Number: X-KR-07/430-1
Sarajevo, 28 March 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA!

Court of Bosnia and Herzegovina, in the Panel composed of Judge Tihomir Lukes as the President of the Panel, and Elizabeth Fahey and Carol Peralta as the Panel members, with the participation of the legal advisor Lejla Konjić as the record-keeper, in the criminal case against the accused Veiz Bjelić for the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (e) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH) and the criminal offense of War Crimes against Prisoners of War under Article 175(1)(a) and (b) of the CC BiH in conjunction with Article 31 of the CC BiH, all in conjunction with Article 180(1) of the CC BiH, following the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ-160/07, dated 22 November 2007, after the consideration of the Guilty Plea Agreement and the public sentencing hearing, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Sanja Jukić, the accused Veiz Bjelić and his defense counsel, Attorney Binasa Abaspahić, on 28 March 2008 rendered and publicly announced the following

V E R D I C T

THE ACCUSED

VEIZ BJELIĆ, son of Mujo and Sejda, née Kovačević, born on 12 September 1949 in Vlasenica, residing in …, ethnicity …, citizen of …, personal ID number …, skilled driller by occupation, literate, widower, served the army in 1968, no criminal record, poor financial standing, no prior convictions, no proceedings pending against him for any other criminal offense,

IS GUILTY

of the following:

During the armed conflict between the Territorial Defense (the TO) of the Republic of Bosnia and Herzegovina (RBiH) and the Army of the Serb RBiH, in the territory of the Municipality of Vlasenica, he acted in violation of the rules of international humanitarian law, specifically Article 3(1)(a) and (c) and Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and Article 121 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, by doing the following:

From June 1992 to 26 January 1993, as a member of the Piskavice TO within the Vlasenica TO and a guard at the so-called *Štale* /stables/ prison in the hamlet of Rovaši, the village of Cerska,

Municipality of Vlasenica, he forced another person into sexual intercourse and aided and abetted others in the intentional infliction of severe physical pain and suffering by doing the following:

1. He enabled unidentified TO RBiH soldiers, who were coming back from frontlines to the Command in Rovaši, to take the stable keys, which were in his sole custody, or to break the door and thus enter the stable without authorization and mentally abuse, insult, swear at, punch and kick the following … prisoners: Rade Pejić, Anđa Obradović, minor Dragan Ilić, Jakov Đokić, Dušan Čestić and Branko Sekulić; instead of reporting this to his immediate superior, the accused Ferid Hodžić, he fixed the door and brought everything into the previous state of repair, knowing that soldiers would come again and cause the prisoners physical and mental pain, which they did during the seven months the prisoners were imprisoned, which resulted, inter alia, in the death of Dušan Čestić;

2. Taking advantage of the time when he was on duty and guarding the prisoners, the accused raped the injured party Anđa Obradović several times, in the way that he would take her out of the stable which was closed during night hours, so that the other prisoners and the guards who were in the same shift would not see that, he raped her behind the stable in an improvised guard box, and then threatened her that he would kill her should she tell anyone about that;

Therefore,

during the state of war in BiH and the armed conflict in BiH between the units of the TO RBiH and the Army of the Serb RBiH, in violation of the rules of international humanitarian law, he committed and aided and abetted in the commission of inhumane treatment, torture, and as a superior and responsible person, he failed to take the necessary and reasonable measures to prevent the commission of the mentioned offenses and to punish the perpetrators thereof.

By doing so,

under Count 1 of the factual description of the operative part of the Verdict, he committed the criminal offense of War Crimes against Civilians **punishable under Article 173(1)(c) of the CC BiH** and the criminal offense of War Crimes against Prisoners of War **punishable under Article 175(1)(a) and (b) of the CC BiH**, **as read with Article 31 of the CC BiH, all in conjunction with Article 180(1) of the CC BiH**.

Under Count 2 of the factual description of the operative part of the Verdict, he committed the criminal offense of War Crimes against Civilians **punishable under Article 173(1)(e) of the CC BiH as read with Article 180(1) of the CC BiH.**

Pursuant to Articles 39, 42 and 48, and Articles 49 and 50 of the CC BiH, the Court hereby imposes on the accused Veiz Bjelić

a sentence of 5 (five) years of imprisonment

for the criminal offense of War Crimes against Civilians punishable under Article 173(1)(c) and (e) of the CC BiH, all in conjunction with Article 180(1) of the CC BiH.

The Court hereby imposes on the accused

a sentence of 5 (five) years of imprisonment

for the criminal offense of War Crimes against Prisoners of War punishable under Article 175(1)(a) and (b) of the CC BiH as read with Article 31 of the CC BiH, all in conjunction with Article 180 (1) of the CC BiH,

and applying the provisions of Article 53 of the CC BiH,

SENTENCES

him to a compound punishment of imprisonment for a term of 6 (six) years

I

Pursuant to Article 188(4) of the CPC BiH, the Accused shall be completely relieved of the duty to reimburse the costs of the proceedings.

II

Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured party Anđa Obradović and other injured parties, if they wish to do so, are hereby referred to take civil action with their claims under property law.

R e a s o n i n g

Under the Indictment number KT-RZ-160/07, dated 22 November 2007, the Prosecutor's Office of BiH charged Veiz Bjelić with the commission of the criminal offenses of War Crimes against Civilians punishable under Article 173(1)(c) and (e) of the CC BiH and War Crimes against Prisoners of War punishable under Article 175(1)(a) and (b) as read with Article 31 of the CC BiH, all in conjunction with Article 180(1) of the CC BiH, and Ferid Hodžić with the commission of the criminal offenses of War Crimes against Civilians punishable under Article 173(1)(c) and (e) of the CC BiH and War Crimes against Prisoners of War punishable under Article 175(1)(a) and (b) in conjunction with Article 180(2) of the CC BiH. At the plea hearing held on 8 January 2008, the accused Veiz Bjelić pleaded not guilty of the offenses brought against him in the Indictment.

On 25 March 2008, in the presence of his defense counsel, the accused Veiz Bjelić concluded a guilty plea agreement with the Prosecutor of the Prosecutor's Office of BiH. Bearing in mind that the main trial in this case commenced on 12 March 2008 and the fact that the accused Veiz Bjelić has concluded the mentioned agreement, on 28 March 2008 the Panel rendered a decision to separate the proceedings against the accused Bjelić from the proceedings conducted against the accused Ferid Hodžić. All parties to the proceedings and the defense counsel for the accused agreed with this decision of the Panel.

