



Number: X-KR-07/419
Sarajevo, 21 December 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, in the Panel comprised of Judges Staniša Gluhajić, as the President of the Panel, and Mira Smajlović and Carol Peralta, as members of the Panel, in the criminal case against the Accused Ratko Bundalo et al., for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with paragraphs a), d), e), f), g), i) and k) of the CC BiH, in conjunction with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(e) and (f) of the CC BiH, and in conjunction with the criminal offense of War Crimes against Prisoners of War in violation of Article 175(1)(b) of the CC BiH, all in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-80/05 of 23 November 2007, confirmed on 28 November 2007, amended at the main trial on 13 October 2009, after an oral, main and public trial was held, from which the public was excluded in part, in the presence of the Accused Ratko Bundalo, Neđo Zeljaja and Đorđislav Aškraba, their Defense Counsels, Dražen Zubak, Krešimir Zubak, Vesna Tupajić-Škiljević, Radivoje Lazarević, Žiko Krunić and Milorad Rašević, Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Munib Halilović, delivered and on 21 December 2009 published the following:

V E R D I C T

THE ACCUSED:

1. RATKO BUNDALO, son of Luka and Milisava, nee Kojić, born in the village of Kriškovci, municipality of Laktaši, Personal Identification Number ..., ... by ethnicity, citizen of ..., an officer in the former Yugoslav National Army - retired, of bad financial standing, graduated from the Military Academy and from the Higher Military and Political School, married, father of two children, with current address in ..., received several medals before the war, received the *Karađorđe's Star* after the war, no other criminal proceedings are pending against him, in custody since 31 August 2007 that was ordered under the Decision of the Court number X-KRN-07/419 of 31 August 2007;

2. NEĐO ZELJAJA, son of Gojko and Zorka, nee Batinić, born on 21 August 1947 in the village of Grab, municipality of ..., Personal Identification Number ..., ... by ethnicity, citizen of ..., retired, of bad financial standing, completed his compulsory military service in Skoplje, the Republic of Macedonia in 1965/66, residing in ..., no other criminal proceedings are pending against him, was in custody from 29 November 2007 to 17 July 2008 that was ordered under the Decision of the Court of BiH number X-KR-07/419 of 29

November 2007, and from 21 August 2008 further on, into which he was ordered under the Decision of the Appellate Panel of this Court number X-KR 07/419 of 21 August 2008,

ARE GUILTY

Because they:

During the period from April 1992 until March 1993, during the state of war in BiH, within a widespread and systematic attack by the *VRS /the Army of Republika Srpska/*, police and paramilitary units against the Bosniak civilian population of the Kalinovik municipality, Ratko Bundalo as the Commander of the Kalinovik Tactical Group, Nedo Zeljaja as the Commander of the Kalinovik *SJB /Public Security Station, hereinafter SJB/*, as conscious participants in the joint criminal enterprise consisting of Grujo Lalović, the President of the Executive Civil Authorities of the Kalinovik Municipality, Boško Govedarica, Chief of the Kalinovik *SJB*, members of the War and Crisis Staff of the Kalinovik Municipality and other members of military, police and paramilitary units of the 'Serb Armed Forces', planned, ordered, perpetrated, aided and abetted the persecution of the entire Bosniak population of the Kalinovik municipality on political, national, ethnic, cultural and religious grounds by way of killings, forcible transfer of population, extermination, unlawful imprisonment, torture, rapes, enforced disappearances, arbitrary destruction of property on a large scale, starvation of the population, causing great suffering and injury to body, by applying measures of intimidation and terror and other inhumane acts of a similar character, in the way that:

1. Ratko Bundalo and Nedo Zeljaja planned, ordered and perpetrated the persecution of the Bosniak population of the Kalinovik municipality and parts of the population of the neighboring municipalities, in the way that:

a) At the beginning of May 1992, members of the military commanded by Ratko Bundalo and the members of the Kalinovik Police Station commanded by Nedo Zeljaja, with his personal participation, surrounded and captured approximately 280 civilians from the local community of Jeleč, the municipality of Foča, who, fleeing from the attack of the Serb Armed Forces, attempted to cross through the territory of the Kalinovik municipality, in the area of the settlement of Jažići in the municipality of Kalinovik, after which men were forcibly separated from women, children and the elderly and detained at the Elementary School of *Miladin Radojević*, where they were guarded by police officers of the Kalinovik *SJB*, while food for the detained men was being provided by the army from the military barracks of *Gornji Logor /the Upper Camp/* in Kalinovik, which was under the command of Ratko Bundalo, and a couple of days later, detained civilians from Jeleč, some 50 of them, among whom were: Ahmo Mušanović, Asim Zametica, Rasim Džubur, witness X, Ahmo Zametica, Nedžad Mušanović, Kasim Mušanović, Muamer Mušanović, Mirzo Mušanović, Hasan Mušanović, Edhem Mušanović and others, were transported by Ratko Bundalo through his subordinating officers and soldiers to the Bileća camp, where they stayed for approximately 20 days and were then returned to Kalinovik, where they stayed again one night at the Elementary School of *Miladin Radojević*, after which, with the participation of police officers of the Kalinovik *SJB*, soldiers transferred them to KPD Foča /Penal-Correctional Institution/.

b) On 25 June 1992 and on the following days, Neđo Zeljaja, as the Commander of the *SJB*, upon the decision by the Crisis Staff of the Kalinovik municipality, organized and personally participated in the arrests of all Bosniak men in Kalinovik and the surrounding villages of Mjehovina, Jelašca and Vihovići; they detained the arrested civilians, some 60 (sixty) of them, at the Gym of the Elementary School of *Miladin Radojević*, where they were guarded by the police officers of the Kalinovik *SJB*, where they stayed until 7 July or close to that date, which is when the transfer of the detained Bosniaks was organized from the Elementary School of *Miladin Radojević* to the camp of *Barutni Magacin*, a military facility under the command of Ratko Bundalo, secured by barb wire, mined, with military guards;

c) At the beginning of July 1992, members of military and police forces of the Kalinovik municipality captured approximately 200 Bosniak civilians, mostly women and children, as well as a relatively small number of men from the area of the Gacko municipality, detained the civilians at the school in Ulog and the next day had them transported and detained at the Elementary School of *Miladin Radojević*, where they were placed on the ground floor, in the gym, the staff meeting room and one classroom; the guarding of the civilians was carried out by Neđo Zeljaja with the police officers of the Kalinovik *SJB*, while food was provided by the army;

d) On 1 August 1992, they organized the attack on the Bosniak civilian population of the village of Jelašca, the municipality of Kalinovik, where at the time there were only women, children and some elderly; the police officers of Kalinovik *SJB* surrounded the village and captured all women and children, burning some Bosniak houses in the process, while members of the army under the command of Ratko Bundalo, using an anti-aircraft gun located in the area of Brdo, near the houses of Badnjar, provided artillery support to the attack, in the course of which in the hamlet of Karaula they killed Derviša Pervan and wounded a young girl called Mirveta Pervan, and, using incendiary bullets, they set all houses in this hamlet on fire and detained the captured civilians at the Elementary School of *Miladin Radojević*, in the rooms on the upper floor; on the same night the remaining civilians (except for the old persons who were unable to walk across the hill) from Vihovići, Mjehovina and other neighboring villages, fleeing from the attack, left the Kalinovik municipality; and they disposed of the body of Derviša Pervan at an unknown location, therefore she is still registered as a missing person;

e) On 4 August 1992 or close to that date, in the village of Jelašca, the municipality of Kalinovik, unknown members of the Serb Armed Forces, killed 7 civilians, mostly elderly persons, as follows: Ćamil Karaman, Duda Karaman, Hajdar Pervan, Muškija Rogoj, Derviš Rogoj, Hajro Pervan and Rifo Bičo; these civilians have been exhumed and identified, except for Rifo Bičo and Hajro Pervan, who are still registered as missing persons;

f) On 5 August 1992 or close to that date, in the village of Jezero, the municipality of Kalinovik, unknown members of the Serb Armed Forces killed Nezir Delberović, Mešan Đipa, Mustafa Đipa, Salko Đipa and Hasan Đipa, who were buried in a mass grave in the fields of Prezren, the village of Jezero; on 15 July 1999 their mortal remains were exhumed and identified;

g) On 5 August 1992 or close to that date, unknown members of the Serb Armed Forces in the village of Mjehovina, the municipality of Kalinovik, deprived the lives of Salko Filipović and his wife Rabija Filipović, Mustafa Hadžić, Ćamil Hadžić and his wife Aiša Hadžić, Nura Mrzić and Huso Hadžić, all rather elderly civilians who were buried into a mass grave at the local Muslim cemetery and in the following days police officers of the Kalinovik *SJB* deprived of liberty 5 Bosniak civilians who had survived and detained them to the prison at the Elementary School of *Miladin Radojević* in Kalinovik;

h) During the period from May 1992 until March 1993, in the detention premises of the Kalinovik *SJB*, lacking any legal grounds, they kept in detention the civilians Tahir Panjeta, Kasim Bojičić, Goran Kukavica, Hamed Ćelik, a hodja, Vuk Jašar and others;

i) During the period from June 1992 until 18 September 1992, they seriously put in danger the life of Huso Tukelija, who was detained in the cellar premises of the Kalinovik *SJB*, and subjected him to mental suffering by way of using him as a driver for mines detection, in the manner that he would drive a cargo vehicle ahead of military and civilian convoys down the road from Kalinovik to Miljevina, with police escort by the Kalinovik *SJB* being assigned under the duty schedule by Neđo Zeljaja; while driving a vehicle in this capacity he came across a mine on 3 different occasions, all resulting in the destruction of the vehicle he was driving, but he managed to survive;

j) During the period from September 1992 until March 1993, civilians G. K. and H. Č. whom Ratko Bundalo personally *took* over from the Foča *KPD*, brought them to the Kalinovik *SJB* and used them as drivers for mines detection, exposing them to life danger and mental suffering;

k) During July or August 1992, Ratko Bundalo issued and Neđo Zeljaja, together with military officers and the senior officers at the Kalinovik *SJB*, executed the order to set Bosniak villages in the municipality of Kalinovik on fire, as follows: the villages of Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine and others; Neđo Zeljaja with the police carried out the setting of the village of Sočani on fire, while the soldiers set the other villages mentioned on fire;

l) By the end of August 1992, they organized the exchange of women detained at the Elementary School of *Miladin Radojević* for the Serb soldiers killed in the area of Jakomišlje; they organized the exchange in the manner that the women, by risking their lives, were forced to pull out the killed Serb soldiers from the front line and bring them to the place of exchange, after which they were allowed, with their children, to cross over to the territory controlled by the Army of BiH, this manner of exchange was approved by Ratko Bundalo;

2. During the period from June to at least September 1992, **Ratko Bundalo** and **Neđo Zeljaja** took part in the forming and organized the operation of the prison at the Elementary School of *Miladin Radojević* in order to unlawfully detain Bosniak population therein; thus, they kept about 300 Bosniak civilians from the area of the Kalinovik municipality, parts of the civilian population from the municipalities of Gacko, Nevesinje, Foča and Trnovo at the building of the Elementary School of *Miladin Radojević*, in the rooms that were inadequate, lacking adequate accommodation necessities, without the possibility to attend the basic

hygienic needs, with very meager daily food rations, exposed to daily physical and mental abuse and humiliation by various soldiers whom the guards would allow to enter freely, whereby Nedo Zeljaja, as the Commander of the Kalinovik *SJB* and as the person directly superior to the police officers on guard duty at the Elementary School of *Miladin Radojević*, was assigning police officers to the guard duty, he was informed by them of the crimes in which his subordinate officers and other persons were taking part, and in spite of that continued to maintain such guard system and Ratko Bundalo, as the Commander of the Kalinovik *TG*, by taking part in the setup of the camp provided the detained civilians with food, in particular:

a) At the beginning of August 1992 or approximately at that time, members of the military unit, the Foča *TG* from Miljevina, whom the police officers securing the premises allowed to enter the school freely, seized all money and jewelry from the detained civilians;

c) During August 1992, from the Elementary School of *Miladin Radojević*, members of the unit from Miljevina, who were within the Foča Tactical Group, who would come on a daily basis and enter the school freely, took seven mostly minor girls-detainees from the school to Miljevina and Foča, of whom at least two women were kept for a longer period of time in sexual enslavement.

d) During August 1992, a number of detained women were raped on several occasions at the premises of the Elementary School of *Miladin Radojević*, by various soldiers, members of the Serb Armed Forces, who were permitted by certain police officers to freely enter the school, and who were also present during the rape;

f) During August 1992, unknown soldiers of the Serb Armed Forces took Edin Bičo, Suad Hasanbegović and Sejdo Kešo from the classroom in which detained civilians were placed to a neighboring room where they physically abused them, after which shots were heard and on the next morning the soldiers took out of the school three bodies in military blankets and transported them by a cargo vehicle to *Grajsensko Polje /fields of Grajsensko/*, the municipality of Kalinovik, whereas the police officers did not allow the prisoners to go to the corridors during that time threatening to kill anyone who would do so; the bodies of the killed persons have still not been identified and they are still registered as missing persons;

g) During August 1992, the members of the unit from Miljevina who were within the Foča Tactical Group and other unknown soldiers of the Serb armed forces took Azemina Pervan, Fatima Pervan, the boy named Almir Kadrić, Zulfo Kadrić, Murat Redžović, Mujo Pervan and Hašim Hatić from the prison in the Elementary School of *Miladin Radojević*, whereas the bodies of Murat Redžović, Mujo Pervan and Zulfo Kadrić were recovered, exhumed and identified after the war while Azemina Pervan, Fatima Pervan, Almir Kadrić and Hašim Hatić are still registered as missing persons;

h) During August 1992, detained women were taken on several occasions from the Elementary School of *Miladin Radojević* by unknown soldiers of the Serb armed forces to the weekend house of Mustafa Sabljica in Mjehovina, where members of an unknown military unit were, the women were taken from the school in the manner that the soldiers would ride horses and the women would walk beside them; at the weekend house they

would be raped repeatedly and physically abused, after which they would be returned to the school by the soldiers or by individual police officers.

3. In July and August 1992 **Ratko Bundalo** and **Nedo Zeljaja** actively participated in the forming and organized the operations of the camp of *Barutni Magacin* in Kalinovik, in which illegally detained was practically the entire Bosniak male civilian population of Kalinovik and the surrounding villages, a part of the captured civilians from Trnovo and Jeleč in the municipality of Foča, in which civilians were detained under inhuman conditions without sufficient food and water, without being able to attend the basic hygienic needs, they were being taken for the compulsory work service and to the front lines, physically abused and eventually killed by the police officers of the Kalinovik *SJB* with the knowledge and approval of Nedo Zeljaja, in particular:

a) On 2 August 1992, he took out of the camp of *Barutni Magacin* the civilians Jakub Muslim and Osman Mandra, who have been unaccounted for ever since;

b) On 3 August 1992, he took out of the camp of *Barutni Magacin* the civilians Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto, who were found dead on the same day in the zone of Rogoj, their hands being tied by police handcuffs two and two together;

c) On 4 August 1992, he took out of the camp Mustafa Šorlija, whose dead body was exhumed in the area of the Foča municipality;

d) On 5 August 1992, upon the approval of the Command of the TG and the chief of the Kalinovik *SJB*, he allowed Pero Elez and other unidentified soldiers of the Serb armed forces, without any documentation on surrender, to take over 12 detained civilians to be allegedly taken to the Foča *KPD*, as follows: Salko Bičo, Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Hasan Suljić, Mustafa Mušanović, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić; these soldiers loaded the detained civilians onto a *FAP* truck and drove them in the direction of *Mehka Brda*, where they deprived their lives and after which the empty truck returned to *Barutni Magacin*; the mentioned civilians were exhumed and identified after the war, except for Hasan Suljić and Mustafa Mušanović, who are still registered as missing persons;

e) On 5 August 1992, somewhat later, in the same manner he allowed the same soldiers to take over Nedžib Pervan, Zijo Pervan and Muzafer Sačić, whom they took in the direction of Kalinovik and they have been registered as missing persons ever since;

f) On 5 August 1992, in the afternoon hours, the soldiers of Pero Elez took away all the remaining prisoners, tied them with wire, loaded onto three trucks, in the process of which they were hitting them with fists, kicking them and hitting them with wooden sticks and, while being escorted by a police vehicle with rotating lights, drove them in the direction of Miljevina, the municipality of Foča; in the place of Ratine, the municipality of Foča, they stopped the column and from the last truck in the column they took out 24 detainees, as follows: Enes Hadžić, Esad Hadžić, Hasan Hadžić, Selim Hadžić, Mehmed Ahmethodžić, Avdija Škoro, Salko Vranović, Dr. Abdurahman Filipović, Almir Čusto, Husnija Rogoj, Refik Rogoj, Elvir Suljić, Ramiz Suljić, Emir Suljić, Ramo Kurtović, Mirso Suljić, Damir Suljić, Edin Suljić a.k.a. Čiča, Suda Suljić a.k.a. Medo, Sado Suljić, Ismet Smječanin and

Adil Mulaomerović and Sabahudin Juković, they lined the detainees up above the stable of Mustafa Tuzlak which is close to the road, after which they opened fire at the detainees using firearms and they killed them all but Fejzija Hadžić, who was wounded in the leg but pretended to be dead, they threw the bodies of the killed into the upper part of the stable where there was hay, they lit the gasoline and set it on fire, while the wounded Fejzija Hadžić, after the remaining two trucks with the detainees had gone ahead, managed to get out of the stables and ran away, while the remaining two trucks with the detainees were driven in the direction of Miljevina, to the location called Tuneli /tunnels/, the municipality of Foča, where they killed all the remaining detainees from *Barutni Magacin*, of which after the war exhumed and identified were: Adem (of Hasim) Hatić, Adem (of Began) Mustajbegović, Ramiz (of Avdo) Kešo, Asim (of Hamid) Pervan, Veiz (of Hasan) Hadžić, Bećir (of Bajro) Pervan, Hamdo (of Hasan) Pervan, Hasan (of Alija) Mušanović, Hilmo (of Meša) Suljić, Ibrahim (of Fadil) Bajrić, Kasim (of Meša) Suljić, Fehim (of Meša) Suljić, Bajro (of Hasan) Pervan, Avdo (of Šaban) Kešo, Safet (of Avdo) Mušanović, Vejsil (of Nasuf) Kečo, Nasuf (of Ramo) Hadžić, Munib (of Adem) Velić, Ramo (of Mujo) Suljić, Fehim (of Omer) Srnja, Jusuf (of Huso) Hadžić, Muharem (of Mujo) Bičo, Edhem (of Smajo) Hadžić, Vahid (of Omer) Hadžić, Adem (of Bećir) Hatić, Ibro (of Bajro) Pervan, Salko (of Nasuf) Suljić, Rašid (of Murat) Redžović, Hilmo (of Meho) Jašarević, Adem (of Meša) Suljić, Smajl (of Smajo) Hadžić, Esad (of Ahmed) Hadžimuratović, Ahmet Hadžić, and the remaining detainees Hilmo Rogoj, Muhamed Čusto, Džafer Kešo, Sevdo Suljić, Smajo Ćemo, Alija Šemić are still registered as missing persons;

whereby:

the Accused **Ratko Bundalo** by the actions described in Counts 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1l, 2, 2a, 2c, 2d, 2f, 2g, 2h, 3, 3a, 3b, 3c, 3d, 3f, and the Accused **Nedo Zeljaja** by the actions described in Counts 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1l, 2, 2a, 2c, 2d, 2f, 2g, 2h, 3, 3a and 3b

committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs (a), (d), (e), (g), (i), (k) of the CC BiH and in conjunction the criminal offense of War Crimes against Civilians in violation of Article 173(1)(e) and (f) of the CC BiH, in conjunction with the criminal offense of War Crimes against Prisoners of War in violation of Article 175(1)(b) of the CC BiH, all as read with Article 180 (1) of the CC BiH,

therefore, pursuant to Article 285 of the CPC BiH, having applied Articles 39, 42 and 48 of the CC BiH, the Court of BiH

S E N T E N C E S

THE ACCUSED RATKO BUNDALO TO THE IMPRISONMENT FOR A TERM OF NINETEEN (19) YEARS,

THE ACCUSED NEDO ZELJAJA TO THE IMPRISONMENT FOR A TERM OF FIFTEEN (15) YEARS,

Pursuant to Article 56 of the CC BiH, the time that the Accused Ratko Bundalo and Neđo Zeljaja spent in custody shall be credited towards the sentence of imprisonment, namely with regard to the Accused Ratko Bundalo, the time he spent in custody under the Decision of the Court number X-KRN-07/419 of 31 August 2007 onwards, and with regard to the Accused Neđo Zeljaja, the time that he spent in custody starting from 29 November 2007 to 17 July 2008 under the Decision of the Court number X-KR-07/419 of 29 November 2007, and from 21 August 2008 further on under the Decision of the Appellate Panel of the Court of BiH number X-KR-07/419 of 21 August 2008.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused are relieved of the duty to reimburse the costs of the criminal proceedings and the lump sum, which will all be paid from the Court's budget appropriations in their entirety.

Pursuant to Article 198(2) of the CPC BiH, the injured parties are instructed to take civil action to pursue their claims under property law.

II

Pursuant to Article 284(1)(c) of the CPC BiH, **the Accused Ratko Bundalo and the Accused Neđo Zeljaja** with the personal details referred to in the Operative Part of this Verdict, and also the Accused:

DORĐISLAV AŠKRABA, son of Grujo and Jela, nee Simić, born on 18 May 1951 in the village of Jelašca, the municipality of Kalinovik, Personal Identification Number 1805951171923, Serb by ethnicity, citizen of BiH, retired, of bad financial standing, completed his compulsory military service in 1972 in Paraćin, has a rank of inspector in the police, married, father of three children, with current address in the village of Jelašca, at Jelašca bb /no number/, the municipality of Kalinovik, no other criminal proceedings are pending against him, was in custody from 29 August 2007 to 17.17.2008 /as rendered in the original/ under the Decision of the Court number X-KRN-07/419 of 31 August 2007, and from 21 August 2008 until the Verdict announcement on 21 December 2009, into which he was ordered under the Decision of the Appellate Panel of this Court number X-KR-07/419 of 21 August 2008

ARE ACQUITTED OF THE CHARGES

Specifically: the Accused RATKO BUNDALO and NEĐO ZELJAJA:

that:

2b) At the beginning of August 1992, they kept all detained civilians for four days without any food rations;

2e) Detained women and men were physically abused by soldiers and in the presence of the police officers from security almost daily; thus on 8 August 1992, Zlata Redović was being

beaten for several hours by members of the unit of Pero Elez, in the course of which they were beating her all over the body, asking her to tell them where her son was, they were stabbing her with a knife, forcing her to cross herself and threatening to rape her and also forcing her to watch the abuse of Edin Bičo, who was lying in a trough full of water, while water was pouring on him from the open faucets.

2i) During August 1992, unknown soldiers took a group of women and Zijo Hadžić from the Elementary School of *Miladin Radojević*, loaded them onto a truck and drove them to the Pavlovac Farm, where they kept beating Zijo Hadžić heavily until he was left lying on the ground immobile, and they took the women into the farm premises, where they raped them.

whereby they would have committed

the criminal offense of War Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs g) and k) of the same Article of the CC BiH, all as read with Article 180(1) of the CC BiH.

And the Accused: ĐORĐISLAV AŠKRABA

that:

3. In July and August 1992 **Ratko Bundalo** and **Nedo Zeljaja** actively participated in the forming and organized the operations of the camp of *Barutni Magacin* in Kalinovik, in which illegally detained was practically the entire Bosniak male civilian population of Kalinovik and the surrounding villages, a part of the captured civilians from Trnovo and Jeleč in the municipality of Foča, in which civilians were detained under inhuman conditions without sufficient food and water, without being able to attend the basic hygienic needs, without adequate health care, they were being taken for the compulsory work service and to the front lines, physically abused and eventually killed by the police officers of the Kalinovik *SJB* with the knowledge and approval of Nedo Zeljaja; and **Đorđislav Aškraba**, as an immediate subordinate of the Command of the Tactical Group and in his capacity of the commander of the guards at the same time also performed duties of a person who commanded this camp during the period from 7 July 1992 until 5 August 1992, in particular:

a) On 2 August 1992, he took out of the camp of *Barutni Magacin* the civilians Jakob Muslim and Osman Mandra, who have been unaccounted for ever since;

b) On 3 August 1992, he took out of the camp of *Barutni Magacin* the civilians Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto, who were found dead on the same day in the zone of Rogoj, their hands being tied by police handcuffs two and two together;

c) On 4 August 1992, he took out of the camp Mustafa Šorlija, whose dead body was exhumed in the area of the Foča municipality.

d) On 5 August 1992, upon the approval of the Command of the TG and the chief of the Kalinovik *SJB*, he allowed Pero Elez and other unidentified soldiers, without any documentation on surrender, to take over 12 detained civilians to be allegedly taken to the Foča *KPD*, as follows: Salko Bičo, Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Hasan Suljić, Mustafa Mušanović, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić; these soldiers loaded the detained civilians onto a *FAP* truck and drove them in the direction of *Mehka Brda*, where they deprived their lives and from where the people present could hear the shooting, after which the empty truck returned to *Barutni Magacin*; the mentioned civilians were exhumed and identified after the war, except for Hasan Suljić and Mustafa Mušanović, who are still registered as missing persons.

e) On 5 August 1992, somewhat later, in the same manner he allowed the same soldiers to take over Nedžib Pervan, Zijo Pervan and Muzafer Sačić, whom they took in the direction of Kalinovik and they have been registered as missing persons ever since;

f) On the same day in the afternoon hours, he allowed the same soldiers to take over all the remaining prisoners, although he knew they would kill them; the prisoners were tied by the members of this unit with wire, loaded onto three trucks, in the process of which they were hitting them with fists, kicking them and hitting them with wooden sticks and escorted by the members of this unit and a police vehicle with rotating lights drove them in the direction of Miljevina, the municipality of Foča; in the place of Ratine, the municipality of Foča, they stopped the column and from the last truck in the column they took out 24 detainees, as follows: Enes Hadžić, Esad Hadžić, Hasan Hadžić, Selim Hadžić, Mehmed Ahmethadžić, Avdija Škoro, Salko Vranović, Dr. Abdurahman Filipović, Almir Čusto, Husnija Rogoj, Refik Rogoj, Elvir Suljić, Ramiz Suljić, Emir Suljić, Ramo Kurtović, Mirso Suljić, Damir Suljić, Edin Suljić a.k.a. Čiča, Suda Suljić a.k.a. Medo, Sado Suljić, Ismet Smječanin and Adil Mulaomerović and Sabahudin Juković, they lined the detainees up above the stable of Mustafa Tuzlak which is close to the road, after which they opened fire at the detainees using firearms and they killed them all but Fejzija Hadžić, who was wounded in the leg but pretended to be dead, they threw the bodies of the killed into the upper part of the stable where there was hay, they lit the gasoline and set it on fire, while the wounded Fejzija Hadžić, after the remaining two trucks with the detainees had gone ahead, managed to get out of the stables and run onto the mountain of Husad, where Bosniaks had fled to and where he was given aid;

g) The remaining two trucks with the detainees were driven in the direction of Miljevina, to the location called Tuneli /tunnels/, the municipality of Foča, where they killed all the remaining detainees from *Barutni Magacin*, of which after the war exhumed and identified were: Adem (of Hasim) Hatić, Adem (of Began) Mustajbegović, Ramiz (of Avdo) Kešo, Asim (of Hamid) Pervan, Veiz (of Hasan) Hadžić, Bećir (of Bajro) Pervan, Hamdo (of Hasan) Pervan, Hasan (of Alija) Mušanović, Hilmo (of Meša) Suljić, Ibrahim (of Fadil) Bajrić, Kasim (of Meša) Suljić, Fehim (of Meša) Suljić, Bajro (of Hasan) Pervan, Avdo (of Šaban) Kešo, Safet (of Avdo) Mušanović, Vejsil (of Nasuf) Kečo, Nasuf (of Ramo) Hadžić, Munib (of Adem) Velić, Ramo (of Mujo) Suljić, Fehim (of Omer) Srnja, Jusuf (of Huso) Hadžić, Muharem (of Mujo) Bičo, Edhem (of Smajo) Hadžić, Vahid (of Omer) Hadžić, Adem (of Bećir) Hatić, Ibro (of Bajro) Pervan, Salko (of Nasuf) Suljić, Rašid (of Murat) Redžović, Hilmo (of Meho) Jašarević, Adem (of Meša) Suljić, Smajl (of Smajo) Hadžić, Esad (of Ahmed) Hadžimuratović, Ahmet Hadžić, and the remaining detainees Hilmo

Rogoj, Muhamed Čusto, Džafer Kešo, Sevdoo Suljić, Smajo Ćemo, Alija Šemić are still registered as missing persons;

4. On 30 June 1992, at the premises of the Kalinovik *SJB*, he hit the detainee Muradif Jašarević with his fist, threatening to cut his arms and legs off, and putting a gun barrel into his mouth threatening to kill him;

whereby

he would have committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs a), d), e) and k) of the same Article of the CC BiH, all as read with Article 180(1) of the CC BiH.

Pursuant to Article 189(1) of the CPC BiH, the Accused Đorđislav Aškraba is relieved of the duty to reimburse the costs of the criminal proceedings that will be paid from the Court's budget appropriations in their entirety.

R e a s o n i n g :

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number: KT-RZ-80/05 of 23 November 2007, confirmed on 28 November 2007, Ratko Bundalo and Neđo Zeljaja were charged that by the actions described in detail in Counts 1, 1a, 1b, 1c, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Ratko Bundalo also by the actions described in Counts 3, 3a, 3b, 3c, 3d, 3e and 3f of the Indictment, committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs a), b), d), e), f), g), h), i) and k), and the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (e) and (f) of the CC BiH, while Đorđislav Aškraba was charged that with the actions described in Counts 3a, 3b, 3c, 3d, 3e, 3f, 3g, 4a, and 4b) of the Indictment he committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(a), (e), (f) and k), as read with Article 180(1) of the CC BiH.

On 13 October 2009, the Prosecutor submitted to the Court an Amended Indictment against the Accused Ratko Bundalo, Neđo Zeljaja and Đorđislav Aškraba having altered in part the factual description and the legal qualification of the offenses. Certain allegations referenced in the Indictment were specified in the factual description of the criminal offense in the manner that in the introductory part of the Indictment, the text of the Indictment was changed after the name „Aškraba Đorđislav” to read „*in his capacity of the commander of the guards at the same time also performed duties of a person who commanded this camp Barutni magacin*”, while after the words “and other members” the word „*civilian*” was deleted and the word „*ordered*” added after the word “planned”. In Count 1 of the Indictment, from the words “ordered and perpetrated, as well as aided and abetted the persecution” the words *aided* and *abetted* were deleted; in Count 1a) after the words “commanded by Neđo Zeljaja” the words „*with his personal participation*”, and after the words “under his command” the words „*and the civilian authorities*” were added; in Count 1b), the name of Nedžib Šljivo was omitted, while the words „*witness X*” were added, and after the words “after which” the words “*with the participation of police officers of the*

Kalinovik SJB” were added; in Count 1c), after the words „the Crisis Staff “ added were the words „of the Kalinovik municipality”, while after „the arrested civilians “ added were the words „some 60 (sixty) of them”; in Count 1e), after the words „burning in the process” the word „some” was added, while the part of the text that follows after the words “Bosniak houses” was rephrased to read as follows “while members of the army under the command of Ratko Bundalo”; also the words “in the rooms on the upper floor” were rephrased to read as „on the same night the remaining civilians (except for the old persons who were unable to walk across the hill) from Vihovići, Mjehovina and other neighboring villages, fleeing from the attack, left the Kalinovik municipality”; Count 1h) was amended to read as follows: „On or about 5 August 1992, unknown members of the Serb Armed Forces in the village of Mjehovina, the municipality of Kalinovik, deprived the lives of Salko Filipović and his wife Rabija Filipović, Mustafa Hadžić, Ćamil Hadžić and his wife Aiša Hadžić, Nura Mrzić and Huso Hadžić, all rather elderly civilians who were buried into a mass grave at the local Muslim cemetery and in the following days police officers of the Kalinovik SJB deprived of liberty 5 Bosniak civilians who had survived and detained them to the prison at the Elementary School of Miladin Radojević in Kalinovik”; in Count 1i) the names of the injured parties G.K. and FWS130 were added, while after the words “food rations” the words “that was provided by the Army from Gornji Logor”; in Count 1j), after the words “SJB Kalinovik” added were “they seriously put in danger the life and subjected him to mental suffering by way of”; in Count 1k), after the word “civilians” the text was amended to read as “G.K and FWS130 (the stated names) whom Ratko Bundalo personally took over from the Foča KPD and brought them to the Kalinovik SJB to perform driver’s duties”; in Count 1m), after the word “the women were forced” the words “by risking their lives were added”; in Count 2), after the names of Ratko Bundalo and Neđo Zeljaja a part of the text was rephrased to read as “During the period from June to at least September 1992, took part in the forming and organized the operation of the prison at the Elementary School of Miladin Radojević in order to unlawfully detain Bosniak population therein”, in further text of this Count, after the words “and other persons” the words were added: “in spite of that continued to maintain such guard system”, further in this count, the word “camp” was replaced with the word “prison”, and the following words were added: “provided the detained civilians with food”, and in the end of this Count, the text was rephrased to read as follows: “of such gender composition was a foreseeable consequence of detention”; in Count 2a), after the words “at that time” a part of the text was rephrased to read as: “members of the 7th battalion of the Foča TG from Miljevina”; in Count 2c), the word “paramilitary” was replaced with “military”, and after the words “for a longer period of time” the text was rephrased to read as follows: “in sexual enslavement”; in Count 2f), after the word “shots” the text was rephrased to read as: “and on the next morning the soldiers took out of the school three bodies in military blankets and transported them by a cargo vehicle to Grajsensko Polje, the municipality of Kalinovik”; Count 2g) was amended in the manner that the text from Counts 2h) and 2i) was added to read as follows as a single Count with the following content: “During August 1992, the members of the 7th battalion from Miljevina and other unknown soldiers took Azemina Pervan, Fatima Pervan, the boy named Almir Kadrić, Zulfo Kadrić, Murat Redžović, Mujo Pervan and Hašim Hatić from the Elementary School of Miladin Radojević, whereas the bodies of Murat Redžović, Mujo Pervan and Zulfo Kadrić were recovered, exhumed and identified after the war while Azemina Pervan, Fatima Pervan, Almir Kadrić and Hašim Hatić are still registered as missing persons”; Count 2j) became Count 2h), the word “paramilitary” in a part of this Count was replaced with the word “military”, while Count 2k) became Count 2i); Count 3)

was rephrased in the manner that after the words “Ratko Bundalo” added were: “and *Neđo Zeljaja in July and August 1992*”, and after the words “hygienic needs” the text was rephrased to read as follows: “*without adequate health care, they were being taken for the compulsory work service and to the front lines, physically abused and eventually killed by the police officers of the Kalinovik SJB with the knowledge and approval of Neđo Zeljaja; and Đorđislav Aškraba, as an immediate subordinate of the Command of the Tactical Group and in his capacity of the commander of the guards at the same time also performed duties of a person who commanded this camp during the period from 7 July 1992 until 5 August 1992*”; in Count 3d), after the words “on 5 August 1992” the text was rephrased to read as: “*upon the approval of the Command of the TG and the chief of the Kalinovik SJB, he allowed Pero Elez and other unidentified soldiers, without any documentation on surrender, to take over 12 detained civilians to be allegedly taken to the Foča KPD, as follows*”, while after the words “detained civilians” the words “*these soldiers*” were added; in Count 3e), after the words “the same soldiers” the text: “*in the same manner he allowed to take over*” was added; in Count 3f), after the words “hours,” a part of the text was amended to read as follows “*he allowed the same soldiers to take over all the remaining prisoners*”; Count 4a) is deleted. In the legal description of the offense, the actions described in Counts 3, 3a and 3b were added for the Accused Neđo Zeljaja. The Prosecutor changed the legal qualification in the manner that with regard to the criminal offense set forth in Article 173(2) he added subparagraph a) for the Accused Bundalo and Zeljaja. The Prosecutor maintained such factual substrate of the Amended Indictment and the changed legal qualification throughout the main trial.

On 13 December 2007, the Court held a plea hearing for the Accused Ratko Bundalo, Neđo Zeljaja and Đorđislav Aškraba, on which occasion the Accused pled not guilty.

During the entire course of the proceedings, the Court bore in mind the witnesses’ identity protection and granted protective measures to the Prosecution witnesses: “A“, „H“, „I“, „X“, „E“, „C“, „G“, „F“, „D“, „W“ and „Z“ and also the Defense witnesses, namely the witnesses for the Second-accused „S1“, S2“ and „S3” and the witness „S4“ for the Third-accused. This was done in the manner that at the main trial and in the Verdict, full names of these witnesses were not mentioned but only the pseudonyms given to them, while complete personal details of these witnesses are submitted in the case record, which is also specially protected. The Court also took into account the protection of the victims who were proposed as witnesses in The Hague Tribunal case against the Accused Todović and Rašević, which was transferred to the Court of BiH, and primarily of all the victims who were granted protective measures by way of the pseudonyms K.G. and FWS 130.

During the main trial, the public was partially excluded at the hearing that was held on 13 March 2008 during the testimony of Džemila Redžović aka „Zlata“ in the part when the witness mentioned the names of the persons who were victims of rape; on 29 April 2008 during the cross-examination of the witness „H” (in one part of the testimony), because the witness was presented with the documentary evidence containing the names of the witnesses who were granted protective measures; on 26 May 2008 (partial exclusion of the public) during a cross-examination of the witness Dika Suljić in the part of her testimony which concerned the rapes because a personal and intimate integrity of this witness had to be protected pursuant to Article 235 of the CPC BiH, and also of the other victims who

were mentioned in the testimony; and on 8 July 2009 during a deliberation regarding the Motion of the Prosecutor's Office to grant protective measures to the proposed witnesses.

The Prosecution moved the Court to exclude the public during the hearing of the mentioned witnesses for the reasons of protection of personal and intimate lives of the aggrieved parties, most of whom were women who testified about the rapes and sexual abuse to which they were subjected, and also for the protection of the interests of the witnesses. The Defense for the Accused did not object to the exclusion of the public.

The Panel decided to grant the Motion of the Prosecutor's Office and exclude the public during the testimony of the mentioned witnesses at the trial and during the reading of the statements given by the aggrieved parties and the witnesses. This was done pursuant to Article 235 of the CPC BiH because of the view that the contents of their testimony were of such nature that the public exclusion was necessary in order to protect their personal and intimate lives, the protection of the witnesses' interests in addition to the measures granted in accordance with the Law on the Protection of Witnesses.

THE EVIDENCE ADDUCED:

During the evidentiary proceedings, the Prosecution adduced the following evidence:

Upon the Motion of the BiH Prosecutor's Office, the following persons were heard in the capacity of witnesses: Fejzija Hadžić, Džemila Redžović, Rade Pavlović, Elvir Ćusto, Aziz Dozo, Asim Zametica, Ahmo Mušanović, Dika Suljić, Ismeta Pervan, Mirveta Pervan, Hasna Ćusto, Šćepan Jovović, Rukija Rogoj, Jašar Vuk, Huso Tukelija, Vojin Puhalo, Rade Lalović, Zlatko Hadžić, Milan (Branka) Lalović, Dragan Aleksandrov, Milan (son of Petar) Lalović, Milivoje Faladžić, Željko Mandić, Dušan Cerovina, Džemal Imamović, Džafer Hubijar, Danilo Đorem, Akif Mahmutović, Miloš Crnjak, Enisa Hasanbegović, Miloš Mandić, Muradif Jašarević, Miloš Viletić, Džemila Suljić, Ismir Rogoj, Zijada Hatić, Abdurahman Pervan, Ranko Erbez, Elvir Ćamo, Fatima Kešo, Remza Šurković, Ramka Velić, Mevlida Ćustović, Memna Jašarević, Nikola Bozalo, Ilija Đorem, Ešrefa Škoro, Risto Puhalo, Đorđo Đorem, Fadila Hatić, Čedomir Okuka, Mirko Aškraba, Neđo Vuković, Manojlo Krstović, Dragomir Đević, Pero Bodiroga, Božo Purković, Eniz Đipa, Macan Slavko, Milan Veletić and also the witnesses who were granted the protective measures, namely the witnesses „A“, „H“, „I“, „X“, „E“, „C“, „G“, „F“, „D“, „W“ and „Z“.

During the main trial, in the capacity of expert witnesses for the Prosecutor's Office of BiH, the following expert witnesses submitted their Findings and Opinion: Nijaz Smajić, Esad Bilić, Dino Osmankadić, Vedad Tuco and Hamza Žujo, while the Findings of expert witness Dr. Ilijas Dobrača were read out. The written Findings and Opinion of these expert witnesses were tendered into the case record of the Court.

Furthermore, during the main trial, the Court reviewed the following evidence submitted by the BiH Prosecutor's Office: Conclusion of the War Staff Kalinovik of 17 May 1992 on the control of military fit men of Muslim ethnicity residing in the municipality of Kalinovik; Certificate of 8 May 1992 number: 17-16/01-210-432/92 confirming that weapons were found and seized from Fejzija Hadžić, resident of Mjehovina; Utilities payment collection

of the *JKP /Public Utility Company/ Gradina Kalinovik*, no. 43-1/92 of 15 May 1992 sent to the Executive Civil Authorities of the Kalinovik municipality, explaining that the company was faced with a difficult financial situation due to collection problems; Invitation of the Municipal Secretariat for National Defense of the Kalinovik municipality of 25 June 1992, for Rašid Redžović of 29 February 2008; Photo-documentation and crime scene investigation: military facility – Jelašačko Polje – Kalinovik, SIPA BiH of 17 November 2007; sketch of the crime investigation scene in the military facility Jelašačko polje Kalinovik of 17 November 2007; Ground-plan of the building of the camp *Barutni Magacin* made on 29 February 2008; two photos of a destroyed house of Fejzija Hadžić; Certificate approving a travel for Marija Redžović to Zelenika to visit her family of 21 May 1992, signed by Slavko Sladoje; Certificate of 9 May 1992, number: 17-16/01-210-432/92 confirming that a pistol make „Crvena Zastava“ was seized from Rašid Redžović from Kalinovik, issued by the War Staff of the Kalinovik municipality, SJB; Order by the SOS Command Kalinovik – Trnovo of 25 August 1992 sent to the *Ljuta* Muslim forces Command concerning a return of the person whose children stayed behind in return for a delivery of the bodies of killed or captured Serb soldiers, or otherwise Muslim people will be killed – also attached translation into English; Order by the SOS Command Kalinovik – Trnovo of 26 August 1992 defining the terms of exchange of Muslim and Serb detainees; Order of 11 June 1992 issued by the Staff Command of the Srpska R BiH in order to regulate certain issues in the TG Kalinovik operative zone, signed by Ratko Bundalo – also attached English version; Photo-documentation of graves in Dujmovići, the Trnovo municipality, of 26 October 2007; Photo-documentation of remains of objects in the place of Sočani – Kalinovik of 13 November 2007; Photo-documentation of the remains of objects in the places of Bojičići and Daganja - Kalinovik, number: 17-14/1-07/25/07 of 13 November 2007; Photo-documentation of the remains of facilities in the places of Kutine and Hotovlje – Kalinovik, number: 17-14/1-07/26/07 of 13 November 2007; Photo-documentation of the Police Station Kalinovik, number: 17-14/1-07/32/07 of 14 November 2007; Photo-documentation of a weekend house owned by Mustafa Sabljica, the village of Mjehovina, the Kalinovik municipality, number: 17-14/1-07/31/07 of 14 November 2007; Complete documentation on a DVD, the recording of 13 and 14 November 2007; Transcript of the hearing of 11 September 2007 with a Record of 23 April 2008 made through the witness “H” testimony, Photo-documentation of the facility in the place of Jelašca – Kalinovik, number: 17-14/1-07/30/07 of 14 November 2007; Witness Examination Record for Vojin Puhalo of 14 September 2007, number: KT-RZ-80/05, with English translation; List of Units in Kalinovik, list of conscripts PVO, 1 July 2008; Witness Examination Record for Danilo Đorem of 23 October 2007, number: KT-RZ-80/05, with English translation; Photo-documentation in the place of Kalinovik, photos taken on 14 November 2007, the farm of Pavlovac, number: 17-14/1-7-28/07; Witness Examination Record for Miloš Crnjak of 17 October 2007, number: KT-RZ-80/05, with English translation; Witness Examination Record for Miloš Mandić of 23 October 2007, number: KT-RZ-80/05, with English translation; Examination Record for the Witness “X” given to SIPA BiH on 23 August 2007 and 3 October 2008; Examination Record for the Witness “F” given in the BiH Prosecutor’s Office on 23 May 2007 and 17 October 2008; Witness Examination Record for Miloš Veletić of 17 October 2007, number: KT-RZ-80/05, with English translation; Witness Examination Record for Zijada Hatić of 23 July 2007, number: 17-14/3-1-3407, with English translation; Witness Examination Record for Ranko Erbez of 15 October 2007, number: KT-RZ-80/05, with English translation; Witness Examination Record for Đorđe Đorem of 25 October 2007, number: KT-RZ-80/05, with English translation; Examination

Record for the Witness “B” given in the BiH Prosecutor’s Office on 16 December 2008, Finding and expert analysis of fire arms traces of 21 March 2005, number: 02/2-2-04-01-8032/04 by the MoI, Crime Police Sector, Sarajevo; Witness Examination Record for Nedo Vuković number: KT-RZ-90/07 of 20 November 2008, with English translation; Witness Examination Record for Manojlo Krstović, number: KT-RZ-90/07 of 22 September 2008, with English translation; Witness Examination Record for Dragomir Đevrić, number: KT-RZ-97/06, with English translation; Expert graphology – traseology analysis of a note book from the *Barutni Magacin* under the title of „Knjiga izlazaka”/Book of Departures/ and indisputable handwritings and signatures of Neđo Vuković and Simo Simić of 26 December 2008, made by expert witness in graphology, Esad Bilić; Finding and Opinion of expert analysis of fire arms traces of 8 July 2005, number: 02/2-6-04-09-7717 made by the General Crime Department; Expert analysis by expert witness Dino Osmankadić; Witness Examination Record for Božo Purković of 24 November 2008, number: KT-RZ-90/07, with English translation; Request to issue an order on exhumation and re-exhumation of mortal remains of a number of bodies of Muslims in the territory of Municipalities Čajniče, Ustikolina – Foča and Goražde, who were killed during 1992, of 14 September 2004; Order for re-exhumation and exhumation of mortal remains of the persons killed in the territory of Municipalities Čajniče, Foča – Srbinje, Foča – FBiH and Goražde of 17 September 2004; Order for autopsy and identification of mortal remains of the persons killed in the territory of the Čajniče municipality of 17 September 2004, issued by the Chief Cantonal Prosecutor; Order for autopsy and identification of the skeletal remains exhumed and re-exhumed in the place of Lađevci, Brdo Potrkuša, the Čajniče municipality; Prvnice and Odžak, Municipality Foča and Kolijevke, the Goražde municipality of 20 September 2004; Crime scene investigation record made on 20 September 2004 – 22 September 2004 by the Cantonal Prosecutor from Goražde regarding the re-exhumed bodies of the Bosniaks killed in the war activities in the places of: Goražde, Čajniče and Foča of 22 September 2004; Photo-documentation of bodies re-exhumation: 21, 21A, 64, 65, 66 and 70 at the *Milakovac* Ustikolina city cemetery of 22 September 2004, made by the MUP Goražde, Crime Police Administration; Sketch of the crime scene, re-exhumation of bodies, number: 21, 21A, 64, 65, 66 and 70, concerning the *Milakovac* Ustikolina city cemetery, a sketch of 22 September 2004, made by the MUP Goražde, Crime Police Administration; Identification Record for Mustafa Šorlija who was killed on 12 June 1992; Report on forensic analysis of the grave site: re-exhumation at the cemetery in Ustikolina 22 September 2004, date of expert analysis is 21 September 2004, made by the Cantonal Prosecutor’s Office in Goražde; DNA Report on the body of Mustafa Šorlija of 14 December 2004; Order to take over the body of Mustafa Šorlija from the premises of the Administration building in Vitkovići, of 7 June 2005; Order for re-exhumation for the purpose of identification to be carried out at the location of JKP *Gradska groblja* Visoko, namely the grave sites marked as Kri – 82/99-NN4 and NN7 of 26 September 2007; Exhumation Order of 27 September 2007, number: 009-0-KPP-07-00155; Order of the Cantonal Prosecutor’s Office of 1 October 2007, number: KTA-116/07-RZ; Re-exhumation Record of the Cantonal Prosecutor’s Office Sarajevo of 2 October 2007, number: KTA-116/07; Identification Record of the Cantonal Prosecutor’s Office Sarajevo of 5 October 2007, number: KTA-11/07-RZ; Corpse Identification Record (Meho Pločo) number: 02/2-548-1/07, made by the MUP, Crime Police Sector; Re-exhumation Photo-documentation of 4 October 2007, Visoko, plot of the JKP *Gradska groblja* Visoko; Motion of the Cantonal Prosecutor’s Office for Exhumation at the location of Vjetren brdo, issued by the BiH Prosecutor’s Office on 1 July 2004, number: KTA.33/04-RZ; Order by the Cantonal Court Sarajevo for exhumation of mortal remains

from a mass grave at the location of Vjetren brdo, and autopsy and identification of mortal remains of 12 July 2004, number: KPP-119/04; Exhumation Record of the Cantonal Prosecutor's Office made on sight on 15 July 2004, at the location of Vjetren brdo during the period from 15 July 2004, number: KTA-33/04-RZ; Autopsy Record Kalinovik, body number 2, issued by the Forensic Institute, Medical Faculty Sarajevo of 2 August 2004; Official Notes and Corpse Identification Record of 30 August 2004, number: 02/2-2-04-01-8032/04, issued by the MUP, Crime Police Sector, Sarajevo; Report on the on-sight criminal and technical investigation of 15 July 2005, number: 3100/04, sent by the Crime Police Sector, Crime Technique Department; Photo-documentation number: 3100/04, the subject is exhumation, place: Kalinovik, Vjetren brdo of 15 July 2004; Record of the JKP *Gradska groblja* Visoko on the delivery of a DNA sample of 21 September 2007, number: 190-262/07; Exhumation Record of 6 August 2004, number: KTA-22/04-RZ, made at the location of the Ponor canyon; Record on the re-association of skeletal remains exhumed from the mass grave at the location of the Ponor canyon of 16 July 2007, number: KTA-22/04-RZ; Part II – DNA Report of 4 December 2006, number: Kpp-107/04 the location of Tuneli – Foča TUN-20-1-T, a possible identity of Nasuf Hadžić ID 17398, signed by Dr. Hamza Žujo; Part I – DNA Report of 4 May 2005, number: TUN-2-LFM, a possible identity of Adem Hatić, report signed by Dr. Hamza Žujo; Part II – Autopsy Record Tuneli – Foča, Forensic Institute, Medical Faculty Sarajevo, body No. 15, autopsy date 2 February 2005 and exhumation date 7 August 2004, a corpse buried in a mass grave, the Report signed by Dr. Hamza Žujo; Part I – Autopsy Record Tuneli – Foča, Forensic Institute, Medical Faculty Sarajevo, body No. 1, a corpse buried in a mass grave, exhumation date 7 August 2004, autopsy date 31 January 2005; Record on the delivery of DNA sample of 3 October 2007, number: 190-276/07, the sample delivered by Dr. Hamza Žujo, and received by Mirza Dautović, *Gradska groblja* Visoko; Exhumation Record of 19 August 2004, number: 02/2.2-287/04, regarding the exhumation of mortal remains of 36 bodies from a mass grave at the location of the Ponor canyon, near the caved-in tunnel at the road M-18 Sarajevo-Foča, record made by the MUP, Crime Police Sector, General Crime Department, Record on the delivery of a DNA sample of 1 September 2006 of the Public Company *Gradska Groblja*, Working Unit „Burial Services” Visoko; Record on the delivery of a DNA sample of 20 July 2007, number: 190-213/07 Public Company *Gradska Groblja* Visoko; Letter of forensic expert, Dr. Hamza Žujo of 25 August 2006 sent to the ICMP Tuzla with reference to the protocol number: 162/06 and 173/06 of 11 April and 25 April 2006; Letter of the ICD Tuzla of 25 April 2006, sent to Dr. Hamza Žujo for the delivery of a reserve sample; Request for exhumation from a mass grave at the location of caved-in tunnel at the Miljevina-Foča road of 26 May 2004, number: 01-41-1534/2004, sent by Amor Mašović; Motion of the Cantonal Prosecutor's Office to issue an order on exhumation at the location of caved-in tunnel on the Miljevina-Foča road of 1 July 2004, number: KTA-22/04-RZ; Order by the Cantonal Court Sarajevo of 13 July 2004, number: Kpp-107/04 for exhumation of a mass grave at the location of the caved-in tunnel at the Miljevina-Foča road; Exhumation Record of the Cantonal Prosecutor's Office Sarajevo of 6 August 2004, number: KTA-22/04-RZ, made at the location of the caved-in tunnel at the Miljevina-Foča road; Exhumation Record of the Cantonal Prosecutor's Office Sarajevo of 19 August 2004, number: KTA-22/04-RZ, made at the location of the caved-in tunnel Miljevina-Foča; Order by the Cantonal Prosecutor's Office Sarajevo of 29 November 2006, number: KTA-22/04-RZ for forensic identification of the mortal remains of the war victims in BiH, exhumed on 6 August 2004 at the location of the caved-in tunnel Miljevina-Foča; Anthropologic Examination of Bodies in Tuneli–Foča of 24 January 2005; Record on the take-over of

items from the exhumed bodies, number: Kpp-107/44, caved-in tunnel-Foča of 8 February 2005, number: 09/05, made by the JKP *Gradska groblja* Visoko; Photo-documentation number: 3364/04 of 18 and 19 August 2004 regarding the exhumation at the site of caved-in tunnel on the M-18 Sarajevo-Foča road in the place of Ponor, Municipality Foča; Exhumation of the Tuneli mass grave of 13 July 2004, number: Kpp-104/04 (singled out from the case record, two big folders with photo-documentation); Report on the on-sight crime and technical investigation in Ponor – Foča, near the caved-in tunnel of 4 August 2004, number: 3337/04, made by the MUP Sarajevo, Crime Police Sector, General Crime Department; Sketch of the exhumation site in the place of Foča, Ponor near the caved-in tunnel of 4 August 2004, number: 3337/04; a DVD with the recording of the location of Tuneli in the territory of municipality Foča, number Kpp-107/04; Record of 21 June 2000, number: Kri-348/99, made in the Cantonal Court Sarajevo regarding the exhumation of bodies at the location of the village of Jeleč, Kalinovik; Forensic Finding and Opinion on Exhumation, Examination with Autopsy and Corpse Identification made by Dr. Hamza Žujo; Decision of the Cantonal Court in Sarajevo of 3 December 1999, number: Kri-348/99 ordering exhumation, autopsy and identification of the bodies of Rifo Bićo, Hajdar Pervan, Dervan Pervan and Derviš Rogoj; Decision of the Cantonal Court Sarajevo of 13 June 1999, number: Kri-348/99 ordering exhumation, autopsy and identification of the bodies of Rifo Bićo, Dervan Pervan and Derviš Rogoj, whose mortal remains are at the location of the village of Jelašci, the Kalinovik municipality; Decision of the Cantonal Court Sarajevo of 8 December 2000, number: Kri-348/99, ordering exhumation, autopsy and identification of the mortal remains of Rifo Bićo, whose mortal remains are at the location of the village Jelašci, the Kalinovik municipality; Decision of the Cantonal Court Sarajevo of 15 July 1999, number: Kri-145/99, ordering exhumation and autopsy of NN bodies, whose mortal remains are at the location of Ratine-Papratna njiva; Exhumation and Autopsy Record of the Cantonal Court in Sarajevo of 21 July 1999, number: Kri-145/99, made on sight at the Rapine location, the Foča municipality; Record of the Cantonal Court in Sarajevo on the hearing of expert witness Ilijas Dobrača of 26 July 1999; Sketch of the sight of exhumation of the mortal remains of human bones of 31 July 1999 that were found in a stable owned by Mustafa Tuzlak located in the village of Ratine, the Foča municipality; Photo-documentation of the exhumation in the village of Ratine, the Foča municipality, photos taken on 21 July 1999 (70 photos); Exhumation and Autopsy Record of the Cantonal Court Sarajevo of 24 June 1999, number: Kri-82/98, made in the place of Jelašca RS regarding the exhumation of killed Bosniaks; Record of the Cantonal Court in Sarajevo on the hearing of forensic expert Ilijas Dobrača of 30 December 1999; Request of the Cantonal Prosecutor's Office to issue an order for re-exhumation for identification purposes of 11 August 2006, number: KTA-71/06-RZ to be carried out at the location intended for burial of NN persons at the *Gradska groblja* Visoko; Order of the Cantonal Court in Sarajevo on re-exhumation of NN person at the location of *Gradska groblja* Visoko, grave plot marked as Kri-82/98 of 11 August 2006, number: 009-0-KPP-06-000-145; Request of the Cantonal Prosecutor's Office for order issuance of 15 August 2006, number: KTA-71-06-RZ for re-exhumation of the person preliminary identified as Meho Šaćić; Re-exhumation and Identification Record of the Cantonal Prosecutor's Office of 22 August 2006 at the plot intended for burial of NN person, *Gradska groblja* Visoko, regarding the re-exhumation of the person assumed of being a war crime victim; Letter of the MUP Sarajevo, Crime Police Sector of 15 November 2006, number: 02/2-2-04-01-10780/06, sent to the Cantonal Prosecutor's Office Sarajevo, with the attached: Corpse Identification Record, DNA Report, Official Notes and Photo-documentation regarding the re-exhumation and identification of the mortal remains of

Meho Sačić; Photo-documentation of 22 August 2006, number: O.R.2520/06, subject of photo-taking is re-exhumation in the place of Visoko, court plot of the JKP *Gradska groblja* Visoko; Autopsy Record to the name of Meho Sačić of 13 October 2006 made on the premises of the Forensic Institute Sarajevo, number: 27-274/2006; Decision of the Cantonal Court in Sarajevo of 25 March 1999, number: Kri-82/98 ordering exhumation and autopsy of the bodies of killed civilians who were buried in 2 (two) mass graves at the location of the Kalinovik municipality in the place of Borovac and at the meadow „kosa” above the village of Jelašca; Corpse Identification Record made by MUP Sarajevo, Crime Police Sector dated 23 September 1999, number: 01/2-5, concerning Zulfo Kadrić; Corpse Identification Record made by MUP Sarajevo, Crime Police Sector dated 23 July 1999, number: 01/2-5, concerning Duda Karaman; Corpse Identification Record made by MUP Sarajevo, Crime Police Sector dated 23 July 1999, number: 01/2-5, concerning Muškija Rogoj; Corpse Identification Record made by MUP Sarajevo, Crime Police Sector dated 23 July 1999, number: 01/2-5, concerning Ćamil Karaman; Exhumation and Autopsy Record of the Cantonal Court of 15 July 1999, number: Kri-143/99, concerning an exhumation in the place of Jezero, location of Prezren, the Kalinovik municipality, carried out on 16 July 1999 in the *Gradska groblja* Visoko; Witness Expert Examination Record made in the Cantonal Court in Sarajevo on 16 July 1999, the hearing of expert witness Dr. Ilijas Dobrača; Photo-documentation of exhumation, autopsy and identification in the RS, Kalinovik, the place of Jezero of 15 July 1999; Decision of 13 July 1999, number: Kri – 143/99, issued by the Cantonal Court Sarajevo on exhumation and autopsy of bodies of the persons killed at the location of Jezero; Decision of 15 July 1999, number: Kri – 142/99 issued by the Cantonal Court Sarajevo on exhumation and autopsy of NN civilian found in Mjehovina; Exhumation and Autopsy Record of 19 July 1999, number: Kri – 142/99, exhumation carried out by: Izet Baždarević, Judge of the Cantonal Court Sarajevo, Ilijas Dobrača – forensic science expert in the presence of the MUP KS, the Commission for Tracing Missing Persons FBiH, the OHR, the PHR and representatives from the RS; Examination Record for expert witness Ilijas Dobrača of 26 July 1999, made in the Cantonal Court in Sarajevo; Photo-documentation of exhumation, autopsy and identification in RS, Kalinovik, the village of Mjehovina of 19 July 1999; Sketch of the exhumation site in the village of Mjehovina, Municipality Kalinovik, local cemetery of 19 July 1999; Certificate of 5 December 2008, number: 01-40-CEN-14/2008, issued by the Institute for Missing Persons BiH confirming that Dervan Pervan has been registered as a missing person; Record on re-association of skeletal remains of the bodies of exhumed NN victims from a mass grave at the location of the Ponor canyon of 16 July 2007, number: KTA-22/04-RZ; Identification Record for a NN corpse made in the Dissecting Department of the *Gradska groblja* Visoko of 26 May 2008, number: KTA-47/08-RZ; Identification Record for a NN corpse made in the Dissecting Department of *Gradska groblja* Visoko of 28 May 2008, number: KTA-47/08-RZ; Identification Record for a NN corpse made in the Dissecting Department *Gradska groblja* Visoko of 29 May 2008, number: KTA-47/08-RZ; Identification Record for a NN corpse made in the Dissecting Department of the *Gradska groblja* Visoko of 27 May 2008, number: KTA-47/08-RZ; Identification Record for a NN corpse made in the Dissecting Department of *Gradska groblja* Visoko of 14 December 2007, number: KTA-47/08-RZ; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-1/08 made in the *Gradska groblja* Visoko confirming that it was Adem Hatić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-2/08 made in the *Gradska groblja* Visoko, in the *Gradska groblja* Ramiz Kešo; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-3/08 made in the *Gradska groblja* Visoko, confirming

that it was Asim Pervan; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-4/08 made in the *Gradska groblja* Visoko, confirming that it was Veiz Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-5/08 made in the *Gradska groblja* Visoko, confirming that it was Bećir Pervan; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-6/08 made in the *Gradska groblja* Visoko, confirming that it was Hamdo Pervan; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-7/08 made in the *Gradska groblja* Visoko, confirming that it was Adil Krajčin; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-8/08 made in the *Gradska groblja* Visoko, confirming that it is Ibro Softić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-9/08 made in the *Gradska groblja* Visoko, confirming that it was Adem Mustajbegović; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-10/08 made in the *Gradska groblja* Visoko, confirming that it was Hasan Mušanović; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-11/08 made in the *Gradska groblja* Visoko, confirming that it was Hilmo Suljić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-14/08 made in the *Gradska groblja* Visoko, confirming that it was Ibrahim Bajrić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-13/08 made in the *Gradska groblja* Visoko, confirming that it was Vejsil Kečo; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-14/08 made in the *Gradska groblja* Visoko, confirming that it was Kasim Suljić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-15/08 made in the *Gradska groblja* Visoko, confirming that it was Fehim Suljić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-16/08 made in the *Gradska groblja* Visoko, confirming that it was Bajro Pervan; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-17/08 made in the *Gradska groblja* Visoko, confirming that it was Avdo Kečo; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-18/08 made in the *Gradska groblja* Visoko, confirming that it was Safet Mušanović; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-19/08 made in the *Gradska groblja* Visoko, confirming that it was Ramo Suljić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-20/08 made in the *Gradska groblja* Visoko, confirming that it was Nasuf Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-21/08 made in the *Gradska groblja* Visoko, confirming that it was Munib Velić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-22/08 made in the *Gradska groblja* Visoko, confirming that it was Jusuf Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-23/08 made in the *Gradska groblja* Visoko, confirming that it was Muharem Bičo; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-24/08 made in the *Gradska groblja* Visoko, confirming that it was Edhem Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-25/08 made in the *Gradska groblja* Visoko, confirming that it was Adil Hatić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-26/08 made in the *Gradska groblja* Visoko, confirming that it was Vahid Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-27/08 made in the *Gradska groblja* Visoko, confirming that it was Ibro Pervan; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-28/08 made in the *Gradska groblja* Visoko, confirming that it was Salko Suljić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-29/08 made in the *Gradska groblja* Visoko, confirming that it was Smail Hadžić; Corpse Identification Record of 26 May 2008, number: 02/2-2-263-30/08 made in the *Gradska groblja* Visoko, confirming that it was Fehim Srnja; Order of 14 May 2008 issued by the Cantonal Prosecutor's Office for forensic identification of mortal remains of the war victims in BiH, exhumed on 6 August 2004 at the location of the Ponor canyon; Order of 3

September 2007 concerning the search of the premises of PS Kalinovik, namely: the archive from the beginning of 1992 until the end of 1994 the search of the premises of Municipality Kalinovik; Receipt on Seizure of Objects by SIPA BiH of 5 September 2007, number: 17-04/2-04-2-17/07 (the items were found on the premises of the PS Kalinovik archive); Receipt on Seizure of Objects by SIPA BiH of 5 September 2007, number: 17-04/2-04-2-18/07 (the items were found in the archive of the Municipality Kalinovik, office number 8); Receipt on Seizure of Objects by SIPA BiH of 5 September 2007, number: 17-04/2-04-2-19/07 (the items were found in the archive of the Municipality Kalinovik, office number 13); Receipt on Seizure of Objects by SIPA BiH 5 September 2007, number: 17-04/2-04-2-20/07, (the items were found in the office 33 on the ground floor); Photo-documentation number: 17-14/1-7-16/07 of 5 September 2007, concerning the search of the premises of the PS Kalinovik; Record on Search of Dwellings, Other Premises and Personal Property by SIPA of BiH of 5 September 2007, number: 17-04/2-01-2-11/07 concerning the premises owned by the MUP RS, CJB Istočno Sarajevo from PS Kalinovik, made by SIPA; Photo-documentation number: 17-02/8-04-24/07 concerning the search of the archive in the building of Municipality Kalinovik of 5 September 2007; Record on Search of Dwellings, Other Premises and Personal Property of the Municipality Kalinovik of 5 September 2007, number: 17-04/2-04-2-12/07 made by the SIPA of BiH; Record on Opening and Inspection of Seized Objects and Documents by the Prosecutor's Office of BiH of 24 September 2007, number: KT-RZ-80/05; MUP RS Certificate of Employment for Đorđislav Aškrača covering the period from 3 May until 28 May 1992 at *SJB* Kalinovik, no. 14-2/01-211-465/93 of 13 Sep 1993; Official Note of 17 September 1992, number: 17-16/01-211-640/92, made by the CSB Trebinje, *SJB* Kalinovik, regarding frequent perpetration of criminal offenses of houses robberies in the territory of the village of Boljanovići; Decision by the Executive Civil Authorities of the Kalinovik municipality establishing a commission to conduct an inspection with the households in order to establish the quantity of firewood, no. 02-012-35/93 of 5 March 1993; Report on notice given to a conscript, *SJB* Kalinovik, no. 17-16/01-211-180/3 of 27 March 1993, made by the CSB Trebinje; Letter of 26 March 1993, number: 13-2/93 of the Defense Ministry Kalinovik sent to the *SJB* Kalinovik, to make available to the Command of the 1st Koševo Light Infantry Brigade all conscripts with the approved compulsory work service; Bulletin of Daily Events for 27/28 May 1992, CSB Trebinje, *SJB* Kalinovik, no. 17-16/01-211-503/92 concerning the public peace and order, criminal activities, traffic, citizens responses to compulsory military service, return of weapons and information obtained from citizens; Order of 9 December 1992, number: 985-1, sent to the police patrol at the Ulog and Jažići check points, for the purpose of increase and maintenance of combat readiness and security of the TG Kalinovik units; Eviction Order sent by the Kalinovik municipality of 31 August 1992, number: SL/92 *SJB* Kalinovik, to evict Jovanka Jovović from the apartment of Hilmo Jašarević; Request to assign Hadžić Hasan to work during a working day, *DP Šumarstvo Zelengora* Kalinovik, no. 17-16/01-211-549/92 of 8 July 1992 sent to the Command of TG Kalinovik, Police Station Kalinovik; Official Note of 1 October 1992, MUP CSB Trebinje, *SJB* Kalinovik, stating that an informative interview was conducted with P.V.; Letter of the Defense Ministry Kalinovik of 24 December 1992, number: 08/2-82-112-2/92, sent to *SJB* Kalinovik requesting information on the captured persons that were exchanged; List of Serb women, children and soldiers of 28 December 1992, number: 17-16/01-211-894/92 who were exchanged in the places of Jakomišlje and Rogoj, made in the CSB Kalinovik; Official Note of 31 December 1992, number: 17-16/01-211-897/92 of the *SJB* Kalinovik, sent to the TG Kalinovik, concerning the information obtained from the inhabitants of the Jelašca village;

Activities Report of the Police Station Kalinovik of 16 December 1992 signed by Milan Perić; Receipt on Seizure of Objects dated 16 December 1992, number: SL/92; Official Note concerning the conducted interviews of 25 November 1992 made by the Police Station Kalinovik employees; Report of 9 October 1992 concerning two houses setting on fire in Ulog, owned by Zejnil Pandža and Nezir Bešić, signed by Ratko Bundalo; Official Note of 26 September 1992 made in the Police Station Kalinovik concerning certain information; Order of 11 October 1992, number: 742-1 by the Command of TG Kalinovik to search and seize military property; Order of 22 October 1992, number: 825-1 by the TG Kalinovik Command ordering soldier Radomir Mandić into military custody; Letter of the SJB Kalinovik of 6 February 1993, number: 17-16/01-211-1/93 sent to the TG Kalinovik Command; Responses and explanations to soldiers by the Command of the 1st Klpbr of 29 December 1992, number: 104-1; Certificate of 8 April 1993, number: 17-16/01-211-222/93 confirming that Đ. Aškraba reported to work in the Police Station Kalinovik on 4 May 1992; Order by the Executive Civil Authorities of the Kalinovik municipality of 19 November 1992, number: 02-012-34/92 to control all natural persons leaving the territory of the Municipality; Order by the TG Kalinovik Command of 20 November 1992, number: 921-1 to gather forces and assets on 22 November 1992 by 10:00 A.M. in the area of Dobro Polje; Order to gather workers for compulsory work service of 7 December 1992 number: 981-1 by the TG Kalinovik Command to provide VP7229 Kalinovik and the Medical Center with heating wood; Order by the TG Kalinovik Command of 15 November 1992, number: 907-1 to establish patrols comprised of members of the SJB and military police with to patrol and control places; Order by the TG Kalinovik Command of 19 November 1992, number: 02-012-99/92 IO Municipality Kalinovik ordering the SJB Kalinovik to check the truthfulness of the allegations concerning the theft of oxen; Letter of the Kalinovik municipality of 29 May 1992, number: 02-012-29/92 sent to the SJB Kalinovik and the command of Gornji logor on the mass-scale illegal cutting of woods in the RJ Crvanji; Order of 2 June 1992 by the TG Kalinovik Command to apprehend the persons who escaped from the unit; Certificate of 8 September 1992, number: 17-16/01-222-618/92 confirming that DP „Zagorje“ transported and sold lambs and sheep from its farm; Travel Permission of 25 July 1992, number: SL/92 by the SJB Kalinovik for a Muslim detainee, Huso Tukelija to travel at the relation Kalinovik – Miljevina – Foča and vice versa; Travel Permission of 10 July 1992, number: SL/92 for a Muslim detainee, Huso Tukelija to travel in the Kalinovik – Miljevina – Foča direction and vice versa; Travel Permission of 30 June 1992 for 8 Muslim detainees with police escort, Kalinovik number SL/92 to travel in the Kalinovik – Nevesinje direction to perform physical labor; Travel Permission of 6 July 1992, number: SL/92 for 6 Muslim detainees in the direction Kalinovik – Nevesinje to perform physical labor; Travel Permission of 18 July 1992, number: SL/92, for 7 Muslim detainees in the Kalinovik – Nevesinje – Gacko direction to perform physical labor; List of military conscripts deployed to the SJB Kalinovik; Letter of the SJB Kalinovik of 16 December 1993, number: 14.2/01.120.631/93, sent to the CSB Trebinje with the attached Personal questionnaire for Đ. Aškraba; Personal questionnaire for Đ. Aškraba; Letter of Krsto Savić of 7 December 1993, number: 1232/93 concerning the transfer of Aškraba Radoslav, a policeman in the SJB Foča to the SJB Kalinovik; Recommendation of 30 May 1994 for the treatment of military deserters and their relatives, number: 35/94 of the SDS Kalinovik Municipal Board, signed by Grujo Lalović; Supplement to the list of soldiers at front line of 27 June 1992, number: SL-1 by the TG Kalinovik Command, Executive Civil Authorities of the Kalinovik municipality; Supplement to the list of soldiers at the front line of 1 July 1992, number: 51-3 by the TG Kalinovik Command, Executive Civil Authorities

of the Kalinovik municipality; Delivery of lists of soldiers at front lines of 30 June 1992, number: 51-2 by the TG Kalinovik Command, Executive Civil Authorities of the Kalinovik municipality; List of soldiers deployed to villages; deployment of soldiers to command posts; list of soldiers in the Main Staff; list of soldiers in the Kalinovik unit; Request for an opinion on redeployment V/O of 27 June 1992, number: 362-1 by the TG Kalinovik Command, sent to the Executive Civil Authorities /ECA/ of the Kalinovik municipality; Order of 16 June 1992 by the ECA of the Kalinovik municipality sent to the SJB Kalinovik to assign a group of Muslims to unload food supplies from a truck; Order of 19 May 1992, number: 02-012-27/92 by the ECA of the Kalinovik municipality to take over the PTT building in Ulog; Order of 20 May 1992, number: 02-012-27/92 EC of Municipality Kalinovik for the appointment of medical doctors for health protection; Record from the 26th session of the ECA of the Kalinovik municipality of 16 May 1992 concerning the situation in the economy, the work of Municipal bodies, the security measures taking; list of employees of the Health Center in Kalinovik of 10 July 1992, number: 295/92; Report on Activities for the SJB Kalinovik of 18 August 1992, number: 17-16/01-211-579/92 sent to the CSB Trebinje; Authorization of 9 October 1992, number: 02-012-33/92 issued by the EC of the Municipality Kalinovik to give glass from the house of Nasuf Hadžić for the Grammar School needs; Letter of JKP /*Public Utility Company*/ Gradina of 4 June 1992, number: 52-1/92, sent to the ECA of the Kalinovik municipality stating that there are no free apartments, except for one efficiency apartment given for the needs of the ECA of the Kalinovik municipality; Order of 1 September 1992, number: 02-012-31/92 of the ECA of the Kalinovik municipality, obliging the Commission comprised of: Mile Mandić from Kalinovik and Drago Mandić from Gradina; Order of 31 August 1992, number: 02-012-31/92 of the ECA of the Kalinovik municipality to list the quantity of hay in tons, wheat, cattle and Muslim population in the village of Vihovići; Order of 31 August 1992, number: 02-012-31/92 by the ECA of the Kalinovik municipality to list the quantity of hay owned by Muslim population in the village of Jelašca; Order of 19 August 1992, number: 02-012-31/92 by the EC of the Municipality Kalinovik authorizing the SJB Kalinovik to go on sight based on the petition of Kosta and Anđelko Lalović from the village of Vlahovlja, establish the stated facts and order the applicants to behave correctly, and explaining them that they can fully exercise their right after the war activities cease in the territory of the Municipality; Order of 11 May 1992, number: 02-012-25/92, issued based on a Decision of the War Command of the SAO Herzegovina, IO SO Kalinovik that all subjects in the Municipality should state operating in war conditions; Death Certificates and Decisions on Registration of 29 October 2007, number: 02/1-13-6-42 for Remzo Suljić, Nasuf Bičo and Zaim Čusto; Death Certificate for Remzo Suljić of 29 October 2007, number: 02/1-132-136, Municipality Trnovo; Submission of final decision, MUP KS of 16 February 1998, number: 02/3.1-202-1 sent to a Registrar in the Trnovo municipality on the subsequent registration of data in the Register of Deaths; Decision of MUP KS of 16 February 1998, number: 02/3-202-1 approving a subsequent entry into the Register of Deaths of the Municipality Trnovo the death of Remzo Suljić; Death Certificate of 29 October 2007, number: 02/1-132-135 for Nasuf Bičo; Letter of the MUP KS SJB Trnovo of 22 January 1997, number: 19/20-6-202-72/97, sent to the SO Trnovo–Registry Office delivering in the attachment a final decision and accompanying documents of the CSB Sarajevo for a subsequent entry of data into the Register of Deaths to the name of Nasuf Bičo; Submission of final decision of 14 January 1997, number: 19/05-1-202-2152/96 sent to Municipality Trnovo-Registrar delivering in the attachment a final decision on the subsequent entry of data into the Register of Deaths; Decision of 14 January 1997, number: 19/05-1-202-2152/96 of the MUP KS, CSB Sarajevo

approving a subsequent entry into the Register of Deaths of the Municipality Trnovo the death of Nasuf Bičo; Death Certificate of 29 October 2007, number: 02/1-132-134 to the name of Zaim Čusto; Letter of 19 September 2007 of the RS Ministry for Labor and Veterans Protection RS accompanied by the official record information for Ratko Bundalo, Neđo Zeljaja and Đorđislav Aškraha; Document with the attached excerpts from the criminal record of the MUP CSB I. Sarajevo, PS Trnovo of 26 October 2007, number: 13-6/02-655/07 sent to the BiH Prosecutor's Office with a review of the Criminal Records of the PS Trnovo with the available data from 1992 regarding clear criminal record for Neđo Zeljaja; Document of the BiH Prosecutor's Office of 30 October 2007, number: 10-4/02-235-62/07 stating that Ratko Bundalo has no prior convictions; Document of the BiH Prosecutor's Office of 26 October 2007, number: 13-1-10/02-235-1020/07 stating that Đorđislav Aškraha has no prior convictions; Notice by the MUP RS of 23 October 2007, number: 02-str. conf. 492/07 sent to the BiH Prosecutor's Office delivering the available documentation to the name of Neđo Zeljaja and Đorđislav Aškraha; Decision of 6 March 1993, number: 4449 of the MUP RS temporarily assigning Neđo Zeljaja, until the adoption of the Rule Book on the Internal Organization of the MUP RS, to the post and tasks of a commander; Personal questionnaire of 10 November 1992 issued by the MUP RS to the name of Neđo Zeljaja; Decision of 20 October 1995, number: 08/1-134-3683 assigning to Neđo Zeljaja the rank of Senior Sergeant; Personal questionnaire for determining the rank of an authorized official person of 21 September 1995, number: 16-3/01-120-408/95 to the name of Neđo Zeljaja; Certificate to the name of Neđo Zeljaja of 8 August 1996, number: 16-3/09-29-618/96 proving that as a MUP member he participated in the armed conflicts in the territory of the former BiH from 4 April 1992 to 20 April 1996; Decision of 20 August 1996, number: 09/3-126-4542 issued by the MUP Bijeljina terminating the employment of Neđo Zeljaja with the MUP RS based on his satisfaction of the requirements for age retirement as of 31 August 1996; Decision of 1 April 1992, number: 10-09/2-120-27/221 issued by the MUP RS temporarily assigning Đorđislav Aškraha to the jobs and tasks of an Assistant Commander of the SJB Ilidža; Decision of 23 November 1993, number: 09-6460, issued by the MUP RS temporarily assigning Đorđislav Aškraha to the jobs and tasks of a police officer in the Police Station SJB Kalinovik; Decision of 20 October 1995, number: 0811-194-1004 issued by the MUP RS to assign Đ. Aškraha, as a MUP employee, to the jobs and tasks of a captain; Personal questionnaire for determining the rank of an authorized official person to the name of Đ. Aškraha; Decision of the MUP RS of 5 December 1995, number: 08/1-120-3986 assigning Đ. Aškraha under the compulsory work service to the post of a chief of shift in the Srbinje Border Control Police Station; Decision of MUP Bijeljina of 30 March 1994, assigning Đ. Aškraha to the activities and tasks of a police officer in the SM SJB Kalinovik; Decision of the MUP RS of 17 September 1994, number: 09/3-120-3594 assigning Đ. Aškraha to the activities and tasks of a chief of sector and category in the SJB Kalinovik; Certificate of the MUP CJB Srbinje, SJB Kalinovik of 6 March 1996, number: 16-3/09-29-154/96 confirming that as the MUP member, Đ. Aškraha participated in the armed conflicts in the territory of the former BiH during the period from 1 May 1992 to 28 May 1992 and from 9 September 1993 to 24 April 1995; Certificate of the Defense Ministry Kalinovik of 8 March 1996 proving that as a member of the RS Army, A. Đorđislav participated in the armed conflicts during the period from 28 May 1992 to 9 September 1993 continuously; Certificate of the MUP, Control Police Station Srbinje of 10 October 1996, number: 01/2-32-12/96 proving that as a member of the RS Army, Đorđislav Aškraha participated in the armed conflicts during the period from 24 April 1995 to 20 April 1996 continuously; Certificate of the MUP, CSB Sarajevo, Rogatica of 20 January

1997, number: 15-01-26/97 proving that as a member of the RS Army, Đorđislav Aškraha participated in the armed conflicts during the period from 4 April 1992 to 30 April 1992 continuously; Decision of 30 August 1996, number: 09/3-126-3581, issued by the MUP RS Bijeljina terminating the employment of Đ. Aškraha as the shift chief in the Srbinje Border Control Police Station Srbinje as of 31 August 1996 with the right to age retirement; Document of the Central Commission for Exchange of Prisoners of War and Civilians of 24 April 1993 sent to the President of the Municipality Kalinovik, Nikola Kovač requesting a transfer of detainee Ferid Zagorac and other detainees to the Kula prison for a collective exchange Tarčin – Kalinovik; Payroll list for September 1992 issued by the SJB Kalinovik with names and contributions; Document of the SJB Kalinovik sent to the CSB Trebinje delivering the data concerning the fact that, in the territory of the SJB Kalinovik, the Public Security Service Sector was established with organizational units as follows: PS Kalinovik, PS Dobro Polje and PS Ulog; Order of the TG VP 4120 Kalinovik Command of 12 July 1992 to make a proposal for soldiers promotion into the rank of reserve junior officers, proposal for exceptional promotion of conscripts, reserve junior officers and reserve officers, collection of information on soldiers-conscripts sent for training in Bileća and soldiers who are in units but who used to work in the JNA as civilian persons; Order by the TG Kalinovik Command of 13 July 1992 preventing combatants to leave posts in order to maintain combat readiness; Signatures of persons aware of the order by the TG Kalinovik Commander of 13 July 1992 concerning the prevention of persons to leave posts; List of captured persons that were exchanged from the Kalinovik prison of 15 September 1992; Letter of the TG Kalinovik Command of 17 June 1992 sent to the Commander of the 1st Battalion Trnovo to carry out certain tasks to stabilize the taken positions; Order by the TG Kalinovik Command of 6 June 1992 sent to the TO Trnovo Commander to immediately send Dragan Zvizdalo from Trnova to a front line; Letter of the Trnovo Command of 10 June 1992 sent to the Military Post Kalinovik, attention of Colonel Ratko Bundalo concerning food requisition; Photo-documentation number: 17-14/1-7-19/07 of 24 October 2007 taken in the place of Ratine, Municipality Foča; Photo-documentation of 13 November 2007, number: 17-14/1-7-27/7 in the place of Luke – Kalinovik; Photo-documentation of 14 November 2007 in the place of Vihovići – Kalinovik, number: 17-14/1-7-29/07; Photo-documentation of 14 November 2007 in the place of Kalinovik, number: 17-14/1-7-33/07; Certificate of 15 November 2007, number: 01-41-450-E/2007 issued by the Federation Commission for Missing Persons to the name of Fatima Pervan; Certificate of 15 November 2007, number: 01-41-449-E/2007 issued by the Federation Commission for Missing Persons to the name of Azemina Pervan; Certificate of 15 November 2007, number: 01-41-451-E/2007 issued by the Federation Commission for Missing Persons to the name of Almir Kadrić; Certificate of 15 November 2007, number: 01-41-452-E/2007 issued by the Federation Commission for Missing Persons to the name of Mujo Pervan; Certificate of 15 November 2007, number: 01-41-453-E/2007 issued by the Federation Commission for Missing Persons to the name of Edin Bićo; Certificate of 15 November 2007, number: 01-41-454-E/2007 issued by the Federation Commission for Missing Persons to the name of Hašim Hatić; Certificate of 15 November 2007, number: 01-41-456-E/2007 issued by the Federation Commission for Missing Persons to the name of Suad Hasanbegović; Certificate of 15 November 2007, number: 01-41-455-E/2007 issued by the Federation Commission for Missing Persons to the name of Sejdo Kešo; List of employees of the SJB Kalinovik and active police officers employed with the Police Station Kalinovik, who did not receive the allowance part of the salary for June 1992; List of detained persons released for exchange from the Foča Correctional and Penal Institute; Order to transport 12 prisoners of war from

the Foča Garrison to the Kalinovik Garrison of 5 December 1992; Suspect Questioning Record for R. Bundalo of 31 August 2007, number: KT-RZ-80/05; Witness Examination Record for Milena Vasić of 17 April 2007, number: KT-RZ-116/07; Corpse Identification Record, delivered by MUP, Crime Police Sector Sarajevo of 1 September 2008, number: 02/2-2-04-01-8100/04; Corpse Identification Record, delivered by MUP, Crime Police Sector, General Crime Department, Sarajevo, number: 02/2-2-334-2/08; Autopsy and Corpse Identification Record, delivered by the MUP, Crime Police Sector, General Crime Department, Sarajevo of 1 September 2008, number: 02/2-2-04-01-8100/04; Identification Record of 26 September 2008 drafted in the Dissecting Department of the JKP *Gradska groblja* Visoko, identification of NN war crime victim of 17 September 2008; Corpse Identification Record issued by the MUP, Crime Police Sector, General Crime Department of 16 October 2008, number: 02/2-04-01-8100/04; Identification Record of 26 September drafted in the Dissecting Department of the JKP *Gradska groblja* Visoko; Delivery of the documentation concerning the medical treatment at the Military and Medical Academy in Belgrade to the name of Ratko Bundalo of 11 January 2008; Delivery of requested data of 7 November 2008, number: 04-835-1-352 issued by the Municipality Foča, General Administration Department, to the name of Pero Elez; List of reserve police officers for salary payment for August 1992 issued by the CJB Trebinje, SJB Kalinovik; List of reserve police officers for salary payment for July 1992 issued by the CJB Trebinje, SJB Kalinovik; List of active employees of the SJB Foča for salaries payment for June 1992; List of reserve force for payment of the salaries for October 1992; Salaries payment list for May 1992 for reserve police officers of the Police Station Kalinovik; 1992 Third Quarter Activity Report sent by the SJB Kalinovik, number: 17-16/01-052/92 of 1 October 1992; Regular combat report sent to the Command of the Herzegovina Corps of 29 August 1992 by Ratko Bundalo; Combat Report of 3 August 1992, sent to the Main Staff of the Serb R BiH; List of conscripts deployed to the SJB Kalinovik during the period from 4 August 1991 to 30 June 1996 issued by the SJB Kalinovik of 11 June 1999 number: 15-2/01-100/99; Two books - Protocol I and Protocol II of ill persons – residence during the period from 1 August to 9 November 1992, and from 24 July to 9 September 1992; Witness Examination Record for Slavko Macan of 26 May 2009, number: KT-RZ-90/07; Witness Examination Record for Milan Veletić of 27 April 2009, number: KT-RZ-90/07; Witness Examination Record for Simo Bozalo of 15 April 2009, number 80/05, Document of the Ministry of Interior of the Serb Republic of Bosnia and Herzegovina, Security Services Center Trebinje number 01-24/92 of 17 April 1992, List of employees of the Security Services Center, Police Station Kalinovik for April 1992; Security Services Center Trebinje-Public Security Service Kalinovik, payroll list for August 1992, Order for exhumation at the site of Grajselsko polje, Municipality Kalinovik issued by the Cantonal Court Sarajevo number 009-0-KPP-09-000-082 of 29 June 2009, Exhumation Record drafted by the Cantonal Prosecutor's Office of Canton Sarajevo, number KTA-67/09-RZ, on 30 June 2009 at the site of Grajselsko polje; Photo-documentation of the exhumation carried out at the site of Grajselsko polje, Municipality Kalinovik made under number K.U.154/09 by the Ministry of Interior Sarajevo, Crime Police Sector, sketch of the site of the exhumation carried out at the site of Grajselsko polje, Municipality Kalinovik made under number K.U.154/09 by the Ministry of Interior Sarajevo, Crime Police Sector Sarajevo, Cantonal Prosecutor's Office of Sarajevo number KTA-67/09- RZ of 10 November 2009, original documentation on identification and autopsy of the war crimes victims exhumed at the site of Grajselsko polje, Municipality Kalinovik (Suad Hasanbegović, Sejdo Kešo and Edin Bičo); A photo delivered by the witness „H“ with three persons in uniforms and one person in civilian

clothes, at the site of an inn in Jagodina, the Republic of Serbia; Official Note number 391/09 of 20 November 2009 made by the Association of Family Members of the Missing Persons from the Territory of the Kalinovik Municipality „Istina- Kalinovik 1992“, with an attachment; Official Note made by the witness „A“ on 14. February 1993; Map of geographical position of Jagodina, R. Serbia.