In the agreement, the accused Bjelić admitted guilt for the commission of all offenses brought against him in the Indictment, for which he has been convicted in the operative part of this Verdict. A sentence of imprisonment for a term between 5 (five) and 7 (seven) years was proposed in the agreement as a compound prison sentence. Although it was stated in the agreement that the accused agreed to bear all costs of the criminal proceedings, at the hearing

held on 28 March 2008 the Prosecution gave up claiming any expenses on their part, while the defense counsel for the accused proposed that the Court relieve the accused of the duty to reimburse the costs of the criminal proceedings because of his difficult financial situation. In addition, it is stated in the agreement that the accused agreed with all consequences related to the conclusion of the agreement, including the consequences related to claims under property law. On 28 March 2008, the Prosecutor's Office delivered to the Court the Annex to the agreement number KT-RZ-160/07, in which it was proposed that a sentence of imprisonment for a term of 5 (five) years be imposed on the accused for the criminal offense of War Crimes against Civilians referred to in Article 173(1)(c) and (e) of the CC BiH, and a sentence of imprisonment for a term of 5 (five) years for the criminal offense of War Crimes against Prisoners of War referred to in Article 175(1)(a) and (b) of the CC BiH, and that for both mentioned offenses a compound sentence of imprisonment for a term between 5 (five) years and 1 (one) month and 7 (seven) years be imposed on him.

On 28 March 2008, the Court held a hearing to consider the agreement, at which the parties to the proceedings and the defense counsel for the accused Veiz Bjelić presented extenuating circumstances on the part of the accused. In that respect, the Prosecutor stated that, when concluding the agreement, she took into consideration the gravity of the criminal offenses charged against the accused, the circumstances under which they were committed, as well as the willingness of the accused to be held responsible for all charges brought against him. Also, the Prosecution stated that it considered as particularly extenuating circumstances the admission of the accused and his remorse for the committed offenses, as well as the fact that he duly responded to all summons served on him by the Prosecutor's Office and the Court, and that he has no prior convictions. At this hearing, the Prosecutor stated that the purpose of punishment would also be achieved by the punishment proposed in the agreement, while both the costs of the proceedings and repeated traumatization of the witnesses, who would otherwise have to testify before the Court, would be avoided by the acceptance of the agreement. The Prosecutor also stated that the accused is in a very difficult financial situation, and that on that very day (28 March 2008) he lost a member of his immediate family.[1] The Prosecutor stated that she considered that there were no aggravating circumstances on the part of the accused Veiz Bjelić.

The defense counsel for the accused stated that she had informed her client about all consequences of the concluded guilty plea agreement, and that the accused had consciously and voluntarily signed the agreement, as well as the Annex to the agreement. According to the opinion of the defense counsel, the facts that the accused admitted the commission of the criminal offense, cooperated with the Prosecution and duly reported to the Prosecutor's Office and the police administration constitute particularly extenuating circumstances. In addition, the defense counsel pointed out that the accused was married to a woman of a different ethnicity during the war, which, according to the defense counsel's opinion, indicates that the accused did not have any discriminatory intent during the relevant period of time. The defense counsel also considers that imposing a more severe punishment would prevent other perpetrators of similar criminal offenses from possibly reporting themselves and admitting to the commission of criminal offenses.

The Court asked the accused whether he had signed the Agreement and its Annex consciously and voluntarily and whether he fully understood the agreement and the consequences arising from it. The accused confirmed that he had read all that was stated in the Agreement and the Annex and that he had signed the Agreement consciously and voluntarily, after having been informed about possible consequences, including the consequences related to claims under

[1] According to the accused Veiz Bjelić, his mother died that morning (28 March 2008)

property law and costs of the criminal proceedings. Also, the accused confirmed that he admitted to all charges brought against him, as well as that he understood that by signing the Agreement he waived his right to a trial, and that he could not file an appeal from a criminal sanction which would be imposed on him if the Court accepted the concluded Guilty Plea Agreement. He supported the arguments given by his defense counsel and the Prosecutor.

The Court has assessed all the Prosecution pieces of evidence which were delivered and found that they proved that the accused had committed the criminal offenses charged against him, namely: Prosecutor's Office of BiH Record of the examination of the witness Anđa Obradović, number KT-RZ-15/06, dated 30 April 2007, Prosecutor's Office of BiH Record of the examination of the witness Rade Pejić, number KT-RZ-160/07, dated 19 June 2007, Prosecutor's Office of BiH Record of the examination of the witness Muharem Sinanović, number KT-RZ-160/07, dated 28 June 2007, Prosecutor's Office of BiH Record of the examination of the witness Dževad Musić, number KT-RZ-160/07, dated 21 September 2007, Prosecutor's Office of BiH Record of the examination of the witness Nurija Hurić, number KT-RZ-160/07, dated 4 September 2007, Prosecutor's Office of BiH Record of the examination of the witness Ismet Hurić, number KT-RZ-160/07, dated 26 June 2007 and 18 September 2007, Prosecutor's Office of BiH Record of the examination of the witness Bešir Aljukić, number KT-RZ-160/07, dated 10 September 2007, Prosecutor's Office of BiH Record of the examination of the witness Esad Maljišević, number KT-RZ-160/07, dated 7 September 2007, Prosecutor's Office of BiH Record of the examination of the witness Samir Musić, number KT-RZ-160/07, dated 10 July 2007, Prosecutor's Office of BiH Record of the examination of the witness Adil Omerović, number KT-RZ-160/07, dated 7 September 2007, … membership application form in the name of Veiz Bjelić, dated 1 April 1992, Excerpt from the criminal record of the Vlasenica Police Station, number 12-1-8/02-235-287/07, dated 12 September 2007, in the name of Veiz Bjelić and Ferid Hodžić, Ministry of Defense – information from the military record number 08-04-1-139-5/07 in the name of Veiz Bjelić (unit file), dated 30 July 2007 + certificate of salaries of members of the Armed Forces of R BiH in the name of Veiz Bjelić, dated 11 July 1996, Prosecutor's Office of BiH Record of the questioning of the suspect Veiz Bjelić, number KT-RZ-160/07, dated 20 September 2007, DVD recording of the exhumation and autopsy of Dragan Ilić, Dušan Čestić and Branko Sekulić, DVD recording *Rovaši*.