During the main trial, the Defense adduced the following evidence:

The Defense for the First-accused Ratko Bundalo adduced the evidence by hearing the following witnesses: Senad Dautović, Željko Vaško, Mirsad Handanović, Mirko Čerović, Risto Puhalo, Sladoje Četko, Anina Bundalo-Dimitrijević, Jovo Lalović, Gordana Kikić-Arsenov. The Defense also presented the following documents as material evidence that the Court accepted and submitted to the case record: Travel Approval of 18 July 1992 number: S1/92 issued by the MUP CSB Trebinje, SJB Kalinovik for 7 detained Muslims to perform physical labor, signed by the Chief of the SJB Boško Govedarica; Record on statement given by witness Fatima Kešo of 13 March 2007, number: 17-14/3-1-39/07, made by SIPA, Regional Office Sarajevo, War Crimes Investigation Department; Record on statement taking from a witness of 3 April 2007, number: 17-14/3-1-54/07 made by SIPA, Regional Office Sarajevo, War Crimes Investigation Department; Order number: 7-40 of the Federal Secretary for People's Defense of 13 June 1991, military secret, the evidence issued by the Command of the 5th Military District, strict. conf. number 40/79-27 of 1 July 1991; Consent by the Command of the 2nd Army for transfer and assignment of Ratko Bundalo to the Command of the 1st Army, signed by Colonel Dušan Zarić, dated 14 May 1993, strict. conf. 1889-2; Order number 66-47 of the Chief of the Main Staff of the Yugoslav Army of 27 May 1993, concerning transfer of Ratko Bundalo; Letter of the Ministry of Defense of the R Serbia, Human Resources Sector, Personnel Administration number: 2344-2 of 24 March 2009, signed by the Chief Deputy, Colonel Rade Slavković, sent to Attorney Boris Bogdanović; Order on transfer, re-assignment and deployment of the units of the 13th Command of 11 November 1991, number: 86-38; Order for pre-deployment of the units from the Rijeka Garrison, sent by the Command of the 13th Corps, Strict. Conf. number: 154-44/1 of 11 November 1991; Order to secure objects sent by the Command of the 13th Corps, strict. conf.: 617-170 of 13 November 1991; Warning Notice sent by the Command of the 13th Corps, strict. conf. number: 617-179 of 18 November 1991 concerning boarding of the ships with full reservoirs; Certificate of 28 June 1993, number: 4514, strict. conf. number: 104-168 confirming that Ratko Bundalo carried out military tasks at front lines in Slovenia and Croatia; Order of 11 May 1992, number: 02-012-25/92 to all economic and social subjects immediately start operating in war conditions; Order to take-over the PTT building in Ulog of 19 May 1992, number: 02-012-27-/92 issued by the EC of the Municipality Kalinovik, signed by Grujo Lalović; Order of 21 May 1992, number: 03-36/92 prohibiting military, civil protection and compulsory work service conscripts to leave the territories of Serb municipalities and the territory of the Serb RBiH; Little red book titled „Book of Rules in the Armed Forces Service“ issued by the People's Defense Federal Secretariat 1985; Little red book titled “Combat Rules-Anti-armoured Artillery Regiment” issued by the People's Defense Federal Secretariat; Order of 15 May 1990, strict. conf. number: 1-90 issued by Colonel-General Aleksandar Spirkovski to take-over, store and safeguard weapons and ammunition; Excerpt from geography on the national composition of the Municipality Kalinovik made based on the 1971 Census; Official Note made by

Prosecutor Munib Halilović, number KT-RZ-80/05 of 15 April 2009; Telegram of the TG Kalinovik of 6 August 1992 sent to the Herzegovina Corps Command; Correspondence between Attorney Dražen Zubak and OKO regarding a request for delivery of certain documentation from The Hague Tribunal, Report issued by the OG Kalinovik Command number 124-4 of 15 August 1992 sent to the Herzegovina Corps Command; Report of the TG Kalinovik number 13/3 of 10 August 1992 sent to the Herzegovina Corps.

The Defense for the First-accused also adduced evidence by hearing expert witness Mladen Prole and submitted his Finding and Opinion in the Court's case record.

The Defense for the Second-accused Neđo Zeljaja adduced the evidence by hearing the witnesses Rešad Hadžić, Dragomirka Mišović, Ranko Kuljanin, Mile Kuljanin, Mustafa Hodžić, Nedžib Muhović, Milan Lalović, Milena Vasić, Haso Dervišević, Nezir Smajo, Mirko Bjelica, Salem Bilalović, Ilija Đorem, Milan Elez, Dr. Mirko Čerović, Mihajlo Badnjar, the witness A, the protected witness S3 who was granted the protective measures and testified in the court room behind a screen, that is, without the presence of the public that monitored the trial from the other room which means that the public was present; Milan Lalović, the public was excluded from this hearing (9 April 2009) during a discussion on the Defense Counsel's proposal to grant the protective measures for witnesses S1 and S2, decisions were issued granting the protective measures for the witnesses S1 and S2, witness Milena Vasić, the protected witness S1, the protected witness S2, Haso Dervišević, Nezir Smajo, Salem Bilalović. The Defense presented the following documents as documentary evidence, that the Court accepted and filed in the case record: Witness Examination Record for Ahmo Mušanović of 20 August 2006, number: 17-14/3-1-131/07 made by SIPA, Regional Office Sarajevo; Statement of Šerifa Hadžić given on 4 April 1994 on the premises of the SJB Kalinovik; Certificate of 4 March 2002, number: 06/1-203-1 confirming that Dragomirka Mišović was captured in Trnovo; Red Cross Certificate of 2 March 2001 confirming that Ranko Kuljanin was captured in Konjic and received visits on a regular basis; List of persons in the TG Kalinovik Command, conf. number: 601-4 of 1 May 1993 who tried to cross over to the Kalinovik territory; Red Cross Certificate of 16 December 1998 confirming that Mile Kuljanin was captured in Čelebići and subsequently released; Order by the EC of the Municipality Kalinovik, number: 02-012-39/93 of 30 June 1993 for the Post Manager in Kalinovik to turn off all phone numbers signed by Grujo Lalović; Order of the EC of the Municipality Kalinovik of 3 June 1992, number: 02-012-30/92 for the Post in Kalinovik to make phone lines technically operative; Record from the EC expanded session of 11 May 1992 regulating the transfer of economy to war production, companies tasks and the manner of production organization; Decision of 11 May 1992 issued by the EC Kalinovik on the establishment of a crisis staff for admission, accommodation and return of refugees in the territory of Municipality Kalinovik; Certificate issued by *Elektrodistribucija* Pale regarding the electricity supply cut off in the Municipality Kalinovik, issued on 21 March 2008; Information delivered by the Intelligence and Security Agency BiH, number 04/5-4148/09 of 3 April 2009 with a statement of witness Šerifa Hadžić; Decision of 10 December 1991, number: 09/4-126-1/544 on termination of the employment of Neđo Zeljaja with the MUP SR BiH; Request to exercise the right to retirement to the name of Neđo Zeljaja of 31 March 1992; Decision of 14 February 1992, number: 09/4-126-1/544 terminating the employment of Neđo Zeljaja in the MUP and determining age retirement; Payment slip to the name of Neđo Zeljaja for the December 1991 payment out; Letter of the Pension and Disability Insurance Fund Sarajevo

delivering a Certificate of the data registered in the BiH Register of 7 March 2008, number: 107 6831798 to the name of Neđo Zeljaja; Certified copy of refugee card to the name of Nedo Zeljaja number 217/96 of 2 May 1996; Sick Leave Certificate to the name of Nedo Zeljaja of 31 December 2007, number: 01-176/07; Military record to the name of Neđo Zeljaja; SDS Certificate number 1/08 of 11 January 2008 confirming that Neđo Zeljaja was not a member of this party, Summary from a working meeting of the RS MUP management held on 20 August 1992 in Trebinje; Proclamation of the Assistant Minister of Interior, Momčilo Mandić of 31 March 1992, number: 02-2482; Order of 15 May 1992, strict. conf. number: 01-1/92 proclaiming imminent danger of war in the territory of the Serb RBiH; Information on the activities of the so called paramilitary formations of 4 August 1992, number: 01-172/92, MUP of the Serb RBiH; Instruction on Organization and Activities of the Serb People Authorities in BiH in Exceptional Circumstances, issued by the SDS Main Board of 19 December 1991, number: O-96; Excerpt from the Instructions for the Activities of Crisis Staffs of the Serb People in Municipalities, issued by the Government of the Serb RBiH; Excerpts on the date, type of service or change and the number of spent official hours; Official Note regarding a report filed by inhabitants of the village of Obalj, number: 17-16/01-211-459/92 of 16 April 2009 made by the EC of the SO Kalinovik; Official Note of the SJB Kalinovik, Dispatch Note number: 327/92 of 17 April 1992 made by the Chief of the SJB Boško Govedarica; Official Note regarding the alienation of objects from Muslim houses in the village of Jelašca made by police officers from the PS Kalinovik, Petar Gočević, Mile Zmukić and Miloš Veletić on 29 September 1992; List of refugees containing 47 names with their dates, year and place of birth, ethnicity and address; Decision of the Crisis Staff and the Government of the SAO Herzegovina of 29 April 1992 signed by Grujo Lalović as the President of the Crisis Staff of the SO Kalinovik defining in 5 items the rights and obligations; Decision prohibiting pouring and sale of alcohol drinks of 23 April 1992, strict. conf. number: 08/1-800-4-7/92, Kalinovik, People's Defense Council signed by Nikola Kovač in the attachment and Order prohibiting pouring alcohol drinks and limiting the working hours of catering facilities of 20 April 1992, number: 02-012-4/92, signed by the President of the EC of the Municipality Kalinovik, Grujo Lalović; Order to seal catering facilities of 25 April 1992, strict. conf. number: 08/1-800-4-7/92, Assembly of the Municipality Kalinovik, People's Defense Council, signed by the President of the People's Defense Council, Nikola Kovač; Conclusion on the working hours of 6 April 1992, strict. conf. number: 08/1-800-4-6/92 Socialist RBiH, Municipality Kalinovik, People's Defense Council, signed by the President of the People's Defense Council, Nikola Kovač; Approval of 28 June 1992, SL 92, Serb Republic of BiH, Ministry of Interior, CSB Trebinje, SJB Kalinovik; Book of Rules on the Systematization of Work Posts in the SJB Kalinovik of 2 June 1992, number: 17-16/09-131-505/92, signed by Boško Govedarica, Assembly of Municipality Kalinovik, EC Kalinovik; Order of 19 June 1992, number: 02-012-30/92, SJB Kalinovik signed by the President Grujo Lalović; Order to search dwellings of 19 June 1992, number: 02-012-30/92 SJB Kalinovik signed by Grujo Lalović; Order to provide 7-8 pupils from higher classes to unload goods of 16 October 1992, number: 02-012-33/92 for Rade Lalović; Order of 16 October 1992, number: 02-012-33/92 issued by the EC of the Municipality Kalinovik obliging the persons under compulsory work order to unload goods for the Red Cross needs; Decision to mobilize passengers vehicles for the school needs of 11 September 1992, number: 02-012-34/92 of the EC of the Municipality Kalinovik signed by Grujo Lalović; Order of 19 November 1992, number: 02-012-34/92 of the Executive Committee of the Municipality Kalinovik under which all physical persons leaving the Municipality must possess a decision on

compulsory work service; Letter of 9 April 1992, number: 02-012-4/92, SJB Kalinovik ordering to ensure the conditions to accept refugees signed by Grujo Lalović; Decision on cleaning the town by detainees of 9 November 1992, number: 02-012-33/92, SJB Kalinovik, signed by Grujo Lalović; Decision of 9 April 1992 obliging *Šumarstvo Zelengora* and *Kalinovik* Wood Industry to single out the goods in the value of 2 million dinars, signed by Grujo Lalović; Request for monetary support in the amount of 20,000.000 dinars of 16 July 1992, number: 01-012-30/92 by the Serb RBiH, Ministry of Finance, signed by Grujo Lalović; Information for employees regarding the National Security Council taking-over the competence of 17 September 1992, number: 277/92, CSB Trebinje, signed by the Chief Krsto Savić; Letter of 18 August 1992, number: 17-16/01-211-573/92 sent to the Assembly of the Municipality Kalinovik, EC Kalinovik, TG Kalinovik Command, with a subject: Order by the Ministry of Interior Sarajevo; Book of Rules on Disciplinary Responsibility of Employees in the MUP SR in War Regime Conditions, with a Letter of 15 September 1992, number: 09-2545, signed by Radomir Njeguš; Information on Certain Personnel Issues in the Procedure of Workers Proposal and Assignment with Measures Proposed; Securing vehicles and drivers for food supply of 18 May 1992, Assembly of the Municipality Kalinovik, People's Defense Secretariat Kalinovik, signed by Slavko Sladoje; Notice on the abolishment of war deployment for conscripts of 27 February 1993, number: 17-16/01-211-90/93, Ministry of Defense RS, Defense Department Kalinovik, signed by Boško Govedarica; Notice of 4 May 1993, number: 09/1-283 for Crime Department by the acting Assistant Minister Radomir Njeguš; Letter of 22 February 1993, number: 02-513-/93 sent to the SJB and CJB; Official Note concerning a shooting from fire weapons, with attached 8 Official Notes; Official Note concerning the behavior of Radomir Mandić, also attached Official Note of 8 November 1992 drafted by police officers from the PS Kalinovik; Official Note of 25 June 1993 regarding the public order disturbance by Radomir Mandić, with an attachment: Certificate of 26 June 1993, number: 14-2/01-211-341/93, Record on the on-sight investigation of 25 June 1993, number: 14-2/01-211-341/93, Receipt of Seizure of Objects of 24 June 1993 and a criminal report filed with the Basic Public Prosecutor's Office Foča of 8 September 1993, number: 14-2/01-230/93; Record on the investigation of the damage in the catering facilities of 20 May 1992, number: 17-16/01-230-653/92, made by the SJB Kalinovik; Official Note concerning certain information of 20 September 1993, signed by police officer Aleksandar Cerovina; Official Note regarding the information collected in the field of 17 September 1992, War Police Station Ulog; Official Note regarding certain information of 19 September 1992, signed by police officers Spasoje Doder, Milivoje Faladžić and Ranko Pavlović; Official Note regarding certain information of 20 September 1992, signed by police officers Spasoje Doder, Milivoje Faladžić and Ranko Pavlović; Official Note regarding a burglary of 18 June 1992, made on the premises of the War Police Station Ulog by Ratko Govedarica, Ranko Tunguz, Ranko Erbez and Željko Žarković; Official Note regarding the collection of information of 19 June 1992 made by Ratko Govedarica, Ranko Tunguz, Ranko Erbez, Željko Žarković and Milan Kuburić; Official Note regarding cattle alienation of 22 October 1992 signed by: Ratko Govedarica and Uglješa Batinić; Report on alienation of a TAM vehicle owned by Fadil Đipa of 22 October 1992; Official Note regarding certain information of 27 October 1992 made by Milan Perić, concerning unlawful alienation of the cattle owned by Muslims; Delivery of Official Note of the CSB Trebinje, SJB Kalinovik, number: 17-16/01-211-127/93, signed by the Chief of the SJB, Boško Govedarica; Record on the on-sight investigation regarding an anti-tank mine of 31 August 1992, number: 17-16/01-230-609/92, with an attached Criminal Report against NN perpetrator of 10 September 1992,

number: 17-16/01-230-609/92, signed by the Chief of the SJB, Boško Govedarica; Statement of Milorad Kovač, number: 17-16/01-230-600/92 of 19 July 1992, with an attachment: Receipt of Seizure of Objects and Criminal Reports of 19 July 1992, number: 17-16/01-230-600/92 to the Basic Public Prosecutor's Office Foča, signed by the Chief of the SJB Boško Govedarica; Record on receipt of a criminal report of 3 October 1992, number: 17-16/01-230-707/92 against NN perpetrator, signed by the person who filed the report, Milorad Elez and official person Rajko Višnjevac; Record on investigation regarding the death of Željko Popović of 27 July 1992, number: 17-16/01-230-560/92, signed by Rajko Višnjevac and Mitar Mandić, with an attachment: Report on the death of soldier Željko Popović of 24 July 1992; Official Note concerning motor vehicles confiscation of 28 October 1992, number: 17-16/01-230-775/92 by the SJB Kalinovik, made by Rajko Višnjevac and Spasoje Doder; Summary information on the criminal offense committed in the territory of Municipality Kalinovik during the last month; Case record envelope containing: a criminal report filed with the Basic Public Prosecutor's Office Foča of 20 October 1992; Request to conduct an investigation of 12 March 1993 against Milorad Golijanin, Official Note of 7 October 1992 made by the SJB Kalinovik, Witness Examination Record of 21 April 1993, Notice to the Basic Court Srbinje of 12 September 1994 by Boško Govedarica, Decision to conduct an investigation of 26 January 1995 against Milorad Golijanin, Notice on criminal record of 20 April 1993 and 2 letters; Expert analysis in the case KT-RZ-80/06 before the Court of BiH against Neđo Zeljaja et al. carried out by Dr. Mile Matijević; Request for the protection of state property of 1 December 1992, number: 01-147/92 signed by Grujo Lalović; Notice of 4 December 1992, number: 02-012-35/92, signed by the President Grujo Lalović; Certificate of ownership over a FAP freight motor vehicle of 4 August 1992, number: 17-16/01-222-561/92 signed by Boško Govedarica; Certificate of a new ID card issuance to Ševko Macan of 5 August 1992, number: 17-16/01-206/566/92 signed by Boško Govedarica; Official Note concerning the use of fire weapons in the PS Kalinovik on duty of 6 September 1992 made by Mladen Lalović and Dejan Đorem; Official Note concerning the public peace and order disturbance on the part of Radomir Mandić of 10 September 1992 made by Branko Stanković and Ranko Pavlović; Official Note concerning a vehicle theft of 18 July 1992, with 6 passengers vehicles mentioned; Letter of 6 March 1993, number: 87/93 by Boško Govedarica; Confidential case record envelope concerning captured and exchanged persons; Letter of the CJB Istočno Sarajevo, number: 11-02/1-144/08 of 19 December 2008, with the attached: Official Note of the SJB Kalinovik, number: 14-2/1-230-374/93 of 22 July 1993 with a list of persons killed in Rogoj, total of 23 persons; List of transferred mortal remains from Miljevina and Trnovo made by the Exchange Commission in the Trnovo Local Office number 02/755 of 23.098.1993 *as rendered in the original*; Record on Identification of bodies of 5 killed civilians made by the Exchange and Burial Commission, MU Trnovo number 02/936/93 of 22 November 1993; List of exhumed civilian victims killed in the territory of the Municipality Trnovo who were buried by 12 July 1993 and whose mortal remains were subject to the criminal processing on 1 October 1993 and a list of civilian war victims from the territory of the Municipality Trnovo who were not buried by 12 July 1993; Survey of the data on civilian victims of war crimes referred to in Article 142 of the CC in the territory of the former Municipality Trnovo, Exchange and Burial Commission, Trnovo Local Office, Serb Municipality Ilidža number: 02-628/93 of 10 August 1993; List of unfound soldiers of the RS Army and civilians in the territory of the former Municipality Trnovo, Exchange and Burial Commission, Trnovo Local Office number: 02-617/93 of 15 August 1993; Review of additional data for killed persons from the territory of Municipality

Trnovo whose mortal remains were not found, Exchange and Burial Commission, Trnovo Local Office, number: 02-768/94 of 25 May 1994; List of civilians exhumed and buried by 22 September 1993, MJ Trnovo, number: 02-618/93 of 20 August 1993; List of persons from the Kalinovik Command, conf. number: 601-2 of 1 May 1993; List of soldiers of the Kalinovik Command who were captured since the beginning of combat activities, conf. number: 601-3 of 1 May 1993; List of civilian war victims from the territory of Municipality Trnovo who were not found and buried and whose destiny is unknown; List of civilian war victims under numbers 1 to 17; Official Note of the PS Trnovo, CJB Ilidža of 20 November 1993; Exchange of prisoners of 3 September 1992, Command of the Serb Armed Forces Kalinovik; Data from the Rogoj record of 10 December 2008, number: 07-3-2129-1-/08-Criminal Defense Department; Certificate of 20 May 2009, number: 01-44/09 for Neđo Zeljaja that he is authorized to present and represent the *Zagorje* Hunters Association Kalinovik; List of killed members of units of Srpska Republika-Battalion Trnovo; Official Note concerning a vehicle theft of 18 July 1992; Official Note concerning the hay setting on fire by Milenko Simić in Jelašci of 4 September 1992; Order issued by the Command of the Light Infantry Brigade number 44-30 of 29 October 1992 sent to the Military Police Platoon; Geographical map of the territory of the Municipality Kalinovik, Official Note number 17-16/01-211-521/92 of 27 July 1992 made by the Public Security Station; Certificate issued by the MUP RS, CSB Trebinje, SJB Kalinovik number 14-1/09-267/93 of 17 May 1993; Certificate issued by the MUP RS, CSB Trebinje, SJB Kalinovik number 14-1/09-267/93 of 8 June 1993.

The Defense for the Second-accused brought before the Court and heard witness expert Mile Matijević, while together with the Defense for the Third-accused it heard expert witness Radovan Radinović, whose written Finding and Opinion was filed in the case record of the Court.

The Defense for the Third-accused adduced the evidence by hearing the following witnesses: Ranko Miljanović, Vukosav Bozalo, Petar Marković, Rajko Macan, Ranko Bozalo, Rajko Višnjevac, Bjelica Mirko, Anđelko Raguž, Milan Lalović, Dragan Pržulj, Radomir Lalović, the witness S4 who was granted the protective measures and who was examined earlier (on 12 May 2009). The Defense also presented the following documents as material evidence, which the Court accepted and filed in the case record: Witness Examination Record for Džemila Redžović of 16 April 2007, number KT-RZ-80/05, KT-RZ-90/07; Service Schedule-a note book with stated dates and time of the service performed; Book of detainees going out to perform work tasks approved by the Commander and the Chief of the PS Kalinovik; Prison House Rules and Discipline issued by the TG Kalinovik Command, number: SL/92; Statement given on the premises of the SJB Trnovo on 5 September 1992 by Muradif Jašarević; Statement given by Muradif Jašarević on 20 April 1994 on the premises of the SJB Kalinovik; Witness Examination Record for Muradif Jašarević of 17 April 2007, number: KT-RZ-80/05, KT-RZ-90/07 taken on the premises of the BiH Prosecutor's Office; Witness Examination Record for Risto Puhalo of 5 November 2007, number: KT-RZ-80/05 taken on the premises of the BiH Prosecutor's Office; Graphology expert analysis of the disputable handwritten contents on the last 3 pages in the document Book of Departures (Book of detainees' going out to work only upon the approval by the Commander and the Chief of the PS Kalinovik) and an expert analysis of the disputable signature of the protected witness „H” of 29 April 2009 by expert witness Zlatko Dugandžić; Delivery of requested information by the Health Center *Sveti Luka*

Kalinovik of 8 April 2008, number: 01-33/08 upon a request by Attorney Žiko Krunić; Information Delivery requested by Attorney Žiko Krunić, Defense Counsel for the Accused Đ. Aškraba concerning providing Muslims with medical protection of 12 February 2008, number: 01-18/08; Order of 22 June 1992, number: 202/92 to temporary move the infirmary in the Local Community Ulog to the Primary School; Order of 25 August 1992, number: 02-012-31/92 issued by the EC AM Kalinovik obliging the Health Center Kalinovik to make a report for the period from 2 to 25 August and submit it to the EC; Report upon the Order number: 02-012-31/92 of 25 August 1992 issued by the Health Center Kalinovik with a base hospital; List of soldiers captured since the beginning of combat activities, strict. conf: 601-3 of 1 May 1993; Order of 19 March 1993, number: 320-1 to exchange captured soldiers; Order of 29 October 1992, number: 44-30 to a Military Police Platoon to apprehend prisoners of war; List of persons released from the KPZ Foča to be exchanged on 21 October 1992; Certificate of 22 August 1993, strict. conf. number: 76-647/1 confirming that Croat prisoners of war from the KPZ Foča were taken over on 24 August 1993; List of Muslim prisoners of war released from the KPZ to be exchanged for the captured Serbs from Konjic; Letter of 31 July 1992, strict. conf. number: 10/74-217 describing mass artillery attack; Regular report of the TG Foča received via radio communications of 2 August 1992, number: 01/113-35; Letter of the TG Kalinovik of 4 August 1992 sent to the Herzegovina Corps Command, Main Staff of the Serb Republic BiH; Official Report sent by the TG Kalinovik Command to the Chief of the Serb Station Kalinovik of 14 July 1992 signed by Đorđislav Aškraba; Official Note of 19 July 1992 sent to the TG Kalinovik Command, Chief of the Serb Station Kalinovik of 19 July 1992; Activities Report by the Red Cross of the Municipality Kalinovik for the period from May 1992 to late January 1993; Request for monetary support in the amount of 20,000.000 dinars sent to the Ministry of Finance of the SR BiH, signed by Grujo Lalović; Letter of 5 August 1992 sent by Colonel Svetozar Parežanin to the Herzegovina Corps Command; Letter of 11 August 1992 sent by Colonel Svetozar Parežanin to the Herzegovina Corps Command; Excerpt from the book "Management and Command", Beograd, 1997; Certificate of the Health Center *Sveti Luka* Kalinovik, number: 01-102/09 of 5 May 2009 concerning Zoran Puhalo; Justification-exemption of 7 August 1992 issued by the medical corps of the SOS Brigade Kalinovik for Đorđislav Aškraba;

During the evidentiary proceedings, the Defense for the Third-accused brought before the Court and heard expert witness in graphology, Zlatko Dugandžić, while military analyst, Prof. Dr. Radovan Radinović, whose written Finding and Opinion were filed in the case record of the Court, was heard together with the Defense for the Second-accused.

During the evidentiary proceedings, the Panel adduced the evidence by hearing expert witness, Prof. Dr. Milan Stojaković, who had carried out a forensic and psychiatric analysis of the witness „S4“ and whose Finding and Opinion was submitted in the case record. Also, the Court faced the witness „H” with witness Risto Puhalo, witness Risto Puhalo with witness Milano Lalović, and Milan Lalović with the witness „H”.

PROCEDURAL DECISIONS:

Established Facts:

On 14 May 2008, pursuant to Article 4 of the Law on Transfer of Cases by the ICTY, the BiH Prosecutor's Office filed a Motion to accept established facts, petitioning the Court to take judicial notice of the facts established in the Judgments of the Trial and Appeals Chambers of the ICTY in the *Prosecutor v. Kunarac* case (number IT-96-23&23/1-T of 22 February 2001 and IT-96-23&23/1-A of 12 June 2002), and the Trial Chamber Judgment in the *Prosecutor v. Krnojelac* case (number IT-97-25-T of 15 March 2002). The Prosecutor's Office moved the Court to accept as proved the total of 24 facts established in the mentioned Judgments. The Prosecutor's Office pointed out that an admission of the proposed established facts would be in favor of the judicial economy and creation of conditions to have the Accused tried within a reasonable period of time set forth in Article 6 of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). In addition, the Prosecutor's Office stated that the established facts are only assumptions and that during the trial the Defense might contest them pursuant to Article 6(2) of the CPC BiH and Article 6(3)(d) of the ECHR. The Prosecutor's Office also stated in its Motion that the acceptance of the proposed facts was in accordance with the established jurisprudence of the ICTY regarding the issue of established facts acceptance, namely that the proposed facts in no way directly or indirectly incriminated the Accused, and that none of these facts was successfully contested in the appellate procedure.

In commenting on the Prosecution Motion, the Defense stated that the following provisions were violated: Article 281 of the CPC BiH, strictly prescribing that the Court shall reach a verdict solely based on the facts presented at the main trial; (*submission of the Defense Counsel for the Accused Ratko Bundalo of 21 May 2008*), Article 6(2) of the CPC BiH prescribing that the accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him; (*submission of the Defense Counsel for the Accused Neđo Zeljaja of 28 May 2008*), Article 6(3)(d) of the ECHR prescribing that the accused is entitled to examine or have examined witnesses against him or to obtain the attendance and examination of witnesses on his behalf under the same conditions applying to the witnesses against him (*submission of the Defense Counsel for the Accused Neđo Zeljaja of 21 May 2008*), the right of the Accused to a fair trial set forth in Article 6(1) of the ECHR because the Accused would be prevented to contest the proposed facts if they were recognized. In addition, a recognition of the allegedly adjudicated facts will seriously violate the principle of the presumption of innocence enshrined in Article 6(2) of the ECHR and Article 3(1) of the CPC BiH and will not contribute to the judicial efficiency and expediency (*submission of the Defense Counsel for the Accused Đorđislav Aškraba of 23 May 2008*).

In addition, the Defense for the Second-accused and the Third-accused stated that some facts proposed by the Prosecutor's Office were not important for this case, were unclear, contained legal elements with regard to the criminal responsibility of the Accused and were established on the basis of an agreement made between the parties.

Finally, the Defense teams asserted that they were entitled to file appeals from the Decision concerning the admission of the already adjudicated facts which is converse to the

established jurisprudence of the Court. The Defense teams stated that a decision to accept established facts falls within the field of application of Article 318(1) of the CPC BiH and that according to the ICTY jurisprudence, the filing of an interlocutory appeal is allowed when these items significantly affect the fair and expeditious conduct of the proceedings or a trial outcome, as is the case here.

On 8 October 2008, the Court rendered a Decision refusing the Prosecution Motion to accept as proved the facts established in the Judgments of the Trial and Appeals Chamber of the ICTY in the *Prosecutor v. Kunarac* case (number IT-96-23&23/1-T of 22 February 2001 and IT-96-23&23/1-A of 12 June 2002), and the Trial Chamber Judgment in the *Prosecutor v. Krnojelac* case (number IT-97-25-T of 15 March 2002). The Court finds that the primary goal of the procedure of taking judicial notice of the established facts is to secure the expediency of the proceedings. However, the discretion to take judicial notice of facts must be exercised based on a careful consideration of the right of the Accused to a fair trial within a reasonable period of time, that is, in accordance with the principle of fair trial established in Article 6(1) of the European Convention on Human Rights, Article 6(2) and Article 13 of the CPC BiH.

Pursuant to the established jurisprudence of the ICTY and the Court of BiH, an evaluation as to whether a Court can take judicial notice of an allegedly adjudicated fact constitutes a process comprised of two phases: the Court must primarily establish whether such facts meet a certain number of admissibility requirements that were established in the ICTY jurisprudence; the Court must also establish for each fact that satisfy these requirements whether a judicial notice of such fact should be denied because it would not be in the interest of justice.

The admissibility criteria are as follows: 1) a fact must be distinct, concrete and identifiable; 2) it must be restricted to factual findings and does not include legal characterizations; 3) must be important for the pending proceedings; 4) must not be subjected to an appellate or revision procedure; 5) it does not attest to the criminal responsibility of the Accused; 6) it is not the subject of (reasonable) dispute between the Parties in the present case; 7) it is not based on plea agreements in previous cases.

The Court considered the facts proposed in the Prosecution Motion which pretend to establish the existence of a widespread and systematic attack of the RS Army, police and paramilitary units against the civilian Bosniak population in the Municipality Kalinovik during the period from April 1992 to March 1993 to the extent they were presented in the Indictment. In referring to the legal test for the acceptance of facts, which is obligatory for the Court, the Court must refuse to take judicial notice of the established facts if they do not meet the established criteria.

The Court recalls that one of the criteria to be applied is whether the facts whose admission is requested are relevant to the proceedings in question. The proposed Judgment in the *Krnojelac* case concerns the events that occurred in the city and Municipality of Foča. The Court finds that the Motion of the Prosecutor's Office to accept facts 23 and 24 stated in the *Krnojelac* case is ill-founded. The Accused are charged with being responsible for the events that occurred in the Municipality Kalinovik. Accordingly, the proceedings currently conducted against the Accused are not related to the events described in the Judgment in the

Krnojelac case, and the proposed facts are not relevant to the allegations in the Indictment. For the same reason, the Court also refused to accept the proposed facts 1-3, 7, 11, 12 and 18 that were stated in the *Kunarac* case. In addition, the Court refused to accept Fact 14 given that it concerned the event that occurred after January 1994, which exceeds the framework given in the referenced Indictment.

Regarding the proposed facts 8, 9, 15, 16, 19, 20 and 21, the Court finds that they contain a characterization which is of a legal nature in essence. Also, the Court finds that the proposed facts 6 and 17 are unclear and do not contain a fact that the Court can take judicial notice of. Accordingly, the Court refused to take judicial notice of these proposed facts given that they do not satisfy the admissibility criteria stated in section 1), 2) and 3) of this reasoning.

Taking into account that formally taking judicial notice of certain facts constitutes a discretionary power, whenever it finds that such taking judicial notice of a fact would not be in the interest of justice, the Court always maintains the right not to take judicial notice of such a fact even when it satisfies all the requirements. A key factor in the decision of the Court regarding the acceptance of adjudicated facts lies in the understanding that the acceptance of such facts will achieve judicial economy, with a simultaneous protection of the right of the Accused to a fair, public and speedy trial. Accordingly, although the proposed facts 4, 5, 10, 13 and 22 satisfy the admissibility criteria established in the ICTY jurisprudence, the Court, having used its discretion, did not accept to take judicial notice of these proposed facts because they were already a subject of consideration at the main trial, and they were presented when the witnesses were heard and when the documentary evidence was tendered in the case record, thereby they already constituted part of the case record.

The Manner of Hearing the Witnesses and Exclusion of the Public

Starting from the Motion of the BiH Prosecutor's Office number: KT-RZ-80/05 of 16 November 2007, the Preliminary Proceedings Judge of this Court issued a Decision number X-KRN-07/419 of 19 November 2007 determining pseudonyms for eight witnesses, that is, the witnesses A, B, C, D, E, F, G and H. This Decision was issued because the Preliminary Proceedings Judge concluded that the Witnesses Examination Records showed that these witnesses can be categorized as witnesses under threat or vulnerable witnesses. The Judge also concluded that these records indisputably pointed to the existence of reasonable ground for a risk that the personal safety of these witnesses or their families might be brought in danger. This risk would probably be a result of their giving evidence, because of which the Court granted them the protective measures in accordance with the Law on the Protection of Witnesses and Vulnerable Witnesses.

On 29 May 2008, the Prosecutor's Office submitted a Motion to grant protective measures to Witness X. In commenting on this motion, at the resumed main trial on 2 June 2008, all the Accused and their Defense Counsels consistently stated that they did not object to the Prosecution Motion to grant the protective measures to this witness. On 4 June 2008, the Panel rendered a decision determining a pseudonym X for the witness, while the personal details of the witness mentioned in the Motion were proclaimed confidential and will

remain as such not longer than 20 years after the decision becomes final and binding. In explaining its decision, the Panel concluded that an obvious risk existed for the personal safety of this witness and his family if he testified without the protective measures granted. Therefore, the Court ordered the concrete protective measures pursuant to Article 12 and 13 of the Law on the Protection of Witnesses.

At the resumed main trial held on 15 July 2008, the Panel considered the Prosecution Motion to grant protective measures to Witness I and reviewed the consistent statements of all Defenses that did not object to the Motion. At the same hearing, the Panel rendered a decision granting the pseudonym I to the witness in reference and proclaiming confidential the personal details indicated in the Motion. These personal details will remain confidential no longer than 20 years after the decision becomes final and binding. With regard to the additional protective measures, the Panel decided that the witness would testify in the courtroom and that the Court would be obliged not to disclose to the public the photos or the video-recording. In explaining this decision, the Panel concluded that an obvious risk for the safety of this witness and his family existed if he testified without the prohibiting measures granted. Therefore, the Court granted the specific protective measures pursuant to Article 12 and 13 of the Law on the Protection of Witnesses.

On 15 December 2008, at the resumed main trial, the Panel rendered a decision to grant a pseudonym W for one Prosecution witness and to proclaim confidential the witness personal details that were mentioned in the Motion. These personal details will remain confidential no longer than 20 years after the decision becomes final and binding. The Panel decided that the witness would testify in the courtroom with an obligation of the Court to prohibit taking photos of the witness and the photos and video-recording disclosure in the public. In explaining its decision, the Panel concluded that an obvious risk existed for the personal safety of this witness and the safety of his family if he testified without the granted protective measures. Therefore, in accordance with Article 12 and 13 of the Law on the Protection of Witnesses, the Court granted the specific protective measures.

With its proposal, the Defense for the Second-accused Nedo Zeljaja moved that the protective measures be granted to three Defense witnesses pursuant to the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses. The Court upheld the Defense proposal and at the hearings held on 2 April 2009 and 9 April 2009, pursuant to Article 12 and 13 of the Law on the Protection of Witnesses, issued decisions to grant the protective measures to the three witnesses of the Defense for the Second-accused by giving them pseudonyms S1, S2 and S3, to declare confidential their personal details mentioned in the proposal, which will remain as such no longer than 20 years after this decision becomes final and binding. In deciding on the additional protective measures for these witnesses, the Panel decided that the witnesses would testify in the courtroom in the presence of the public in the manner that the public would follow the course of the trial from another room in which they will hear the voice, but would not be able to see the faces of these witnesses.

At the resumed main trial, having acted upon a proposal of the Defense Counsel for the Third-accused Aškraha, the Panel decided to grant protective measures to one witness by giving him pseudonym S4, declare confidential his personal details mentioned in the proposal which will maintain as such no longer than 20 years after the decision becomes final and binding. On 31 August 2009, the witness S4 testified before the Court with a

previously issued decision of the Panel granting additional protective measures. The witness S4 testified from a different room while his voice and picture remained unaltered.

On 31 August 2009, at the resumed main trial, the Panel decided to give a pseudonym Z to one Prosecution witness, to declare confidential his personal details mentioned in the motion which will remain as such no longer than 20 years after the decision becomes final and binding. In explaining its decision, the Panel concluded that an obvious risk existed for the personal safety of this witness and members of his family if he testified without being granted the protective measures. Therefore, in accordance with Article 12 and 13 of the Law on the Protection of Witnesses, the Court granted the specific protective measures.

During the entire course of the proceedings, the Court was mindful of the protection of identity of both the Prosecution witnesses with the granted protective measures: "A", "H", "I", "X", "E", "C", "G", "F", "D", "W" and "Z" and the Defense witnesses with the granted protective measures, namely the witnesses for the Second-accused, S1, S2 and S3 and the witness for the Third-accused S4. This was done in the manner that full names of these witnesses were not mentioned at the main trial and in the Verdict as they were given only the pseudonyms, while full personal details of the mentioned witnesses were taken down in the case record that is also specially protected.

Exemption from Direct Presentation of Evidence

During the main trial, the Prosecutor's Office filed a Motion with the Court requesting that the statement of the witness with the pseudonym „B“ that was given in the BiH Prosecutor's Office under number KT-RZ-80/05 of 8 November 2007 be read at the main trial and thereby be tendered and used as evidence in the proceedings in reference. The Prosecutor's Office found the basis for the mentioned motion in Article 273(2) of the CPC BiH. The Court granted the foregoing Motion of the Prosecutor's Office. Pursuant to Article 273(2) of the CPC BiH, the Court accepted that the earlier taken statement of the witness with the pseudonym „B“ be read and filed in the case record given that this person lives in America, that making contacts with him was not possible and given that his arrival before this Court was significantly more difficult due to the mentioned important reasons. The Witnesses Support Section has delivered information that it had tried to contact the witness with the pseudonym „B“ but that no contacts were made with this witness. Also, no other way to contact this witness existed because of which it could not confirm the arrival of this witness. This is so particularly because this witness no longer lives in the BiH territory. In order to make contacts with the witness „B“, the Section submitted two letters from which it follows that it was not possible to make contacts with the witness, and that members of his family stated that he did not want any contacts with the Court and did not want to testify any more.

Amended Indictment

On 13 October 2009, the Prosecutor's Office delivered to the Court an Amended Indictment as presented in detail by the Court in the introductory part of the reasoning.

In commenting on the Amended Indictment, the Defense for the Accused Ratko Bundalo stated that the Prosecutor's Office gave no written or oral explanation as to the presented evidence from which a need to amend the confirmed Indictment followed, so that the Defense could comment on whether there was any reason or justification for such action of the Prosecutor's Office. Thereby, the Accused were denied the right to a defense set forth in Article 6 and 7 of the CPC BiH. In addition, the Defense for the First-accused submits that the Prosecutor's Office exceeded the frame allowed in Article 275 of the CPC BiH according to which an amendment is allowed. It follows from the foregoing that by these amendments the Prosecution exceeded the charges with regard to the Accused Bundalo, which particularly concerns the changes made in Count 1 i) and k) of the confirmed Indictment.

In its written response, the Defense for the Second-accused Nedo Zeljaja stated that it objected to the Indictment amendments made by the Prosecutor's Office in Counts 3, 3a and 3b of the Indictment, since essential changes were made in these Counts in relation to the Accused Zeljaja. These criminal acts were not charged against the Accused Zeljaja in the confirmed Indictment. In the opinion of the Defense, this is not an indictment amended pursuant to Article 275 of the CPC BiH but this represents an exceeding of charges which is not allowed by the provisions of the applicable CPC BiH.

The Defense for the Third-accused Đorđislav Aškraba, via Defense Counsel Žika Krunić, submitted to the Court a written response to the Amended Indictment of the BiH Prosecutor's Office. It was stated in the response that the Prosecution exceeded the Indictment in an objective sense. This is because the Amended Indictment stated that Aškraba was a camp warden, namely that he also performed the duties of the camp warden which is a new and more severe charge against him, the consequence of which is a change of the degree of responsibility and legal qualification. This is all converse to Article 275 of the CPC BiH.

On 20 October 2009, at the resumed main trial, the Court decided to accept the Amended Indictment of the BiH Prosecutor's Office and to refuse the objections of the Defense teams. This is so because in the opinion of the Court the factual description was not exceeded in the amended Indictment and there was no significant change in the legal qualification of the offense. Therefore, the change was made pursuant to Article 275 of the CPC BiH, since the Prosecutor evaluated that the presented evidence pointed that the state of facts presented in the Indictment had changed. To wit, making certain factual arguments in the indictment more precise and specified does not constitute an extension of the indictment to a degree that would require its confirmation, as stated by the Defense in their responses. As to the legal qualification of the offense, in the opinion of the Court, in the confirmed Indictment the Prosecution charged the Accused with the commission of the criminal offenses that were indicated in the amended Indictment. The only fact is that in relation the Accused Ratko Bundalo and Nedo Zeljaja subparagraph a) of Article 173(1) of the CC BiH was added to the existing ones. However, this legal qualification does not bound the Court and this change is not of such nature that the Indictment should be sent for new confirmation. For the reason of the defense preparation after the Amended Indictment, the Panel postponed the main trial and gave the Defense sufficient time to prepare possibly new evidence after the Court had decided to accept the Amended Indictment. The Defense teams for the

Accused used this additional time and presented to the Court a number of additional evidence as a supplement to the evidentiary proceedings.

CLOSING ARGUMENTS

Closing Argument of the Prosecutor's Office

In the closing arguments, the BiH Prosecutor's Office stated that based on the presented evidence it was proved beyond any reasonable doubt that the Accused Ratko Bundalo, Nedo Zeljaja and Đorđislav Aškrača committed the criminal offense as charged under the Amended Indictment. The Prosecutor's Office proposed that the Panel find the Accused guilty as charged and punish them in accordance with the law. The BiH Prosecutor's Office firstly referred to the essential elements of the criminal offense of Crimes against Humanity, that is, the existence of a widespread and systematic attack, the direction of such attack against the civilian population, the knowledge of the Accused of the existence of such attack, that the acts of the perpetrators constituted a part of such attack, namely that they were related to the attack. The BiH Prosecutor's Office emphasized that during the proceedings it succeeded to prove with the presented evidence that the actions of the Accused contained all essential elements of the criminal offense in reference. In a very detailed manner, the Prosecutor elaborated on the statements of the examined witnesses and the presented documentary evidence, having brought them into connection with the individual criminal-legal actions referenced in the indictment and having given a legal qualification of individual factual descriptions of the acts for each Count of the Indictment. In analyzing the witnesses' statements, the Prosecution placed them in the context of corroborating evidence, while small inconsistencies in them appeared as a logical consequence of the elapsed period and the traumas experienced by these witnesses. Being of the opinion that during the proceedings it succeeded to prove the theory that the Accused were conscious participants in a joint criminal enterprise taken with a view to persecuting Bosniak civilian population on a discriminatory ground, the Prosecutor's Office briefly referred to the evidence from which a creation of the persecution plan and the realization of persecution through concrete actions of the Accused followed. As pointed out by the Prosecutor, the implementation of the strategic plan devised by the Bosnian Serbs leadership implied a permanent removal of a significant number of non-Serb population from the territory of the imaginary state of Bosnian Serbs, while a key and decisive step toward this plan realization in the territory of Municipality Kalinovik was carried out through the Crisis Staff of the Serb Democratic Party led by Gružo Lalović. That all was organized and synchronized by the army and the police clearly followed from the testimony of a large number of heard witnesses who confirmed in their testimony in an undoubted and decisive manner that already in early April 1992 the arrests of Muslims from the village of Jeleč started, followed by a planned action of arresting all civilian Muslim men in the territory of Municipality Kalinovik. The persecution was continued with the arrest of civilian population of the Municipalities Gacko and Nevesinje and the detention of civilians from the Trnovo territory. A number of witnesses were heard regarding the attack on the civilians in the Municipality Kalinovik. Almost in an identical manner they all confirmed that members of the SJB Kalinovik were the main attackers in concert with soldiers of the TG Kalinovik, and that members of the police and the army apprehended civilians and detained them in the *Milan Radojević* Primary School, *Barutni magacin* and the basement

of the SJB Kalinovik. In analyzing individual Counts of the Indictment, the Prosecutor's Office firstly analyzed the evidence that confirmed the Prosecution assertion that during the relevant period the Accused Ratko Bundalo and Nedo Zeljaja performed the functions stated in the Indictment. In the opinion of the Prosecutor's Office, that Ratko Bundalo performed the function of the Commander of TG Kalinovik follows from abundant documentary evidence, primarily the official records of the RS Ministry of Labor and Protection of War Veterans and Invalids. It clearly follows from this evidence that Ratko Bundalo performed the function in the TG Command during the period from 22 November 1991 to 24 June 1993. Other evidence listed by the Prosecutor also points to this. This was considered relevant in proving the assertion in reference. The Prosecution based its assertion regarding the function performed by Ratko Bundalo also on the statements of the witness "H", Božo Purković, Milan Veletić, Rade Pavlović and Witness S4. In the opinion of the Prosecutor's Office, at the relevant time the Accused Nedo Zeljaja was a Commander of the SJB Kalinovik, which was confirmed by the police officers who were subordinated to the Accused and abundant documentary evidence. The Prosecutor refers to the Decision of the MUP RS of 6 March 1993 from which it can be clearly seen that Nedo Zeljaja was temporarily assigned to the tasks of a Commander of the Police Station in the SJB Kalinovik as from 1 April 1992. It follows from the other pieces of evidence that Zeljaja *de jure* performed this function from May 1992 and *de facto* from 1 April 1992. With regard to the Accused Đorđislav Aškraba, the Prosecution stated that at the critical moment he was a Security Commander in the *Barutni magacin* camp. The Prosecutor analyzed the probativeness of all Counts of the Indictment having stated all subjective and objective evidence, and concluded that the Accused performed the functions mentioned in the Indictment and committed the actions as charged, from which their responsibility for the mentioned crimes followed. In the closing argument, the Prosecution particularly elaborated on the theory that the Accused committed the offense as conscious participants in the joint criminal enterprise that was taken with a view to persecuting the civilian Bosniak population on discriminatory grounds, through multiple commission of criminal offenses. In doing so, the Prosecution analyzed all three categories of a joint criminal enterprise, having considered that the Accused can be charged with different forms of joint criminal enterprise. Finally, having stated the circumstances both in favor and against the Accused, the Prosecution requested that the Court sentence the Accused Ratko Bundalo and Nedo Zeljaja to long term imprisonment, while for the Accused Đorđislav Aškraba it requested a sentence of imprisonment.

Closing Arguments of the Defense

The Defense for the First-accused Ratko Bundalo, Defense Counsels Dražen Zubak and Krešimir Zubak, did not contest in the closing argument that international war and humanitarian laws were violated in the territory of the Municipality Kalinovik during the period indicated in the Indictment. However, the Defense did contest a contribution of the First-accused to it given his capacity, the place and the role that he had in those events. The Defense Counsels firstly pointed to numerous deficiencies of the confirmed and subsequently amended Indictment. They also indicated that as such, the Indictment was contrary to Article 6 of the ECHR according to which a fair trial implies *inter alia* a material and not a formal concept of the Indictment. This means that the Indictment must have clear legal and realistic grounds. The Defense Counsels then referred to the legal

ground of the Indictment, stating that it must be clearly and specifically determined, which was not done in the Indictment at issue. According to the Defense, the Prosecutor cannot give a general legal qualification. It must be specifically determined to this end for each count of the indictment. Furthermore, regarding the legal qualification, the Defense stated that the Prosecutor had submitted that the Accused Bundalo carried out persecution on all grounds set forth in Article 172(1)(h) of the CPC BiH albeit no Count of the Indictment contained factual descriptions from which such legal qualification would ensue. Instead of the factual descriptions from which such legal qualification would ensue, the Prosecutor entered a legal description of this criminal offense into the factual description of the Operative Part of the Indictment. The view of the Court of BiH and also of the ICTY is that in bringing charges for persecution it is necessary to apply the principle of legality which prescribes that concrete actions comprising persecution should be specified and that an accused should not be charged with persecution in general. With regard to the legal ground of the Indictment, the Defense stated that the Prosecutor used a similar method also with regard to the application of Article 180(1) of the CC BiH. This is so because the Accused Bundalo was charged with almost all methods of commission of the criminal offenses included in this Article, without stating specific actions in any factual description in the Indictment that the Accused had allegedly taken. Furthermore, in its closing argument, the Defense argued that the Prosecutor's Office did not state precisely the military organization which was under the command of the Accused Bundalo. According to the Defense, it was not proved during the proceedings that the Accused Bundalo was a Commander of soldiers of the Tactical Group Kalinovik as stated in the Indictment, since there is no clear evidence that would confirm the existence of "military forces of the Municipality Kalinovik" at least at the time when they were mentioned in the Indictment. The Defense is in possession of the evidence that such forces existed. This was confirmed by a report of Colonel Svetozar Parežanin of 10 August 2009 in which it was stated that in a number of villages in the Municipality Kalinovik a local army was established which was in the function of the local authorities. Regarding the Prosecution assertions that the Accused Bundalo was a TG Commander, the Defense stated that it could be seen from the testimony of Witness Pavlović that after the event related to the Trnovo capture in mid June 1992, an *ad hoc* group was established that was comprised of two tactical groups and a tactical unit MPOAP that was under the command of the Accused Bundalo. It was not part of any permanent military structure in this territory but an agreed organizational form. Following the foregoing, according to the Defense, the Accused did not perform the duty of a tactical group commander. The Defense referred thereupon to the complicity in a joint criminal enterprise as the institution mentioned by the Prosecution in the Indictment. According to the Defense, the applicable criminal legislation in BiH does not prescribe an institution of joint criminal enterprise because it is neither an incrimination nor a criminal offense. A JCE is not an element of any criminal offense charged against Bundalo, but it is also not a form of criminal liability prescribed by the BiH legislation. The Defense submits that the Trial Panel should dismiss the JCE both for the stated reasons and because something unproved and determined as a collective form of liability should not be accepted. In referring to certain Counts of the Indictment, the Defense analyzed the adduced evidence and presented individually for each count of the Indictment the reasons for which the Accused Ratko Bundalo is not responsible for the events charged against him. The Defense particularly submitted that since the beginning of the trial, the Accused defended himself with an alibi regarding the time of commission of certain actions charged against him. This concerns August 1992, more precisely, the period from 3 August 1992 to 22 August 1992 during

which the Accused Bundalo was not in Kalinovik, as he was in Belgrade and Banja Luka. The Defense heard a number of witnesses regarding these circumstances. At least ten witnesses heard before the Court confirmed the alibi of the Accused Bundalo in August 1992. The alibi of the Accused Bundalo was also confirmed by abundant documentary evidence and the Finding and Opinion of expert witness Radinović. With regard to this circumstance, the Defense analyzed the testimony of Witness Risto Puhalo, Witness “H”, Witness Mirko Čerović, Witness S4 and argued that all these witnesses testified that after the fall of Rogoj and until he went to the Military and Medical Academy, the Accused Bundalo was severely ill and was not able to command over the subordinated units. Regarding the Accused Bundalo’s departure from Kalinovik to Belgrade and then to Banja Luka, the Defense also analyzed the testimony of witnesses Rade Pavlović, Anina Bundalo-Dimitrijević, Gordana Kikić-Arsenov, Mirsad Handanović and other witnesses too. Regarding the alibi of the Accused Bundalo, the Defense also mentioned the ICTY jurisprudence in the case against the Commander of the Sarajevo-Romanija Corps, Dragomir Milošević. The Defense mentioned the conclusions of the Appeals Chamber that it was unreasonable on the part of the Trial Chamber to conclude that the Accused ordered the commission of two incidents when he was in Belgrade for a medical treatment during this period. For all the foregoing, the Defense for the Accused Bundalo moved the Court to pass a verdict pursuant to Article 284 of the CPC BiH acquitting the Accused of the charges because it was not proved that he committed the criminal offense as charged.

In his closing argument, the **Accused Ratko Bundalo** stated that he supported the closing argument of his Defense Counsels and added that he came to the Kalinovik territory in 1991 after the dislocation of the JNA Rijeka Corps. Already in this period, relations among the ethnic groups in Kalinovik were disturbed. At the time, the organization and arming of the Serb population in Kalinovik started under the SDS leadership, firstly through village guards and thereupon through the establishment of military units. The Accused stated that he could not accept the SDS ideology and that he had nothing in common with the then leaders of the Municipality Kalinovik, Grujo Lalović and Boško Govedarica. As to Neđo Zeljaja, he stated that he had met him perhaps for five times, while he did not know Đorđislav Aškraba. The Accused questioned then how could he join these men in a criminal organization when he did not know some of them, while with the others he had quite different views on all issues. The Accused finally stated that he considered himself completely innocent and that he expected that the Court would acquit him of responsibility.

The Defense for the Second-accused Neđo Zeljaja, Defense Counsels Vesna Tupajić-Škiljević and Radivoje Lazarević, firstly stated in the closing arguments that the Amended Indictment of the Prosecutor’s Office of 13 October 2009 was exceeded with regard to the Accused Zeljaja and that the institute of exceeding the indictment is not allowed pursuant to the applicable provisions of the CPC BiH. Accordingly, the Defense submitted that Counts 3, 3a) and 3b) of the Indictment concerning the Accused Zeljaja were added after the completion of the evidentiary proceedings and that they were not confirmed by the Preliminary Hearing Judge. The provisions of the criminal legislation and the right to a fair trial in this specific case were violated by the Panel’s acceptance to try the case pursuant to the exceeded indictment. After an evaluation of all the evidence presented, the Defense submitted that the Prosecutor’s Office failed to prove beyond any reasonable doubt the criminal responsibility of Neđo Zeljaja for the criminal offense charged against him in the Indictment. As to the issue of application of substantive law, the Defense submitted that

regardless of the hitherto jurisprudence of the Court of BiH the Trial Panel is autonomous in the application of the criminal code in the concrete criminal proceedings. The Defense opined that the principle of legality and the prohibition of retroactivity are the basic principles of criminal law enshrined in Article 3 and Article 4 of the CC BiH. These two principles constitute a requirement of prescribing criminal offenses and criminal-legal sanctions by the law prior to their commission (*nullum crimen sine lege, nulla poena sine lege*). The principle of legality was established in order to prevent arbitrary and unpredictable punishing without laws or based on undetermined or retroactive laws. An obligatory application of a more lenient law is a generally accepted postulate in all contemporary criminal legislations. The same provision is incorporated in Article 4(2) of the CC BiH. In analyzing the prohibition of retroactive application of criminal law, the Defense referred to Article 15(1) of the Covenant on Civil Rights which prohibits a retroactive application of the laws and regulations, and Article 7(1) of the European Convention on Human Rights which prescribes that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. The Defense also analyzed the application of Article 4 and Article 4a) of the CC BiH and concluded that Article 4a) does not preclude the application of Article 4) of the CC BiH regarding the obligatory application of a more lenient law. The Defense for the Second-accused Zeljaja argued that the criminal offense - Crimes against Humanity in violation of Article 172 of the CC BiH, which was charged against the Accused and which was allegedly committed during 1992, was not prescribed by the CC SFRY that was in effect at the time. The Adopted CC SFRY, that was applicable at the time, defined the gravest forms of criminal offenses referred to in Chapter XVI as the Criminal Offenses against Humanity and International Law. It also prescribed a lower special minimum sentence of imprisonment of at least 5 years and the lowest special maximum of 15 years imprisonment or 20 years as an alternative to a death penalty. According to the Defense, pursuant to all the foregoing, a more lenient law is the law that was in effect at the time of the alleged commission of the criminal offense at issue. Therefore, by the application of the prescribed sanction for the offenses referred to in Article 172 of the CC BiH the principle *nulla poena sine lege* and the right of the Accused to the application of a more lenient provision would be violated. In its closing argument, the Defense for the Second-accused Zeljaja particularly referred to the notion of joint criminal enterprise /JCE/, stating that as a form of participation in the commission of the criminal offense it is not prescribed in the provisions of the CC BiH. According to the Defense, a JCE did not exist even as a part of customary international law at the critical time. The Defense thereupon referred to the ICTY case law regarding the JCE application, and analyzed in detail three forms of JCE with a special reference to the existence of subjective and objective elements of JCE. The Defense further analyzed the essential elements of the criminal offense of Crimes against Humanity, and the essential elements of the existence of guilt, with a special reference to Persecution as the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH. The Defense also referred to the Indictment of the Prosecutor's Office, stating that it was generalized, abstract and imprecise both with regard to the legal qualification and the individually described acts of commission, the form of responsibility of the Accused persons and the manner of commission of the offenses charged against the Accused. The Indictment is imprecise also with regard to the statement of concrete actions that the Accused had allegedly taken under all Counts of the Indictment. The act of commission, including a consequence resulted from the mentioned actions, constitutes an objective element of the criminal offense, while the criminal responsibility, as a group of subjective

elements, is inseparably connected with the criminal offense and constitutes one of its general elements. The Defense stated that criminal responsibility is individual and a perpetrator is responsible for his own actions, and that no collective criminal responsibility existed. If a criminal offense was committed with the participation of a number of persons, each perpetrator will be held responsible pursuant to the provisions on complicity and will be held criminally responsible within the limits of their intent or negligence. The Defense also analyzed the evidence adduced individually for each Count of the Indictment and stated that all the adduced evidence denied the arguments of the Prosecutor's Office that were stated in the Indictment itself. The Defense for the Second-accused also stated that during the critical period the Accused Neđo Zeljaja performed neither *de jure* nor *de facto* function of a Commander of the CJB Kalinovik, and that this can be seen from abundant documentary evidence in the case record and also from the witnesses' testimony. Finally, the Defense for the Accused Neđo Zeljaja stated that it did not deny the fact or contest at any moment that a number of Bosniaks were killed in Kalinovik during 1992. The Defense also submitted that it did not deny the sufferings of the families of killed persons. The Defense for the Second-accused opined that the persons responsible for the committed offense should be held responsible, but that the Accused Zeljaja Neđo did not bear any responsibility for the events in reference because the Accused Zeljaja did not commit them personally, nor did he plan, instigate, initiate or aid and abet them, as stated in the Indictment. Therefore, the Defense moved the Court to acquit the Accused of all charges.

In his closing argument, the **Second-accused Neđo Zeljaja** stated that he entirely supported the closing argument of his Defense. He added that after the fall of Rogoj, 90% of the Kalinovik population left the place as refugees, and that his family stayed because he opined that there was no need to leave as he did no harm anybody and that this would not happen to him either. He worked as a police officer all his life and enjoyed a great reputation and respect both among his colleagues and ordinary people.

The Defense for the Third-accused Đorđislav Aškra, Defense Counsels Žiko Krunić and Milorad Rašević, submitted in their closing arguments that the Accused Aškra expected that the Court would accept the results of the adduced evidence that indicated that he had to perform the duty of a guard and that thereby he neither had the authority nor the powers to issue any decision or to influence in any manner the situation and the destiny of the persons detained in the *Barutni magacin* building. The Defense for the Accused Aškra firstly referred to the application of substantive law, particularly Article 4 of the CC BiH that refers to the time of applicability of the criminal code. The Defense submitted that the criminal code that was in effect at the time of commission of the criminal offense charged against the Accused Aškra, namely the CC SFRY, should be applied in this specific case. This Code was also in effect as the adopted law in the Republic of BiH after its recognition as an independent state. A retroactive application of the CC BiH provisions in this concrete case is neither justified nor can it be subsumed under the exceptions prescribed in Article 15(2) of the Covenant on Political Rights or Article 7(2) of the European Convention. This is so because, according to the Defense, an exception is applicable only if the principles of international law are not incorporated in any manner in the national legislation and only when a violation of these principles can be characterized as "an act or omission to act" that constitute a crime against humanity. The Appellate Panel of the Court of BiH upheld the view of the Defense in the *Kurtović* case. The Defense for the Accused Aškra thereupon referred to the application of the JCE concept and stated that, except for a part of the

Indictment and a part of the closing argument, the Prosecutor's Office failed to specify the participation of the Accused in any form of the JCE and that, for these reasons, the Defense was not able to defend itself against such charges during the trial. Regarding the foregoing concept, the Defense stated that if the Accused Aškraba was found guilty pursuant to the JCE doctrine, Article 6(3) of the ECHR would be violated. The Defense further submitted that a JCE must be specified in the Indictment and that it is not sufficient that a generic language of the Indictment includes a possibility that a person is charged pursuant to the JCE concept. The Defense mentioned the jurisprudence of the ECtHR, the ICTY and the Court of BiH. Furthermore, in its closing argument, the Defense for the Accused Aškraba referred to the fact that the Accused was charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h)-Persecution, in conjunction with subparagraphs a), e), f), k) and i) of the CC BiH. According to the Defense, in order to find the Accused Aškraba guilty of the criminal offense of persecution, it was necessary to prove that all other offenses were committed with a discriminatory intent because the discriminatory intent gives to persecutions their unique character. The Defense submitted that during the presentation of their evidence, the Prosecution did not in any case point to the existence of intent on the part of the Accused to discriminate against anybody in any manner. Further in its closing argument, the Defense mentioned the ICTY jurisprudence through the *Kupreškić*, *Blaškić*, *Čelebići* and *Tadić* cases. In analyzing individually Counts of the Indictment charged against the Accused Aškraba, the Defense submitted that the Prosecution did not succeed to prove the allegations referenced in the Indictment. In this context, the Defense started from the qualification of the criminal offense of Crimes against Humanity having stated that in addition to the concrete elements of individual acts, the Prosecution also had to prove the general elements of Crimes against Humanity, namely: the existence of a widespread or systematic attack against the civilian population, knowledge of the Accused on the existence of such an attack, that the actions of the Accused constituted a part of this attack, and that he was aware that his actions constituted a part of the attack. In the case at hand, the Defense argued that the general elements of the criminal offense of Crime against Humanity were not satisfied. This is corroborated by the witnesses whose hearing was proposed by the Prosecutor, who are mostly the aggrieved parties in this specific case. The Defense stated that based on the testimony of these witnesses it could be clearly concluded that during the July-August 1992 time period, civilians from the village of Jelašca and Kalinovik and also a certain number of civilians from Jeleč were deprived of liberty in June 1992 pursuant to the decision of the Crisis Staff of the Municipality Kalinovik and placed in the Primary School in Kalinovik. Able bodied men were firstly detained in the same school building, and on 7 July 1992 they were transferred to the *Barutni magacin* building where they were kept against their will until this fatal 5 August 1992. According to the Defense, such manner of deprivation of liberty brings into question the Prosecution theory on the existence of an attack, because the term attack *per se* implies an offensive activity of one subject against the other, passive subject. The Defense further opined that there could be no discussion on a systematic attack either because such form of attack implies a multiple repetition of attacks against the same targets, which was not so in this specific case. The Prosecutor's averments that the acts of the Accused Aškraba comprised part of a widespread and systematic attack and his knowledge of this attack are also ill-founded. The Defense opined that such attack did not exist, and that it is absurd to state that Aškraba had knowledge of such attack or that he participated in it. The Defense Counsel also referred to the Amended Indictment in which the Accused Aškraba was charged that as a directly subordinated to the TG Command, while performing

the function of guards' commander, he also managed the *Barutni magacin* camp. The Defense opined that the Prosecutor offered no piece of concrete evidence to support his allegations concerning the direct subordination of the Accused Aškraba to the TG Command. According to the Defense, there were many persons in the hierarchy structure above the Accused Aškraba. One of them was the witness "H" for whom many witnesses confirmed that he was a member of military units and that he held a rank. The Defense submitted that the Accused Aškraba could have been a corporal of a guard at most, and that therefore the Prosecutor's averment concerning his direct subordination to the highest command is absurd. The Defense further stated that the Accused Aškraba in no way participated in rendering the decisions on the establishment of objects for detention of civilians neither in the *Milan Radojević* Primary School nor in the *Barutni camp* or in deciding to arrest these civilians. The Accused Aškraba was mobilized as were all other able bodied men in BiH. His privilege to perform his military duty in the *Barutni magacin* as a member of guard service instead at front lines was transformed to his bad destiny by the activities of other persons because he was present there during these tragic events. The Defense particularly referred to the events that occurred on these critical dates mentioned in the Indictment, with a particular reference to Aškraba's role. According to the Defense, the Accused Aškraba had no capacity or authority to decide autonomously whether someone will be taken out from the *Barutni magacin*. The presented evidence confirmed the opposite, namely that the guards, including Aškraba, acted in compliance with the orders by their superiors from the military, police or civilian authorities, all pursuant to the order given by the witness "H". All this was duly recorded in the document "Book of Departures" from the facility. Since the Prosecutor's Office did not prove beyond reasonable doubt that the Accused Aškraba undertook the acts of commission and that he was responsible for them, the Defense proposed that according to the principle *in dubio pro reo* the Court render an acquitting verdict.

The Accused Đordislav Aškraba stated in his closing argument that he entirely supported the closing argument of his Defense Counsel. He added that as a police officer he had executed the orders of his superiors and that at the time he did not have any doubt that persons were taken out for exchange. The Accused stated that he felt sorry for what happened to those detainees.

APPLICABLE LAW

In relation to the applicable substantive law, the defense objected to the application of the Criminal Code of BiH pointing out that the Criminal Code of the SFRY that was in effect at the time of the critical events should be applied. The Defense further stated that the application of any other law instead of the CC SFRY that was in effect during the period relevant to this case amounts to a violation of the principle of legality. In that regard, the Defense referred to Article 7(1) of the European Convention and Article 15(1) of the International Covenant on the Civil and Political Rights.

Article 3 of the CC BiH governs the principle of legality, namely that criminal offences and criminal sanctions shall be prescribed only by law and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which no punishment

has been prescribed by law. In addition, Article 4 of the CC BiH prescribes that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence; if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Article 7(1) of the European Convention also prescribes the principle of legality. Pursuant to Article 2.2 of the Constitution of BiH, the European Convention for the Protection of Human Rights has primacy over all laws in BiH. Furthermore, this provision of the European Convention prescribes a general principle that prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed, but it does not prescribe the application of the most lenient law. Article 4a) of the CC BiH prescribes that Articles 3 and 4 of this Code shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, *was criminal according to the general principles of international law.*” Article 7(2) of the European Convention prescribes the same exception pointing out that paragraph 1 of this Article “... *shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.*” (Also see Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions. The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.)

This provides a possibility to depart in the described circumstances from the principle set forth in Articles 3 and 4 of the CC BiH (and Article 7(1) of the European Convention), and also from the application of the criminal code that was in effect at the time of commission of the criminal offense and to apply a more lenient law to the proceedings for criminal offenses pursuant to the international law. In considering the Defense objection, it should be stated that no provision of the CC SFRY that was in effect at the relevant period exclusively addressed crimes against humanity in the manner as set forth in Article 172 of the CC BiH. However, taking into account other provisions of the applicable substantive law and the general principles of international law, this objection of the Defense could not be accepted as well-founded. The Court submits that the criminal offenses of which the Accused was found guilty constitute the criminal offenses pursuant to customary international law and are therefore categorized as “the general principles of international law” set forth in Article 4a) of the Law on Amendments to the CC BiH, and “the general legal principles recognized by civilized nations” set forth in Article 7(2) of the European Convention. Because of this the CC BiH can be applied to this case pursuant to these provisions.

Furthermore, the fact that the criminal-legal actions listed in Article 172 of the CC BiH can be also found in the code that was in effect at the relevant period of time-at the time of commission of the criminal offenses, namely in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154 and 186 of the CC SFRY. This implies that the acts constituting charges were also punishable pursuant to the then applicable criminal code, which additionally supports the conclusion of the Court regarding the principle of legality.

Also, the application of the CC BiH is additionally justified with the fact that the imposed sentence is in any case more lenient than the death penalty that was in effect at the time of commission of the criminal offense, which satisfies the principle related to the time

applicability of the criminal code, that is, the application of the code more lenient to the perpetrator pursuant to the prescribed punishment criterion. The foregoing is also in accordance with the view of Section I of the Appellate Division of the Court of BiH in the Verdict against Abduladhim Maktouf number KPŽ 32/05 of 4 April 2006 and the Verdict against Dragoje Paunović number KPŽ 05/16 of 27 October 2006.

The Constitutional Court of Bosnia and Herzegovina considered this issue in the Appeal of A. Maktouf (AP 1785/06) and stated in its Decision of 30 March 2007 as follows:

“68. In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of *Krstic*, *Galic*, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law.”

“69. In this context, the Constitutional Court holds that it is simply not possible to “eliminate” the more severe sanction under both earlier and later laws, and apply only other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned.”

The case at hand concerns the trials for the criminal offenses for which it was absolutely predictable and generally known at the time of commission that they were in contravention of the general rules of international law. Therefore, the Panel finds that the Accused had to know during the state of war or armed conflict that the application of international rules had primacy and that violations of internationally protected values would cause severe consequences.

If Article 172 of the CC BiH and its position in the CC BiH are analyzed, it is obvious that the essential element of this criminal offense includes, *inter alia*, the elements of violations of international rules. The group of criminal offenses that includes Crimes against Humanity is characterized by the fact that it is not solely sufficient to perpetrate one of the actions of such criminal offense, but awareness must exist that the international rules are being violated by such perpetration. An assumption that the accused must be aware that the period of war, conflicts or hostilities is particularly sensitive and particularly protected by the generally accepted rules of international law is entirely justified. Therefore, also taken into account is the existence of awareness that all perpetrated offenses have an even bigger significance and that their commission incurs even more severe consequences than it would generally be the case.

An additional argument for the application of international humanitarian law is reflected in the fact that at the time of commission of the criminal offenses, Bosnia and Herzegovina, as a successor state of SFRY, was a signatory to all relevant international conventions on human rights and international humanitarian and criminal law.

Also, the customary status of criminal responsibility for crimes against humanity and individual responsibility for the war crimes committed in 1992 was also confirmed by the

UN Secretary General, the International Law Committee and the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR).

These institutions established that the criminal responsibility for crimes against humanity constituted an imperative standard of international law or *jus cogens*.

Therefore, it appears indisputable that in 1992 crimes against humanity constituted part of customary international law. This conclusion was also confirmed by the Study on Customary International Humanitarian Law made by the International Committee of the Red Cross.

According to this Study “Serious violations of international humanitarian law constitute war crimes” (Rule 156), “Individuals are criminally responsible for war crimes they commit” (Rule 151) and “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.” (Rule 158).

The principles of international law recognized by the Resolution 95(I) of the UN General Assembly (1946) and by the International Law Committee (1950) concern the “Charter of the Nuremberg Tribunal and Judgment of the Tribunal” and thereby war crimes in general. “Principles of International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal” adopted by the International Law Committee in 1950 and delivered to the General Assembly prescribed in the Principle I: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.”

Principle II also prescribes: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law”.

Therefore, the criminal offense of Crimes against Humanity should in any case be categorized as “general principles of international law” set forth in Article 3 and 4a) of the CC BiH. That is why it is indisputable that, regardless of whether being viewed from the aspect of customary international law, international treaty law or “the principles of international law” that the criminal offenses committed at the critical period constituted crimes against humanity, namely that the principle of legality was also satisfied in terms of *nullum crimen sine lege* and *nulla poena sine lege*.

Accordingly, the criminal offense of Crimes against Humanity, pursuant to the Common Article 3(1)(a) and (c) of the Geneva Conventions and Article 27 of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949 should in any case be categorized as “international law” or “general principles of international law” set forth in Article 3 and 4a) of the CC BiH. Therefore, it is indisputable that crimes against humanity, regardless of the form of criminal responsibility, amounted to a criminal offense at the critical period.

FINDINGS OF THE COURT

General considerations regarding the evaluation of evidence

The Court evaluated the evidence pursuant to the applicable procedural law, that is, the Criminal Procedure Code of Bosnia and Herzegovina. Furthermore, the Court applied to the Accused the presumption of innocence set forth in Article 3 of the CPC BiH which is a fundamental principle of the contemporary criminal legislation. Therefore, the Prosecutor's Office had to bear the burden of proving the guilt of the Accused.

In evaluating the testimony of the witnesses, the Panel took into account their conduct, behavior, character to the extent to which it was possible, the logic and consistency in their testimony and in relation to the other evidence adduced. Furthermore, the Court was aware of the fact that the witnesses' credibility depended on their knowledge of the facts they testified about, their sincerity and the fact that they were obliged to tell the truth in terms of the given oaths. However, it was not sufficient that the witnesses' testimony were given sincerely. They had to be reliable. During the entire course of the proceedings, the Panel was aware that in the statements regarding the facts that happened long time before there was uncertainty in the witnesses due to the lack of permanency in the human perception of traumatic events and the memories thereof.

The Panel particularly evaluated the testimony of the witnesses who were exposed to severe stress and trauma during the period when they had been present in the events they testified about. According to this Panel, certain discrepancies regarding the sequence of events and their duration do not affect the credibility of their testimony in relation to the assertions that some events even occurred.

Also, the Panel was aware that a possibility existed that such witnesses made mistakes when describing the presence and behavior of certain persons. However, in the cases when the other evidence confirmed the presence of a certain person and the event the person described, the Panel gave credence to the testimony of such witnesses.

Regarding the indirect evidence, the Court emphasized that a view has been adopted in the jurisprudence according to which indirect evidence is acceptable. In addition, in terms of Article 15 of the CPC BiH, the Court is free to evaluate the evidence. The view is that the Panel must be satisfied that such evidence is reliable, namely if the witnesses' testimony are in question they must be truthful, reliable and obtained in a lawful manner. Specifically, the probative value of indirect evidence depends on the context and character of the testimony in reference, and whether such evidence has been corroborated with the other adequate evidence. The view of the Panel is that indirect evidence constitutes the evidence on facts, that is, on the events or the criminal offense from which a relevant fact logically follows. Since some critical events occurred at the time when just a few witnesses were present on sight and since a possibility to establish relevant facts through the witnesses' testimony and the physical evidence that directly confirm these facts was insufficient, then the indirect evidence could be of key importance not only for the Prosecution but also for the Accused and his Defense. Such pieces of evidence, taken individually, can be insufficient *per se*, but if viewed in its entirety and mutual connection, its mutual and cumulative character can sometimes be decisive too.

The sequence and the connection of events in terms of time referenced in the Indictment and the manner of their development were particularly important for the Panel.

In the case at hand, a large number of documents were submitted in the case record as documentary evidence. The fact that some of these documents were not signed or sealed does not mean that they are not credible (particularly when copies of documents sent from a printer are in question). The Court did not consider that the documents without signatures and seals were *a priori* incredible. Both the Prosecution and the Defense submitted such documents into the case record. The Court reviewed all the presented documents and found that the parties had proved their reliability beyond any reasonable doubt. In order to evaluate their credibility, the Court considered them in the light of evidence such as the other documentary evidence and witnesses' testimony. In addition, even when the Court was satisfied with the credibility of documents, it did not automatically accept the statements contained in these documents as a correct presentation of facts, but in each specific case it evaluated the credibility of the contents in the light of the other evidence adduced.

We emphasize again that Article 15 of the CPC established the principle of free evaluation of evidence, which entitles the Court to freely evaluate the existence or non-existence of the facts, that is, whether certain facts are proved or not. Such evaluation is not limited to any particular formal evidentiary rules. The value of evidence is neither qualitatively nor quantitatively determined in advance. Accordingly, a free evaluation of evidence is limited only to the principle of lawfulness of evidence and to nothing else. In terms of free evaluation of evidence, the Court consciously evaluated each piece of evidence both individually and in relation to the other evidence, and based on such evaluation drew a conclusion as to whether a certain fact was proved having taken into account their logical and psychological evaluation.

Article 10 of the CPC BiH defined the term of unlawful evidence in the manner that legally invalid evidence is the evidence obtained in a lawfully prohibited manner. The evidence obtained through violation of human rights and freedoms, or through essential violations of procedural law is marked as unlawfully obtained evidence which constitutes legally invalid evidence on which it is not possible to base a court decision.

The Panel based its decision on the evidence adduced before the Court at the main trial. In the case at hand, abundant evidence was adduced, including subjective evidence, the evidence obtained by hearing the witnesses and expert witnesses and the documentary evidence. The Court evaluated each piece of evidence, both individually and in their mutual relation. In the reasoning of each Section of the Verdict, the Court stated the relevant evidence that was adduced for the purpose of proving or contesting the allegations referenced in the Indictment. The evidence that the Court did not especially mention and explain in the reasoning of the Verdict is, according to the Court, the evidence that did not have a particular importance for the establishment of the state of facts referenced in the Indictment and the criminal responsibility of the Accused.

General Elements of Crimes against Humanity

The Accused are charged with the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs a), b), d), e) f), g) i) and k) of the CC BiH.

To qualify a criminal offense as a Crime against Humanity, in addition to the concrete elements of an individual act, the Prosecutor must also prove the general elements of Crimes against Humanity, namely:

1. the existence of a widespread and/or systematic attack directed against any civilian population
2. knowledge of the Accused of the existence of such an attack
3. awareness that the actions of the Accused constituted a part of the attack and that they were aware that their actions constituted a part of the attack.

ad 1)

Based on the documentary evidence and the testimony of a large number of witnesses, the Panel established that during the period from May 1992 to March 1993 a widespread and systematic attack of the Army of Republika Srpska (VRS), police and paramilitary formations was launched against the civilian Bosniak population in the Municipality Kalinovik. That the attack included a wide area, namely that it was not limited only to certain settlements in the Municipality Kalinovik, can be seen from many adduced evidence indicating that, in addition to the Kalinovik area, attacks were also launched against the civilian Bosniak population in the territory of Municipalities Foča, Gacko, Trnovo. Due to these attacks against the civilian Bosniak population in Kalinovik and the territories of the surrounding municipalities, several hundred Bosniak civilians from Kalinovik, Gacko, Foča, Nevesinje and Trnovo were unlawfully detained at three detention facilities, namely in the *Miladin Radojević* Primary School, *Barutni magacin* and the detention premises of the SJB Kalinovik. One of the consequences of these attacks of the RS Army, police and paramilitary formations (“Serb armed forces”) against Bosniak settlements in Kalinovik and in the wider area is reflected in the fact that a large number of Bosniak civilians were arrested and captured. They were arrested either during the attack itself or while they were escaping from the neighboring municipalities to the territory of Municipality Kalinovik in order to cross over to the territory that was controlled by the Army of the R BiH. Military and police forces in Kalinovik arrested these fleeing civilians. During their detention, other numerous incriminating actions constituting the essential elements of the criminal offense-crimes against humanity were committed against them.