In addition to the foregoing documentary evidence, the Prosecution also proposed in the Indictment the examination of the mentioned witnesses, who would confirm the factual allegations stated in the Indictment in the course of the main trial.

The defense for the accused did not offer evidence to the Court.

After the confidential deliberation and voting, the Court accepted the agreement in its entirety, finding that all requirements referred to in Article 231(4) of the CPC BiH had been met. The Court established that the accused Veiz Bjelić concluded this agreement voluntarily, consciously and with understanding, after he had been informed about possible consequences, including the consequences related to possible claims under property law and costs of the criminal proceedings. The Court further found that there was sufficient evidence concerning the guilt of the accused, as well as that the accused understood that in this way he waived his right to a trial, and that he cannot file an appeal from a criminal sanction which would be imposed on him. The testimony of the accused was entered into the record, and the sentencing hearing was held on the same day.

In the beginning, the Court considered which law is applicable in the present case. While doing this, the Court was mindful that the accused, by signing the agreement, admitted guilt for the

commission of the criminal offenses stipulated in the CC BiH. The Court was also mindful of Articles 3, 4 and 4(a) of the CC BiH and Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR).

As the Criminal Code of BiH was enacted in 2003, the Court has taken into consideration the fact that the relevant acts of the accused, at the moment when they were committed, constituted criminal offenses both in accordance with the general principles of international law and the Criminal Code of the Socialist Federal Republic of Yugoslavia (which was in force during the relevant period of time). Certainly taking into consideration the general principles contained in Articles 3 and 4 of the CC BiH, the Court concludes that, applying Article 7(2) of the ECHR (as well as Article 4(a) of the CC BiH), the provisions of the CC BiH are to be applied to the present case. The Court has particularly borne in mind the decision of the Constitutional Court of Bosnia and Herzegovina in the case of Abduladhim Maktouf (number AP-1785-06), from which follows that the application of the Criminal Code of BiH in cases of criminal offenses against humanity and values protected under international law (which had been committed before this code came into force) is in accordance with the ECHR and the Constitution of BiH.

1. Applicability of provisions of the Geneva Conventions – character of the armed conflict

Since the accused, among other things, has been charged with violations of certain principles of international law, it is necessary to preliminarily solve the issue of the applicability of these principles in the present case. The particular reason for this is that international law makes a difference between the treatment of international armed conflicts and those of an internal character. The application of certain principles of international law in this case is incorporated into the very articles for whose violation the accused has been charged, as further explained below.

It is clear from the very provision of Article 173(1) of the CC BiH that the same crime, *prima facie*, is applicable to armed conflicts, without any particular distinction between internal and international conflicts. The same can also be said for Article 175(1) of the CC BiH, which does not explicitly mention the existence of an armed conflict (although the Third Geneva Convention, which stipulates the rules applicable to prisoners of war, applies in the case of an armed conflict). The existence of an element of "violation of the rules of international law" incorporates the principles of that law into both articles.

The Indictment charges the accused with acting contrary to the Geneva Convention relative to the Treatment of Prisoners of War of 1949 (the Third Geneva Convention) and the Geneva Convention relative to the Protection of Civilian Persons of 1949 (the Fourth Geneva Convention), namely with violating Articles 3 and 121 of the Third Geneva Convention and Articles 3 and 27 of the Fourth Geneva Convention. These violations would constitute "violations of the rules of international law" and as such they would satisfy the abovementioned element in Articles 173 and 175 of the CC BiH.

However, at the very beginning it is necessary to underline the fact that, exclusive of Common Article 3 of the Geneva Conventions, the provisions of these Conventions primarily apply to armed conflicts of an international character. This principle clearly follows from Article 2 of the Third and the Fourth Geneva Conventions, and it was confirmed by judgments of international courts, including the International Criminal Tribunal for the former Yugoslavia (ICTY).[2] On the other hand, the provisions of Common Article 3 of the Conventions, as it is stated in the very introduction to that article, are related to internal armed conflicts, and they are

[2] See the *Blaškić* case, Appeals Chamber, 29 July 2004, paragraph 170

further supplemented by the provisions of the Second Additional Protocol of 1977. It is also worth mentioning that the provisions of Common Article 3 constitute a minimum of principles and guarantees of international customary law, which are common to internal and international armed conflicts.[3]

Since the armed conflict between the Territorial Defense of BiH (the TO BiH) and the Army of the Serb Republic of BiH, in which the criminal acts of the accused were committed, is of an internal character, it is necessary to consider whether and on what basis the principles of the provisions of the Geneva Conventions, the violation of which the accused has been charged with, are applicable to them (of course, this issue does not refer to Common Article 3, which is directly applicable). As these provisions cannot be directly applied to an internal conflict, the question arises whether they have become a part of customary international law applicable to internal armed conflicts.

It is clear that certain principles of international customary law are applicable to armed conflicts of an internal character and that, as such, they incorporate individual criminal responsibility of persons who violated them.[4] Furthermore, the ICTY Appeals Chamber confirmed that the principle of international customary law according to which serious violations of the Geneva Conventions are also applicable to internal armed conflicts is in the process of development[5], although one cannot speak about the direct "transfer" of all rules applicable in international conflicts to internal conflicts.[6]

At the same time, the ICTY Appeals Chamber in the *Čelebići* case refused the argument that completely separate principles apply to international and internal conflicts, which would result in certain acts constituting criminal offenses in an international armed conflict, while they would not be punishable in a conflict of an internal character.[7]

When the application of the principles of international humanitarian law, particularly of the Geneva Conventions, to internal armed conflicts is at issue, this Panel finds that the basic principles, including the fundamental obligations and prohibitions of the Geneva Conventions, have become part of international customary law applicable to internal armed conflicts. As the Panel will further explain, they were part of the law applicable to the territory of Bosnia and Herzegovina in the period covered by the Indictment.

These principles include the obligations and/or prohibitions stipulated in Article 121 of the Third Geneva Convention and Article 27 of the Fourth Geneva Convention, for the violations of which the accused has been charged, and which he himself admitted. These articles contain the obligations of participants in an armed conflict, which are logically constituent elements of the principles of international customary law applicable to internal conflicts. The Panel particularly bears in mind the fact that these are provisions which aim at the protection of basic rights of civilians and other persons who do not take part in an armed conflict.