During the proceedings, it was indisputably established that in early May 1992, soldiers from Kalinovik and the Police Station Kalinovik captured several hundreds of civilians from the Local Community Jeleč, Municipality Foča. Trying to escape from the attack of the Serb armed forces, they tried to reach the area of the Jažići neighborhood through the territory of Municipality Kalinovik. This follows from the testimony of a number of heard witnesses, including the witnesses “F”, “X”, “A” and “Z”, witnesses Fevzija Hodžić, Memna Jašarević, Mevlida Čustović, Aziz Đozo and others. It followed from the witnesses’ consistent and reliable testimony that at the mentioned critical period the civilian Bosniak

population of the LC Jeleč, Municipality Foča, was attacked by the military forces. The artillery from Kalinovik also participated in this attack. Thereupon, when they tried to pass through the territory of Municipality Kalinovik and reach the territory controlled by the Army BiH, these Muslim civilians were unlawfully deprived of liberty and detained in the detention facilities in Kalinovik.

Also, it was indisputably established during the proceedings that Bosniak civilians were attacked in the territory of Municipality Gacko in early July 1992. They also tried to reach the territory controlled by the Army BiH through the Kalinovik territory. On this occasion, around 200 Bosniak civilians, mostly women and children and a small number of men, were deprived of liberty by military and police forces. They were firstly detained in a school in Ulog, and thereafter in the *Miladin Radojević* Primary School in Kalinovik. During the evidentiary proceedings, a number of witnesses testified about these events, that is, about the attack of the “Serb armed forces” against the Bosniak civilians in the Municipality Gacko, including the witnesses “E”, “W” and “D” and witness Enes Hasanbegović. These witnesses described the events in reference in a very convincing and reliable manner. From their testimony, the Panel undoubtedly established that the attack was indeed launched, and that Bosniak civilians, including a large number of women and children, were the subject of the attack. Bosniak civilians who entered the territory of Municipality Kalinovik due to the attack on Gacko were arrested by the military and police forces of the Municipality Kalinovik. They detained them first in the school in Ulog, and thereafter in the *Miladin Radojević* Primary School in Kalinovik. These facts were stated by the foregoing witnesses and also by police officers Milan Lalović, Milivoje Faladžić, the witness “A”, witness Vuk Jašar, the witness “F”, witness Rade Pavlović and the witness “H”. Since the testimony of all the foregoing witnesses concerning the fact that Bosniak civilians, who escaped from Gacko, were arrested in the Kalinovik territory and interned in a detention facility were consistent, they were also very reliable, according to the Panel. Therefore, the Court accepted them as reliable and truthful.

It was also established during the proceedings that, at the critical time, Bosniak civilians from other neighboring municipalities, Trnovo and Nevesinje, were also detained in the detention facilities in Kalinovik. This was a consequence of the attack against Bosniak population in these municipalities. This fact follows from the testimony of a large number of witnesses who were detained in the foregoing detention facilities. It can be seen from the testimony of witnesses Ramka Velić and Elvira Čemo that settlements in Trnovo were shelled in late May 1992. On this occasion, many Bosniak civilians were arrested, taken to Kalinovik and detained in the *Miladin Radojević* Primary School and the Police Station Kalinovik.

Witness Vuk Jašar, who was a hodja in Ulog, stated that in the *Miladin Radojević* School he had recognized a number of Muslim civilians from the Nevesinje territory. Witness Zlata Redžović also spoke about the detention of civilians from Nevesinje in the school detention facility.

In addition to the attacks of “Serb armed forces” against the civilian Bosniak population in the neighboring municipalities, the Court established that the same attack was also launched in the Municipality Kalinovik itself, both by soldiers and the police from the Kalinovik territory. One manifestation of the attack was the arrest of civilian men from Kalinovik and

the surrounding villages of Mjehovine, Jelašca and Vihovići. This occurred on 25 June 1992. On this occasion, nearly 60 Bosniak men were arrested. They were civilians and prior to the arrest they had been called to report to a compulsory work service. These civilians were firstly detained in the *Miladin Radojević* Primary School, where security/guard was provided by the SJB Kalinovik police. After some ten days, they were removed to the detention facility-*Barutni magacin*, which was guarded by soldiers. In early August, these civilians were taken out from the *Barutni magacin* and almost all executed. A number of witnesses testified about this incident, including the detained civilian men themselves, members of the military and the police from Kalinovik, and families of the detained persons. Witness Fevzija Hadžić, as the only survived detainee from the *Barutni magacin* camp, described the foregoing incidents in a very detailed and convincing manner, both regarding the arrest, detention in the Primary School and thereafter in the *Barutni magacin* camp, and in relation to their being taken away from the *Barutni magacin* and their execution. His testimony was confirmed by a number of testimony of other heard witnesses, including witness Džemila Redžović, Dika Suljić, Aziz Đozo, Elvir Čusto, Hasna Čusto, the witnesses “C”, “E”, “B”, “A” and “Z”, the testimony of the witnesses, former police officers in the SJB Kalinovik: Danilo Đorem, Ilija Đorem, Milivoje Faladžić, Milan B. Lalović and others. With regard to this incident and the arrest of civilians, documentary evidence exist, such as an invitation to report to compulsory work service drafted by the People’s Defense Secretariat of the Municipality Kalinovik on 25 June 1992. The case at hand does not concern a classic attack against civilians. However, according to the Court, the capturing of almost all remaining Bosniak men capable of working under the excuse of an invitation to make agreements regarding compulsory work service also constitutes an attack against civilian population. This is so particularly because this attack was closely related to the armed conflict that existed in the closer area at the same time. This means that such attack was related to the armed conflict in terms of time and place. This attack was directed exclusively against the civilian population, Bosniak men, given that all arrested persons were civilians under the compulsory work order at the time.

On 1 August 1992, the military and the police from Kalinovik launched an attack against the civilian Bosniak population in the village of Jelašca, Municipality Kalinovik, and the facilities in the part of the village populated with the Bosniak people. At the time of the attack, only women, children and the elderly were staying in this part of the village. The attacked was carried out by soldiers under the command of Ratko Bundalo in concert with the police from Kalinovik whose Commander was Neđo Zeljaja. Consequences of this attack were one person killed, one girl wounded and the expulsion of the Bosniak civilian population from the villages of Jelašca, Vihovići, Mjehovine and other neighboring villages.

A couple of days later, on or about 4 August 1992, members of the “Serb armed forces” killed in the same village seven civilians, mostly elderly persons, who had not escaped from the village after the earlier attack. The Court established these facts based on the testimony of witnesses Mirveta Pervan, Zlatko Hadžić, Hasna Čusto, Dika Suljić, Fadila Hatić, Reuf Rogoj, Zijad Hatić, Čedo Okuka, Dragan Aleksandrov and Miloš Mandić, the documentary evidence submitted to the case that confirms the testimony of the foregoing witnesses, especially photo-documentation of destroyed Muslim houses in the village of Jelašci.

During the same period, on or about 5 August 1992, the “Serb armed forces” attacked the Bosniak civilian population in the place of Jezero, Municipality Kalinovik. On this

occasion, five villagers were killed, mostly the elderly who had not left the village. This ensues from the testimony of witness Eniz Đipa. He described the attack in a detailed and convincing manner, pointing out that it was carried out from the infantry weapons supported by the artillery. His testimony was also supported by the documentary evidence reviewed by the Court, namely the Exhumation Records for the persons who were killed in this attack.

Also, at the same time, on or about 5 August 1992, within the attack on the Bosniak civilian population in the Municipality Kalinovik, in the village of Mjehovina, members of the "Serb armed forces" killed Salko Filipović and his wife Rabija, Mustafa Hadžić, Ćamil Hadžić and his wife Aiša, Huso Hadžić and Nura Mrzić. They were elderly persons who were then buried in a mass grave in the local cemetery. In the following days, the remaining Bosniak civilians were arrested by police officers of the SJB Kalinovik and detained in the *Milan Radojević* Primary School. The Court indisputably established these facts based on the testimony of the witness "C", witnesses Zlatka Hadžić and Ešref Škoro whose testimony were convincing and reliable and confirmed by the Exhumation Records for the persons who were the victims of the referenced attack.

In July or August 1992, soldiers under the command of Ratko Bundalo, and the police from Kalinovik attacked the villages inhabited by the Bosniak population, namely the villages of Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine. On this occasion, members of the police set on fire the houses in the village of Sočani while soldiers burned the remaining villages. This indisputably ensues from the testimony of the witness "A", Milan B. Lalović, Dušan Cerovina and others. Their testimony, that the Court accepted as reliable, was also confirmed by the documentary evidence that was submitted in the case record, particularly photo-documentation of the mentioned inhabited places from which it can be seen that houses and other facilities in these villages were burnt down and destroyed.

Since August 1992 until mid March 1993, the responsible military, police and municipal bodies from the territory of Municipality Kalinovik were engaged in the exchange of detained persons. First exchanges were started in August 1992 when women and children from the *Milan Radojević* Primary School in Kalinovik went for exchange. Thereafter, in September, intensive negotiations between the TG Kalinovik Command and representatives of the Army BiH were conducted regarding the exchange of detained men, of whom a number managed to come out from the detention centers by way of exchange. During the proceedings, a large number of witnesses testified about these exchanges. Also, a series of documentary evidence exist speaking about the correspondence related to the time, the circumstances and the manner of exchange of civilians and prisoners of war. The foregoing exchanges of Bosniak civilians detained in the detention facilities in Kalinovik were also carried out in March 1993 when Ratko Bundalo, as the Commander of the TG Kalinovik, issued an order for the witness FWS-130 exchange. This witness was detained on the premises of the SJB Kalinovik that were secured by members of the Police Station Kalinovik whose Commander was Neđo Zeljaja.

All the foregoing actions, from the mass unlawful detention of the Bosniak civilian population, their interning in detention facilities, the armed attack on Muslim villages in which a certain number of Bosniak civilians were killed, expulsion or detention of the remaining Bosniak civilians, setting the houses on fire and other facilities around the Bosniak villages constitute the actions of the attack on the civilian Bosniak population in

the Municipality Kalinovik. According to the Court, this attack was widespread given that it was carried out by the Serb armed forces at the same time in the wider area, while members of the military, police and paramilitary units in Kalinovik arrested, detained, persecuted, killed, raped and committed other inhuman acts against both the domestic Bosniak civilians from Kalinovik and Bosniak civilians who had come from the neighboring territories to the territory of the Municipality Kalinovik trying to escape from these attacks.

Furthermore, according to the Panel, the attack on the civilian population was also systematic in its nature and was carried out following a certain plan. It clearly follows from the evidence adduced that in all territories, and in the Municipality Kalinovik itself, the attack was carried out in a similar manner, if not in an identical manner. It was manifested in the armed attack against the settlements inhabited with Bosniak population. These places were attacked by infantry and artillery weapons and thereafter civilians were killed and expelled from these settlements, arrested and detained in detention facilities. It was also manifested in a planned detention of other Bosniaks from Kalinovik, Gacko, Foča and Nevesinje in a number of detention facilities that were particularly established for this purpose. Some detainees (Witness FWS-130) remained detained in the police station all through March 1993. In all this, particularly noticeable is the connection of the attack on certain settlements and Bosniak population in terms of the place and the time. Bearing in mind all the foregoing, the Panel finds indisputably established that at the critical time, namely from May 1992 to March 1993, a widespread and systematic attack of the Army of Republika Srpska (VRS) was launched in the Kalinovik Municipality against the civilian Bosniak population.

ad 2) and 3)

With regard to the other obligatory key elements of crimes against humanity, having considered the adduced evidence both individually and in their mutual relation, the Panel established beyond any reasonable doubt that the Accused Ratko Bundalo and Nedo Zeljaja knew that such an attack existed, that the actions of the Accused constituted part of the attack and that they were aware that their actions constituted part of the attack.

Although the Prosecutor did not explicitly state in the Indictment that the Accused Bundalo and Zeljaja were aware of the existence of a widespread and systematic attack against the Bosniak civilian population, such conclusion can be quite certainly drawn from the overall formulation of the Operative Part of the Indictment. Analyzing the Operative Part of the Indictment in its entirety, it can be seen that the Accused Ratko Bundalo is charged that at the critical time he was Commander of the TG Kalinovik, while the Accused Nedo Zeljaja was Commander of the SJB Kalinovik. This means that both of them were very highly positioned in the military and police structures in the territory of Municipality Kalinovik, and that to a large degree it depended on their decisions whether the civilian population would be attacked and what would be the character of the attack.

In the opinion of the Panel, the role of the Accused Ratko Bundalo and Nedo Zeljaja surpassed the role of regular soldiers or police officers, that is, their role in the events in the territory of Municipality Kalinovik was very important at the critical time. Therefore, not only that they were aware of the attack against the civilian Bosniak population, but in a certain way they initiated it, led it and enabled its continuation.

As the highest military officer, both in terms of his rank and the position in the Kalinovik territory, the Accused Bundalo had knowledge of these attacks already since May 1992 when the artillery from his zone of responsibility attacked Jeleč, the Municipality of Foča. When trying to escape this attack the Bosniak civilians came to the Kalinovik territory they were arrested and detained in the *Miladin Radojević* Primary School. The Accused Neđo Zeljaja was present when these persons were arrested near Sreto's inn in the neighborhood of Jažići, the Municipality Kalinovik. He subsequently interrogated certain civilians on the premises of the SJB Kalinovik. The detainees in the school were guarded by the police from the PS Kalinovik, while soldiers from Kalinovik, whose Commander was Ratko Bundalo, provided the food. A couple of days after the civilians from Jeleč had been detained, Commander Ratko Bundalo firstly transported Bosniak men to Bileća by military trucks through his subordinated officers and soldiers. Thereafter, when they were returned, they spent a night in the school in Kalinovik which was secured by the police. On the following day, soldiers and the police of the SJB Kalinovik participated in their transport to Foča. Also, the Accused Neđo Zeljaja, as the Commander of the PS in the SJB Kalinovik, in concert with the Accused Ratko Bundalo, and upon a decision of the Crisis Staff of the Municipality Kalinovik, organized the arrest of Bosniak men from the territory of a number of settlements in the Municipality Kalinovik on 25 June 1996. They were thereupon detained in the *Miladin Radojević* Primary School. The detained Bosniak civilians were guarded by the police from the SJB Kalinovik while soldiers provided food. After ten days, the same detainees were transported by military trucks and escorted by the police to the *Barutni magacin* military facility in Kalinovik, which had been prior to this cleaned and prepared for their arrival in detention. In this facility, soldiers kept guard while their Commander was Ratko Bundalo. While these detainees were in the *Barutni magacin*, the Accused Bundalo participated in drafting the *House Rules*. He personally assigned some of the guards there. On two occasions, the Accused Zeljaja approved the detainees to leave the *Barutni magacin* to go to work. Members of the military and the police from Kalinovik participated in the capturing and detention of around 200 Bosniak civilians in the *Miladin Radojević* Primary School, mostly women, children and the elderly who had escaped from the Gacko territory to the territory of Municipality Kalinovik. In the *Miladin Radojević* Primary School, the same persons were guarded by the police of the SJB Kalinovik. Their Commander was the Accused Zeljaja, while soldiers who were under the Command of Ratko Bundalo provided food in the school. During the detention, some of these persons were killed in the school, a number of women were raped, and many were exposed to inhumane treatment. A large number of women and children from Gacko were subsequently exchanged in the manner that they had to carry dead Serb soldiers from the front lines. The military and the police from Kalinovik participated in the organization of this exchange.

During the period from or about 1 August 1992 to 5 August 1992 a number of attacks were launched in the territory of Municipality Kalinovik against the settlements, or parts of the settlements inhabited with Bosniak civilians. Soldiers under the command of the Accused Bundalo and the police of the SJB Kalinovik whose commander was Neđo Zeljaja directly participated in the first of these attacks against the Bosniak civilian population in the village of Jelašca. In the same period of time, a large number of Bosniak civilians were arrested by the police from Kalinovik. These civilians were thereafter detained in the Primary School in Kalinovik or in the *Barutni magacin* facility. Bosniak villages in the Municipality Kalinovik were set on fire in July or August in a joint action of the military and the police from

Kalinovik. An order for this attack was given by the Commander Ratko Bundalo while the Commander of the Police Station, Nedo Zeljaja, personally participated in setting one village on fire. All these facts presented by the Court were proved during the proceedings based on the testimony of a large number of witnesses who personally participated in these events, both the witnesses who were the victims of the actions of attack and persecution, and the witnesses who were as members of military and police units in Kalinovik engaged in taking the actions of attacks and persecution of civilian population whose superiors were the Accused Bundalo and Zeljaja. These facts were also established based on the documentary evidence reviewed by the Court, particularly based on different orders, war reports, photo-documentation of burnt villages, death certificates, records on the on-sight investigations, exhumations and autopsy of dead bodies, and also the letters and the documents that were at the critical period drafted and signed by the Accused Bundalo and Zeljaja. To prevent unnecessary repeating of all this evidence for a number of times, the Court will state them in detail and give their evaluation in the reasoning of certain sections of the Verdict. Bearing in mind the leading functions held in the military and the police by the Accused Bundalo and Zeljaja in this period and the concrete actions that they had taken, the Court found indisputable that they were aware of the attack launched at the time and directed against the Bosniak civilian population, and also that they had knowledge that their actions constituted part of the attack.

As to the Accused Đorđislav Aškraba, who was a commander of guards in the *Barutni magacin* camp at the time, the Panel found that he was aware of the existence of a widespread and systematic attack against the civilian Bosniak population of the Municipality Kalinovik, but that he did not take the actions that constituted part of the attack. The Court will separately explain the part of the acquitting Verdict concerning the Accused Aškraba.

Legal Standards Applied to the Established State of Facts

In deciding on how to qualify certain actions and the facts charged against the Accused Bundalo and Zeljaja with regard to the criminal offense of Crimes against Humanity, the Panel started from a definition that:

- Murder means depriving another person of his life
- Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law
- Unlawful detention or other severe deprivation of fundamental rights is the one contrary to fundamental rules of international law
- Rape and sexual enslavement means coercing another person 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, sexual enslavement
- Persecution of any group of people on political, racial, national, ethnical, cultural, religious, sexual or other grounds that is universally accepted as inadmissible pursuant to international law, in relation to any criminal offense prescribed in Article 172(2) of the CC BiH, any criminal offense prescribed by the CC BiH or any criminal offense from the jurisdiction of the Court means the intentional and severe

deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

- Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge such deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time.
- Other inhumane acts of a similar character mean the acts perpetrated with an intention of inflicting severe physical or mental pain or suffering upon a person or great suffering or serious injury to bodily integrity or health

When there is a doubt regarding the legal qualification of the established state of facts, in explaining each individual section in the Verdict the Panel will present the reasons by which it was led in drawing the legal conclusions.

Discriminatory Intent and Persecution

In addition to the dilemma concerning the application of the substantive law governing this field, the Panel also addressed the issue of persecution as the offence charged against the Accused. The essence of consideration was reduced to the existence or lack of existence of persecution containing *per se* a specific discriminatory intent which must be proved in order to find someone guilty of persecution. The view of the ICTY case law is that for a persecution it is necessary to prove that certain fundamental rights were denied for the purpose of discrimination on national, religious, ethnical, racial or political grounds. With regard to this, the case law shows that the ICTY Chambers often drew the conclusion on the existence of such intent based on indirect evidence and most often based on the structure of victims and the duration of denial of certain fundamental rights.

In the case at hand, it is obvious that the victims of attack and the acts of persecution by the Accused Bundalo, Zeljaja and other members of the military, police and paramilitary forces that were active at the critical time in the Kalinovik territory were exclusively Bosniaks, mostly women, children and the elderly. None of the above mentioned attacks of the “Serb armed forces” in the territory of the Municipality Kalinovik was directed against military or armed formations of the opposite military party but exclusively against Bosniak civilians. In this manner, around 280 Bosniak civilians were firstly arrested, including a large number of women, children and the elderly, who had come to the Kalinovik territory having escaped from the attack on the village of Jeleč, Municipality Foča. On this occasion, close to 50 men from Jeleč and the surrounding villages of the Municipality Foča, who were in a column of refugees, were arrested. It follows from all the adduced evidence that when they were arrested, these persons did not wear uniforms and did not carry weapons. Therefore, they must be considered civilians pursuant to all conventions of international law. After being detained in Kalinovik, Bileća and Foča, the above mentioned Bosniak men were mostly killed.

In late May, Bosniak women, children, the elderly and men from Trnovo were arrested. They were detained in the school in Kalinovik, while a number of men were in the SJB Kalinovik. Of these detained persons, women, children and the elderly were exchanged after

fifteen days, while men were taken to the *Barutni magacin* where they were all killed or are still registered as missing persons.

In late June, around 60 Bosniak men from Kalinovik, all civilians, were arrested and detained. These civilians were taken to *Barutni magacin*. Witness Fevzija Hadžić is the only detainee who survived, while all others were either killed or are still registered as missing persons.

At the beginning of July, around 200 Bosniak civilians, mostly women, children and the elderly who came to the Kalinovik territory after they had escaped from Gacko, were arrested and detained at the *Miladin Radojević* Primary School. The men from this group were killed in the detention facilities while the women were raped.

A number of attacks were launched from 1 to 5 August 1992 against the villages in the Municipality Kalinovik in which civilian Bosniak population lived. The result of this attack was the killing, detention and persecution of Bosniak civilians. This firstly occurred in the village of Jelašca, that is, exclusively in the part of the village where Bosniaks lived and whose houses were set on fire. Then the same occurred in the villages of Jezero and Mjehovina. Almost in the same period, almost all Bosniak houses and facilities in the villages of Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine and others were also set on fire.

While they were detained in the detention facilities in the territory of Municipality Kalinovik, most of the detained Bosniak men were killed. Bosniak women were raped while a large number of captured persons were abused in different manners.

In all these events it was Bosniaks exclusively who were the target of these attacks. The Accused Bundalo and Zeljaja participated in the incidents at issue either as the persons who gave orders or the perpetrators of certain actions, that is, as the persons who enabled other persons to perpetrate the incriminating actions.

During these events, the Accused were present in Kalinovik. They performed important military and police duties. The Accused Bundalo was a Commander of the TG Kalinovik, while the Accused Zeljaja was a Commander of the Police Station. From 7 August 1992 and during the following fifteen days, the Accused Bundalo was not present in Kalinovik. However, most of the incriminating actions occurred just at the time while he was present there. Upon his return to Kalinovik, the Accused Bundalo continued performing the function of the TG Kalinovik Commander without having taken any action from which it could be concluded that he did not approve of the events that occurred in his absence. Here we should emphasize the opinion of the Court that the perpetrators of a large number of incriminating actions in the *Miladin Radojević* P. S. in Kalinovik were the units which belonged to the TG Foča and which the Accused Bundalo invited to support him in the battles for Rogoj. Bearing in mind that a large number of incriminating actions against Bosniak detainees occurred in the detention facilities or directly prior to their detention, it is quite natural that the Accused Bundalo and Zeljaja, as the persons who participated in the establishment and functioning of these facilities, were entirely informed about all the events related to the persons detained in therein.

The Accused were certainly aware of the national, ethnic and religious origin of the victims of the attacks since they lived and stayed in the Kalinovik territory, while a large number of Bosniaks who had been arrested and detained, and thereupon abused, killed, disappeared or exchanged were from the territory of Municipality Kalinovik, which means that they were fellow-citizens or neighbors of the Accused.

Bosniak persons were particularly known to the Accused Nedo Zeljaja who had lived for a number of years in the territory of the Municipality Kalinovik, and who worked as a Commander of the Police Station in Kalinovik before the conflicts. The population of the Municipality Kalinovik was not numerous. Based on the 1991 Census and national composition by the inhabited places, a total of 4,667 citizens lived in the territory of the Municipality Kalinovik, of whom 1,716 were Muslims-Bosniaks, thus almost all inhabitants of Kalinovik mostly knew each other.

As a result of persecution of Bosniak population from the territory of Municipality Kalinovik on national, ethnic and religious grounds that was manifested in the killing, enforced removal, rapes, enforced disappearance of persons, setting houses and other facilities on fire, intimidation, terror and other inhumane acts, the ethnic structure of population in the territory of Municipality Kalinovik has been drastically changed since a large number of Bosniaks have still not returned to this territory.

The Accused Bundalo and Zeljaja who by their acts participated in the attacks against the civilian Bosniak population also participated in the persecution of Bosniaks. In doing so, having perpetrated discriminatory acts or omissions to act, they had a discriminatory intent against Bosniaks on national, religious and ethnic grounds. With their actions and omissions to act, the fundamental rights of Bosniaks, enshrined and defined in international law, were denied and violated.

General Elements of War Crimes against Civilians

According to the Amended Indictment of the Prosecutor's Office, the Accused were charged with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1), (c) (e) and (f) of the CC BiH, that reads as follows:

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

- a) Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;*
- b) Attack without selecting a target, by which civilian population is harmed;*
- 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;*
- d) Dislocation or displacement or forced conversion to another nationality or religion;*
- e) 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) or forcible prostitution, application of measures of intimidation and terror,*

taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or in its intelligence service or administration;

- f) *Forced labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money,*

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

From the quoted legal definition, the following elements of the criminal offense of War Crimes against Civilians that had to be established ensue:

- a) an act of the perpetrator must be committed in contravention of the rules of international law,
- b) a violation must be perpetrated at the time of war, armed conflict or occupation,
- c) the act of the perpetrator must be related to the war, armed conflict or occupation,
- d) perpetrator must order or commit an offense.

Essential elements of this criminal offense, primarily different acts of commission, confirm that the legislator ensured the protection of values protected by international law in a full scope. Just for the foregoing reasons, a division of armed conflicts into international and national armed conflicts was not made within war crimes against civilians, nor was a classification of violations made of international law into severe violations of the Geneva Conventions and other violations that do not amount to severe violations.

For the existence of this criminal offense it is necessary that the acts of commission of the offense constitute a violation of the rules of international law.

The foregoing statutory provision is, *inter alia*, also based on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. Article 3(1)(a) and (c) of the Geneva Convention contains the rules that are considered customary law and constitute a minimum standard from which the parties at war should never depart. This Article prescribes that:

“ 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;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Therefore, it is firstly necessary to establish the application of international rules in the critical period. In the ICTY case *Prosecutor v. Tadić*, number: IT-94-1, the Appeals Chamber stated: “International humanitarian law is applicable from the beginning of the armed conflicts all until the cessation of hostilities...”

In interpreting Article 173 of the CC BiH, it is clear that it is not necessary (it is not a requirement of the existence of the offense itself) that the perpetrator knows or has an intent to violate an international norm (it is not necessary that a violation of blanket regulations is included in the awareness of the perpetrator), but it is sufficient that his conduct objectively constitutes a violation of the rules of international law, while in taking concrete individual acts of commission, a subjective relation of the perpetrator toward the offense must be certainly considered.

In order to establish all violations of the rules of international law, it is necessary to establish against whom the act of commission of the offense was directed, namely, whether the act was directed against a special category of population protected by Article 3(1) of the Geneva Convention which is applicable in BiH based on Annex 6 to the Dayton Peace Agreement for BiH, which is, according to the ICTY case law, considered part of customary international law (*Kunarac, Kovač and Vuković* – Appellate Chamber, Judgment of 12 June 2002, paragraph 68).

According to the definition in Article 3(1) of the Geneva Convention, the term “protected category” implies the 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* (ICTY, *Blagojević and Jokić* case – Trial Panel, 17 January 2005, paragraph 544), which also implies persons incapable to fight.

The Accused Bundalo and the Accused Bundalo and Zeljaja were charged in relation to the foregoing sub-categories of the criminal offense of war Crimes against Civilians in violation of Article 173(1)(e) and (f) of the CC BiH.

Among other incriminations, Article 173(1)(e) of the CC BiH also prescribes the application of measures of intimidation and terror as an act of commission of a criminal offense, while in subparagraph f), the incriminating action is pillaging the population's property, illegal and self-willed destruction and large-scale stealing of property not justified by military needs.

In the factual description of the Amended Indictment, the Prosecution charged the Accused with the commission of the criminal offense at issue during the state of war in BiH.

The Court established the fact that at the critical time there was a state of war in Bosnia and Herzegovina based on the reviewed documentary evidence and on the generally known or well-known facts.

On 6 April 1992, the Republic of Bosnia and Herzegovina was recognized as an independent state and it has had an international integrity ever since. According to the Finding and Opinion of expert witness Radinović, this legitimacy was contested by the Serb entity called Srpska Republika BiH at the time. The expert further stated that for official BiH, but also for most states in the Western part of the international community, the war is considered to have started on this date.

A decision on the establishment of the Army of Republika Srpska BiH was issued at the 16th session of the Assembly of Srpska Republika BiH on 12 May 1992. Item 2 of the Decision reads as follows: "The units that existed so far and the Crisis Staffs of the Territorial Defense will be renamed into Commands and Units of the Army whose organization and formation will be established by the President of the Republic (Official Gazette of the SR BiH, 1992). At the same session, the Assembly of the SR BiH also issued a Decision on Strategic Goals of Serb People in Bosnia and Herzegovina, while the first strategic goal concerned the state separation from the other two ethnic communities.

A day prior to the issuance of the stated decisions of the Assembly of Srpska Republika BiH, the Executive Committee of the SO Kalinovik issued based on a decision of the War Staff of the SAO Herzegovina an order of 11 May 1992 to all business and social subjects in the territory of Municipality Kalinovik to move to the operations in war conditions. These orders were signed by the President Grujo Lalović (T-233).

According to the Activities Report of the SJB Kalinovik for the period from 1 April 1992 to 15 August 1992, it follows that in May 1992 a mobilization of all conscripts of Serb ethnicity was carried out in the entire Republic.

On 11 June 1992, based on a Decision of the Main Staff of the Command of Srpska Republika BiH, Commander of the TG Kalinovik, the Accused Ratko Bundalo, issued an order declaring the territories of Municipalities Kalinovik and Trnovo war zones. On 8 April 1992, the Presidency of Bosnia and Herzegovina issued a Decision Declaring Imminent Danger of War.

Upon a review of the Decision Declaring State of War in the Territory of Bosnia and Herzegovina and the Order Declaring General Public Mobilization in the BiH Territory which were issued by the Presidency of Bosnia and Herzegovina at the session held on 20 June 1992, it can be seen that the state of war was declared in the entire territory of Bosnia and Herzegovina.

Bearing in mind the foregoing documentary evidence, the Court indisputably established that during the critical period of time, the state of war was declared in the entire territory of Bosnia and Herzegovina and that it was also declared in the Municipality Kalinovik.

General Elements of the Criminal Offense of War Crimes against Prisoners of War

In the Indictment in reference, the Prosecutor's Office did not charge the Accused with the commission of the criminal offense of War Crimes against Prisoners of War set forth in Article 175 of the CC BiH.

However, in giving a legal qualification of certain criminal offenses, the Court found that in relation to the offense stated in Count 1(j) of the Indictment, the Prosecutor's legal qualification should be changed and that the offense should be qualified as the offense of War Crimes against Prisoners of War. This is so because according to the testimony of the aggrieved party, Huso Tukelija, he was a member of the BiH Army at the time when he was captured and carried weapons when he was captured by soldiers from Trnovo. Bearing in mind such testimony of the witness-aggrieved party himself, which was uncontested by anything and which the Court accepted as convincing, and considering that the witness was a captured member of the opposing armed party and that he was armed at the moment when he was captured, the Court finds that the criminal offense committed against him is Crimes against Humanity in violation of Article 172(1)(h) of the CC BiH, in conjunction with the criminal offense of War Crimes against Prisoners of War in violation of Article 175 of the CC BiH.

The Court will now state the legal wording for the criminal offense in question and the general elements of this criminal offense.

The legal wording 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;*
- c) Compulsive enlistment into the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial,*

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

Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War of 12 April 1949 provides a definition of prisoners of war. According to the Convention:

“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:*
 - (a) That of being commanded by a person responsible for his subordinates;*
 - (b) That of having a fixed distinctive sign recognizable at a distance;*
 - (c) That of carrying arms openly;*
 - (d) That of conducting their operations in accordance with the laws and customs of war.*

According to Article 5 of the Geneva Convention the Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Article 13(1) of the Geneva Convention prescribes that *“Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention.”*

Article 23(1) of the Geneva Convention prescribes that *“No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.”*

General Elements:

According to the foregoing, the law will not be applied unless the criminal offenses were committed in the context of an armed conflict and with a sufficient *nexus* between the criminal offense and the armed conflict.

1. Existence of Armed Conflict

Firstly, the Trial Panel notes that albeit the legislator does not prescribe explicitly the requirement of the existence of war or armed conflict, Article 175 of the CC BiH refers to

the breaches of international law. International laws or customs of war are closely related to the state of armed conflict, thus no war crime is possible without an armed conflict and a sufficient *nexus* between the acts of the accused and this conflict. Accordingly, the Panel concluded that Article 175 of the CC BiH requires the existence of an armed conflict. During the proceedings, the parties did not contest that the armed conflict existed at the critical time, and this can also be seen in the Defense closing arguments. The existence of an armed conflict is indisputable since armed force was used between the parties to the conflict.

2. Nexus between the Accused and the Armed Conflict

In addition to the existence of an armed conflict, it is necessary to establish the existence of a *nexus* between the actions of the Accused and the armed conflict. A cause-and-effect connection between the armed conflict and the committed crimes is not required. However, it is at least required that the existence of an armed conflict to a great extent influenced the capacity of a perpetrator to commit a crime.

“In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties” (the Kunarac case).

In the case at hand, the acts of the Accused and other persons who participated in the engagement of Huso Tukelija as a mine-sweeper occurred at the time when the war raged in the territory of the entire Bosnia and Herzegovina and when fully defined parties to the conflict existed. The Accused Bundalo was a Commander of the TG Kalinovik while as a conscript the Accused Zeljaja was assigned to the Police Station where he was appointed a commander. The victim of the offense in reference, Huso Tukelija, indisputably belonged to the opposing party. The Accused knew this because Huso Tukelija was arrested by soldiers in Trnovo who were members of the Tactical Group Kalinovik. Thereupon, he was detained in the Police Station Kalinovik where the Accused Zeljaja was a Commander. All this suggests that a relation existed between the Accused and the armed conflict in relation to the offense charged against them.

INDIVIDUAL COUNTS OF THE INDICTMENT

Introduction

In the introduction, the Prosecutor’s Office charged the Accused with the following: that at the relevant period of time, during the state of war in BiH, as part of a systematic and widespread attack by the VRS /the Army of Republika Srpska/, police and paramilitary units against the Bosniak civilian population of the Kalinovik municipality, Ratko Bundalo as the Commander of the Kalinovik Tactical Group, Neđo Zeljaja as the Commander of SJB Kalinovik /Public Security Station/ and Đorđislav Aškrača, on the duty of the commander of the guard who at the same time was carrying out the duty of the warden of the camp Barutni Magacin /Gunpowder Warehouse/, as conscious participants in the joint criminal

enterprise also comprising Grujo Lalović, Boško Govedarica, members of the War and Crisis Staff of the Kalinovik Municipality and other members of military, police and paramilitary units /Serb Armed Forces/, planned, instigated, perpetrated, aided and abetted the persecution of the entire Bosniak population of the Kalinovik municipality on political, national, ethnic, cultural and religious grounds by way of committing various acts of Crimes against Humanity and related war crimes.

In the evidentiary procedure, it was found indisputably that in the period from May 1992 until March 1993 there was the widespread and systematic attack by the Army of Republika Srpska /the VRS/, police and paramilitary units against the Bosniak civilian population of the Kalinovik municipality as well as parts of the neighboring municipalities. The scope of this attack, its duration and character of the attack itself are specified in the analysis of the general elements of the criminal offense –Crimes against Humanity, that the Accused is charged with. As judged by the Court, the widespread and systematic attack started in May 1992, when a larger number Bosniak civilians, who were fleeing the attack of the Serb Armed Forces on the village of Jeleč, were captured. The artillery from Kalinovik also participated in the attack, and it ended after the exchange of the prisoner FWS-130 in mid March 1993.

Also, during the evidentiary procedure, it was indisputably found that Ratko Bundalo, at the relevant time, was the Commander-in-Chief in Kalinovik and as such the Commander of the Kalinovik Tactical Group. Such state of facts stems from numerous pieces of physical evidence as well as from the testimonies of a larger number of witnesses.

The defense for the first Accused, during the entire proceedings, challenged this fact pointing out that the Accused Ratko Bundalo was a member of the Army of Yugoslavia in the capacity as the Commander of the Mixed Anti-Armor Artillery Regiment /MAAR/. Considering the aforementioned, the defense filed with the Court the certificate of the Ministry of Defense of Serbia, which reads that the Accused was the Commander of the Mixed Anti-Armor Artillery Regiment until 30 June 1993.

It indisputably results from the proceedings that the Accused Ratko Bundalo, pursuant to the Order of the Secretariat of National Defense, number 7-40, was appointed the Commander of the 13th Mixed Anti-Armor Artillery Regiment in July 1991 according peacetime deployment, which was part of the 5th Military District, 13th Corps, Rijeka Garrison. Also, in the proceedings it was indisputably found that on 11 November 1992, the Command of the 13th Corps issued the Order on Transfer, Re-subordination and Deployment of Units, according to which the 13th MAAR was relocated to Kalinovik. It stems from the Global Plan of Relocation-Pull Out that on 28 November 1991 the unit of the Accused Bundalo arrived in Kalinovik. These facts were not particularly challenged and they were established by inspection of the defense physical evidence (OI-4a, 5a, 5b, 5c, 5d, 5e).

However, the Court did not accept the defense arguments that the Accused Bundalo, all the time when he was in Kalinovik, including the relevant time as well, was exclusively the Commander of the 13th MAAR and that he had no other formation duties and tasks in Kalinovik.

The foregoing claim of the Defense for the first Accused is based on several pieces of physical evidence admitted to the case file of the Court, including the following: the letter of the General Staff of the Army of Yugoslavia dated 14 May 1993 sent to the Command of the First Army stating that the approval was given for the transfer of the Accused Bundalo, who was previously the Commander of the 13th MAAR, 13th Corps; then the Order number 66-47 dated 27 May 1993 issued by the General Staff of the Army of Yugoslavia stating that the Accused Bundalo is the Commander of the 13th MAAR, and based on the letter of the Ministry of Defense Ministry of Serbia - Personnel Administration indicating that Ratko Bundalo was on the duty of the Commander of the 13th MAAR from 13 June 1991 until 30 June 1993. However, from the letter of the General Staff dated 14 May 1993 it can be seen that the Accused Bundalo at the relevant time was temporarily deployed to work in the other competent command. Also from the said Order of the General Staff dated 27 May 1993 it can be seen that the Accused Bundalo was in the Kalinovik Garrison, where he was temporarily deployed to work, while the letter of the Ministry of Defense Ministry of Serbia reads that the unit of the Accused Bundalo was relocated to the Kalinovik Garrison in 1991. Taking into consideration the aforementioned facts it is indisputable that the Army of Yugoslavia continued to keep the Accused Bundalo in their records as the Commander of the 13th MAAR of the 13th Corps. However, based on all the other presented evidence it is indisputable that at the relevant time he was staying in the Kalinovik Garrison, that he was a member of the Army of Republika Srpska and that he was the Commander of the Kalinovik Tactical Group which was staffed by forces from Kalinovik and Trnovo.

During the proceedings it was indisputably found that in the territory of BiH different changes in terms of organization and territory took place following the arrival of the units of the Rijeka Corps in Kalinovik, including the Accused Ratko Bundalo. It ensues from the Findings and Opinion of the military analyst Prof. Ratko Radinović, Ph.D., retired General, that according to the military-territorial division of BiH, taking into consideration the peacetime location, the territory of Kalinovik was an integral part of the zone of responsibility of the 2nd Military District, Sarajevo Military District, which was established in the beginning of 1992, that is, at the time when the 5th Military District (Zagreb) and Naval District (Split) ceased to exist as a consequence of the war in the territory of Croatia. Therefore, the 5th JNA Military District, the headquarters of which was in Zagreb, ceased to exist. In a limited military-territorial terms the area of Kalinovik was an integral part of the zone of responsibility of the 4th Division which was reorganized into the 4th Corps, 2nd JNA Military District with the headquarters in Sarajevo. From the Findings of the same expert witness it arises that at the end of 1991 two JNA regiments on the strength of the 13th Corps came to Kalinovik, the headquarters of which was in Rijeka and one of them was the MAAR and the other was the Howitzer Artillery Regiment. When they arrived in Kalinovik these two regiments did not become part of the range forces nor did the range commander in Kalinovik was their superior officer, but the commanders of these regiments were subordinated to the Command of the 2nd Sarajevo Military District. When the armed conflicts in the territory of BiH broke out, a part of these forces and equipment of the MAAR was used for equipping and forming the Kalinovik Light Infantry Brigade which became part of the Bileća Corps (later Herzegovina Corps) while a part of it staffed the units that would become the Sarajevo-Romanija Corps and East-Bosnia Corps of the Army of Republika Srpska. The territory of Kalinovik and Trnovo became part of the zone of responsibility of the Herzegovina Corps. In order to regulate and simplify the command system in this part of the zone of responsibility, the Herzegovina Corps formed the

Kalinovik Tactical Group (TG) from the forces in the territory of Kalinovik-Trnovo-Borak, while the TG Foča was formed out of the forces which happened to be in the upper Drina River. In the opinion of the same expert witness, in addition to the military forces deployed to the TG Kalinovik, in the territory of the town and region of Kalinovik regular tasks were performed by the police of the SJB Kalinovik. Therefore, the aforementioned Findings and Opinion of military analyst Radinović, whose findings, in this part, were accepted by the Panel as objective and professional and consistent with testimonies of the witnesses and physical evidence admitted to the case file, result in the fact that the 13th MAAR at the relevant period of time did not exist but that technical equipment, staff and officers were mostly re-assigned to the Kalinovik Tactical Group which was within the zone of responsibility of the Herzegovina Corps.

Based on the testimony of witness Božo Purković, who joined the army in the month of May and came to Kalinovik, to Gornji Logor /the Upper Camp/, where he carried out the duty of the Assistant Commander for Personnel Affairs, it can be seen that by that time the Kalinovik Tactical Group had been formed and that its Commander was Ratko Bundalo. As stated by this witness as well, the Tactical Group covered the territory of Kalinovik and Trnovo, and all the units of the military character which existed at the relevant time in this area were part of the Tactical Group. The military facilities which existed at the time concerned in Kalinovik and which were part of the Tactical Group and under its command were Gornji logor, Donji logor and Barutni magacin. All these facilities were guarded by the logistics unit of the Tactical Group whose Commander was Milan Veletić. He was attending meetings of the Command and was subordinated to the Tactical Group Command, that is, to the Commander of the Kalinovik Tactical Group.

In his testimony, Witness H also spoke about the existence of the Tactical Group, stating that at the time of establishment of the Kalinovik Tactical Group there had already existed the Herzegovina Corps and that the Tactical Group covered the area of Kalinovik, Trnovo as well as one unit from Borak. The Commander of this Tactical Group was Ratko Bundalo.

In his Findings and Opinion, expert witness Radinović, page 16, states that the oldest document on the existence of the Kalinovik Tactical Group is dated 21 May 1992 and as the source of the data he indicates the Combat Report of the Kalinovik Tactical Group, strictly confidential, number 13/23 dated 21 May 1992.

Also, as a written document on the existence of the Kalinovik Tactical Group admitted to the case file there is the Order issued by the Kalinovik TG Command dated 2 June 1992, from which it arises that at the time concerned the Commander of the Tactical Group was Col. Ratko Bundalo, whose name and position are stated in the place envisaged for signature. Inspecting the handwritten text it can be seen that the Order was sent to the Chief of SJB to be forwarded to the police in Dobro Polje for execution (T-201).

During the proceedings, the Court inspected several pieces of physical evidence from which it arises that at the relevant time the Kalinovik Tactical Group existed and that all the time the Commander of the Tactical Group was Ratko Bundalo. Thus, inspecting the letter of the Kalinovik TG Command dated 6 June 1992, sent to the Territorial Defense Commander of Trnovo, it can be seen that it was signed by the Commander, Colonel Ratko Bundalo.

Also, inspecting the letter of the Kalinovik TG Command dated 17 June 1992 sent to the Commander of the Trnovo First Battalion it can be seen that it was signed and verified with the stamp VP 4120.

The Order of the Kalinovik TG Command, VP 4120 dated 12 July 1992, results in the fact that it was issued by the Commander, Colonel Ratko Bundalo.

Based on the Order of the Kalinovik TG Command dated 13 July 1992 to prevent soldiers to leave the positions, issued by the Commander, Colonel Ratko Bundalo, under Item 1, there is a handwritten text that Ratko Bundalo is the Commander of the Kalinovik TG. In the same Order it can be seen that the commanders of the combat groups and commanders of the basic units are supposed to personally report to him about the execution of the aforementioned tasks. The names and surnames with the signatures of the persons who received the Order are attached to the document.

Inspecting the list of units and conscripts in Kalinovik, without date, it can be seen that the first on the list of the Kalinovik TG Command is Ratko Bundalo.

The Kalinovik TG Command was also submitting, by dispatch notes, regular combat reports to the Herzegovina Corps Command. Inspecting the dispatch notes concerned, it can be seen that Commander Ratko Bundalo signed these combat reports for 2, 3, 4 and 28 August 1992.

From the letter of the Trnovo Territorial Defense Command dated 10 June 1992, to the attention of Colonel Ratko Bundalo, it can be seen that he was requested to approve the food for meals of 567 members of the Trnovo Territorial Defense for the following ten days.

The insight into the Request for an Opinion on Redeployment of Conscripts, the Kalinovik TG Command, VP 4120, Kalinovik, signed by Commander, Colonel Ratko Bundalo, sent to the Executive Committee of the Kalinovik Municipality, results in the fact that the decision on deployment of conscripts was made in agreement with the Executive Board, headed by Grujo Lalović.

It stems from the evidence T-196 dated 11 November 1992 that the Kalinovik TG Command, under Commander Ratko Bundalo, issued several orders to different subjects including the police platoon.

The last written document related to the existence and control of the Kalinovik TG Command, is the evidence O3-16 from which it can be seen that the Commander of the Kalinovik TG Command, Colonel Ratko Bundalo, on 19 March 1993, issued the Order according to which the prisoner FWS-130 was supposed to be exchanged and surrendered to the 7th Battalion of the Foča TG.

Based on the aforementioned evidence as well as testimonies of numerous witnesses who consistently testified that all the time the Accused Ratko Bundalo was the Commander of the Tactical Group, the Court indisputably found that he, at the relevant time, discharged the duty of the Kalinovik TG Commander, whose zone of responsibility also included the areas of Kalinovik and Trnovo as well as a part of the Konjic municipality.

Also, during the evidentiary procedure, it was indisputably established that the Accused Nedo Zeljaja, at the relevant period of time, was the Commander of the police station within the SJB Kalinovik. This fact was confirmed based on the testimonies of a large number of witnesses who consistently stated that Zeljaja was the police Commander as well as based on the physical evidence inspected by the Court which clearly results in the fact that Zeljaja was the police Commander of the Kalinovik Police Station.

Pursuant to the Activity Report of the SJB Kalinovik for the period 1 April 1992 - 15 August 1992, made on 18 August 1992, it stems that by the beginning of April 1992, the SJB Kalinovik was a part of the CJB /Public Security Center/ Sarajevo and that in the beginning of April the service divided so that the SJB Kalinovik became part of the CJB Trebinje. From the Report it can be seen that employment of all Muslim employees, both active and reserve, was terminated, and that the Station was manned by Serbs only.

During the proceedings the Court found that Neđo Zeljaja, prior to the appointment to the post of a Commander of the Police Station in SJB Kalinovik, was working in the Sarajevo MUP/ Ministry of Internal Affairs/ wherefrom he retired.

Inspecting the Decision of the Sarajevo MUP dated 10 December 1991, the employment of the Accused Neđo Zeljaja was terminated on 31 December 1991, with the right to old-age pension.

However, when the aforementioned Decision was made, on 31 March 1992, the Accused Zeljaja files the new retirement request, based on which the Sarajevo MUP rendered a new Decision with the retroactive date of 14 February 1992, pursuant to which Neđo Zeljaja stopped working in the Sarajevo MUP on 31 March 1992.

In order to determine the duration of service and the date of retirement of Neđo Zeljaja, the payroll accounts for December 1991 was admitted to the case file as well as the Certificate on his data entered in the records of the Mostar Federation Pension Fund.

Based on the refugee identity card to the name of the Accused Neđo Zeljaja it is indisputable that as a refugee from Ilidža, settlement of Kasindo, he registered himself in Kalinovik on 30 March 1992.

Pursuant to the said evidence the Court found clearly that Neđo Zeljaja was employed in the Sarajevo MUP until the end of March which is when he retired (31 March 1992) as well as that in Kalinovik he registered himself as a refugee (30 March 1992).

Based on the physical evidence and testimonies of numerous witnesses the Court found that Neđo Zeljaja, at the relevant period, that is, from May 1992 until March 1993, was the Commander of the Kalinovik Police Station, which was part of the SJB Kalinovik.

Also, based on the Decision of the MUP of Republika Srpska number 4449 dated 6 March 1993, it can be seen that Neđo Zeljaja was temporarily deployed, until the adoption of the Rule Book on Internal Organization and Systematization of the RS MUP, to the post of the commander in the Police Station-SJB Kalinovik as of 1 April 1992. It is true that in the

decision concerned the year of deployment of the Accused Zeljaja is visibly corrected with ballpoint pen from 1993 to 1992 given that it cannot be seen who made this correction since the correction lacks verification in the form of a signature or stamp.

However, it arises from the other evidence inspected by the Court that Neđo Zeljaja, in many other records of the official state bodies as well as personal questionnaires, was kept as the Commander of the Kalinovik Police as of April 1992 and that finally he left and retired with such data on the employment record.

Inspecting the Personal Questionnaire of the RS MUP for Neđo Zeljaja dated 10 November 1992, which he signed, under Item 14-Serb MUP, it is written that Neđo Zeljaja was registered as the “Commander of the Police Station as of Establishment of the MUP” while in the notes of this Decision it is stated that his employment was terminated by the Decision of the former MUP with the right to retirement on 31 March 1992.

Mile Matijević, defense expert witness for the second Accused, in his Findings and Opinion stated that the RS MUP was established on 1 April 1992.

Pursuant to the Personal Questionnaire of the RS MUP for Neđo Zeljaja dated 21 September 1995, it arises that at the time when the Questionnaire was made he was working at the post of the Commander of the Police Station Kalinovik and in the Employment Record column it is noted that from 1 April 1992 until 20 April 1995 he was the Commander of the Kalinovik Police Station. The same thing is noted in the survey of the “total years of service” column where it is stated that at the post concerned he accumulated in total: six years, one month and ten days of service.

From the Certificate of the SJB Kalinovik dated 8 August 1996 it arises that Neđo Zeljaja, as a member of the MUP, participated in the armed conflicts in the territory of BiH, in the period from 4 April 1992 until 20 April 1996, in continuity. This Decision was sent to Neđo Zeljaja.

Inspecting the Decision of the RS MUP dated 20 August 1996, it can be seen that the employment of the Accused Neđo Zeljaja, who was deployed to tasks and duties of the Commander of the Kalinovik Police Station, SJB Kalinovik, was terminated due to fact that he met the conditions for retirement on 31 August 1996.

Thus, all the aforementioned evidence clearly indicates that according to the official documents made by the state authorities, some of which were even signed by the Accused Neđo Zeljaja himself, he was the Commander of the Kalinovik Police Station as of April 1992.

Also, the other documents made or signed by the Accused Neđo Zeljaja were admitted to the case file and based on these documents the Court found that at the relevant period of time he was performing the duty of the Commander of the Kalinovik Police Station, SJB Kalinovik.

The Court inspected the slip of paper dated 3 May 1992, signed by the Accused Neđo Zeljaja, with the following handwritten text: “that Grujo Lalović, President of the Executive

Committee of the Municipal Assembly was requesting Mladen Jovović to be withdrawn from the work unit due to the other obligations.”

Based on the insight into the Bulletin of Daily Events for 27/28 May 1992, which was sent by the SJB to the War Staff of the Kalinovik Municipality (T 177), it can be seen that Neđo Zeljaja was the Commander of the Station.

From this Bulletin it also ensues that some Serbs were moving individually into the apartments of Bosniaks; that on the day concerned, 25 citizens came to SJB; that there was an ongoing operation of surrender of the licensed rifles and pistols in Ulog; and that there were indications that during the night Bosniaks were transporting weapons on horses from the territory of Foča and Goražde in the direction of Trnovo.

Inspecting the Certificate dated 8 September 1992, issued by SJB Kalinovik it can be seen that the acting Commander of the Police Station is the Accused Neđo Zeljaja.

In the same month, based on the Official Note of SJB Kalinovik dated 17 September 1992, it arises that it was signed by Neđo Zeljaja on behalf of Chief Boško Govedarica.

The fact that the Accused Neđo Zeljaja, at the relevant period of time, was the Commander of the Police Station in the Kalinovik SJB also stems from the payrolls for June, July, August and September 1992 resulting in the fact that Neđo Zeljaja had the second largest salary after Chief Boško Govedarica in the SJB Kalinovik. For the month of June, in the payroll it was noted that Neđo Zeljaja was performing the tasks of the Commander of the Police Station. His salary for that month was the same as the salary of Chief Boško Govedarica.

The incomplete list of paid remunerations for the month of April 1992 in the SJB Kalinovik is also admitted to the case file. The list reads that in that month there were 57 active and reserve police officers in total, listing only 27 police officers and without mentioning Neđo Zeljaja.

A similar list was made about the advance salary payment for March, then corrected by hand to April 1992, listing only the names of 19 employees who were performing regular duties in the SJB Kalinovik including Ismet Poljak for whom it is noted that he was the Commander.

During the entire proceedings, the defense for the second Accused claimed that in April, to be precise, until 20 April 1992, the Commander of the Kalinovik Police Station was Ismet Poljak, and later on Radomir Elez aka Suki assumed his office. According to the defense, the Accused Zeljaja became the Commander of the SJB Kalinovik as late as 1 April 1993. In reference to the aforementioned, the defense adduced several pieces of evidence including O2-20 which is the working list with attendance records.

The fact that Ismet Poljak, in the beginning of April 1992, was the Commander of the Kalinovik Police Station also arises from the CSB Trebinje Document dated 17 April 1992, sent to the SR of BiH MUP, listing 19 persons who were with the SJB Kalinovik including

Ismet Poljak as the Commander and four other Muslims. Also, from the Official Note made by the SJB Kalinovik on 16 April 1992 it can be seen that it was signed by Ismet Poljak.

The Court does not find it disputable that at the aforementioned time, to be precise, on 20 April 1992, the Commander of the Police Station was Ismet Poljak.

In his testimony, witness Đemal Imamović, states that during April he met the Accused Neđo Zeljaja in Kalinovik, who told him that he was offered the position of the Commander of the Police Station by the SDS, and requested the witness's opinion about that.

Based on the document of the CSB dated 17 April 1992 sent to MUP of Serb Republic of BiH it can be seen that the employees of SJB Kalinovik were not offered to express their loyalty to the established MUP of Serb Republic, and pursuant to the payrolls of SJB Kalinovik as well as testimony of witness Fevzija Hadžić it is obvious that in April the Bosniak employees ceased to carry out their duties in SJB Kalinovik.

In his testimony, witness A stated that when Ismet Poljak left the post of the Commander in late April 1992, a meeting of working community was convened. All the active and reserve police officers attended the meeting, and Boško Govedarica together with Neđo Zeljaja came to the meeting. On that occasion, Chief Govedarica said that he brought Neđo who was placed at the disposal of the National Defense HQ, as an experienced police officer who was the Commander of the station, to assist and not to be a reservist in the army.

Witness A, who made the Official Note on 14 February 1993, and forwarded it to the CSB Trebinje, stated that the Accused Neđo Zeljaja, after he returned from Sarajevo, in 1992, was re-appointed to the post of the Commander of the Kalinovik Police Station. In his letter, the witness indicates that it was not clear to him, as well as to the majority of the colleagues, on what merits he was appointed since he had no professional qualifications for that post. In this Note, there is no reference to any other person except Neđo Zeljaja who was performing the duties of the Commander when Ismet Poljak left the office of the Commander of the SJB Kalinovik.

Witness Dušan Cerovina, who was a police officer in Kalinovik at that time, stated that after departure of Ismet Poljak there were some people supporting some Suki to assume the office of the Station Commander but he had never been appointed.

Also, witness Slavko Macan, said that following the departure of Commander Ismet Poljak from the office in mid-April 1992, Neđo Zeljaja assumed his office. The witness states that Zeljaja was in that office by the end of April or beginning of May 1992 given that he does not know whether he was acting Commander or Commander. Witness Slavko Macan, who at time was in the reserve police in Kalinovik, says that he communicated with Neđo Zeljaja as a superior, that all the time he considered him to be the Commander since he was performing that duty.

Witnesses Asim Zametica and Ahmo Mušanović said that when they were captured, in early May, they saw Neđo Zeljaja. Asim Zametica said that Zeljaja was personally interrogating him and issued the order for him to be taken to the school.

The Court has already pointed to abundant documentary evidence resulting in the fact that at the relevant time Neđo Zeljaja was performing the duty of the Commander, therefore, it shall not repeat it here. The Court also evaluated numerous testimonies of other witnesses who consistently stated that it was none other than the Accused Neđo Zeljaja who was the Commander of the Kalinovik Police Station. These witnesses are co-workers of the Accused: Danilo Đorem, Milivoje Faladić, Milan Lalović, Nikola Bozalo, witnesses A and Z, Miloš Veletić and other, their neighbors, who knew Neđo Zeljaja well.

The fact that the Kalinovik Police Station had the Commander also arises from the answer of the SJB Kalinovik sent to the TG Kalinovik on 6 February 1993 which reads that on 24 January 1993 in Foča a meeting of all the Chiefs and Commanders of police stations from the territory of East and Old Herzegovina was held and the Chief and Commander attended the meeting on behalf of the SJB. After that, the two of them together went to Trebinje where they took the salary for the reserve police and then they dropped by the house of Risto Puhalo and stayed there overnight. This evidence clearly refers to the conclusion that the SJB Kalinovik had its own Commander at the time concerned.

Also, inspecting the Decision sent from the Executive Committee of Kalinovik Municipality to the SJB Kalinovik in the handwritten part one can see Neđo Zeljaja's signature.

During the proceedings, the defense for Neđo Zeljaja was pointing out that at the end of July and beginning of August 1992 Neđo Zeljaja was sick, as well as that he spent some time on the frontline so that he could not have had any insight into and influence the events that took place in the beginning of August in Barutni magacin as well as in the area of Kalinovik. Concerning the aforementioned, the defense for the second Accused admitted to the file the physical evidence and heard the following witnesses: Ilija Đorem, Milan Elez, Witness A. These witnesses said that following the fall of Rogoj Zeljaja spent with them a couple of days on the frontline and after he got sick he went to see a doctor. Doctor Mirko Čerović confirmed that the Accused Zeljaja reported to the infirmary and had pneumonia, because of which he had to receive treatment for 2 to 3 weeks.

The Court did not accept such a defense given that it does not correspond to the presented evidence and it is particularly in opposition to the physical evidence that the Court inspected.

That is, inspecting the Patients Record of the Kalinovik Medical Centre for the period from 24 July 1992 until 7 September 1992, it can be seen that on 6 August 1992, it was registered that Neđo Zeljaja was examined in the health institution. However, according to the same records, the Accused Zeljaja was not referred anywhere else, he was not admitted to the infirmary nor exempted from duty. Also, from the Patients Record for 30 July 1992, it can be seen that Neđo Zeljaja came for examination but even on that occasion he was not exempted from duty. Therefore, the opinion of Doctor Čerović that he had to stay in bed is not correct since in that case he would have put him on a sick-leave and would refer him to do additional follow-ups.

The testimonies of the aforementioned witnesses who testified about the circumstances of Zeljaja's stay on the frontline, in the opinion of the Court, were unconvincing, illogical and in contradiction, both mutually and to their previous statements and documents. Thus,

witness Ilija Đorem said that Zeljaja spent a couple of days with them on the frontline, that he was like a platoon commander to them during the time when their immediate superior, Milan Perić, was not with them; Milan Elez said that at the same time both Platoon Commander Milan Perić and Station Commander Zeljaja were on the frontline. At the main trial, Witness A points out that Neđo Zeljaja spent 3-4 days on the frontline and due to a flue returned to Kalinovik but that the rumor was that in this way he had tried to avoid going to the frontline. The testimonies of these witnesses are also opposed to the Note made personally by the Witness A on 14 February 1993, which reads that for more than five months two police platoons are on the frontline in rotation and that in the period concerned Commander Neđo Zeljaja slept with them for only a night or two at the frontline and right away he “faked pneumonia” and continued working in the Police Station. Therefore, based on the same Note, the Accused Zeljaja even then did not stay at the positions during the day but slept for a night or two. The explanation of Witness A that these were not his own words but that he wrote that based on the discussion between two colleagues, was not accepted by the Court since the entire Note was written in the first person singular and it nowhere mentions that somebody else participated in its drafting with their views. The Court does not challenge that the Accused Zeljaja spent a night or two on the frontline but it does not make sense to the Court that the same Commander stayed for several days on the frontline given the fact that the witnesses consistently stated that in those days there were no battles on Humci and there was no threat at all, as well as that at leisure they were playing football. Taking into consideration other physical evidence from which it arises that in those days columns of refugees from Trnovo were arriving in Kalinovik, that the town was in chaos, it would be quite normal for the Police Commander to be in the Station where peace and order had to be established and not to be on the frontline where absolutely nothing was happening. The Court also notes that during the first interrogation Witness A did not mention the stay of the Accused Zeljaja on the frontline at all. Considering that all the aforementioned witnesses were longtime friends of the Accused Zeljaja, the Court holds that their testimonies about days-long stay of the Accused Zeljaja on Humci, following the fall of Rogoj, were aimed at diminishing the criminal responsibility of the Accused Zeljaja.

Pursuant to the Rule Book on Internal Organization of the Republic Secretariat of Internal Affairs of SRBiH (RSUP SRBiH) dated 21 January 1990, applicable at the relevant period, the commander of the police station shall manage the operation of the police station, he shall organize, plan and control performance of tasks and duties in maintenance of public law and order, prevent criminal offenses, arrest perpetrators of criminal offenses and protect personal security of people and property. The commander shall deploy the employees, take the appropriate measures in case of omissions, directly organize and participate in elaboration of all the plans, programs, reports, analyses and information falling within the scope of activities of the police station, evaluate security situation and shall be responsible for security and take part in crime scene investigations of serious criminal offenses, organize and be in charge of security.

Expert witness Mile Matijević, who was hired by the defense for the second Accused to testify about the organization and operation of the RS MUP at the relevant time, with particular reference to the organization and operation of the SJB Kalinovik and the status of the Accused Neđo Zeljaja, in his Findings and Opinion states that the RS MUP was established on 31 March 1992, and that it had five security services centers (CSB), one of which was located in Trebinje. The expert witness notes that the Rule Book on Internal

Organization in the RS MUP was not adopted right away and that as late as September 1992 the old 1990 RSUP SRBiH Rule Book was in force. A SJB for every municipality was established within every Public Security Center (CJB) and police stations were established within each SJB. Police stations could have substations in a certain area which was far away from the center (HQ) of the police station. The Kalinovik SJB inherited its organizational structure from the Rule Book on Internal Organization in force before the RS MUP was formed. The only change was that the SJB Kalinovik, pursuant to the RS Law on Internal Affairs, in terms of organization was now part of the newly-established CSB Trebinje.

At the main trial, when orally presenting his Findings and Opinion, expert witness Matijević said that the commanders of substations were subordinated to the Commander of the Police Station. He also stated that duty officers in the Police Station were directly subordinated to the Police Station Commander. This part of the Findings and Opinion of expert witness Matijević was accepted by the Court as correct and objective given that it is consistent with other presented evidence, both physical and subjective evidence. Also, the dispatch note of the SR BiH MUP dated 31 March 1992 shows that following the adoption of the Constitution of the Serb Republic of BiH, a set of laws including the Law on Internal Affairs was also adopted. These laws entered into force on 1 April 1992 and five regional CSBs were formed pursuant to the law concerned, given that a SJB would be formed in each municipality.

In his Findings and Opinion, expert witness Matijević further states that the SJB Kalinovik formed reserve police stations Kalinovik, Dobro Polje and Ulog, although he did not specify the source of information or a document which served as a basis to draw such conclusion. Further, the expert witness is of the opinion that newly-formed reserve police stations, as a rule, have their commanders who are directly reporting to the Chief of SJB and who are directly controlling the activities of the police when executing tasks in the field.

However, based on the document forwarded on 18 August 1992 by the SJB Kalinovik to the Executive Committee of the Municipality of Kalinovik and Kalinovik TG Command, it arises that at the relevant period there were 46 employees in the reserve police forces, 9 of whom were deployed to the Ulog substation while seven police officers from the Dobro Polje substation, in mid July, were deployed to the Serb Armed Forces, the Dobro Polje platoon, which was the reason for the substation to stop working. The same document includes the request for the Executive Committee of the Municipality of Kalinovik and the Kalinovik TG Command to jointly consider the problem.

The Note of Witness A reads that after Trnovo was taken by the Serb Army, which happened at the end of May 1992, according to the testimonies of all the heard witnesses from Trnovo, the Dobro Polje substation was closed down while the Ulog checkpoint existed just formally to control the passage of the conscripts.

Based on the aforementioned document as well as the testimony of Witness A, it is quite clear that at the relevant period there were no special reserve police stations in Dobro Polje and Ulog as stated by expert witness Matijević and used as a basis for a great deal of his subsequent conclusions.

Given that no specific documents were indicated based on which the expert witness made his conclusion, and considering the testimonies of numerous witnesses who, at the relevant time, were members of the Kalinovik Police Station, and the physical evidence inspected by the Court, the Court did not accept the Findings and Opinion in the part referring to the organization and operation of the SJB Kalinovik at the relevant time.

Also, the Court did not accept the Findings and Opinion of expert witness Matijević which refers to the status and authorities of Neđo Zeljaja during the period concerned. According to the written findings of expert witness Matijević, the Accused Neđo Zeljaja, based on the MUP Decision, retired on 31 March 1992 from the post of the Police Station sector leader for traffic control in Novo Sarajevo and then re-assigned to the SJB Kalinovik reserve forces. In the opinion of the same expert witness, the Accused Zeljaja was on sick leave until 1 June 1992 and was temporarily deployed to the post of the Commander of the Kalinovik Police Station as late as 6 March 1993, and somebody corrected the said Decision to 1992. The expert witness believes that Boško Govedarica, Chief of SJB Kalinovik, also took over direct control of the police and delegated some tasks to his police co-workers in order to provide for the smooth operation of this part of the service. In his conclusion, the expert witness states that the Accused Neđo Zeljaja was not the Commander of the Police Station in Kalinovik in the period from 1 April 1992 until 1 April 1993 either *de facto* or *de iure*.

When cross-examined at the main trial, expert witness Matijević pointed out that when he was drafting the Findings and Opinion he did not get all the required documents for inspection; that the Accused Zeljaja, as late as July 1992, did some tasks upon the order of Chief Boško Govedarica, that these tasks were partially falling within the scope of the Station Commander. Also, he stated that the commander of the police station was in charge of daily orders, reports, bulletin of daily events, minor offense claims, reports and service schedule. The salary of an SJB employee is determined based on the Rule Book on Salary, setting a coefficient for each post.

The defense for the second Accused filed into the case file the Certificate on duration of sick leave for Neđo Zeljaja issued by the Kalinovik Medical Center on 31 December 2007, stating that according to the medical record card kept by the Kalinovik Medical Center Neđo Zeljaja was on sick leave in the period from 3 February 1992 until 1 June 1992. These data were also used by expert Matijević when giving his Findings and Opinion.

However, inspecting the aforementioned medical record card of Neđo Zeljaja used when issuing the certificate concerned and attached, it can be seen that the Accused Neđo Zeljaja was examined and diagnosed with neuralgia and prescribed apaurin (valium) as a therapy. Also, on a couple of occasions in February he came for examination, once he was registered in March and on 1 June his blood pressure was checked and it was 130/100. In the column "incompetent for work" it is not indicated that he was on sick leave at all, although he retired as late as 31 March 1992. It ensues from the above mentioned facts as well as other physical evidence that he joined the SJB in April 1992; that in May 1992 he was personally writing some documents; then, in some other documents referring to that period he was also indicated as the Commander of the Kalinovik Police Station. Considering the testimonies of the heard witnesses who saw the Accused Zeljaja and were in contact with him both in May when a large group of civilians from Jelač was arrested and detained and later when the

civilians from Kalinovik were arrested and interrogated as well as during the entire period of the incrimination, it clearly arises that the argument of the defense pertaining to the sick leave of Nedo Zeljaja is incorrect, therefore, the Court did not accept it.

Further in the reasoning, the Court will evaluate the presented evidence and give legal definition of the criminal offense per Counts of the Indictment.

Accused: Ratko Bundalo and Nedo Zeljaja

Count 1a)

Unlike the Indictment which under two Counts (Count 1a and 1b) described the events referring to the capture of Bosniak civilians from the local community of Jeleč, the municipality of Foča, who, fleeing the attack of the Serb Armed Forces, attempted to cross through the territory of the Kalinovik municipality, and their detention at the Elementary School of Miladin Radojević and then the transport of men first to Bileća and then to Foča, the Panel put these events under one Count given that the same persons were captured, then transferred and also the events took place in continuity.

During the proceedings the Court indisputably found that in early May 1992, the Serb Armed Forces attacked the settlement of Jeleč, Municipality of Foča, and that around 280 civilians from the local community of Jeleč, fleeing the attack of the Serb Armed Forces, attempted to cross through the territory of the Kalinovik municipality, where they were surrounded and arrested in the zone of the settlement of Jažići in the municipality of Kalinovik. Then, men were separated from women, children and the elderly and detained at the Elementary School of Miladin Radojević, where they were guarded by police officers of SJB Kalinovik, while food for the detained men was being provided by the army from the military barracks of Gornji Logor in Kalinovik, which was under the command of Ratko Bundalo, and a few days after that the detained civilians from Jeleč, some 50 of them, including Muamer Mušanović, Mirzo Mušanović, Asim Zametica, Hasan Mušanović, Edhem Mušanović and others, were transported by Ratko Bundalo through his subordinating officers and soldiers first to the Bileća Camp, where they stayed for approximately 20 days, then returned to Kalinovik, where they stayed one night at the Elementary School of Miladin Radojević, and thereafter the army, assisted by SJB Kalinovik police officers, transferred them to the KPD Foča .

Such state of facts arises from the testimonies of numerous heard witnesses as well as from the physical evidence inspected by the Court.

In his testimony, Witness A said that he participated in the rescue operation of Bosniaks from Jeleč and that he was given such order by the SJB Chief, Boško Govedarica, given that the army officer, Rade Pavlović, was in charge of the operation. The army, civilian and military police participated in the operation as well as Dr. Filipović from Kalinovik, while Đoko Ždrale was driving the bus although he did not have a driving license. Bosniaks who were on the Husar hill were called to come to Kalinovik and while they were waiting to gather he heard the army artillery, on the positions some 200 to 300 meters away from him, was firing at Jeleč. On the occasion concerned, he was at the Vratlo pass, between

Kalinovik and Jeleč. It was not clear to him why they called them to round up the population when the artillery was firing at their village. At that moment, somebody said – “...look what that guy Pavlović is doing, our artillery is firing at Jeleč and around Jeleč and we are rounding up people to help them.” He does not know who was really commanding the artillery at that moment. He knows that at the said time the Rijeka Corps which came there had the artillery and according to the stories he had heard Ratko Bundalo took over the commanding role. While he was at Vratlo, Pero Govedarica came by and he was on the combat armored vehicle, on the left side from him. The artillery was not visible because of the forest but he heard the firing of shells and clearly saw explosions when the shells were descending. Witness A stated that the agreed meeting point was the café at Sreto Kovačević's in the settlement of Jažići, Kalinovik municipality. A number of Bosniaks were transported from Husar to Kalinovik and accommodated in the houses, while a significant number of the inhabitants from Jeleč remained at Sreto's café. He does not know what happened to this group of Bosniaks who arrived there. Regarding the men from Jeleč, the witness knows that they were detained and taken to Bileća. Then, they were taken back to Kalinovik and transferred to Foča. Witness A points out that he was escorting Bosniak men from Jeleč on their way to Foča. The police complained about this escort and wanted to refuse the task. They thought that it was the military police that should have to carry out the task. Boško Govedarica said that he contacted Commander Bundalo and that the military police from Kalinovik would escort the convoy and that the civilian police would provide security for the military police. For security, one vehicle, as a mine sweeper, was driving in front of the convoy. Witness A states that more than 30 persons were taken to the KPD Foča and the military police had the list of these persons. When they returned, they wrote a report on the back side of the patrol order and the Accused Neđo Zeljaja, on behalf of the Chief, signed this patrol order many times.

Witness Rade Pavlović said in his testimony that in 1986 he passed the exam for the rank of major, that when officer Perović left he was appointed to the duty of the range commander in Kalinovik where he had one battery and one smaller unit for support to the security and repairs of the facilities. In May, the Accused Bundalo said that he was taking over the command since he had a higher rank and by his duty he was the most responsible in that area, which was accepted by the witness. The witness stresses that following the conflict in Foča, on one occasion, the refugees from Jeleč, women, older men and younger men came to town and that he saw them while sitting in Sreto's café in Jažići. At that time he was uniformed. He is pointing out that he directed the refugees to go to the village of Jelašca, that is, to the places where they had somebody, to find a way, which they did. With regard to the captured men, Bosniaks from Jeleč, witness Pavlović states that on one occasion he set off towards Bileća and that Ratko Bundalo asked him to take with him the people who were in the school in Kalinovik. He indicates that at the time concerned only Bundalo could tell him to take over those persons and that he would obey him. These people were transferred to Bileća by two military trucks. The truck drivers were soldiers and the escort consisted of four uniformed armed persons. In Bileća, he surrendered these persons to the Commander given, as he states, that at the time concerned only Bileća and Sarajevo had military prisons. The persons were surrendered as listed. He is stressing that Ratko Bundalo told him that people were transferred to Bileća because they would be safer in Bileća.

In his testimony, witness Asim Zametica states that he lived in Jeleč until 4 May 1992 when they were attacked, in a manner that the village was shelled from the direction of both

Miljevina and Kalinovik. Due to these attacks they ran away to the forest where they were hiding with women and children. He stresses that they requested him to surrender the rifle, so he did it, and surrendered the rifle to some person named Mima from Dobro Polje who was in an APC and uniformed. After that, he and some other locals from Jeleč were told to come to Kalinovik for interrogation and a civilian van was sent for them, which transported them to the police in Kalinovik. There, he saw Neđo Zeljaja whom he knew well and who asked him about his whereabouts and told them to go to the school. In the school, he found a large number of persons from Jeleč. The first day there was no security in the school but on the second day already he could not leave the school at all. At the time, the guards in the school, who were wearing both civilian clothes and uniforms, started to make the list of persons by writing down names, surnames and years of birth. Whoever had the year of birth older than 1936 was released. In addition to the men, there were also women, children and old men in the school. Some women were leaving the school. After three days in the school, two military trucks with tarpaulin arrived at the school and there he also saw Pavlović whom he had known from before, and he was the one reading the list and those whose names were read out would enter the trucks. Some 42-43 Bosniak men were in the trucks. They came to Bileća where they were placed in the prison. Some Elez from Borije was also escorting the trucks and the escorts were armed and in military uniforms. From Bileća they were all taken back to Kalinovik and they first came to the Gornji logor and then they were sent to the police station where they were surrendered according to the list and from there they were taken to the school. They spent one night in the school and the next day they started making the list again, and then a bus came to pick them up, they got on the bus and started in the direction of the municipality where he saw a large group of people. He saw one police officer throwing the order on the bus step and there he learned that the police did not want to escort them to Foča, to the prison. On their way to Foča, one police vehicle with reserve police officers escorted them. They were brought to the KPD Foča, 45 Bosniak men, out of whom 35 did not survive that camp. The witness says that he knew the Accused Neđo Zeljaja but that at the time Zeljaja did not tell him any reason why they were going to the school. He knows that Meho Mušanović asked Zeljaja why they were taking them to the school and Zeljaja replied only: "Move, move".

In his testimony, witness Ahmo Mušanović says that he lived in the settlement of Drača, Foča municipality, before the war but that he worked in Kalinovik. The settlement of Drača was a part of the local community Jeleč which had 900 inhabitants before the war, 70% Muslims. In mid April the first armed conflicts in the area took place when for 19 days he was hiding in the forests. On that occasion, he saw that the artillery was firing from the direction of Kalinovik, Dobre Vode and Trešnjevo brdo in the direction of Foča. On 4 May 1992, the attack on Jeleč started. He saw the army coming from the direction of Miljevina and Kalinovik. The army from Kalinovik was coming down to Jeleč from the direction of Vratlo and Trešnjevo brdo. The infantry attacked with a support of artillery which was targeting the village with some guided missiles and recoilless gun from Vratlo and Trešnjevo brdo. The houses were burned down and people fled to the forests on the Zelengora mountain. He personally saw when a certain Pura from the settlement of Jelašca, Kalinovik municipality, who used to work in Centrotrans and who arrived at his house in an APC, set his house on fire. On the Husad mountain, Lučice settlement, around 280 persons from Jeleč gathered in a mass of refugees including 45 adult men who from that place started towards Sarajevo. When they arrived at the Sreto's café, in the settlement of Jažići, Kalinovik municipality, they surrounded them from all sides. He saw many acquaintances

from Kalinovik who were in reserve police and military. There were around 30 of them and they were all armed. The buses and trucks arrived from the direction of Kalinovik and they started to sort them, that is, they separated women and children from men, and took them away by different vehicles. He knew almost all the police officers that he saw, including Dragan Perić, the Accused Neđo Zeljaja, Doder, Terzić and others. In his opinion, the Accused Zeljaja came as a commander and he remembers that on that occasion he was standing and talking to Nedžib Šljivo and Asim Hadžimuratović. In front of the Sreto's café the police were issuing orders and doing the sorting of the people. He knows the Accused Neđo Zeljaja well as a commander from before. He cannot say whether Zeljaja was armed on that occasion. Together with the other men he was brought to the Elementary School, to the gym, wherefrom, in groups of 5-6, they were taken to the MUP for interrogation. Milivoje Sladoje and Commander Neđo Zeljaja were interrogating them in the school. Mitar Govedarica and one army officer unknown to him were present there. After 6-7 days that he spent in the school a larger number of police officers with Commander Neđo Zeljaja came to the school. An officer, major, whom he believes was Commander Bundalo, started reading out the names of the captured persons from the list. First, he read out Meho Mušanović's name, while his name was read out as the 22nd. At the moment when his name was read out he said that he was refusing to go, so Milivoje Sladoje requested the person reading the list to release him so he released him. He remembers that finally the police used force to bundle two men by the last name Nikšić into the military truck. Among the persons taken away by the truck there were the following: Asim Zametica, Ahmo Zametica, Kasim Mušanović, Edhem Mušanović, Hasan Mušanović, Mirzo Mušanović, Muamer Mušanović, Rasim Džubur and others. Around 50 persons went to Bileća, most of whom were subsequently killed and many of them were located and exhumed. The witness states that Asim Zametica was not in the group which together with him went to the Sreto's café but he came to the school in Kalinovik, two-three days after them. The witness indicates that he was returned to the school where he was engaged in work. One day, he tried to escape but they caught him and brought him to MUP where he was interrogated by Rajko Višnjevac who, in the presence of Neđo Zeljaja, told them to take him and told Neđo Zeljaja to kill him if he tried to escape again. While he was staying in the school, Mika Badnjar was bringing food by the Niva vehicle. During the cross-examination, the witness stated that he told SIPA that a person with a rank of major was calling the roll, not saying his name, and he said that he could not remember whether Zeljaja was present there on the occasion.

In his testimony, witness X says that he lived in the village Jeleč, Foča municipality, until early May 1992, when the artillery attacked the village, first from the direction of Miljevina and then also from the direction of Kalinovik. The village was burned down, the army entered the village and around 40 villagers were killed. A large number of Bosniaks from Jeleč came to the territory of Kalinovik, to the place where the Sreto's café was. There, he saw Commander Neđo Zeljaja who was the only one he knew. He stresses that Neđo Zeljaja ordered that the people be taken to the Kalinovik school by bus. On that occasion, he also talked to Neđo Zeljaja who approached him and said that all the persons who had weapons, pistol, knife or something similar should surrender those so that they should not look for them themselves. At the spot, there were persons in uniforms, both military and police uniforms. On that occasion, one major ordered him to go to Foča, together with a driver and a Muslim doctor from Kalinovik, since one woman was wounded, and they did it. Then he returned to Kalinovik, where he stayed in the school for a couple of days and then men over 65 were separated from the younger ones. He thinks that Neđo Zeljaja was also present

during the separation. He spent 21 days in Bileća and then again returned to Kalinovik where they stayed one night in the school and were then taken to the KPD Foča where he was detained for more than six months. Most of the persons that came with him from Kalinovik to Foča were murdered in Foča.

Witness Memna Jašarević says that in May a large number of refugees who were expelled from Jeleč came to Kalinovik, including her sister-in-law, that these persons were detained in the Elementary School and guarded by the police. The men stayed in the school for a couple of days and were then taken to Bihać, while upon her proposal, between 50-60 women, children and old men were released from the school and accommodated in the houses. She accommodated one Bosniak family in her house and these persons, in an organized manner, were transferred to Ljuta by buses. The starting point for Ljuta was in front of the school in Kalinovik where they were searched by the police officers and on that occasion they singled out a 14-year-old boy and an old man from the group of women, children and old men, but at her request they let them go with the others.

Witness F, in his testimony, also confirmed that some women and children from Jeleč stayed with Bosniak families from the territory of Kalinovik stating that he accommodated two refugees from Jeleč, who stayed at his place for some 10-15 days, and after that in an organized manner they were taken to Ljuta by bus. The men from Jeleč were detained and then taken to Bileća. He heard the aforementioned from the other people but did not see it.

Also, in her testimony, witness Mevlida Čustović indicates that in May 1992 she lived in the settlement of Mjehovina, Kalinovik municipality, and that some Muslim refugees from Jeleč were staying at her place. They stayed in her house for 7-8 days and then by organized transport they left in the direction of Ljuta.

In his testimony, witness Danilo Đorem, who was a reserve police officer of the SJB Kalinovik, states that Muslim men from Jeleč were taken to Kalinovik. They were in the school where the police provided security and he personally participated in it. Subsequently, they were taken to Bileća by buses, then from Bileća they returned to Kalinovik where they stayed one night and then left for Foča.

In his testimony, witness Aziz Đozo, states that he knows that in the spring of 1992 the village of Jeleč, Foča municipality, was attacked and that the village was completely burned down and that the inhabitants fled to the Husar mountain wherefrom many of them went to Kalinovik.

In his testimony witness Fejzija Hadžić notes that until 25 June 1992 he worked as the director of the public utility company in Kalinovik. In early May, around the 5th – 6th May 1992, he heard that Muslim villages in the Jeleč valley, Foča municipality, were attacked. He heard that the artillery from Kalinovik was firing in the direction of Jeleč and later when he came to the territory concerned he personally saw the traces of explosions of the artillery shells. At that time, Mitar Govedarica, who worked in the Police Station in Kalinovik, and Nikola Kovač, the then President of the municipal assembly, came to his house and told him that a larger number of refugees from Jeleč arrived in Kalinovik and that they were accommodated in the Elementary School including many women and children who were in need of milk, so it would be necessary to organize their accommodation in Mjehovina to

give these women shelter. He knows that after that a number of women and children came to the village of Mjehovina where they were accommodated in the houses and one family from Jeleč was in his house. Witness Hodžić, states that one day when he was passing by the Elementary School he saw the parked military vehicles with uniformed persons next to them, when men from Jeleč were taken to Bileća by trucks. Among the aforementioned persons he recognized members of Zametica, Mušanović and Musić families. Women and children stayed in the school for a certain period of time when they were transferred from the Elementary School to the houses in Kalinovik and Mjehovina and at their insistence they were then transported to Ljuta by buses. Later, these men were returned from Bileća and right away taken to Foča.

Inspecting the List of Persons who took refuge and who were then sent to the KPD Foča, which was admitted to the evidence by the defense for the second Accused, and registered by the SJB Kalinovik on 2 June 1992, it can be seen that on that occasion a total of 47 Bosniak men were registered and almost all of them were previously residing in Jeleč or Drač, Foča municipality, and that they arrived in Kalinovik on 7 May 1992 while only two of them arrived one, that is, two days before that. Among the persons who took refuge there were: Kasim Mušanović, Muamer Mušanović, Mirsad Mušanović, Asim Zametica, Edhem Mušanović, Rasim Đubur and others. On the last page of this document it was written by hand that on 1 June 1992, at 15,15 hrs, these persons were surrendered to the Miljevina Crisis Staff, and then to the KPD Foča, where the signature of the persons who accepted them could be seen.

The fact that in the specific case it was really a deprivation of liberty and detention of the persons from the territory of Jeleč and that the police and army from Kalinovik participated in the deprivation of liberty concerned can be seen from the Activity Report of the SJB Kalinovik for the period 1 April 1992 - 15 August 1992. It is indicated in the said Report that during the war activities in the territory of Foča municipality a part of Muslim armed forces attempted to break out across the Kalinovik territory with the intention to join the stronger Muslim forces in Trnovo and on Igman. By the efficient action of Serb army and SJB members they made an ambush and on that occasion 55 members of Muslim armed forces were captured. The captured persons were heard in detail and interrogated, which was recorded in the official report forwarded to the Military Command, Kalinovik-Military Security Department. It is also written in this Report that pursuant to the Military Command Order the captured persons were transferred to the Bileća prison and then to Foča.

The Court concludes that according to the aforementioned Report these were allegedly the armed Muslim forces which tried to break out across the territory of Kalinovik municipality. Based on the testimonies of all the aforementioned witnesses this is not correct, considering that from the consistent testimonies of witnesses Mušanović, Zametica and Witness X it can be seen that Bosniak men did not have any weapons whatsoever when they were arrested and the reason for their crossing over the territory of Kalinovik was indisputably to flee from the attack of "Serb Armed Forces" in the territory of the Jeleč settlement.

However, the Report clearly states that men, 55 of them, were captured, interrogated and the appropriate Report forwarded to the Military Command in Kalinovik and that in this operation of capturing both the military and police had participated. It arises from the testimonies of the above mentioned witnesses that the Accused Neđo Zeljaja was present at

the Sreto's café in Jažići when Bosniaks from Jeleč were captured, and that he ordered that the captured Bosniaks be taken to the school. Also, the witnesses stated that Accused Zeljaja was interrogating them, that is, was present during their interrogation on the premises of the SJB Kalinovik. It stems from the testimony of witness Rade Pavlović, which was confirmed by the testimonies of other witnesses, that Commander Bundalo ordered that the aforementioned persons be taken to Bileća, to the military prison, and when they were returned, the military, together with the police, again organized the transport of these persons to the KPD Foča.

Therefore, based on all the foregoing pieces of evidence accepted by the Court in this part since they are consistent and supplement each other it clearly arises that in early May 1992 the "Serb Armed Forces" attacked the settlement of Jeleč, located in the territory of Foča municipality, and that approximately 280 civilians from the local community of Jeleč, fleeing the attack of the Serb Armed Forces, attempted to cross through the territory of the Kalinovik municipality where in the zone of the settlement of Jažići in the municipality of Kalinovik they were surrounded and captured, after which men were forcibly separated from women, children and the elderly and detained at the Elementary School of Miladin Radojević, where they were guarded by police officers of the SJB Kalinovik, while food for the detained men was being provided by the army from the military barracks of Gornji Logor /the Upper Camp/ in Kalinovik, which was under the command of Ratko Bundalo. A couple of days later, the detained civilians, men from Jeleč, approximately 50 of them, were transported by Ratko Bundalo through his subordinating officers and soldiers first to the Bileća Camp, where they stayed for approximately 20 days, then returned to Kalinovik, where they stayed one night at the Elementary School of Miladin Radojević, after which the army with the participation of SJB Kalinovik police officers transferred them to the KPD Foča.

In the course of the aforementioned events, the Accused Bundalo and Zeljaja ordered and committed persecution of Bosniaks given that Zeljaja ordered to take the captured persons to the school by buses, and then interrogated them, while the Accused Bundalo ordered their transfer to Bileća, and then to Foča. The detained Bosniak population in the school were guarded by the police whose Commander was the Accused Zeljaja and the food for the detained men was being provided by the army whose Commander was Ratko Bundalo.

Starting from the aforementioned established state of facts, the Court, trusting the witnesses who testified and considering the presented physical evidence, concluded that the described acts satisfy the elements of the criminal offense of Crimes against Humanity under Article 172(1) h) in conjunction with d), and e) of the CPC of BiH, given that the persons from Jeleč, as Bosniak civilians, were detained and deprived of freedom of movement, that they were guarded by the police in Kalinovik, that no proceedings were conducted against them pertaining to their capture, that they were not advised of the real reasons for deprivation of liberty, that they had never received any decision on capturing and that by the military vehicles and according to the already made list they were forcibly transferred to Bileća and then to the KPD Foča. These acts had discriminatory grounds given that all the captured and then transferred persons were Bosniaks and that the acts concerned were committed aimed at their persecution and expulsion from the territory of Kalinovik and beyond.

Count 1b)

During the proceedings the Court found the following: that on 25 June 1992 and on the following days Neđo Zeljaja, as the Commander of Police Station of SJB Kalinovik, upon the decision by the Crisis Staff of Kalinovik municipality, organized and personally participated in the arrests of Bosniak men in Kalinovik and the surrounding villages of Mjehovina, Jelašca and Vihovići; they detained the arrested civilians at the Gym of the Elementary School of Miladin Radojević, where they were guarded by the police officers of SJB Kalinovik, where they stayed until 7 July or close to that date, which is when the transfer of the detained Bosniaks was organized from the school to the camp of Barutni Magacin, a military facility under the command of Ratko Bundalo, secured by barb wire, mined, with military guards;

Such state of facts was established based on the testimonies of numerous witnesses as well as on the physical evidence admitted to case record.

In his testimony, witness Fejzija Hadžić, states that in May 1992 all Bosniak able-bodied men had an obligation to report daily to the Police Station in Kalinovik otherwise all their property would be confiscated. The members of the reserve police in Kalinovik told them the said decision and they were told that such decision was made by the Kalinovik Crisis Staff which was established by the political parties and authorities in Kalinovik. At the time he did not see the said decision but had an opportunity to see it in the ICTY where he testified. According to this decision, as stated by the witness, every day he reported to the duty officer who was registering it in the book. On 25 June 1992, he went to work in the public utility company in Kalinovik where he was the director, and when he returned home to the village of Mjehovina he found Gojko Lalović, who was the Head of the Civil Defense, and Miko Badnjar who were serving the call-up papers for the Secretariat of National Defense of the Municipality of Kalinovik, which read that they have to report to the municipality for further work obligations. He received such a call up paper and together with several men from the village of Mjehovina he came in front of the municipal building where they found other persons who arrived based on the same paper from the territory of Jelašca and Vihovići. As soon as he arrived in front of the municipal building he noticed a large number of reserve police officers who started surrounding them. There, in front of the municipal building again he saw Gojko Lalović, then the TAM-110 truck arrived driven by police officer Milan Perić, while Spasoje Doder, Commander of reserve police forces, came with him. Spasoje Doder ordered them to get on the truck, so around 40 of them, escorted by the reserve police forces, were taken by this truck to the Elementary School where they were accommodated at the gym. Upon the arrival at the school, he saw that in addition to the reserve police forces there were active police officers Terzić and Saša Cerovina who searched them. The same night, the police brought more people to the gym of the Elementary School. After the arrival at the gym of the Elementary School they found there 15 men who had been captured in Trnovo and these people were together with them the entire period both in the school and in the Barutni magacin. In the school, there were some 10-15 police officers from Kalinovik among whom he recognized many. The witness points out that he has heard from his wife's family that on the day concerned his father-in-law, Ibro Pervan from Jelašca, was taken by Neđo Zeljaja himself, who told them that they had to interrogate him about something and that he would be taken back, but his father-in-law never returned. The same night, Zaim Ćusto, Ismet Hatić, Rašid Redžović and others were

taken from the gym to the Police Station, and when they returned Ismet Hatić said that he was interrogated by Commander Neđo Zeljaja in the Police Station. In the gym, they were sleeping on the floor, had some blankets, twice a day they were getting bad quality food and they were allowed to receive daily family visits to bring them food. Two-three days following their detention in the school, Slavko Sladoje, on behalf the Crisis Staff, came telling them that they were detained there for the sake of their personal security. During their stay at the school they could not leave the building, the school door was locked, and it depended on a good will of the guards whether they would be allowed to go to the toilet. The school was guarded by the civilian police in blue uniforms. They stayed there until 6 or 7 July when the police officers told them to pack and go to the Barutni magacin camp. As far as he recalls three military vehicles with tarpaulins were parked in front of the school, the drivers were in military uniforms, and the armed civilian police officers escorted them to the camp. Željko Mandić, reserve police officer from Kalinovik, was in his vehicle. In Barutni magacin, he saw Đorđislav Aškraba, who said that he was the warden and in charge of them while they were in the camp and there were some other persons in military uniforms among whom he recognized the following: Mikailo Lalović, Milivoje Lalović, Milan Vuković, Vojo Lalović who were setting up the camp. The first night in Barutni magacin they slept on wooden pallets and later the families were allowed to bring blankets. Nobody told them the reasons of their further detention. Approximately 74 persons were brought to this camp. Barutni magacin was closed with iron door and in one section there was a barrel which they used as a toilet while they were in the building. They were getting water in cisterns, going out in groups, for 15 minutes. There was a gatehouse with the guards in military uniforms and a guard post next to the entrance gate, the other guard post opposite to it and as it seems to him there were three guard posts in total. Outside the facility there was a latrine and no bathroom. They were getting food twice a day and in small quantities. Branko Banjanin, who was wearing a military uniform, was bringing food by car. Also, all the guards in Barutni magacin were in military uniforms.

In her testimony, witness Đemila Redžović aka Zlata states that her husband Rašid worked as a secretary in the Viteks company before the conflict and on 25 June 1992 got the call-up paper to report to the municipality for work obligation in the saw-mill of the Šumarstvo /Forestry/. A larger number of Bosniaks came in front of the municipal building that day, and at some point the police surrounded them all. A man by the name of Ćifo Mandić told her that all of them were taken to the school in Kalinovik so she went to the school where she found the uniformed civilian police. They allowed them to enter the school so she saw her husband, brought him coffee and breakfast. That day she asked to speak with Boško Govedarica and Grujo Lalović who was number one and the most powerful person in Kalinovik. Grujo was in some meeting and when he entered he pointed at Ratko Bundalo whom she did not know from before and told her that he would send Ratko to search her apartment and house. A few days after, she heard from her father-in-law that her husband was transferred to Barutni magacin. Then she went to Barutni magacin to visit him and saw that it was fenced in with wire. They told her that Đorđislav Aškraba was in charge. She managed to see her husband when Danilo Vuković, who was in a military uniform, allowed her. She saw the husband for the last time on 27 July 1992 when she came to visit him.

The Court inspected the physical evidence admitted to the case file which refers to this Count of the Indictment. Inspecting the call-up papers of the Municipal Secretariat of National Defense of the Municipality of Kalinovik, dated 25 June 1992, it stems that Rašid

Redžović, husband of Đemila, received the call-up paper to report the same day to the premises of the Municipal Secretariat of National Defense of the Municipality of Kalinovik to determine the stay and work obligation in the companies of the Drvna industrija i Šumarstvo Zelengora /Zelengora Wood Industry and Forestry/.

Inspecting the conclusions of the War Command, the Kalinovik Municipal Assembly, it ensues that the arrest operation was carried out based on the Conclusion of the War Command, the Kalinovik Municipal Assembly, dated 17 May 1992, where it can be seen that it was concluded that in the period from 20 May until 25 May 1992 all the Bosniak men fit for military service with the place of residence in Kalinovik had to report to the Secretariat of National Defense and if they failed to do so that they would be proclaimed the enemies of the SDS, banned to return to the territory of the municipality and that all their property would be confiscated. Among others, the SJB Kalinovik was tasked with the execution of this decision.

In her testimony, witness Zlatka Hadžić stated that she lived in the village of Mjehovina before the conflict and that members of the Kalinovik police including Saša Cerovina took her husband Veiz to the Kalinovik Police Station and interrogated. At that time they did not allow her to visit him but she got Neđo Zeljaja's telephone number who, as she states, was the Commander in the Police Station. Subsequently, her husband was released and when in May the Chetniks from Miljevina came to Kalinovik, allegedly to slaughter Muslims, it caused panic among the Bosniaks. Her husband told her that a meeting would be held in their house that would be attended by Grujo Lalović, Bundalo and Mandić and that they would talk to Muslims. There, it was agreed that nothing would happen to them if they surrendered all the weapons and report regularly to the Kalinovik Police Station. On 25 June 1992, her husband was taken to Kalinovik. He was taken by the reserve police officers Milan Lalović aka Mika, Nikola Bozalo and Radomir Mandić aka Ćifo. On that occasion, many other Bosniak men from Mjehovina were taken away. In the evening, she learned that they were taken to the Elementary School in Kalinovik. When she came to visit her husband she saw police officers Saša Cerovina and Predrag Terzić who inspected her bag and allowed her to take food to her husband in the school. She would go in front of the school every day. Her husband stayed in the school 7-10 days wherefrom he was transferred to Barutni magacin, where she recognized Đorđislav Aškraha whom she heard was in charge. Again, she was going to Barutni magacin every day, taking food and clothes to her husband, and on 29 July 1992 she went to Barutni magacin for the last time when she saw nobody. Her husband was later murdered and found in the tunnels in Miljevina.

Witness Elvir Ćusto, who at the time of the relevant events was 15 years old, states that a military truck arrived in the village of Jelašca on 25 June 1992 and that he saw that soldiers were taking some people to the trucks but due to the distance from the spot he was not able to recognize who that was. When he proceeded home from that place, police officers Saša Cerovina and Predrag Terzić in blue uniforms came behind his back and asked him where his brother Nedžad was. When he replied that he did not know, Saša punched him in the belly. The other members of this group of police officers went in the direction of Bosniak houses in the village of Jelašca. Police officer Aleksandar Cerovina aka Saša came to his house and took out from the house his second eldest brother Almir, who was 17 years old, and together with Terzić he snatched him from his mother and took him to the truck. In that group of police officers, some 20 of them, he recognized Milan Perić and Ilija Đorem.

These police officers had blue police uniforms and weapons. It was a military truck and the driver in a military olive drab uniform was already in the truck. Then, Ilija Đorem also brought Muhamed Bičo, his neighbor, to the truck. That day, Bosniaks who were employed were sent some call-up papers to report for some job given that some people did report and some did not. They would come to pick up a person who failed to report. The following day, when he came to Kalinovik with his mother he heard that all the Bosniaks were detained in the Miladin Radojević Elementary School. Then, they were allowed visits and it was the last time he saw brother Almir and father Zaim. As for his father, prior to that, he did not know that he had been arrested, considering that a day before he received the call-up paper he had gone to see neighbor Nasuf Bičo. A police officer was a guard in the school. Due to this event, together with the other boys of his age, soon he fled to the free territory. He heard that his father got killed at Rogoj. From Fevzija Hadžić he heard that his brother Almir was together with him during the execution by firing squad in the settlement of Ratine, nearby Tuzlak's stable, but his body has never been identified.

Witness Dika Suljić lived in the village of Vihovići, Kalinovik municipality, and states that her husband Remzo was captured on 25 June 1992 while he was at work. That day, around 14,00 hrs the police and army came to their village. There were two military and one police vehicles as well as an ambulance. She saw many uniformed soldiers, dressed in the JNA uniforms, who surrounded their houses. On that occasion, younger men were arrested including her brother-in-law who was taken away by three soldiers. Her son Elvir went to Kalinovik that day to report to the MUP with his two cousins since at the relevant period there was an obligation to report to the MUP. On that occasion, they were also arrested. Since none of them returned home, in the evening she went to see acquaintance Milan Šupeta who was an SDS member, and he told her that they were arrested for their own safety and that they would be interrogated. The following day, with Šupeta, she went to see Boško Govedarica, who told them to go in front of the Elementary School. In front of the school she only recognized Mičo Mandić who told her that her husband and son were at the gym and to bring them some food. The witness claims that they were at the gym and when she saw them they did not know why they were arrested and told her that nobody addressed them. After that, with women from Vihovići, she also went to see Grujo Lalović who spoke with them saying that he was not the one who arrested them but that it was the army and police, and that the executive authorities would hold a meeting with the army and police. On that occasion, Nikola Kovač and Milivoje Sladoje, who were in the Crisis Staff, attended their discussion. The captured men stayed around ten days in the school and one day two women who went to bring them food returned saying that they had been transferred to *Barutni magacin* and that they should urgently take them blankets and mattresses. She was going to *Barutni magacin* almost every day, it was fenced in with wire and among the uniformed persons she knew Đorđislav Aškraha who went to school with her. The guards were around the warehouse and at the gate.

Witness Demila Suljić also lived in Vihovići and from the testimony of this witness it arises that on 25 June 1992 the police and army came to the village of Vihovići. She recognized Simić, Doder, Macan and Miloš Veletić. They were all armed. When they found somebody they would pick him up and take away. On that occasion, her husband and two sons were taken away. First they were in the Elementary School and then in *Barutni magacin*. Her husband was found in a grave, in the tunnels nearby Miljevina, while she heard that her sons were killed in the stable and that they were burned to death in the stable.

In her testimony, witness Hasna Ćusto states that on 25 June 1992 Srđan Puhalo, who at the time was wearing a uniform, came to her village of Jelašca and brought call-up papers for her husband who at the relevant time went to see Nasif Bićo. After that a military truck arrived in front of her house and 20-30 police officers got out of the truck. Then, police officer Saša Cerovina took her 17-year-old son Almir out of the house, while Obren Đorem took out Muharem Bićo. Both of them were loaded onto the truck and taken away. They were taken to the school in Kalinovik. The following day, when she went to the school, apart from her son and husband she saw her two brothers and several Bosniak inhabitants from Jelašca, Mjehovina and Vihovići. Later, she heard that her husband was taken out from Barutni magacin on 4 August 1992 and killed in a human shield, while she learned from Fevzija Hadžić that her son was killed and burned to death in the stable. She fully corroborates the testimony of her son Elvir.

Rukija Rogoj also states that Puhalo came to the village of Jelašca on 25 June 1992 and brought the call-up papers for all the men in the village, including her husband and son, to report to Kalinovik. Since the men decided not to report, the police with a truck came to the village. Among the police officers she recognized Perica Gočević, Predrag Đorem, Spasoje Doder who were uniformed and armed. They said that Vukica Manjak had just been killed, so for their own safety they were taking them to Kalinovik. Her sons escaped to the forest and later she heard from her son Rusmir that he was caught and captured there but they let him escape. Also, she heard from Pervan that he talked to Neđo Zeljaja about this event and that Zeljaja told him that if their children had surrendered that all of them would have been released. At the time concerned, Zeljaja was the Police Commander.

Witness Ešrefa Škoro who lived in Kalinovik stated that on the relevant day Rajko Višnjevac, SJB Kalinovik inspector, arrested her husband who was first detained in the school and then transferred to Barutni magacin. That day she personally saw when the Kalinovik police brought in Jusuf Hadžić.

Witness Mevlida Ćustović stated that on 25 June 1992 she was working, so when she arrived in the village of Mjehovina, where her parents used to live, police officer Rade Sladoje told her that she could not leave Kalinovik because some order was in force. Then she went to the SUP and looked for Neđo Zeljaja who, as she thinks, was the Commander of the Police Station. She did not find him but they confirmed to her that there indeed was such an order. She saw her two co-workers, Mehmed Ahmethodžić and Hasan Hadžić, at the SUP stairs, who also could not leave Kalinovik, so she was standing with them in front of the Police Station. Then, two police officers came by, one of whom was Ranko Cerovina, and took away these two co-workers in the direction of the school. When she started home, at the outskirts of Kalinovik, while passing by the municipal building, she saw some twenty people and among them recognized her cousin Enes Hadžić who told her that they had received the call-up papers for a meeting about work obligation. That day, she also went to see Boško Govedarica, Chief of SJB, who told her that she could leave Kalinovik, called somebody on a hand-held radio, so she managed to go to Mjehovina. Along the road, she saw a certain number of Muslims in front of the school and the police standing in front of them. Along the way, she heard from a neighbor that all the men from the village of Mjehovina had been taken away. When she arrived at her parent's house she found husband Ramiz while her father had gone to Kalinovik for a meeting. The following day she went to

Kalinovik, to see Grujo Lalović, one of the top and most responsible persons in the SDS and the municipality. She entered the office of the Executive Committee of the Municipal Assembly, where besides Grujo she also found Slavko Lalović, one of the SDS founders. Grujo told her that all the men had been taken to Kalinovik for their own safety because Vukica Manjak had been killed earlier that day. At the moment when she was leaving the office of Grujo Lalović she saw that uniformed Petar Jovović aka Dene, who was an officer of some special unit, entered the office. Neđo Zeljaja also arrived as well as another person in a military uniform who seemed to be coming directly from the frontline. Then she heard Neđo Zeljaja telling Grujo Lalović that her husband Ramiz had not been arrested. She knows the Accused Zeljaja well and she was a guest at his wedding when he got married. After that she went to the school to see her father. The school was guarded by the police. Then she left Mjehovina with her family and never saw her father Jusuf Hadžić again. His mortal remains have been discovered in Miljevina.

In her testimony, witness Remza Šurković states that on 25 June 1992 numerous Bosniak men were taken away from the settlement of Vihovići, Kalinovik municipality, where she lived at the time concerned, to Kalinovik. Her father, upon the call-up paper for work obligation, went to Kalinovik and together with the other Bosniaks from the village was detained in the Elementary School wherefrom he was transferred to Barutni magacin. The Elementary School was guarded by the police, while Barutni magacin was also guarded and was fenced in with wire.

Witness Ismir Rogoj, from the village of Jelašca, states that on 25 June 1992, he received the call-up paper to report to Kalinovik, for a meeting referring to work obligation, but he decided not to go. His father Refik however decided to go to Kalinovik as requested. Sometime in the afternoon, four neighbors came to his house and told him to flee since they were taking away men from the village. Then, together with these neighbors and brother Refik he started fleeing in the direction of the woods. He saw two military trucks when they arrived in the village. He heard that they were shooting after them. His brother surrendered but he stayed in the woods. He surrendered to two individuals, Slobodan Sudžum and Sajo Lalović, who were in military uniforms. Subsequently he heard that they brought his brother to the village, to the police, which let him flee. The father never returned.

Also in her testimony, witness Fadila Hatić states that she lived in the village of Jelašca, and that her husband was called to go to Kalinovik to work and after that he did not return. He was detained in the Elementary School and then transferred to Barutni magacin. She indicates that on the day concerned two trucks with tarpaulin arrived in the village and that they were capturing civilians and looking for weapons. Some civilians then fled to the forests.

Witness Zijada Hatić from Jelašca states that in June her husband received the call to go to Kalinovik for a meeting where he was arrested and taken to the Elementary School. There she visited him once and then they were transferred to Barutni magacin.

Witness G states that he lived in Kalinovik and on the relevant day he received the call-up paper for work obligation. Civilian police officer Saša Cerovina and military police officer Ćifo came to pick him up. They took him to the Police where there were Zeljaja and Govedarica. At the time, he did not talk to them. They took his particulars and then took

him to the Elementary School where he was accommodated at the gym together with the other arrested persons. The police guarded the school. He spent 12 days there. He does not know the reason for detention. He received no document on the deprivation of liberty. The police said that they were safer in the school. After 12 days the army came and took them to Barutni magacin which was fenced in with barbed wire. They were locked and the door was reinforced. He saw that the area around Barutni magacin was mined. The guard was guarding the detainees. By the lists they were taken out three times a day for 15 minutes. Dordislav Aškraba was heading the guard and there were also Milan Lalović, Vojin Puhalo, Bozalo, Vuković and others. Once he applied for work. He went with a group of detainees to Gacko to load wood planks. Savo Crnjak and some Žabac were the police officers who were escorting them. It happened on 18 July 1992, and upon the return from Gacko he managed to escape. The police did not shoot after him.

Witness C also states that her husband went to Kalinovik from the village of Mjehovina because of the call-up paper for work obligation and that he was detained in the school together with some twenty members of the Hadžić family from Mjehovina as well as other Bosniaks from other places. Then, they were transferred to Barutni magacin at the time when a group from Gacko was arrested.

Witness Fatima Kešo, who lived in Mjehovina, states that on the relevant day her husband also received the call-up paper to report to Kalinovik, that he was arrested and taken to the Elementary School and after that to Barutni magacin.

Witness, police officer Ilija Đorem, states that on 25 June 1992 the police was bringing in the men from Kalinovik. He says that he was in Jelašca that day, that the police arrived in a TAM 110 truck which was driven by police officer Perić, when Saša Cerovina took out the wife and child of Zaim Ćusto and slapped the child. He was guarding the school when the detained persons were inside the school. Witness Ilija Đorem notes that the guards had patrol orders with them, signed by Commander Neđo Zeljaja. Upon the return from the guard duty the patrol order would be returned to the station. If there were some problems during the duty, a report about events would be written on the patrol order. He told the Accused Neđo Zeljaja that he would not go to guard people he knew, so Zeljaja assigned him to be in front of the Police Station.

In his testimony, witness Miloš Veletić states that he was a reserve police officer and that at the relevant time Muslim men who refused to respond to the call were arrested. He personally participated in the arrest of Veiz Hadžić and Ibro Bajrić. He was tasked by the duty officer in the Police Station. All these people were in the school where he was a guard.

Witness Danilo Đorem, who was a reserve police officer, states that at the relevant time men from Kalinovik were brought to the school, which he knows because he was guarding them. Then, they went to Barutni magacin and after them women from Gacko were brought to the school.

Witness Milivoje Faladžić states that at the relevant time he was a reserve police officer and that he knows that Bosniak men were receiving call-up papers to report for work obligation. The police would come to pick up those who failed to report. Those persons were detained in the Elementary School in Kalinovik. They got the task from Boško Govedarica and the

Commander was Neđo Zeljaja. Together with his colleague Simo Simić he went to the village of Jelašca and informed the Pervan family members to take the papers and go to Kalinovik, and they said the same to Rusmir Rogoj and his brother. He knows that three Pervan family members were subsequently detained in the school. The police guarded the school. Then the detainees were transferred to Barutni magacin.

Witness Milan (father's name Branko) Lalović notes that he was a reserve police officer and that he knows that all the Bosniak men from the territory of Kalinovik municipality, from the month of April 1992, had an obligation to report to the MUP when going to their regular jobs. After that, these people were taken to the school. He does not know how these people were brought in. They received an order to go and inform the other men to report. At the said period, he was at the positions in Kutine when a TAM 101 vehicle arrived, picked them up and took them in front of the SUP. In front of the SUP he found both active and reserve police members. Their superiors, Boško Govedarica and Neđo Zeljaja, were also there. They were told to inform the men who failed to report. There, in front of the SUP, there was also Radomir Mandić aka Ćifo who was a military police officer. The witness states that he was in the group with witness A, Nikola Bozalo and Ćifo. By a Golf vehicle they went to Mjehovina where his colleagues informed Juka Hadžić and Edin Hadžić to report, which they did. At the time when they were given this task, many Muslim men had already been detained in the school. The leader of his group was Witness A and he had a patrol order. Upon the return the Witness A went to the SUP. The men were accommodated in the school, in the gym. Active and reserve police officers were guarding it. He too was personally guarding these people. The guard roster was made by the Chief or Commander of the Police. Neđo Zeljaja was the Commander of the Police at the time and Boško Govedarica was the Chief. During the period when the men were detained in the school, Zeljaja would occasionally visit. Later, these detainees were transferred to Barutni magacin.

In his testimony, Witness A states that on one occasion Bosniak men were arrested in front the municipality in Kalinovik. Since not all the men responded to the call-up papers, he was ordered to take the papers to those men who failed to come in front of the municipality. The patrol was mixed, made of both civilian and military police. The reserve police officers, Milan Lalović aka Mika and Nikola Bozalo as well as military police officer Ćifo were with him in the patrol. Generally speaking, he was receiving assignments from the Chief, Govedarica. He remembers that they came to the village of Mjehovina, and that being a shift leader he split the patrol. They came to the house of Rešad Hadžić, which was locked, and later to the house of Edo Hadžić. He gave the call-up paper to the mother for him the report. It happened the day after the men were arrested in front of the municipality and taken to the school. Ćifo told him that he saw when Edo Hadžić came to Kalinovik upon the call-up paper.

Also, in his testimony, police officer Nikola Bozalo states that Boško Govedarica gave him the task to take the men who had not responded to the call for work obligation. He went to carry out this task together with Witness A, Ćifo, who was in the military police, and Mika. There arrived in Mjehovina, which is where he told Jusuf Hodžić to go to Kalinovik by himself and report there, which he did. After that these people were detained in the school where the witness, on two occasions, was standing the guard. The detained persons could not leave the school.

Witness Z, who was a police officer in Kalinovik, states that at the end of June, the municipal authorities, headed by Grujo Lalović, who was the president of the Executive Committee of the Municipal Assembly Kalinovik and of the SDS, sent the call-up papers to the Bosniak men in the villages to report to Kalinovik. He came from the frontline to SJB and in the corridor he met Boško Govedarica telling him to go to the village of Jelašca and inform the men to report. At the moment when Boško told them that he saw that the door of his office was opened and inside he saw Commander Neđo Zeljaja, Assistant Tošović and some other people. Then together with Faladžić he went to the hamlet of Karaula, Jelašca village. On the way through the woods he met three men from the Pervan family who told them that they received the call-up papers and that they would report. Shortly after that, Rusmir Rogoj, who was afraid, rushed out of the forest and his brother Ismir followed from the other direction. They talked for a little while there and then took leave. Witness Z states that he knows that other police officers went to other villages by car to bring in the Bosniak men. Later, he heard that Commander Zeljaja was also in Jelašca. The police officers and people were talking about it. They went there to transport the Bosniaks. The Bosniaks were brought in front of the municipality and then transferred to the school. The school was guarded by the police. The duty roster was prepared by Neđo Zeljaja under the supervision of Boško Govedarica. These people did not stay long in the school. Later, they were transferred to Barutni magacin which was a military facility guarded by the military.

In his testimony given on 14 September 2009, Witness H states that the Kalinovik Municipality Crisis Staff made decisions to arrest the able-bodied Muslims from the territory of Kalinovik municipality by summoning them to report for work obligation. He learned the reasons for their arrest from Commander Ratko Bundalo and Grujo Lalović, who told him that it was necessary to arrest them because Muslims could attack from the back. Representatives of the Crisis Staff, together with Boško Govedarica and Neđo Zeljaja, and with the proposal for arrest as well as the lists of persons to be arrested, came to see Commander Bundalo in Gornji logor. There, Bundalo was informed about this decision and operation and at the meeting they also made notes on the lists. Two meetings on this subject were held in Bundalo's Command. The witness is positive that the Accused Zeljaja attended the meeting when the lists of citizens who had to be arrested were brought, while he is not positive about the second meeting. That second meeting was of a technical character where the method of arrest was discussed. It was agreed that the police would carry out the arrest and the police did it.

The Court accepted the testimonies of the aforementioned witnesses as reliable since they are mutually consistent in significant facts as well as complementary. Also, they are corroborated by the inspection of the physical evidence that was admitted to the case record.

Inspecting the Report of the SJB Kalinovik for the period from 1 April until 15 August 1992, which was made on 18 August 1992, it stems that the municipal and military authorities made the Decision to bring in the Muslim able-bodied men and accommodate them in the Elementary School Kalinovik. Upon this order, the SJB started to bring in people and on the occasion concerned it brought in a number of persons. The Report reads that on 6 July 1992 the Muslim conscripts from the Elementary School in Kalinovik, who were guarded by the SJB, were transferred to military prison Barutni magacin, where the Kalinovik TG Command took over the further security of these persons.

Based on the presented evidence, the Accused Zeljaja and Bundalo had an active role in these events and participated both in the planning and the execution of the plan of detention of all the Bosniak men fit for work in the territory of the Kalinovik municipality. Witness H, states about the Accused Neđo Zeljaja that he attended at least one meeting organized in the Kalinovik TG Command when the plan of detention of Bosniaks was discussed and the list of persons to be arrested updated. The Accused Bundalo, Grujo Lalović and Boško Govedarica attended the said meeting in the military Command. Witness Mevlida Ćustović says that immediately after she learned about these arrests she came in front of the municipal building to see Grujo Lalović, and she saw Neđo Zeljaja entering the office and told Grujo that her husband was not arrested. Such behavior of Neđo Zeljaja shows that he was a co-perpetrator in the elaboration of the capture plan, that all the time during the operation of capturing the men from Kalinovik he was in contact with the highest officials in the municipal authorities and that he had field information as to who was arrested. Witness G, Milan Lalović and Witness Z consistently stated that during the days of arrests they saw the Accused Zeljaja and Chief Boško Govedarica in the SJB building. Witnesses Lalović and Z stated that the Accused Zeljaja was present when they were told to go to the villages and inform people to respond to the call-up papers. Witness Z even said that he heard that the Accused Zeljaja had been in the village of Jelašca during the arrest. The same fact was also stated by witness Fejzija Hodžić who heard it from his wife's family given that it was rumored that his father-in-law was taken away from Jelašca personally by the Accused Zeljaja. However, considering that these are testimonies of the witnesses who were not direct eyewitnesses to this event, the Court did not find these facts established. Also, the witness Fejzija said that upon his return to the Police Station, four captured men told him that the Accused Neđo Zeljaja had personally interrogated them on the premises of the police station. Based on the testimonies of witnesses Elvir Ćusto, Dika Suljić, Witness A, Nikola Bozalo and Milan Lalović it can be seen that the operation was well-devised and organized according to the plan by municipal, military and police forces as well. The above mentioned persons stated that both the military and the police participated in the arrest operation, given that the name of military police officer Radomir Mandić aka Ćifo, who was a member of a mixed patrol, was frequently mentioned.

As already stated, the Accused Bundalo was present in the Command on two meetings when the method of execution of the plan of capturing the Bosniak men was discussed and when the lists of the men to be arrested were updated. Based on the testimony of witness Zlata Redžović it can be seen that he was also seen at the meeting in the municipal building attended by Grujo Lalović as well. Also, the Accused Bundalo formed the camp of Barutni magacin. Shortly afterwards, the detained men were transferred to this camp and the camp, as stated by the witnesses and based on the photo-documentation, was secured with barbed wire, mined and under military guard.

During the proceedings, based on the consistent statements of the heard witnesses which were also corroborated by physical evidence, it was found that the captured Bosniak men were guarded by the police in the school. The fact that the police were tasked to implement the plan operationally can be seen in the testimonies of the witness who are saying that members of the police were guarding the first group of Bosniaks who voluntarily answered the call-up papers and came in front of the municipality, then the police ordered them to get on the vehicles to be taken to the school in Kalinovik, that the police were bringing in the men who failed to respond to the call, that they transported the detainees to Barutni

magacin. Therefore, the police were fully involved in all the activities pertaining to the commission of the offense concerned.

Taking into consideration that the subject of the attack were civilians, fit for work Bosniak men, that no procedure related to their capture had ever been conducted against them nor were they ever told the real reasons for deprivation of liberty, that they had never received any decisions on capturing, that later they were transferred to the military prison, from which they were taken away and killed, the Court holds that the act in question has a discriminatory grounds and that its aim was the persecution of the Bosniak population and that in the specific case it is the criminal offense of Crimes against Humanity under Article 172(1) h) in conjunction with e) of the CC of BiH.

Count 1c)

During the proceedings, the Court found that at the beginning of July 1992, members of military and police forces of the Kalinovik municipality captured approximately 200 Bosniak civilians, mostly women and children, as well as a relatively small number of men from the area of the Gacko municipality, detained the civilians at the school in Ulog and the next day had them transported and detained at the Elementary School of Miladin Radojević, where they were placed on the ground floor, in the gym, the staff meeting room and one classroom; the guarding of the civilians was carried out by Neđo Zeljaja with the police officers of the Kalinovik SJB, while food was provided by the army.

Such a state of the facts was established based on the testimonies of the witnesses who described this event as well as on the physical evidence inspected by the Court.

Witness Enesa Hasanbegović stated that she lived in Gacko and that because of the attack of Bijeli orlovi on Gacko and setting the Muslim houses on fire, on 1 May 1992 she fled to the settlement of Bahori which is 12 km away from Gacko in the direction of Borča. Her husband fled at the end of May when 150 Bosniaks were arrested. In Bahori, she stayed until 10 June 1992 when they were given the ultimatum to surrender so the fleeing population moved on. She stayed with a mass of refugees until the end of June when the Serb Army started shelling them. The column of refugees then moved in the direction of Zelengora, however, the shelling continued. There, the mass of refugees separated. Her group started in the direction of Konjic while the other one started in the direction of Foča. They were walking at night and eventually arrived in the area between Ulog and Kalinovik. All the time they were subjected to shelling. When they arrived in the village of Tuhovići, some teacher Slavko told them to surrender and that they were surrounded. At that moment, uniformed soldiers came to them and forced them to go to some ropeway across the Neretva, then loaded them onto the military trucks and transferred them to Ulog. At least 193 civilians were transferred to Kalinovik, and she does not know the exact number of the persons taken to Ulog since some women and old men were released in Ulog. In Ulog, they were detained in the Elementary School where they stayed for two nights. They could not get out at all. The guards were around the school. There, they were interrogated and her husband told her that they were coming and interrogating them from some military command. The school was guarded by both the police and military. Also, they were transferred to Kalinovik in military trucks and they were escorted by the people in green uniforms. They drove them in front of the Elementary School in Kalinovik. The first group

was accommodated in the gym and the other in two-three classrooms. It happened in the period from 4 to 7 July 1992. There were some 10 men and out of 193 persons from Gacko more than one hundred were children. In the school, they were supervised by the guards in police uniforms and could not leave the school unsupervised. They were getting food in military, green containers and they were eating from rations. Among the guards she remembers Slavko Lalović aka Ustaša, then Duško Mandić, Beli Stanković and Witness A.

In her testimony, Witness W states that she lived in Gacko, so when they started burning the houses and arresting Bosniak men she fled to the village of Bahori where they stayed until they started shelling the village. From there, they proceeded to Borač where they stayed for approximately 10 days and when the shelling of this settlement started the mass of refugees moved on. Around 800 persons including men, women, children and older men, all who could flee Gacko, were in the mass of refugees. From Borač, in groups, they started to Bjelimići. The last night, they started shooting around them so the men decided to leave while the women, children and older men stayed because they would arrest them. When they separated, around 200 of them remained. They went to the village of Tuhovići and the soldiers with some teacher came there and told them that they would go to Ulog together with them. They were transported to Ulog by military trucks. In Ulog, they spent two nights in the Elementary School. They could not move. There were many soldiers around the school. The soldiers kept some 24 older men in Ulog and she later heard that they released them two days after that and transferred the others by trucks to the school in Kalinovik. It happened on 6 July 1992. In the school they were placed on the ground floor, in one staff meeting room, classrooms and in the gym. There were two men, Sutko Hasانبegović and Munib Memić, some older women while the others were younger women and children. Sutko was 40 years old and Munib was older. In the school they were guarded by active and reserve police officers. The soldiers were bringing food.

In her testimony, Witness D stated that she lived in Gacko and when they started burning the villages the mass of refugees proceeded to Zelengora. A large number of refugees were in the mass. They stayed there for 10 days and then they set out for Konjic. There were constant shootings around. They were walking by night. They arrived in the village of Tuhovići where they were captured. All the captured were Muslims. They were taken to Ulog by trucks, where they were placed in the school. In the morning when she went to wash herself, four guys intercepted her and told her that she was captured and could not move. One of them hit her and she fainted so they took her to the outpatient clinic. The guards in Ulog had olive drab uniforms. Around 200 of them were transferred from Ulog to the school in Kalinovik. These were women, children and elderly as well as two men. They were placed in the gym, classrooms and staff meeting room, all on the ground floor. Ustaša, Mika from Miljevina and Mile who were mainly in civilian clothes were guarding them in the school. The guards were armed. She was placed in the staff room in the school. Among the guards Miloš Veletić helped them most.

Witness E also stated that she lived in Gacko before the conflict. Following the attack of Serb forces against the Muslim population and setting their facilities on fire in Gacko, then the burning of Fazlagića kula, with her husband and daughter she left to the village of Borač, wherefrom her mother originated. She stayed there until the end of June when the Serb units attacked this village as well, so they moved in the direction of Zelengora. The column of refugees included around one thousand persons. From there, over the suspension

bridge, they arrived in the village of Tuhovići. At that moment, a man approached them saying that the Serb army was in Morina and a few minutes after that he showed up with a person in a camouflaged uniform who told them to return over the bridge. There, the soldiers loaded them onto the military trucks and drove them. They also called, over the megaphone, those who were hiding in the woods. They came to Ulog where they placed them in the school. At that time there were 160 of them. There, they spent two nights. Before they started in the morning, they separated two women and older men and let them go. They transported the others to the school in Kalinovik by trucks. The Serb soldiers, armed and in camouflaged uniforms, took them to Kalinovik. There, they were placed in the gym, classroom and staff meeting room. Women, children, old men and two men were in the group concerned. The police from Kalinovik was guarding the school. The main entrance was locked and two police officers were always on the school entrance. At times, they were allowed to get out to the playground where there was a creek in which they could wash their clothes and dry it on the playground fence. During that time they were also supervised by the guards. Some women with children were allowed to go to the village of Mjehovina under the condition to leave their children in the school so that they had to return. Later, they were not allowed to get out at all.

Witness H, who was engaged in the military, stated that at the relevant time the Accused Ratko Bundalo called him saying that he had just received information from Morina, from the military unit positioned there, that a larger group of persons was captured. The said group mostly consisted of women, children and old men, and the police placed them in the school in Ulog together with this unit. He stresses that the Accused Bundalo told him to request trucks from the Kalinovik Brigade in order to allow the women, children and old men to go wherever they want. The Kalinovik Brigade sent three trucks and later the buses sent by the civilian authorities also arrived. In Ulog, he found the police which were guarding the school. In Ulog, he contacted Govedarica who was the Commander of that branch police station and who surrendered him all the persons including two-three men. The civilian authorities, that is, Crisis Staff ordered the healthy people to be transferred to the school in Kalinovik to exchange them for those captured in Trnovo. In Ulog, he also found SJB Chief, Boško Govedarica, who interrogated one girl and agreed that he should take old men, women and children wherever they wanted. He transferred a larger number of these persons in the direction of Bjelimići and later learned that other groups were also transported to the school in Kalinovik where these persons were quartered. There were some men among those persons. He informed Bundalo about everything and Bundalo called the Chief of the Police. After that, Boško came to report to Bundalo. Bundalo ordered him to go to the outpatient clinic without delay in order for the doctors to come and examine these people, to disinfect the premises and provide food for them.

In his testimony, witness Rade Pavlović states that in agreement with the Commander Ratko Bundalo he was assigned a zone in the direction of Obalj and that he was present when the refugees from the direction of Borča came to his zone. He is pointing out that he was not present there at the time but he knows that these were Muslim women, children and old men from the territory of Gacko municipality. In Ulog, in the school, they stayed for one or two days. While they were in Ulog they did not have full freedom of movement since the school was guarded by the unit from Ulog, formed by the locals, and there was also some police in Ulog. The witness knows that these persons were transferred and placed in the school in Kalinovik, where they were getting the army food. He believes that they were transported to

Ulog by military vehicles and the use of these military vehicles as well as the order to transport them to Kalinovik in these vehicles could only be issued by Colonel Bundalo. The witness states that these people were brought to Ulog by members of a company formed in Ulog which consisted of approximately 30 people. These soldiers took him to the place where they found these refugees, which was located some ten kilometers away from Ulog. At this place, he found a doll that he subsequently took to the school in Kalinovik. Nobody banned him from entering the school nor asked him where he was going. The refugees accommodated in the school in Kalinovik were getting food from the military which had its kitchen in Gornji logor, the Commander of which was Ratko Bundalo.

Witness Milivoje Faladžić stated that he was on duty when women from Gacko were detained in the school in Kalinovik.

In his testimony, witness Željko Mandić, said that he was a member of the Kalinovik Police and was tasked with guarding the school in Kalinovik. At the relevant period there were refugees in the school – Muslim women and children from Gacko. They were allowed to visit Mjehovina. Neđo Zeljaja made the duty roaster and drafted patrol orders. The army sent food in food containers.

Also, witness Dušan Cerovina is pointing out that persons from Gacko were put in the school in Kalinovik and that they were getting food from the military barracks in Kalinovik and that it was transported in food containers. The detainees were eating from the army rations, therefore he believes that the army gave them these rations.

Witness Miloš Veletić, who used to be a police officer guarding the school in Kalinovik, in his testimony stated that after the departure of the Bosniak men from the school in Kalinovik to Barutni magacin, women and children from Gacko came to the school. He does not know who brought them. These persons from Gacko were guarded by the Kalinovik Police.

In her testimony, Witness F confirmed that Bosniak civilians from Gacko were detained in the school, as well as the witness Danilo Đorem who stated that when the men left the school for Barutni magacin, women from Gacko came in and were guarded by the Kalinovik Police. A larger number of women, children and some men came from Gacko.

Witness Ranko Erbez, who used to be a reserve police officer in Ulog, states that he knows that a larger group of inhabitants from Gacko came across the military patrol and that they, by military trucks and TAM trucks, took them to Ulog. Those were soldiers from the Kalinovik military barracks. They were mainly women, children and old men and there were a few unarmed able-bodied men. According to the list made in the branch police station in Ulog, there were around 181 persons and they stayed one night in Ulog. On that occasion, the police was given the task to accommodate them in the school. The village patrol was guarding the school during their stay. One civilian whose name was Salko Šabanović escaped. At the time, Milivoje Sladoje was also present in Ulog. He was a teacher in the Elementary School in Kalinovik and President of the Crisis Staff in Ulog, as well as Ratko Govedarica who was in charge of the branch police station in Ulog. The branch police station in Ulog was subordinated to the Police Station in Kalinovik, that is, it was subordinated to that station. The witness knows that until the beginning of the conflict

the Commander of the Police Station in Kalinovik was Ismet Poljak and later on Neđo Zeljaja. Mile Tunguz and Ranko Batinić were the commanding officers in Ulog.

Witness Milan (father's name Branko) Lalović stated that after departure of the Bosniak men from the school in Kalinovik to Barutni magacin, women and children from Gacko, as well as from other settlements, came to the school. He stood guard in front of the school while the women were in there. At the time when the women were staying in the school a rebellion flared up. They reported to the SUP about the rebellion, so Boško Govedarica came and appeased the rebellion. The Accused Neđo Zeljaja was occasionally coming to the school visiting both the guards and detainees.

Witness A stated that he was guarding the school at the time when the women from Gacko were in the school. He asked Grujo Lalović and Boško Govedarica about their status and they answered that they found refuge there and that Alija did not want to accept and feed them. Later, on the Internet, he learned that they were captured at Morine.

Inspecting the SJB Kalinovik Report for the period from 1 April 1992 until 15 August 1992, it can be seen that most persons placed in the Elementary School in Kalinovik were refugees from the territory of the municipality of Gacko and they were brought in during the transfer of the Muslim armed forces from the territory of Gacko in the direction of Konjic, when they were together with the said forces.

Evaluating the testimonies of the heard witnesses the Court accepted them given that they are mutually consistent regarding the key facts, that they supplement each other and that they are also corroborated by objective evidence in the case file. The Court did not accept the testimony of Witness H in the part where he states that a larger number of persons from Gacko were transferred in the direction of Bjelimići since this part of the testimony is in opposition to the testimonies of Witnesses Enesa Hasanbegović, W and E who stated that some of the civilians were released. Witness W specified that 24 older persons were released. There was no large-scale movement of the Gacko people to the free territory.

The fact that both military and police forces participated in this arrest operation clearly arises from the testimonies of all the heard witnesses, both the arrested civilians and the then members of army and police. It stems from their testimonies that the army from Kalinovik arrested those Bosniak civilians and took them to Ulog. As stated by Ranko Erbez, who was a police officer, it ensues that the Ulog police made a list of the captured persons and placed them in the school in Ulog. The same witness stated that there was a branch police station in Ulog which was subordinated to the Police Station in Kalinovik where the Commander was Neđo Zeljaja. Also, the testimonies of the heard witnesses result in the fact that the military from Kalinovik were transporting the captured persons from the school in Ulog to the school in Kalinovik, that is, that they were transported by military trucks and escorted and guarded by the army. The detainees were then placed in the gym and one classroom of the school in Kalinovik where they were taken over by the Kalinovik police. It can be seen from the consistent testimonies of all SJB Kalinovik police officers that the school was guarded by the police throughout this period. Witness Milan (father's name Branko) Lalović said that at the time when the persons from Gacko were detained the Accused Zeljaja was coming to the school and visiting both the guards and detainees, while witness Željko Mandić stated that the Accused Zeljaja was writing patrol orders to the

guards in the school. Regarding the Accused Bundalo, Witness H stated that he sent him to Kalinovik when he heard of the arrest of the people from Gacko. After completion of the assignment, he reported to him, and the Accused Bundalo then contacted Boško Govedarica and requested from him to disinfect the school premises where the detainees were placed, and only the Accused Bundalo could give an order to the army to transport the captured persons to Kalinovik. Such conduct of the Accused Bundalo is logical considering that until the arrival of the people from Gacko to the school in Kalinovik the men from Kalinovik were detained in the same gym and then transferred to the Barutni magacin. Also, it indisputably stems from the testimonies of the heard witnesses that the army provided food for the detained Bosniaks. Such actions of the Accused indicate that they were fully involved, from the very beginning, in the detention of the Bosniaks from Gacko, and that this detention was part of the persecution plan in which they participated knowingly and willingly.

Taking into consideration that the target of the attack were civilians, women, children, elderly and a few men, that all the detained were Bosniaks, that no proceedings pertaining to their capture were ever conducted, that they were not advised of the real reasons for deprivation of liberty, that they never received any decision on capturing, that during the detention some people were killed, women raped and then exchanged, the Court holds that the offense concerned has discriminatory grounds and that its aim was the persecution of Bosniak population and that in the specific case it is the criminal offense of Crimes against Humanity under Article 172)1) h) in conjunction with subparagraph e) of the CC of BiH.

Count 1d)

During the proceedings the Court found that on 1 August 1992 an attack was organized on the Bosniak civilian population of the village of Jelašca, municipality of Kalinovik. At the time, there were only women, children and some elderly in the village. On that occasion, the police officers of SJB Kalinovik surrounded the village and captured all women and children, burning some Bosniak houses in the process, while members of the army under the command of Ratko Bundalo, using an anti-aircraft gun located in the zone of Brdo, near the Badnjar houses, provided artillery support to the attack, in the course of which they killed Derviša Pervan and wounded a young girl called Mirveta Pervan in the hamlet of Karaula, and, using incendiary bullets, they set all houses in this hamlet on fire and detained the captured civilians at the Elementary School of Miladin Radojević, in the rooms on the upper floor. On the same night the remaining civilians from Vihovići, Mjehovina and other neighboring villages, except for the old persons who were unable to walk across the hills, fleeing from the attack, left the Kalinovik municipality. The body of Derviša (Dervana) Pervan was disposed at an unknown location, thus she is still registered as a missing person.

Numerous pieces of evidence were presented in respect to this Count of the Indictment.

Witness Mirveta Pervan, born in 1987, and was only five years old at the time of the relevant attack, states in her testimony that at the relevant period she was in Jelašca. On the relevant day, together with her grandmother Derviša Pervan she was in the house of the neighbor Šemso Pervan, when she heard a violent blow. The house started burning. Grandmother Derviša picked her up in the arms and got out of the house and at one point she saw that a shrapnel hit her granny and she fell down. She taugth that she fell asleep

since she did not move. She was also scratched by a shrapnel across her right cheek. There was nobody around them. She saw that everything was burned down. At one point she heard the sound of a vehicle and pretended to be asleep. Some people she did not know told her that they were taking her to her cousins. They took her to the clinic and stuck a plaster. Her aunt came there and she was taken to the school in Kalinovik. After the war she took inspectors to the place where her granny Derviša was killed.

The testimony of this witness was accepted by the Court as credible given that it is consistent with the testimonies of the other witnesses as well as with the physical evidence in the case record, which is the Records of the Dressing Station in Kalinovik from which it can be seen that on 14 August 1992 Mirveta Pervan was brought for dressing and referred to sinuses X-ray examination.

In her testimony, witness Hasna Ćusto states that on 1 August 1992, she passed through the village of Jelašca when at one moment the shootings started. On the road she met three members of the Badnjar family with rifles who did not address her and just passed by. When she arrived at the house of Adem Hatić she saw his wife Fadila crying and telling her that they were arresting all the women. There, Danilo Đorem arrested her and Fatima and took them to the house of Zehra Rogoj where there were some other women and children. There she saw Savo Puhalo who was a police officer and Vela Stanković who was in a military uniform. In front of this house there were many other uniformed persons who separated women from children. They took women to the house of Avdo Kešo and she also saw that two women from the Pervan family were arrested. At the time, the houses in Jelašca were burning and Karaula was burned to the ground. She saw when a bullet hit a house and then the house was burning. The hamlet of Karaula was reduced to ashes. Some 40 to 50 women were arrested there. After that they took them to Kalinovik on foot. When testifying at the main trial the witness identified the burned houses in Karaula on the photographs as well as the burned houses in Jelašca. Some thirty police officers and soldiers were escorting the captured. After their arrival at Barutni magacin, a military truck arrived to take them to the Elementary School Miladin Radojević. They took them to the school and placed them in a classroom on the upper floor of the school. In the classroom, they found some women from the territory of Kalinovik who had been brought there before them. The police officers from Kalinovik were guarding them in the school.

Witness Ismeta Pervan stated that in early August 1992 the hamlet of Karaula in Jelašca was set on fire. That is when a shooting started and armed and uniformed persons, among whom she recognized Miodrag Badnjar, Savo Puhalo and others, surrounded the house. There, they arrested everybody expect for old and bedridden people. A cannon from which they opened fire was located near the Badnjar's houses. Then Karaula started burning, she saw that the houses were on fire. They took them on foot to Barutni magacin and then by truck took them to the school in Kalinovik where they were placed upstairs.

Witness B, whose statement was read out at the main trial, stated in her statement that on 1 August 1992, in the evening, armed police officers and soldiers including Risto Badnjar, Blaško Badnjar, Puhalo as well as Vjekoslav Suđum came to the village of Jelašca. They were going from house to house taking away the local Bosniaks. At the time, intensive fire was ongoing and she saw that the houses in Karaula were burning. All the arrested were

taken to Barutni magacin and from there they were transferred by a military truck to the Elementary School in Kalinovik where they were placed upstairs.

Witness Fadila Hatić states that the locals in Jelašca were arrested and taken to the house of Zehra Rogoj. Savo Puhalo arrested her while Đorem brought Raza. They waited for the truck to come to Zehra's house and since they heard that it had broken they marched them, on foot, to Kalinovik. On the way, she also saw Blaško Badnjar who was shooting, swearing and threatening to kill them. Also, she saw when Savo Puhalo personally set on fire the house of Nusreta Kešo. Subsequently, they were placed in the upstairs classrooms in the school.

Witness Rukija Rogoj stated that on 1 August 1992, she was in the village of Jelašca which is when police officers Saša Cerovina, Predrag Đorem and Savo Puhalo came to the village. On that occasion, they arrested her and her 12-year-old daughter. They assembled them at the house of Avdo Kešo and then at the mosque. Mostly women, her daughter, two older men, Sejo Kešo and Mujo Pervan, as well as Edin Bičo who was younger men were there. They started shooting around them. Blaško Badnjar, who was in a military uniform, opened fire saying that his brother was killed that day. They forced them to walk to Barutni magacin. While they were walking, somebody asked Azemina and Fatima Pervan if they could see whether their houses were burning. She personally saw that Karaula was on fire. When they reached Barutni magacin a truck arrived and transported them to the school in Kalinovik where they were accommodated upstairs. There were around 20 of them from Jelašca, maybe more. Then Zdravko Višnjevac in a military uniform entered their room saying that all of them would be killed. Her father-in-law stayed at home.

Witness Zlatka Hadžić, from the village of Mjehovina, states in her testimony that at the relevant day intensive shooting could be heard and fire from Jelašca could be seen. The grandfather, the late Mustafa, climbed a hill further up from the house and saw it all. The locals started to gather, in order to flee. There were women, children and old men, approximately 40-50 of them. First, they came to the village of Selište. Todor Avram invited them to hide there in his basement, saying that the guards were all around and that Vlado Tepavčević ordered not to allow anyone to leave the village, either to take them to the school or be killed. They did not dare to sleep at Todor's place. They started fleeing in the direction of the village of Golubići and to Ljuta. Todor showed them the way. They managed to reach the territory under the control of the Army of BiH. Around 10 locals remained in the village. Later, it was rumored that these people were also killed in Mjehovina.

Witness Ešrefa Škoro said that she lived in the village of Mjehovina and when they saw that the village of Jelašca was on fire, the locals started fleeing. She states that they might not have decided to flee if they had not seen that the artillery attacking Jelašca and the houses burning. Then, they had to leave Mjehovina. Also, that day they heard from a Serb woman that in the house of Milan Lalović it was said that Bosniaks would be massacred, so the woman told them to flee or else all of them would be slaughtered. Then all the women, children and old men gathered and proceeded to the free territory. They heard that Vlado Tepavčević set up a road block to prevent them from leaving and gave orders either to capture or kill everybody. Only seven old men remained in the village and soon thereafter they were all killed.

Witness Fezija Hadžić, who at the time was detained in Barutni magacin, said that on the relevant day in the evening he heard artillery gunfire and saw that the houses of the Kečo family in Jelašca were burning as well as other houses in Karaula. Barutni magacin is facing the village of Jelašca and the hamlet of Karaula so through the door openings they could see it all. Before his arrival at Barutni magacin he saw that an anti-artillery three-barrel gun was positioned next to the Badnjar's houses. Also, on that occasion, he saw a group of women and children taken by uniformed persons who were passing by Barutni magacin and subsequently he learned that they were detained in the school in Kalinovik.

Witness Dragan Aleksandrov stated that at the relevant time he was engaged in the VRS Gornji logor Barracks, the anti-aircraft defense unit led by Commander Milan Mališ. His unit had anti-aircraft guns, with one and three barrels. They were within the brigade and could not operate individually. Commander Mališ was in charge of communication with the Command. They were on the positions in Jelašca at the end of July next to the Badnjar's houses where the 20-mm anti-aircraft three-barrel gun was placed there. When the locals from Jelašca were arrested, then they fired in the direction of the woods above the village because they had some information that Muslims were concentrated there. It seems to him that at that moment somebody opened fire from the woods. He cannot remember who issued the order to fire this gun. He cannot remember if houses were set on fire on that occasion. He was in charge of loading the gun as part of the artillery crew which consisted of 5 to 7 persons. Except for him he cannot remember who were the other crew members - commander, gunner and assistant gunner at the time. They stayed at that position until the beginning of August. The witness was presented his previous statement when he said that on the same day women and older men were arrested, that the gun was fired and that some houses were set on fire by incendiary bullets, but the witness maintained his testimony at the main trial.

Witness Čedomir Okuka stated that at the relevant time he was engaged in the army as a gunner and that for one day they were firing guns on the edge of the woods above the village of Jelašca, hamlet of Karaula. He saw that the woods was burning but did not see whether the houses were burning too, although it could be caused by that fire. Lieutenant Milan Mališ ordered them to fire. He did not see any residents in the village. Also, while he was on that position, he did not see that anybody was attacking them from the opposite side nor did he feel any danger during that time. Two or three days after that they returned to Gornji logor in Kalinovik. The Commander was Ratko Bundalo.

Witness Miloš Mandić stated that he was also an artilleryman, in the three barrel gun crew, whose commander was late Mališ. He knows that the three-barrel gun was located next to the Badnjar's houses, above the village of Jelašca. At the main trial, the witness stated that he could not remember whether this gun fired on the settlement of Jelašca, but when presented with the records from the investigation where he stated the names of the crew members and stated that the gun fired once in the direction of the woods above the village of Jelašca, the witness accepted it. Also, he said that the Commander was Ratko Bundalo.

Witness X, in his testimony, stated that at the relevant time Milan Mališ was an active military officer, holding the rank of Lieutenant, that he was the Commander of the unit

which had the following semi-heavy weapons: light anti-aircraft guns, and that his unit was on the strength of the Kalinovik Barracks.

Witness Danilo Đorem, reserve police officer, says that Chief Boško Govedarica, on the relevant day, told them to get on the truck and go to Jelašca to bring Muslim women. There were several police officers on the truck and police officer Milan Perić was driving the truck. Upon the arrival in Jelašca, Milan told them to go to the houses of the Bičo family. He arrived at the house of Adem Atić where he saw one woman and told her that he should take her to Kalinovik, so she agreed. He also told the same thing to Adem Atić's wife who entered the house to get ready. At that moment, Risto Puhalo, who died later on, came by. He was a soldier in a uniform and had a rifle and at one moment he said that one woman was running away. Then, with the other woman, he came to the house of Avdo Kešo. There he saw that several women and old men had assembled. There were the following persons: Rukija Rogoj, Sejdo Kešo, Pervan and some others. Some people stayed in the village. From there they took them on foot in the direction of Barutni magacin. These locals were escorted by the armed police officers. When they ascended a hill that the houses of the Pervan family in Jelašca were burning. On that occasion, they heard shooting from the Badnjar's houses. At Barutni magacin, two larger TAM 150 military trucks arrived and there all of them got in the vehicles and proceeded to Kalinovik. Judging by the size of the vehicles he assumes that there were several gathered locals. From Barutni magacin first, by trucks, they went through Donji logor where the army was quartered. They opened the gates for them to pass. Then, the women were taken to the school in Kalinovik and accommodated upstairs.

Witness Milan (father's name Petar) Lalović, who lived in the village of Jelašca and was engaged in the army as a guard in Barutni magacin also stated in his testimony that he saw a gun mounted at the Badnjar's houses and that he knows that there was artillery fire but he did not approach the place. Also, he knows that on the critical day the police arrested and detained women from the territory of the village of Jelašca.

Witness Milivoje Faladžić, reserve police officer, who was residing in the village of Jelašca, stated in his testimony that he knew that Bosniak women from Jelašca were brought and detained in the school in Kalinovik. He knows that the police took them to the school. He was not in the village but he heard fire when the village of Jelašca was attacked. At the time, he was at the positions in Kutine wherefrom he could see that the houses in the hamlet of Karaula were on fire. The Bosniaks under the surname Pervan lived there. The following day, Boško Govedarica and Neđo Zeljaja told them what happened and ordered them to visit the villages of Jelašca and Karaula. He came to Karaula together with the colleagues including Simo Simić. He saw that the houses were burned down. There, at one meadow, they found Dervana Pervan dead, lying on her back, and a wounded child sitting next to her. Dervana Pervan did not move and some blood was under her. The child had a cut on the right side of the face and it seemed to him that it was caused by a bullet. The child was first taken to a doctor and then to the school where her aunt was. The witness does not know the name of this girl but he knows that her family name is Pervan. The dead body of Dervana Pervan remained at the spot. There was no crime scene investigation nor does he know where she was buried. At the relevant time her husband was captured and was in Barutni magacin. The witness also knows that at the time the three barrel gun was located next to the Badnjar's houses and that it fired when the village was attacked.

Witness Z in his testimony stated that he heard that the women were taken away from the settlement of Jelašca to the Kalinovik Elementary School. Late in the afternoon, from the positions in Kutine, he heard shots in the village of Jelašca, he saw that the guns were targeting houses and that something was burning. The following day, with colleague Faladžić, he entered the village of Jelašca. His mother, who was living in the village of Jelašca, confirmed to him that there was shooting and he saw the burned houses of Bosniaks in the hamlet of Karaule. These were the houses of the Pervan and Hatić families. Not a single Serb house was set on fire. That day in Jelašca he saw Boško Govedarica with some other police officers, as well as a TAM 110 vehicle used by the Kalinovik police. At that moment, he saw a woman lying on a meadow and a small child next to her. The child told him that her name was Mirveta. He took her up in his arms and saw that she was wounded in the face, which was stretching from ear to mouth. Her granny was dead, and her name was Derviša. He transported the child to the medical center and later on he took her to the school where the little girl's aunt was detained.

Witness Dika Suljić with her family lived in the village of Vihovići and it stems from her testimony that after the arrest of the Bosniak men from the village of Vihovići, which took place on 25 June 1992, there followed a new arrest of Muslim men at the end of July. On that occasion, soldiers and police officers again came to the village and per list they arrested approximately ten remaining men and took them to Barutni magacin. After that there was no Bosniak men in the village of Vihovići, only Bosniak women and children stayed. These women and children stayed in the village until August. During the period concerned, their neighbor Slavko Lalović aka Ustaša told her and the other women to go wherever they can because the village of Jelašca was set on fire and all the women and children were arrested and placed in the Elementary School in Kalinovik. The witness notes that in front of her house she saw when the hamlet of Karaula in Jelašca was set on fire. She saw that fire was opened from the Badnjar's houses and that bullets were raining on houses, barns and other buildings which belonged to Muslims. She saw that these buildings started burning immediately and that everything was set on fire within ten minutes. Even the coniferous woods started burning from that shooting. At the time she did not know what happened to the Bosniak population from the village of Jelašca. After the warning given by Slavko Lalović, the women assembled and considered what to do since the army surrounded everything around their village. Military vehicles were constantly passing by, and uniformed persons started coming to their village and looting Bosniak houses and vehicles. During the day they were hiding in the woods and a few days later they agreed to proceed to the free territory, via Mosorić to Sarajevo. On their way, they saw armed soldiers so they did not dare to proceed to Sarajevo. One group moved on to Sarajevo while the other group, including her together with five women and two or three children, returned to the woods closer to the village. She knew that the school was full of the Muslim women and children from Jelašca. The group which continued to Sarajevo eventually managed to reach Ljuta, in free territory. Two days after, Febo Lalović and some Sladoje bundled her group of women with children into a bigger jeep and took them to the Elementary School in Kalinovik where they were immediately detained. After they left, no Bosniaks remained in Vihovići.

In her testimony, witness Remza Šurković from the village of Vihovići stated that in the beginning of August around 45 women and children tried to flee from Vihovići to the free territory, via Mosorić. They had to flee because they could not stand it any more since all

the men were detained and women and children were staying in the woods fearing for their lives. Slavko Lalović aka Ustaša told them that they had to flee. She heard the shooting in Jelašca. In the settlement of Mosorić, they were arrested and by vehicle taken to Kalinovik. There, Čifó said that they should be released to go to their own people so they drove them up to a certain point and then let them walk. Thus they managed to reach the free territory.

Witness Đemila Suljić from Vihovići stresses that she saw the shelling of the village of Jelašca and that she knows that people were taken away from Jelašca. She mentions that at the time concerned the remaining population from Vihovići were hiding in the woods. Women and children started fleeing to the free territory. In the village of Mosorić, they were stopped by the army and police, they loaded them onto the truck and took them to Kalinovik. From there, they were taken to the village of Jasen and then released to walk to Ljuta.

A witness for the second Accused, Rešad Hadžić, testified that he knew that on 1 August 1992 a large number of the locals from Mjehovina left to the free territory, while a smaller number, including his parents, could not leave but were hiding.

Inspecting the photo documentation made by the SIPA on 19 November 2007, referring to photographs of the buildings in the settlement of Jelašca, Kalinovik municipality, it can be seen that all the houses were burned down and destroyed in the hamlet of Karaula while in the village of Jelašca, apart from a couple of houses, numerous houses were set to fire and destroyed.

The defense for the first Accused disputed that the settlement of Jelašca, Kalinovik municipality, was within the zone of responsibility of the unit commanded by the Accused Ratko Bundalo. The defense for the first Accused notes that two Tactical Groups were formed in the territory of Kalinovik and that the village of Jelašca belonged to the Tactical Group commanded by officer Rade Pavlović. The defense based this claim on the testimony of witness Pavlović. Also, in order to dispute the arguments of the Indictment pertaining to this particular Count, the defense for the first Accused also hired the expert witness Mladen Prolo. The aforementioned expert witness gave his opinion that the anti-aircraft gun unit located at the Badnjar's houses was used to support the infantry platoon whose task was to provide defense in the direction of Zelengora. Then he concluded that a 203-mm anti-aircraft gun fired at least once on the edge of the woods above the hamlet of Karaula and that it could not cause significant damage to the houses nor could they be destroyed by this fire. The commander of the anti-aircraft gun squad was the one to decide when the fire would be opened and as to the choice of target, and he was getting his orders directly from the infantry platoon commander that he was attached to. The infantry platoon was on the strength of the infantry company, the company was in the battalion and the battalion was within the Pavlović Tactical Group which had its own zone of responsibility. In the opinion of this expert witness the Accused Bundalo, as the Commander of the MPOAP (Mixed Anti-Armor Artillery Regiment), assigned the gun to the Commander of the Pavlović TG who was later deciding on the use of that gun, its location and task. There is no Accused Bundalo in the chain of command for the use of this gun.

Witness Rade Pavlović stated that in Kalinovik, holding the rank of a major, he was carrying out the duty of the range Commander which consisted of one range battery and one

smaller unit for security, building repairs and food preparation. His command was in Donji logor. Following their arrival in late 1992, the units from Rijeka were accommodated in Gornji logor. In mid-May the order came in that all the JNA members should withdraw from that area, after which the majority of the commanding officers left but Colonels Ratko Bundalo and Smiljanić stayed. Smiljanić went to the Mostar frontline and then to Montenegro, while Bundalo stayed in Kalinovik. With the people from Kalinovik the Accused Ratko Bundalo established his command. Throughout the Kalinovik territory he held the highest rank and then he told everybody that he was taking over the command because by his position and Rules of Services he held the highest rank and was the most responsible in such relations in the area concerned. Witness Pavlović notes that he accepted that fact although that relation was not regulated by any written document. Further, witness Pavlović stated that for a month, a part of June and July 1992, he was absent from Kalinovik due to his private commitments and that he requested from the Accused Bundalo the permission to leave Kalinovik and that he gave him oral approval. When he returned to Kalinovik he went to Gornji logor to report to Colonel Bundalo and since he did not find him there he proceeded to Rogoj. There, he proposed to Bundalo to form two Tactical Groups which would be under the command of the OG and that the OG Commander should be Bundalo. The witness states that at the time he did not know what was Bundalo's position given that once he saw that from Bileća, where the Corps HQ was based, the command structure was sent out and that he was not in it. Pursuant to this structure the Accused Bundalo was appointed Commander. The witness could not remember, based on this order of the Bileća Corps, exactly which unit or formation the Accused Bundalo commanded. That command structure also included Slobodan Lalović, who at the same time was an operational officer at the Territorial Defense HQ in Kalinovik. Also, Witness H was in the command structure. Witness Pavlović stated that an OG which would also include the units from the territory of Foča was supposed to be formed. During the meeting the witness asked to go to Obalj and Ulog where there were artillery units. He was allowed to go, given that Sreto Lalović would command the group in Dobro Polje and the Accused Bundalo remain in Kalinovik and that all the units should be under the command of Bundalo because the control over the entire territory had to be established. This was accepted and Ratko Bundalo was the Commander to all of them.

From the numerous physical pieces of evidence admitted to the case file and to which the Court referred when explaining the position held by the Accused Bundalo at the relevant period of time it can be seen that there was only one Tactical Group in the territory of Kalinovik, called the Kalinovik Tactical Group, the Commander of which was the Accused Bundalo. The aforementioned also arises from the Findings and Opinion of military analyst Prof. Radovan Radonović, Ph.D. Therefore, the Court is satisfied that in the territory of Kalinovik there were no two Tactical Groups and that there was no Pavlović Tactical Group. In other words, not a single piece of presented evidence indicates that Pavlović had his own Tactical Group and also it does not stem from a single piece of evidence that he could make independent decisions. In his testimony, witness Pavlović himself said that after the fall of Rogoj he was called by the Accused Bundalo to report to him and right away go and get Rogoj back. On the List of Persons who were in the Kalinovik army command, listing Ratko Bundalo first, there is no witness Pavlović. Witness Pavlović also stated that the exchange was performed based on the command decision and he only participated in its realization. For these reasons, the Court does not accept the Findings and Opinion of expert witness Mladen Prolo since they are opposite to the testimonies of numerous witnesses who

explicitly said that the TG Commander was Bundalo, none of whom spoke about the existence of any other Tactical Group in the territory of Kalinovik including the Pavlović TG. Also, the Findings and Opinion of this expert witness are opposite to numerous pieces of physical evidence that the Court inspected and from which it can be seen that at the relevant period the Commander of the only Tactical Group in Kalinovik was Ratko Bundalo.

Concerning the Findings and Opinion of this expert witness that the artillery gun fire could not damage the houses significantly nor could they be destroyed, the Court holds that this opinion cannot be accepted given that all the witnesses who were eyewitnesses to the event consistently stated that the houses on Karaula were set on fire with the bullets fired from this gun and the photo documentation shows that all the houses in this hamlet were burned so not a single house remained intact.

Also, the defense for the second Accused was disputing the participation of the police in burning and destruction of the property in the village of Jelašca, stating that based on the physical evidence, which is the Official Note of SJB Kalinovik dated 29 September 1992, it can be seen that the patrol which entered the village of Jelašca found that the situation was such that the buildings were destroyed, and they also found the dead body of Hajdar Pervan. The Head for Economy Affairs and Rajko Višnjevac, crime inspector, were informed about the aforementioned.

However, inspecting the aforementioned Official Note, the Court notes that the patrol entered the village of Jelašca no sooner than on 29 September 1992, meaning almost two months after the attack itself, and that the Note concluded that the remaining Bosniak property that was left after burning down of the village was taken away, and it was also noted what Bosniak property remained in the village as well as where it was. The same Report reads that Nasuf Bičo's tractor with a trailer was taken to Gornji logor, where the command was located. The Report states that five Bosniak houses in Jelašca remained intact and the three of them were allocated for use to Serb families while in the hamlet of Karaula all the houses were burned down. Considering such a late field visit of the patrol as well as the fact that the official persons of the Kalinovik SJB on the day of the attack were informed about the consequences of the attack on the village of Jelašca since the members of the same Police Station participated in the attack, the Court is of the opinion that the task of the patrol was just to establish the field situation and inform the superiors accordingly. The aforementioned was done in order to undertake further actions because it would be logical, following the destruction of the houses and property, detention, killings and expulsion of Bosniak population, for the authorities to undertake certain actions in order to establish the existing situation and take further measures .

Witness Fadila Hatić stated that on the relevant day when the village of Jelašca was attacked she saw herself that police officer Savo Puhalo set on fire the house of Nusref Kešo.

The fact that in the specific case it was an organized attack on the village of Jelašca transpires from the fact consistently indicated by the witnesses that the police and army together participated in the attack. The witnesses, former police officers from Kalinovik, consistently pointed out that at the relevant time they were sent to Jelašca. From the testimonies of the women who lived in the village of Jelašci at the time concerned it

indisputably ensues that they were arrested by the police, albeit members of the military were also present when they were arrested and the Badnjars stood out in particular.

Based on the consistent testimonies of witnesses Hasna Ćusto, Ismeta Pervan, Witness B, Fadila Hatić, Rukija Rogoj and Fejzija Hadžić it was indisputably found that on the occasion concerned many women and a few children from Jelašca were arrested and on foot and escorted by the police they were brought to Barutni magacin. Then, by military vehicles and escorted by the police they were transported to the school in Kalinovik. This fact is consistently pointed out by all the witnesses, former police officers who participated in the attack, as well as those who were guarding the school at the time when the women and children from Jelašca were detained in it. Thus it is indisputable that the police and army from Kalinovik undertook actions to detain Bosniak civilians from the village of Jelašca. These civilians were brought and detained in the Elementary School in Kalinovik which was guarded by the police of SJB Kalinovik. The Accused Zeljaja was the Commander of this police and was signing the patrol orders for them and he was also elaborating the duty roster. Without participation of the Accused Neđo Zeljaja, the police would not be able to go to Jelašca, bring captured civilians to the school and detain them in the school.

Based on the consistent testimonies of witness Mirveta Pervan, Milivoje Faladžić and Witness Z the Court found that the old woman Derviša Pervan, also called Dervana by some of the witnesses, was killed in the attack. Witness Milivoje Faladžić and Witness Z saw the dead body of Dervana upon their arrival in the village and witnessed themselves that she was not alive. Subsequently, somebody obviously managed to hide this body thus it had not yet been discovered. Inspecting the evidence, being the Certificate issued by the BiH Commission for Missing Persons dated 5 December 2008, it can be seen that Dervana Pervan, from Jelašca, Municipality of Kalinovik, is registered as a missing person as of 2 August 1992.

During the proceedings, the Court, based on the consistent testimonies of the witnesses who testified to this circumstance, found that the Bosniak houses were set on fire during the attack on the village of Jelašca. From the testimony of witness Fadila Hatić it can be seen that one house was set on fire by Savo Puhalo. Concerning Puhalo, during the proceedings, by testimonies of the witnesses, inspecting the payroll and lists of employees, it was established that he was a police officer in Kalinovik. Witness Z stated that not a single Serb house was burned down in the said attack. Considering that the village of Jelašca was ethnically mixed, the Court is of the opinion that the targets of the attack were exclusively Bosniak houses and that they were set on fire on discriminatory grounds.

Reviewing the photo documentation, it can be seen that all the Bosniak houses in the hamlet of Karaula were burned down and destroyed as well as a large number of the houses in the village of Jelašca. Given a large number of destroyed houses and other facilities as well as all the movable property which was inside of these facilities, the Court holds that on the occasion concerned the property of Bosniak population was destroyed on a large scale but with no reasons for the destruction of the property. In other words, there were no offensive attacks from the village of Jelašca, which was also acknowledged by the witnesses who were the crew members of the anti-aircraft gun. It is clear that the burning of the houses was motivated by the persecution of Bosniak population since the expected consequence of such large destruction of property was the lack of possibility to return to the place of residence.

However, based on the presented evidence it can also be seen that burning of the village of Jelašca was aimed at intimidation of the Bosniak population in the surrounding villages – Vihovići, Mjehovina and others.

Based on the consistent testimonies of witnesses Ešrefa Škoro and Zlatka Hadžić from the village of Mjehovina, as well as witnesses Dika Suljić, Remza Šurković and Đemila Suljić from the settlement of Vihovići, accepted by the Court as reliable since they were corroborated by the other presented pieces of evidence, the Court found that the burning of the village of Jelašca had an immense effect on the population of the neighboring villages and that this event, together with the murder threats, intimidated the remaining civilians of these villages who subsequently decided to leave their homes and flee the territory of Kalinovik municipality. Witness Zlatka Hadžić stated that following the burning down of the village of Jelašca, the Bosniak population of Mjehovina was gripped by panic and they got the information that Vlado Tepavčević had ordered that no Bosniaks from the village should flee. Witness Ešrefa Škoro said the same thing, pointing out that the rumor had it that following the burning of Jelašca, the Bosniak population in Mjehovina would be slaughtered. Witness Dika Suljić said that in the village of Vihovići, after the attack on Jelašca, they received a warning from the police officer Slavko Lalović aka Ustaša to flee, and then the population, fearing for their lives, started hiding in the woods. Also, at the same time the large-scale looting of the Bosniak property started including passenger cars. Witness Remza Šurković said that the situation was such that it could not have been taken any more, and the same witness and witness Dika Suljić confirmed that the population was fleeing to the woods.

Inspecting the topographic map of the settlement of Kalinovik it transpires that the aforementioned villages of Mjehovina and Vihovići are located near the village of Jelašca, and the witnesses from these villages consistently stated that they could see smoke when the houses in the village of Jelašca were burning, as well as that fire could be heard. Also, according to the testimonies of the aforementioned witnesses who are from Mjehovina and Vihovići, a large number of the remaining inhabitants of their villages saved themselves by deserting their homes and Kalinovik and going to the territory controlled by the Army of BiH. The same witnesses consistently stated that only old men who could not walk stayed in these villages. At the time of these events, the state of war had already been declared in the territory of Kalinovik as well as in the entire BiH, and it referred to the armed conflict of the warring parties.

According to the established state of facts, the Accused Bundalo and Zeljaja were involved in all these events given that the army and police together participated in the attack on the village of Jelašca, in which one person was killed, the houses were set on fire, civilians deprived of liberty and detained, while intimidating the population of the neighboring villages who then left their homes and Kalinovik municipality. Taking into consideration the established state of facts, the Court is of the opinion that during the aforementioned event numerous incriminating acts were committed. Given that a larger number of Bosniak civilians were arrested, who were detained in the Elementary School in Kalinovik unlawfully and with no grounds, and that they were neither issued a decision on deprivation of liberty nor were any proceedings conducted against them, as well as that the target was exclusively the Bosniak population, the Court holds that by these acts the criminal offense

of detention of these persons with discriminatory intentions under Article 172(1) h) in conjunction with e) of the CC of BiH was committed.

Also, due to the fact that in the attack on the village of Jelašca one person, who was also a Bosniak civilian, was killed, this Court finds that in this case the criminal offense of murder with discriminatory intentions under Article 172(1) h) in conjunction with a) of the CC of BiH was also committed.

Pursuant to Article 172(1) h) of the CC of BiH, persecution can be connected with any offense listed in this Code so it can also be committed in connection with War Crimes against Civilians. At the time of commission of the offense, the state of war had already been declared in the territory of Kalinovik and in the entire BiH.

Article 13(1) of the First Geneva Convention stipulates that it shall be applied also to the persons not directly participating in the hostilities.

Article 50(1) of the same Convention reads that grave breaches shall involve inhuman treatment including extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. According to the ICTY Statute, the destruction of property of the opposite side, not justified by military necessity of the conflict, is considered to be the war crimes in the case of armed conflict not of an international character. The breach of this rule is punishable by the laws of many states so that it became an integral part of the customary international law.

The protection of private property is known in the Lieber Code, Brussels Declaration and Oxford Manual.

In reference to intimidation and terror, the ICTY, in the Galić case, gave the following elements of this crime:

- that it is the violence aimed at civilian population not directly participating in the hostilities and the acts which resulted in the death or serious injury to civilians,
- that the perpetrator willfully made the civilian population the object of these acts of violence,
- that the offense was carried out with the primary purpose of spreading terror among the civilian population.

The crime of intimidation and terror is based on Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the 1949 Geneva Conventions. Both Articles prohibit the acts or threats of violence the primary purpose of which is to spread terror among the civilian population.

Considering that willfully and with no military need numerous houses of Bosniak population in Jelašca were set on fire and thus their property was destroyed on a large scale, as well as that by the destruction of their property, by killing one person and wounding a little girl, by different threats that the civilians would be killed, by plundering vehicles and other property the Bosniak population of the neighboring villages of Mjehovina and Vihovići was willfully intimidated. Due to the aforementioned acts, their population had to leave their homes in great numbers and flee to the territory under the control of the Army of BiH, the Court is of the opinion that by these acts the criminal offense under Article 173(1)

f) of the CC of BiH was committed, that is, illegal and self-willed large-scale destruction of property not justified by military needs, as well as the offense under Article 173(1) e) of the CC of BiH, intimidation and terror of population, all with a discriminatory intention, that is, to the end of persecution of the Bosniak population on political, national, ethnic and religious grounds. Considering exactly this discriminatory intention and the aim to persecute Bosniak population, the Court holds, given the legal definition of persecution and in particular that it can be committed by any criminal offense listed in the CC of BiH, that in the specific case by these acts the criminal offense of Crimes against Humanity under Article 172(1) h) in conjunction with the criminal offense of War Crimes against Civilians under Article 173(1) e) and f) was committed.

Count 1.e)

During the proceedings the Court found that on 4 August 1992 or close to that date, in the village of Jelašca, the municipality of Kalinovik, unknown members of the Serb Armed Forces, killed 7 civilians, mostly elderly persons, as follows: Ćamil Karaman, Duda Karaman, Hajdar Pervan, Muškija Rogoj, Derviša Rogoj, Hajro Pervan and Rifa Bičo. The aforementioned civilians have been exhumed and identified, except for Rifa Bičo and Hajro Pervan, who are still registered as missing persons.