The Panel bases its conclusion regarding the issue of the application of the mentioned provisions in the context of an internal armed conflict also on the ICTY case law and the provisions of the Second Additional Protocol of 1977, which extends the basic principles of Common Article 3 applicable to internal conflicts, and particularly contains the obligations of

[3] See the case of *Delalić and others*, Appeals Chamber, 20 February 2001, paragraphs 143 and 150
[4] See the *Tadić* case, Decision of the Appeals Chamber on interlocutory appeal, paragraphs 96-127 and 128-134
[5] Ibid
[6] See the *Tadić* case, Decision on jurisdiction, paragraph 126
[7] See the *Čelebići* case, Appeals Chamber, paragraph 161

parties to the conflict when persons deprived of liberty are at issue.[8] The ICTY case law consistently shows that a number of principles of international humanitarian law from the war crimes field are applied in internal conflicts. This Panel completely agrees with the conclusion of the ICTY Appeals Chamber that maintenance of a distinction between the two legal regimes and their criminal consequences when equally serious offenses are at issue, only because of a difference in the nature of an armed conflict, would ignore the basic purpose of the Geneva Conventions, which is the protection of dignity of human beings.[9] There is no doubt that this case concerns serious violations of the basic rights of detained persons, which are protected by the principles of international customary law.

The conclusion regarding the issue of the application of the fundamental obligations and prohibitions of the Geneva Conventions in the conflict which is the subject of the Indictment is also supported by the fact that punishment for the violations of obligations deriving from international law was also incorporated into the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) which was adopted back in 1976. Hence, the obligation to respect the international rules, which include the Geneva Conventions, has a long tradition in the territory of the former Yugoslavia and it was part of domestic legislation long before armed conflicts took place in these territories during the period from 1992 to 1995. That fact also supports the conclusion that the basic principles incorporated into the Geneva Conventions were also applicable to internal conflicts in these areas during the relevant period of time. Furthermore, the Panel is aware that criminal punishment for violations of the principles of international law in domestic systems, even in the context of internal conflicts, exists throughout the world, while the first examples of the same can be found as early as in the 19th century.[10]

Moving specifically to Article 121 of the Third Geneva Convention, the Panel finds that the obligation from that article which pertains to the initiation of an official enquiry into the circumstances of causing serious injuries to detained persons (who fell under the category of prisoners protected by the Convention) is certainly one of the basic obligations of a party to the conflict. As such, it was applicable as part of customary law also in this case, and the accused Veiz Bjelić, as a person who was directly responsible for the supervision of the prisoners and the functioning of the prison, was obliged to undertake concrete actions in accordance with this article. His violation of this obligation constitutes a violation of the principles of international law, and the same is only the continuation of an obvious violation of Article 13 of the Third Geneva Convention with respect to the overall treatment of prisoners. As for the status of the prisoners, the Panel finds that, in addition to being covered by Common Article 3, some of the detained persons enjoyed the status of protected persons by an analogous application of Article 4 of the Third Geneva Convention, which defines categories of war prisoners to which that Convention applies. As explained in the further text of the Verdict, it is clear that some of the prisoners for whom the accused was responsible fell under the categories of prisoners of war (members of the armed forces of a party to the conflict or members of a militia or volunteer corps).

As for the application of Article 27 of the Fourth Geneva Convention, and starting from the foregoing discussion, it is clear that the principles of that article constitute the basic obligations for the treatment of civilians during an armed conflict. The Panel finds that this article, as part of international customary law, was also applicable during the armed conflict relevant to this case, and that the accused was obliged to act in accordance with it. In this case, in addition to

[8] See Articles 4, 5 and 6 of the Second Additional Protocol
[9] See the *Čelebići* case, Appeals Chamber, paragraph 172
[10] For example, Article 44 of the Lieber Code of 1863 in the United States of America; see also the *Tadić* case, ICTY Appeals Chamber, decision of 2 October 1995, paragraph 131

the fact that they are covered by the provisions of Common Article 3, and in any case under the protection of the basic principles of the Convention, the detained civilians, by an analogous application of Article 4 of the Fourth Geneva Convention, can be included in the category of protected persons in that provision.

In the text below, the Panel will specifically assess the responsibility of the accused for the particular criminal offenses charged against him.

2. War Crimes against Prisoners of War referred to in Article 175(1)(a) and (b) in conjunction with Article 31 and War Crimes against Civilians referred to in Article 173(1)(c), all in conjunction with Article 180(1) of the CC BiH

Under Count II-1 of the factual description of the Indictment, the accused has been charged with the commission of the criminal offenses of War Crimes against Civilians referred to in Article 173(1)(c) of the CC BiH and War Crimes against Prisoners of War referred to in Article 175(1)(a) and (b) in conjunction with Article 31, all in conjunction with Article 180(1) of the CC BiH.

The relevant part of Article 173 of the CC BiH stipulates the following:

"Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:

(c) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."

Article 175(1)(a) and (b) of the CC BiH reads as follows:

"Whoever, in violation of the rules of international law, orders or perpetrates in regard to prisoners of war any of the following acts:

- *(a) depriving another persons of their life (murders), intentional infliction of severe physical or mental pain or suffering upon persons (tortures), inhuman treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation;*
- *(b) causing of great suffering or serious injury to bodily integrity or health;*

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."

These provisions contain similar prohibitions and they are applicable to different groups of protected persons (civilians and prisoners of war) who were detained in the prison for which the accused was responsible.

In accordance with the cited provisions, the Court has established the elements which pertain to both articles:

- the act of the perpetrator must be committed in violation of the rules of international law
- the violation must take place in time of war, armed conflict or occupation *(only for the criminal offense of War Crimes against Civilians)*
- the act of the perpetrator must be related to war, armed conflict or occupation
- the perpetrator must order or perpetrate the act

- **the act committed in violation of the rules of international law**

As already mentioned, the Indictment is this part charges the accused Veiz Bjelić with:

- War Crimes against Prisoners of War (referred to in Article 175(1) of the CC BiH) and violations of Article 3(1)(a) and (c) and Article 121 of the Third Geneva Convention, and
- War Crimes against Civilians (referred to in Article 173(1) of the CC BiH) and violations of Article 3(1)(a) and (c) and Article 27 of the Fourth Geneva Convention.