In reference to the above mentioned Count of the Indictment, during the evidentiary proceedings the following evidence were presented:

In her testimony, witness Zijada Hatić stated that in the village of Jelašca, after she was taken to the Elementary School, the elderly people, Ćamil and Duda Karaman, Hajdar Pervan, Rifa Bičo and other stayed in the village. Later, they were all killed. Ćamil, Duda and Zehra were found, Hajdar was found by his daughter-in-law while Rifa has never been found.

In her testimony, witness Ismeta Pervan stated that in Jelašca, when they were taking away people, they left her uncle who was walking on crutches and grandmother who was about 90 years old.

In her testimony, witness Rukija Rogoj said that in the village of Jelašca, when people were taken away from the village, her 80 years old father-in-law stayed in the house. A couple of days later he was killed. His remains were found behind the house. Also, the same day, Ćamil and Duda Karaman, who were subsequently killed, had stayed and their bodies were found.

In her testimony, witness Hasna Ćusto said that when the women, children and a smaller number of men were taken away from the village of Jelašca, which took place on 1 August 1992, the people were separated. It was done by their neighbors Blaško Badnjar, Mičo Badnjar, Mičo Simić and other uniformed persons. That is when they also separated and left in the village Ćamil and Duda Karaman who were over 60.

In his testimony, Witness Z stated that on the relevant day the elderly persons stayed in the village of Jelašca including Ćamil and Duda Karaman, Rogoj and Rifa Bičo. These elderly persons stayed over the night in the house of Ćamil Karaman. When they proceeded they

were intercepted by soldier Čedo Okuka who was operating the three barrel gun at the Badnjar's houses with another person, and killed them in the settlement of Luke. Five to six days after the event he learned about it. He thinks that there was no crime scene investigation. Everyone in Kalinovik knew about those killings. He learned about the murder of Hajdar Pervan after the war. He heard that a group of soldiers came to the house of Hajdar Pervan who got out of the house and greeted the soldier from Kalinovik, Milorad Lalović, who drew the pistol and killed him. At the time, Mujo Pervan's wife was also in the house and she was also killed. Everything happened a few days after 31 July 1992.

In his testimony, witness Milivoje Faladžić said that on 1 August 1992 not all the Bosniak inhabitants were taken away from the village of Jelašca and detained, but that a few older persons stayed. He knows that Ćamil Karaman, Duda Karaman and Zehra Rogoj were among them and that they were killed in the hamlet of Luke in Jelašca. There were buried in Luke and later found and exhumed. The witness knows that an excavator came to the village to bury their dead bodies to prevent beasts from scattering them around. The members of the Kalinovik Police Station did not perform any crime scene investigation at the time.

In her testimony, witness Fadila Hatić said that at the relevant time the women from Jelašca were taken away and those who were not taken away were killed. The witness indicates that on that occasion Ćamil Karaman and his wife, Zehra Rogoj, stayed in the village, as well as the mother of Edin Bičo, Hajdar Pervan who had a crippled leg, then also grandfather Rogoj, who were all killed.

Based on the Official Note of the Kalinovik SJB dated 29 September 1992, it can be seen that the police patrol which entered the village of Jelašca found the dead body of Hajdar Pervan.

Inspecting the physical evidence referring to this Count of the Indictment, the Court found that the Cantonal Court in Sarajevo issued the decisions ordering the exhumation and autopsy of the bodies of Rifa Bičo, Hajdar Pervan, Dervana Pervan and Derviša Rogoj as well as the exhumation and autopsy of the persons discovered at the sites in Kalinovik above the village of Jelašca.

Inspecting the Record on exhumation and autopsy, made by the Sarajevo Cantonal Court, no. Kri. 82/98 dated 24 June 1999, it stems that in the settlement of Jelašca, Kalinovik municipality, on the road from Kalinovik to Miljevina, near the Mehka Brda site, three dead bodies of killed Bosniaks in civilian clothing were exhumed. On that occasion, the following persons were identified: Ćamil Koroman born in 1924, Duda Koroman born in 1925, Muškija Rogolj born in 1919. The death of these persons stems from the Records on identification included in the case file and inspected by the Court (T-114, T-115, T-116).

Pursuant to the Records of the Cantonal Court in Sarajevo, no. Kri-348/99 dated 21 June 2000 it can be seen that at the site of the village of Jelašca, hamlet of Karaula, next to the house of Mahmut Pervan, the body of Hajdar Pervan, born in 1932, from the village of Jelašca, was exhumed and was identified by his son-in-law. On the occasion concerned, almost at the same place, a few meters away, the dead body of Derviša Rogoj, born in 1909, was exhumed and then identified by her daughter. The same day, at the site of the village of

Jelašca, settlement of Medni do (by the road, to the right in the direction of Kalinovik) they were looking for Rifa Bičo born in 1905, but her remains were not found on that occasion.

Based on the Forensic Expert Finding and Opinion on the Exhumation, Examination with the Autopsy and Identification of the Corpses carried out by expert witness Dr. Hamza Žujo, a specialist in forensic medicine, it arises that the expert witness could not determine the cause of death of Hajdar Pervan and Derviša Rogoj.

Expert witness Hamza Žujo testified about these circumstances at the main trial as well and he stated that he did not discover the injuries on the bones while the soft tissues disappeared. He also said that some bones were missing thus he assumed that they were buried later.

The Court accepted the testimonies of the aforementioned witnesses as reliable and credible given that they are consistent and supplement each other and that they are also corroborated by the physical evidence inspected by the Court. The Court also accepted the Finding and Opinion of expert witness Hamza Žujo as objective since it was given impartially and pursuant to the rules of profession.

Based on the testimonies of the aforementioned witnesses, then of the forensic medicine expert witness, as well as on the inspection of the physical evidence, the Court found indisputably that at the relevant time seven elderly persons who remained in the village of Jelašca were killed and that the killing was committed by unknown members of Serb Armed Forces. In the case concerned, it was not specifically determined who committed the killings of the inhabitants of the village of Jelašca, however, based on the foregoing it stems indisputably that these killings are directly linked to the attack on the village of Jelašca which took place on 1 August 1992, and in which the military and police forces from Kalinovik participated. The settlement in which the killings of Bosniak civilians took place is in the municipality of Kalinovik, that is, in the territory covered by the Kalinovik Police Station and within the TG Kalinovik area of responsibility. At the relevant period of time members of the Serb Armed Forces came to the zone of responsibility of the Kalinovik Tactical Group, at the request of the TG Kalinovik, whose Commander was Ratko Bundalo, and it also arises from numerous physical pieces of evidence listed in the reasoning of the Verdict. No doubt that the killed persons were civilians, in an advanced age, which means that they, as citizens, should have enjoyed protection of both the police and army from Kalinovik. The case record does not contain a single piece of evidence which would indicate that the police and army did anything to protect the civilians of the village of Jezero, that is, that they undertook anything to identify possible perpetrators of this criminal offense and possibly to prosecute them. However, the Court notes that in these acts of killing, the same pattern of treatment of Bosniak civilians population as during the attack on the village of Jelašca was applied. During the foregoing attack one person was killed, the other wounded and all the Bosniak houses in the village were set on fire, and in the same period all the men from Barutni magacin in Kalinovik were taken away and they were either killed or still registered as missing persons. Also, the Court notes that the period from 1 August until 5 August 1992 or around that date was extremely brutal for the Bosniak civilian population of the municipality of Kalinovik considering that during the aforementioned period, first the Bosniak houses were set on fire, then the remaining Bosniak population arrested, then people left their houses in big numbers and fled to the territory under the control of the Army of BiH, and finally it ended with the killing of

Bosniaks and their disappearance. Such a large number of the offenses committed against the Bosniaks in Kalinovik, in the opinion of the Court, indicates that all the committed offenses were part of the plan of the persecution of Bosniaks on discriminatory grounds, and that the Accused Bundalo and Zeljaja, being high-ranking persons in the army and police of Kalinovik, were active participants in the overall attack, thus they were responsible even for those offenses and their consequences committed by other unknown persons in this attack, who were sharing with them the joint criminal intent.

Taking into consideration that in the case concerned several elderly Bosniak persons in the village of Jelašca were killed, the Court holds that in the specific case the criminal offense of Crimes against Humanity under Article 172(1)h) in conjunction with a) of the CC of BiH was committed.

Count 1 f)

The Court has established in the course of the proceedings that unidentified members of the *Serb Armed Forces* killed Nezir Delberović, Mešan Đipa, Mustafa Đipa, Salko Đipa and Hasan Đipa on or around 5 August 1992 in the village of Jezero, Kalinovik Municipality, who were then buried in a mass grave and at the Prezren field in the village of Jezero and whose mortal remains were recovered and identified on 15 July 1999.

The following evidence relevant to this Count of the Indictment was adduced during the proceedings:

Witness Eniz Đipa stated in his testimony that he lived in the village of Jezero, Kalinovik Municipality, as of end 1991 up to August 1992. The village of Jezero was inhabited by Bosniaks and Serbs. On 4 August 1992, his cousin Huso Đipa inform them that all young people should leave the village during the night, since his neighbor Radivoje Golijanin told him that some unfamiliar soldiers would come to the village and stay there several days. The wording 'unfamiliar soldiers' told him that the soldiers were not from Kalinovik. That same night, they withdrew towards Crvanj and the next morning already shooting could be heard and shells flying over the village. Using binoculars, they could see shells falling and one shed burning in the village, they also saw small groups of people going from one house to another. Artillery was deployed at a hill called Morine, the hill belonging to the municipalities of Kalinovik and Nevesinje. Two or three days afterwards, he arrived in the village of Jezero, where they found a local woman called Đemila, who told them that on 5 August 1992 she hid on a hill outside of the village while shelling and infantry shooting was in progress. When the shooting ceased, she saw his father, Mustafa Đipa, then Hasan Đipa and Salko Đipa sitting under a hazel tree. She saw two armed men approaching them and taking them away behind the hill. Ten minutes afterwards, she heard automatic gunfire and saw the two armed men running in the direction of the village. She assumed that all the three men were killed in the place called Klačina. When he came to the village of Klačina about twenty days after that with some people to check if they were killed, he did not find them at first, but on their way back in the direction of Bjelimići, he felt an unpleasant smell at one spot. It was dark, one of the people who were there had a torch and they saw dead bodies lined up. There were five bodies there, including his father Mustafa's body, the bodies of another three members of the Đipa Family, Mešan, Salko and Hasan, as well as the body of an elderly man, Nezir Dilberović. He noticed that they tried to burn the bodies

and the body of Dilberović was partially burned. The place where they found the dead bodies was around 100 meters far from the place Đemila showed them. It was Prezren field covered with high grass, he noticed car tires tracks and he supposed that they were brought there by car. They buried them there in groundsheets and then returned to Bjelimići, where the Army of BiH was. After the war, all the bodies were recovered and buried at Vlakovo. After burying those bodies, he came to the village of Jezero, where he saw traces of bullets on Bosniak houses and broken windows. There were no casualties among Bosniak women from Jezero on that occasion. Serbs stayed in the village of Jezero and did not move from there. He never found out who did the killing.

It follows from the Exhumation and Autopsy Report of the Cantonal Court in Sarajevo, No. Kri-143/99 of 15 July 1999 that the exhumation was carried out on 15 July 1999 in the village of Jezero, at Prezren, Kalinovik Municipality, the autopsy was performed the following day and the mortal remains were identified. According to the Exhumation Report, five dead bodies were buried at a small hollow at the Prezren field. The identity was established on the basis of identification and recovered personal documents, so that the victims were identified as Hasan Đipa, Mustafa Đipa, Nezir Dilberović, Salko Đipa and Mešan Đipa.

The Court has examined the photo documentation of the site and of the each killed civilian which was made during the exhumation.

It stems from the Record taken during the examination of expert witness, doctor Ilijas Dobrača, that Hasan Đipa, born in 1926, died a violent and very fast death. He had a perforating wound in his upper arm and in his shoulder blade which was inflicted by a dynamic movement of a bullet fired from a hand-held fire weapon at a living man. Mustafa Đipa, born in 1924, had a perforating wound in his skull, Nezir Dilberović, born in 1914, had multiple perforating wounds in different parts of his body inflicted by multiple bullets fired at a living man from a hand-held fire weapon, most probably it was automatic gunfire, Salko Đipa, born in 1921, also had multiple perforating wounds in his collar bone and upper arm, inflicted by dynamic movement of multiple bullets fired at a living man from fire arms, Mešan Đipa, born in 1904, had perforating wounds inflicted by multiple bullets fired at a living man from a hand-held fire weapon. According to the description of clothes found on these bodies, all the men wore civilian clothes at the moment of death and there is no doubt that all of them were old people, as it is proved by their years of birth.

The Court admitted the testimony of Eniz Đipa as credible and reliable, since it was a convincing testimony with a lot of details and it was entirely substantiated by the physical evidence examined by the Court. Also, the witness Eniz Đipa was in the village of Jezero until it was attacked and he was very familiar with the relevant incident, because he was personally involved in it.

It was not precisely established who killed the inhabitants of the village of Jezero, however, it clearly stems from the testimony of Eniz Đipa that the inhabitants of the village of Jezero were killed after being informed that some Serbian soldiers not from that area would come there, that they were killed during an armed attack on the village by some armed individuals and that, in addition to infantry fire, there was also artillery fire. In his testimony, witness Eniz Đipa stated to have seen through the binoculars some armed persons moving around in the village of Jezero and a local woman, Đemila, confirmed that information when they

entered the village. Therefore, there is no doubt that the killings were closely linked to the armed attack on the village of Jezero which was carried out by the Serb armed forces. The place where the Bosniak civilians were killed is situated in the Kalinovik Municipality, that is, in the area of responsibility of the Kalinovik Police Station and in the area of responsibility of the Kalinovik Tactical Group. During the relevant period, soldiers who were not from Kalinovik came to the area of responsibility of the Kalinovik Tactical Group, upon a request made by the Kalinovik Tactical Group, whose commander was Ratko Bundalo. This fact arises from the numerous documentary evidence listed in the Reasoning of the Verdict. The killed people were definitely elderly civilians, so that they should have been protected as citizens by both the police and the soldiers from Kalinovik. There is not a single piece of evidence in the case file indicating that the police and soldiers did anything to protect the civilian population of the village of Jezero, or did anything to identify possible perpetrators of the criminal offence and prosecute them. However, the Court notes that there was the same pattern of behavior towards Bosniak civilian population in the area of Kalinovik in the relevant period. After the attack on the village of Jelašca carried out on 1 August 1992 by soldiers incorporated in the Kalinovik Tactical Group, in which one person got killed, one wounded and all Bosniak houses in the village burned, Bosniaks in other villages of the Kalinovik Municipality were killed soon afterwards. In that same period, all the men were taken away from the *Barutni Magacin* (Gunpowder Depo) in Kalinovik and killed, or are still missing. The Court also notes that the period 1 August to 5 August 1992, or around that date, was the most brutal for the Bosniak population of the Kalinovik Municipality, since in those days their houses were burned down first, then the remaining Bosniaks were arrested, while other people abandoned their houses *en masse* and fled to the territory controlled by the Army of BiH, then the killing of Bosniaks eventually took place. According to the Court, such a huge number of offences whose victims were Bosniaks from Kalinovik suggests that all of those actions were conducted as part of an overall plan to discriminate and persecute Bosniaks on the ground of their ethnicity. The accused Bundalo and Zeljaja were highly positioned in the military and police forces of Kalinovik and they participated in the overall attack, therefore they are held responsible also for the offences perpetrated in the scope of the attack by other unknown individuals, who shared the same criminal intention.

In view of the fact that five elderly people of Bosniak ethnicity were killed in the village of Jezero in this specific incident, the Court holds that this offence amounts to the Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph a) of the CC of BiH.

Count 1g)

It was indisputably established during the proceedings that on or around 5 August 1992, unidentified members of the “Serb armed forces” killed Salko Filipović, his wife Rabija Filipović, Mustafa Hadžić, Čamil Hadžić and his wife Aiša, Nura Mrzić and Huso Hadžić in the village of Mjehovina, Kalinovik Municipality, who were all elderly civilians and buried them in a common grave in the local graveyard */harem**. Then, in the days to follow, police officers of the Kalinovik SJB deprived of liberty five Bosniak civilian survivors and detained them in the prison in the *Miladin Radojević* primary school in Kalinovik.

* Translator’s note: The expression denotes a Muslim graveyard usually on the grounds of a mosque.

Numerous subjective and documentary evidence was presented in the evidentiary procedure relevant to this Count of the Indictment.

In her testimony, witness Ešrefa Škoro stated that she lived in the village of Mjehovina. When people realized that the village Jelašca was on fire, rumors started that Bosniaks in the village of Mjehovine would be massacred as well and they were told to flee. They took their children and left in the evening in the direction of the free territory. Their neighbors transferred them, since Vlado Tepavčević had blocked the road they had to take. All those who could, left the village, only seven old people stayed and they were all killed. Some women also stayed in hiding, however, the police arrested them two or three days afterwards and took them to the school building. She did not personally see the killings or the arrests of the women who stayed behind, she heard about that later on, when she met some elderly women who stayed in the village and were imprisoned in the school building. Salko Filipović and his wife were killed, so were Ćamil Hadžić and his wife, Mustafa Hadžić, Huso Hadžić and Nura Mrzić.

Witness "C" stated to have seen the village of Jelašca burning and the inhabitants of Mjehovine started fleeing after that. Her husband was in the *Barutni Magacin* and she heard the Serbs were saying that they would not release the husbands of those who leave the village, so that she decided to stay. A huge group of people left Mjehovine over Selište, since they realized that they could not stay in the village any longer, otherwise they would be caught and imprisoned. Only twelve, mainly old and weak people, stayed in Mjehovine, including Salko Filipović and his wife, Ćamil Hadžić and his wife, Mustafa Hadžić and his wife Sevda, Nura Mrzić and her son, Aiša, Huso Hadžić, Šerifa Hadžić. They were afraid to sleep in their homes, so that they hid in the groves. One day she saw three people who came in the village. Vule Papić's wife showed them the way pointing her hand, they went to Salko Filipović's house and brought five people from there, Salko called his wife Rabija telling her to come back from a field, Ćamil Hadžić was there with his wife and Mustafa Hadžić. Then she heard a burst of fire and saw the three people going down the road towards Nura Mrzić, who was pouring milk to buckets. A burst of fire could be heard again, then the same individuals killed Huso Hadžić, who was by the haystacks. The witness stated to have seen that the three men had rifles, but she was so frightened that she did not see how they were dressed. When the three armed men left, the witness went to see if anyone survived, but she saw that all of them were dead. She survived, so did Sevda, who hid, then Muniba, Mensura. An excavator came later on, collected the bodies, took them to the Bosniak cemetery and buried them in one grave. Five of them, Bosniaks, stayed in the village, they spent some time in hiding, then their neighbor, Todor Avram, came and told them that they would be taken via Strelište to the territory controlled by the Army of BiH. After that, the police came to the village in two vehicles. She saw one man, a policeman, who shouted at them to get in the car. She got in and then she saw that they were taking them to Kalinovik. They were brought in front of the *Miladin Radojević* primary school, then on the upper floor, where she met her neighbor Šerifa Hadžić, who had been arrested before and brought to the school. They were brought to the school in August, around 9 August. She was locked in the school and could not go anywhere, except to the toilette. She stayed there until the exchange which took place in late August in Dobro Polje.

According to witness Zlatka Hadžić, the police came to the village of Mjehovine at the time when Rogoj fell and they ran into the yard around doctor Braco Filipović's house. Among

the policemen she recognized Predrag Terzić and she believed to have seen Miloš Veletić as well. Braco's mother told her that her son was taken away. That created great panic among Bosniak population of the village. She thought that they left the village on 31 July 1992. Before that, a neighbor, Savka, told an old woman Aiša that she overheard a conversation in Milan Miko Lalović's house, she heard him talking about what was planned and that most probably all the Bosniaks would be killed. Prior to their departure, they heard a fierce shooting coming from the village of Jelašca and she saw that the village was on fire. Together with a group of 40 or 50 women, she left the village via Selište. Old Ćamil Hadžić stayed in the village with his wife Aiša, then Salih and Rabija Filipović, Ćamil Hadžić, Mustafaga Hadžić, Nura Mrzić, Huso Hadžić, Azemina Hadžić, Mesuda Filipović, Uma Hadžić, Muniba Hadžić. While they were in Šabići, news spread that some people were killed in Mjehovina. Following the exchanges, she found out that Ćamil and Aiša Hadžić, Salko and Rabija Filipović, Mustafa Hadžić, Huso Hadžić and Nura Mrzić were killed, while others were taken to the primary school building. She was locked inside the school, could not go anywhere, except to the toilette. She stayed there all the time until the exchange which took place in late August.

Witness for the second accused, Rešad Hadžić, testified that his parents stayed in Mjehovine, his father was killed on 4 August 1992, while his mother was captured and taken to the primary school building in Kalinovik. In the meantime, his mother died, but she told him that the policemen Terzić, Lalović and Cerovina came to Mjehovine, searched her mother's house looking for a radio set and then took her to the school building in Kalinovik. His mother stayed in the school until late August, when she was exchanged for killed Serbian soldiers.

It follows from the Decision No. Kri-142/99 issued by the Cantonal Court in Sarajevo on 15 July 1999 that the court ordered an exhumation and autopsy of civilians whose bodies were found at the Mjehovine site, Kalinovik Municipality.

According to the Exhumation and Autopsy Report No. Kri-142/99 of 19 July 1999, the relevant exhumation took place at the local cemetery in Mjehovine, but no visible traces were found suggesting that the bodies of killed civilians were buried there. Seven dead bodies in total were found at the exhumation site, they were identified and an autopsy was performed on the local cemetery premises. The bodies that were identified belonged to Rabija Filipović, born in 1924, Salko Filipović, born in 1912, Ćamil Hadžić, born in 1914, Mustafa Hadžić, born in 1922, Nura Mrzić, born in 1910, Huso Hadžić, born in 1931 and Aiša Hadžić, born in 1919.

It stems from the Expert Evaluation Report presented by Dr. Ilijas Dobrača before the Cantonal Court in Sarajevo and the Minutes thereof dated 26 July 1999 that all the people were killed by automatic gunfire while they were alive and buried in their clothes at the cemetery. The description of their clothes and shoes clearly shows that they wore civilian clothes at the time of death and their years of birth indicate that those were old people.

The site and mortal remains were photographed and a sketch of the site was made. The court examined the Photo Documentation No. Ku.1612/99 of 27 July 1999 taken by the Sarajevo Forensic Department during the exhumation, autopsy and identification of the bodies and the Sketch of the site bearing the same number, dated 19 July 1999.

The court accepted the testimonies given by these witnesses as credible, since they were consistent, complemented each other and were corroborated by the physical evidence admitted in the case file.

Witness “C” was in the village of Mjehovine when the relevant incident took place. It stems from her testimony that the 7 Bosniak inhabitants of Mjehovine were killed by armed individuals whom the witness could not recognize. The same witness also stated that an excavator came to the village later on, took the dead bodies to the local cemetery and buried them in one grave.

The killing of the seven elderly civilians in Mjehovine was proved not only by the testimonies given by the heard witnesses, but also by the Identification Report which contains their names and years of birth. It was also established on the grounds of Exhumation Report that all the killed people were buried in the same grave at the local cemetery.

It arises from the consistent testimonies given by the mentioned witnesses that some Bosniaks stayed in the village and according to the witness “C”, who stayed in the village, there were only 5 people who stayed in the village. All the heard witnesses were consistent in stating that the police came and took those people to the school in Kalinovik, while the witness “C” and Rešad Hadžić stated that they were kept as prisoners in the school and were exchanged in late August.

It was not precisely established who killed the seven inhabitants of Mjehovine, though it clearly follows from the testimony given by the witness “C” that it was done by some armed individuals who came to the village. The village of Mjehovine is situated in the Kalinovik Municipality, therefore in the area of responsibility of the Kalinovik Police Station and in the area of responsibility of the Kalinovik Tactical Group. During the relevant period, soldiers who were not from Kalinovik came to the area of responsibility of the Kalinovik Tactical Group after being called by the Kalinovik Tactical Group Command, whose commander was Ratko Bundalo, as it follows from the physical evidence listed in the Reasoning of the Verdict. There is no doubt that the killed people were elderly civilians, who should have been protected as citizens by both the police and the army of Kalinovik. There is not a single piece of evidence in the case file of the court suggesting that either the police or the army did anything to protect the civilian population of the Mjehovine village, or to identify the potential perpetrators of the criminal offence and possibly prosecute them.

The court has taken into account the part of the testimony given by Zlatka Hadžić stating that her neighbor Savka told the old woman Aiša that she had overheard a conversation in Milan Miko Lalović’s house, that she heard him talking about what was planned and that most probably all the Bosniaks would be killed. Mika Lalović was a police officer in Kalinovik at the relevant period, which means that the police in Kalinovik was aware that Bosniak inhabitants of that village could be killed. Also, the heard witnesses were consistent in stating that the killed people stayed in Mjehovine after many Bosniak inhabitants fled a couple of days before from Mjehovine to the territory controlled by the Army of BiH, fearing for their lives after the attack on the village of Jelašca. In the reasoning of the previous Counts, the court has already established that the soldiers under the command of

Milan Mališ, whose unit was incorporated in the Kalinovik Tactical Group, participated in the attack on Jelašca together with the Kalinovik Police, when one person was killed and a number of Bosniak civilians imprisoned.

Thus, the court notes that there was the same pattern of behavior towards the Bosniak civilian population in the area of Kalinovik in the relevant period. After the attack on the village of Jelašca carried out by Kalinovik soldiers and police on 1 August 1992, Bosniaks in other villages of the Kalinovik Municipality, who could not or did not want to leave their homes, were killed soon afterwards. In that same period, all the men were taken away from the *Barutni Magacin* in Kalinovik and killed, or are still missing. The court also notes that the period from 1 August to 5 August 1992, or around that date, was the worst for Bosniak population of the Kalinovik Municipality, since their houses were burned down, the remaining Bosniaks were arrested and imprisoned or fled to the territory controlled by the Army of BiH and eventually killed. According to the court, such a huge number of offences whose victims were Bosniaks from Kalinovik suggest that all those actions were conducted as part of an overall plan to discriminate and persecute Bosniaks on the ground of their ethnicity. The accused Bundalo and Zeljaja were highly positioned in the military and police forces of Kalinovik and they participated in the overall attack on Bosniak civilians, therefore they are held responsible also for the offences perpetrated in the scope of the attack by other unknown individuals, who shared the same criminal intention.

The five captured individuals were taken to the *Miladin Radojević* primary school in Kalinovik and incarcerated there. It follows from the testimonies of the heard witnesses that all those people were Bosniak civilians, that they were arrested and taken to the school building by the Kalinovik Police. The witnesses also confirmed that these individuals were kept imprisoned in the school building until the exchange in late August that same year. When they were imprisoned, the captured people were not given any decision concerning their deprivation of liberty, nor was any procedure instigated in that respect. The court opines that those people were discriminated and persecuted on the grounds of their ethnicity.

In view of the foregoing, the court qualifies this criminal offence as Crimes against Humanity, in violation of Article 172(1)(h), as read with sub-paragraphs a) and e) of the CC of BiH.

Count 1.h)

The Prosecution charges the accused with keeping imprisoned the civilians: Tahir Panjeta, Kasim Bojčić, K.G., “FWS-130”, *hodja* (Muslim priest) Jašar Vuk and others from May 1992 to March 1993 in the detention facilities of the SJB Kalinovik in absence of any legal grounds.

A number of witnesses testified during the proceedings about these allegations and a number of physical evidence was admitted in the case file.

In his testimony, witness Ahmo Mušanović stated to have been captured on 6 May 1992 near Sreto’s café in Kalinovik together with other 280 civilians from the Jeleč Local Commune and that he once attempted to escape from the Primary School building, where he

was imprisoned, but he was prevented by certain Lalović in Mjehovine, who brought him to the MUP, where he was kept imprisoned in the cellar for two days. Rajko Višnjevac interrogated him in the MUP and Nedo Zeljaja was also present. After two days, they brought him back to the school gym, but on 26 May 1992, when Ratko Mladić came to Kalinovik, he took advantage of the confusion among the police and escaped to the free territory.

Witness Jašar Vuk was a *hodja* in Ulog. On 26 June 1992, police officer Ranko Erbez came in front of his house and told him that Ratko Govedarica, commander of the Ulog Police Substation, wanted to see him. At the station, he saw Ratko Govedarica and Milivoje Sladoje, who was a director of the school in Kalinovik. They told him that the Mayor of Kalinovik Municipality wanted to talk to him and they drove him to Kalinovik, holding their rifles in their hands on the way there. The Mayor told him that he was brought there for his own safety, that a priest was captured in Trnovo and they wanted to exchange him for the priest. Ratko took him from there to the SUP premises to see commander Neđo Zeljaja. The accused Zeljaja told him that he had to go to the cellar. Zeljaja personally took him to the cellar, opened a solitary cell and ordered that some blankets and a mattress be brought to him. He also allowed him to pray to god according to his own faith. During his stay in the cellar, the door of his solitary cell was locked. Later on, Huso Tukelija was moved to his cell, while Muradif Jašarević was in the other cell. Tahir Panjeta came there afterwards and the witness whose pseudonym is "F" and Kasim, so that there were four of them in the cell for some time. There were wooden pallets on the floor. One day, Terzić and another policeman took him to the school in Kalinovik, where he spent the night. In the morning, Terzić brought him back to the SUP, where he saw commander Zeljaja sitting in the porter's booth. They brought him back to the same cell. He was to be exchanged together with Panjeta and Tukelija, but they returned him in the evening, so that he was not exchanged before the following day. The witness "F" was exchanged a day before. He stayed in the prison in Kalinovik for three months.

According to witness Ranko Erbez, he was ordered directly by Boško Govedarica to find hodja Jašar Vuk and tell him to report for an interview. The hodja was examined by Ratko Govedarica and Milivoje Sladoje in Ulog and he was transferred to Kalinovik after that. He was arrested to be exchanged for an arrested priest from Trnovo. Milivoje Sladoje was the President of the Ulog Crisis Staff at the time. The accused Neđo Zeljaja was the commander in the Kalinovik Police Station.

Witness Huso Tukelija stated to have been captured as a soldier and taken to the cellar of the Police Station in Kalinovik. There were four detention cells in the cellar. At first, he was alone in the cell and later on, hodja Jašar Vuk came to his cell, then witness "F" and Tahir Panjeta. He was imprisoned for 110 days and then exchanged.

Witness "F" testified to have been arrested as a civilian and transferred on 4 August 1992 from the *Miladin Radojević* primary school building to the prison in the Police Station in Kalinovik, where he found Muradif Jašarević, hodja Jašar Vuk and Tahir Panjeta. He went to see commander Zeljaja, who told him that there would be no letter of exchange. When the war started, he heard that Zeljaja was a commander.

Witness "H" stated to have known that Tahir Panjeta was under house arrest at first and later on he was imprisoned on the Police Station premises in Kalinovik. The witness stated to have known that Tahir Panjeta was deprived of liberty in order to be exchanged for some important person from Sarajevo.

Witness Muradif Jašarević also stated to have been captured in Jakomišlje in late June and that he had weapons. He was taken to Kalinovik, then to *Donji Logor* and he was then brought back to the Kalinovik Police Station. He spent 35 days alone in his cell, while Tahir Panjeta, hodja Vuk and witness "J" were in other cells. When he arrived, Tukelija, Panjeta and Jašar Vuk were already there. Later on, witness "F", Zijo Hadžić and a civilian Šećo Mrzić, were brought to his cell. The accused Zeljaja was commander of the Police Station ever since Iso Poljak had left. He used to come to his cell to write a letter to Edo Godinjak.

According to witness Milivoje Faladžić, a reserve police officer, Neđo Zeljaja made duty roster for the police. In addition to the people imprisoned in the primary school, there were prisoners on the SJB Kalinovik premises as well. The witness could remember Zagorac, Jašarević, K.G.

In his testimony, witness "A" stated that there were imprisoned Bosniaks on the Police Station premises. They were in the detention cells in the cellar of the Station. Food was provided by the army from Kalinovik, both to the prisoners and to the police. Ferid Zagorac was also imprisoned, he was captured as a soldier, then there were also witness FWS-130, K.G. and a hodja from Ulog, all of them civilians.

Witness Miloš Veletić, a reserve police officer, also testified that there were captured Bosniaks in the Police Station in Kalinovik, he knew Zagorac, K.G, FWS-130 and others. They were locked in a cell.

According to witness Danilo Đorem, a reserve police officer, there were imprisoned Bosniaks in the Police Station, including a human minesweeper, who came across a mine.

In his testimony, witness Željko Mandić confirmed that there were imprisoned Bosniaks in the Police Station in Kalinovik, including witness "F", K.G, Huso Tukelija, Zagorac, Jašarević, Zijo Hadžić, Tahir Panjeta, hodja Jašar. They were imprisoned in four holding cells in the cellar. Muradif Jašarević was captured as a soldier. He did not know how other people were captured or why they were kept there. This witness stated that Panjeta had a special treatment for some time and he stayed in the resting room on the upper floor. All these people were exchanged afterwards.

In his testimony, witness "A" stated that there were imprisoned Bosniaks in the Police Station. They were kept in the detention cells in the cellar. Food was provided by the army from Kalinovik, both to the prisoners and to the police. Ferid Zagorac was among the prisoners, he was captured as a soldier, there were also witness FWS-130, K.G. and a hodja from Ulog, all of them civilians.

It follows from the list of detained persons who were released from the KPD Foča to be exchanged that K.G. and FWS-130 were released from the KPD to be assigned driver's duty.

Having examined the List of 106 exchanged prisoners of war, bearing no date, which is kept in the SIPA records, the court established that the names of FWS-130 and K.G. were included in the list.

It indisputably stems from the Order issued by the TG Kalinovik Command on 19 March 1993, which was signed by the Commander, the accused Ratko Bundalo, that FWS-130 was handed over to the TG Foča 7th Battalion Command for exchange.

The court also examined the List drafted by the Trnovo SJB on 14 September 1994 containing the names of captured people from Trnovo, Kalinovik, Gacko, Foča, Nevesinje and other places in the RBiH who were exchanged from August 1992 to June 1993, which shows that Kasim Bojčić, Tahir Panjeta, Jašar Vuk, Muradif Jašarević, Huso Tukelija, Zijad Hadžić, Šećo Mrzić and others were among the people from Kalinovik who were exchanged.

The testimonies given by the mentioned witnesses were accepted by the court as credible, given that they were consistent, complemented each other and were substantiated by the physical evidence in the case file. Based on the foregoing, the court has indisputably established that a number of Bosniak civilians were imprisoned in the Kalinovik SJB detention cells from May 1992 to March 1993, including Tahir Panjeta, Kasim Bojičić, K.G, FWS-130, hodja Jašar Vuk and others. Witness Jašar Vuk gave a very plausible account of his own capture and he also stated that the accused Neđo Zeljaja told him to go downstairs to the SJB cellar, where he was imprisoned for the following three months. It arises from the consistent testimonies given by several witnesses that he was imprisoned to be exchanged for a priest arrested in Trnovo, but the exchange never took place. Witness "A" also testified that the only reason for Tahir Panjeta's arrest was to be exchanged for an important individual from Sarajevo. Witness "A" stated that the other captured people were civilians, while other witnesses did not say anything about that. Guided by the provisions of Article 50(1) of the Protocol 1 Additional to the Geneva Convention which stipulate that "in case of doubt whether a person is a civilian, that person shall be considered to be a civilian", the court has concluded that the other people were also civilians.

According to the witness testimonies, the imprisoned people never received any official document concerning their deprivation of liberty, either at the moment of their arrest or during their imprisonment, nor was any procedure ever instigated in that respect.

There is no doubt that those individuals were imprisoned in the Kalinovik SJB and guarded by the police officers of this Police Station. The witnesses were also consistent in stating that food was provided to the prisoners by the army. In the relevant period, the accused Zeljaja was commander of the Police Station within the SJB Kalinovik and it arises from the testimony given by Jašar Vuk that those were precisely the members of the Kalinovik Police who brought him from Ulog to the SJB Kalinovik premises, where Neđo Zeljaja met him and told him to go down to the cellar. The accused Zeljaja, therefore, actively participated in the capturing of this individual. He was also aware that other Bosniak civilians were imprisoned in the cellar. The accused Bundalo personally participated in the imprisonment of Bosniaks in the Police Station cellar. This is proved by the fact that he provided food to them, in addition, it follows from the physical evidence contained in the case file that

Bundalo personally took over K.G. and FWS-130 from Foča. Those two individuals were afterwards imprisoned in the SJB Kalinovik and he himself handed over FWS-130 in March 1993 to the 7th Battalion from Miljevina.

Based on these facts, the court holds both accused responsible for the imprisonment of the mentioned civilians in the cellar of the Kalinovik SJB. The imprisoned people were Bosniak civilians and they were imprisoned, discriminated and persecuted on the grounds of their ethnicity.

When determining the status of those people, the court has started from the provisions of the Geneva Convention relevant to the definition of civilians and prisoners of war. To that end, the court has taken into account that it follows from the adduced evidence that FWS-130 and K.G. came from the KPD Foča, that commander Ratko Bundalo took them over, that they were imprisoned in the Police Station and eventually exchanged, in the way that FWS-130 was handed over to the Foča TG 7th Battalion Command, while there was no information about how Kasim Bojičić was arrested.

Based on the presented evidence, the court could not make a definite decision about the status of those individuals when they were captured. Guided by the provisions of Article 50(1) of the Protocol 1 Additional to the Geneva Convention which stipulates that “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian”, the court has concluded that the other people were also civilians at the moment of their arrest.

The court holds that these actions amount to the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph e) of the CC of BiH.

Count 1.i)

The Prosecution charged the accused with seriously threatening the life of Huso Tukelija during his imprisonment in the SJB Kalinovik cellar from June to 18 September 1992. He suffered mental torture since he was used as a driver for mines detection. He had to drive a cargo vehicle ahead of military and civilian convoys along the road from Kalinovik to Mjehovine, escorted by members of the *SJB* Kalinovik assigned under the duty schedule made by Neđo Zeljaja. While driving a vehicle in this capacity he came across a mine on 3 occasions, the vehicles he was driving were destroyed, but he managed to survive.

A number of pieces of evidence relevant to this Count of the Indictment was presented in the evidentiary procedure, witness were heard and physical evidence was admitted in the case file.

Witness Huso Tukelija testified to have been arrested as a soldier on 11 June by the Serb army, he was brought to the Police Station and imprisoned in the cellar. The Police Chief in Kalinovik told Pero Elez to bring him to Kalinovik because he would need him. He was a human minesweeper there. He was known to be a driver in Kalinovik, so that he was assigned to drive a truck as a human minesweeper. Whenever he went for a drive, he would see Neđo Zeljaja in the Police Station, he would bend his head down because he knew that he was going to mined areas and upon his return, he would call him to come to his office and gave him cigarettes and food. He accompanied both the army and police as a human

minesweeper. Duty officer would call him to go out and tell him where to go: Foča, Miljevinina, Nevesinje, Bileća. A FAP 13 vehicle was in front of the station, he would get in alone and drive, a military APC went around 50 meters behind him, or he was escorted by the Police. Once when he escorted a bus from Kalinovik which took armed soldiers to their shift, with a Police Jeep behind, he came across a mine at the Prapatna Njiva which blew up the truck, but he survived, only his nose bled. He went back with the soldiers and police to Kalinovik, Zeljaja saw him and let him wash himself since he was all smoky. The other FAP vehicle was also a *Sticar* truck, while the third one was a loader. He destroyed three vehicles.

Second time when he came across a mine was near Ulog, when his right rear wheel hit a mine and the third time it was close to Miljevinina, when his rear wheel also hit a mine, but he remained unhurt again. On a number of occasions he went as a human minesweeper from Kalinovik to Foča to get some supplies. Upon arriving in Foča, the police would hand him over to the Foča KP, where he would spend several days in the solitary cell waiting for the supplies. Then a policeman would come to pick him up and he would drive back to Kalinovik. When he had to go to Nevesinje, they would keep him imprisoned for several days in the Police Station in Nevesinje, until his return to Kalinovik. He had to take those rides all the time. On his way to Miljevinina, he was beaten up by two individuals on three occasions. He lost his teeth as a consequence of beating, he was covered in blood, his lips were cut and the policemen could see that. He was exchanged after 110 days. When he left, that same day or the following day, two men from the Foča KP came to Kalinovik. He learned about that from one of those two men later on at Bjelašnica, when they were exchanged.

Witness "F", who was imprisoned in the same Police Station, confirmed in his testimony that Huso Tukelija was used as a human minesweeper. Witness Muradif Jašarević, incarcerated in the same Police Station in Kalinovik stated that Huso Tukelija was in the same prison with him at the relevant period and that he had arrived there before him. He once saw Huso Tukelija with scratches on his face and Tukelija told him that he drove a FAP 13 vehicle and hit a mine.

Witness Jašar Vuk confirmed in his testimony that he was imprisoned with Huso Tukelija in the cell in the SJB Kalinovik. He knew that Tukelija drove a FAP vehicle in front of convoys, he once hit a mine which exploded, the vehicle was destroyed, but nothing happened to him. Huso would be given the vehicle to go ahead and in case that mines were planted, he would hit them and clear the road. According to him, Huso Tukelija was the only one who could leave the cell and go for a ride. Tukelija also told him that was beaten up in Miljevinina. The witness was taken to be exchanged together with Tukelija and Panjeta, when Tukelija and Panjeta were exchanged, but he was brought back to the same cell in the evening and exchanged the following day. He stayed in the prison for about three months.

It follows from the List drafted by the Trnovo SJB on 14 September 1994 containing the names of captured people from Trnovo, Kalinovik, Gacko, Foča, Nevesinje and other places in the RBiH who were exchanged from August 1992 to June 1993, Jašar Vuk, Tahir Panjeta, Huso Tukelija and others were among the people from Kalinovik who were exchanged.

The document drafted by the RBiH Armed Forces from Trnovo on 6 September 1992 shows that they were interested in the exchange and that prior to the suspension of the exchange, they would release a soldier Nenad Drašković, on condition that the SOS /*Serb Armed Forces*/ Command in Kalinovik release Huso Tukelija and then Tahir Panjeta and Jašar Vuk. On 9 September 1992, the RBiH Armed Forces from Trnovo approached the SOS Command Kalinovik again requesting that Huso Tukelija be exchanged. The SOS Command sent a letter on 10 September 1992 informing them that they would exchange Huso Tukelija, but only for a certain soldier from Kalinovik. In a letter of 11 September 1992, they expressed their regret over the failure to exchange Jašar Vuk that day. It stems from the letter of 25 September 1992 sent by the OOS RBiH /*Armed Forces*/ to the SOS Command Kalinovik regarding the exchange of prisoners that only witness Huso Tukelija was exchanged on the stated date from the Kalinovik side.

Witness Đorđo Đorem stated to have been in the engineering military unit from Kalinovik. According to him, Huso Tukelija drove a FAP vehicle during the battle for Rogoj, going ahead of a column in the direction of Grebak, while the witness drove a truck behind him. Nobody knew at that time if the road for Grebak was mined. They went to take some supplies and they were sacrificed.

Witness "A" testified that a driver from Trnovo, whose name was Huso, once came across a mine and the vehicle he drove was destroyed. He could remember that Zeljaja took him to the health centre later on for a check up. He saw the truck and everybody was amazed that a driver could survive in a totally destroyed truck. Those trucks were used to detect mines and after Tukelija left, other prisoners took over that assignment.

Witness Danilo Đorem stated to have known that there was a human minesweeper who was imprisoned in the Police Station, hit a mine and survived.

Witness Dušan Cerovina, a reserve police officer testified that it was the commander Neđo Zeljaja who made duty roster at the relevant period. There were prisoners in the Police Station who were used as human minesweepers. Witness Željko Mandić, a reserve police officer, also stated that commander Neđo Zeljaja made duty roster at that time. Huso Tukelija was among the people imprisoned in the Police Station and he drove a vehicle. Witness Milivoje Faladžić, a reserve police officer, testified that commander Neđo Zeljaja made duty roster and that he saw his first name, last name and signature on those lists. He knew that there were captured Bosniaks in the Police Station.

Having examined the Permission issued by the SJB Kalinovik on 10 July 1992, the court has found that Huso Tukelija was allowed to travel that same day on the route Kalinovik-Miljevina-Foča and back and that he would drive a FAP make vehicle. He was used as a human minesweeper, who had to go ahead of a convoy of vehicles, since mines were often planted on this road. It also stems from this document that the relevant authorities in Foča were requested to keep Huso Tukelija detained until the departure of the convoy from Foča. A similar permission was issued by the SJB Kalinovik on 25 July 1992 as well and it also stated that Huso was used as a human minesweeper, going as an advance, since the road was frequently mined.

It indisputably arises from the stated evidence that Huso Tukelija was arrested as a soldier at the Trnovo front lines, that he was brought and kept imprisoned on the Kalinovik SJB Police Station premises and that he was used on a number of occasions as a human minesweeper.

The Activity Report for the third quarter of 1992 (July, August, September) shows that members of the SJB Kalinovik escorted convoys. The Report was drafted by the Kalinovik SJB on 1 October 1992 and states that 31 convoys in total were escorted in the mentioned period. The Report was signed in the upper right corner by the second accused Neđo Zeljaja, who personally noted that the report was dispatched.

Soldiers obviously used the cells in the Public Security Station in Kalinovik to incarcerate prisoners of war. This stems from the Order issued by the Kalinovik TG, Pov. br. 825-1 of 22 October 1992, under which a soldier Radomir Mandić was ordered in the military detention in the SJB Kalinovik, as the only appropriate facility which could be used to prevent further fleeing and endangering soldiers and civilians. The same Order states that it would be enforced in cooperation with the SJB Kalinovik, it was signed by the accused Ratko Bundalo and sent in one copy to the Kalinovik SJB. The physical evidence proves that after Huso Tukelija's exchange, the accused Bundalo took over two prisoners from the Foča KPD to detect mines. They were incarcerated in the same detention cells of the Kalinovik SJB, then one of them was handed over in March 1993 to another unit on the order of the accused Bundalo, which the court has already explained in the previous section of the Verdict.

The Court has admitted the testimonies of the heard witnesses as consistent, credible and corroborated by physical evidence and found that they irrefutably show that Huso Tukelija was arrested as an Army of BiH soldier, with a weapon on him, imprisoned in the cellar of the Kalinovik SJB and used as a human minesweeper. Witness Tukelija gave a reliable and very detailed account of the events, which was consistent with the other adduced evidence. He testified to have driven a truck ahead of military and civil convoys, escorted by the police and the army, he came across a mine on three occasions, the trucks he drove were destroyed, but he managed to survive. The witnesses, former police officers, were consistent in testifying that the commander Neđo Zeljaja made duty rosters for the police officers in the station. According to witness Tukelija, Zeljaja knew when he had to go to detect mines because whenever he would see him in such situations, he would bend his head down and upon his return, he would give him food and cigarettes. Witness Huso Tukelija also stated that not even a crazy man would voluntarily go to such assignments.

In addition to Huso Tukelija's testimony, it follows also from the testimony given by witness Đorđe Đorem that military units from Kalinovik, among others, needed a human minesweeper who would clear the road ahead of convoys. The witness was a soldier and he went to one such assignment behind Huso Tukelija's vehicle. He stated that they were sacrificed. Witness Huso Tukelija testified to have been captured by soldiers and brought to the detention cells of the Kalinovik SJB. The fact that Ratko Bundalo looked for other human minesweepers after his release clearly demonstrates the need of the army for human minesweepers in this period. It undoubtedly follows from the account given by injured party Tukelija about the damage and destruction of the vehicles that his life was under threat and that he suffered mental torture. He was extremely lucky to survive on three occasions when

he hit mines driving his vehicle and all the heard witnesses who testified about that were surprised that he had survived.

According to Article 13, paragraphs 1 and 2 of the First Geneva Convention, prisoners of war are defined as 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, or members of other units commanded by a person responsible for his subordinates, that they have a fixed distinctive sign, that they carry arms openly and conduct their operations in accordance with the laws and customs of war. Pursuant to the Convention, prisoners of war enjoy full protection.

Article 50, paragraph 1 of the same Convention provides that grave breaches include inhuman treatment and willful causing great suffering or serious injury to body or health of those people.

The Geneva Convention relative to the Prisoners of War of 12 August 1949 gives in its Article 4 the same definition of prisoners of war. Article 13, paragraph 2 provides that prisoners of war must at all times be protected, particularly against acts of violence, while Article 23 of the same Convention prescribes that the presence of prisoners of war may not be used to render certain points or areas immune from military operations. Pursuant to Article 53 of the Convention no prisoner of war may be employed on labor which is of an unhealthy or dangerous nature, while Article 130 of the same Convention provides that the grave breaches of the Convention include inhuman treatment, and willful causing of great suffering.

The injured party, Tukelija, was a Bosniak by ethnicity and he was used to detect mines. The court opines that this offence was committed with the aim of discriminating Bosniak population and persecuting them on that grounds. Article 172(1)(h) of the CC of BiH stipulates that the criminal offence of Persecution may be in connection with any offence listed in this Code, therefore, the court holds that the same offence may be committed in conjunction with the offence of War Crimes against Prisoners of War.

Considering that Huso Tukelija had a POW status at the relevant period, that the relevant incident took place during the war and the armed conflict, that Huso Tukelija's life was constantly threatened when he had to carry out his assignments, that he feared for his life all the time and that he was subjected to severe mental suffering, particularly when he hit mines on three occasions, the court holds that all this amounts to the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with the criminal offence of War Crimes against Prisoners of War, in violation of Article 175(1)(b) of the CC of BiH.

Count 1 j)

It was irrefutably established during the proceedings that Ratko Bundalo personally took over the civilians K.G. and FWS-130 from the Foča KPD, who were then imprisoned in the SJB Kalinovik detention unit and used as drivers to detect mines from September 1992 to March 1993, whereby their lives were threatened and they were subjected to mental suffering.

FWS-130 and K.G. were not heard as witnesses. According to the Prosecution, they have lived abroad for years, at unknown addresses, so that they could not be summoned as witnesses. During the proceedings conducted before the ICTY, witness FWS-130 was granted protective measures pursuant to the ICTY Rules of Procedure and Evidence, he was given a pseudonym – FWS-130. The measures are still in force and shall apply to all other proceedings until they be revoked by the relevant Tribunal authority. Mindful of this fact, the court referred to this witness as FWS-130 throughout the Verdict. In addition, the ICTY referred to witness K.G. using his initials, which was also accepted by this court and the witness is mentioned as K.G. throughout the Verdict.

Witnesses “A”, Željko Mandić, Miloš Veletić and Milivoje Faladžić were consistent in stating that the mentioned individuals were imprisoned in the SJB Kalinovik in the relevant period and that they had to detect mines. The court established these facts on the grounds of their testimonies and on the grounds of the examined physical evidence which corroborate those testimonies.

The List of inmates released from the Foča KPD to be exchanged shows that these individuals were taken over from the Foča KPD by the Kalinovik Tactical Group Command and that it was the accused Ratko Bundalo who signed the document. The document bears no date and it was issued to approve that the detained K.G. and FWS-130 be released from the Foča KPD to be assigned as drivers.

It follows from the testimony given by witness “A” that there were imprisoned Bosniaks in the Police Station. They were locked in the detention cells in the cellar of the station. Food was provided by the military units from Kalinovik, both to the inmates and to the police. Civilians, FWS-130 and K.G. were among the prisoners, but there were detained soldiers there as well. Given the position held by witness “A”, he could be very much aware who among the people incarcerated in the SJB were soldiers and who were civilians. According to this witness, after Huso Tukelija’s departure, other inmates were used to detect mines. They were kept there to drive a truck-deminer. They were sent to the most dangerous areas. Drivers, human minesweepers had to go alone ahead of a convoy. According to witness “A”, it was the army that took over the human minesweeper and the truck, while the police was subordinated to the army when they escorted military convoys.

Witness Huso Tukelija testified to have been exchanged after 110 days he spent in the SJB Kalinovik cellar. When he left, that same day, or the following day, two men arrived in Kalinovik from the Foča KPD. One of those two men told him about that later on at Bjelašnica, when they were exchanged. The physical evidence mentioned in the reasoning of the previous section of the Verdict shows that Huso Tukelija was exchanged in mid September 1992.

Witness Miloš Veletić, a reserve police officer, also testified that there were imprisoned Bosniaks in the Kalinovik Police Station and that he knew K.G, FWS-130, Zagorac and others. They were imprisoned in the cells in the Station.

Witness Milivoje Faladžić, a reserve police officer, stated that commander Nedo Zeljaja made duty rooster for the police. The witness could remember that in addition to the people

detained in the primary school building, there were also imprisoned people in the SJB Kalinovik building. The witness could remember Zagorac, Jašarević, K.G.

Witness "Z" testified that there were imprisoned people in the Kalinovik Police Station cells, including K.G. and FWS-130, as human minesweepers. According to him, it was Pero Elez who took them to be used as human minesweepers. Pero Elez had arrangements with the army and the police, since he was often in contact with Boško Govedarica and they together used to go to see Ratko Bundalo.

It stems from the testimony of Željko Mandić that there were people imprisoned in the cellar of the Kalinovik Police Station, including K.G. All the prisoners were exchanged later on and all of them survived.

Witness Dušan Cerovina was also aware that there was a human minesweeper in the Kalinovik Police Station who drove a truck to detect mines. The human minesweeper was K.G. Witness FWS-130 was also in the Police Station, but Cerovina did not know if he too was a human minesweeper.

Having examined the List of 106 exchanged prisoners of war, which is kept in the SIPA files and bears no date, the Court has determined that the names of both FWS-130 and K.G. were included in the list.

The Order of the Kalinovik Tactical Group Command of 19 March 1993, signed by the accused Ratko Bundalo as the commander, indisputably shows that that FWS-130 was handed over to the Foča TG 7th Battalion Command to be exchanged.

The Defense argued that the status of FWS-130 and K.G. was not irrefutably established during the trial, since there are certain indications suggesting that they were prisoners of war, not civilians.

When determining the status of those people, the court has started from the provisions of the Geneva Convention relevant to the definition of civilians and prisoners of war. To that end, the court has taken into account that it follows from the adduced evidence that they came from the KPD Foča, that the commander Ratko Bundalo took them over, that they were imprisoned in the Police Station and eventually exchanged, in the way that FWS-130 was handed over to the Foča TG 7th Battalion Command.

Pursuant to Article 3(1) of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 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 enjoy protection. According to Article 13, paragraphs 1 and 2 of the same Convention, prisoners of war are defined as 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, or members of other units commanded by a person responsible for his subordinates, that they have a fixed distinctive sign, that they carry arms openly and conduct their operations in accordance with the laws and customs of war.

It was not established during the proceedings how the mentioned individuals were imprisoned in the Foča KPD, if they were members of one party to the conflict when they were arrested, if they were armed and so on. The evidence presented by the Prosecution to establish their identity also contains some information about their imprisonment and ill-treatment in the SJB Kalinovik. This evidence, however, provides very little or no information at all about how they were captured. The only exception is the capture of Huso Tukelija, which is sufficiently substantiated.

Therefore, the trial panel was not able to establish with certainty the status of these individuals at the time when they were arrested. Pursuant to Article 50(1) of Protocol 1 Additional to the Geneva Convention “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian”. In view of this Convention provision, the court holds that the imprisoned people were civilians.

It follows from the adduced evidence, which the court has found to be credible, consistent and complementing each other, that FWS-130 and K.G. were used as human minesweepers and that they had to drive vehicles along roads which were believed to be mined. Each of those drivers human minesweepers had to drive ahead of others and should there be an explosive device on the road, they would be the first to activate it. Explosive devices could be of different lethal power, but they in any case posed a danger to members of the Serb army, police and other people from Kalinovik who had to take that road. Thus, they were used as drivers because of the danger of explosive devices. Therefore, these men were exposed to a real and serious danger which could severely affect their health.

FWS-130 and K.G. were used precisely to face such a danger and possibly become victims of planted explosive devices. The court has found that on every occasion they had to drive in order to detect mines, their lives were threatened, or they could be seriously injured. Having to work as human minesweepers, those individuals were realistically exposed to both mortal danger and potential physical injuries. Everyone knew about their assignment.

Not only was using these people as human minesweepers humiliating, but it logically had to result in mental trauma, since they constantly feared for their lives. Fear of death is inherent in every human being. According to the court, whoever assigned FWS-130 and K.G. as human minesweepers did it with the intention to subject them to serious mental suffering and bodily injuries.

It was proved during the trial that FWS-130 and K.G. were transferred from the Foča KPD to Kalinovik, where they were taken over by the accused Bundalo, precisely to perform this duty. Therefore, there is no doubt that the accused Bundalo was actively involved in bringing those people and using them as human minesweepers.

Given that they stayed fairly long in the detention cells of the Police Station in Kalinovik, in the same building where the accused Neđo Zeljaja had his office and that they were guarded by the police officers whose commander was the accused Zeljaja, the court has concluded that the accused Neđo Zeljaja definitely knew why they were imprisoned in the Police Station in Kalinovik and he was aware of their assignment, but he nevertheless actively participated in maintaining the assignments and status of those people. Furthermore, before these two individuals, Huso Tukelija stayed in the same cells and was assigned as a human

minesweeper and the accused Zeljaja met him on a number of occasions when he returned from those assignments. In any case, whoever needed a human minesweeper, he had to request that such an individual be temporarily taken out of the detention cells in the Police Station, where the accused Zeljaja was in command and had to know why those individuals were taken out.

Witnesses FWS-130 and K.G. were Bosniak civilians. They were assigned as human minesweepers, they had to go ahead and possibly hit a mine, thereby clearing the way for Serb convoys. While executing those assignments, they were exposed to severe suffering since they constantly faced mortal danger. Such assignment of theirs was discriminatory in nature and was aimed at the persecution of Bosniak population.

Based on the foregoing, the court holds that all this amounts to the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph k) of the CC of BiH.

Count 1.k)

The Prosecution charges the accused Ratko Bundalo with issuing the order and Neđo Zeljaja with executing the order to burn down Bosniak villages in the Kalinovik Municipality together with other military and reserve officers during the period from July to August 1992. The villages that were burned down included Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine and others. Neđo Zeljaja set on fire the village of Sočani, while other soldiers set on fire the other mentioned villages.

A number of witnesses testified about this Count of the Indictment and the physical evidence was admitted in the case file.

Witness "A" testified to have been at his post between Sočani and Kutine, when chief Boško Govedarica came there accompanied by Neđo Zeljaja, Mitar Govedarica, the then Deputy Commander of the Police Station in Kalinovik, Radomir Tošović, chief for defense preparations, and Gojko Starčević, an army officer who was under the command of the accused Ratko Bundalo. The members of the SJB Kalinovik came in a *Land rover* police vehicle, while soldiers came by their *Campagnola* vehicle. Chief Boško Govedarica said that they received a written order from the commander Ratko Bundalo to burn down the Bosniak villages of Daganj, Bojići, Hotovlje, Kutine, Sočani and others for the reasons of security, he thought that there were six villages in total. While Govedarica was saying that the order was signed by Bundalo, officer Starčević opened his shoulder bag to take out the order, but he said that the order was in the bag, then all of them, including Boško, told him that he did not have to take it out of the bag. Boško explained that by saying that it was precisely why four of them, senior officers, came to the post and that others would not be responsible for burning down the villages. He also said that they would split in four groups, each of them led by one senior officer. Witness "A" said that he then saw soldiers coming to the post and the soldiers told them that they would burn down all the villages except Sočani. After that, they split in groups, one of them led by Neđo Zeljaja. The village of Sočani was around one kilometer far from the post and when they came there, the Bosniaks had already deserted the village. There were 6-7 Bosniak houses in the village. Witness "A" and his group were supposed to set two houses on fire and they did that. They got some matches to

use for that purpose. Soldiers burned the majority of houses in the other villages that same day, while very few houses which remained were burned down afterwards. When shown some photographs and video footage, witness "A" recognized burned houses in the village of Sočani. He was also shown the photo documentation and the witness recognized burned houses in the villages of Dagan, Bojići, Kutine and Hotovlje. He stated that one day, after the fall of Rogoj, they repositioned to the Humac hill. According to this witness, police officer Željko Mandić told him once that he saw Neđo Zeljaja in Kalinovik when they came back from the village of Sočani, his face was all sooty, and it was then when he heard that the village was set on fire.

Witness Milan (Branko) Lalović confirmed in his testimony that the village of Sočani was burned down. He stated that a senior officer Starčević came to the post at Kutine on behalf of the army, while Boško Govedarica, Neđo Zeljaja, Radomir Tošović and Mitar Govedarica came there on behalf of the Police. They told them that they had to set Sočani on fire. They all entered Sočani, together with the mentioned individuals, the village which had around ten houses was abandoned. They set the houses on fire using matches. The army burned other villages. When examined for the first time, witness Lalović said that he saw the accused Zeljaja entering some houses in Sočani on that occasion, but he did not see him setting those houses on fire. Another time he was examined, he claimed that they were in the same group. When clarifying this, the witness said that everyone entered the houses, he assumed Zeljaja did as well, but he did not know if he burned them. The witness stated later on that Zeljaja came in front of Bosniak houses in Sočani and that he might have entered them as well.

Witness Milivoje Faladžić, also a reserve police officer in Kalinovik at the time, testified that the villages of Sočani, Hotovlje and Kutine were burned down, the property destroyed and that all Bosniaks from those villages left. Witness Željko Mandić, a police officer, said that Sočani, Hotovlje, Kutine and other villages were burned down in the summer.

Witness Dušan Cerovina was a police officer deployed at the post in Kutine when these villages were set on fire. He said that he was not involved in setting Sočani on fire, but he heard about that when his fellow police officers returned to the post. According to them, the order was issued by the army.

The photo documentation of the mentioned villages (T-13, 14, 15) and the CD (T-18) show that all the houses and other property were burned down in the mentioned villages and that those villages are still uninhabited.

The map of the inhabited places in the Kalinovik Municipality and the topographic map which is integral part of the Expert Report drafted by Mladen Prole show that the villages of Sočani, Kutine, Daganj, Hotovlje, Luko and Bojići are situated in the western part of the territory of the municipality and that all those were adjoining villages.

The 1991 Census shows that those villages situated in the Kalinovik Municipality were populated exclusively by Muslims.

It follows from the testimonies given by the mentioned witnesses which the court accepted as credible, consistent and corroborated by the physical evidence contained in the case file,

that the Bosniak villages in the Kalinovik Municipality were burned on the order of the accused Ratko Bundalo. The police forces of the SJB Kalinovik, including the accused Nedo Zeljaja, set Sočani on fire, while the army and its officers burned the other villages.

The court has found the testimony given by witness “A” credible in this part, since it was substantiated by testimonies of the other witnesses, including witness Milan (Branko) Lalović and established that the SJB Kalinovik commanding staff came to Kutine. Boško Govedarica, the Chief, Neđo Zeljaja the commander, Radomir Tošović, Deputy Commander and Mitar Govedarica were among them, as well as Gojko Starčević, a highly ranked officer of the Kalinovik Tactical Group. Boško Govedarica told those present that they had to set on fire six Bosniak villages in Kalinovik on the orders of the accused Bundalo. When Starčević wanted to open his bag and show them the order, they told him that he did not have to show it. The witness stated that they then split in four groups and that the senior officers led those groups. It was decided that the Police would burn the village of Sočani, while the army would set other villages on fire.

Witness “A” testified that one group was led by the accused Zeljaja. Witness Milan Lalović stated that Zeljaja entered some houses in Sočani, but he did not see him burning them, while he later claimed that he was in the same group with Zeljaja. When explaining this, the witness said that everyone entered the houses, he assumed Zeljaja did as well, but he did not know if he burned them. The witness stated later on that Zeljaja came in front of Bosniak houses in Sočani and that he might enter them as well. In the opinion of the court, the witness gave such partially inconsistent testimonies in order to diminish the responsibility of the accused, since they knew each other for years. The witness said that they used matches distributed to them to set the houses in Sočani on fire and that commander Zeljaja was with him on that occasion. Zeljaja’s presence in Sočani during the relevant incident was substantiated by an indirect piece of evidence given by witness “A”, who testified that police officer Željko Mandić told him once that he saw Neđo Zeljaja in Kalinovik when they came back from the village of Sočani, his face was all sooty and it was then when he heard that the village was set on fire.

The photographs of the burned property in the Bosniak villages show that all facilities made of brick were burned down, that only bare walls remained and that there were a lot of burned houses. When these villages were set ablaze, no resistance was offered, since it follows from witness’ testimonies that the villages were already abandoned. Therefore, the burning and destruction of the Bosniak property was entirely unjustified and unprovoked. Given the number and size of the burned property in the six Bosniak villages in the area of Kalinovik, the court holds that the fire caused large scale damage to the Bosniak population. The court has found that these actions were aimed at expelling Bosniaks from their centuries old homes and targeted against their property on discriminatory grounds. The accused were the key participants in the planning, ordering and setting those villages on fire, since it was Bundalo who ordered the burning of the villages, while the accused Zeljaja arrived with a highly ranked military officer and commanding staff of the SJB Kalinovik to lead the police in the execution of this assignment.

According to Article 172(1)(h) of the CC of BiH, the offence of Persecution may be in connection with any offence listed in this Code, it can therefore be committed in connection

with the War Crimes against Civilians. The state of war was declared in the area of Kalinovik and in the entire BiH at the time when the offences were perpetrated.

Article 13(1) of the 1st Geneva Convention stipulates that its provisions apply to the persons taking no active part in the hostilities.

Article 50, paragraph 1 of the same Convention provides that grave breaches include inhuman treatment, including extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. Under the ICTY Statute, destruction of property belonging to the opposing party not justified by military necessity is considered to be a war crime in non-international armed conflicts. Violation of this regulation is punishable under national legislation in many countries, so that it became integral part of customary international law.

Protection of private property is recognized in the Lieber Code, Brussels Declaration and Oxford Manual.

Given that the property belonging to the Bosniak population in the six neighboring villages was burned down in this specific case and extensively destroyed with no justified or permissible cause and that the accused participated in those actions which were aimed at the persecution of Bosniak population on discriminatory grounds, the court holds that this offence amounts to the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with the criminal offence of War Crimes against Civilians in violation of Article 173(1)(f) of the same Code.

Count 1.1)

The Prosecution charges the accused with having organized an exchange in late August 1992 when the women imprisoned in the *Miladin Radojević* primary school were exchanged for Serbian soldiers killed in the area of Jakomišlje. The women had to pull out the killed Serbian soldiers first, exposing themselves to mortal danger and bring them to the point of exchange and only after that they were allowed to cross over with their children to the territory controlled by the Army of BiH. Such a manner of exchange was approved by Ratko Bundalo.

A number of pieces of evidence was adduced in the evidentiary procedure relevant to this criminal offence.

Witness Rade Pavlović testified to have personally participated in the exchange of the women imprisoned in the school building in Kalinovik for the Serbian soldiers killed in Jakomišlje. The killed Serbian soldiers came to Kalinovik from Belgrade, in the second group, while the first group of soldiers was brought personally by the accused Bundalo when he returned from Belgrade to Kalinovik. Those units were under the command of Colonel Bundalo, who wanted to regain lost morale among the soldiers in Kalinovik upon his return, which was why it was decided to bring Jakomišlje back under their control. Ten volunteers from Belgrade led by officer Gojko Starčević went to execute the assignment, but all of them got killed in the attack. Thus, a way had to be found to pull out the bodies of the killed soldiers from those positions. They concluded that the best way to do that would

be to exchange them for the women and children kept in the school building in Kalinovik. The women were supposed to bring back the dead soldiers first and they would be released after that. Ratko Bundalo, Starčević, witness "H", Boško Govedarica and others discussed and agreed upon the manner and organization of the exchange in the Command. Witness Pavlović testified to have personally executed the agreed exchange. The women were brought to the road to Ljuta, where they waited for him, so that he did not know precisely whether they were brought there under the order of Boško Govedarica or Ratko Bundalo. Coffins were made for the dead bodies, Boško Govedarica was present at the exchange and the witness thought that Grujo Lalović was also there. The dead bodies were on a prominent hill and the women had to go there to pull out the bodies. The exchange started when four women went to pull out the dead bodies to Jakomišlje. They carried a groundsheet and were supposed to bring one dead soldier. After that, eight women were supposed to go and four women would be released to cross over to the other side, while those eight would bring two dead bodies. The women went along the road. The witness believed that the bodies were probably somewhere in the forest and someone from the Muslim side was supposed to show them the location. The witness said that that the exchange was unpleasant, but the women did it properly. The exchange was not completed that day since three bodies could not be found. The women were sent back and the following morning they were again taken for exchange which was organized in the same manner. Since the women were escorted by only few people, a group of volunteers came in front of the truck and threatened the women to kill them, they even fired one round. All the women who were on the truck were released that day. The witness personally approached Ratko Bundalo asking for a helicopter to transport the dead Serbian soldiers from Belgrade to the place from which they came. A helicopter arrived and all the bodies were transported except one, who did not belong to that group.

Witness Đemila Redžović testified to have been imprisoned in the school building in Kalinovik and that one morning a policeman Febo Lalović came there and started reading out a list of 45 people in total. They climbed onto a truck on the order of an officer Rade Pavlović. They drove them in the direction of Ljuta. When they reached a place unknown to her, Pavlović lifted a tarpaulin and asked who would take a message to the opposite side. Fata and another woman volunteered, they took the message and the exchange could start. The first group went for exchange and after that she was selected to go with another three women. They got on another truck and left. The driver of the truck took out his pistol and told them that if anyone started shooting at him, he would kill them first and then himself. When the truck stopped, they got off and found a body on the open ground. It was around one kilometer far from the truck. There were some cartridge cases around the body. The four of them put the body on the stretcher and carried it to the truck. The truck then went to take away the body. They were supposed to bring another dead body and then go each one's way. They returned to take another body, but she was weak and could not carry the body all the way to the truck, she gave up half a way. Before going for the second body, they were told that when they carry it to the truck, their children and belongings would be brought by the truck. The witness stated that she was afraid to get close to the dead bodies she had to carry. Around 15 women were exchanged that day and the exchange lasted long. All the three women who were with her were exchanged that day, but she did not return to the truck again because she did not have any children.

Witness Fadila Hatić, who was captured in early August in the village of Jelašca, stated to have stayed in the school building in Kalinovik until the exchange for dead soldiers took place. She was exchanged at Jakomišlje, when she had to pull out killed Serbian soldiers. They left for the exchange after a list of names was read out, they were taken in a truck which had a tarpaulin, so that they did not see the road. When the truck stopped, they told them to jump off, to take a stretcher, go to the separation line between the conflicting parties and bring the dead bodies. They would bring two dead bodies, then they would give them a white flag to cross to the other side. They did not tell the women if the area where they had to go to find and bring the bodies was mined. She carried two Serbian soldiers during the exchange and loaded them on the truck. It was hard for her to look at those dead soldiers, she experienced a great fear and as a consequence, she got a nervous system disorder and other health problems.

Witness Dika Suljić was also imprisoned in the school building in Kalinovik. According to her account of the exchange, policeman Rajko Višnjevac read out the list of names the first day, when a number of women left to be exchanged, while Febo Lalović read out the list of names the second day. Both those days, they selected young and strong women who were supposed to carry dead Serbian soldiers. The third day, Rajko Višnjevac called her and the names of women from Gacko. When she left the school with her little daughter, she saw a truck and many people in uniforms. They separated her from her daughter there, loaded her on the truck and took them in the direction of Ljuta. That same day she went over to Ljuta, her daughter joined her the same night and told her that she came to the separation line with the other women, they left her there and sent the other women to carry some dead soldiers, while their children had to stay in the truck.

Witness Mirveta Pervan was only five years old when she was exchanged together with her aunt, who was imprisoned with her in the school building. The exchange was supposed to take place on condition that the women bring dead Serbian soldiers.

Witness Hasna Ćusto testified to have been exchanged at Jakomišlje and that there was a list of people to be exchanged. The first day, two trucks arrived and one of them returned in the evening bringing back the elderly women. They were to be exchanged for dead bodies of Serbian soldiers. The women went to bring the bodies, while their children had to stay until they bring them. The location where they had to go and pull out the bodies was at the front line, at Bosniak side, where those Serbian soldiers got killed.

On the request made by the RS Ministry of Defense, Kalinovik Department, the SJB Kalinovik sent them on 28 December 1992 the list of women, children and Serbian soldiers who were exchanged at Jakomišlje and Rogoj. The document of the RS Ministry of Defense, Kalinovik Department, in which this list was requested, shows that the SJB was in charge of the exchange of the captured people.

The letter sent by the SOS Command Kalinovik - Trnovo on 25 August 1992 to the Muslim forces Command in Ljuta shows the manner of communication regarding the relevant exchange at Jakomišlje. In the letter, they informed the enemy that they would send the letter by a Bosniak woman whose children would stay behind and they requested that all dead bodies belonging to those killed at Jakomišlje be handed over to them the following

day, otherwise, they would kill 24 captured citizens to start with and all others afterwards. The letter was signed and stamped with VP 4120 Kalinovik.

The manner and organization of the exchange was described in detail in the Letter sent by the SOS Command Kalinovik – Trnovo, VP 4120, to the Muslim forces Command in Ljuta on 26 August 1992. According to the document, the exchange would start by sending four women with a stretcher to bring one body. After that, eight women would be sent for exchange, four of them to be exchanged and the remaining four would stay and bring one body. After that, the third time and afterwards they would send groups of 12 women, four to stay and eight to bring two bodies. They would bring a truck up to 1.5 kilometers close to the location to make the carrying easier. Thirty women from Kalinovik and nine from Gacko would be sent for exchange. In case that the exchange deviated from the agreed plan, 24 captured people would be executed.

The SOS Kalinovik – Trnovo Command sent on 25 August 1992 a letter to the Muslim forces Command in Ljuta informing them to deliver by the following day the bodies of all the killed or captured Serbian soldiers at Jakomišlje. Three Muslims would be exchanged for each handed over soldier.

It follows from the regular combat report drafted by the TG Kalinovik Command on 29 August 1992 and signed by the accused Ratko Bundalo as the commander, which was forwarded to the Herzegovina Corps Command, that an exchange of women and children was proposed that same day to the Kalinovik TG Command, all for all, that the proposal was accepted and the exchange would take place the following day at 13:00 hours in the area of Jakomišlje, so that there would be no combat activities that day.

The testimonies given by the mentioned witnesses were accepted by the court as credible, given that they were consistent and substantiated by other physical evidence examined by the court, which show that the relevant exchange took place in late August 1992 and that the women imprisoned in the primary school building in Kalinovik were exchanged for killed Serbian soldiers in the area of Jakomišlje. Witness Rade Pavlović, who was in charge of the exchange on behalf of the army, testified that the dead bodies were on a prominent hill and the women had to go there to pull out the bodies. The exchange was unpleasant in his opinion. It stems from the testimony given by witness Hasna Ćusto that the bodies were indeed in the area where combat activities were previously conducted, she had to pull out the dead bodies of Serbian soldiers from the front line at the Bosniak side. Witness Đemila Redžović saw some cartridge cases around one body. Obviously, the bodies were not collected and put at one place, so that the women had to look for them. This stems from the testimony given by witness Đemila, who found one dead body on the open ground. Witness Pavlović stated that three bodies of the killed Serbian soldiers could not be found that day.

There was a realistic threat that the exchange could take an unpredicted turn. According to witness Đemila Redžović, the driver of the truck who took them for exchange, pulled out his pistol and said that if anyone started shooting from the other side, he would kill them all. The women taken for exchange had to go to the front line, on the open ground, search and find dead bodies of Serbian soldiers and bring them on a stretcher. Some of those women had children, who were kept hostage until they return with the dead bodies. Witness Đemila Redžović stated to have been afraid during the exchange, while witness Fadila Hatić

testified that it was hard for her to look at the killed soldiers she had to carry, that she was very scared, which all resulted in a nervous system disorder and other health problems. Witness Rade Pavlović personally stated that the women coped rather well with this unpleasant exchange, meaning that he himself thought that it was not easy for them. The point of exchange was a battlefield, a firing line, the place where the Serbian soldiers were killed and soldiers of the conflicting parties were on both sides. The correspondence between the Kalinovik Command and the enemy shows that threats were constantly made that the women would be killed in great numbers should the exchange fail. Therefore, all this implies that the exchange was extremely risky and that the lives of women were threatened. The exchange organized in such a manner exposed the women to great fear and suffering, given that they had to go to the open ground and to the first firing line, where they had to look for the dead bodies, while their children were kept behind, then to carry the bodies 1.5 kilometers to the other side and they were threatened that they would be executed should the exchange fail or shooting start.

With regard to this Count of the Indictment, the Defence heard two witnesses: Dragomirka Mišović and Milena Vasić. Witness Dragomirka Mišović claimed to have been captured as a civilian by the Army of BiH in Trnovo. The exchange took place on 10 September 1992 at Jakomišlje. The bodies of the killed Serbian soldiers had been previously dug up and were carried by Serb civilians and only one body was brought by Bosniak women, who came from Kalinovik. Witness Milena Vasić testified to have been exchanged at Jakomišlje on 7 September 1992, when 20 women and children from Kalinovik were exchanged. On that occasion, she saw 10-12 bodies of killed soldiers and she noticed some Muslim coffins at the place of exchange. According to her, Dragomirka Mišović stayed behind and she was exchanged on 13 September 1992, when her husband was also exchanged.

The court has not accepted the testimonies given by the two witnesses as relevant, since the court opines that they testified about some other exchange of captured civilians, not about the exchange charged in the Indictment, for which the court established that happened in late August and in the manner described in the Indictment. Even Rešad Hadžić, witness for the Defence, testified that his mother was exchanged for the killed Serbian soldiers at Jakomišlje in late August 1992, the date stated by other heard witnesses as well. In addition, the manner of exchange as described by these two witnesses was very much different from the account given by the other heard witnesses and corroborated by the testimony of witness Rade Pavlović who was present at the exchange and by the physical evidence which shows precisely how the exchange was planned.

The exchanged women were undeniably imprisoned in the primary school building in Kalinovik and secured by the Police. Witnesses Dika Suljić and Đemila Redžović stated that the Police from Kalinovik read out both days the names of people to be exchanged, while witness Hasna Ćusto, who was also captured, stated that the list of women to be exchanged was made at that time. It stems from the testimony given by witness Pavlović that the exchange was agreed in the Command in Kalinovik, in the presence of Ratko Bundalo and Boško Govedarica. The correspondence examined by the court shows that soldiers under the command of Ratko Bundalo participated in the organisation, since the manner of exchange was precisely explained and threats were made that the female prisoners would be killed *en masse* should the exchange fail. The testimony of witness Pavlović and the relevant physical evidence clearly show that the exchange and the manner

of its execution was approved by Ratko Bundalo. Members of the SJB actively participated in the exchange, not only through the Chief Boško Govedarica, but also through the police officers who secured the school. The letter sent by the Kalinovik SJB reveals that they had a list of women and children who were exchanged at Jakomišlje. Furthermore, the police officers of the Kalinovik SJB read out the names of the women from the list who were to be exchanged.

The foregoing and the fact that those actions put the imprisoned Bosniak women in mortal danger during the exchange organised in such a manner, the fear and agony they suffered by being intentionally exposed to such a danger, led the court to conclude that this offence too was committed with the aim of persecuting Bosniak civilians on discriminatory grounds and that it amounts to the Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph k) of the CC of BiH.

The accused Ratko Bundalo and Neđo Zeljaja

Count 2

The Prosecution charges the accused Ratko Bundalo and Neđo Zeljaja under Count 2 of the Indictment with participating from June, at least to September, in the establishment and securing the operation of the prison in the *Miladin Radojević* primary school in order to unlawfully imprison Bosniak civilians. To that end, they kept hundreds of prisoners from Kalinovik, Nevesinje, Foča and Trnovo in the school building, who were subjected to various criminal actions conducted by soldiers of the Serb armed forces, who were allowed a free entrance by the guards.

The court has established in the evidentiary procedure that the *Miladin Radojević* primary school in Kalinovik was used from June to at least September 1992 as a prison and that Bosniak population from the municipalities of Kalinovik, Gacko, Nevesinje, Foča and Trnovo were unlawfully imprisoned there.

It stems from the consistent testimonies of witnesses and from the photo documentation that there was only one primary school building in Kalinovik at the relevant period, housing both primary and secondary school. The name of the school was *Miladin Radojević* and it had a gym. These facts relevant to the school building were not disputed under the evidentiary procedure.

The court notes that the Prosecution alleges in Count 2 of the Indictment that the school building in Kalinovik was used as a prison from June 1992 to at least September of the same year. Notwithstanding that Bosniak civilians were imprisoned in that school in May as well, as the court already concluded and explained, the Panel will evaluate such a portrayal of the school in Kalinovik under this Count.

Imprisonment of men from Jeleč, Foča Municipality, started in May 1992 and lasted until early June 1992 with some disruptions, when the imprisoned men were brought back to the school building in Kalinovik after their return from Bileća. From there, they were taken to the Foča KPD immediately the following morning. These facts follow from the testimonies

given by witnesses Ahmo Mušanović, Asim Zametica, Mevlida Ćustović, Rada Pavlović, witnesses “A”, “Z”, “X” and others.

As of end May 1992, for the following 15 days of June 1992, women and children from Trnovo were also imprisoned in the school building in Kalinovik, while men from Trnovo were imprisoned both in the school in Kalinovik and in the Police Station in Kalinovik. Later on, in early July, all the men from Trnovo were transferred to the *Barutni Magacin* camp. This follows from the testimonies given by witnesses Emka Velić, Elvira Ćemo and Fevzija Hadžić.

Imprisonment of men in the area of Kalinovik Municipality started on 25 June 1992, when they were detained in the school building in Kalinovik, as it was described in detail in Section 1.b) of the Verdict. Many witnesses testified about that fact, including Fevzija Hadžić, Zlatka Hadžić, Rukija Rogoj, Dika Suljić and others. Testimonies of these witnesses were corroborated by the Report made by SJB Kalinovik for the period 1 April to 15 August 1992, which was drafted on 18 August 1992. The Report shows that municipal and military authorities issued a Decision to apprehend and detain able-bodied Muslim population in the primary school building in Kalinovik. Acting pursuant to this order, the SJB started detaining people. However, in the opinion of the court, the contents of the SJB Kalinovik Report does not at all exonerate the senior officers of the SJB, including Nedo Zeljaja as the Police Commander, from taking part in the establishment of the prison in the school building that month. Based on a number of the adduced pieces of evidence, the court has concluded that the school building in Kalinovik was transformed into a detention centre and that it was done in accordance with the strategy devised and agreed upon by both military and police authorities of Kalinovik. The military authorities participated by carrying out an attack on Bosniak civilians, who were later on arrested and brought to the school. The first detainees were Bosniak civilians who were captured after they fled from Jeleč in Foča Municipality, and those who were arrested following the attack on Trnovo. According to the testimony given by a highly positioned military officer, witness “H”, the plan to imprison all able-bodied Bosniak men was discussed two times in the Kalinovik Tactical Group HQ prior to its execution, in the presence of the accused Bundalo, as the Tactical Group Commander and the accused Zeljaja, as the Police Station Commander. During those meetings, the list of people to be arrested was discussed, as well as the manner of their arrest. The court holds that the military authorities were interested in the arrest, since it was foreseen that all able-bodied Bosniak men in the area of Kalinovik were to be arrested, the men who were conscripts at the same time, therefore posed a danger. Afterwards, the municipal and police forces mainly participated in the execution of the plan, while the military police assisted in arresting. The municipal authorities sent call-up papers to those men through the Secretariat of National Defence and whoever failed to respond, the police would be sent to bring him in, together with members of the military police. According to witness Fevzija Hadžić, the assembled men who responded to the call-up, were taken in a truck by the Police to the primary school building in Kalinovik and the Police guarded the building all the time. The fact that the imprisoned men were transferred after ten days to the *Barutni Magacin* military facility, which was under the command of the Tactical Group Kalinovik, shows that the imprisoned men were important to the army. All the men imprisoned in the school in Kalinovik were transferred to the *Barutni Magacin* in a joint action taken by the Police and the Army, which would be addressed in more detail in the reasoning of Count 3 of the Indictment. That same day, or the following day, a large

group of captured Bosniak civilians from Gacko were brought to the school building jointly by the Army and the Police.

It follows from the testimonies given by witnesses "C", Danilo Đorem, Miloš Veletić, Milan (Branko) Lalović and others that immediately after the Bosniak men imprisoned in the school in Kalinovik were transferred to the *Barutni Magacin*, a group of 200 Bosniak civilians from Gacko was brought in early July 1992. Those men were captured and incarcerated in the school in Ulog the night before. The accuracy of testimonies given by these witnesses was confirmed by the Report of the SJB Kalinovik, stating that Muslim conscripts were transferred on 6 July 1992 from the school in Kalinovik which was guarded by members of this SJB, to the military prison, guarded by the Kalinovik Tactical Group Command.

Witness Fevzija Hadžić testified that the imprisoned men were transferred from the school gym in Kalinovik to the *Barutni Magacin* on 6/7 July 1992, as was proved by the physical evidence admitted in the case file, particularly the *Knjiga Izlazaka /Absence Record/*.

Based on this evidence, the court has concluded that both accused, Bundalo and Zeljaja, participated in the establishment and securing the prison in the primary school building in Kalinovik and that they used the prison to unlawfully imprison Bosniak population. Both of them were also involved in ensuring the operation of the prison by accommodating a huge number of Bosniak civilians there, who were guarded by the Police and provided food by the Army the whole time of their imprisonment, with the exception of several days in early August.

Witness Jašar Vuk was a *hodja* in Ulog when he was arrested and incarcerated in the detention cells in the Police Station in Kalinovik. He stated to have found a lot of prisoners in the school in Kalinovik when he came there in August, some of them from the area of Nevesinje.

Witness "D" also stated that old men and women from Nevesinje were imprisoned in the school in Kalinovik, when she was incarcerated there in August.

Bosniaks were being captured and imprisoned in the *Miladin Radojević* primary school in Kalinovik also after Bosniaks from Gacko were brought there. The imprisoning intensified in early August 1992, during the fights for Rogoj and immediately after that, when a number of Bosniak villages were burned in the area of Kalinovik Municipality. Also, people who could not or did not want to leave the village were killed soon afterwards. Witness Demila Redžović was arrested on 1 August in Kalinovik and she testified that the school in Kalinovik was already full of civilians from Gacko, Nevesinje and Kalinovik when she was brought there.

Witnesses Hasna Čusto, Rukija Rogoj, Fadila Hatić and others were consistent in stating that Bosniak citizens were arrested and imprisoned in the school in Kalinovik in this period. All these witnesses were arrested and imprisoned in the school during this period. It stems from testimonies given by those witnesses that women, children and elderly people from the village of Jelašca were arrested in a joint action conducted in the village by the army and police, when houses were burned and Bosniak population imprisoned.

All the witnesses were also consistent in testifying to have been imprisoned in the *Miladin Radojević* primary school at the relevant period, to have been civilians at the moment of arrest, to have received no decision about their imprisonment and to have been unlawfully arrested.

It follows from the testimonies given by all the heard witnesses, both the police officers assigned to guard the school and the witnesses imprisoned in the school, that the *Miladin Radojević* school in Kalinovik was guarded by members of the Police Station in Kalinovik in the relevant period. This fact was not disputed even by the Defence Counsel.

Section 1 of the Verdict provides a detailed explanation as to how the court indisputably established the fact that the accused Neđo Zeljaja was the commander of the Police Station in Kalinovik during the relevant period. Such a position and rank held by the accused Zeljaja suggest that the police officers who were assigned as guards were directly subordinated to him. This fact is also proved by the Rule Book on Internal Organisation which was in force at that time (O-II-71).

Pursuant to Article 62 of the MUP SR BiH Rule Book on Internal Organisation, the accused Neđo Zeljaja had certain duties and authority as the commander of the PS within the SJB Kalinovik, which included assigning duties to his subordinates and taking appropriate measures in case of the failure on their part. Witness Milan (Branko) Lalović testified that it was the accused Zeljaja who assigned police officers as guards in the *Miladin Radojević* school and who scheduled shifts. In the statement given under the investigation, witness Miloš Veletić also stated that the commander Zeljaja assigned police officers to shifts at the time when men were imprisoned at school, as well as when women were imprisoned. Witness Veletić denied this statement at the main trial, but the court has not found it convincing, since the witness did not offer a single reasonable argument to explain why he changed his earlier statement. On the other hand, the mentioned Rule Book and the TOR of the commander of the station foresaw such duties. Witness "A" testified that Neđo Zeljaja signed shift schedules.

It was also irrefutably established in the proceedings on the grounds of consistent testimonies given by a number of witnesses that Ratko Bundalo was the commander of the Kalinovik Tactical Group in the relevant period and that food for the imprisoned people in the school was supplied from the kitchen in *Gornji Logor*. According to testimonies given by witnesses Rade Pavlović, Božo Purković, Milan Veletić, Miloš Crnjak and others, the Tactical Group Command was in charge of the military facilities in Kalinovik, including *Gornji* and *Donji Logor* and *Barutni Magacin*.

In relation to this Count of the Indictment, the Defence for the principal accused argued that the prison in the primary school in Kalinovik was established by the municipal authorities, that the army did not take part in it. Also, it was the Police who arrested all those people. The Defence disputed that the accused Bundalo could know that various criminal offences would take place in the school, merely because food was provided to the prisoners by the army. In addition, all the offences under this Count of the Indictment took place in early August or during this month, when the accused Bundalo was not in Kalinovik at all.

The Defence for the second accused argued that the time frame under Count 2 of the Indictment was not precisely defined, since August 1992 was stated as the month when the relevant incidents happened, however, it follows from testimonies given by a number of witnesses that they happened at the very beginning of August. The Defence denied that the accused Zeljaja was the commander in the Kalinovik Police Station at the relevant period and gave a number of positive examples of some police officers who helped the prisoners, including the accused Neđo Zeljaja, who once prevented soldiers from entering the school. The Defence for the second accused also argued that those responsible in the Kalinovik SJB did not have all the information about the incidents in school, that it was the duty police officer who collected all the information and directly communicated with the patrol which secured the school and that it was also his responsibility to take all available measures and inform the superiors. The Defence for Neđo Zeljaja further alleges that it follows from their evidence adduced in the case file under numbers 22 through 66 that the technical equipment in the station was very poor and that the police officers protected citizens and their property the best they could. The Police force was insufficient to confront all the paramilitary and criminal groups which perpetrated various criminal offences and disturbed public peace and order. The accused Zeljaja did not have any authority relevant to the incidents. Civilian and military authorities ordered the imprisonment of people in the school building. Not a single police officer committed the criminal offences charged under Count 2 of the Indictment.

The offences under Count 2 and the incidents described under Count 3 of the Indictment, took place after 2 August 1992, but the timing was not precisely outlined, it was stated that the incidents happened in early August and/or on an unspecified date in August 1992. The accused Bundalo defended himself by claiming that he was not in Kalinovik from 3 August 1992 through 22 August 1992, he was in Belgrade and Banja Luka. The Defence presented abundant evidence to prove this averment, both witness testimonies and physical evidence. The Defence for the first accused questioned at the main trial witnesses Anina Bundalo Dimitrijević, Gordana Kikić, dr. Mirko Ćerović, Mirsad Handanović, Sladoje Ćetko, protected witnesses S-1, S-4 and Risto Puhalo about the alibi.

The witnesses gave alibi to the accused Bundalo by confirming that he was not in Kalinovik as of 3 August 1992 for the following 15-20 days and that due to his health problems, he went to Belgrade first and then to Banja Luka. However, the court did not find credible those testimonies given that they were completely in contravention of the physical evidence relevant to those facts, which the court examined.

Witnesses Anina Bundalo, Gordana Kikić, dr. Ćerović and Risto Puhalo were consistent in claiming that the accused Ratko Bundalo was in Belgrade on 3 August 1992 already, where he spent the night at the Students hostel, in his daughters' room. They linked this date to the religious holiday - Elias' Day that is celebrated on 2 August, or to the fall of Rogoj which happened on 31 July 1992. Witness S-4, who was a secretary at the Command, said the same thing about Bundalo's departure to Belgrade.

However, it follows from the physical evidence admitted in the case file, primarily from the Medical Records and from the Reports of the Kalinovik Health Centre, that the accused Ratko Bundalo was not referred to the Military Medical Academy (hereinafter MMA) in Belgrade before 7 August 1992.

The Report No. 562/92 of the Kalinovik Health Centre of 28 August 1992 shows that the accused Ratko Bundalo is listed under number 52 and that he was referred to the MMA in Belgrade on 7 August 1992. The Report contains a total of 101 names listed in chronological order of all the people who were referred to other medical institutions outside of Kalinovik from 2 August 1992 to 25 August 1992.

The same information about the accused Ratko Bundalo is included in the piece of evidence tendered by the Defence for the third accused (O III-10), more precisely in the Letter No. 01-33/08 of 8 April 2008 sent by the Kalinovik Health Centre, which shows that Ratko Bundalo's name is listed in the record under number 480 and that he was referred to Belgrade on 7 August 1992.

The Records kept by the Kalinovik Health Centre were tendered as evidence by the Defence for the third accused and admitted in the case file. It stems from the Record of the Kalinovik HC for the period 24 July to 7 September 1992 that Ratko Bundalo was listed under number 480 on 7 July 1992, that his address was *Gornji Logor* and that he was referred to the MMA in Belgrade. Having examined the same Record, the Court has found that the first patient was entered under the number 443 that day - 7 August 1992 and that only two patients were recorded after Ratko Bundalo the same day.

Hence, notwithstanding that there is sufficient evidence in the case file which leads to the conclusion that Ratko Bundalo went to the MMA in Belgrade for a check up and that he was issued a referral dated 7 August 1992, the letter dated 5 October 2007 sent by the Military Medical Academy in Belgrade shows that he did not receive any medical treatment at the MMA from 1 April to 31 December 1992 and that he did not undergo any medical treatment in this health institution prior to the year 2004.

The Court accepts what the witnesses "H", Risto Puhalo and Milan Lalović said about going to Belgrade in August together with Ratko Bundalo. According to them, they came to the MMA in Belgrade in a *PUH* vehicle, but none of them was with Ratko Bundalo while he had check-ups in the MMA building. Their accounts are different, witness Risto Puhalo claimed that Milan Lalović was not with them, while witness "H" left the possibility that he too might have accompanied them, but later on he tendered a picture into evidence showing all the three witnesses sitting in a restaurant patio in Svilajnac in the summer. The court confronted the witnesses in order to clarify the discrepancies in their testimonies, witness Risto Puhalo maintained all his averments, as well as witness Milan Lalović, while the witness "H" allowed a possibility that the witness Milan Lalović was with them on the relevant occasion. Since the witness Milan Lalović gave a very detailed account of the route they took to Belgrade and of everything that happened during their travel, which was all confirmed by witness "H", the court has accepted that witness Milan Lalović travelled to Belgrade with Bundalo on that occasion. Witness Milan Lalović stated to have left for Belgrade five to six days following the fall of Rogoj, while the witness "H" stated in the redirect examination that it could have happened on 7 August 1992.

The court has not given credence to the testimony given by the witnesses Risto Puhalo and Čerović, who stated that Bundalo left for Belgrade on 3 August 1992, the date which was also mentioned by witnesses Anina Bundalo and Gordana Kikić in their testimony. The witness "H" mentioned this same date when he was examined for the first time, but he

changed his testimony later on. In view of the close relationship between dr. Čerović and the accused Bundalo, the court opines that the former changed his testimony in order to diminish the criminal responsibility of the accused or to exonerate him. Witness Anina Bundalo is a daughter of the accused and Gordana Kikić has been a good friend of hers ever since their student days, as well as at present in Banja Luka. Bearing in mind such a close relationship of these two witnesses with the accused, the court has found that they were motivated to testify to his benefit. Witness Risto Puhalo was also on good terms with the accused Bundalo throughout his stay in Kalinovik, he was commander Ratko Bundalo's personal driver. The court has found yet another proof that these two men were on good terms - on 29 December 1992, the 1st Kalinovik Light Infantry Brigade Command asked the Kalinovik Tactical Group Command, among others, to explain why the permission to transport timber was given precisely to Risto Puhalo. In addition, if the army had nothing to do with the transport of timber, how could Risto Puhalo and Radojica Puhalo obtain the permission to leave the area of fighting at the time of full combat readiness and in a situation when combatants who did not see their families for seven months could not obtain such permissions. The response sent by the Kalinovik SJB to the Kalinovik TG Command shows that Risto Puhalo and his brother indeed transported timber in a freight vehicle, but the SJB authorities did not know whose timber it was or for whom they transported it.

Considering that it was only the commander Bundalo who could give permission to the conscripts to leave the area of Kalinovik, as it is proved by the testimony given by witness Rade Pavlović and by the physical evidence in the case file, it is clear that the witness Puhalo, unlike others, could do other things than driving and could leave the area of Kalinovik Municipality.

The court has found reliable the documentary evidence tendered by the Defence for the first accused (O1-13a, b, 14, 15, 16 and 17), which shows that all the dispatches sent by the Kalinovik TG Command to the Herzegovina Corps Command from 6 August 1992 through 17 August 1992 were signed by Svetozar Parežanin, Chief of Staff. It follows from the Dispatch dated 4 August 1992 drafted by the Trebinje Municipal Assembly Reporting Centre that this Centre received a telegram via radio communication on 4 August 1992 at 22:30 hrs and that it was a Regular Combat Report sent by the Foča TG which states that an order was issued to the special forces to carry out a coordinated action with the Kalinovik TG units on 4 and 5 August 1992. On 4 August 1992 at midnight, one part of units ... and the other part of units on 5 August 1992 ... when Colonel Svetozar Parežanin left ... */sentence incomplete/*. The court has indisputably established that the accused Ratko Bundalo was absent from Kalinovik for some time in the month of August. This can be concluded on the grounds of testimonies given by the heard witnesses and other evidence which shows that Ratko Bundalo left Kalinovik on 7 August 1992 and went to Belgrade.

Count 2a)

Witnesses Džemila Redžović a.k.a. Zlata, Hasna Čusto, Rukija Rogoj, Fadila Hatić, Dika Suljić and witness "F" testified about the incidents charged under Count 2a) of the Indictment, when in early August or some time around that period, members of the Foča Tactical Group from Miljevina seized the money and jewellery from the civilians imprisoned in the *Miladin Radojević* primary school building in Kalinovik.

Witness Džemila Redžović a.k.a. Zlata stated to have been brought to school on 1 August in the afternoon, to a classroom on the upper floor. The school was secured by the Police, the witness could remember police officer Predrag Terzić, then Slavko called *Ustaša*, Saša Cerovina and protected witnesses “D”, “C” and “A”. The school was full of civilians (men, women and children) from Kalinovik, Jelašca, Nevesinje and Gacko. Men from Miljevina used to come there and force the women to undress, so that the witness once had to take off her clothes in the presence of her father-in-law. They were looking for gold jewellery the women hid in their underwear and they would take away everything they found.

Witness Hasna Ćusto explained how she was arrested on 1 August and imprisoned in the school, where she found a lot of civilians. She was taken to a classroom of the *Miladin Radojević* primary school, where there were 50 to 60 civilians. One day, around 12 o'clock, Pero Elez came with some 10 soldiers of his, lay down on a blackboard, put the knife down and told everyone to put the money and gold in front of him. They did what he told them since they were afraid that he would slit their throats using his knife. Then Pero Elez took the gold, scattered the pearls around and they left. Some other soldiers arrived the following day, they said they were from Nikšić, looked for gold and money, but they did not have anything to give them because Pero Elez's soldiers had already taken everything. The soldiers then forced the women to undress, to shake out their dresses to check if they hid anything. Guards were at the entrance to the school, but they let in everybody who came to the school building.

Witness Fadila Hatić from the village of Jelašca stated to have been brought to the school in Kalinovik after being arrested. One day a soldier called *Ustaša* came to the school and wanted all the prisoners to surrender all gold and money they had to save Zijo Hadžić's life. She recalled that all of them undressed to save Zijo's life.

According to witness “F”, soldiers came to the school one day and started ill-treating the prisoners. They told them they knew that the prisoners had money and gold and told them to put the money and gold they had on one desk in the classroom and those who had nothing would be killed. So, all the prisoners who had money and gold handed it over.

Witness Dika Suljić remembered that soldiers in uniforms used to come to the school while they were there and ill-treat the women, by searching them to find money, jewellery, gold and everything else they had, threatening to undress them all should they fail to hand it over. They gave them everything they had, but they would return the following day wanting the same thing. She did not know any of those soldiers because they were not locals. Certain *Vojvoda* Kovač was with them, he personally introduced himself.

Witness “E” remembered a group of soldiers in camouflage uniforms, armed with sub-machine guns, ammunition belts and bombs, who came asking for all the money and gold they had. They even threatened to search them after collecting everything and if they found anything else, they would hang them up in the gym. We gave them everything, they collected it and left. Immediately the following day, another group came asking the same thing. We told them that we already gave everything we had. They did not believe us. One of the soldiers took a boy, Mirnes Madeško, who was 5 or 6 years old at that time, put him on a desk, held his knife above the boy's head and threatened to slit his throat unless he got

what he wanted. We begged each other to give him whatever we had, if we had anything. When they realised that we had nothing, they released the boy and left.

Witness "W" stated that a group of Pero Elez's soldiers came to the school, wanted them to give them money and gold, otherwise they would slaughter their children. She gave them 300 German Marks and some gold jewellery, rings, a necklace and a medallion. Witness Zijada Hatić said that her father-in-law also had to give gold and money to the soldiers who came to the school.

It clearly follows from the testimonies given by these witnesses that money and jewellery were seized from the imprisoned civilians in early August 1992 and that it was done by soldiers unknown to the Bosniak civilians, who stated that those soldiers were from Miljevina and belonged to Pero Elez's unit. Witness Pero Bodiroga stated to have been a member of the 7th Platoon of the Foča Tactical Group, that Pero Elez was his commander and that the AOR of this unit was the area of Miljevina.

The SJB Activity Report of 18 August 1992 for the period from April to August, shows that after the Serb forces were defeated at Trnovo on 31 July 1992, the military command from Kalinovik requested assistance from the military command in Foča and 100 armed soldiers came, who were re-subordinated to the Kalinovik TG Command, according to expert witness dr. Radinović. It follows from the dispatch sent by the Trebinje Reporting Centre on 4 August 1992 that Foča Tactical Group special forces participated in combat during the battle for Rogoj at that time. The same Kalinovik SJB Report shows that members of those units entered the school and ill-treated the imprisoned civilians, by taking away their jewellery and money, among other things.

Therefore, the proceedings indisputably established that members of the Foča Tactical Group units responded to the request made by the Kalinovik Tactical Group, whose commander was Ratko Bundalo and that those responsible in the Kalinovik SJB were aware of this. The consistent witnesses' testimonies and the Kalinovik SJB Report show that the people imprisoned in the school were guarded by the Police, whose commander was the accused Zeljaja. He made duty roster for the police officers who guarded the school and by virtue of his position, he was aware of the crimes. The duty of the Police was to protect all the prisoners in the school from any abuse by third parties. However, it was established during the proceedings that the Police allowed the soldiers to enter the school freely and perpetrate the offences. It stems from the SJB Third Quarter Report of 1 October 1992 that the SJB did not take any measures against any individual, no civil procedure was instigated, no criminal reports filed, no one was detained, there was no coercion apart from combat activities. Not a single member of the Police was subjected to any disciplinary or other procedure. According to the witnesses, there was no investigation into the treatment of the imprisoned civilians. However, the mentioned Report only states that the SJB forwarded relevant information to the Kalinovik Military Security authority.

The stated evidence demonstrates that the incident happened at the time and in the manner as outlined in the Indictment and that the accused participated in it by their actions and omissions. Notwithstanding that the school and the prisoners confined therein were guarded by the Police whose members were assigned duties by the accused Zeljaja as the commander, who was aware of the incident, he nevertheless continued to secure the

building in the same manner, taking no steps to change the situation. As the commander of the Kalinovik Tactical Group, the accused Bundalo requested that Foča Tactical Group soldiers be sent to Kalinovik, but he never instigated any procedure to identify those responsible for the incidents and punish them accordingly. The accused Bundalo knew that a great number of civilians was imprisoned in the school, as civilians from Gacko were captured by members of his units and brought to the school in Kalinovik in military trucks, where they were imprisoned. Women, children and old people from Kalinovik were arrested in early August, following the attack on the village of Jelašca, with the active participation of the Kalinovik Tactical Group military unit. The fact that food for all the prisoners was supplied from the kitchen in *Gornji Logor* in Kalinovik shows the involvement of the accused Bundalo in the functioning of this detention facility.

The offences prescribed under Article 173(1)(f) of the CC of BiH, War Crimes against Civilians include stealing their property on a large scale. This offence is prohibited under international law as well, particularly under the First Geneva Convention of 12 August 1949, whose Article 18 provides that sums of money carried by prisoners of war may not be taken away from them except by order of an officer and ... articles of value may be withdrawn from prisoners of war only for reasons of security, a receipt has to be issued to the owner and the belongings shall be returned to prisoners of war at the end of their captivity. Article 50 of the First Geneva Convention lists as a grave breach the appropriation of property not justified by military necessity and the same provision is included in Article 51 of the 2nd Geneva Convention and Article 147 of the 4th Geneva Convention. Therefore, private property has to be respected and may not be appropriated both in international and internal conflicts. Private property has been protected from appropriation and looting under customary international law rather long and it has already been recognised under the Lieber Code, Brussels Declaration and Oxford Manual. Article 46 of the ICTY Rules of Procedure also ban seizure of private property, while its Articles 28 and 47 prohibit looting in all situations. Looting is recognised as a war crime in the Report by the Commission on the Responsibility established after World War I, then in the Charter of the International Military Tribunal in Nuremberg and in Article 33(2) of the 4th Geneva Convention. Article 4 of the Second Additional Protocol prohibits pillaging of persons whose liberty has been restricted. The UN Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law bans pillaging of persons *hors de combat*. The actions taken in this specific case were clearly in violation of the provisions of international law. The perpetrators of the relevant criminal offence looted all valuables the prisoners had on themselves, including all their money, gold, pearls and other jewellery they had. The perpetrators knew that Bosniak women traditionally wore valuable gold jewellery. Bearing in mind the time, place and manner of the perpetration of this offence, the court holds that it was aimed not only at pillaging property of Bosniaks, but at their persecution as well. Since there is no doubt that the people imprisoned in the school were Bosniak civilians and the actions taken were aimed at ill-treating and persecuting the people on discriminatory grounds, the court is satisfied that the criminal offence amounts to the Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with the criminal offence of War Crimes against Civilians in violation of Article 173(1)(f) of the same law.

The accused were charged under the relevant Count of the Indictment with forcing all the civilians to completely undress and keeping them so for some 40 minutes, however the

court has not found them guilty as charged because the Prosecution stated no consequences thereof. Therefore, the court could not address the issue of legal qualification of this element of the criminal offence.

Count 2c)

Witnesses Ismeta Pervan, Džemila Redžović a.k.a. Zlata, Hasna Ćusto, Rukija Rogoj, Fadila Hatić, Enesa Hasanbegović, Dika Suljić, witnesses D and W, Danilo Đorem and Milan Lalović testified about the charges under Count 2 c) of the Indictment – sexual enslavement of girls who were taken away from the school in Kalinovik by members of the Foča TG.

Witness Ismeta Pervan was arrested on 2 August 1992 and taken to the school in Kalinovik, to a classroom on the upper floor. She spent a night there and then Slavko a.k.a. *Ustaša* came to the classroom in a camouflage uniform, accompanied by two soldiers. They selected three women there, including the witness and another four women from Gacko, who were downstairs, on the ground floor of the school. She could remember that witness B was with her then, but she could not remember other women. The women from Gacko were young, they could be from 14-15, up to 18 years of age at that time. They were taken to Foča in a refrigerator truck by some soldiers, including the one called Žaga, she found out later on that his last name was Kunarac. Upon arriving in Miljevina, they stopped at a petrol station where she saw Pero Elez, who she did not know, but she heard other soldiers calling him Pero, so that she thought that it was Pero Elez. They left Miljevina in the direction of Foča and when they were in a tunnel, one woman was taken off the truck and she never saw her again. In Foča, they accommodated them in the house of the Hadžialić family and from there, they took away one woman at a time. The following morning, she saw witness B in the house, but she did not see her ever again. Witness Pervan stayed in the house 7 or 8 days, while all other women were taken away. Later on, they took her at all sorts of places, so that she did not know any more where she was being taken. She stated to have been sexually abused all the time, they did “all sorts of things” to her, beat her up and as a result, she was so agonized that she could not give a detailed account. She was released on 13 August 1992.

It stems from the statement given by Witness B during the investigation, which was read out at the main trial, that she lived in Kalinovik and was arrested on 1 August 1992 by Serb soldiers and Police, who arrested all the women and children who stayed behind. She was brought to the primary school in Kalinovik in a military truck, where she was accommodated with other women and children. Refugees from Gacko were in the school at that time. She spent only one night in the school building and the following evening already three soldiers came to the classroom, one of them pointed at her and another two girls. They took them downstairs, to the ground floor and told them to wait in the corridor. There she saw police officers Slavko Lalović a.k.a. *Ustaša* and Duško Mandić, who she knew. Duško wanted to help her, proposed her to hide, but Slavko Lalović then pointed his rifle at him and threatened to kill him because he was helping *Balijas*. In the meantime, three soldiers took out another four girls from the ground floor, pushed them in a *Stojadin /Fiat Zastava 101* vehicle/ and transferred them to a refrigerator truck near a petrol station. They were brought to Miljevina in that truck. They took out one girl in Miljevina, who stayed there, while the other women were brought to Foča, to a house close to the mosque. That same

night she was raped by Ranko Radulović, whose name she found out later on. She did not know what happened to the other girls, who were all taken to different places that night. A soldier, Vasiljević, a.k.a. *Gica* came with a young men the following day and they took her to a flat in the part of the town called Brod, where she stayed until her return to Kalinovik. During that period she was raped repeatedly by various soldiers whom she did not know. She was raped almost daily. Witness "B" stated that Dragoljub Kunarac-Žaga came with two soldiers on 28 or 29 August 1992 and took her to the part of the town called Brena, where Grujo Lalović was waiting with two military policemen. He told her that he was taking her to Kalinovik to be exchanged. He also said that he wanted to bring back other girls as well. They waited for two or three hours for the girls to come, since they were not brought there, he took only her back to Kalinovik. He brought her in front of the SJB in Kalinovik, they entered the building, where she found Neđo Zeljaja, Predrag Terzić and Boško Govedarica. Boško Govedarica questioned her that night in his office, but she did not tell him what had happened to her. After the questioning, they took her to the school building and placed her in the same room with Rada Zečević and her children. She saw other Bosniak women from Kalinovik in the school, where she stayed until 3 September 1992. Boško Govedarica used to come there and warn her to be cautious about what she would be saying because they could always find her.

Witness Džemila Redžović a.k.a. Zlata could remember that Pero Elez, Žaga and Zeko came there on 2 August and she knew the names because they called each other by those names, so that she remembered them. They took away three girls in a Golf vehicle. Those girls never returned, she could remember that Jasmina Bajrić came back, she stayed in the school for half an hour and she said that they were then taken to Miljevina.

Witness Hasna Ćusto was arrested on 1 August 1992 by soldiers and police, taken to the school and placed together with other arrested people on the first floor of the *Miladin Radojević* school. One day Pero Elez's soldiers came around 11 o'clock p.m, one girl was with them and she told the twins who were 15 years old (Jasmina and Azemina) to go out. They took them away and they never returned. In addition to the twins, she could remember that they also took away witness B, Jasmina Bajrić, Ismeta whose family name she could not remember and some other girls from Gacko. The witness thought that it was Pero Elez who took the girls away and that they left in the direction of Miljevina and/or Foča.

According to witness Fadila Hatić, she was arrested and imprisoned in the primary school building, in a classroom on the upper floor. They took away two girls from Jelašca one day, Azemina and Mina Pervan. The witness stated that "their soldiers" took away civilians and that the guards, who were also "theirs" let them in.

Witness Enesa Hasanbegović lived in Gacko when the war started. She was arrested and imprisoned in the primary school in Kalinovik. After 1 August, soldiers started coming there, including Pero Elez, who introduced himself and referred to his soldiers as to Chetniks. In addition to Pero Elez's soldiers, a *Vojvoda* from Prebilovci used to come there, he always wore a sword and was escorted by his soldiers. She could remember that Pero Elez took away a group of 4-5 girls from Gacko and some girls from Kalinovik, who never came back.

Witness “D” testified that Pero Elez came to the school one day, introduced himself and took away eleven girls, children better to say, including Amela Greljo who was told to be Pero Elez’s girl, then Jasmina Greljo, Prguda, Belma Kovač and two girls from Kalinovik. They heard that those girls were taken to Foča.

Witness “W” stated that Pero Elez’s soldiers came to the school, that they wore uniforms and could be distinguished from other soldiers because they had some insignia on their uniforms. Girls were taken away on a daily basis and she could remember one instance when Pero Elez’s soldiers took away Jasmina Greljo, who was only 13 at that time, then Amela Greljo and a girl whose last name was Prguda, but she could not recall her first name.

Witness “E” stated that soldiers came on 2 August and took away Amela Greljo and Jasmina Greljo, Amra Kovač, Suada Prguda, Almasa Jugo, they were from 14 to 17 years of age, except Suada, who was 18. The girls never came back.

Witness Danilo Đorem, who was a guard at the primary school in Kalinovik, recalled that some paramilitary units entered the school. He heard about women being taken away, but those incidents did not happen when he was on duty.

It follows from the testimonies given by those witnesses that 7 girls were taken away during the month of August from the *Miladin Radojević* primary school in Kalinovik, majority of them were under age. They were taken away by the soldiers belonging to the Foča Tactical Group and, according to a number of witnesses, Pero Elez’s unit from Miljevina participated in it. The girls were taken to Miljevina and Foča, actually only one girl was taken to Miljevina, while the others were taken to Foča, as the witnesses stated. The names of those girls were not stated in the Indictment, which makes it imprecise, however, the identity of those girls can be undoubtedly established on the grounds of testimonies by the mentioned witnesses, so can the number – at least seven girls were taken away. It has also been indisputably established that all those girls were imprisoned in the school in Kalinovik at the moment of their taking away. In addition, there is no doubt that the Police guarded the school in Kalinovik and that the commander was Neđo Zeljaja. Out of all the girls who were taken away on that occasion, the Prosecutor examined only Ismeta Pervan, who testified at the main trial, while the testimony of witness “B” was read out. The court has concluded on the grounds of their consistent testimonies as well as on the grounds of testimonies of other witnesses, whose account of those incidents corresponds to the statements of the witnesses, victims of rape, that minimum two girls were kept in sexual enslavement in Foča. Given that the other girls who were taken away did not testify in the proceedings, nor were their statements read out, the court could not undeniably establish what exactly happened to those girls when they were taken to Miljevina and Foča, or if they were kept in sexual enslavement, as it was alleged in the Indictment. Therefore, the court paid special attention to the testimonies given by the witnesses who were taken away on the relevant occasion and, having evaluated them, admitted them in their entirety, since they were consistent and substantiated by other heard witnesses.

Witness Ismeta Pervan and Witness “B” gave a very detailed account of the incidents and stated that, with the exception of one girl who stayed in Miljevina, all other girls were brought to Foča, including Witness Ismeta and Witness “B”. These witnesses did not know

what happened to other girls who were brought to Foča together with them, but it follows from their consistent testimonies that the other girls were immediately taken away from the house in which they were brought upon their arrival and they never saw them again. In view of the testimonies given by the witnesses, the court concluded that Ismeta Pervan and Witness “B” were kept in sexual enslavement during their stay in Foča, given that they were taken away from the school against their will by unknown soldiers, who then brought them to Foča, where they were kept in various apartments and houses, under the conditions in which they could not offer any effective resistance and they were sexually abused over a fairly long period. Soldiers of the Foča Tactical Group could do whatever they pleased with these witnesses-victims, to do it as long as they wanted and to treat them as if they were their property. Given the circumstances in which the witnesses were sexually abused and/or raped over a fairly long time, the court has concluded that both witnesses were kept in sexual enslavement. There is no doubt that those were Bosniak civilians and everyone who took part in this was aware of that. The women were raped and kept in sexual enslavement against their will. The court opines that the acts these women were subjected to were perpetrated in the scope of attack and persecution of civilians on discriminatory grounds. The accused Bundalo and Zeljaja are held responsible of committing the same offence, since soldiers of the Foča Tactical Group came upon the request made by the Kalinovik Tactical Group, the women were taken away from the school in Kalinovik, which was secured by police officers assigned to that duty by Neđo Zeljaja. Also, the women were taken away when both accused were in Kalinovik and they were aware that soldiers of the Foča Tactical Group did that, as also follows from the SJB Activity Report. In addition, the testimony given by Witness “B” shows that Neđo Zeljaja was present when she was brought back to Kalinovik after twenty days spent in Foča. On top of everything, none of the guards at the school or the soldiers who committed the offences was ever held accountable for his acts and omissions, furthermore the accused Bundalo and Zeljaja never took any action to sanction any of the perpetrators. All that indicates that taking the women and keeping them enslaved was part of a common plan or objective, in which the accused willfully and consciously participated. It should also be noted here that Grujo Lalović, as a highly positioned civilian authority in the Kalinovik Municipality, went to Foča with the military police to bring back the girls and on the way back, he brought Witness “B” to the Kalinovik SJB, then back to the same school guarded by the police from Kalinovik. It stems from the testimony given by Witness “B” that the authorities of Kalinovik were very much interested in covering up the incident since Boško Govedarica, the Chief of the SJB Kalinovik, threatened her not to say anything to anyone after leaving Kalinovik.

Based on the foregoing, the court has concluded that the relevant offences amount to the Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph g) of the CC of BiH.

Count 2 d)

The Prosecution charges the accused Bundalo and Zeljaja with being responsible for the rapes of a number of women in the *Miladin Radojević* primary school in Kalinovik. The police officers who guarded the school were present during those rapes.

In order to prove these charges, the Prosecution heard the witnesses: “D”, “E”, “W”, Džemila Redžović, Fadila Hatić, Danilo Đorem, Milan (Branko) Lalović and Ilija Đorem.

Witness "D" stated that the rapes started when Šešelj's men came to Kalinovik, the guards brought them. It was common knowledge that those were Šešelj's men since they wore such insignia. They used to light lampions */as written/* and the guards let them in. In daytime, women hid in the toilette, but they nevertheless managed to find them, they would simply grab a woman and take her to be raped. The women did not dare to resist. At the same time, there were drinking parties in the porter's lodge. Guards would make fun of them when they told them they were raped, they asked them if they had a good time and laughed. One day, the witness went to wash the clothes in the toilette which had partitions, when someone grabbed her by her head. It was after 2 o'clock p.m. and she thought that no one was there. A young boy, so young that she could be the age of his mother, he was drunk, threatened her with his knife, told her to go down on her knees and raped her anally. Before that, the witness begged him not to do that, telling him that she was dirty, that she had lice, but to no avail. After the rape, she went back to the room where other women stayed and she told Ramiza Greljo what happened to her. The witness stated to have been raped by a Šešelj's man, she knew that because that same soldier came back in the evening, he could not have been older than twenty years, he wore a camouflage uniform with a death's head insignia and was saying that he was a Šešelj's man. The witness stated that Ramiza Greljo was raped in the school by the same soldier, the witness thought that the soldier mistaken the two of them when he came to the classroom again and took out Ramiza Greljo instead of her. When Ramiza came back, she said that she was raped anally.

Witness "E" stated that people imprisoned in the school were mostly ill-treated and raped when Slavko Lalović a.k.a. *Ustaša* was on duty. He would open the school door, lift his legs onto the desk and sing the words "please go ahead", meaning that whoever wanted could enter the school. They could take away whoever they pleased and as many women as they pleased. She could remember that the first two women who were raped were herself and a girl whose name was Sanela. The girl was 13 years old at the time, but she looked like she was 9 years old. She was not fully formed. That day a soldier came in a camouflage uniform, he was tall, blond with frizzy hair. Slavko Lalović was on duty as a guard. When he came in, he stood in the middle of the hall, looked around, pointed at the girl and the witness and told them to get out with him. She did not know then why he was taking them out. The witness had a daughter who was two years old at that time, she was with her in the school and the witness was 4 months pregnant. Another soldier was waiting outside in the corridor, he wore a camouflage uniform, was around 40, a bit chubby and had dark complexion. He told Sanela that he was from Gacko and that someone could recognise him, but that she was so young that she could never recognise him. He took her by her hand and took her to the locker room. No one else except the two men and Slavko Lalović were in her field of view. Lalović was sitting behind his desk. The doors were closed and they were not allowed to leave the rooms. The blond soldier took her to the other locker room and there was only a wall between hers and Sanela's locker. He sat on a chair, holding his automatic rifle and telling her to go with him. The witness begged him to let her go, telling him that she was pregnant, that she had a child, but to no avail. She could hear the young girl's voice from the other locker room, begging: "Please, don't!", but after some time there was only silence. The witness's plea to the soldier to let her go did not help her at all. The soldier ripped off her shirt, telling her that she was good-looking, that she had great breasts and that she had to go with him. When she told him that he could take out only her dead body, he cocked his automatic rifle and threatened to kill her should she refuse to go with

him. After that, he pulled down her trousers and thrust his finger in her. He raped her on a desk. She took her clothes and tried to put it on, when a soldier who could be around 17 years old appeared and she asked him to help her. The soldier who raped her told her to stay there and wait for him to come back. She told the young soldier that she was pregnant and that she had a small child. He helped her to put on her clothes and took her back to the room where her daughter was. He said that he would take care of the soldier who raped her. After that, she never again saw the soldier who raped her. When she came back to the room, she looked at Sanela's place, Sanela was there with her aunt and her three children. Her clothes were ripped off, she was crying, trying to wrench off and hang herself with a rope hanging in the gym. She took her child in her arms, feeling so bad that she could not come to her senses. Other women asked her what had happened, they thought that they were taken for questioning. The witness told the women that she had just been raped. Sanela kept silent at first, later on she said that the soldier took her to the toilette and raped her. Her clothes and underwear were ripped off. Witness "E" stated that Ramiza Greljo was also raped in the school, on a desk in the corridor. When she came back, she could not walk all day long. Ramiza herself told the witness about the rape.

Witness "W" knew that women were being taken away and that 12-years-old Sanela was the first one who was taken away. She was a child, the moment they brought her back, she knew what had happened to the girl. When taking the women away, a group of 8-10 soldiers would usually enter the gym, simply pointed at women, saying 'you, you, you' and all those women had to go with them. The girl Sanela personally told her that she was raped and when they heard that, all of them cried.

Witness Džemila Redžović a.k.a. Zlata knew that Munevera Sačić was raped while they were in the school by Dado Krstović, but there were other soldiers as well. The witness described how Dado came to the room one day, went to Munevera, took her out and she did not come back before the following morning. She did not immediately tell them what had happened, she told them about that several days afterwards, after she was taken away again. She said that she was raped both times by the same individual, but that there were others who also raped her. When they came again, they just pointed at women, saying 'you, you, you' and all the selected women had to go with them. All the girls were raped.

Fadila Hatić was not raped in the school, but she knew that Sabina Rogoj, Munevera and other women were raped. Soldiers were looking for women up to 45 years of age and the women themselves had to come forward, so that the majority of them lied about their age to avoid being taken away and raped.

According to witness Danilo Đorem, the policemen in the school did not talk about the rapes, however, they knew that there were rapes, but they did not know who did it and how they did it. There were rumours about that in the town as well. He could remember a woman who told him that she was raped the night before and that she would flee, but the guard told her to wait 5 minutes until their shift was over. The witness informed Govedarica about what was going on in the school, but he told them that they had to go there and do their duty. He did not talk to Zeljaja about these incidents. The school was safeguarded by the Police all the time.

Witness Milan (Branko) Lalović testified that the SJB Kalinovik police officers were assigned as guards in the school and that they did not request any assistance from the army to protect the prisoners from those soldiers, since the guards could do nothing, only superior officers could do that. His superiors at that time were Boško Govedarica and Neđo Zeljaja. All the time while he was a guard in the primary school building, Neđo Zeljaja made the duty roster as the commander. According to him, patrol leader would be given assignments and issued with the patrol order and when he was on duty in the primary school, they had a radio set they could use to contact a duty officer in the police station. There were two chairs for guards in the school and the witness sometimes entered the rooms where the prisoners were. Pero Elez's units used to come to the school, as well as Žaga's and some Šešelj's men and the prisoners were ill-treated and abused. The women protested because they could not bear it any more. Guards would report that to the Kalinovik SJB, so that Boško and Zeljaja would come after receiving such information. He stood guard in the school together with Lalović a.k.a. *Ustaša*. The witness stated that *Ustaša* shouted at prisoners.

On the basis of these consistent testimonies, the court has found that a number of imprisoned women were raped in August 1992 in the school building in Kalinovik by members of the "Serb armed forces" who entered the school freely because some police officers let them in and they were in the school when the rapes took place. Witnesses "D" and "E", who were victims of rape, gave very convincing accounts which were substantiated by other witnesses' testimonies. One of the victims of rape was an under age girl, Sanela, from Gacko, who was not heard as a witness, but that incident was described in detail by witnesses "E" and "W". Witness "E", who was taken out of the classroom together with Sanela, saw a Serb soldier bringing Sanela in a locker room and she heard the girl begging him to let her go. Also, when witness "E" returned to the classroom, she saw Sanela with her clothes and underwear ripped off. Witnesses "E" and "W" were consistent in stating that Sanela said that she had just been raped. Since witness "E" was raped at the same time by another soldier, who came to the school together with the soldier who took Sanela to the locker room, the court holds that the two men came there with the intention to rape women and that they raped witness "E" and Sanela. It indisputably stems from the testimonies given by witnesses "E", "D" and "W" that the women were raped against their will, that the soldiers applied force and threats and the mere fact that the raped women were imprisoned in the school building in the presence of guards, clearly demonstrates that they did not have any opportunity to defend themselves. The consistent testimonies by these witnesses who were imprisoned in the school show that the police officers who were on guard let in the soldiers for whom the witness "D" claimed that they were Šešelj's men, that they were present when the rapes took place and made fun of the women when they complained. All the imprisoned women who were raped were of Bosniak ethnicity. Witness Milan (Branko) Lalović stated that there were women of Serb ethnicity who also spent some time on the separate premises in the school in Kalinovik, but they were never raped. This clearly shows that the perpetrators had the discriminatory intention. Also, these offences were ultimately aimed at the expulsion of Bosniaks from the area of Kalinovik, given that the women imprisoned in the school were raped almost daily in the month of August. The accused Bundalo was in Kalinovik in early August when those rapes started. He was aware that a lot of Bosniak women from Kalinovik and Gacko were imprisoned in the school, particularly because his units participated in arresting the women and confining them in the school. His units guarded, maintained the prison facility and supplied food to the prisoners. Soldiers who came to the school were in his AOR and he had the necessary authority and it

was his duty to control their behaviour. In addition, according to witness Danilo Đorem, the accused Zeljaja, as the Chief of the Police who guarded the prisoners, was aware of the incidents in the school and the witness stated that everyone in Kalinovik knew that the women imprisoned in the school were sexually abused. The Report drafted by the Kalinovik SJB also states that the women imprisoned in the school were raped. His duty as the commander was to prevent those incidents and/or to take all possible measures to put a stop to those rapes. Still, neither the accused Bundalo, nor Zeljaja did anything to stop that. Commander Zeljaja received necessary information from police officers assigned as guards. The Military Security Service also had certain information which was supplied to them by the Kalinovik SJB. Kalinovik is a small town with only several thousand inhabitants and everything took place in the centre of the town, therefore, both the accused were clearly informed about the incidents, but they nevertheless did nothing to prevent those rapes, or to identify and punish the perpetrators. Thus, it is clear that the rapes were committed in order to achieve their objective and expel Bosniaks, so that the court holds them criminally liable. In view of such an account of facts, the court has concluded that this specific criminal offence amounts to the Crimes against Humanity in violation of Article 172(1)(h), as read with sub-paragraph g) of the CC of BiH.

Count 2 f)

The Prosecution alleged that in August 1992, unknown Serb Armed Forces soldiers took out Edin Bićo, Suad Hasanbegović and Sejdo Kešo from the primary school in Kalinovik where Bosniak civilians were imprisoned, physically abused them and killed them using their fire arms, while the police officers who guarded the school did not allow the prisoners to leave the rooms.

Witnesses Hasna Ćusto, Rukija Rogoj, witnesses "F", "Z", Miloš Veletić, Milan (Branko) Lalović, Mirko Aškraba, Fadila Hatić and others testified about this incident.

Witness Rukija Rogoj stated that Žaga's men came one day and asked Sejdo Kešo what his name was, then one of the soldiers threw him out in the corridor, they beat him up and took him in an unknown direction. After that, they approached Mujo Pervan and asked him where his sons were, Mujo told them that he did not have any children and they took him away as well. Then they went over to Hatić, asked him how old he was and took him away as well. The witness did not know where those people were taken or what happened to them. One day, there was some shooting in the school, they went out in the corridor and some women from Gacko asked who was killed. That is when she learned that Edin Bićo, Sejdo Kešo and a veterinarian were killed.

According to witness Hasna Ćusto, in addition to women, men were also imprisoned in the primary school in Kalinovik, including Hašim Hatić, Bećir Pervan, Murat Redžović and others, as well as some men from Gacko. One day some unknown soldiers arrived and took some men away. There were also Suad Hasanbegović from Gacko and Edin Bićo, who was ill, he suffered from diabetes. The witness stated that none of the men who were taken away survived. Sejdo Kešo was taken away on that same occasion by Pero Elez's men.

Witness Đemila Redžović stated that Edin Bićo was tortured in a trough and then taken to a classroom. Sejdo Kešo's name was also called and he was taken out of the classroom.

Witness "F" could remember that one day some soldiers came, they took away Edin Bićo and put him in a trough where water run. Pero Elez came that same day in the evening hours and told them to clean the classrooms. Then he disappeared. After that, a man came whose nickname was *Čačanin /a man from Čačak/*, he took him to the school accounting office, hitting him on the way. There, the witness saw Sejdo Kešo, who was in a critical condition, lying there with his legs and arms spread apart. He did not see if he was dead or alive. There was another man there, on the floor, he had a beard, the witness did not know then who that man was, but he learned later on that he was a veterinarian from Gacko whose family name was Hasanbegović. Witness "F" testified that Edin Bićo was sitting on a chair, dozing, he was exhausted. Then he was interrogated. The man who interrogated him went with him to the classroom where civilians were and told him that he was an honest man.

Witness "Z" stated that he did not go to the school building in the relevant period. He knew that the police guarded the women in the school. After the war, he heard from other people what was going on there. People talked at that time that three individuals were killed – Edin Bićo, Hašim Hatić and Sejdo Kešo. He heard it from others that paramilitary formations used to go there, that the three individuals were killed and taken away in a military truck in the direction of Grajsensko Polje. The driver Mirko Aškraba drove them.

Witness Miloš Veletić testified to have known that Edin Bićo was on the first floor of the school in the relevant period, together with a veterinarian, who was on the same floor, but in a different classroom. The veterinarian and another man were alone in one classroom. He did not know what happened to them.

It follows from the testimony given by witness Milan (Branko) Lalović that killings took place in the school and that Edin Bićo from Jelašca was killed, he was an ill man who suffered from diabetes. His dead body was taken out of the school in a blanket and thrown in a car. He did not know how he was killed, but he stated to have heard a shot upstairs inside the school, when Žaga came in with around ten armed soldiers of his. He guarded the school at that time. He heard that Enes Hasanbegović was imprisoned in the school and he heard from his colleagues that he was killed, but he did not know him.

It stems from the testimony given by witness Mirko Aškraba that he was a guard and occasionally a driver with the army at *Gornji Logor*, where Ratko Bundalo was the commander. Radojica Đaković, a corporal of the guard, sent him in August 1992 to the school in Kalinovik to transport something. He left with two unknown men in olive drab uniforms, one of them had Red Cross insignia on his sleeve. He saw 8-10 soldiers with beards in front of the school in Kalinovik, they were armed, wore camouflage uniforms and they told him to put the car in reverse and get in front of the school entrance. He was in a driver's cab and he saw them in his rear-view mirror carrying something in blankets. They put three loaded blankets onto the truck. Then the same two men got in his car and told him to drive in the direction of Grajsensko Polje. Those men told him that the bodies of three dead Bosniaks who were imprisoned in the school were loaded on the truck. When they reached Grajsensko Polje, they told him to stop at a meadow and they unloaded the dead bodies, which stayed in the meadow. The witness was not present when the bodies were buried and he did not know who buried them, since he immediately went back with the two men who were with him. Upon his return to *Gornji Logor*, he told Radojica what he

transported and he told him off. The witness thought that the incident took place after the fall of Rogoj.

Witness Fadila Hatić testified to have been arrested in early August and brought to the primary school building in Kalinovik. Edin Bičo, a man in poor health, was arrested together with her. The third day after they were brought to the school, some soldiers came and started to demolish whatever they could. They took Hašim Hatić, Seid Kešo, the Pervans and Murat Redžović to another classroom. They were all killed in that room. Savo Puhalo, a guard in the school, told her and another woman to clean blood in that classroom and she did that. There was blood everywhere in that classroom, on the floor, on the walls up to the ceiling, the blood clotted and it was difficult to clean it. The witness knew that Edin Bičo was also killed in the school. At the time when the bodies were taken out of the school, guard Savo Puhalo threatened them not to get close to the window for 15 minutes, not to get out in the corridor, or go to the toilette. Nevertheless, before Puhalo warned them, they managed to see a truck through the window looking at the school entrance, it had a tarpaulin and was going in reverse, getting as close to the entrance door as possible. The bodies were loaded on the truck.

Witness Zijada Hatić was incarcerated in the school and she stated that some unknown soldiers belonging to Pero Elez's group, including Žaga, came once to the school and ill-treated the imprisoned men, including her father-in-law Hašim, who was 86 years old. They returned the following day, took out all the men and brought them to another room in the school, including Sejdo Kešo, Edin Bičo and a fairly young man, a veterinarian from Gacko. She heard that the veterinarian from Gacko was taken to another room and killed, she was told so by his wife, who was also imprisoned in the school with him. The men were all killed that same day in the other room. The witness heard some noise, swearing and shots fired from rifles. They went out, brought the truck very close to the school entrance, there were two men on the truck and the women were threatened not to get out and watch. Despite the threats, the women peeked out and saw dead bodies taken out in blankets. Later on she entered the room where those people were killed, she saw blood on the parquet floor, a number of cartridges and traces of fired bullets on the wall and ceiling. She did not count the cartridges, but she said that there was a number of them.

Witness Enisa Hasanbegović was arrested with a group of people from Gacko and imprisoned in the school together with her husband Suad Hasanbegović who was a veterinarian. They were imprisoned in the school gym on the ground floor. Her husband was taken out on 1 August 1992 to another room upstairs, where women from Kalinovik were detained. Slavko Lalović a.k.a. *Ustaša*, who was a guard in the school, did that together with another three individuals, she believed they were members of some *Vojvoda's* unit from Prebilovci. Her husband was called by his first and last name, then Slavko came in the evening asking her to give him some pain killers. Her husband never came back. She heard from a woman from Kalinovik that he was killed in a classroom. Several days afterwards she managed to get to that classroom. She saw that the door was nailed, so that other women helped her to open the door. When she got inside, she saw some cartridges on the floor and bullet traces on the wall, the parquet floor was blood stained, although it was obvious that someone washed the blood. A day after her husband was taken away, a truck came in front of the school and the guards told them to go to the gym and to stay inside. The truck came to the entrance driving in reverse, the tarpaulin was uncovered and she saw

some individuals carrying something in two or three blankets. She could not watch any longer because the guards sent them away and they did not even let them go out to the toilette. Her husband's body was never found.

Witness "E", who was also from Gacko, stated that Suad Hasanbegović too was imprisoned in the school with them, that he was taken away by guards and never returned. The Police told them that he was taken to the men's prison. The witness heard shooting and screams from the upper floor and they learned later on that Suad was tortured and killed afterwards. A woman from Kalinovik, who was on the upper floor, came downstairs and told the women from Gacko about that.

Witness "C" also heard that Suad from Gacko was killed in a classroom on the upper floor of the school and she heard that Edin Bičo was killed in the school as well. She saw blood on the wall of the room where they were killed. She did not see the killings, but she heard shots in the school.

According to witness "D", Suad Hasanbegović was taken out of the classroom to the upper floor one day and then they heard cries. Another boy was also taken away, he was from Kalinovik and suffered from diabetes. She heard shots in the school and they heard from a woman from Kalinovik that both men were killed. Guard Slavko a.k.a. *Ustaša* came there around noon and said that no one dared to get out in the corridor, otherwise they would be killed. Then they brought the bodies down from the first floor in some blankets and loaded them on the truck in front of the school.

The Prosecution tendered the physical evidence into the case file relevant to the killed people, including the Order for Exhumation in the area of Kalinovik Municipality at Grajselsko Polje, the Report on Exhumation at Grajselsko Polje where four unidentified dead bodies were found, the Photo Documentation on the Exhumation and the Sketch of the Site. It stems from the Identification Report of 5 November 2009, which was admitted in the case file, as well as from the DNA Report, that the bodies of three individuals were identified as Suad Hasanbegović, Sejdo Kešo and Edin Bičo.

It indisputably follows from the consistent testimonies given by the stated witnesses, which the court accepted as credible and substantiated by the physical evidence, that the prisoners Edin Bičo, Sejdo Kešo and Suad Hasanbegović were killed in August 1992 in the classroom of the school in Kalinovik by soldiers of the "Serb armed forces" and that those men were physically abused before the killing. After the killing, the bodies of those Bosniak prisoners were taken out of the school in blankets and buried at Grajselsko Polje. While they were taken out of the school for burial, the police officers who guarded the school did not allow other prisoners to get out in the corridor, threatening to kill them. All the killed people were civilians imprisoned in the school in Kalinovik and all of them were Bosniaks. Bearing in mind that there were Serbs in the school at the same time who fled from Trnovo and that no one did them any harm, it is clear that the killings were discriminatory in nature and carried out with the purpose of persecution of Bosniak population. The accused Bundalo and Zeljaja are held criminally responsible for the perpetration of this criminal offence. The accused Bundalo was the commander of the Kalinovik Tactical Group and the school in Kalinovik was in his area of responsibility. The Serbian soldiers entered the school and committed the criminal offences and the accused Bundalo did nothing to stop the soldiers

who came to his area of responsibility and prevent them from committing the criminal offences. It clearly follows from the testimony given by witness Mirko Aškraha that his Command knew about the killings, since he, as a soldier at *Gornji Logor* in Kalinovik, was assigned by his immediate superior to drive a military truck to the school, escorted by two individuals in military uniforms and transport the dead bodies of prisoners. According to this witness, the soldiers who left *Gornji Logor* with the witness brought the bodies to Grajselsko Polje, where they were eventually found. Upon the return to Kalinovik, the accused Bundalo did nothing to identify and punish the perpetrators. The accused Zeljaja was the commander of the Police who guarded the school and the prisoners, but the soldiers killed a number of imprisoned men in the presence of his police officers who guarded the school. According to the consistent testimonies given by the mentioned witnesses, the Police knew about the killings, they furthermore ordered other prisoners not to get out in the corridor or go to the toilette at the time when the three bodies were taken out of the school. The accused Zeljaja, as the superior officer, failed to stop the soldiers to enter the school, or to prevent the commission of the criminal offences in the building guarded by his policemen. Moreover, he maintained the same security system and failed to instigate any procedure to identify those responsible, both the police officers and the third parties. Given that three individuals were killed in this incident, the court holds that the criminal offence amounts to the Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraph a) of the CC of BiH.

Count 2g)

The Prosecutor's Office charged the Accused with responsibility for the offense that took place during August 1992 when members of a unit from Miljevina, who belonged to the Foča Tactical Group (hereinafter: TG), as well as other members of the "Serb armed forces" took Azemina Pervan, Fatima Pervan, a boy named Almir Kadrić, Zulfo Kadrić, Murat Redžović, Mujo Pervan and Hašim Hatić out of the prison in the *Miladin Radojević* Elementary School. The bodies of Murat Redžović, Mujo Pervan and Zulfo Kadrić were recovered and exhumed after the war, while Azemina Pervan, Fatima Pervan, Almir Kadrić and Hašim Hatić are still unaccounted for.

With a view to proving these averments the following witnesses gave evidence in the proceedings: Džemila Redžović, a.k.a. Zlata, Hasna Ćusto, Rukija Rogoj, Fadila Hatić, Zijada Hatić, Danilo Đorem, Miloš Velatić, Witness A, Miloš Cenjak and Milan (son of Branko) Lalović.

Witness Džemila Redžović, a.k.a. Zlata, stated that some unknown soldiers came to the school on 6 August and took Zulfo Kadrić, allegedly because they needed him as a driver. The witness knew Zulfo as they were neighbors living in the same building. After Zulfo said that he did not possess a driver's license, the soldiers told him: "Come with us, you'll learn." Then they took him and he never returned. She also remembered that on 8 August they took her father-in-law Murat Redžović. That day the soldiers of Pero Elez came and told her father-in-law Murat, Hašim Karaman and another person whose first name was Mujo but whose last name she could not remember. [sentence as rendered in the original text; translator's note]. They drove these three men in a white *Golf* automobile toward Kalinovik. The same night they took "the little" Almir, who was 12-13 at the time and a son of Zulfo Kadrić, and two twin girls who were from Jelašca. They were taken by unknown

persons. Almir's mother went to find Zeljaja to ask him to save her child, but the witness could not confirm if the mother actually found Zeljaja.

Witness Hasna Ćusto recalls that, in addition to women, there were also several men in the school and that one day Hašim Hatić, Bećir Pervan, Murat Redžović, Zulfo Kadrić and his son Almir, who was 15 at the time, were taken away. The witness thinks that they were taken by Pero Elez's soldiers.

Witness Fadila Hatić stated she remembered that one day they came and took Murat Redžović, whom they found in the school, and Zulfo Kadrić, whom some soldiers took saying they needed a driver. He never showed up again. On that occasion, they also took Zulfo's son, the little Almir, who never returned, either.

Witness Rukija Rogoj remembers that one day Žaga came with his soldiers and they asked Sejdo Kešo for his name, whereupon they threw him out into the corridor, beat him and took him somewhere unknown. After that, they approached Mujo Pervan and asked him where his sons were, to which Mujo said he had no children, whereupon Žaga said that they should take him, so they took him out. They also approached Hatić and asked him for his age and took him, but the witness does not know where.

Witness Zijada Hatić stated that present in the school were her father-in-law Hašim, Sejdo Kešo and Mujo Pervan, who was mistreated. Pero Elez mistreated him by telling him to lie down whereupon they would step on his spine and neck. They reached her father-in-law, who was 86 at the time, and Žaga started strangling him. Then they reached them and took them away. On that occasion they took Hašim and Mujo Redžović and they kicked Sejdo out into the corridor, and he started bleeding from either his mouth or his nose, whereupon they rounded them up in a small space and took them away.

Witness Danilo Đorem stated that he knew that Zulfo Kadrić was also detained in the school, but that he did not know what happened to him. He also knew the Pervan sisters and they were detained in the school, but he did not know what happened to them, either.

Witness Miloš Velatić stated that the Pervan sisters were put up in the school. He remembered that when he once set off for his shift he saw them being taken -- one Žaga was there -- and he was told they were being taken to be exchanged. The army and the police pursued them afterward. On the said occasion, they led them on foot.

Witness A stated that he encountered Samija Kadrić in the school and that she told him that her husband Zulfo and son Almir were missing and that is when he learned that there were problems in the school.

Witness Miloš Crnjak, who was a driver in a unit of the Kalinovik TG, stated that one day in *Donji Logor* four unknown soldiers told him to drive to Kalinovik. He drove to a hotel where the soldiers took alcohol, food and drinks. Then he drove in front of the Elementary School. One of the soldiers stayed with him next to the truck. Then the soldiers took out Fatima Pervan, Azemina Pervan and Zijo Hadžić, whom the witness knew. However, it is also possible that there were even more persons. They loaded them onto the truck and ordered him to drive to the Pavlovac farm. They took them off the truck at the gate. They

beat Zijo, he fell, so he thought that Zijo was killed. The witness then returned to *Donji Logor*. He afterward learned that there were rumors that the Pervan sisters were killed in a sand quarry near Jažići. He heard that some child was also with them. He said that the child might have been Zulfo Kadrić's son. That boy was not on board the truck when he was driving the Pervan sisters.

Witness Milan (son of Branko) Lalović stated that he knew Zulfo Kadrić, as he worked in a saw-mill and was the director in one period as well. He heard that Zulfo was taken together with his son and the two Pervan sisters by paramilitary units toward the village of Jažići.

In the course of the proceedings the Prosecutor's Office introduced a considerable number of documentary pieces of evidence related to this Count in the Indictment such as: Expert Analysis Finding on the traces of firearms made by the Crime Police Sector Sarajevo, dated 21 March 2005, pertaining to the site of Vjetren Brdo, Kalinovik Municipality, where one 7.62 mm bullet shell was found next to two recovered dead bodies; Order to conduct an exhumation at the site of Vjetren Brdo dated 1 July 2004; Order to conduct an exhumation, autopsy and identification pertaining to a mass grave at the site of Vjetren Brdo dated 12 July 2004; Record of exhumation dated 15 July 2004, reading that two dead bodies and one shell casing were found; Record of Autopsy of two dead bodies by Dr. Hamza Žujo, dated 2 August 2004, reading that the victims were elderly men but that it is not possible to state the immediate cause of death; Record of 2 August 2004 of identification of bodily remains of Murat Redžović, exhumed at the site of Vjetren Brdo; Report of technical search of the site of Vjetren Brdo dated 15 July 2004; Photo-documentation of the exhumation and autopsy of 15 July 2004; Record on the handover of DNA samples dated 21 September 2007; Record of exhumation and autopsy of 24 June 1999; Decision on the exhumation and autopsy of [word(s) missing; translator's note] that were buried in two mass graves at the locality in Kalinovik Municipality dated 25 March 1999; Record of identification, dated 14 December 2007, conducted at the site of Vjetren Brdo in Kalinovik where the dead body of Mujo (son of Bajro) Pervan, born in 1913, from the village of Jelašca, was identified; Record, dated 23 July 1999, of the identification of the body of Zulfo (son of Edhem) Kadrić, born in 1948; Certificate by the FB-H Commission for Missing Persons attesting that Fatima (daughter of Asim) Pervan from Kalinovik, born in 1964, is registered as a missing person as of 1 August 1992; Certificate by the FB-H Commission for Missing Persons attesting that Azemina (daughter of Asim) Pervan from Kalinovik, born in 1964, is registered as a missing person as of 1 August 1992; Certificate by the FB-H Commission for Missing Persons attesting that Almir (son of Zulfo) Kadrić, born in 1977, is registered as a missing person as of 1 August 1992; Certificate by the FB-H Commission for Missing Persons attesting that Hašim (son of Ibro) Hatić, born in 1906, is registered as a missing person as of 1 August 1992.

It follows beyond doubt from the statements of the examined witnesses, which the Court accepted as credible given that they are mutually consistent with respect to important facts and that they are corroborated by the documentary evidence that the Court inspected, that the murder and disappearance of the referenced persons, who were detained in the school in Kalinovik, took place at the time and in the manner averred in the Indictment. It was also established beyond doubt that these detainees were civilians, and it can be seen from their age that they were mainly young persons, one of whom was not even 15, and the elderly, of whom Hašim Hatić was 86. All these persons were Bosniaks. The taking of these persons

was beyond doubt conducted both by the units that belonged to the Foča TG, including the units of Pero Elez and Žaga Kunarac, and the other unidentified soldiers who belonged to the Serb armed forces. It is also beyond doubt that all the persons who were taken out were detained in the school, which was guarded by the police from Kalinovik whose Commander was the Accused Zeljaja. The Pervan sisters, Mujo Pervan and Hašim Hatić, who were taken out, were captured in an attack by the military and the police from Kalinovik on the village of Jelašca. The other persons who were taken out were also arrested in Kalinovik. It can clearly be concluded from the foregoing that both Accused participated in the execution of the plan of arresting and capturing the Bosniak civilian population in Kalinovik Municipality. In August, this population was gradually taken out of the school and not returned, some of them having been found dead afterward, whereas some others still being unaccounted for. The Court is satisfied that these acts indicate that there existed an obvious intent to permanently remove the detained Bosniak men from the Kalinovik region, that is, that the act was committed with a view to persecuting the Bosniak population on a discriminatory basis. Certain units that took the referenced men belonged to the Foča TG, including the units of Pero Elez and Dragoljub Kunarac, a.k.a. "Žaga", which were called by the Kalinovik Tactical Group Command to assist. Other units of the Serb armed forces were also active in the Kalinovik TG zone. The evidence of witness Miloš Crnjak shows that members of these units that came to the Kalinovik region had an absolutely open access to materiel and manpower, so they could request vehicles and drivers for their operations without encountering any opposition. According to this witness' evidence, one such operation was the taking of the detained Bosniak girls and men out of the school. This taking happened at the time when the Kalinovik SJB police officers guarded the school, which was also the case in the other instances. Again, there were no reactions by the Accused, although they had full responsibility to take certain measures both to protect the detainees and to discover and punish the perpetrators and the persons who made it possible for them to perpetrate these acts. The army and the police units from Kalinovik arrested and brought these detainees to the school where they were left at the mercy of the incoming Serb soldiers who entered the school passing by the guards. Although it can be seen from the Report on Activities of Kalinovik SJB, as well as the evidence by the witnesses who were policemen in Kalinovik at the time, that everyone was aware of these events, the Accused did nothing to prevent them or to have the perpetrators identified and possibly punished. Also, nothing was done to change the routine and the conduct of the guards who secured the school. None of the policemen ever answered for potential omissions regarding the referenced events in the school and the Accused Bundalo never did anything to have the soldiers who committed criminal offenses in his zone of responsibility processed in any way. The Court is, therefore, satisfied that the Accused Bundalo and the Accused Zeljaja are also responsible for the criminal offense concerned. With his conduct, the Accused Zeljaja gave support to the perpetrators of these acts at the time of the commission, while the Accused Bundalo also gave support later on when the matter was kept silent about and when nothing was done about it. Given the fact that some of the taken detained persons were afterward recovered and exhumed at the site of Vjetren Brdo near Kalinovik, whereas the others are still unaccounted for and nobody wants to provide any information as to their destiny and whereabouts, that a shell casing was found in the grave from which the bodies were exhumed, that following these detainees' departure rumors in Kalinovik had it that some of them were killed, and the fact that after their exit from the school nobody has ever seen the detainees alive, the Court is satisfied that the criminal offense committed in the case at hand is the Crimes against Humanity, in violation of Article 172(1)(h) as read with

Sub-Paragraph (a), pertaining to murder, and Sub-Paragraph (i), pertaining to enforced disappearance of persons.

Count 2h)

The Prosecutor's Office charged the Accused that during August 1992 the detained women were taken on several occasions from the school in Kalinovik by unidentified soldiers of the Serb armed forces to the weekend house of Mustafa Sabljica in Mjehovina where army members were quartered. The women were taken from in front of the school in the manner that the soldiers would ride horses and the women would walk beside them; at the weekend house they would be raped repeatedly and physically abused, whereupon they would be returned to the school by the soldiers or by individual police officers.

In order to prove this offense the Prosecutor's Office examined witness Milan (son of Branko) Lalović, Witness A, Witness D, Witness E, Witness W, Witness C and witness Enesa Hasanbegović in the course of the proceedings.

Witness Milan (son of Branko) Lalović guarded the civilians in the Elementary School in Kalinovik as a reserve police officer. He knows that some paramilitary units, Žaga's and Pero Elez's, used to come and take the women from the school. Some women were returned, some were not. The witness stated that he knows where Mustafa Sabljica's weekend house is and that some of Šešelj's soldiers used to stay there. The witness remembers that Šešelj's soldiers would come to the school and take some of the Muslim women to that weekend house. The witness stressed that these soldiers would come with horses, armed, and that they would beat and take the women while shouting. They would usually mount the women on the horses and take them in that manner. These women would stay away for a night or two and then be returned. Some times they would be returned by the same soldiers, at other times the police officers on duty would go to bring them back, so the witness stated that he, too, had to go and pick these women up. The witness also stated that he remembered that one woman who was taken was married into his village, that she was around 50 and childless. They used to inform Boško and Neđo in the SUP [Secretariat of Internal Affairs; translator's note] about the taking of the women, but they would not get any specific answer except that they would curb it.

Witness D stated that many women were raped. The women were taken to different places, some of them to Mjehovina. One woman was chained as she was resisting. When she returned, she was pushing her child away. Her name was Fehma Memić.

Witness E remembers that women were taken to Mjehovina and toward Miljevina in some abandoned hotel. They were afterward returned. The witness learned this from the women's accounts as to what happened to them. This witness stated that Aiša Bajrović was taken to Mjehovina when Marinko Bjelica came on a horse in front of the school and took her. She was absent for the whole night. When she returned, she brought food and cigarettes in plastic bags. She stood in front of everyone and said she wanted everyone to know what had happened to her. She said that she was in one house in Mjehovina for the whole night and that three soldiers took turns raping her. Everyone could hear it well. The detained women complained to the guards over everything that happened to them, but they would just say

that there was nothing they could do. Thus one day they agreed to push for the door and get out since they could no longer bear the situation, but they were prevented from doing it.

Witness W stated that on 28 August 1992 three or four soldiers came to the school in Kalinovik saying they were from Serbia or Montenegro. That is when she was taken together with Fehma Memić by a truck to one weekend house in Mjehovina. There were 40 to 50 of them in the weekend house in Mjehovina. The witness stated that the soldiers raped her on the ground-floor, while they raped Fehma on the upper floor. They did whatever they wanted to them until the evening. In addition to the rape, they also mistreated her and one of them forced her to all sorts of terrible things, so if she met him, she would be his judge. She would recognize him although she hardly remembers the faces. Several persons raped her in the weekend house. The consequences for Fehma were worse and she suffered a nervous breakdown then. Mićo and some other soldiers took them back on foot. They left them in front of the school door and the soldiers talked with the police in a normal tone on that occasion.

Witness C stated that she saw one horseman taking a woman tied to the horse's tail toward Mjehovina.

Witness Enesa Hasanbegović stated that women were also taken by night to several locations, including certain locations in the village of Mjehovina. The witness did not have much contact with these women, but she would see upon their return that they were all beaten up and they would complain that "all sorts of things" had been done to them.

Witness A stated that he heard that some Chetniks held Bosniak women in weekend houses in Mjehovina. The witness knows from hearsay that they took them with horses, however, the women would not sit on the horses' backs with them, but would walk like slaves. The witness heard of the events concerned from the policemen and he remembers that Mladen Lalović encountered a soldier leading a Bosniak woman and the policemen wondered where that woman came from since all the women had been exchanged. As for the event concerned, the witness remembers policeman Mika saying that one man was riding a horse and leading two women.

The Prosecutor's Office introduced into the case file a photo-documentation of the weekend house owned by Mustafa Sabljica in Mjehovina and a CD depicting the village of Mjehovina and the weekend house.

It follows from the statements of the foregoing witnesses, which the Court accepted as credible since they are mutually consistent and fully convincing, that in the relevant period soldiers of the Serb armed forces raped the women-detainees who were taken to the weekend house of Mustafa Sabljica in Mjehovina. At times these women would walk by the soldiers riding horses. These women were abused and raped repeatedly in the weekend house and then taken back to the school, either by the soldiers or the policemen who guarded the school. The status of detainees the women had at the relevant time, the arrival of armed soldiers who came to pick them up from the school where they were detained, the manner of their taking, the venue of the rapes, all these facts indicate that the acts of rape were committed against their will and that they could not avoid the rapes in any way, since their complaints to the policemen whose duty was to guard them did not produce any

positive response in terms of providing protection and preventing rapes. It is beyond doubt that all these women were civilians at the relevant time and that they were Bosniaks.

It follows beyond doubt from the evidence of Witness W, who was a victim of this rape, as well as from the evidence of the other women detained in the school who would see the women when they would be brought back from the weekend house and would hear their stories, that the women were abused during the rape, that is, that strong physical and mental pain and suffering were inflicted on them. The very manner of these women's taking, described by witnesses A, C and Milan Lalović, was utterly humiliating since they were taken on horses, that is, they walked beside the soldiers like slaves, as Witness A described graphically, while Witness C stated that a woman was tied to a horse's tail. Many of these women at that time had families and children of school age. Witness W described that they did all sorts of terrible things to her and that she would be their judge for it, and she said for the aggrieved party Fehma that she suffered a nervous breakdown as a consequence of the rape. Fehma's mental state was also described by Witness D in her evidence when she stated that Fehma refused to hold the child in her arms upon returning to the school. Witness Enesa Hasanbegović also stated that upon the return the women would be beaten up and would tell that the soldiers had done all sorts of things to them.

The Accused Bundalo and the Accused Zeljaja are responsible not only for participating in the bringing of these women to the school, but also for failing to do anything to protect them and for failing to do anything once the rapes happened in terms of finding and punishing the perpetrators. The Accused Zeljaja, as the police commander, did not change the manner of guarding the women and did not take any measures against the guards. It follows beyond doubt from the evidence given by the witnesses who were policemen that everyone in the police force knew of the rapes of the women in the weekend house in Mjehovina. The women complained to the guards over all these events and the treatment they suffered in the school, of which guard Lalović informed Boško Govedarica and Neđo Zeljaja. Also, in late August they wanted to break through the door and get out of the school, which the Accused Zeljaja was also aware of. Also, the manner of their taking with horses through the town must have been noticed by the not-numerous population of Kalinovik and known to everyone. However, despite everything they knew, and the Court notes that Witness W said that she was raped in the weekend house on 28 August 1992 when the Accused Bundalo was in Kalinovik beyond any doubt, the Court considers that with their conduct the Accused encouraged and supported the soldiers to commit these rapes. In the absence of any opposition to such events on the part of the most important officials in the police and the army in this period, all soldiers who came to Kalinovik and committed these or similar acts had a feeling they were doing things accepted by everyone. For these reasons they would sometimes call the police to take the raped women back to the school. The foregoing indicates that, with their conduct, the Accused participated in the common plan to forcibly remove the Bosniak population and that one way of executing that plan was to rape the detained women. The Court is, therefore, satisfied that in the case at hand they are responsible for the commission of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with Sub-Paragraph (g) – rape, and Sub-Paragraph (f) – torture.

Count 3

The Prosecutor's Office charged the Accused Bundalo and the Accused Zeljaja that in July and August 1992 they actively participated in the forming and maintaining the *Barutni Magacin* camp in Kalinovik, in which Bosniak male civilians from Kalinovik and the surrounding villages and a number of captured civilians from Trnovo and Foča were unlawfully detained. The civilians were detained under inhuman conditions without being able to meet their basic hygienic needs; they were being taken to compulsory work service and to the front lines, physically abused and eventually killed by the military and the police officers of the Kalinovik SJB. The description of facts in Count 3 reads that the Accused Aškraba was immediately subordinated to the Command of the Kalinovik TG in his capacity as the commander of the guards and that, at the same time, he also performed the duties of running this camp.

In order to prove these averments, the Prosecutor's Office adduced numerous pieces of subjective and documentary evidence during the proceedings.

Witness Rade Pavlović, who was previously the Commander of the barracks in Kalinovik, stated that *Barutni Magacin* was a military facility and that all ammunition was taken out of it while he was in Serbia, in the period from mid-June to mid-July 1992. According to this witness, only the Accused Ratko Bundalo, who was the Commander of the Kalinovik TG, could make a decision on relocating weapons from *Barutni Magacin*. The Accused Bundalo could also have control of that facility. The military from *Gornji Logor* provided guards and food for the detainees.

Witness Božo Purković, who was the assistant for personnel to the Chief-of-Staff, stated that *Barutni Magacin* belonged to the Kalinovik TG, whose Commander was Ratko Bundalo.

Witness Vojin Puhalo stated that Ratko Bundalo assigned him to the post of guard in *Gornji Logor* in the Kalinovik barracks. Ratko Bundalo was the barracks Commander. The witness stayed on this duty until 27 July 1992, when Ratko Bundalo gave him a new assignment of guard in *Barutni Magacin*. The guard commander there was Đorđislav Aškraba, who made guard shifts schedules. At that time Muslims were detained in *Barutni Magacin* in one room where ammunition had been kept previously. They would go out for a walk three times a day. They could go out to a pit latrine. The food was brought by a military vehicle from the kitchen of the barracks in *Gornji Logor*. The daily activities schedule, that is, "the House Rules", was laid down by the Command and attached to the door of the room where the guards were quartered, and verified by the seal of the Military Post commanded by Bundalo. Prior to the fall of Rogoj, a written order arrived from the Command reading that all detained Muslims should be released, save for the ones whose children were in the Army of B-H. The order was not complied with because Rogoj fell that day and a lot of Serb soldiers were killed in that attack. His son was among the killed ones in Rogoj, as well as 13 other Serb soldiers.

Witness Miloš Crnjak stated that he was mobilized in the JNA in November 1991, as of when he was on duty as a guard in *Donji Logor*. In the period when he was mobilized, the barracks Commander was Major Rade Pavlović, but Ratko Bundalo was the Commander

from the arrival of the JNA Rijeka Corps in Kalinovik. The witness knows that there existed the *Barutni Magacin* military facility and that it was guarded by military all the time. Ammunition was stored in *Barutni Magacin* until someone decided that detainees should be held there. The complete military equipment was transferred from *Barutni Magacin* to *Donji Logor* then. After that, Muslim civilians were put up in *Barutni Magacin* and all guards were replaced. The witness transported food in a vehicle from the barracks to *Barutni Magacin*, to the detainees and the guards alike. He knows that the guard commander in this facility was Đorđislav Aškraba.

Witness Nedo Vuković stated that he was engaged in the army and that due to his illness he was on duty as a guard in *Gornji Logor* in Kalinovik. The barracks Commander at that time was Ratko Bundalo. Under the order of his commander the witness transported water in a military cistern from the *Gornji Logor* compound to *Barutni Magacin*. That day when he transported the water the detainees had not arrived yet. He was then assigned to be a guard in *Barutni Magacin* and Đorđislav Aškraba was his superior and he was the one making the guard shifts schedules. There were around 10 guards in *Barutni Magacin*, later perhaps even more, but they changed often. In the beginning, women were allowed to bring food and clothing to the detainees, but later, after one detainee had escaped, the order came that women could no longer enter the *Barutni Magacin* compound or approach the detainees. While he was in *Barutni Magacin*, he would sometimes write down in the Log Book of Exits (hereinafter: the Exit Log) which detainee exited *Barutni Magacin* to go to compulsory work. On such occasions, he would enter the names of these persons, the date and the time of the exit, who took them and who authorized their taking out. As far as he remembers, taking out happened on a daily basis. The detainees were mostly taken by policemen of the Kalinovik SJB and when taking over the detainees, the policemen would say who had authorized it and for whose needs the detainees were going to work. He remembers that Đorđislav would not allow the detainees to be taken out without an order and that he saw policeman Savo Crnjak showing a piece of paper to Aškraba, whereupon Aškraba allowed him to take over certain detainees. He left *Barutni Magacin* after the fall of Rogoj and the permit to leave Kalinovik together with his family which he got then was signed by Ratko Bundalo.

Witness Manojlo Krstović said in his evidence that he was a guard in *Barutni Magacin* and that Đorđislav Aškraba was the guard commander. At that time there were detained Muslims in *Barutni Magacin*. He was assigned as a guard at the entrance gate.

Also, witness Rade Lalović stressed that until 13 July 1992 he was a guard in *Barutni Magacin*, where he stayed for seven days. Prior to that, he was assigned to be a guard in the barracks in *Gornji Logor*, where corporal of the guard was Četko Sladoje. Corporal Sladoje asked him if he would go to stand guard in *Barutni Magacin* and he agreed because of the proximity of his home and the summer mowing. He was armed and in a military uniform. Muslim men were detained in *Barutni Magacin* and there they could use one pit latrine. In addition to the gate, there were two other guard posts, too.

Witness Pero Marković stated that in the period concerned he was engaged in the army as a quartermaster in charge of food. He knows that there were detained persons in *Barutni Magacin* to whom the military from the kitchen in *Gornji Logor* secured and delivered food twice a day. His commander at that time was Ratko Bundalo. He had telephone connection

with *Barutni Magacin*. The witness stressed that detainees came to the kitchen twice to unload the provisions and that they came under police escort.

Witness Šćepan Jovović stated that in the period concerned he was in an engineering company in *Gornji Logor* and that in summer 1992 he received an order from the company commander, whose last name was Nogo, to construct a pit latrine near the *Barutni Magacin* facility. When he arrived in *Barutni Magacin*, he found guards in olive drab uniforms there. The pit was already dug up and he constructed a one-booth latrine out of boards. There was also one toilet in the building. He later learned that the pit latrine was used by the Bosniaks who were detained in *Barutni Magacin*. He does not know officer Pavlović at all.

Witness A stated in his evidence that policeman Spasoje Doder told him that a camp would be established for the detained Muslims in the school and that some of the policemen of the Kalinovik SJB could be the guard commander there. The witness stressed that many police employees were interested in that post, as they thought it would be a safer and better post and that the captured Muslim men would soon be exchanged. When reserve policeman Đorđislav Aškraba was assigned to that duty, all active policemen cursed wondering how he managed to get that post bypassing them.

Witness Fejzija Hadžić stressed that he was first captured together with a large group of Bosniaks from Kalinovik and held in the school in Kalinovik, that the capture was committed by the police from Kalinovik that guarded the school, and that Neđo Zeljaja participated in it, too. With respect to the Accused Neđo Zeljaja the witness stated that on the same occasion the Accused, together with Boško Govedarica, interrogated the captives in the police station, namely Reuf Rogoj, Zaim Čusto, Rašid Brezović and Ismet Hatić, who told about it upon returning from the station to the school. He also knows from the stories told by his wife's relatives that the Accused Neđo Zeljaja personally took his father-in-law Ibro Pervan from Jelašca to Kalinovik, allegedly for interrogation. The witness noted that, while they were in the school, Slavko Sladoje visited them on behalf of the Crisis Staff in Kalinovik and told them they were being held there for their own safety. They were accommodated in the school's gym and there they found some 15 men who had been captured in Trnovo before them. They stayed in the school until 6 or 7 July, when in the afternoon the policemen from the security told them to get packed and that they would be transferred to the *Barutni Magacin* camp. Three military trucks driven by soldiers awaited them in front of the school. The civilian police in blue uniforms loaded them onto these vehicles and two armed reserve policemen from the Kalinovik SJB were on board each vehicle as escort. The witness remembers that reserve policeman Željko Mandić from Kalinovik was an escort on board the vehicle on which he was and that he escorted him all the way to *Barutni Magacin*, but he did not see him afterward. When they arrived in *Barutni Magacin*, he saw Đorđislav Aškraba, who introduced himself as the warden. There were also other persons in military uniforms there and some civilian workers who were completing the works by welding the iron door and assembling bulbs in the facility. Deal boards were fitted on the floor. Nobody told them why they were detained there. They later got blankets, pillows and mats from their families. There were 74 persons brought in total. They would get water from cisterns and there was one barrel in the building which they would use as a toilet when they did not go out to the pit latrine. During his evidence witness Fejzija Hadžić recognized *Barutni Magacin* in the photo-documentation and noted that the detainees were grouped in such a way that people from Trnovo were in one part while in

other parts people were grouped by their family names. Land-mines were laid around the building and it was guarded by uniformed soldiers deployed at three guard posts. The detainees could not take a bath. They would wash their faces from one barrel containing rain water and from water cisterns. Soldier Branko Banjanin brought the food in food containers. Witness Fejzija stressed that while they were in the school and *Barutni Magacin*, a number of detainees would go out to work, to work for the kitchen, to chop wood, to load things and the like.

Witness Rade Pavlović stated that in one period the Accused Bundalo was absent from Kalinovik and that some Colonel from Bileća replaced him. He stated that the Accused Bundalo was absent for 10 to 20 days and he re-assumed the command when he returned. When he returned to Kalinovik, he brought along some 10 persons who got uniforms and weapons. Afterward a group from Belgrade came and they were under Bundalo's command and they also got uniforms and weapons at Bundalo's order.