The Panel has previously explained the application of Article 121 of the Third Geneva Convention and Article 27 of the Fourth Geneva Convention in this case, while Common Article 3 is at all events applicable to internal conflicts. A violation of these provisions would, of course, constitute a violation of the rules of international law, and as such it would be covered by Article 175(1) and/or Article 173(1) of the CC BiH.

The relevant provisions of the mentioned Conventions read as follows:

Common Article 3(1)(a):

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;"

Article 121 of the Third Geneva Convention:

"Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible."

Article 27 of the Fourth Geneva Convention:

"Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war."

One of the prerequisites for the application of the mentioned provisions is certainly that "a victim" belongs to the protected category of persons. Therefore, it is necessary to identify the object of the criminal act and establish whether it is protected by the relevant Geneva Convention.

Prisoners of War

Article 4(A) of the Third Geneva Convention defines prisoners of war in the following way:
"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

1) *Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.*
2) *Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:*
   - *That of being commanded by a person responsible for his subordinates;*
   - *That of having a fixed distinctive sign recognizable at a distance;*
   - *That of carrying arms openly;*
   - *That of conducting their operations in accordance with the laws and customs of war.*

3) *Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.*
4) *Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.*

5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.
6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war."

Obviously, it is not claimed in this case that all, but rather only some of the victims of the committed offenses were persons referred to in the cited provision. Based on the admission of the accused and the Prosecution evidence, the Court has established that some of the detained persons (at least two) belonged to the abovementioned categories as members of the armed forces of a party to the conflict or members of volunteer corps forming part of such armed forces. This is confirmed, among other things, by the statements of the witnesses Adil Omerović and Ismet Hurić.

In his statement given to the Prosecution in the course of the investigation, the witness Omerović (a member of the Patriotic League of BiH) stated: *"I knew that there was a prison in that place, Rovaši,…I know that a soldier was imprisoned there; he was a rather young man – a recruit from the former Yugoslav People's Army, Serb, from the village of Kalabače… another one came later, I conclude this from the fact that I also knew that a soldier from the village of Sebiočina came…"*[11]

The witness Hurić (a member of the Ceranska Brigade) stated: *"When I assumed my duty as a guard, I found in that stable 12 Muslims from Kamenica and a Serb soldier in a uniform; Muslims were released after several days, and that Serb soldier remained alone."*[12] He further stated that Mišo, Dragan, Dušan Ćestić, a soldier whose name he did not know, and a woman had been brought after that.

At all events, these persons are also covered by Common Article 3 of the Conventions, since they are persons *taking no active part in the hostilities, including …… those placed hors de combat by … detention, or any other cause.*

It is also important to note that the Prosecutor and the Defense agree regarding the particular issue of the status of some of the detainees as prisoners of war, which follows from the Guilty Plea Agreement.

Civilians

The Panel finds that it has been also proved beyond any doubt that persons belonging to the category of civilians, specifically in terms of Article 4 of the Fourth Geneva Convention, were among the persons who were in the prison supervised by the Accused, since they were the persons who, colloquially speaking, were in the enemy forces' hands. Furthermore, as in the case of the already described category of detainees – former members of armed forces, these persons as well are protected under Common Article 3 of the Convention, since they are obviously persons *taking no active part in the hostilities.*

[11] Record of the examination of the witness Adil Omerović, number KT-RZ-160/07, dated 7 September 2007, page 2
[12] Record of the examination of the witness Ismet Hurić, number KT-RZ-160/07, dated 26 June 2007, page 3

In that respect, the Court has assessed the Prosecution evidence and the admission of the accused at the hearing held for the consideration of the Agreement, which is consistent with the statement he gave in the Prosecutor's Office as a suspect.[13]

Although it is not possible to conclude from the submitted evidence the exact number of detainees in the mentioned facility, it is clear that it was a group which included a certain number of civilians. Anđa Obradović and Rade Pejić, who gave their statements in the course of the investigation in this case, were among them.

In her statement given to the Prosecution during the investigation, the witness – injured party Anđa Obradović[14] stated that during the relevant period of time she lived in Novo Selo, Zvornik Municipality, with her husband, who managed to run away before the attack on that village. The witness further stated that she did not dare to go out of the house just before soldiers raided the village, so she remained alone in the house. In the early morning hours of 17 September 1992, soldiers raided the village and the witness heard them saying: *"catch them alive"*. Then two armed men in black uniforms, with black stockings on their heads and gloves, entered the ground floor of the house in which the witness was hiding. After they asked her where Chetniks were and after the witness replied that she did not know, one of the two hit her hard under the left eye. Then they took her to the military command in the place Bajrići, where they interrogated her, and then, after a certain period of time, they took her to the prison in Rovaši, for which the accused was responsible. It is clear that the witness had no weapons, that she was not a member of the armed forces of any party, and that she undoubtedly had the status of a civilian, and was deprived of liberty as such. The witness Muharem Sinanović also stated: *"When we entered the village, in the far end of the village we captured a woman, about whom I later learned that her name was Anđa. She wore a multicolored waistcoat and she was in civilian clothes."*

In his statement, Rade Pejić said: *"At that time I was not a member of the JNA Army (Yugoslav People's Army) or the Army of RS, and I did not keep village guard. I was an ordinary civilian and I wore plain civilian clothes."*

Therefore, it is clear that there were a certain number of civilians among the persons who were detained in the prison for which the Accused was responsible. These civilians, together with other imprisoned persons, were subjected to the abuse facilitated by the Accused, as explained in the further text of the Verdict.

- **the violation in time of war, armed conflict or occupation**

This temporal requirement ("in time of war") refers only to Article 173 of the CC BiH, in the sense that the prohibitions of that Article are related to the period of hostilities (while certain protections of civilians continue also after the end of conflict, as indicated by, for example, Article 2(2) of the Second Additional Protocol).