It follows from the evidence of witness Ramka Velić that she lived in Trnovo and that in late May, after the VRS attack on Trnovo, she was captured and brought to the school in Kalinovik together with several Bosniak inhabitants. Her husband was among the captives. At the time of the detention she went to the police station in Kalinovik several times to give a statement and she was interrogated by Neđo Zeljaja. She asked him to allow her to see her husband, Munib, and when she set off for an exchange, Zeljaja called her and told her that she could meet with her husband. At that time her husband was detained in the gym in the school in Kalinovik together with the other men from Trnovo, including Mustafa Šorlija. She was exchanged 16 days after having been brought to the school and that was on 16 or 17 June 1992. The witness stated that while exiting the school she heard Zeljaja telling the present guards to take the men out to load some flour. She afterward learned that her husband was found in the tunnels in Miljevina and exhumed, whereupon she buried him. She has the same information about Meho Sačić from Trnovo, who was also buried.

Witness Elvir Ćemo confirmed that men from Trnovo were brought to Kalinovik on 30 May 1992, of which one number were in the school, while the others were held in the Police Station. Some persons from Foča and one family from Gacko were also in the school at the time. The police stood guard in the school and he remembers one policeman nicknamed Ustaša. The witness was a child at the time and he was put up in the school, while his father and some other men from Trnovo were in the Kalinovik Police Station. He remembers that on one occasion he saw Neđo Zeljaja in the school, who came since one policeman from the security said that Zeljaja should be called because of disorder. Fifteen days later the women and children were taken for an exchange while the men stayed in Kalinovik. The majority of these men are still unaccounted for.

The records of identification of the dead bodies recovered at the execution sites indicate that there were persons from the greater Jeleč region, Foča Municipality, among the killed.

Of the documentary evidence pertaining to the forming and the operations of the *Barutni Magacin* camp, the Defense for the third Accused introduced into the case file the Exit Log and the Duty Roster.

It can also be seen from the Letter of the *DP Šumarstvo Zelengora* company from Kalinovik, dated 8 July 1992, that this company forwarded a request to the Kalinovik TG Command and the Kalinovik Police Station to have Hasan Hadžić assigned to work in the company in the course of the workday. The Letter reads that Hasan is a professional auto-electrician and the only worker qualified for maintenance of cargo vehicles and that on 7 July 1992, upon the authorization of the Kalinovik Police Station, he started the repair works. The request reads that the referenced person should be brought for work on a daily basis (T-180).

On the basis of the presented evidence the Court is satisfied that the accused persons actively participated in the forming and operations of the *Barutni Magacin* camp in Kalinovik in which Bosniak civilian male population was detained. Based on the consistent statements of the witnesses the Court established that *Barutni Magacin* was a military facility that belonged to the Kalinovik TG Command, and it was established beyond doubt during the proceedings that the Accused Ratko Bundalo was the Commander of the Kalinovik TG in the relevant period. It can be concluded beyond doubt from the statements of the above-referenced witnesses, Fejzija Hadžić, Rade Pavlović, Miloš Crnjak and Šćepan Jovović, whose statements the Court admitted because they are mutually consistent and complementary, that *Barutni Magacin* had previously served as an arms and ammunition warehouse and that, a couple of days prior to the transfer of the Bosniak men detained in the school in Kalinovik, it was rearranged as a military camp, with all ammunition being taken out, a pit latrine being constructed and with workers fixing the iron door and fitting bulbs. Witness Rade Pavlović, who was a senior military officer in Kalinovik, stated that only the Accused Ratko Bundalo could make the decision on relocation of weapons from *Barutni Magacin* and that he had the control of that facility. Based on the evidence of witnesses Miloš Crnjak and Pero Marković, it was established beyond doubt that food for the detainees was provided by the military from *Gornji Logor*. It follows from the evidence of witnesses Rade Lalović, Neđo Vuković, Miloš Crnjak, Vojin Puhalo and Manojlo Krstović, whose statements are consistent, that soldiers stood guard in *Barutni Magacin*. Witness Vojin Puhalo stated that the Accused Bundalo personally assigned him to the duty of guard in *Barutni Magacin* in late July 1992, while it is obvious from witness Miloš Crnjak's statement that even before the forming of detention camp soldiers were guards in *Barutni Magacin*, but that the guards changed when *Barutni Magacin* changed the purpose. It follows from the evidence of Witness A that everyone in the Kalinovik SJB knew that a camp would be set up in *Barutni Magacin*, since the staff of the Police Station in Kalinovik wondered who would be appointed commander and all active policemen were interested in this position. It was established beyond doubt in the proceedings, from both the documentary evidence pertaining to Aškraba's personal information and the testimonies of numerous witnesses, including witnesses A, Fejzija Hadžić, Neđo Vuković, Manojlo Krstović and others, that the Accused Đorđislav Aškraba, as a reserve policeman, was transferred to the military service and appointed the guard commander in *Barutni Magacin*. This fact was also indicated in the Certificate issued by the Kalinovik SJB on 8 April 1993 signed by the Chief, Boško Govedarica, reading that Đorđislav Aškraba had applied to work in the Serb Police Station in Kalinovik on 4 May 1992 where he worked on the public security duties until 7 July 1992, when he was discharged and transferred with the SJB's clearance to the Army of Republika Srpska to the duty of the commander of the guards for detained Muslims. It needs to be noted here that it was also established during the proceedings that the Accused Neđo Zeljaja in this period of discharge, transfer and

appointment of Aškraba the guard commander in *Barutni Magacin* was the Commander of the Kalinovik Police Station, whose member Aškraba was until 7 July 1992. It is an indisputable fact that men from Kalinovik who were fit for work were detained in the school in Kalinovik on 25 June 1992 and this was reasoned in detail in Count 1b) of this Verdict. Also, in Count 2 of the Verdict, the Court explained that the Accused Bundalo and the Accused Zeljaja actively participated in the forming of the prison for these men in the elementary school in Kalinovik and that meetings were held in the army command to that effect which they both attended and where the plan, the manner of arrest and the list of persons to be arrested were discussed. These persons who were arrested were transferred to *Barutni Magacin*, together with the arrested Bosniaks from Trnovo, within some 10 days only, *Barutni Magacin* having been cleared of ammunition and prepared as a camp in the meantime. This timeline of the events clearly indicates that the forming of a camp in *Barutni Magacin* was pre-planned and that the Accused Zeljaja participated in that plan by the significance of his office. This is also clear since, according to the only surviving inmate from *Barutni Magacin*, Fejzija Hadžić, the police who were the guards told the detainees in the school to get packed and that they would go to *Barutni Magacin*. The same policemen then loaded all 74 detainees on board three military trucks and escorted them to *Barutni Magacin*, where the detainees were awaited by guard commander Đorđislav Aškraba, who not so while ago was a colleague and subordinate to the Accused Zeljaja Bundalo [as rendered in the original text; translator's note]. It follows beyond doubt from this course of events that the military and the police authorities had a clear agreement regarding the transfer of the detainees from the school, guarded by the police, to *Barutni Magacin*, guarded by the army, and that the establishment of both detention facilities was pre-arranged and that both Accused participated in these discussions. It can be seen from the Exit Log and the House Rules for Detainees that even after the arrival in *Barutni Magacin* the detainees did not cease to be under the control of the police force in Kalinovik as well, as it was clearly indicated in the referenced documents that, in addition to the Commander of the Kalinovik TG, the Chief of Kalinovik SJB can also authorize the taking of the detainees out of *Barutni Magacin*. It can be seen from this evidence that the competences over the detained Bosniak men in *Barutni Magacin* overlapped between the military and the police and that both the military and the police officials were competent to authorize their taking out for certain purposes, which means that all this was agreed on at the meetings between the military and the police authorities and that the detainees enjoyed the same status in both the school and *Barutni Magacin*. In other words, it can be seen from the evidence of witness Ramka Velić that the Accused Zeljaja issued orders that the detainees in the school be used for labor, and he did the same when they were in *Barutni Magacin*, as there are two entries in the Exit Log for 11 July 1992 and 16 July 1992 registering him as a person who authorized their exiting. It can also be seen from the Exit Log that the detainees were taken out of *Barutni Magacin* mostly following the authorization of the police authorities and that police members most often took the detainees to labor. However, having inspected the Exit Log, the Court established that the detainees would also be taken out of *Barutni Magacin* following authorizations by certain military officials and that they would also be engaged for the needs of the army, which was confirmed by other witnesses, too.

Based on the foregoing, the Court established that both Accused, Ratko Bundalo and Neđo Zeljaja, actively participated in the forming and operations of the *Barutni Magacin* camp in which Bosniak men were unlawfully detained. It was also established during the proceedings based on the evidence given by numerous witnesses, including Rade Pavlović,

Witness H, guard Neđo Vuković, Vojin Puhalo and Manojlo Krstović, and on the inspection of a sketch and photo-documentation, that *Barutni Magacin* had all characteristics of a camp, since it was under constant guard by the military who were deployed at three guard posts, that it was enclosed with barbed wire and that mines were laid on the inner side of the barbed wire.

With respect to the duration of the detainees' stay in this camp, the Court established beyond doubt by inspecting the Exit Log that the Bosniak civilian detainees were in *Barutni Magacin* on 7 July 1992 and that they stayed there until 5 August 1992. It can also be seen from the Duty Roster that duty shifts were organized from 10 July 1992 and that the last day when it was scheduled was 6 August 1992.

Given the fact that the Court acquitted the Accused Đorđislav Aškraha of responsibility for the events described in Count 3 of the Indictment, in this part of the Reasoning of the Verdict the Court will only reason the sentencing of the Accused Bundalo and the Accused Zeljaja, while the acquittal of the Accused Aškraha will be separately reasoned in the part concerning the acquittal of the Accused of criminal responsibility.

Count 3a)

In this Count of the Indictment the Prosecutor's Office charged the Accused that on 2 August 1992 they took civilians Jakub Muslim and Osman Mandra out of the *Barutni Magacin* camp. These civilians are still unaccounted for.

Witness Fejzija Hadžić and Witness I testified about the circumstances referred to in this Count of the Indictment and documentary evidence was also adduced.

Witness Fejzija Hadžić stated that during the stay in *Barutni Magacin* a number of detainees, especially the ones from Trnovo, would get out and work for the needs of the kitchen, chop wood, load stuff and the like. The witness stressed that in the evening of 2 August 1992, the Accused Đorđislav Aškraha took Alija Šemić and Vejsil Kečo out of the facility where they were detained and that they were returned to *Barutni Magacin* later in the evening, when the dark fell, and then Đorđislav Aškraha took out Osman Mandara and Jakub Muslim again. The witness further explained that Aškraha came with a list and read out the names of the detainees who were to follow him, not explaining why and where they would be going, just saying they would be exchanged. The witness stated that he did not see these two detainees afterward and that he did not hear what had happened to them, either, but he thought that they had most probably been killed.

Witness I, who was a guard in *Barutni Magacin*, said at the main trial that mid-July he was told at the Command, located in *Gornji Logor* where Ratko Bundalo was the Commander, that he should move to *Barutni Magacin*, where he guarded the detainees. There were 12 persons who provided security to *Barutni Magacin* and they did not have ranks. Đorđislav Aškraha was among these persons and he, too, would sometimes stand guard. He knows that the detainees were taken out for compulsory work service. In a statement given at the Prosecutor's Office of B-H during the investigation, Witness I stated that in early August 1992 fighting at Rogoj started and that some unknown soldiers came with some papers arguing that it was ordered they should be handed over certain persons from *Barutni*

Magacin whom they mentioned by their names. The witness stated that he never saw such an order and that these men said that the order had come from the military command. He also said that he was present on several occasions when the detainees were taken out in that way.

Inspection of the Exit Log, which the Accused Aškraba introduced into the case file as evidence, shows an entry for 2 August 1992 stating that Jakup Muslim and Osman Mandra were taken out of *Barutni Magacin* in the afternoon, that it was authorized by Boško Govedarica and that they were taken by Savo Crnjak. It was established in the proceedings based on witness statements and inspection of the Kalinovik SJB active policemen payroll that Crnjak was a policeman of the Kalinovik SJB at the relevant time. It can also be seen in the Exit Log that in the period when Bosniak men were detained in *Barutni Magacin*, policeman Savo Crnjak came several times as a driver to pick up the detainees.

The Court accepted the statements of the referenced witnesses as credible since they are mutually consistent and complementary with respect to important elements. The evidence given by witness Fejzija Hadžić was also corroborated with a piece of documentary evidence in the case file, the Log Book of Exits from *Barutni Magacin* concerning the relevant day. It follows beyond doubt from the referenced evidence that on 2 August 1992, Đorđislav Aškraba took Jakup Muslim and Osman Mandra out of the *Barutni Magacin* facility where detainees were held and that these men have been unaccounted for ever since. Given the fact that *Barutni Magacin* was a military facility and that Đorđislav Aškraba was in charge of guarding the detainees as a member of the army, it follows beyond doubt that the Accused Bundalo, who was the Kalinovik TG Commander at the time these persons were taken out and a person who set up this camp for detainees and who personally assigned certain guards in the camp to their posts, was responsible for the events in *Barutni Magacin* and the enforced disappearance of the referenced detainees. The Accused Zeljaja also participated in the forming and operations of the *Barutni Magacin* camp, *inter alia*, by authorizing the taking of the detainees to labor. In the case at hand, it was established beyond doubt based on the Exit Log that the specific authorization for the taking was given by SJB Chief Boško Govedarica and that the persons were taken by active policeman Savo Crnjak whose Commander at the time was the Accused Zeljaja. The Exit Log for 11 July 1992 shows that Osman Mandra was taken out of *Barutni Magacin* at the authorization of Nedo Zeljaja and that he was taken back to the camp the same day. When detainees Muslim and Mandra were taken out on 2 August 1992, they were never again returned to *Barutni Magacin* and they are still unaccounted for, while the Accused, as the leading officials in the army and the police, did not do anything that would facilitate their finding. All this indicates that the taking of detainees out of *Barutni Magacin* was a part of the plan and the purpose of the Accused to persecute Bosniak civilians in Kalinovik, *inter alia*, by their enforced disappearance. In the case at hand, it is indisputable that these two persons, as well as all the other detainees in *Barutni Magacin*, were civilians and ethnic Bosniaks and that their persecution had a discriminatory basis. Given the fact that all these persons were arrested, detained and then taken out of the camp, that they are still unaccounted for and that no information as to their fate or whereabouts has been provided yet, the Court is satisfied that the criminal offense committed in the case at hand is Crimes against Humanity in violation of Article 172(1)(h), as read with Sub-Paragraph (i) of the CC B-H.

Count 3b)

The Prosecutor's Office charged the Accused because on 3 August 1992, civilians Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Ćusto were taken out of *Barutni Magacin* and were found dead in the zone of Rogoj, handcuffed two and two together.

Witnesses Fejzija Hadžić, Witness Z, Manojlo Krstović, Džafer Hubijar, Akif Mahmutović and Witness A testified on the circumstances described in this Count of the Indictment.

Witness Fejzija Hadžić stated that in the evening when the taking of the detainees started there was a feeling among them that something was going on, as if an exchange had started and as if they would be exchanged. The witness also remembers that in the morning of that day, 3 August, Đorđislav Aškraha came with a list and took Nasuf Bičo, Nezir Rogoj, Zaim Ćusto and Remzo Suljić saying they were going to be exchanged. The witness added that they saw that a police Land Rover came to pick them up and that they were handcuffed. They could see it because they lifted one another on the shoulders and watched out of the window as it was happening. The witness corroborated this statement related to the window when inspecting photograph No. 32 on which he clearly pointed at the three windows at the front side of the building from which everything could be seen. The witness then stated that upon exiting the camp and crossing to the free territory he learned that these four men had been found dead at Rogoj, that they had been tied and most probably used as a human shield and that they had been buried in the village of Dujmovići.

Witness Z stated that he knew that four detainees got killed at Rogoj and that it happened in early August. He knows that Boško Govedarica asked the police officers to give him a few handcuffs and that he took them with him. The witness added that there was an instant rumor that Boško took these four detainees and that Mičo Simić brought them to Rogoj because his brother was killed. A military vehicle accompanied the police one on that occasion. The witness remembers that these four prisoners were Zaim Ćusto, Nasuf Bičo, Rogoj and Suljić.

Witness I, who was a guard in *Barutni Magacin*, stated that he remembered that Nasuf Bičo and Nezir Rogoj were detained, as they were his neighbors, and that they were taken away, but he did not remember the date.

Witness Manojlo Krstović, who was a guard in the *Barutni Magacin* camp, stated that he could not confirm that he stood guard on 3 August 1992 but allowed that it was possible. Concerning the taking of the four prisoners to Rogoj, the witness stated that someone was needed to retrieve the bodies of those killed at Rogoj and that the four prisoners were taken from *Barutni Magacin* for that purpose. With respect to this circumstance, the witness said in a recorded interview with the Prosecutor that he remembered being present in *Barutni Magacin* when four or five detainees were taken to Rogoj to retrieve the dead. They were taken by the police on that occasion.

Witness Džafer Hubijar said that when Rogoj fell eight bodies of the killed persons were transported, of which four persons were handcuffed, and he remembered this because they had problems when burying them. All four were in civilian clothes and he recognized Zaim

Ćusto, because the witness' mother was from Ćusto's area. He knows that all four men were buried in the local cemetery in Dujmovići.

Witness Akif Mahmutović said that he was a member of the Army of B-H and that he remembered an event from early August when he got an order from the Logistics Commander to go to Rogoj and take over the bodies of slain civilians. The witness explains that the Army of B-H entered Trnovo and took Rogoj on 1 August 1992 and that on 2 August 1992 the Serb forces re-captured Rogoj, whereupon, on 3 August 1992, the Army of B-H re-captured that pass. On the same day he received an order from the Logistics Commander to go to Rogoj and was told that the slain civilians were there. Three of them set off in a van and found four slain civilians who were handcuffed two and two together, one in each pair being handcuffed on his left hand and the other on his right hand. He did not notice blood on these persons' bodies, but stressed that he saw they had bruises on their faces and necks. He heard that they might have been used as a human shield. The witness thinks that these four men were killed on the same day and he thinks so because their bodies were not stiff when they were putting them onto the truck, so they had trouble doing it. They were buried in the local cemetery in Dujmovići. The witness stated that the only thing he learned was that they were from Jelašca, but that he did not know their names.

Witness Milan (son of Petar) Lalović, who was a guard in *Barutni Magacin*, said that Muslims were detained there and that he knew detainees Adem Hatić, Nezir Rogoj, Nasuf Bičo and the Suljićs. The witness knew Zaim Ćusto and Nezir Rogoj and thinks that they stayed in *Barutni Magacin* until the end, until the time the others were there, too.

The Prosecutor's Office introduced photo-documentation of the cemetery in Dujmovići, Trnovo Municipality, in the case record as documentary evidence. Having inspected the photo-documentation the Court established that it contained photographs of the graves of Nezir Rogoj, Remzo Suljić, Zaim Ćusto and Nasuf Bičo. All four graves are concentrated at one place.

It follows beyond doubt from the referenced evidence that the referenced persons were taken out of *Barutni Magacin* on the relevant day and that they were found dead at the Rogoj pass, whereupon they were buried in Dujmovići. It also follows beyond doubt that they were handcuffed at the moment of death and from the evidence of witness Fezija Hodžić and Witness Z it follows that the handcuffs, which originally belonged to the police from Kalinovik, were put on these detainees while they were being taken out of the camp.

The Exit Log of *Barutni Magacin* for 3 August 1992 shows that all four persons were taken out at 1130 hrs and that Boško Govedarica authorized it. The Log also reads that Savo Crnjak and Miro Mišur were present on that occasion, the former having already been mentioned as an active policeman at the Kalinovik SJB and a driver, the latter also having been on the list of the Kalinovik SJB police officers. Given the witnesses' statement that a police vehicle came to take these detainees on that occasion and that it was accompanied by a military vehicle, it is beyond doubt that both the police and the army from Kalinovik took part in the taking out of these civilians.

The Court accepted the referenced statements of the witnesses as credible since they are mutually consistent and complementary and corroborated with the documentary evidence that the Court inspected.

At the time of the commission of this offense the Accused Bundalo was in Kalinovik in the position of the Commander of the Kalinovik TG. It is an established fact that the detainees, who were guarded by military guards, were taken out of the military camp which he established and whose operation he enabled. On the other hand, the police officers of the Kalinovik SJB, whose Commander was Neđo Zeljaja, participated in these detainees' taking. The police came with their vehicle in front of *Barutni Magacin* and took the detainees who were tied with handcuffs provided by the police. The foregoing indicates that Neđo Zeljaja, as their Commander, was aware of the taking of the referenced detainees and their execution.

That the Accused were aware of everything and that the referenced acts were a part of the common purpose of persecution which they shared with the other participants in a Joint Criminal Enterprise also arises from the fact that neither Accused ever did anything to prevent repetition of such acts, that is, to have the perpetrators discovered and punished. The taken detainees were Bosniaks and their killing was basically of a discriminatory nature and, in the opinion of the Court, it was committed with a view to persecuting the Bosniak civilian population from the Kalinovik region.

Given the fact that four detained persons were killed on this occasion, the Court is satisfied that the criminal offense committed in the case at hand is the Crimes against Humanity in violation of Article 172(1)(h) as read with Sub-Paragraph (a) of the CC B-H.

Count 3c)

The Prosecutor's Office charged the Accused Bundalo and the Accused Aškraha with the taking of detainee Mustafa Šorlija out of the *Barutni Magacin* camp on 4 August 1992. Šorlija's dead body was exhumed in the Foča Municipality territory.

Witness Fejzija Hadžić and Witness I testified about the circumstances surrounding this event and the Prosecutor's Office introduced in the case file the documentary evidence as follows: T-42, T-43, T-44, T-45, T-46, T-47, T-48, T-49, T-50 and T-51. The Defense for the Third Accused introduced the Exit Log of *Barutni Magacin* as documentary evidence.

Witness Fejzija Hadžić stated that on 4 August Đorđislav Aškraha came and called out Mustafa Šorlija, a youngish man who was captured in Trnovo, and took him out saying that he would be exchanged. He remembers that the guys who were watching out of the window saw Mustafa with his hands tied in the compound where he stayed for a longer while as if he had been waiting for someone. The witness did not see when Mustafa Šorlija was taken out of the *Barutni Magacin* compound, but he learned last year in the State Commission that Šorlija's body was exchanged in the place of Osanice, Goražde Municipality, and that a DNA analysis confirmed that it was the body of Mustafa Šorlija.

Witness I stated that there were instances of individual taking, but did not specify the names.

The Court inspected the Exit Log for 4 August 1992 reading that Mustafa Šorlija was taken out that day at 1500 hrs upon Boško Govedarica's authorization and that he was taken out for exchange by Pero Elez and one Delić.

The inspection of the Report on forensic expertise on re-exhumation at the Muslim cemetery in Ustikolina shows that skeletal remains of a male person were re-exhumed and that the cause of death was a penetrating wound to the thorax. Based on the Record of identification made in Goražde on 7 June 2005, the bodily remains belonged to Mustafa Šorlija, son of Mujo, born in 1958 in Kljuna, Foča Municipality.

Expert witness Dr Vedo Tuco, specialist in forensic medicine, stated in his expert analysis that the cause of death of the person found in the Muslim cemetery in Ustikolina were penetrating wounds to the thorax and the head.

It was established beyond doubt from the evidence given by witness Fejzija Hadžić, which the Court accepted as credible and which was corroborated by all the other presented evidence, that on the relevant day detainee Mustafa Šorlija was taken out of *Barutni Magacin* and subsequently killed and his dead body was exhumed and identified.

At the time of the commission of this crime the Accused Bundalo was in Kalinovik as the Commander of the Kalinovik TG, and it was established beyond doubt in the proceedings that Mustafa Šorlija was taken out of the military camp that the Accused formed and whose operations he enabled and that Šorlija was guarded by the military. He was taken by Pero Elez and one Delić. It was established in the proceedings that Pero Elez's unit came at the invitation of the Accused Bundalo, which means that it was legally staying in the territory which is in the zone of responsibility of the Kalinovik TG headed by the Accused Bundalo.

That the offense was a part of the common purpose of persecution that the Accused Bundalo shared with the other perpetrators also follows from the fact that he never did anything to have such acts prevented or not repeated, that is, that he never did anything to have the perpetrators discovered and punished.

In the case at hand, it follows beyond doubt from the presented evidence that Mustafa Šorlija was killed. Given the fact that he was a Bosniak civilian who was a detainee in *Barutni Magacin* and taken out as such and subsequently killed, the Court considers that this murder is related to the plan of persecution of the Bosniak population from the territory of the Kalinovik Municipality on a discriminatory basis. Therefore, the Court is satisfied that in the case at hand an offense in violation of Article 172(1)(h), as read with Sub-Paragraph (a) of the CC B-H, was committed.

Count 3d)

The Prosecutor's Office charged the Accused Ratko Bundalo and the Accused Đorđislav Aškraba that on 5 August 1992, upon the authorization of the Command of the Kalinovik TG and the Chief of the Kalinovik SJB, 12 detained civilians from the *Barutni Magacin* camp were surrendered to Pero Elez and other unidentified soldiers of the "Serb armed forces" to be allegedly taken to the Foča KPD, whereupon the soldiers loaded the detainees

onto a truck and drove them in the direction of Mehka Brda where they killed them, which was loud enough to be heard. These civilians were exhumed and identified after the war, except for Hasan Suljić and Mustafa Mušanović who are still unaccounted for.

In the course of the evidentiary proceedings the following witnesses testified about these circumstances: Fezija Hadžić, Manojlo Krstović, Miloš Crnjak and Witness I. Numerous documentary evidence related to the exhumation and identification of the recovered dead bodies as well as the Exit Log of *Barutni Magacin* was adduced.

Witness Fezija Hadžić stated in his evidence that he would remember that 5 August 1992 as long as he lived. In the morning of that day Aškraba came and offered to the detainees to buy something for them if they had money, which they did, and the witness gave him some 10 Marks. The witness did not see Aškraba again after that until the time of testifying before the Court. That day in the afternoon a man in a camouflage uniform, bearded and chubby, entered the compound, but at that time the detainees did not know who he was and the witness afterward learned that it was Pero Elez. Another soldier was with him. His nickname was Zeko, his full name was Milenko Vuković and he was from Miljevina. The witness learned their identities from Hasan Hadžić, who encountered them once he was repairing a tractor. The witness stressed that there were other uniformed persons together with the said two men then and he remembered that among them was also one of Čedo Vukadin's sons. When they entered they had a list in their hands and they started a roll-call. They roll-called Salko Kurtović, Safet Suljić, the two Karaman brothers, Fikret and Mirsad, Salko Bičo, Ismet Hatić, Šaban Fočo, Vehbija Dudo, Meša Sačić, Edin Hadžić, Mustafa Mušanović nicknamed Mučo from Drača, and Hasan Suljić. After the roll-call they took them saying they were going to be exchanged. The guys who had previously watched out of the window managed to climb and then they saw them being loaded onto a *FAP-Sandučar* box truck, confiscated from Muharem Nikšić. The vehicle left in the direction of Foča, toward the village of Jelašca. Bursts of fire could be heard after a while and the vehicle returned to the camp compound. These shots were heard 15-20 minutes upon the vehicle's arrival in the compound.

Witness Manojlo Krstović stated that in early August he started standing guard in *Barutni Magacin* and that Đorđislav Aškraba told him to come to *Barutni Magacin* as that would be the best for him. The witness remembered that one day in August while he was on guard duty three vehicles showed up at the gate some time in the afternoon, between 1600 and 1700 hrs. The gate was locked, nobody could enter, neither civilians nor Serb soldiers. Then, since they dared not open, the people from the vehicles shouted and someone fired from an automatic rifle aiming at the padlock. There were some 15 men there. They were dressed differently, wearing different uniforms, and they were all armed and requested from the guards to enter *Barutni Magacin*. Đorđislav Aškraba was not present in the facility at that moment. The witness stated that he first called the Army Command, namely Commander Ratko Bundalo, and then also Boško Govedarica, Kalinovik SJB Chief, and that they shifted responsibility to each other. While the witness was talking on the phone, those soldiers had already broken through the gate and entered the compound. They parked the trucks next to the swing-gate and loaded the first detainees aboard saying they were taking them to work in a mine in Miljevina. In his statement before the Prosecutor the witness stated that upon the arrival, these persons tied one group of detainees, some 10 to

12, put them on board a truck and drove them through *Gornji Logor*. They returned in an hour-hour-and-a-half and the truck was empty.

Witness Miloš Crnjak, who was a guard at the gate in *Donji Logor*, stated that, in addition to being a guard, he also sometimes transported food to the detainees in *Barutni Magacin*. He thus had an opportunity to have contact with these detainees and he remembers that among them were also some of his work colleagues and other acquaintances from Vihovići whose last name was Suljić and there were the Pervans from Jelašca there as well. The witness stated that one day, while he was on guard in *Donji Logor*, a truck with detainees came by and he then learned that they were being taken to Foča. The witness stated that the truck was an open one, but he could not say the truck's make exactly. There were some soldiers on board, there were two of them. In the statement given before the Prosecutor in the investigation the witness stated that he saw when two or three cargo vehicles came with 10-15 well-armed soldiers and that he opened the gate of *Donji Logor* to them and that they went in the direction of *Barutni Magacin*. The witness stresses that one has to pass through *Donji Logor* when going from the direction of Kalinovik toward *Barutni Magacin*. They then said that they were coming to pick up detainees and that they would be taking them to Foča. An hour or two later, two or three trucks showed up again with Muslims from *Barutni Magacin* on board and the witness saw that their hands were tied at their backs and that they were thrown across the trucks. He later heard that they had not been taken to Foča or exchanged. The witness confirmed that he was adhering to his statement given to the Prosecutor.

Witness I stated that one day Pero Elez and Dragoslav Kunarac a.k.a. Žaga came with their men to *Barutni Magacin*. They arrived in two or three military vehicles and in one blue police vehicle with rotating lights. The witness stated that on that occasion they probably had some document allowing them to take the Muslims. They first talked with the guards at the gate and the witness then saw that the guards opened the gate to them and the vehicles came inside the *Barutni Magacin* compound. Then they opened the doors of the trucks and started taking the detainees on board. The witness stressed that on that occasion he was at his guard post and that he had a rifle, but that he dared not react since the soldiers were armed to the teeth. After the detainees got on board the trucks, they were taken on some dirt road in the direction of Foča. Some 5 to 10 minutes later a burst of fire was heard. The witness remembered that 10 to 12 detainees were taken on that occasion. When he heard the burst, the witness concluded that this group of detainees was killed. In a recorded interview with the Prosecutor the witness said that this happened on 5 August 1992 and that the soldiers had the order to be handed over the detainees.

The Exit Log for 5 August 1992 shows that at around 1200 hrs on that day 15 persons were taken out of *Barutni Magacin*, including all the persons referred to by witness Fezija Hadžić in his evidence. At the end of the list of these 15 persons are the names of the three taken detainees who will be referred to in the next Count in the Indictment. The Log also reads that the authorization to take the detainees out was given by a person who was a member of the Command of the Kalinovik TG whose identity is protected, as well as the Kalinovik SJB Chief Boško Govedarica, and that the persons were taken out in order to be transported to the Foča KPD.

Having inspected the sketch of the site and the photo-documentation of the military facility of *Barutni Magacin* in Jelašačko Polje in Kalinovik, the Court determined the appearance of the facility, which had three booths for guards, one building for guards and the main building which used to be a gunpowder warehouse. The facility was enclosed with barbed wire and mines were laid on the inner side of the wire. The camp where the gunpowder warehouse was can be reached by a dirt road and from *Barutni Magacin* the direction leftward leads to Foča and rightward to Kalinovik.

The Report on crime investigation of the Mehka Brda site was admitted into the case file together with a sketch of the exhumation site and the photo-documentation of the exhumation, autopsy and identification of the recovered mortal remains at the Mehka Brda site, with Orders of re-exhumation for the purpose of identification, the Records of re-exhumation and the Record of identification of the body of Šaban Pločo. It stems from the Record of interview with expert witness, Dr Ilijas Dobrača, before the Cantonal Court in Sarajevo on 30 December 1999, that also recovered at the Mehka Brda site were the bodies of Ismet Hatić, who died a violent death, Safet Suljić, also killed violently, Fikret Karaman, Edin Hadžić, Mirsad Karaman, Salko Kurtović, Salko Bičo and three other unidentified persons who died violent and instant deaths. It follows from the Record of re-exhumation and identification, dated 22 August 2006, that the dead body of Meho Sačić was identified. The relevant photo-documentation and Autopsy report were also admitted into the case record.

Dr Hamza Žujo, witness expert in forensic medicine, stated in his oral finding and opinion that the identification of Šaban Pločo's body was done on the basis of a DNA analysis and that he was present during the drafting of the Record on identification of the dead body, but that he did not remember making the attestation of death. With respect to the bodies recovered at the site of Vjetren Brdo in Kalinovik, he stated that after the medical examination of these bodies he could not state precisely the immediate cause of death, but did not rule out a possibility of a violent death, given that the victims might have sustained injuries to the soft tissue, abdominal organs and the like.

It follows from the presented evidence, especially from the statements of the witnesses examined related to these circumstances, which the Court accepted since they are consistent and complementary and corroborated by the documentary evidence inspected by the Court, that on the day concerned 12 detained persons were taken out by Pero Elez's unit and other unidentified soldiers, loaded onto a truck and taken in the direction of Mehka Brda. It follows beyond doubt from the documentary evidence that the majority of these persons were killed; 10 of them having been identified, while two are still unaccounted for. Based on the documentary evidence, detainees Hasan Suljić and Mustafa Mušanović, who were taken together with the discovered persons, are unaccounted for.

All these persons were Bosniak civilians; they were captured and subsequently taken while in captivity. It was afterward established that the majority of them were killed, while two were victims of enforced disappearance. The Court considers that the murder and the enforced disappearance of these persons was a part of the plan of persecution of the Bosniak civilian population from the Kalinovik area and that it had a discriminatory basis.

At the time of the commission the Accused Bundalo was in Kalinovik, in the position of the Kalinovik TG Commander. It was established beyond doubt during the proceedings that from the military camp that he formed and whose operation he enabled a total of 12 detained Bosniak civilians, guarded by military guards, were taken out. They were taken by members of Pero Elez's unit and others. It has already been established that Pero Elez's unit came at the invitation of the Accused Bundalo, which means that it was legally in the territory which was in the zone of responsibility of the Kalinovik TG headed by the Accused Bundalo.

That this offense was a part of the common purpose of persecution that the Accused Bundalo shared with the other perpetrators follows from the fact that he never did anything to prevent the commission or repetition of such acts, that is, he never did anything to have the perpetrators discovered and punished.

Given the fact that in these events a number of the detained Bosniak civilians were killed while a number are still unaccounted for, and that their disappearance is related to their prior capture by the police and the army and the taking from *Barutni Magacin*, and that the information about these persons' fate and whereabouts is still being withheld, the Court is satisfied that the criminal offense in violation of Article 172(1)(h) as read with Sub-Paragraph (a) and Sub-Paragraph (i) of the CC B-H was committed in the case at hand.

Count 3e)

The Prosecutor's Office charged the Accused Ratko Bundalo and the Accused Đorđislav Aškrača that on 5 August 1992, somewhat later in the day, in the same manner they allowed the same soldiers to take over detainees Nedžib Pervan, Zijo Pervan and Muzafer Sačić, who were taken in the direction of Kalinovik and who are still unaccounted for.

Fejzija Hadžić, Witness Z and Witness I testified about the circumstances described in this Count and the Exit Log was admitted into the case file as documentary evidence.

Witness Fejzija Hadžić stated that Pero Elez came, after they had previously taken 12 detainees, and called out Muzafer Sačić, Nedžib Pervan and Zijo Pervan. Pero then asked Sačić where his brothers were and he answered he did not know. After these three prisoners were taken out of the facility, the witness saw that they were taken on board a *FAP* vehicle in the direction of Kalinovik and they never saw them again.

Witness Z, who was an active policeman in Kalinovik, stated that he was familiar with the fate of the Bosniak detainees in *Barutni Magacin*. He knew detainees Zijo and Nedžib Pervan. In summer 1992, while passing by the *Lelija* Hotel in Kalinovik, he saw a *TAM* vehicle and, by the reactions of the children who were peering toward the truck, he concluded that something was in it. He was in a uniform and he then approached this vehicle and saw that two men were lying prone on board. On board the truck was also an elderly man whose last name was Paprica. The truck driver told him then to go away, so he left. He did not notice if these persons were tied. He could not help them because Pero Elez was close-by with his men of whom he knew Paprica only. He did not know why these men were held on board the truck. The witness stated that it was possible that he saw them on 5 August 1992. He later learned that these persons got killed somewhere near Miljevina.

Witness I testified only about the arrival of Pero Elez and Dragoslav Kunarac and the taking of the detainees out of *Barutni Magacin* without specifying the names of the three detainees.

The Exit Log for 5 August 1992 shows that Nedžib Pervan, Zijo Pervan and Muzafer Sačić were taken out of *Barutni Magacin* that day.

Given the fact that these persons were in *Barutni Magacin* as detainees and that they were Bosniak civilians, the Court is satisfied that their disappearance is a component part of the plan of persecution of the Bosniak population from the Kalinovik area.

At the time of the commission of this crime the Accused Bundalo was in Kalinovik, in the post of the Commander of the Kalinovik TG, and it was established beyond doubt in the proceedings that from the military camp, which he formed and whose functioning he made possible, these three persons, who were guarded by military guards, were taken out. The said persons were taken by members of Pero Elez's unit and other soldiers. It was established in the proceedings that Pero Elez's unit came at the invitation of the Accused Bundalo, which means that it was legally in the zone of responsibility of the Kalinovik TG headed by the Accused Bundalo.

That this offense was a part of the common purpose of persecution that the Accused Bundalo shared with the other perpetrators also follows from the fact that he never did anything to prevent the commission or repetition of such acts, that is, he never did anything to have the perpetrators discovered and punished.

Given the fact that the referenced persons disappeared while detainees in the *Barutni Magacin* military camp, that their disappearance is related to their capture by the police and the army and the taking from *Barutni Magacin*, and that the information about their fate is still being withheld, the Court is satisfied that the criminal offense in violation of Article 172(1)(h) as read with Sub-Paragraph (i) of the CC B-H was committed in the case at hand.

Count 3f)

The Prosecutor's Office charged the Accused Bundalo and the Accused Aškraba that on 5 August 1992 they allowed Pero Elez's unit and other unidentified soldiers to take over all the remaining detainees, tie them with wire, load them onto three trucks, in which process they were kicking them and hitting them with fists and wooden sticks, and, escorted by a police vehicle with rotating lights, drive them to Miljevina, Foča Municipality, where in the place of Ratine they stopped the column and took 24 detainees off the last truck, lined them up above the stable of Mustafa Tuzlak and opened fire at them killing them all except Fejzija Hadžić, whereupon they threw the bodies of the killed into the stable, doused them with gasoline and set them on fire, after which they continued their journey.

In a separate Count in the Indictment, Count 3g), the Prosecutor's Office charged these Accused that following the killing of the detainees in front of Mustafa Tuzlak's stable, they drove the remaining two trucks with the detainees in the direction of Miljevina, to the location called Tuneli [tunnels], Foča Municipality, where they killed the remaining

detainees, many of whom were exhumed and identified after the war, while six are still unaccounted for.

Given the fact that these are absolutely related events that took place on the same day and that were committed by the same persons, on which occasion all detainees from both these Counts in the Indictment were taken out of *Barutni Magacin* together, the Court merged these two Counts into one and will, therefore, reason them as one.

Fejzija Hadžić, Manojlo Krstović, Witness I, Miloš Crnjak, Dragomir Đević, Aziz Đozo and others testified about the circumstances described in this Count. Also, several pieces of documentary evidence were admitted in the case file with respect to this Count in the Indictment.

Witness Fejzija Hadžić stated that on the relevant day Pero Elez came with a group of soldiers in *Barutni Magacin* with three trucks (*FAP-Sandučar* box truck and two *TAM-110* vehicles with tarpaulin) and after the taking of the first group of detainees, Pero Elez returned and then they were told that they must not take anything with themselves and that they should surrender all valuables (watches, jewelry, money and everything else). The detainees gave these things to uniformed soldiers who were with Pero Elez, so the witness surrendered a wedding ring and a *Seiko* watch. Čedo (son of Pero) Vuković, Lalo, Jehović and Ljuba Šćepa with a rifle in his hand were in *Barutni Magacin* at that moment. After the surrender of all these things one man went from one detainee to another ordering them to put their hands behind their backs so their hands were tied with wire, whereupon they were ordered to go outside and then the witness was hit with a wooden stick by one of the present soldiers. After that, the detainees were thrown one by one onto a *TAM* vehicle with tarpaulin. When the detainees got on board they were not allowed to sit on the seats, but had to sit on the tin car body. After that, two other vehicles arrived (*TAM-110*), one military, the other civilian, and they heard that the detainees were being loaded onto them as well. After a short while, the detainees, 24 of them including the witness, were taken back to the facility again and then they started kicking and beating them with fists and sticks and sadistically abusing them, and the witness then also saw fresh blood traces. The witness stated that he received several blows which made him pass out, whereupon all the detainees were again loaded onto the truck like logs. They were beaten by 7-10 of Pero Elez's men. After that, all three trucks set off toward Foča. The witness stressed that he did not see if there were any other vehicles escorting these three vehicles. After a while, the vehicle made a short stop in the village of Jelašca next to the Puhalo family's house and then continued travelling on a dirt road. After some time, the vehicle on board which the witness was together with another 23 detainees stopped and then they were ordered to get off and warned that if someone tried to run away he would be shot at. While getting off the vehicle the witness saw a car with rotating lights that was masked in different colors, so he was not sure whether it was a military or a police car. All detainees got off the vehicle and stood next to the road being continually warned against escaping. While they were standing, the witness saw one uniformed man getting out of a nearby stable saying: Everything is ready; you can take them. This group of detainees was on board the last truck and after this order they set off toward the stable. Then the witness saw Adem Hadžić standing, but then he was also taken toward the stable. The witness remembers the names of some of the 24 detainees in that group, such as Dr Abdurahman Filipović, the two brothers -- Enes Hadžić and Esad Hadžić, Hasan Hadžić, Selim Hadžić, Mehmed Ahmethodžić, Abdija Škoro, Sabahudin

Ljuković, Salko Vranović, Ramo Kurtović, brothers Damir Suljić and Mirsad Suljić, Sado Suljić, brothers Čilo and Medo Suljić, Elvir Suljić, Edin Suljić, Ramiz Suljić, Adil Mulaomerović, Ismet Smječanin, a 17-year-old boy Almir Čusto, Husnija Rogoj and Reuf Rogoj. After they took them in front of the stable, they separated four detainees, brothers Čičo and Medo, Elvir Suljić and Mirsad Suljić, from the other detainees. Then bursts of fire were heard and on that occasion the witness was hit in his left lower leg and he fell with his hands tied. After the burst, an order was heard that shooting should stop. Being wounded, the witness pretended and waited for further developments. After this shooting, the four prisoners who had previously been separated from the column were ordered to throw all the bodies into the stable in 20 minutes after which they would be released. Throughout all this time the other two trucks with the detainees were waiting on the road, some 50 meters away. Having been thrown into the stable the witness managed to hide unnoticed behind one wall and from that place he heard a shot, so he assumes that on that occasion they killed Adem Hadžić, whom they had previously taken off the truck. Then they killed three other detainees, only a burst was heard, and one of the Suljićs remained. He was ordered to set ablaze the killed detainees, which he refused, whereupon a burst was heard again and he was killed. Afterward they threw one tire on top of the detainees' bodies and set it on fire. The witness could hear and see all this because he was shielded by one wall some 3-4 meters away. The witness saw then that there were five to seven uniformed soldiers. When they were gone the witness managed to get out of the stable and he walked through a forest and was then saved and arrived on the Husad Mt. The trucks with the other detainees which were parked on the road left in the direction of Foča and the witness is familiar with the fate of the remaining detainees, some of whom he remembered by their names since they were together as of 25 June and became close to one another.

Witness Aziz Đozo stated in his evidence that at the relevant time he was on the Husad Mt., where he saw Fejzija Hadžić, who said that he had survived the execution of Bosniaks in the stable owned by Tuzlak. The witness stated that on that occasion Fejzija showed him a wound to his left lower leg and told him that the wound was caused by firearms near the stable. The witness administered first aid to Fejzija and changed his bandages for the next 10 days.

Witness Manojlo Krstović stated that he stood guard that day, that it was hot, but he did not remember the exact date, he only knew it was August, and some time around 1600 or 1700 hrs three vehicles showed up in front of the gate that was locked. They asked for it to be unlocked, whereupon they fired from an automatic rifle and thus opened the gate. The soldiers wore different uniforms, but the camouflage ones prevailed, and they were all armed. The witness stated that he then called the military command asking for Commander Bundalo, but he does not know if he got him, and the person he talked with told him that that was not their business and that he should call the SJB. He then called the station asking for Boško Govedarica, but he got an answer that it was a military matter. Meanwhile, these soldiers forcefully entered the *Barutni Magacin* compound and said that they had to drive the detainees to Miljevina to work in the mine, which they did indeed. They bundled them onto the trucks and tied the hands of some detainees with rope, but the witness did not see whether the detainees were beaten. Everybody in Kalinovik knew that these detainees were taken away.

Witness I confirmed the averments of witness Manojlo Krstović about the arrival of Pero Elez's and Žaga's soldiers and that they had some piece of paper reading that they were to take the detained Muslims. They entered the compound armed to the teeth and they took these detainees by force, so the guards could not prevent them from doing it. They arrived in two or three military vehicles and there was also one police vehicle there. Soon after they had taken one group a burst of fire was heard, whereupon they returned to *Barutni Magacin* and loaded the remaining detainees onto the truck in a brutal manner having tied them first. Then they hit the detainees with fists and rifle butts and whipped them. After that, the trucks went toward Miljevina on a dirt road escorted by the police car.

Witness Miloš Crnjak was a guard at *Donji Logor* and was sometimes tasked with driving food to the detainees in *Barutni Magacin*. He knows that Muslims from the Kalinovik region were detained in *Barutni Magacin*. As for these detainees' fate, he knows that one day two trucks with these detainees passed through *Donji Logor*. The detainees were on board these trucks which were open, without tarpaulin, and they were escorted by one or two armed soldiers.

Witness Z stated that he knew that 70-80 Bosniak men were detained in *Barutni Magacin*. He knows that these persons were taken out of *Barutni Magacin* in the direction of Miljevina where they were killed. The rumors had it that they were taken by the units of Pero Elez and Kunarac and others. The rumors also had it that soldier Savo Krunić buried these persons with an excavator. The police from Kalinovik did not do anything with respect to this event. Witness Z stressed that he knew Pero Elez, that Elez had contacts with Boško Govedarica and that they used to visit the Accused Ratko Bundalo.

Witness Dragomir Đević stated that he was assigned to be a driver in the 7th Battalion from Miljevina whose Commander was Pero Elez and Deputy Commander Novak Stanković. He remembers that he would also go to Kalinovik in line of his duty and that Novak Stanković once called him and told him to take a truck, fill it up and go to Kalinovik together with another truck. He remembers that when they arrived in the barracks he pulled the truck next to one swing gate, opened the door and watched from the distance of a couple of meters the civilians he did not know getting on board the truck. The other truck was parked nearby and the witness remembered that troops arrived on board that other truck. After the civilians got on board, he got an order to drive on a dirt road in the direction of Miljevina, since that was the only road available at the time. On that road, in a place unknown to him, the witness halted the vehicle as these troops ordered him so, and then all the detainees got off the truck and the witness was ordered to drive to the Command, which he did.

Witness Pero Bodiroga stated that he knew that members of the battalion from Miljevina brought some civilians from Kalinovik to Miljevina and that they killed them and buried them in Ponor, in some hole near the tunnel and the open pit of the mine. The witness also stressed that the 7th Battalion from Miljevina, commanded at that time by Pero Elez, could not do anything independently as it was a component part of the Foča TG.

The following pieces of documentary evidence were admitted into the case file: the Order to conduct an exhumation and autopsy of the body of an unidentified person whose mortal remains were recovered at the site of Ratine – Papratne Njive dated 15 July 1999; Record of exhumation and autopsy of 21 July 1999; Record of examination of expert witness, Dr Ilijas

Dobrača, which indicates that several shell casings, bullet shells and bullets were recovered in the vicinity of and inside a demolished facility and that the violent death was most probably caused by firearms, and that also recovered were carbonized human bones, on the basis of which it was not possible to determine the number of human bodies, age and sex due to the degree of carbonization. The Sketch of the site and the photo-documentation of the exhumation, autopsy and identification of the bodies recovered at the site of Ratine were also admitted into the case record.

When it comes to the site of Ponor, the following documentary evidence was admitted in the case record: Orders to conduct an exhumation; Record of 6 August 2004 of the exhumation at the site of Ponor canyon, near a caved-in tunnel; Record of 19 August 2004 on the exhumation at the site of Ponor; Record of 2007 on the re-association of the skeletal bodily remains exhumed at the site of Ponor; DNA reports; Autopsy Records by the School of Medicine in Sarajevo dated 31 January 2005 and 2 February 2005; Record on the handover of DNA samples; Request by the ISD Tuzla for a spare bone sample; Order to carry out forensic identification of the mortal remains of the persons recovered at the site of Ponor; Anthropological examination of the bodies; Records of the takeover of items from the dead bodies; Photo-documentation of the exhumation and autopsy of 36 dead bodies made on 23 March 2005; Report on a crime scene investigation of 4 August 2004 indicating that wires were found on the hands of three dead bodies with which wires they were tied; Sketch of the exhumation site; CD pertaining to the exhumation conducted at the site of Tuneli; Records of identification of the following persons found at the Ponor site: Adil Karajićin from Foča; Adem Hatić from Jelašca; Ramiz Kešo from Jelašca; Asim Pervan from Jelašca; Veiz Hadžić from Mjehovina; Bećir Pervan from Jelašca; Hamdo Pervan from Jelašca; Nasuf Hadžić from Mjehovina; Munib Velić from Trnovo; Jusuf Hadžić from Mjehovina; Muharem Bićo from Jelašca; Edhem Hadžić from Mjehovina; Vahid Hadžić from Foča; Adil Hatić from Jelašca; Ibro Pervan from Jelašca; Salko Suljić from Vihovići; Smail Hadžić from Mjehovina; Fehim Srnja from Ratine, Foča Municipality; Ibro Softić from the village of Tečići, Foča Municipality; Adem Mustajbegović from Sarajevo; Hasan Mušanović from Drača, Foča Municipality; Hilmo Suljić from Vihovići; Ibrahim Bajrić from Kalinovik; Vejsil Kečo from Trnovo; Kasim Suljić from Vihovići; Fehim Suljić from Vihovići; Bajro Pervan, son of Hasan, and Hajro Pervan, son of Bajro, from Jelašca; Avdo Kešo from Jelašca; Safet Mušanović from Kalinovik; Ramo Suljić from Vihovići; Adem Hatić; Bećir Pervan; Adem Mustajbegović from Trnovo; Avdo Kešo from Jelašca; Nasuf Hadžić; Jusuf Hadžić; Muharem Bićo; Edhem Hadžić; Vahid Hadžić from Foča; Muharem Bićo; Adem Suljić; Esad Hadžimuratović; Rašid Redžović; Hilmo Jašarević and others.

During the proceedings on the circumstances of expert analysis of traces of firearms following the exhumation of the 36 dead bodies at the Ponor site, on which occasion three shells were found next to the body No. 2. [sentence as rendered in the original text; translator's note]. Dino Osmankadić, expert witness in ballistics, stated that during the expert analysis of the shell he established that it was a rifle bullet shell, but that he could not determine the bullet caliber due to the dirtiness and oxidation. With respect to the expert analysis of traces of firearms at the Ponor site, where a considerable number of dead bodies were exhumed and several shell casings, shells and bullet jackets found, the expert witness established that 25 shell casings constituted parts of rifle ammunition, of the bullets fired from an automatic rifle of some of the basic AK 47 models, commonly known as Kalashnikov. With respect to the six other casings, the expert witness concluded that they

constituted parts of rifle ammunition, but could not determine with certainty the model of the weapon from which the bullets were fired. The submitted shells and bullet jackets were not fitting for determining the caliber of bullets they were the parts of. In the course of the expert analysis the Prosecutor's Office introduced into the case file this expert witness' two written Findings and Opinions.

Dr Hamza Žujo, expert in forensic medicine, also gave his finding and opinion about the manner of death of the persons exhumed at the site of Tuneli in Miljevina. The expert witness stated that he was personally present when the referenced exhumation was conducted, that prior to the exhumation an excavator had to remove huge blocks of stone and slabs due to which the bones got mixed, and that he did the autopsy of the dead bodies once they were exhumed. He then found traces of firearms impact on the majority of the skeletons. The expert witness established for 16 of the 36 recovered bodies the impact of firearms projectiles; for 15 the impact of open flame, that is, these 15 dead bodies were affected by flames so he could not find the injuries given that plenty of bones were burnt down; with three dead bodies he found traces of blunt weapon; but he could not determine obvious traces of injuries on two bodies. A total of 35 of the 36 dead bodies recovered there were identified by a DNA analysis. The expert witness could not state the exact cause of death but said that the injuries were violent ones and that the firearms injuries were probably inflicted while the victims were still alive.

The Exit Log for 5 August 1992 shows that at 1800 hrs all the remaining detainees in *Barutni Magacin* were taken out and that it was authorized by a protected witness who was in the Command of the Kalinovik TG and Boško Govedarica, and that the detainees were taken toward the Foča KPD.

Based on the statements of the examined witness, which the Court accepted as credible since they are mutually consistent and complementary, it follows beyond doubt that in the afternoon of the relevant day Pero Elez's and other unidentified soldiers took out all remaining Bosniak civilian detainees, loaded them onto three trucks and drove in the direction of Miljevina. While the detainees were being taken out these soldiers kicked them and hit them with fists and sticks. When they arrived in the place of Ratine, according to the only survivor, witness Fejzija Hadžić, whose evidence the Court accepted as it was very convincing and consistent in almost every aspect with all the other presented evidence, especially the documentary evidence in the case file, the convoy of vehicles stopped there and all 24 detainees whom the witness named were taken off the last truck, whereupon they opened fire at the detainees killing them all except the witness, threw the dead bodies into the stable, doused them with gasoline and set them ablaze. This state of the facts also stems from the documentary evidence such as the photo-documentation of the site and the Record of exhumation and autopsy, as well as the Finding and Opinion of Dr Dobrača, which the Court accepted as impartial and professional. It also follows from the evidence given by witness Fejzija Hadžić and witness Aziz Đozo that Fejzija suffered an injury to his leg on this occasion and that he managed to save himself by escaping to the Husad Mt., where witness Aziz treated him.

It follows from the evidence by witness Fejzija Hadžić as well as the documentary evidence, especially the Record of exhumation and the Photo-documentation of the exhumation, that two trucks went on farther toward Foča where the remaining detainees were killed at the

locality of Tuneli, Foča Municipality. The Court established from the Record of identification of victims that on that occasion 35 bodies were recovered and identified and their names are listed in the reasoning. It was established on the basis of the Finding and Opinion of Dr Hamza Žujo, witness expert in forensic medicine, whose finding the Court accepted as professional and impartial, that firearms impacts were observed on many recovered skeletal remains, while the majority of the other skeletal remains were charred and damaged to such an extent that it was not possible to determine the cause of death. It can also be seen from the evidence of Dino Osmankadić, expert witness in ballistics, whose finding and opinion the Court accepted as it was presented in a professional and impartial manner, that the majority of the shell casings found at the exhumation site were the casings matching the Kalashnikov rifle bullets, while the other casings were also parts of rifle bullets. Based on this evidence, it is beyond doubt that all the found persons were killed at the locality of Tuneli near Foča.

The Exit Log shows that Bosniak men Muhamed Čusto, Đafer Kešo, Sevdó Suljić, Smajo Ćemo and Alija Šemić were also detained in *Barutni Magacin*. Given the indisputable fact that all detained persons were taken out of *Barutni Magacin* on this occasion and that the Record of identification of victims shows that they were not identified at the locality of Tuneli, the Court considers them to be missing.

It was established beyond doubt in the proceedings that all the killed and missing detainees were arrested as civilians and that they were Bosniaks.

Given the fact that in these events a number of detained Bosniak civilians were killed, while a number are still unaccounted for and that their disappearance is related to their capture by the police and the army and their being taken out of *Barutni Magacin*, and that the information about these persons' fate or whereabouts is still being withheld, the Court is satisfied that the criminal offense in violation of Article 172(1)(h) as read with Sub-Paragraph (a) and Sub-Paragraph (i) of the CC B-H was committed in the case at hand.

As reasoned in Count 3 of the Verdict, the Accused Bundalo participated in the forming and operation of the *Barutni Magacin* camp. This camp was a military facility and guarded by the guards who were members of the Kalinovik TG. It can be seen from the evidence of Witness H that he and the Accused Bundalo together drafted the House Rules in effect in that camp. It follows from the House Rules and Discipline and the Exit Log that the persons could be taken out only upon the authorization of the Commander, Chief of the Serb Public Security Station and Chief of Security. The latter implies the Chief of Military Security. The taking of all the detainees referred to in Counts C, D, E and F of the Indictment was carried out in accordance with the foregoing documentary evidence. It was established beyond doubt in the course of the proceedings that at the time the detainees were taken out of *Barutni Magacin* Commander Bundalo was in Kalinovik and that he performed his duties. The Court has already provided its reasoning concerning the Accused Bundalo's alibi and established that he was definitely in Kalinovik until 7 August 1992. According to the Defense, he returned on 22 August 1992 and, as the numerous pieces of documentary evidence indicate, continued performing the duty of the Kalinovik TG Commander. Pero Elez's troops belonged to a regular unit from Miljevina, which was a component of the Foča TG and which, according to witness Pero Bodiřoga, a member of the same battalion from Miljevina, could not operate independently. It can be seen from the regular report of the

Foča TG of 2 August 1992, which the Trebinje Warning Center received via radio link, that the *Dragan Nikolić*, the *Žaga* and the *Elez* Special Detachments liberated Rogoj. The attack on Rogoj started on 31 July 1992 and that follows from the dispatch of the Command dated 31 July 1992. The dispatch by the Kalinovik TG dated 4 August 1992, signed by Commander Ratko Bundalo and sent to the Herzegovina Corps Command, reads that the Accused Bundalo asked to be sent an 800-strong infantry battalion since he had a small number of troops available. It can also be seen from the Report on Activities of the SJB of 18 August 1992 that, following the defeat in Trnovo, the military command asked the military command of Foča for assistance, whereupon around 100 armed troops came. The fact that help was sent from the Foča TG to the Kalinovik TG also follows from the Trebinje CSB dispatch reading that the special units of the Foča TG were dispatched to take Rogoj and that they went to Kalinovik on 4 and 5 August 1992. It follows from the dispatch of the Herzegovina Corps Command of 2 August 1992 that the battle at Rogoj was intense all the time as of 31 July 1992. A comparison clearly shows that the battle for Rogoj took place in the same period as the taking of the detained Bosniaks out of *Barutni Magacin*.

It can be seen from the reasoning of Count 3b) of this Verdict that four prisoners from *Barutni Magacin* were taken exactly to Rogoj where they were found dead and handcuffed on the same day. Witness Z stated that he knew that four detainees got killed at Rogoj, that Boško Govedarica took these four detainees, and that a military vehicle accompanied a police vehicle on the occasion. The Court finds the evidence given by witness Miloš Crnjak to be especially characteristic, as he stated that Pero Elez's units in their vehicles drove through *Donji Logor* both when arriving and when returning with the detainees they had taken out of *Barutni Magacin*. The witness also stated that *Donji Logor* was under Ratko Bundalo's command and that it had guards. Witness Crnjak stated that nobody halted these trucks on that occasion and that the swing gate was lifted so that they could pass through *Donji Logor*. Also, several witnesses, including Witness H and witness Milan Veletić, stated that Pero Elez would come to *Gornji Logor* and enter the Command. Witness Rade Pavlović, Witness A, Witness H, Witness Z and others testified in their respective evidence about the good cooperation between Bundalo and Boško Govedarica. The witnesses who were guards in *Barutni Magacin* on the relevant day claimed that members of Pero Elez's unit had a list when they entered *Barutni Magacin*, and since it was a unit from the Foča TG, it is logical that it received this list of detained persons from the authorities in Kalinovik. Witness Fejzija Hadžić stated that it was Đorđislav Aškraha who read out the names from the list every time the detainees were taken out of *Barutni Magacin* in August. Witness Danilo Đorem stated in his evidence that the list of the detainees was in the Police Station. It should be stated here that, according to Witness H, the list of the arrested men who were later transferred to *Barutni Magacin* was discussed at meetings in *Gornji Logor* attended by Commander Ratko Bundalo. It follows beyond doubt from these testimonies that the list existed and that it was given to the members of Pero Elez's unit who came to take all the remaining prisoners. Finally, according to the Exit Log, the authorization to take these persons out was issued by Boško Govedarica and a senior officer of the Command in Kalinovik who was Ratko Bundalo's subordinate at the time, from which it follows beyond doubt that this operation was well known to both the military and the police authorities of Kalinovik, therefore also to the Accused Ratko Bundalo, who had the most senior position in the Kalinovik TG at that time.

Given the foregoing, the Court is satisfied that the Accused Ratko Bundalo is responsible for the acts described in Sub-Counts c, d, e and f, when all the detained Bosniak men were taken out of *Barutni Magacin*. It follows from the referenced evidence that a huge number of the persons who were taken out of *Barutni Magacin* were killed, while a number of them are still unaccounted for. The Court is satisfied that in this period there existed a plan and a purpose – an attack against the Bosniak population on a discriminatory basis -- and that one of the aspects of this attack was the killing, that is, the disappearance of the detainees. In the opinion of the Court, the Accused Ratko Bundalo participated in this common purpose by having formed and maintained the *Barutni Magacin* camp in which Bosniak men were detained; he also asked for other units of the Foča TG to come; the units under his command made it possible for troops to pass with detainees on board the trucks through *Donji Logor*; the taking of the persons was committed in the facility guarded by the units under his command; and the authorization for it was given by a senior officer from his Command. All this indicates that the Accused Bundalo is responsible for the criminal offense committed on that occasion and that he shared the criminal intent with other perpetrators of the offense.

JOINT CRIMINAL ENTERPRISE

Introduction

All three Accused are charged with responsibility pursuant to Article 180(1) of the CC B-H, specifically that they are responsible as co-perpetrators in a Joint Criminal Enterprise (JCE).

The Amended Indictment, filed in October 2009, alleges that all three Accused were "knowing participants" in the JCE consisting of Grujo Lalović, a representative in the Assembly of the Serb Bosnia and Herzegovina and the President of the Executive Committee of the Kalinovik Municipal Assembly, Boško Govedarica, Chief of the Kalinovik SJB, members of the War and Crisis Staff of the Kalinovik Municipality and other members of the civilian, military, police and paramilitary units of the "Serb armed forces".

The alleged common criminal purpose of the JCE was to persecute the Bosniak population of the Kalinovik Municipality by way of killings, forcible transfer of population, unlawful imprisonment, torture, rapes, enforced disappearances, arbitrary destruction of property on a large scale, causing great suffering and injury to body, by applying measures of intimidation and terror and other inhumane acts of a similar character.¹

Applicable law

Although Article 180(1) of the CC B-H does not make explicit reference to JCE, the Trial Panel is satisfied that, in line with the jurisprudence of this Court, persons who contribute to the commission of crimes in execution of a common criminal purpose are subject to criminal liability as a form of "commission" of a crime pursuant to Article 180(1) of the CC B-H, subject to certain conditions.

¹ Amended Indictment, pp. 2,8.

The *Tadić* Appeals Chamber identified, and this Court adopted, three categories of JCE liability:

Cases in which all co-accused act pursuant to a common design and possess the same criminal intention. To be established, it must be shown that the accused must have (i) voluntarily participated in one of the aspects of the common criminal design; and (ii) intended the criminal result, even if not personally effecting it.

The so-called "concentration camp" cases, where the notion of common purpose was applied to instances where the offenses charged were alleged to have been committed by groups of persons acting pursuant to a concerted plan. The Prosecution must demonstrate that the accused (i) personally knew the system to ill-treat the detainees; and (ii) had the intent to further this system.

Cases involving a common design where one of the perpetrators commits an act, which, while outside the common design, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose.²

The requisite elements for *actus reus* for all three categories are the same. Thus, the Prosecutor must prove the existence of the following:

A plurality of persons, not necessarily organized;

A common criminal plan, design or purpose; and

The participation of the Accused in the common plan or design to perpetrate a crime.³

The common plan, design or purpose need not have been previously arranged; the plan may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect the plan; the understanding or agreement need not be express and may be inferred from all the circumstances. The circumstances in which two or more persons are participating together in the commission of a particular crime may themselves establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that crime.⁴

Individual criminal responsibility for participation in a JCE does not arise as a result of mere membership in a criminal enterprise.⁵ In order to incur criminal liability, the accused is required to take action in contribution of the implementation of the common plan. Participants in a JCE may contribute to the common plan in a variety of roles. Indeed, the term participation is defined broadly and may take the form of assistance in, or contribution to, the execution of the common plan. Participation includes both direct participation and indirect participation. An accused's involvement in the criminal act must form a link in the chain of causation. This means that the Prosecution must at least establish that the accused took action in furtherance of the criminal plan. However, it is not necessary that the participation be a *conditio sine qua non*, or that the offense would not have occurred but for the accused's participation.

² *Prosecutor v. Tadić* Appeal Judgment, para 220.

³ *Čelebići* Appeal Judgment, para 366. *Tadić* Appeal Judgment, paras 227-228.

⁴ *Vasiljević* Trial Judgment, para. 66; *Krnjelac* Trial Judgment, para. 80; *Tadić* Appeal Judgment, para. 227; *Furundžija* Appeal Judgment, para. 119.

⁵ *Ojdanić* Decision on Joint Criminal Enterprise, para. 26.

Unlike *actus reus*, the *mens rea* requirements for liability differs depending on the category of JCE under consideration:

The first category of cases requires the intent to perpetrate a specific crime (this intent being shared by all co-perpetrators). To establish responsibility under the first category of JCE, it needs to be shown that the accused voluntarily participated in one of the aspects of the common plan, and intended the criminal result, even if not physically perpetrating the crime;

For the second category (which is really a variant of the first), personal knowledge of the system of ill-treatment is required as well as the intent to further this concerted system of ill-treatment. The knowledge component can be proved by express testimony or can be a matter of reasonable inference from the accused's position of authority); and

The third category requires intention to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, in the circumstances of the case, it was foreseeable that such a crime might be perpetrated by one or other members of the group and the accused willingly took that risk.⁶

Pleading of JCE

When the Prosecutor alleges that the Accused's liability is based on the theory of JCE, JCE must be specifically pleaded in the Indictment.⁷ In addition, in order for an Accused charged with joint criminal enterprise to fully understand the acts he is allegedly responsible for, the indictment should also *clearly* indicate which *form* of JCE is being alleged,⁸ the *actus reus* and the *mens rea* corresponding to each JCE category. Failure to do so will result in a defective Indictment.

The Amended Indictment does not specify which category of JCE the Prosecutor invoked to charge the Accused. Given the recent Appellate Panel's decision in the *Zdravko Božić et al* case with respect to pleading requirements and a proper form of the Indictment, the Trial Panel will first determine whether the Prosecution pleaded JCE with sufficient specificity to provide the Accused with sufficient notice of the charges against them.

Actus Reus of JCE liability

As for pleading the *actus reus* of JCE liability, the Prosecutor must plead the following material facts (which are the same for all three categories of JCE):

⁶ *Krnjelac* Appeal Judgment, para. 32, citing *Tadić* Appeal Judgment, para. 204.

⁷ *Prosecutor v. Blagoje Simić*, Appeal Judgment, IT-95-9-A, para. 22, citing *Prosecutor v. Gacumbitsi* ICTR Appeal Judgment, ICTR-2001-64-A, paras. 163, 167; *Prosecutor v. Ntagerura et al.* ICTR Appeal Judgment, ICTR-99-46-A, para. 24; *Prosecutor v. Kvočka et al.*, Appeal Judgment, IT-98-30/1-A, para. 42.

⁸ *Ntagerura et al.* Appeal Judgment, para. 24; *Kvočka et al.* Appeal Judgment, para. 28, citing *Prosecutor v. Krnjelac* Appeal Judgment, IT-97-25-A, para. 138.

The nature or purpose of the joint criminal enterprise;
The period over which the enterprise is said to have existed;
The identity of the participants in the enterprise – so far as their identity is known, but at least by reference to their category as a group; and
The nature of the accused's participation in the enterprise.⁹

Nature and purpose of the JCE

For the existence of a JCE, there must be a joining of two or more individuals in a common plan, design or purpose which amounts to or involves the commission of one or more crimes which are within the jurisdiction of the Court. There is no necessity for this plan, design or purpose to have been previously arranged or expressly formulated. It may materialize extemporaneously and its existence may be inferred. Further, the Accused must participate in the common purpose, by participation in the commission of the crime, or one of the crimes contemplated, or by assisting in, or contributing to, the execution of the common plan, design or purpose.¹⁰

The Indictment defines the purpose of the JCE as "the persecution of the Bosniak population of the Kalinovik Municipality on political, national, ethnic, cultural and religious grounds by way of killings, forcible transfer of population, extermination, unlawful imprisonment, torture, rapes, enforced disappearances, arbitrary destruction of property on a large scale, starvation of the population, causing great suffering and injury to body." Additionally, each of the Counts specifically sets out the alleged criminal acts underlying the charge of persecution and states that the crimes alleged were within the common purpose of the JCE.

The Trial Panel is satisfied that the nature and purpose of the JCE have been sufficiently pleaded.

Timeframe of the JCE

The Indictment defines the timeframe of the JCE as during the period from April 1992 until March 1993. Based on the evidence adduced, the Court partially modified this timeframe by defining it as during the period from May 1992 until March 1993, and it is set out with respect to each Count of the Indictment where JCE is alleged. In view of the above, the Trial Panel finds that the timeframe of the JCE is sufficiently pleaded.

Identity of participants

Sufficient pleading of JCE requires identification of the alleged members of the JCE, either by name or by category. The Indictment identifies members of JCE as Grujo Lalović, a

⁹ *Prosecutor v. Vlastimir Dorđević*, IT-05-81/1-PT, Decision on the Form of Indictment dated 3 April 2008, para. 9.

¹⁰ *Prosecutor v. Tadić* Appeal Judgment, para 227; *Prosecutor v. Krnojelac* Appeal Judgment, para 31; *Prosecutor v. Vasiljević* Appeal Judgment, para 100.

representative in the Assembly of the Serb Bosnia and Herzegovina and the President of the Executive Committee of the Kalinovik Municipal Assembly, Boško Govedarica, chief of the Kalinovik SJB, members of the War and Crisis Staff of the Kalinovik Municipality and other members of civilian, military, police and paramilitary units of the "Serb armed forces".

While some individuals alleged to be participants in the JCE remain unspecified in the Indictment and their categorization, as "other members of civilian, military, police and paramilitary units of the Serb armed forces", is too broad, the Trial Panel nonetheless is satisfied that such identification of further JCE participants by category is reasonable in the circumstances. These unidentified members of the JCE, by reference to the military force from Kalinovik, are alleged to be under the command of Ratko Bundalo, as Commander of the Kalinovik TG, and the police units are alleged to be under the command of Neđo Zeljaja, as Commander of the Kalinovik SJB, while the members of the military of the Foča TG are alleged to be members of the 7th Battalion of the Foča TG, headquartered in Miljevina. Thus, the Trial Panel finds that identification of additional members of JCE by category is sufficient and does not prejudice each of the Accused's ability to prepare an adequate defense.

Accordingly, the Trial Panel finds that the requirement that the identity of the participants is sufficiently pleaded in the Indictment is therefore satisfied.

Nature of the participation of the Accused

The Prosecutor pleads JCE liability and the means by which each Accused is alleged to have participated in it, shared its purpose and furthered its aims in each Count of the Indictment. The Indictment also provides factual background of Ratko Bundalo's alleged command over the military units in the Kalinovik Municipality; Neđo Zeljaja's alleged command over the Kalinovik police units; and Đorđislav Aškraba's alleged command over the guards in the *Barutni Magacin* camp. Furthermore, each Count of the Indictment alleges general activities of the Accused Bundalo and the Accused Zeljaja in the JCE and the ways in which the aims of the JCE were furthered. Finally, the Indictment identifies the alleged steps these two Accused took to participate in the JCE, both directly and indirectly.

The Indictment, however, fails to properly plead the actions of the Accused Aškraba which were contributory to or participatory in the alleged JCE. The Indictment does not allege that the Accused Aškraba, as a co-perpetrator of the alleged JCE, organized or maintained the operations of the *Barutni Magacin* camp. It does allege that the Accused Aškraba took the detainees out of the camp on the 2nd, 3rd, 4th and 5th of August, upon the authorization of the Command of the Kalinovik TG and the chief of the Kalinovik SJB. The Indictment thus fails to specify the criminality of the actions of the Accused Aškraba regarding his participation in the common plan, design or purpose, as well as the corresponding *mens rea* necessary for the alleged crimes he is charged with.

The Trial Panel is satisfied that the nature of the Accused Bundalo's and the Accused Zeljaja's participation in the alleged JCE has been sufficiently pleaded. The Trial Panel is not, however, satisfied that the nature of the Accused Aškraba's participation in the alleged

JCE has been sufficiently pleaded. Accordingly, the Trial Panel will not consider JCE liability with respect to the Accused Aškraba.

Mens Rea of JCE Liability

Where the state of mind is relevant, the Prosecution must plead either the relevant state of mind as a material fact or the evidentiary facts from which the state of mind is to be inferred.¹¹ In the present case, each of the Accused is charged with various forms of liability under Article 180(1) as well as with criminal liability arising from participation in a JCE. Further, the charge of persecutions (Counts 1 to 3 of the Indictment) requires a specific discriminatory intent in addition to the state of mind required for the commission of the underlying crime.

The *mens rea* required for participation in a JCE is different for the different categories of JCE. If the crimes charged in the Indictment fall within the common purpose of the joint criminal enterprise, the Accused's intent to perpetrate a particular crime (being the shared intent of the co-perpetrators) is required.¹² Where the crime or crimes charged fall beyond that common purpose, both the Accused's intent to participate in and further the common purpose is required, and also that it was foreseeable that such a crime might be perpetrated by one or other members of the group and that the Accused accepted that risk.¹³

Therefore, if the Prosecution case is that a crime charged fell within the common purpose, it will be necessary for the Prosecution to prove that the accused had the state of mind required for that crime.¹⁴ If the Prosecution case is that one or more crimes charged are beyond that common purpose, the Prosecution must prove the Accused's intent to participate in and further the common purpose, and further, that each crime charged was the *natural and foreseeable consequence* of that plan and that the Accused accepted that risk.¹⁵ These are the respective mental states of the Accused which must be *expressly* pleaded. Alternatively, the Prosecution must plead the facts from which these mental states can be inferred.

The Indictment pleads explicitly that each of the Accused was a "*knowing* participant of the alleged JCE". This is an attempt at shorthand pleading of the various states of mind of the Accused. The respective states of mind which are relevant to each charge and each form of liability must be established for each of the offenses charged and each form of liability considered.

The Court considers that individual Counts of the Indictment contain sufficient facts from which the state of mind could be inferred. The Trial Panel finds that the outline of crimes of, *inter alia*, killings, torture and inhumane treatment, unlawful imprisonment and the factual

¹¹ *Prosecutor v. Brđanin & Talić*, IT-99-36-PT, Decision on the Form of Further Amended Indictment and Prosecution Application to Amend, dated 21 June 2001 (Third *Brđanin & Talić* Decision), para. 33.

¹² *Tadić* Appeal Judgment, para 228; *Krnjelac* Appeal Judgment para 32.

¹³ *Tadić* Appeal Judgment, para 228; *Krnjelac* Appeal Judgment para 32.

¹⁴ *Prosecutor v. Radoslav Brđanin and Momir Talić*, IT-99-36-PT, Decision on the Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001 ("Second *Brđanin* Decision"), para. 41.

¹⁵ *Tadić* Appeal Judgment, para. 228; *Krnjelac* Appeal Judgment para. 32.

allegations in each Count and Sub-Count, constitutes sufficient basis from which the Accused's state of mind can be inferred.

The Trial Panel notes that the language indicative of the Accused's direct participation in the joint criminal enterprise corresponds to the *mens rea* required under the first category of JCE. The Trial Panel will make its findings with respect to the Accused's JCE liability accordingly.

Existence of JCE

The Trial Chamber is satisfied upon the evidence before it that Ratko Bundalo, as the Commander of the Kalinovik TG; Nedo Zeljaja, as the Commander of the Kalinovik Public Security Station (SJB); Grujo Lalović, President of the Executive Committee; Boško Govedarica, as the Chief of the SJB; members of the War and Crisis Staff, and other military, police and paramilitary units, were participants in a Joint Criminal Enterprise, responsible for executing the common plan to persecute non-Serb civilians in the Kalinovik Municipality.

The Trial Panel does not consider it necessary to make a finding on when the common plan was first conceived. Instead, it infers the common plan from all the circumstances. There is sufficient evidence, which is discussed in meticulous detail in the separate Counts and Sub-Counts of the Verdict, to conclude that participants in the joint criminal enterprise acted in unison to execute a plan that included the forcible takeover of the parts of the Kalinovik Municipality populated by Bosniaks and persecution of non-Serb civilians in the Kalinovik Municipality during the Indictment period. The criminal acts of the relevant offenses in the Kalinovik Municipality and beyond were committed in an identical manner, manifested as severe deprivation of the Bosniak civilians of physical liberty, followed by setting their houses ablaze, arresting the remaining population, detaining them in detention facilities (the school, *Barutni Magacin*, Police Station) where they were exposed to killings, enforced disappearances, torture, rapes, deportation and other inhumane acts. All these individual criminal acts are related to the criminal offense of persecution. The Court finds that this common plan was exclusively aimed at committing persecution against non-Serbs, including all referenced acts of unlawful arrest, detention, cruel and inhumane treatment, forcible transfer, killings, rapes, and other crimes charged in the Indictment.

The Trial Panel is satisfied that this common criminal plan was executed in a context of a widespread or systematic attack against the Bosniak civilian population, which spilled over to the neighboring municipalities of Trnovo, Foča and Gacko.

Attack against Bosniak population and JCE to persecute

The Trial Panel is satisfied beyond reasonable doubt that there was an extensive attack by the Serb forces targeting the Muslim civilian population in the Kalinovik area and beyond during the Indictment period. The attack was also a systematic one.

In May 1992, the War Staff of the Kalinovik Municipal Assembly, at its session held on 17 May 1992, passed a Conclusion to conduct a control of able-bodied Muslim men from Kalinovik and that they should report to the Secretariat of National Defense, otherwise they would be considered opponents of the SOS (the Serb Armed Forces), all their property would be confiscated and they would be prohibited from returning to the territory of the Municipality. The Kalinovik SJB, *inter alia*, was in charge of the implementation. The same Conclusion also introduced an obligation for Muslim men to report twice a week to the SJBs in Kalinovik, Ulog and Dobro Polje. The Court was satisfied that this Conclusion was fully implemented on the basis of the evidence by a large number of witnesses, including witness Fejzija Hadžić, who stated that all Bosniak men complied with this obligation and that they reported every time to authorized officials of the police force in Kalinovik. In line with this Conclusion, no Muslim man could leave the Kalinovik Municipality freely in the same period, and this also pertained to the other Muslim citizens, which stems from the Permit by the Kalinovik Crisis Staff approving Marija Redžović to visit her relatives on 22 May 1992. In May, the War Staff of the Kalinovik Municipality also rendered a decision that all Muslim inhabitants should surrender their weapons, and this decision was carried out on a regular basis by the Kalinovik SJB, which is seen in the Certificates issued by this Station reading that pistols were confiscated from Fejzija Hadžić and Rašid Redžović for which they both possessed licenses.

The Bulletin of Daily Events for 27/28 May 1992 which the Kalinovik SJB sent to the War Staff of the Kalinovik Municipal Assembly (T 177), signed by Station Commander Neđo Zeljaja, shows that 25 citizens reported to the Kalinovik SJB that day and that six rifles and three pistols with license and one pistol without a license and origin were returned in Ulog.

At that time, the local Serb authorities, including Grujo Lalović, as the President of the Executive Committee of the Kalinovik Municipal Assembly, Boško Govedarica, as the Chief of the Kalinovik SJB, and the Accused Ratko Bundalo, assured the local civilian population that they had nothing to fear.

In Kalinovik in early May 1992, the military commanded by Ratko Bundalo and the police officers commanded by Neđo Zeljaja captured a large number of Muslim civilians who were fleeing an attack of the "Serb armed forces" on the village of Jeleč, Foča Municipality. These Bosniak civilians were detained in the *Miladin Radojević* Elementary School in Kalinovik and Neđo Zeljaja personally participated in their capture, whereupon, at the order of Ratko Bundalo, the men were transferred to the military prison in Bileća. When they were returned, with the participation of the army and the police from Kalinovik they were transferred to the KPD in Foča, where the majority of them were killed. All captured persons were Bosniak civilians and none was issued with any decision on reasons for the arrest.

In late May, Muslim civilians from Trnovo who had fled their homes after the shelling of Trnovo were also arrested. The Court notes that Trnovo was in the zone of responsibility of the Kalinovik TG. These civilians were also detained in the school in Kalinovik, while a number of the arrested men were detained on the custody premises of the Kalinovik SJB. The majority of these men were afterward transferred to *Barutni Magacin* and they were either killed or are still unaccounted for.

In June 1992, there was a mass arrest of able-bodied Bosniak men in the Kalinovik Municipality. The decision on and the manner of execution of the arrest were rendered and conceived by the civilian and military authorities of the Kalinovik Municipality, including the Municipal Crisis Staff, Executive Committee of the Municipal Assembly headed by Grujo Lalović, Kalinovik TG Commander Ratko Bundalo, SJB Chief Boško Govedarica and Kalinovik Police Station Commander Neđo Zeljaja. All these men, some 60 of them, were detained in the school gym guarded by the police officers whose commander was Zeljaja and they stayed there until 6 or 7 July 1992, when they were transferred to the military facility of *Barutni Magacin* guarded by the military on the strength of the Kalinovik TG commanded by Ratko Bundalo.

At the same time when the Bosniak men were transferred from the school to *Barutni Magacin*, there happened a capture of around 200 Bosniaks who arrived in the Kalinovik Municipality fleeing the attack by the "Serb armed forces" in the Gacko region. These civilians were first detained in the school in Ulog and then transported by military vehicles to the *Miladin Radojević* school in Kalinovik and put in the same gym in which men from Kalinovik and Trnovo had been detained on the previous day.

In addition to this, in late July 1992, several Bosniak men, including Dr Filipović, were captured in the village of Mjehovine, Kalinovik Municipality, and subsequently detained in *Barutni Magacin*. They were afterward killed but some are still unaccounted for. In the same period, especially in early August, at the time of the conflict of the warring parties at the Rogoj pass and in Trnovo, there was a mass arrest of Bosniak women, children and elderly from Kalinovik and the surrounding villages who were subsequently detained in the school in Kalinovik.

The Court established that the attack did not consist of capture of the Muslim civilians only, but had other forms as well, such as armed attacks and burning of Bosniak-populated villages in the Kalinovik Municipality, killing of the remaining inhabitants, mostly elderly women and children who could not or did not want to leave their homes, and the use of intimidation methods with a view to make the remaining Bosniak population leave their homes.

Thus in July or August 1992, at the order of the Accused Ratko Bundalo, Bosniak villages in the Kalinovik Municipality were set ablaze and the Accused Neđo Zeljaja personally participated in the attack on the village of Sočani while the other villages were set ablaze by members of the Kalinovik TG under the command of Ratko Bundalo. In early August, members of the Kalinovik TG carried out an artillery attack and the burning of the Bosniak houses in the village of Jelašca, Kalinovik Municipality, and the police commanded by Zeljaja also participated in this attack on the village and the capture of the civilians. A couple of days later, five of the remaining Muslim civilians in the village of Jelašca were killed while two are still unaccounted for. Almost at the same time the Bosniak village of Jezera in the Kalinovik Municipality was attacked with shells and small arms and five elderly persons were killed there. The village of Mjehovina also came under attack and there seven elderly Bosniak civilians were killed, while a few were captured and taken to the school in Kalinovik by members of the Kalinovik SJB.