Therefore, the main requirement referred to in Article 173 of the CC BiH is that acts of the accused must be committed in time of armed conflict or occupation or state of war. This is consistent with the fact that the principles of international law apply from the very beginning and throughout hostilities. The Decision of the ICTY Appeals Chamber in the Tadić case states

[13] Record of the examination of the suspect Veiz Bjelić, number KT-RZ-160/07, dated 20 September 2007, page 5
[14] Record of the examination of the witness Anđa Obradović, number KT-RZ-15/06, dated 30 April 2007

the following: *"International humanitarian law applies from the initiation of (such) armed conflicts and extends beyond the cessation of hostilities…"*[15]

An armed conflict *"exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State".*[16] The Panel finds the fact that an armed conflict was ongoing between the Territorial Defense of BiH and the Army of the so-called Serb Republic of BiH during the period covered by the Indictment to be beyond any doubt. Although specific evidence which would allow the conclusion about the organization and command structures of the TO BiH and the Army of the Serb Republic of BiH was not submitted to the Court, it is clear that both were organized armed groups/forces which operated in the relevant geographical area and during the relevant period of time.

The Panel bases its conclusion regarding this contextual element on both the admission of the accused and the statements of the witnesses, out of whom some were members of the TO Vlasenica (and were also prison guards, together with the Accused), while some were direct victims of the committed offenses. In their statements, all of them speak in an unquestionable manner about the armed conflict between the units of the TO BiH and the Army of the Serb Republic of BiH which was ongoing in the area of the Vlasenica Municipality during the relevant period of time. The existence of this armed conflict was certainly not contested in this case in any way.

- **the act of the perpetrator must be related to war, armed conflict or occupation**

When speaking about war crimes, it is necessary to establish the existence of a sufficient nexus between the acts of the accused and the state of war. In international humanitarian law, the proving of this element refers to all war crimes, hence both to the criminal offense of War Crimes against Civilians (Article 173 of the CC BiH) and the criminal offense of War Crimes against Prisoners of War (Article 175 of the CC BiH).

International humanitarian law does not apply to all unlawful acts committed during an armed conflict. It applies only to those unlawful acts which are sufficiently related to hostilities. In order to be punishable as war crimes, acts of the accused must be *"closely related to the state of war"*[17]. Therefore, what distinguishes a war crime from an "ordinary" criminal offense is that a war crime is shaped by or dependent upon the environment (the armed conflict) in which it is committed.[18]

The smallest degree of relationship which has to be established is that the existence of war has played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.[19] It follows from this that it is not necessary to establish a cause-and-effect relationship between the state of war and the commission of a crime.

The Court assesses that it is sufficient to establish that criminal offenses of the perpetrator are closely related to the state of war if it is proved that the perpetrator acted in the context of the state of war, as it happened in this case. The Court finds it indisputable that the relevant acts

[15] See the *Tadić* case, number IT-94-1, Decision on the defense motion for interlocutory appeal on jurisdiction, dated 2 October 1995, paragraphs 67 and 70
[16] Ibid, paragraphs 67 and 70
[17] See the *Kunarac* case, Judgment of 12 June 2002
[18] Ibid, Appeals Chamber Judgment, paragraph 58
[19] See the *Vasiljević* case, Trial Chamber Judgment, paragraph 25

took place at the time and in the context of the armed conflict between the TO BiH and the Army of the Serb Republic of BiH in the area of the Vlasenica Municipality, while the accused Veiz Bjelić, committing the relevant acts, acted as a participant of a party to that conflict. It is clear that the accused was engaged as a prison guard exactly as a member of the military forces within the TO Vlasenica.

Such a conclusion of the Court follows both from the statement of the accused and the statements of the witnesses Rade Pejić, Muharem Sinanović, Dževad Musić and Nurija Hurić.

- **the perpetrator must order or perpetrate the act**

The accused is specifically charged with the commission of the criminal acts referred to in Article 173(1)(c) and Article 175(1)(a) and (b) of the CC BiH, all in conjunction with Article 180(1) of the CC BiH.

In relation to subparagraph (c) of Article 173, it stipulates that this criminal offense, with the existence of the previously analyzed general elements, is specifically perpetrated by: *"…intentional infliction of severe physical or mental pain or suffering upon a person (torture),… inhuman treatment…"*. With respect to Article 175(1)(a) and (b) of the CC BiH, that criminal offense specifically constitutes (also with the existence of the general elements which were previously described): (a) "… *intentional infliction of severe physical or mental pain or suffering upon persons (tortures), inhuman treatment …",* (b) *"…causing of great suffering or serious injury to bodily integrity or health".*

Article 180(1) of the CC BiH reads as follows: *"A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offense. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment."*

By the Guilty Plea Agreement, the accused admitted his guilt for all the offenses charged against him in the Indictment of the Prosecutor's Office of BiH, number KT-RZ-160/07, and expressed remorse for the committed offenses. However, the Court is obliged to assess the validity of that admission, as well as to establish if there is sufficient evidence from which his criminal responsibility follows.

In the statement which he gave as a suspect, the accused stated that he had known the Commander Ferid Hodžić from before and that he had appointed him as the company commander.[20] The accused further stated that on 6 June 1992 he came to Rovaši, where, after a military operation of the Vlasenica TO, he was deployed to guard persons captured in that operation. In relation to this, the accused claimed that he got the keys to the stable in which prisoners were placed from a young man wearing a green beret. According to the allegations of the accused, all this happened on Ferid Hodžić's order. The accused stated that there were 5 men in that stable (prison), one of whom was wearing a set of old military clothes. He also stated that all prisoners were Serbs, that they had nothing to cover themselves with and that

[20] Record of the examination of the suspect Veiz Bjelić, number KT-RZ-160/07, dated 20 September 2007, page 5

they were lice-infested, while they received food from the accused. According to the allegations in the statement, one of the following days "Fata" was brought there, and the accused later learned that her name was actually Anđa Obradović. The accused described that soldiers, TO Vlasenica members, would come, enter the stable and maltreat the prisoners. According to the allegations of the accused, someone of TO members always kept guard, so that the prisoners could not move or go out freely.

The Court has also inspected the remaining Prosecution evidence which was delivered, including the statements of the witnesses from which it follows that the accused Veiz Bjelić was a prison guard, and in that capacity he was responsible for the safety of the prisoners. It follows from this evidence beyond any doubt that the accused also had the keys to that prison and that he would give them to soldiers of the Army of RBiH and other people, thus enabling them to enter the prison and inflict bodily injuries and physical and mental pain on the prisoners, among whom were civilians (including one woman) and Serb soldiers. The Panel concludes that the accused knew that those persons entered the prison and beat the prisoners, given that after soldiers forced open the door, he came, changed the lock and locked up again.

According to the statement of the witness Ismet Hurić (one of the guards, Vlasenica TO member), the prisoners were beaten by soldiers or other people who were coming back from a battlefield, which the accused knew. In his statement given in the course of the investigation, he claimed: *"Veiz knew that they were beaten, since those soldiers who did the beating would bring the key from Veiz. Only Veiz had the prison key."* The witness confirmed that the conditions in the stable were horrible, as well as that the person called Dušan Čestić hanged himself. In their statements given during the investigation, the witnesses Nurija Hurić, Dževad Musić, Bešir Aljukić, Rade Pejić and Anđa Obradović confirmed Ismet Hurić's allegations concerning the role of the accused in the prison where Serbs were detained.

The foregoing is consistent with the information stated in the Records on the identification of mortal remains of Dušan Čestić, Dragan Ilić and Branko Sekulić,[21] who were also imprisoned in the stable guarded by the accused, and who died as a result of physical abuse (according to the witnesses' statements, Dušan Čestić hanged himself).

In his statement given in the course of the investigation, the witness Ismet Hurić stated: *"The door was always locked. For that reason I concluded that Veiz was the commander of the guard. When I say – the commander, I mean that he was the commander of us who kept guard, since he gave assignments to us, the guards. I also concluded that he was the commander of the guards from the fact that he brought the food in and decided whom he would let inside, he would take the key out of his pocket and unlock the entrance door to the stable and he would give food to the prisoners while standing at the door… … Then I went to call Veiz and I told him that, while in the meantime those soldiers picked a lock, beat them and left, and Veiz made a latch and locked the door."* In their statements given in the Prosecutor's Office during the investigation, the other, earlier mentioned witnesses described the accused as a person who was responsible for the persons imprisoned in the stable. Samir Musić (one of the prison guards) confirmed that the stable keys were with the accused. He stated the following in his statement: *"I know that Serbs were captured; Mišo, Dragan, Anđa, and two Muslims were among them".*[22] He also confirmed that one of the prisoners hanged himself, after which they buried him. The statement of the witness Bešir Aljukić (member of the Ceranski Detachment, which was a part of the Vlasenica TO) states that the conditions in the prison were very bad and that

[21] Records on the identification of mortal remains of Dušan Čestić (72/2007, dated 25 June 2007), Branko Sekulić (28/2004, dated 13 February 2004) and Dragan Ilić (121/2004, dated 1 September 2003)
[22] Record of the examination of the witness Samir Musić, number KT-RZ-160/07, dated 10 July 2007, page 2

the accused was one of the prison guards. The witnesses Nurija Hurić and Dževad Musić (both were prison guards), as well as the previously mentioned witnesses, confirmed in their statements that the accused had the stable key and that he decided on who would keep guard at what time. In his statement given in the course of the investigation, the injured party Rade Pejić described the conditions in the stable and stated that the prisoners could not go out of that prison since the door was locked, and that everyone in the stable was beaten. He stated*: "…however, I know that the guards who guarded me did not beat me, but they allowed others to enter, since they gave the keys to those other persons to enter, and there they beat us."* [23]

When establishing the criminal responsibility of the accused for the criminal offense of War Crimes against Prisoners of War, the Panel bore in mind that the accused in the present case has been charged with aiding and abetting other persons in the commission of that offense. The ICTY Panel in the *Tadić* case assessed that *"…all acts of assistance by words or acts that lend encouragement or support constitute sufficient participation to entail responsibility whenever the participation had substantial effect on the commission of the crime…"*[24] Therefore, it is unnecessary to prove that a cause-and-effect relationship existed between the act of aiding and abetting and the commission of the crime, but rather it is sufficient to establish that aiding and abetting, that is, the participation of the accused significantly facilitated the perpetration of the crime. The Panel finds that the accused must have aided and abetted in the unlawful act in full knowledge of what he was doing. The aiding and abetting by the accused (which could take place before, during and after the commission of the act) does not always imply his physical presence.

The Panel assesses that it has been proved beyond any reasonable doubt that the accused was responsible for the conditions of detention of the persons in the stable. It has been established that his duty as a guard in that prison was to take care of the hygienic conditions, as well as the health and well-being of the prisoners. In the statement of the accused given in the course of the investigation (in his capacity as a suspect), it is mentioned that the prisoners were in the stable: *"…The stable is a place where farmers tie cows, sheep, horses, goats. There is no plaster either inside or outside, there are beams, it is covered by barrel sheet metal, there is a hay-rack, where food was put for the cattle to eat… Three times I brought straw in nylon and laid it. They had nothing to cover themselves with. They were lice-infested… Whenever operations were ongoing, women, old people and children would come, bring pick-axes, a pick, go inside and beat…"*[25] The other Prosecution witnesses also confirmed in their statements that the conditions in the prison (the so-called stable) were very bad, and that the prisoners were physically maltreated. Although the accused obviously gave no order to commit such violence, the Court assesses that it has been proved that he aided and abetted in and contributed to the commission of violence against the prisoners. To wit, the accused was present during the violence and he was aware that it took place, but still did not oppose in any way. Quite to the contrary, after persons had committed violence against the prisoners, the accused repaired all what they had previously destroyed and broken and brought everything into the previous state of repair, instead of reporting all that was happening to his superior, Ferid Hodžić. The accused was the only one who had the keys of the stable in which the prisoners were detained, so he decided on who would go in and who would go out. Additionally, the accused was a superior to the other guards; he assigned the other guards to shifts and submitted reports to the command.

Assessing the admission of the accused and all the Prosecution evidence which was delivered, the Court has concluded that the acts of the accused constitute a violation of Articles 3 and 121

[23] Record of the examination of the witness Rade Pejić, number KT-RZ-160/07, dated 19 June 2007, page 3

[24] See the *Tadić* case, paragraph 689, page 272

[25] Record of the examination of the suspect Veiz Bjelić, number KT-RZ-160/07, dated 20 September 2007, page 6

of the Third Geneva Convention and Articles 3 and 27 of the Fourth Geneva Convention. The criminal responsibility of the accused is specifically stipulated under Article 173(1)(c) and Article 175(1)(a) and (b) of the CC BiH. His criminal acts are specifically reflected in facilitating the intentional infliction of severe physical and mental pain and suffering (torture) upon the prisoners in the stable and facilitating other persons (members of the Army of BiH and other people) to treat inhumanely the persons detained in the stable. The accused committed all these acts knowingly and willingly as a member of the Piskavice TO, attached to the Vlasenica TO.

Bearing in mind all the abovementioned circumstances, the Court assesses that the acts of the accused constitute elements of the criminal offense of War Crimes against Civilians referred to in Article 173(1)(c) and the criminal offense of War Crimes against Prisoners of War referred to in Article 175(1)(a) and (b) in conjunction with Article 31, all in conjunction with Article 180(1) of the CC BiH. The accused is individually responsible for the commission of this offense (pursuant to Article 180(1) of the CC BiH). The Court concludes that the accused committed the mentioned criminal offenses with direct intent, aware of the offenses he was committing and willing to commit them.

3. War Crimes against Civilians referred to in Article 173(1)(e) of the CC BiH in conjunction with Article 180(1) of the CC BiH

The Panel has already established the existence of the general elements which comprise this criminal offense, so in this part it will focus on the assessment of the existence of evidence that the accused committed the criminal act of rape of the injured party Anđa Obradović. First of all, the Panel has established beyond any doubt that the injured party was a civilian, and as such she belonged to the category of persons protected under Articles 3 and 27 of the Fourth Geneva Convention.

The criminal offense referred to in Article 173(1)(e) of the CC BiH, in addition to other things, implies *"coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape)…".* The Court has drawn the conclusion that the accused raped the injured party Anđa Obradović on the basis of the very admission of the accused that he committed that act, which is consistent with the statement of the injured party. In her statement, the injured party correctly and clearly described how the accused did that, while the witness Rade Pejić stated that the accused did not go inside the prison, but occasionally, during night hours, he took out Anđa Obradović, who would stay out for some time, and when she returned, he heard her sobbing in the dark. In addition, the injured party was present at the hearing held in order to consider the agreement, and on that occasion she confirmed that it was exactly the accused who had raped her. In his statement given in the course of the investigation, the witness Bešir Aljukić stated that he had heard that the accused had raped *"a woman who was captured".* In their statements given during the investigation, the other witnesses also confirmed that the accused, while he was a guard in the prison, the so-called "stables", raped the injured party Anđa Obradović. Rape constitutes a direct and flagrant violation of the basic principles of the Fourth Geneva Convention, including Article 3(1) and Article 27 of the Fourth Geneva Convention, and it is also stipulated as a criminal offense in Article 173(1)(e) of the CC BiH.

After it considered the concluded guilty plea agreement and found that, in addition to the accused's admission of guilt, there is sufficient evidence of the Prosecutor's Office of BiH, which is mentioned above, the Court has found it established that the accused raped Anđa Obradović, a person who enjoyed the protection of the Fourth Geneva Convention during the

armed conflict, and thus he committed the criminal acts of War Crimes against Civilians referred to in Article 173(1)(e) of the CC BiH in conjunction with Article 180(1) of the CC BiH. The Panel finds that the accused bears individual criminal responsibility for this offense and that he acted with direct intent, knowingly and willingly.

4. Meting out the punishment

Assessing all the circumstances on the part of the accused (both aggravating and extenuating) as well as the general range of punishment from the concluded guilty plea agreement, and applying Article 49(1)(b) of the CC BiH, the Court has imposed a 5 (five)-year prison sentence on the accused for the criminal offense of War Crimes against Civilians referred to in Article 173(1)(c) and (e) in conjunction with Article 180(1) of the CC BiH, and the same sentence for the criminal offense of War Crimes against Prisoner of War referred to in Article 175(1)(a) and (b) in conjunction with Article 31 of the CC BiH, all in conjunction with Article 180(1) of the CC BiH. It is clear that such sentences constitute a reduction of the minimum prescribed sentence for the criminal offenses at issue (the legal minimum is 10 years), pursuant to Article 150(1)(a) of the CC BiH. The Court assesses that the individually established punishments are criminal sanctions adequate and proportionate to the gravity of the criminal offenses and the degree of criminal liability of the accused, who is the perpetrator of these offenses.

When establishing individual prison sentences, the Court assessed as particularly extenuating circumstances on the part of the accused the facts that he cooperated with the Prosecution, that he admitted to the commission of the criminal acts stated in the Indictment, and expressed sincere remorse for the committed criminal offenses. In addition, the Court assessed the circumstances under which the criminal offenses were committed and the position of the accused at that time. The Court has also borne in mind that the admission of the accused may have a significant positive effect also on the victims of the committed crimes, which surely has a certain social impact. The Court has not found any aggravating circumstances on the part of the accused.

As this case concerns several acts by which the accused committed several criminal offenses for which he has been simultaneously tried, applying Article 53 of the CC BiH, the Court has imposed on the accused a compound sentence of imprisonment for a term of 6 (six) years, finding this criminal sanction to be adequate and proportionate both to the gravity of the criminal offenses and the degree of criminal liability of the accused as their perpetrator. The Court assesses that it will fulfill the purpose of punishment referred to in Article 39 of the CC BiH, and first of all, it will have an educational impact on the accused so that he does not commit criminal offenses in the future, as well as preventive influence on others so that they do not commit criminal acts.

5. Costs of the proceedings and claims under property law

Pursuant to Article 188(4) of the CPC BiH, the accused is relieved of the duty to reimburse the costs of the criminal proceedings, and they shall be borne by the Court. The Court rendered such a decision bearing in mind the difficult financial situation of the accused, who has no regular income, is unemployed and has no property. In addition, the Court has borne in mind that the Prosecution withdrew the request that the accused should reimburse the costs which the Prosecution incurred in the course of the investigation.

The Court referred the injured party Anđa Obradović to take civil action to pursue her claim under property law. Taking into account that the accused concluded the guilty plea agreement with the Prosecutor's Office of BiH and that the main trial was not conducted, during which other injured parties might have possibly stated their positions about claims under property law, pursuant to Article 198(2) of the CPC BiH, the Court refers the injured parties to take civil action to pursue their claims under property law, if they wish to do so.

Record taker	**PRESIDENT OF THE PANEL** **JUDGE**
Lejla Konjić	**Tihomir Lukes**

LEGAL REMEDY: An appeal from this Verdict may be filed with the Panel of the Appellate Division of the Court within 15 days from the receipt of the Verdict. Given that the Verdict was rendered on the basis of the guilty plea agreement, an appeal from the criminal sanction is not allowed.