At the time of these attacks many Muslim villagers around Kalinovik Municipality were afraid to remain in their homes and decided to sleep in the woods rather than risk being attacked in their own houses. A number of Bosniak inhabitants, being so scared, left their homes and fled to the territory controlled by the Army of B-H.

Therefore, in the period of the Indictment, from about May 1992 to mid-August 1992, the troops of the Kalinovik TG, the local police and members of the Serb units that came to the Kalinovik TG zone of responsibility shelled, burnt, attacked and took control of the Bosniak-populated villages and hamlets in the Kalinovik Municipality. Many villagers, including elderly and women, were killed during these attacks. Those who survived were rounded up and captured, sometimes beaten and killed in the process. Men and women were separated and detained in various detention facilities.

Between May 1992 and August 1992, the military, police and municipal authorities in Kalinovik, assisted by the military units that came to their help, arrested, rounded up, separated and imprisoned or expelled almost all Muslim men, women, children and elderly from Kalinovik; and also a huge number of civilians from Jeleč, Foča Municipality; approximately 200 women, children and elderly persons from Gacko; approximately 50 Bosniak men from Foča and a considerable number of women and children from Trnovo and Nevesinje. All detainees were taken to various detention facilities, such as the *Miladin Radojević* elementary school in Kalinovik, custody cells in the Kalinovik SJB and *Barutni Magacin* in Kalinovik. The detained Bosniak civilians were exposed to various kinds of violence in the detention facilities in Kalinovik. Some detainees were killed, the others were beaten and mistreated physically and mentally, while a number of women were sexually abused. None of these civilians was served a decision on the arrest nor was any proceeding conducted in that respect. The sole reason for this treatment of the civilians was their Muslim/Bosniak ethnicity.

On 2, 3 and 4 August 1992, at the approval of Chief Boško Govedarica, the captured Bosniak men were taken out of the *Barutni Magacin* camp one by one and they did not return to the camp.

On 5 August 1992, at the approval of the military and police authorities of the Kalinovik Municipality, Pero Elez's soldiers and other unidentified soldiers loaded on trucks all the remaining Muslim detainees following a list, and transported them under police escort. During the boarding the detainees were severely mistreated, their hands tied with wire and their valuables taken away. The convoy stopped in Ratine and 23 Bosniaks were killed there. There was only one survivor, Fejzija Hadžić, who testified about this horrific crime at the main trial. The convoy proceeded further in the direction of Tuneli, Foča Municipality, where the remaining detainees were killed, some of them still being unaccounted for.

The Bosniak women detainees who remained in the *Miladin Radojević* elementary school had to live in unhygienic conditions and were mistreated in many ways, including rape. Many women and girls were raped repeatedly by Serb soldiers or policemen at the school. Some of these women were taken out of these detention centers to other buildings and places where they were subjected to repeated sexual assaults. For many women the captivity ended in expulsion or exchange. The Bosniak men who were not killed and who were

detained on the premises in the basement of the Kalinovik SJB were also gradually exchanged. The exchange continued until, at least, March 1993.

In view of these facts, the Trial Panel is satisfied that the Kalinovik Serb authorities, including the civilian authorities, the War and the Crisis Staff, the army and the police, together with the incoming Serb armed forces, established a regime of persecutions designed to permanently and forcibly remove the non-Serb population from Kalinovik Municipality in order to make that territory a Serb-dominated one. The JCE came into existence no later than May 1992 and continued until March 1993.

The fact that the persecution of the Bosniak population related to numerous criminal acts was executed following a single pattern, that it happened over a rather short period, but was at its most intense in the period from May to September 1992, leads to a logical conclusion that it had certain outlines of a plan and that several persons participated in the persecution, who planned, executed or furthered it in other ways, which constitutes one of the elements of a JCE, while the criminal offense of persecution constitutes the common purpose of all members of this JCE. Also, all criminal acts described in the operative part of the Verdict indicate the intent of the members of the JCE to permanently remove the Bosniak civilian population from the referenced territory.

The plan of persecution of civilians, which was based on political, racial, ethnic or religious grounds, included the forcible transfer, unlawful imprisonment, rapes, enforced disappearances, and killings of a huge number of Bosniak civilians in Kalinovik and the neighboring villages of Mjehovina, Jelašca, Vihovići, Jezero, Sočani, Daganj, Bojčići, Luko, Kutine and Karaula, as well as Bosniak civilians from the Municipalities of Foča, Trnovo and Gacko, their prolonged and routine imprisonment and confinement in the *Miladin Radojević* Elementary School, the *Barutni Magacin* camp in Kalinovik and the cells in the Kalinovik SJB; and the deliberate destruction of the Bosniaks' homes and private property on a large scale. The sole reason for this regime of persecution of Bosniak civilians was their national, religious, political and ethnic affiliation.

These acts were intended to permanently and forcibly remove the Bosniak population from the Kalinovik Municipality in order to transform that territory into a Serb-dominated one. This goal was achieved given that after March 1993 there has been almost no Bosniak in the areas where the persecution was executed.

The Role of the Accused in JCE

All acts described in this Verdict were perpetrated with complete knowledge and, sometimes, with direct involvement of the local police and military forces in Kalinovik, that is, the Accused Ratko Bundalo and the Accused Neđo Zeljaja, who held senior military and police offices during the Indictment period.

The Accused Ratko Bundalo was the Commander of the Kalinovik TG, and the Accused Neđo Zeljaja was the Commander of the Kalinovik SJB during the Indictment period. They substantially participated and contributed to the described campaign of persecution whose objective was a permanent and forcible removal of the non-Serb population from Kalinovik

Municipality. Their participation in the criminal acts of individual offenses is discussed in great detail in the reasoning of individual Counts of the Indictment. However, at this point, the Court will explain the Accused Bundalo's and the Accused Zeljaja's participation and contribution to the common plan, that is, common intent to commit a crime.

On the eve of the war, the Accused Bundalo, together with Grujo Lalović, the then President of the Executive Committee, President of the SDS and the Crisis Staff, attended joint meetings with Bosniak inhabitants, and he also attended meetings of that nature with the then Commander of the Police Station in Kalinovik. Witness Fejzija Hadžić testified about these meetings in his evidence stating that in the period concerned he lived in Kalinovik and that until his arrest, which took place on 25 June 1992, he was the director of the *Gradina* Public Utilities Enterprise in Kalinovik. The plebiscite of the Serb people was followed by personnel changes to the municipal authorities in Kalinovik. The office of the President of the Kalinovik Municipal Assembly was assigned to Nikola Kovač, and Grujo Lalović, the SDS chairman in Kalinovik, also assumed the office of the President of the Executive Committee of the Kalinovik Municipal Assembly. Prior to the beginning of the war, Ratko Bundalo came with his unit and armament to Kalinovik. The witness knows that some Bosniaks who were employed with the Army in Kalinovik were eventually detained in the camp. The witness named Hasan Suljić, who was employed with the Army in Kalinovik and captured and whose fate is still unknown. He is also familiar with the case of Osman Mandra from Hadžići, who was in *Gornji Logor* because he was supposed to transfer some machinery, and while he was in Kalinovik, Ratko Bundalo's unit arrested him and sent him into detention in the school. Witness Fejzija Hadžić stresses that in mid-April 1992 Colonel Ratko Bundalo and Grujo Lalović, President of the Executive Committee and President of the Crisis Staff, organized a meeting in Kalinovik with the inhabitants of the Muslim villages of Mjehovine, Bukvice, Vihovići, Jelašca and Kutine, at which the two of them gave every assurance to the local population that nothing would happen to them, that they should be calm and that the leadership was in control of the situation. A subsequent meeting was held in the village of Mjehovina in Sulejman Hadžić's house with Ratko Bundalo at which the same guarantees were given to the Muslim population.

The Accused Bundalo and the Accused Zeljaja participated in the persecution and perpetration of the crimes against the Bosniak population from the Kalinovik Municipality and beyond from the very beginning of these events.

As the Commander of the Kalinovik TG, the Accused Ratko Bundalo controlled the territories of the Kalinovik Municipality, Trnovo and part of the Boračko Lake in Konjic Municipality. The order of the Accused Bundalo on declaring the Municipalities of Kalinovik and Trnovo a war zone shows that the Accused issued orders and instructions to all organs operating in that territory, from which one can clearly infer that these were, beyond doubt, his zones of responsibility which he controlled. The military facilities of *Gornji Logor*, *Donji Logor* and *Barutni Magacin* fell under the competence of the Kalinovik TG, which is obvious from the evidence by the examined witnesses.

On the other hand, the Accused Zeljaja was the Commander of the Police Station in Kalinovik in the relevant period and was active from the beginning in the persecution and perpetration of crimes against the Bosniak population. Members of the Police Station commanded by Neđo Zeljaja guarded the detention facilities in the *Miladin Radojević*

Elementary School and the custody premises in the Police Station throughout the Bosniaks' detention. As the Police Commander, the Accused Zeljaja had the authority to organize, plan and control the execution of the duties and tasks of police officers, as well as to directly organize and participate in the drafting of all plans, programs, analyses, reports and information from the Police Station's scope of work. As the Police Commander, the Accused Zeljaja was in charge of assigning duties in the service and signing patrol orders.

The Court concluded beyond doubt that the Accused Bundalo and the Accused Zeljaja participated in the forming and maintaining the detention centers in the *Miladin Radojević* school and *Barutni Magacin* in Kalinovik, with a view to unlawfully detaining Bosniak population, which was reasoned in Count 3 of the Verdict.

From early May the school in Kalinovik served for imprisoning Muslim population. In the beginning, the detainees spent a short period of time there, whereupon the women, children and the elderly were released and the men transferred farther. From June to September 1992 the school was a prison in which a large number of Bosniaks were detained. The fact that in one period there were also Serb persons from Trnovo in the school did not change the function of this facility, since all Serb persons were separated and the regime of the Bosniak civilians' stay and the conduct toward them clearly shows that only Bosniaks were detained for persecution purpose and that crimes were committed against the detained Bosniak civilians only.

Already in early May, while arresting persons from Jeleč, the Accused Zeljaja issued an order that they should be put in the school in Kalinovik. The school was guarded by the police and Zeljaja assigned the guard shifts and also interrogated some captured men from Jeleč. This capture was preceded by an attack on Jeleč in which the army units from Kalinovik also participated (Witnesses A, Rešad Hadžić, Nedžib Muhović, Mušanović, Zametica and others). Members of the army from Kalinovik, including witness Rade Pavlović, were also present during the arrest in the village of Jažići, in addition to the police. The municipal authorities also interfered in many events. Following the attack on the village of Jeleč, there was a meeting in Mjehovina in the house of Veiz Hadžić, attended by Grujo Lalović, President of the Executive Committee and the Crisis Staff, at which the Bosniak inhabitants were again told to stay in their homes and that nothing would happen to them. Witness Fejzija Hadžić stated that in that same period Mitar Govedarica from the police and Municipal President Nikola Kovač came to his house and told him that a big number of refugees came from Jeleč and that they were put in the elementary school in Kalinovik. It was established beyond doubt during the proceedings that Mitar Govedarica was a Deputy Commander of the Police Station in Kalinovik in the relevant period.

In general, all actions undertaken by the army and the police regarding the arrests, accommodation, transportation and transfer of the detained civilians from Jeleč indicate that the army and the police undertook these actions in full synchronization and that they carried out all tasks jointly.

This is best seen in the Report on Activities of the Kalinovik SJB for the April-August 1992 period, reading that the capture of the persons from Jeleč was a result of an efficient operation undertaken by the Serb army and members of the Kalinovik SJB.

The captured persons from Jeleč were interrogated and the Accused Zeljaja participated in the interrogation, according to witnesses Ahmo Mušanović and Asim Zametica. These persons were transferred first to Bileća and then to Foča under the order of the Military Command. In these events the Accused Bundalo ordered that all detainees from Jeleč should be transferred to the prison in Bileća, and when they returned, they again spent the night in the school in Kalinovik, where they were guarded by the police whose commander was Neđo Zeljaja, whereupon they were transferred from Kalinovik to the Foča KPD under the army and police escort.

Also, the events that preceded the detaining of around 60 civilian men from Kalinovik on 25 June 1992 indicate full cooperation between the military and the police authorities and the municipal authorities, especially the Crisis and the War Staff, and the Executive Committee of the Kalinovik Municipal Assembly. This operation was preceded by a decision of the War Staff and a decision of the Crisis Staff that able-bodied Bosniak men be detained in the school in Kalinovik, which follows from the documentary evidence in the case record. It also follows from the evidence of Witness H that the decision to detain the men was passed by the Crisis Staff and the order, together with the lists of persons who should be detained, was brought to Commander Ratko Bundalo by members of the Crisis Staff, together with Boško Govedarica and Neđo Zeljaja. Two meetings were held in the Command to coordinate the manner of arrests and the lists of persons who were to be arrested. It was decided on that occasion that all able-bodied Bosniak men from the Kalinovik Municipality would be arrested and the lists of persons to be arrested were updated on that occasion and the manner of their detention was agreed. The notices to the able-bodied population of Kalinovik were dispatched by the National Defense Secretariat of the Kalinovik Municipal Assembly headed by Neđo Banjanin, while the police apprehended the persons who did not respond to the notices voluntarily. Neđo Banjanin features in the List of members of respective military units as a person who was in the Military Command on the list topped by Ratko Bundalo. It follows from the presented evidence that these persons were arrested by the police officers of the Kalinovik SJB, whose Commander was the Accused Zeljaja, and by the Military Police, and detained in the elementary school in Kalinovik, where they were guarded by the police of the Kalinovik SJB. Radomir Mandić a.k.a. Ćifo, a military policeman in Kalinovik, also participated in that arrest and the bringing of men from Kalinovik. These persons were guarded in the school by the police officers of the Kalinovik SJB whose Commander was the Accused Neđo Zeljaja, while food for the detainees was provided by the army under Ratko Bundalo's command.

Some 10 days later, these detainees were transported to the *Barutni Magacin* camp by the police and the army jointly. That camp was a military facility and was guarded by the military of the Kalinovik TG under the command of the Accused Bundalo.

The cooperation between the army and the police continued during the transfer of the arrested men from the elementary school to *Barutni Magacin*. The police guarding the school told the detainees to get packed because they would be going to *Barutni Magacin*, whereupon the army came with military trucks and, under police escort, transported the detained Bosniak men to *Barutni Magacin*, which was a military facility and guarded by the military. The guard commander in *Barutni Magacin* was Đorđislav Aškraba, who had been a policeman in the Kalinovik SJB until the start of the camp's operations and who switched from the police to the army. There is a certificate on this transfer issued by Kalinovik SJB

Chief Boško Govedarica. Although the guards in *Barutni Magacin* were soldiers from the Kalinovik Garrison whose commander was Ratko Bundalo, it can be seen from the House Rules and Discipline, drafted by the Command of the Kalinovik TG, as well as from the evidence of Witness H, that the Accused Bundalo also participated in the drafting thereof. It can also be seen from the Exit Log that authorization to take the detainees out could be given by Commander Ratko Bundalo, SJB Chief Boško Govedarica and the Military Security Chief. The Exit Log shows that the authorization was also twice given by the Accused Neđo Zeljaja, who was the Commander of the Police Station in Kalinovik and whose authorization was complied with.

The detainees were taken to labor on daily basis out of this camp, enclosed with barbed wire and with mines laid on the outer side. It can also be seen from the Exit Log that members of the Police Station from Kalinovik in most of the cases used to come and take the detainees out to labor. In addition to participating in the forming of the camp, the Accused Bundalo, as the Commander, and the Accused Zeljaja, as the Police Commander, with their acts also facilitated the participation of the military and the police in establishing and maintaining the *Barutni Magacin* camp, thereby furthering the objective of permanently and forcibly removing Bosniak population from the municipality.

Members of the army and the police from Kalinovik also participated together in the unlawful imprisoning of civilians who were fleeing Gacko and who were detained in the school in Kalinovik. This event was confirmed by many witnesses' testimonies as well as by the Report on Activities of the Kalinovik SJB for the referenced period reading that persons from Gacko were placed in the elementary school. The adduced evidence showed that the referenced persons were arrested by the military from Kalinovik that were deployed at the Morine high plains and the Ulog region. These persons were guarded by the police from Kalinovik in a school in Ulog, as a temporary detention site, and in the *Miladin Radojević* school in Kalinovik, where they were detained for a longer period. The army sent the vehicles and transported the detainees to the school in Kalinovik and the Accused Bundalo, according to Witness H, requested a disinfection of the school premises where they were detained, which is logical given that the men arrested in the Kalinovik region had been detained in the school until the arrival of the people from Gacko. Food was delivered to the detainees in the school from the kitchen in *Gornji Logor*, which belonged to the Kalinovik TG.

The army and the police members also cooperated in the shelling and burning of the Muslim villages in the Kalinovik Municipality. The result of this military shelling and burning of the villages was the killing and imprisoning of the Bosniak population in detention facilities, destruction of property on a large scale, spreading of fear and forcible removal of the Bosniak population from the Kalinovik Municipality.

The attack on the villages inhabited by Bosniaks in the Kalinovik Municipality and the burning of the villages and the killing and imprisoning of the civilians from these villages were carried out by the army and the police from Kalinovik together. All these attacks were carried out without any military rationale, solely with a view to persecuting the complete Bosniak population from this area. Thus, on 1 August 1992, the police and the army organized an attack on the village of Jelašca in which only women, children and the elderly remained. On that occasion, members of Milan Mališ's unit, which was under Ratko

Bundalo's command, opened fire from an anti-aircraft gun against the village and set on fire with incendiary bullets many Bosniaks' houses in this village and the hamlet of Karaula, on which occasion an old woman, Derviša (daughter of Dervan) Pervan, was killed and her granddaughter Mirveta wounded. In this attack members of the Kalinovik SJB surrounded the village and captured a considerable number of women, children and elderly men whom they afterward took to the elementary school in Kalinovik where they held them in captivity.

This operation by the army and the police from Kalinovik was followed by a whole series of incursions in the Bosniak villages in the Kalinovik Municipality by members of the "Serb armed forces" who came from elsewhere, on which occasion many Bosniak inhabitants, mainly elderly, were killed in the villages of Jelašca, Mjehovina and Jezera. These incursions were related both time-wise and territory-wise to the attack on the village of Jelašca by the police and the army from Kalinovik, and it was actually the army and the police from Kalinovik who prepared the ground for these attacks by having previously attacked, burned, detained and expelled the population of these Bosniak villages.

It also reads in the Report on Activities of the Kalinovik SJB dated 18 August 1992 that, following the defeat of the Serb forces in Trnovo on 31 July 1992, the Military Command asked the Military Command in Foča for help, whereupon around 100 armed soldiers arrived. This fact of dispatching military units of the Foča TG to the Kalinovik TG zone was also corroborated by the combat report of the Trebinje Warning Center dated 4 August 1992 (O I-15). Therefore, these were the military units that came following an appeal and that operated as such in the zone of responsibility of the Military Command of the Kalinovik TG. At the time of the appeal and the arrival of these units, Kalinovik TG Commander Ratko Bundalo was in Kalinovik. It was also established in the proceedings that Bundalo was present in Kalinovik until 7 August 1992 and it follows from the description of the acts that many occurred in early August, that is, on or about 5 August 1992.

The referenced Report on Activities of the SJB dated 18 August 1992 reads that members of these invited units would enter the Muslim-populated villages and plunder and kill the inhabitants. It also reads that the same army members from the Foča TG also entered the elementary school in Kalinovik, where Muslim civilians were detained, and mistreated the detainees by taking younger and prettier women whom they raped, killing the detainees and confiscating gold jewelry and money. Therefore, everyone in the SJB, especially Commander Neđo Zeljaja, was aware of all of the numerous criminal offenses that were committed in that period in the villages around Kalinovik and in the elementary school.

It was established beyond doubt in the proceedings that members of the police guarded the school and were tasked with maintaining public order, which is one of their basic functions, and it is clear that the detained civilians, that is, women, children and the elderly fall under the category of civilian population that was under the protection of the police, whose Commander was Neđo Zeljaja. According to the presented description of the commander's duties, the commander organizes, plans and controls the execution of duties and assignments of maintaining public order and preventing the perpetration of criminal offenses, arresting the perpetrators and the like.

It was established not only that guarding the persons detained in the *Miladin Radojević* school in Kalinovik was carried out by the police commanded by Zeljaja, but also that a number of the policemen allowed these persons to enter the school and commit unlawful acts. Some of these acts were committed with the policemen guarding the school looking on. The examined policemen stated that they had radio stations with which they could inform their superiors about the events in the school and on the ground, and they also had patrol orders in which they would write reports on the events in their respective shifts. Witness Milan (son of Branko) Lalović stated that the Accused Zeljaja was informed of the revolt by the women in the school over the rapes and mistreatment. Witness Z, who was a policeman, also stressed that Zeljaja would be informed first and Boško Govedarica second. Witness Ilija Đorem stated that the distance between the school and the Police Station in Kalinovik was 100 meters.

It follows from the presented evidence that Commander Zeljaja was informed of these events, but he obviously did nothing within his competencies and numerous authorizations to prevent them. Witness Milan (son of Branko) Lalović stated that only superiors could help and protect the detainees from the unlawful acts of the soldiers who came to Kalinovik.

It can be seen from the Report on Activities of the Kalinovik SJB for the third quarter of 1992 that authorized persons in the Kalinovik SJB did not at all attempt to prevent the referenced persons from committing these acts. The Kalinovik SJB delivered this Report to the Trebinje CSB on 1 October 1992. The Report reads that there was no request to institute minor offense proceedings in the period concerned, that no criminal report was filed, that there were no held persons or the use of coercion outside combat activities and that everything ended in drafting of official information. The Accused Neđo Zeljaja signed this Report in the upper right corner where it was stated that the Report was dispatched on 2 October 1992.

The foregoing indicates that the Accused Zeljaja, despite all the information concerning all the referenced events in which the units of the Foča TG and the other units of the "Serb armed forces" participated, did not do anything in line with his rights and duties as the commander of the Police Station to prevent the acts and events as charged.

Not only that the Accused Bundalo invited the soldiers who entered the school and *Barutni Magacin* and committed atrocities to come to his zone of responsibility, but, as the commander of the Kalinovik TG, he also had a duty to take all measures to prevent any kind of unlawful activities on their part during their entire stay in the Kalinovik region. However, the Accused Bundalo never undertook any action to prevent these acts or any measure to have the perpetrators of the criminal offenses found and possibly tried and punished.

It reads in the referenced Report of the Kalinovik SJB dated 1 October 1992 that in the relevant period the army was submitted a total of 53 official pieces of information on various findings of interest for the military security organ, which means that he might have learned from this information of the activities of the military from Foča whom he invited. However, even after the return from Belgrade to Kalinovik, which, according to the Defense, happened on 22 August 1992, the Accused Bundalo continued to carry out the duty of the Commander of the Kalinovik TG not undertaking anything within his competencies to have the perpetrators of the criminal offenses possibly punished. There is

no mention of the events in the school in Kalinovik or the events in *Barutni Magacin* in any of the reports that he submitted following his return from Belgrade, from which the Court concludes that these events were deliberately passed over in silence and that the truth about the ordeal of Bosniaks in this region was concealed.

It should be noted here that it was established beyond doubt in the proceedings that early August 1992 marked the start of the taking of the detainees out of *Barutni Magacin* who no longer returned to the camp, and that on 5 August 1992, members of these units of the Foča TG took all the remaining detainees out of the *Barutni Magacin* military camp in Kalinovik, of which only one survived the execution by fire accidentally, whereas all the others were killed or are still unaccounted for. It is beyond doubt that the event concerned happened at the time when the Accused Bundalo was in Kalinovik and it can be inferred that the Accused Bundalo was aware of the outcome of the taking of these persons. The foregoing can be inferred from the consistent statements of Witness H and witness Milan Lalović, son of Vulo, who stated that on his way to Belgrade Bundalo dropped by Foča TG Commander Marko Kovač in Foča where they talked and Witness H concluded from Bundalo's reactions that something was wrong. The witness stressed that upon returning to Kalinovik Bundalo told him that the detainees from *Barutni Magacin* allegedly wanted to escape during the transportation to Foča and that they were all killed. This fact of the taking, killing and disappearance of the detainees from the military camp that he had set up was not mentioned in any of the Accused Bundalo's official reports either, nor were these detainees and their fate subsequently mentioned anywhere. It can be seen from the correspondence between the military authorities of Kalinovik and the Bosniak military forces in Trnovo on the exchange of prisoners, the exchange having started in August and lasted until late September 1992, that authorized persons in the Army of B-H requested the exact data on the detained Bosniaks and explanation of the fate of the detainees in *Barutni Magacin*, but that they were never informed about it by any organ from Kalinovik.

It follows from the Official Note of 1 October 1992, drafted by Kalinovik SJB police officers Miroslav Mišur and Branko Stanković (T-181), that these events were a common knowledge but were kept quiet about. This document shows that authorized persons in Kalinovik were very much interested in not having any information published on what happened to the detainees in the school. The referenced Official Note reads that services in charge of prisoner exchange should be informed that Rada Popović, who wants to be exchanged to Trnovo and who is married to a Muslim, has plenty of information and findings on the treatment of the detainees. Rada was accommodated on the premises of the elementary school where she was allowed to move freely, so she could witness many acts and treatment. The Note was submitted to superiors for notification and follow-up.

Based on the adduced evidence the Court concludes that there existed a strong correlation between the military and the police authorities on all levels in the territory of Kalinovik Municipality at the relevant time and that they operated in concert with the War Staff and the Executive Committee of the Kalinovik Municipal Assembly, headed by Grujo Lalović, who was also the president of the SDS and the president of the Crisis Staff of Kalinovik Municipality. This correlation was reflected in organized and synchronized activities of these organs and representatives of the authorities in various conducted operations, as well as in the very frequent personal contacts of the leaders of the civilian, police and military authorities.

The various pieces of documentary evidence admitted into the case file indicate that these organs and their leaders often acted in concert and that their respective roles in the joint participation in all events in the Kalinovik Municipality were prearranged.

The Court is satisfied that participants in the Joint Criminal Enterprise in the relevant time were Grujo Lalović, President of the Executive Committee of the Kalinovik Municipal Assembly and President of the Kalinovik Municipality Crisis Staff; Boško Govedarica, Chief of the Kalinovik SJB; members of the Crisis and the War Staff of Kalinovik Municipality; members of the units of the Foča TG, including a unit from Miljevina commanded by Pero Elez, as well as other members of the military, police and paramilitary units of the "Serb armed forces".

Based on many pieces of documentary evidence the Court inspected it was established beyond doubt that Grujo Lalović carried out the referenced duties in the relevant period.

During the proceedings the Court did not have access to the piece of documentary evidence indicating that Grujo Lalović was a deputy in the Assembly of the Serb Bosnia and Herzegovina, due to which it omitted this office attributed to him in the introductory part of the Indictment.

It follows clearly from the presented evidence that in the beginning Grujo Lalović held meetings together with Bundalo at which he promised the scared Bosniak population that nothing would happen to them telling them they should stay, whereupon, as the Crisis Staff President, he actively participated in the drafting of the plan of arresting able-bodied Bosniak men from Kalinovik and went to the Accused Bundalo's to arrange this. The National Defense Secretariat of Kalinovik Municipality actively participated in the implementation of this plan by sending out notices for compulsory work service to all able-bodied Bosniak men, which follows from the testimonies of several examined witnesses and the Notice admitted into the case file as documentary evidence.

The correlation of the municipal, the police and the military authorities in Kalinovik was an everyday intense routine.

The Minutes of the 26th Session of the Executive Committee of the Kalinovik Municipal Assembly dated 16 May 1992, chaired by Grujo Lalović, indicate that Neđo Banjanin also attended the session. The List of units and military conscripts in Kalinovik features Neđo Banjanin under number 10 as a member of the Kalinovik TG Command. It also follows from the notice to the Muslims in Kalinovik to report for compulsory work service of 25 June 1992 that Neđo Banjanin was the secretary of the Municipal National Defense Secretariat.

Also, according to the statement of witness Božo Purković, who was the Assistant Chief for Personnel, Nikola Kovač was not only the President of the Kalinovik Municipal Assembly in the relevant period, but also the Assistant Commander for Morale.

The Order of the Executive Committee of the Kalinovik Municipal Assembly dated 11 May 1992, issued pursuant to the Decision of the War Staff of the SAO [Serb Autonomous

Region] Herzegovina, orders all businesses and social services in the Kalinovik region to transfer to wartime mode of operations. Functioning of the economy and social services in wartime should be secured by filling the vacancies with pensioners and persons engaged pursuant to compulsory work service.

The Crisis Staff of Kalinovik Municipality, whose complete personnel structure was not established in the proceedings, functioned as of the moment of the adoption of the Instructions for the Organization and Activity of Organs of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances on 19 December 1991.

The Decision of the Crisis Staff of the Kalinovik Municipal Assembly, whose President was Grujo Lalović, dated 29 April 1992, prohibits movement to everyone without a permit issued by the Municipal Crisis Staff. The Kalinovik SJB was tasked with implementation of this Decision and the SJB was to report to the Crisis Staff and the Kalinovik Municipal Assembly. After the beginning of the armed conflict, the Crisis Staffs transferred their role to the War Staffs, as indicated in the Finding and Opinion of expert witness Radovan Radinović.

The Kalinovik Municipality Crisis Staff for Sheltering Refugees, whose chairman was Slavko Sladoje, issued permits allowing certain persons to travel outside Kalinovik. Thus the Crisis Staff issued Marija Redžović from Kalinovik with a permit to leave Kalinovik on 21 May 1992 and visit her family in Zelenika.

Several witnesses stated during the proceedings that Grujo Lalović was the number one person in Kalinovik and in charge of everything. Witness A stated that Grujo Lalović was the most influential person in Kalinovik at the time and that he was constantly in the company of SJB Chief Boško Govedarica and that the two of them often visited Commander Ratko Bundalo. According to Lt Col Rade Pavlović from Kalinovik, the Accused Ratko Bundalo was in contact with Boško Govedarica, Chief of Kalinovik SJB, and Grujo Lalović, President of the Executive Committee of the Kalinovik Municipal Assembly and the most influential person in Kalinovik. These persons came to see the Accused Bundalo in *Gornji Logor*; Boško Govedarica doing it more often as his house was in the proximity of *Gornji Logor* where Bundalo was quartered.

Witness Božo Purković, who was the Assistant Commander for Personnel at the relevant time, stated that Grujo Lalović was the SDS President and Boško Govedarica the Chief of Kalinovik SJB and that these men often visited the Accused Ratko Bundalo in the Command. This witness is also familiar with the person named Pero Elez, who he said was a member of a unit from the Foča region. The witness heard several times that Elez came to the Command of the Kalinovik TG and that he took supplies from the Kalinovik TG.

The relation between the army and the police in Kalinovik, where Boško Govedarica was the Chief of SJB, has already been explained. It was established beyond doubt that Boško Govedarica was the Chief of Kalinovik SJB in the relevant period. This follows from the many documents of the Kalinovik SJB issued by Boško Govedarica as the Chief that were admitted into the case file. Also, according to a witness statement, Boško Govedarica actively participated in the interrogation of the arrested persons and in the drafting of the plan to arrest the men in Kalinovik. The police, whose chief he was, guarded both the

elementary school in Kalinovik and the detention facilities where many Bosniaks were detained. During the month of August, many criminal offenses were committed in the school and several detainees in the school were killed, raped, mistreated, robbed and the like. It was established in the proceedings that Boško Govedarica was one of the three persons who could authorize the taking of the detainees out of *Barutni Magacin*, which he did very often. It was upon his authorization that all detainees were taken out of *Barutni Magacin* in August, whereupon the majority of them were killed and a number are still unaccounted for.

The correlation between the municipal and the military authorities is also obvious from the dispatch of the Tactical Group signed by the Commander, Col Ratko Bundalo, whereby lists of combatants on the front line were submitted to the Executive Committee of the Kalinovik Municipal Assembly on 27 June 1992, 30 June 1992 and 1 July 1992, with a view to updating the lists of combatants.

It follows from the Order issued by the Command on the manner of conducting searches and confiscating military property dated 10 November 1992 that the military authorities in Kalinovik acted in concert with the policemen of the Kalinovik SJB, the Order reading that searches of apartments and other facilities may be conducted by the Military Police and the Kalinovik SJB pursuant to decision of the Tactical Group Commander.

It follows from the Order of the Kalinovik TG Command dated 15 November 1992, issued and signed by Ratko Bundalo, related to preventing incursions of hostile sabotage groups, that the Accused, as the Commander of the Kalinovik TG, issued orders for the forming of patrols made up of members of the SJB and the Military Police. These patrols were made up of three persons, two members of the SJB and one member of the Military Police. One such patrol participated in the apprehension of able-bodied men from Kalinovik who did not voluntarily respond to the notice by the National Defense Secretariat and one of its members was Military Policeman Radomir Mandić a.k.a. Čifo.

Also, on 9 December 1992, the Kalinovik TG Command issued an Order, signed by Ratko Bundalo, to conduct control and review of all civilian and military trucks with a view to confiscating smuggled goods. The Chief of Kalinovik SJB was personally responsible for carrying out this order, among others.

The Court has already provided reasoning on the participation of the units from the Foča TG in the events in the school and *Barutni Magacin*, in which the unit from Miljevina commanded by Pero Elez stood out, as well as on the participation of other military and paramilitary units in the commission of the acts charged in the Indictment. It was also established in the proceedings that the units from the Foča TG came at the invitation of the Command of the Kalinovik TG, that they passed with the taken detainees through the military barracks in Kalinovik without hindrance, and that they also entered the school in Kalinovik without hindrance, where within sight of the police from the security they committed various incriminating acts. Other members of the Serb armed forces also had free access to the detainees in the school and freedom of movement in the Bosniak villages around Kalinovik where they committed murders of the remaining Bosniak inhabitants.

Authorized officials of the Kalinovik Police Station wrote official notes or reports on activities related to the torching of houses and the looting of hay, cattle, flour, vehicles and other Muslim property. These are the official notes and reports made after the Bosniak inhabitants had been killed, expelled from these places or exchanged. In this respect, the Defense for the Second Accused introduced numerous reports and notes by the Kalinovik SJB in order to prove that the police did everything to protect the citizens and introduce peace and order. However, none of these reports contains any information that the Bosniak inhabitants were protected by the police in their native villages when they needed such protection.

Based on the foregoing, the Court is satisfied that the Accused Bundalo and the Accused Zeljaja knowingly and intentionally participated in the campaign of persecutions described above, personally participated in certain actions, and also cooperated with and supported each other and other persons involved in that campaign. The Accused shared the intent of others with whom they participated in planning the campaign of persecutions to forcibly remove the non-Serb populations from the targeted areas and knew that crimes such as murders, rapes and various kinds of mistreatment in prisons, deportations, forcible transfer, and the destruction of property described in the Indictment were committed in an attempt to achieve this purpose.

In conclusion, the Trial Panel finds that a war and an armed conflict existed in the Kalinovik region during the times referred to in the Indictment and that the execution of the JCE entailed a widespread or systematic attack directed against a civilian population. The Trial Panel further finds that the execution of the JCE was carried out with discriminatory intent, on political, racial, ethnic or religious grounds.

All the referenced circumstances related to the contribution and the knowledge of the Accused Bundalo and the Accused Zeljaja, that is, the existence of their awareness and knowledge about the commission of the relevant criminal offenses, point at the inference of the Court that the Accused Bundalo and the Accused Zeljaja shared the intent of the other members of the JCE to perpetrate the relevant criminal offense in the manner described in the operative part of the Verdict.

Accordingly, the Trial Panel is satisfied that the Accused are criminally responsible for the crime of persecution which was committed in the context of a JCE, in which the Accused Bundalo and the Accused Zeljaja participated with their acts or omissions, with the intent to discriminate against the civilian Bosniak population on political, ethnic, racial or religious grounds.

METING OUT THE PUNISHMENT

In respect of decision on meting out the punishment for the act the accused perpetrated, the Court analysed separately for each of them the level of their responsibility, their behaviour before the Court and their personal circumstances, the motive they had, their personalities, possibility of commuting the sentence, as well as prevention and rehabilitation. Further in the reasoning the Court will present in detail the principles by which it was guided while meting out the punishment, and will pass the sentence.

1. The accused Ratko Bundalo

a). Level of responsibility

On the ground of the evidence presented the Panel found that the accused Ratko Bundalo was a commander of the Kalinovik Tactical Group throughout the material period and that, by that function, he had responsibility for the overall developments in Kalinovik, as well as for detainees. In the military hierarchy, no one was above him in the areas of the municipalities of Kalinovik and Trnovo.

Given the position he had as a commander of the Kalinovik Tactical Group, the accused Bundalo was superior to all members of military units in Kalinovik, Trnovo and Borač, including the guards at the *Barutni Magacin* prison. Holding such position, he had a real possibility to influence the course of events and to direct those events in a desired direction. However, it was found in the proceedings that the accused Bundalo had planned and issued orders for the perpetration of a number of acts which are part of the criminal offence of crimes against humanity which include murders, incarcerations, forcible transfer and other inhumane acts, and that in his capacity as a co-perpetrator he participated in other acts as a member of a joint criminal enterprise. While meting out the punishment, the Panel took into account, as a factor, his position and role he had as a commander of the Kalinovik Tactical Group. His position in Kalinovik and the manner in which he used it constitute the aggravating factors.

b). Behaviour and personal circumstances of the accused

The behaviour and personal circumstances of the accused Bundalo before, during and after the perpetration of the offence contain both aggravating and extenuating facts, and are relevant for the issues of prevention and rehabilitation.

Prior to the war, Ratko Bundalo was, according to data from the file, a member of the JNA and commander of the Mixed Anti-tank Artillery Regiment which was a part of the 13th Corps based in Rijeka. In the last days of 1992, his unit was relocated to Kalinovik. Until the time of the conflict that arose in Kalinovik, he had a correct behaviour and, together with other leading figures of police and municipal authorities from Kalinovik, he held meetings with disturbed Bosniak population from Kalinovik which was told that they should not worry and that both military and civilian authority in Kalinovik had all developments under their control. This constitutes an extenuating circumstance for the accused Bundalo.

As indicated by evidence which substantiates many counts of the Indictment, Bundalo as a commander of the Kalinovik Tactical Group took an active part in developing the plan for incarceration of Bosniak men from Kalinovik who were fit for military service. They all were arrested and incarcerated in a school after they had been called on to report because of arrangements for compulsory work service. Some time later, they were transferred to the Barutni Magacin camp where all but one were killed or reported missing. Also, he was actively involved in the arresting of Bosniak civilians from Gacko, and he issued the order for torching Bosniak villages inhabited by Muslim population. Such activities of his

encouraged other soldiers and paramilitary to commit various acts of crimes against humanity in respect of Bosniak civilians in towns of the Kalinovik Municipality as well as in respect of prisoners. The manner in which he committed those offences constitutes an aggravating factor.

After the war, Bundalo retired and until his arrest lived in his apartment in Banja Luka where he has family. The accused Bundalo was never convicted, which ensues from the extract from the Criminal Record which bears his name. This constitutes an extenuating circumstance.

The accused Bundalo behaved appropriately during the proceedings and in line with expectations of the Panel. Pursuant to the aforementioned, his behaviour before the Court is neither an aggravating nor an extenuating circumstance.

c). Motive

The motive in this case is not connected with intent. As it was reasoned above, it was with intent that the accused persecuted the detainees of Bosniak ethnicity in the manner as that crime is defined in law and specified in the reasoning. Besides carrying out the specific policy, the Court did not find that Ratko Bundalo had a particular motive to perpetrate the criminal offence, so that it constitutes neither an aggravating nor an extenuating circumstance.

d). Personality of the accused

In connection with the accused's personality, the Panel has specific information on the basis of statements by the witnesses who testified about that circumstance. The witness Senad Dautović stated that in September of 1995 the accused Bundalo, as a senior officer of the unit that held the place of Vinac near Donji Vakuf, which was inhabited by citizens of Bosniak ethnicity before the war, left the place with soldiers without torching or devastating houses and other facilities. The witness Željko Vaško, who has Czech nationality, stated that the accused Bundalo was protecting him in his capacity as a VRS soldier during the year 1994, and that at that time a person of Croat nationality discharged command duty in Bundalo's unit. Also the witness Mirsad Handanović, who is the immediate neighbour of the accused Bundalo in Banja Luka, described him as a good neighbour. Bearing in mind that all of the listed witnesses have known the accused Bundalo since another period of the war and that at the material time they were not in Kalinovik, those testimonies about the personality of the accused do not constitute extenuating circumstances for the Court.

e). Legal reduction of punishment

The Panel did not find the reasons from Article 49 of the BiH CC to set the punishment below the limit prescribed by the law.

f). Prevention and rehabilitation

The length of prison sentence and the time spent in prison as the punishment for the crime constitute legitimate means for prevention in the majority of cases. They provide the

perpetrator with a possibility to review the consequences of his actions for victims, to think his faults from the past over, and to redeem himself from his criminal actions.

PUNISHMENT

In assessing the relevant “circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances)” referred to in Article 48(1) of the BiH CC, on the basis of the aforementioned reasons, the Panel concluded that there exist both extenuating and aggravating circumstances on the part of the accused Bundalo. The degree of injury to the protected object has already been covered by the part of this analysis referring to punishment when the gravity of the offence was reviewed, and shall not be “counted” twice. Extenuating circumstances which were reviewed by the Panel involve the accused’s contribution towards pre-war criminal justice, his family circumstances and the fact that he is a relatively old person who was 65 when the Verdict was handed down. Aggravating circumstances which was reviewed by the Panel involve the position of the accused as a commander of the Kalinovik Tactical Group and the manner in which he used his position, especially having in mind that he personally participated in preparation and carrying out individual actions, especially of the actions referring to the deprivation of liberty, forcible transfer, torching the villages and other inhumane acts. The Panel concluded that the punishment should reflect both extenuating and aggravating circumstances and that the referenced circumstances must be taken into account in meting out the punishment. The Panel found that the prison sentence for a term of 19 years constitutes an appropriate sentence and that both individual and general prevention can be attained by the referenced sentence in terms of deterring the perpetrator from committing criminal offences in future and in terms of deterring the others from committing criminal offences.

2. The accused Nedo Zeljaja

a) Level of responsibility

On the basis of the evidence presented, the Panel found that Nedo Zeljaja was a commander of the Police Station in the Kalinovik SJB at the material time and that he, like the accused Bundalo, given his high-ranking leading position which he held in the police, had responsibility, in respect of that position, for the overall developments in the area of the Kalinovik Municipality, especially in respect of the persons who were detained in the school and Police Station in Kalinovik and who were guarded by the police which were in his command. Only the chief of the Kalinovik SJB Boško Govedarica was, in the police hierarchy, above the accused Zeljaja.

Given the position that he held as a commander of the Police Station in the Kalinovik SJB, the accused Zeljaja was superior to active and reserve police officers from Kalinovik, and consequently to persons who stood guard and secured the *Miladin Radojević* Elementary School and detention rooms at the very station, and also he had real possibility to influence the course of events. However, it was found in the proceedings that the accused Zeljaja personally participated in the planning and that he perpetrated some acts which make a part of the criminal offence of crimes against humanity. They are detention, large-scale destruction of property that is not justified, forcible transfer and other inhumane acts. In the

other acts he also participated as a member of the joint criminal enterprise. In meting out the punishment, the Panel took into account, as a relevant factor, his position and role which he had as a commander of the Kalinovik Police Station. As assessed by the Panel, the position which Neđo Zeljaja held in Kalinovik and the way in which he used it constitute aggravating circumstances.

b). Behaviour and personal circumstances of the accused

The behaviour and personal circumstances of the accused Bundalo before, during and after the perpetration of the offence contain both aggravating and extenuating facts, and are relevant for the issues of prevention and rehabilitation.

Before the war, Neđo Zeljaja was a commander at the Police Station in Kalinovik. Afterwards he was relocated to Sarajevo and he stayed in the Sarajevo MoI until his retirement on 31 March 1992. The witness Nezir Smajić who worked in Sarajevo together with the accused Zeljaja stated that before the war he had very good relationship with him and that he did not have a discriminatory attitude towards members of other ethnicities. During that period he was not convicted, which is evident from the extract of the Criminal Record of the accused; he was a family man, so that his behaviour and conduct during that period constitute extenuating circumstances.

As indicated by the evidence which substantiates many counts of the Indictment, at the material time, Zeljaja participated in the planning of arrest of all Bosniak men fit for work from the area of the Kalinovik Municipality, directly participated in the incarceration of persons from Jeleč, in the attack on the village of Jelašca, in torching the village of Sočani, on which occasion a number of the following acts were perpetrated: incarceration, large-scale destruction of property, intimidation and terror, inhumane acts, which, bearing in mind his position during that period, incited and encouraged the others to commit against detainees various acts of crimes against humanity. The manner in which he committed those offences constitutes an aggravating factor.

After the war the accused Zeljaja retired, and as late as his arrest he held the position as the president of the Hunters' Association in Kalinovik. During his term a great number of Bosniaks were admitted into that association. The witnesses Đemal Imamović and Salim Bilalović addressed that fact in their testimony.

The accused Zeljaja behaved appropriately during the proceedings and in accordance with Panel's expectations. Pursuant to the aforementioned, his behaviour is neither an aggravating nor an extenuating circumstance.

c). Motive

The motive in this case is not connected with intent. As it was reasoned in this Verdict, it was with intent that the accused persecuted Bosniak civilians as that crime is defined by the law and specified in the reasoning. Besides carrying out such policy, the Court did not find that Neđo Zeljaja had a particular motive to perpetrate the criminal offence, so that it constitutes neither an aggravating nor an extenuating circumstance.

d) Personality of the accused

In connection with the personality of the accused Zeljaja, a large number of witnesses that were heard made statements about it, and on the basis of testimonies by those witnesses the Court arrived at specific conclusions in that regard. It ensues from the statement by the witness Đemila Redžović that, late in August, the accused Zeljaja was in front of the school in which the witness was detained. She saw him talking with soldiers who had come from Serbia, according to her, to torch the school. After the conversation with Zeljaja, the same soldiers went in the direction of Ljuta. The witness Jašar Vuk also stated that he had a very correct relationship with Zeljaja. He even thought that he had saved him from execution. The Defence witness Mustafa Hodžić also mentioned the humane behaviour of Neđo Zeljaja at the time when he, as a prisoner of war, was in SJB Kalinovik rooms. The witness F noted he had never had any problem with Neđo Zeljaja and that he had given him some personal documents which he preserved during the war and returned them to him later on. The witness Muradif Jašarević also stated that Zeljaja gave him cigarettes to smoke while he was detained. The same witness heard Zijo Hadžić, who had previously been detained in the school in Kalinovik and then brought to the detention unit of the Police Station, saying that if Zeljaja had not been there, it seemed to him, they would have killed him there. Bearing in mind the statements of the referenced witnesses which the Court accepted as veracious and reliable, the Court considered that those acts of the accused Zeljaja constitute an extenuating circumstance. Also, in respect of the accused Zeljaja's personality, the evidence was given during the proceedings by Salim Bilalović and Nezir Smajo whose testimonies were accepted by the Court.

e) Legal reduction of punishment

The Panel did not find the reasons from Article 49 of the BiH CC to set the punishment below the limit prescribed by the law.

f) Prevention and rehabilitation

The length of the prison sentence and the time spent in prison as the punishment for the crime constitute legitimate means for prevention in the majority of cases. They provide the perpetrator with possibility to review the consequences of his actions for victims, to think his faults from the past over and to redeem himself from his criminal actions.

PUNISHMENT

In assessing the relevant "circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances)" referred to in Article 48(1) of the BiH CC, on the basis of the aforementioned reasons the Panel concluded that there exist both extenuating and aggravating circumstances on the part of the accused Zeljaja. The degree of injury to the protected object has already been covered by the part of this analysis referring to punishment when the gravity of the offence was reviewed, and shall not be "counted" twice. The extenuating circumstances which were reviewed by the Panel involve the accused's contribution towards pre-war criminal justice, the fact that he is a family man, that in particular cases he had correct relationships with some persons of Bosniak ethnicity, that he sometimes offered them specific help and that after the war he kept on maintaining

normal relationships with the population of Bosniak ethnicity. The aggravating circumstances which were reviewed by the Panel involve the manner in which the accused used his position to arrest and bring civilians of Bosniak ethnicity into prison, that he personally took part in some attacks on villages, that he, given his high position in the police, had information about the attacks and behaviour of the others towards the arrested persons and detainees, especially in the Elementary School in Kalinovik which was guarded by the police that were in his command. On balance, by virtue of all aggravating and extenuating circumstances, the Panel found that the prison sentence for a term of 15 years constitutes an appropriate sentence and that both individual and general prevention can be attained by the referenced sentence in terms of deterring the perpetrator from committing criminal offences in future and in terms of deterring the others from committing criminal offences.

Pursuant to Article 56 of the BiH CC, the time spent in custody pending trial, starting on 31 August 2007 onwards for the accused Bundalo, and starting on 29 November 2007 until 17 July 2008 for the accused Neđo Zeljaja, the custody of which was ordered by Decision of the Court of BiH Number X-KR-07/419 of 29 November 2007, and the time spent in custody pending trial starting on 21 August 2008 onwards, the custody of which was ordered by Decision of the Appellate Panel of the Court of BiH Number X-KR 07/419 of 21 August 2008, shall be credited towards the sentence of imprisonment for the accused Ratko Bundalo and Neđo Zeljaja.

Pursuant to Article 188(4) of the BiH CPC, the accused Ratko Bundalo and Neđo Zeljaja are entirely relieved from duty to pay the costs of the criminal proceedings, given that the accused have been in custody for a long period of time, that they are pensioners, that during the proceedings Ratko Bundalo was paying for the service of one defence counsel of his choice and that they are acquitted from charges on some counts of the Indictment. Those costs cannot be separated from the overall costs. Also, as assessed by the Court, the paying of proceedings costs would bring into question the subsistence of the accused themselves and of their dependants.

Pursuant to Article 198(1) and (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the aggrieved parties are instructed to take a civil action with their claims under property law, given that the establishing of facts referring to the amount of their claims under property law would take long time, which would prolong these criminal proceedings. Since the proceedings lasted for too long even without the establishing of facts, the Panel decided to instruct the aggrieved parties to take a civil action. During the main trial, a certain number of the aggrieved parties did not apply for satisfying a claim under property law. In any case, persons authorized to apply for satisfying a claim under property law may request that right of theirs in a civil action.

ACQUITTING PART OF THE VERDICT

Count 2b)

The Prosecutor's Office charged the accused Ratko Bundalo and Neđo Zeljaja that early in August they kept all detained civilians without any food for four days. In order to prove these allegations from the Indictment, the Prosecutor's Office presented evidence by

hearing a number of witnesses – both the witnesses who had been detained and the witnesses who had prepared and brought food, and also the witnesses who as police officers or soldiers had secured detention facilities. It was established beyond doubt from consistent statements by all witnesses who were heard about this circumstance that the military in Kalinovik that was under the command of Ratko Bundalo provided food for all prisoners in all detention facilities. Food was prepared in the *Gornji Logor* and was then sent to the detention facilities.

The evidence about this fact was given by the witness Rade Pavlović, senior military officer in Kalinovik, Witness H, witness Pero Marković who was a head of army canteen, Miloš Crnjak, who brought food, witness Manojlo Krstović, guard at the *Barutni Magacin*, and also the witnesses - former police officers in Kalinovik, who secured the school in Kalinovik, such as the witness Danilo Đorem and others. It ensues from all of their testimonies that food for all of them arrived from the *Gornji Logor*.

The Court established as an incontestable fact that in early August there was an interruption to delivery of food for detained persons lasting for a couple of days. Many witnesses who were heard and who had been in detention facilities, including Fevzija Hadžić, Vuk Jašar, Đemila Redžović, Witness F and others confirmed this fact in their testimonies.

The witness Fevzija Hadžić, who was detained in the *Barutni Magacin*, noted that they did not receive food at the beginning of August.

The witness Đemila Redžović, who was detained in the school, noted that she had been brought there on 1 August 1992 late in the afternoon, and that they started receiving food on 5 August 1992. During that time, they ate pieces of sugar cubes, which was also confirmed by Rukija Rogoj who noted that the Witness F gave them the sugar. The witness F noted that upon arriving at the school they did not receive food for three days.

Also the witness Hasna Ćusto noted that on arriving at the school in Kalinovik on the first of August of 1992, they had not received food for the next two to three days. Afterwards, soldiers were bringing food in food containers. This was also noted by the witness Fadila Hatić.

The witness Vuk Jašar, who was incarcerated in basement rooms of the SJB Kalinovik, noted that, after the fall of Trnovo which was taken by forces of the BiH Army, no food was brought to them for three days. However, during that time his wife sent him *gurabije* /translator's note: a kind of local cookies/ through Milivoje Sladoje. Detainees ate them for breakfast, supper and dinner in a cell, so that they did not feel great hunger.

The witness Danilo Đorem stated it was only when Rogoj had fallen that detainees did not receive food. The same witness noted that police officers then brought sugar and bread from the station for the detained persons.

The witness Miloš Veletić noted that in the *Barutni Magacin* women had been bringing food to detainees. The bringing of food in the *Barutni Magacin* by women was confirmed in the testimony of Zijada Hatić, Zlata Redžović, as well as other women whose husbands and sons were incarcerated.

It was not found during the proceedings that the Police Station in Kalinovik had any obligations in respect of preparing and delivering food to the detained persons. Also, not a single piece of evidence indicated that in early August food was coming from the army canteen to security personnel in the *Barutni Magacin*, the school in Kalinovik and detention rooms of the SJB Kalinovik.

For the existence of the referenced criminal offence it was necessary to establish that perpetrators had the intention to commit such crime. As they were prosecuted on the ground of the joint criminal enterprise, it was necessary to establish the existence of *mens rea* on their part. Hence, it was essential for the Court to establish the reasons for non-delivery of food in early August, in other words, whether the referenced non-delivery of food was caused solely by the criminal intent that detainees be tortured or for detainees to be inhumanely treated or potential existence of some other reasons.

By virtue of the evidence presented, the Court holds it as established that the non-delivery of food to prisoners occurred in early August of 1992 when Rogoj and Trnovo were captured by the BiH Army. As regards the length of time of non-delivery of food, witnesses were not entirely consistent. However, irrespective of the discrepancies regarding the same fact, the Court holds as proved that the referenced interruption lasted for a couple of days.

By virtue of statements by Witness H, the witness Rade Pavlović and other witnesses, and especially by virtue of numerous documentary evidence which was reviewed by the Court, it is evident that, at that time, in early August of 1992, combats were ongoing in Trnovo and Rogoj, and that, at that time, Rogoj repeatedly changed hands between the conflicting sides. These facts were not contestable during the proceedings.

The review of the dispatch which was forwarded by Colonel Parežanin on 10 August 1992 (O-I-16) indicates that after the defeat in Trnovo and on the Rogoj mountain pass VRS units were in real disarray. The dispatch reads that the VRS suffered heavy casualties in combats in Trnovo and Rogoj and that massive hardware fell into the hands of the enemy. The authorities officially called people to depart Kalinovik and they organized transportation to that effect.

The witness Rade Pavlović noted that, after the fall of Rogoj and Trnovo, around two hundred persons had come to Kalinovik from Trnovo and that there was a chaos in the town. Witness H noted that, when Trnovo fell, there was a total disarray and refugees from some villages of Trnovo started to flee towards Kalinovik. At that time, all military and police forces were engaged in order to recapture Trnovo and Rogoj.

Bearing in mind such situation in the area of the Kalinovik Municipality in the early days of August, the Court held that in the proceedings it was not proved beyond doubt that temporary interruption to delivery of food was a result of some particular plan for torturing and starving the detained persons, in other words, that the detained persons were deprived of food deliberately and willingly. According to the Court, the mentioned developments on the frontline and the situation in the Kalinovik proper could cause a temporary disturbance in preparing and distributing food to prisoners, all the more so because a couple of days

later, when the situation ameliorated and when combats ceased, the delivery of food to prisoners resumed, although both Rogoj and Trnovo were still held by the BiH Army forces.

The Court also concluded on the basis of the evidence presented that food had been delivered to detainees in all detention facilities in Kalinovik every day even before the fall of Trnovo and Rogoj, and that there was not a great difference in the quality of food consumed by security personnel and detainees. Bearing in mind that they resumed bringing food for detainees after the interim interruption at the time of combats around Rogoj and Trnovo, the Court held that in the present case there was no reliable evidence proving that the actions of non-delivery of food during that short period of time were taken knowingly for the purpose of committing a crime.

At this point the Court wished particularly to point out that the referenced sub-paragraph of the Indictment does not mention a consequence which potentially arose due to the act of commission, so that, in respect of it, the Indictment could not be examined in its entirety to that effect.

Potential definition of the offence would also depend on the referenced consequence, since offences differ not only in the act of commission but also, and especially, in the consequence ensued. In the manner as indicated in the Indictment it ensues that there is no consequence, which means that there is no offence either. In any event, the Court holds that the omission to state the consequences for detainees due to the non-delivery of food makes this subparagraph of the Indictment legally deficient and makes it such that a convicting verdict cannot be based on it.

Based on all the aforementioned, the Court holds that the Prosecutor's Office did not prove beyond any reasonable doubt during the proceedings that the accused Bundalo and Zeljaja are responsible for the indicated offence because of which it acquitted them of criminal responsibility.

Count 2 e)

Under Count 2.e) of the Amended Indictment by the Prosecutor's Office, the accused Ratko Bundalo and Nedo Zeljaja were charged that they are criminally responsible for the following: the women and men detained in the *Miladin Radojević* School were physically abused by soldiers and in the presence of the police officers from security almost daily; thus on 8 August 1992, Zlata Redžović was being beaten for several hours by members of the unit of Pero Elez, in the course of which they were beating her all over the body, asking her to tell them where her son was, they were stabbing her with a knife, forcing her to cross herself and threatening to rape her and also forcing her to watch the abuse of Edin Bičo who was lying in a trough full of water, while water was pouring on him from the open faucets.

A number of Prosecution witnesses testified about the event from this count of the Indictment.

The witness Đemila Redžović, nicknamed Zlata, stated in her statement that on 2 August 1992 Pero Elez and Zeka came into the school in Kalinovik. She heard them using those names while addressing each other. They wore uniforms and hanging daggers. They came

up to take away three girls. They returned in the afternoon, and came into her room. Elez pointed with his finger at her and called her to come out. He asked her where her son was. She told him that she did not know. Zeka hit her then and was clenching her so firmly that even now she has rosy and yellow spots on her body. They forced her to sing a song about son. Afterwards, they started beating her. She did not know how long it lasted. They threw her at the wall, and when she recovered she was all covered with blood. They brought her into a classroom and threatened her not to recount anything. Two or three times Pero, Žaga and Zeka took her out and battered her and asked her about her son. The first stab at her breast she received from Pero Elez. Her hair was all mussed up. They were beating her also on 3 August 1992 and they always told her that she must not tell anyone about it. Every day, Pero Elez, Žaga and Zeka inflicted on her those pains. That was an everyday procedure which lasted until 26 August 1992. There were times when she was taken out and beaten two to three times a day. On her body she has seven knife stabs. Those wounds would not heal. Pero Elez cut a part of her finger with nail. The cutting with a knife took place in a classroom where she was alone with Pero Elez, Žaga and Zeka. During the abuse by those persons, her hair was all mussed up. They poured hot water on her hands. The knife left one stab wound on the back of her neck, one on her breast, one on her stomach, one on each of her knees, two wounds on her foot and a wound on her nail. The blood was oozing from those wounds, but she did not receive any medical aid. The witness further stated that, on one occasion, Dado Krstović came during the night and took out women. Among the others, she was also told to come into a classroom where four or five men were waiting for her. One man, whose name she did not want to tell and who as a police officer was a receptionist in the school, told her to cross herself. So, she started crossing herself, which saved her from being raped. On that occasion she was not brought into the classroom. She considered that the mentioned police officer wanted to help her by that. Dado also came second time for the same reasons, but she saved herself then, too. The witness noted that she was called to come out three to four times, but she crossed herself only once, whereas in other situations she was saved by some other persons. Also, she noted that no one told her on any occasion that they had intention to rape her.

The witness Zlata Redžović also stated that she had watched the abusing of Edin Bičo. One man told her to come out of the classroom and when she came out she saw a guy lying in a large trough. Faucets above the trough were open and the guy was choking in the trough. The man who took her out told her to stand by his side. She did not know Edin Bičo from before. He was in his clothes while in the trough. Sometimes, she would approach him and pull a water plug from the trough to let water flow, or she would stop water from running when there was no one in the corridor. All of that lasted around four to five hours. During that time, somebody would pass by and hit Bičo with a rifle or would plunge him into the trough, but they did not kill him there. Neđo Mijatović, who was a civilian and who walked on a crutch, also passed by. He gave her a cigarette. None of the police officers approached, but she heard a police officer nicknamed Ustasha screaming at the top of his lungs in the corridor. Bičo would tell her sometimes to unplug the trough. She felt terribly. On that day, one streak of her hair became grey and her beard grew and was so large. Afterwards, Pero Elez came and took Bičo towards the classroom, and he cut her beard and hit her two or three times. The witness stated that they had taken her down in a gym, among women from Gacko, and then brought her back to her classroom and threatened her not to tell anybody anything.

The mentioned allegations from the Indictment that the witness was abused in the manner that members of Pero Elez's unit were hitting her all over her body for several hours, requiring that she tell them where her son was and stabbing her on that occasion, were not confirmed by any other witness who was detained in the school in Kalinovik at the same time. Only Đemila Redžović, called Zlata, testified about that event, but she did not state that it happened exactly on 8 August 1992 as the Indictment reads, but she mentioned the dates of 2 and 3 August 1992, and she also stated that she had been taken out and beaten, sometimes two to three times a day, every day, until 26 August, when she was exchanged. In that connection, the witness stated that Pero Elez, Žaga Kunarac and Zeka were beating her together, and they all were commanders of their units. None of the other witnesses heard, who were held captive in the school at the same time, stated that all of the three of those persons came together into the school. Also, no-one stated that he saw that they took Đemila Redžović, called Zlata, out of the classroom in order to beat her. The witness Redžović noted that during physical abuse she received many blows, that her hair was all mussed up, that they poured hot water on her hands and that several times they stabbed different parts of her body with a knife, and that she was bleeding heavily because of those wounds. However, during the evidentiary procedure, none of the witnesses heard stated that he saw Đemila, alias Zlata Redžović, battered, and none of them stated that he had seen bloody wounds on her, and none of the witnesses said that Đemila had complained to him about her being physically abused. Bearing in mind, as Đemila described in her testimony, the manner in which the injuries occurred and the parts of her body where she had injuries and wounds, it is not a logical thing that such wounds covered with blood were not perceived upon her return to the classroom, especially the wounds that were inflicted with knife stabs and with hot water poured on her hands. During the proceedings no medical documentation was presented to the Court proving that the witness indeed had been inflicted the injuries, that is, the evidence which would confirm her testimony. Before the Court, the witness Đemila Redžović showed with her hand parts of her body where she had received knife stabs. However, the parts of the body that she showed were mostly covered by clothes of the witness, because of which the Court could not see visually the scars from those stabs. Only the scar on her finger near the nail could have been seen. However, given that such injury would have caused a massive bleeding, and that none of the other witnesses heard saw that injury or testified about that, the Court could not conclude only from that evidence that it was caused by a knife stab at the material time, especially if one has in mind that the witness is a housewife by occupation and that such injuries can be caused very often by a knife while doing the housework and preparing food. The witness repeatedly stated in her testimony that she had been ordered not to tell anybody anything upon her return to the classroom after the physical abuse. However, irrespective of that, the Court holds that the injuries which the witness described and because of which, as she said, she was bleeding, could not have been hidden from the eyes of all detainees, especially if one takes into account that it was summer time when clothes are not warm and when they do not consist of many layers. Also, the very look of the witness which she described, stating that her hair was all mussed up, according to the Court, could have been observed by other detainees and indicated in their testimonies. From all the above mentioned, the Court holds that the physical state in which the witness allegedly was, as she stated in her testimony, could not have been hidden. Bearing in mind that none of the other witnesses confirmed the statement by the witness Đemila in this part of the Indictment, and that there does not exist a single documentary evidence to substantiate her statement, the Court could not accept beyond any reasonable doubt that she had been physically abused at the time and in the manner as

described in the Indictment. During her testimony, the witness Đemila Redžović had with her a diary which she allegedly had kept during her detention, but she did not want it to be included into the record as evidence.

Given the part of the Indictment indicating that the witness Đemila Redžović was forced to cross herself and that she was threatened with rape, the Court could not establish beyond reasonable doubt that the described event indeed happened. In respect of this part from the count of the Indictment, except for the testimony by the witness Đemila herself, none of the other witnesses stated that Đemila was forced to cross herself, nor did any witness state that she was threatened with rape. The witness Đemila herself stated that, on one occasion when she should have been taken out of the classroom together with other women, one police officer who secured the school had told her to cross herself, which she understood as a well-intentioned gesture intended to save her, so that she crossed herself and they did not take her away. None of the other witnesses heard mentioned the event referring to forcing her to cross herself, as has already been mentioned. But since the event occurred, as the witness Đemila maintained, in the classroom in which several persons were present, it was possible for those other persons to see that and to possibly mention it in their testimonies.

However, irrespective of the fact that the referenced part of the testimony was not confirmed by the other witnesses, the Court holds that, with regard to the manner in which the event was described by the witness Đemila, no coercion was exerted on her by soldiers and members of Pero Elez's unit to cross herself. The Court holds that the person who proposed her to do so, the security police officer, did not exert the referenced coercion either, but that the proposal to cross herself was well-intentioned. At this point it should be noted that the witness Đemila Redžović did not want to say the name of the police officer who proposed her to cross herself, although she maintained that everything was recorded in her diary which she had kept during her stay in the school. Also, the witness Đemila Redžović did not want to show her diary which she brought at the trial, nor did she want it to be photo-copied and included into the case record as evidence.

In respect of the part of the count of the Indictment noting that Đemila Redžović was threatened with rape by members of Pero Elez's unit, none of the witnesses confirmed that in his statement, nor does the case record contain any other evidence substantiating that event. The witness Đemila herself stated that, even though she had been called to come out, she had never left the classroom, and that the others had always helped her not to come out. She also noted that she had not been threatened with rape, in other words, that on that occasion nobody had mentioned the rape. She did not state who had helped her not to have been taken out of the classroom, although only for the first occasion she said that the police officer who had told her to cross herself had helped her.

Bearing in mind the state of facts thus established, the Court did not accept as proved the allegations from the Indictment that Đemila Redžović was threatened with rape.

In connection with the allegations from the referenced sub-count of the Indictment indicating that Đemila Redžović was forced to watch the abuse of Edin Bićo who was lying in a trough full of water, while water was pouring on him from the open faucets, the Court established on the ground of the statement by the witness Đemila and the other witnesses

that the referenced event relating to Enes Bičo indeed occurred and that Đemila Redžović attended it.

A number of witnesses testified about the same event. Among them is Zijada Hatić who noted in her statement that she knew that, in the school, members of Pero Elez's unit put Edin Bičo in the trough, letting water pour on him from the faucets. The referenced witness noted that they had kept him in the trough for about 2-3 hours, and that they had charged Zlata Redžović to stand guard, ordering her not to allow anyone approach.

Also, the witness Rukija Rogoj, who was arrested in early August 1992 and brought to the school, stated that on one occasion Žaga had come to the school. She saw then that Edin Bičo, who suffered from diabetes, was taken into the corridor. Together with him, Zlata Redžović was taken out of the classroom, too. The witness noted that they heard later from Zlata that they had removed Bičo's clothes and put him into a barrel full of water and that they had said to her to "keep plunging" his head into the water. It lasted for one hour.

The witness Hasna Ćusto was in the same room with Đemila Redžović. She stated that detainees had taken Edin Bičo out of the classroom and led him into the corridor where there was a faucet above the trough to drink water. Members of Pero Elez's unit asked what happened to him. When they told them that he was ill, one of them said that he would cure him right away. Then, they took out Džemila Redžović, and she was in the corridor with him. The witness thought that they had poured water on Bičo on that occasion, but that Đemila had seen that all.

The witness Fadila Hatić, who was in the same classroom together with Zlata Redžović, stated that Edin Bičo had been killed in the school, in the trough where he had been choked in the water, and that during that time Zlata Redžović had guarded him, standing next to him.

The witness F, who was detained in the school in Kalinovik in August 1992, stated that a group of soldiers came into the school one day. The group took Edin Bičo, put him into the trough and let water pouring on him. Another group, which passed by later on, cursed his Ustasha's mother, telling him to use gills to breath.

Bearing in mind the statement by the witness Đemila Redžović, it is incontestable that she attended the event and that she was taken into the corridor at the time when Edin Bičo was in the trough.

In this count of the Indictment the Prosecutor's Office described the act of commission in the manner that Đemila Redžović had been forced to watch the abuse of Edin Bičo, but the description does not show that the Prosecutor's Office charged the accused with the abuse of Edin Bičo himself. To tell the truth, the referenced Indictment describes in the next sub-count already the event which refers to the murder of Edin Bičo at the time when he was lodged in the school in Kalinovik, so that the Court considers it to be the reason that in this count the accused are not responsible for the act of Edin's abuse, but are responsible for forcing Đemila Redžović to watch it.

The analysis of statements of the aforementioned witnesses, who testified about the event at issue, shows that the witnesses gave different views of the method of Edin Bičo's abuse and different length of time of that abuse. One of the witnesses maintained without grounds that it was in that trough that Edin Bičo died.

However, the Court nevertheless incontestably established from the statements of all of those witnesses that Edin Bičo spent quite a long period of time in the trough in which water was poured, and that the referenced event was attended by Đemila Redžović. In that connection, Đemila Redžović herself stated that she had been told to come out into the corridor, and when she had seen a guy lying in the trough and the faucets being turned on, she was told to be standing next to him. Also, it ensues from the statement of this witness that she was able during that time to let the water flow from the trough and to turn off the faucets, and Edin himself had implored her several times to do so. Some who would pass by, hit him with a rifle or would plunge him into the water, whereas one persons who passed by, offered her a cigarette to smoke. The witness also stated that she had not known Edin Bičo from before and that he had not been killed then.

In order that the criminal offence of other inhumane acts exists, the law requires a consequence which is reflected in the intention that a victim is caused great suffering or serious injury to body or to physical or mental health.

The referenced count of the Indictment does not state the consequence of the act which Đemila as the aggrieved party had from that sort of coercion, which makes this count of the Indictment deficient in respect of establishing essential elements of the offence. The reason for this is stronger when the fact is taken into account that in every event a consequence makes up the basic element of this criminal offence and that the offence cannot exist without the referenced consequence. Bearing in mind the mentioned deficiency, the Court opines that the offence is unprovable.

At this point, the Court shall refer to the consequence stated by the aggrieved party Đemila. She stated that it was horrible for her to watch all that, and that the referenced event caused one streak of her hair to become grey and her beard to grow, and that Pero Elez cut it. In that connection, the witness noted that upon leaving the scene, she spent the first half of an hour on the ground floor where there were women from Gacko, and then they brought her back to her classroom.

During that testimony, the witness Đemila was showing a grey streak of her hair to the Court, but given that she is a person who is over sixty, that streak could not have been a reliable and positive evidence.

The Court expresses a complete doubt about the part of the statement by the witness Đemila in which she stated that during that time her beard grew long and that Pero Elez cut that beard. The Court has this reserve for the reason that the referenced fact is *per se* unrealistic and unnatural.

Also, in respect of the referenced consequence, none of the witnesses heard who at that time were in contact with Đemila stated that, upon attending the abuse of Edin Bičo, the streak of her hair became grey or that he saw some traces of beard that had grown on her face.

Bearing in mind all the aforementioned, the Court concluded that in the present case there is no evidence to indicate, beyond any reasonable doubt, that the accused committed the criminal offence with which they are charged under this sub-count of the Indictment.

At this point, the Court also wants to state that the first part of the referenced sub-count of the Indictment addresses, in a completely generalized way, the everyday physical and mental abuse of women and men by soldiers and in the presence of police officers, without explicit listing of persons and acts by which the abuse was performed, and also without stating specific consequences, so that in respect of this part of the referenced sub-paragraph, the Court was not able to establish potential responsibility of the accused.

Count 2i)

During the proceedings the Court did not establish beyond any reasonable doubt that, during August, unknown soldiers took a group of women and Zijo Hadžić out of the *Miladin Radojević* Elementary School, loaded them on a truck and carried them to the Pavlovac Farm where they were hitting Zijo Hadžić heavily until he was left lying motionless and that they took women to farm rooms where they raped them.

For the purpose of proving this count of the Indictment, the Prosecutor's Office heard a number of witnesses during the evidentiary procedure and adduced specific documentary evidence.

The witness Hasna Ćusto stated that Zijo Hadžić had been detained with other civilians in the school in Kalinovik during August 1992. On one occasion, when Pero Elez's men came into the school, they noticed him and started beating him there in the school. They tied him with a cord then and brought him in front of the school where they continued beating him. Then, he was taken somewhere, she did not know exactly where, and when he was brought back he was beaten black and blue.

The witness Rukija Rogoj stated that Zijo Hadžić had been detained in the school together with his family. She was present there when unknown persons came to pick up Zijo and when they took him away from the school. When they brought him back to the school, he was all covered with blood. Zijo's sister implored Perica Gočević to take him to the police station because it was a safer place for him, which he did, and Zijo was then taken from the school to the police.

The witness Fadila Hatić stated that she knew Zijo Hadžić and that he had been battered, and that he had been released from the school after the police officer nicknamed Ustasha had collected money and golden items from detainees for his release.

The witness Miloš Crnjak stated that, during the conflict, he was engaged as a soldier and that he stood guard in Donji Logor. He also transported food by a truck for detainees from Gornji Logor in Kalinovik. On one occasion, three or four armed persons with beards and some caps on their heads came to Donji Logor, and they told him to drive the truck in front of the elementary school in Kalinovik. Those men came into the school, and then they took Fatima Pervan, Azemina Pervan and Zijad Hadžić out of the school, the persons whom he

knew. However, more other persons that he did not know were probably taken out. He drove them to the Pavlovac Farm. At the gate, those armed persons got Zijo Hadžić off the truck and they started punching him. Due to those blows, Zijo fell down, so that he thought that Zijo was killed, as he remained lying on the field. The women that he transported there remained there, and he did not know what happened to them, but later he heard rumours that they had been killed in some mine near Jažići, and that Zulfo Kadrić's child was with him. In the photo-documentation presented, the witness recognized the gate and the Pavlovac Farm as the place where he transported the detainees from the school.

The witness Danilo Đorem stated he knew that the Pervan sisters were detained in the school in Kalinovik and he heard that Žaga took them out of the school and most likely killed them. The witness stated they had thought that they had been taken for exchange, but they were told later that Kunarac aka Žaga had killed them.

The witness Miloš Veletić, who worked as a member of the school security staff, stated that on one occasion when he set off for work to do his shift, he had seen Žaga's four soldiers taking the Pervan sisters out of the school and marching them; they were going on foot. Then he thought they had been taken for exchange. He knew that later on the military and the police had been in chase of them in order for them to be brought back. The witness stated he knew that Zijo Hadžić had been beaten up and that he had been all covered with blood, and that Neđo Zeljaja had come into the school and had taken him to the police station. The witness Veletić stated that Zijo Hadžić had been exchanged from the police station.

The witness Milan Lalović (father's name Branko) stated that he had known Zijo Hadžić and that he had known about his having been beaten up and transferred from the school to the police station.

The witness A stated that he had heard that Zijo Hadžić had been pulled by a truck and that he had not seen what they had been doing to him, but rumour had it if Zeljaja had not been there, the situation would have been even worse. He heard later that rapes had occurred in the Pavlovac Farm. He also heard that the Pervan sisters had been buried in the place of Jažići near a sawmill, but had been relocated later on.

As documentary evidence the Prosecutor's Office included photo-documentation into the case record in which the Pavlovac Farm can be seen.

Assessing the evidence presented the Court noted, as an initial consideration, the factual description of this sub-count of the Indictment. The month of August is mentioned in the factual description as the time of the commission of the offence, which *per se* is a very long period, considering that this was a single event. However, bearing in mind that, based on all evidence presented, in August 1992 women were detained in the school in Kalinovik and that during the same month members of various units which were not from the Kalinovik area came into the school, such definition of the act of commission during August is acceptable, especially if it is taken into account that many witnesses, due to considerable lapse of time, were not able to make a more precise statement about time relating to the event itself.

It is stated in the factual description of the offence from this sub-count that on that occasion a group of women and Zijo Hadžić were taken out, and that the same group was taken by a truck to the Pavlovac Farm where the women were raped, and Zijo was receiving heavy blows until he remained lying on the ground, motionless.

It can be seen through the analysis of the given description that the Prosecutor's Office used the expression "a group of women," which indicates that it did not precisely state a single name of the women who had been raped in the Pavlovac Farm. A group consists of at least three persons, so that the Court assumed that the Prosecutor's Office, in default of a precise datum about the number of the women taken out, stated the referenced generalized notion.

None of the witnesses heard described the event at issue in the manner as it was indicated in the factual description. The witness Miloš Crnjak was the only one to state that he had been a participant in the event. He stated that he transported the Pervan sisters and Zijo Hadžić from the school to the gate of the Pavlovac Farm, but the witness did not know what happened to those women later on.

None of the other witnesses heard stated that Zijo Hadžić had come out of the school together with the Pervan sisters, nor did any other witness state with whom Zijo Pervan had been taken out of the school and where he had been battered. Also, statements of the other witnesses who were examined about those circumstances do not mention that Zijo Hadžić was taken out of the school together with a group of other women.

It is evident from the factual description that Zijo Hadžić was being heavily hit until he remained lying on the ground, motionless. Such description does not indicate either what he was being hit with or what part of his body received the hits. Also, it cannot be seen from the factual description whether Zijo Hadžić was killed on that occasion or was unconscious, in other words, the description of the act of commission does not indicate if he survived or was dead.

It is evident only on the ground of the statements of the witnesses heard that Zijo Hadžić stayed alive. Also, witnesses were consistent that he had been battered, whereas the witnesses Lalović and Veletić stated that afterwards he was transferred from the school to the police station and was exchanged. During the main trial the Prosecutor's Office did not hear Zijo Hadžić personally. The Court is unaware of the reason why he did not testify.

However, what constitutes a major deficiency in the factual description of the offence in respect of Zijo Hadžić is the failure to specify, that is, the omission of any consequence, as a compulsory element of the criminal offence referred to in Article 172(1)f) of the BiH CC. Specifically, analyzing the evidence presented, the Prosecutor's Office stated in the closing arguments, in respect of the event concerning Zijo Hadžić, that it is an inhumane act of similar nature, and for this offence to exist it is necessary under the law to establish the consequence which is reflected in causing great suffering or serious injury to body or to physical or mental health.

The Court must observe the framework given in the factual description of the offence, but it is not evident therefrom that some of the referenced consequences of this offence occurred. No documentary evidence was submitted to the Court in that regard.

At this point it is necessary to note that the accused Neđo Zeljaja, according to a number of witnesses, helped Zijo Hadžić whom he transferred to the police station after he had been battered where there was not any physical abuse of detainees, and that afterwards he was exchanged. Bearing in mind this fact too, the Court was not able to establish potential existence of *mens rea* on the part of Neđo Zeljaja in respect of Zijo Hadžić.

As for the rape of women at the Pavlovac Farm, during the evidentiary procedure none of the witnesses heard stated that he had seen the referenced event, nor did any witness state that on the relevant day she had been taken out of the school together with a group of women and Zijo Hadžić and taken to the Pavlovac Farm where she had been raped. Regarding the Pervan sisters, the witnesses stated they heard that they had been killed and that they had been seen dead in the village of Jažići, and that afterwards they had been relocated to an unknown location. Based on the documentary evidence which was included into the case file it ensues that sisters Azemina and Fatima Pervan are still reported missing, considering that their mortal remains have not been found. As to the statement by Witness A that he knew from recounts of the other persons that rapes had occurred at the Pavlovac Farm, but he did not give any more precise statement, it cannot be established beyond any reasonable doubt that it occurred at the time and in the manner as described in the factual description of this sub-count of the Indictment, especially if one has in mind the vagueness of the Indictment in respect of the women who were raped, as well as more precise definition of the time of raping. The Court perceives that, despite the statement by witness Miloš Crnjak that he transported the Pervan sisters, too, to the farm in Pavlovac, the Prosecutor's Office did not state their names in the description of this offence, which also clearly indicates that even the Prosecutor's Office did not obtain clear evidence that, in the event at issue, the group of women, including the Pervan sisters, were raped at the Pavlovac Farm. Specifically, the Prosecutor's Office described the event in the manner that it occurred in just one day, and that Zijo Hadžić was taken out of the school, together with a group of women who were taken to the farm rooms where they were raped. The manner in which the event was described in the Indictment was not confirmed by statements of the witnesses heard.

Bearing in mind all the aforementioned, the Court holds that the present case does not contain sufficient evidence on the basis of which the Court would establish beyond doubt that the referenced event occurred in the manner as mentioned, and also, neither the factual description contains precise and necessary definitions of the elements of the criminal offences with which the accused are charged, because of which it decided to acquit the accused Bundalo and Zeljaja of the charge at issue.

Count 3

Under Count 3 of the Amended Indictment, the prosecutor charges the accused Aškraba with murders, imprisonment, torture, enforced disappearance and other inhumane acts as basic acts of persecution in violation of Article 172 of the BiH CC.

Under Count 3 of the Amended Indictment the prosecutor notes that from 7 July 1995 until 5 August 1992 Đorđislav Aškraba, as an immediate subordinate of the Command of the Tactical Group, performed duty of the commander of the guards and, at the same time,

performed duties of a person who commanded the Barutni Magacin Camp, and that he personally committed the alleged criminal offences in the manner that he personally took prisoners out of the Barutni Magacin Camp on 2, 3 and 4 August 1992, in other words, that he personally made it possible for soldiers of the Serb armed forces to take them out during the period of 5 August 1992. Those prisoners were either killed or are still unaccounted for or are still reported missing. In line with that, the prosecutor notes that the accused Aškraba is criminally responsible for the alleged criminal offences pursuant to Article 180(1) of the BiH CPC.

Before the Trial Panel starts to analyse specific charges against the accused Aškraba, the Panel finds that the prosecutor does not charge the accused with the acts of his subordinates, that is, with command responsibility, nor does the prosecutor charge the accused Aškraba with maintaining the organized system of abuse, nor with any crime which was committed against the prisoners in the camp before 2 August 1992. By contrast, the prosecutor charges the accused with direct participation in various acts of commission mentioned under many sub-counts of Count 3 of the Indictment. Specifically, a close reading of the factual description from Count 3 of the referenced Indictment shows that the accused Aškraba is only said to have performed the referenced duties during the aforementioned period. Therefore, the accused Aškraba is not charged with a single act of commission of any offence in the introduction of Count 3 of the Indictment.

Consequently, the Trial Panel holds it unnecessary to consider the evidence and draw any conclusions relating to the responsibility of the accused and to discuss various crimes committed in the camp before 2 August 1992, so that it will present only specific facts and establish the criminal responsibility of the accused in that context and during the Indictment period.

Taking this into consideration, it is not contestable for the Court that during the period from 7 July 1992 until 5 August 1992 the accused Đorđislav Aškraba performed the duty of the commander of the Barutni Magacin Camp, which ensues both from numerous documentary pieces of evidence reviewed by the Court and from the consistent statements of numerous witnesses who stated that fact.

Count 3 (a)

The prosecutor notes that on 2 August 1992 the accused Aškraba took the civilians Jakub Muslim and Osman Mandra out of the Barutni Magacin Camp, as of when they still remain unaccounted for. Consequently, the prosecutor charges the accused with the enforced disappearance of those prisoners.

Prosecution evidence is based on the testimony by the witness Fejzija Hadžić who testified that on 2 August 1992 the accused Aškraba came into military barracks and took out two prisoners, Alija Šemić and Vejsil Kečo, who came back to the camp later on the same day. The witness recalled that the accused Aškraba had returned in the evening and called Osman Mandra and Jakub Muslim. He told the prisoners that they would be taken for exchange, but they are still unaccounted for.¹⁶ The witness explained that after the war he

¹⁶ Transcript of testimony by Fejzija Hadžić, p. 48

had tried to find them through the Commission for Missing Persons, but in vain. He believes that Osman Mandra and Jakub Muslim have been killed.¹⁷

In order to substantiate his allegations, the prosecutor included into the case file two certificates issued by the Commission for Missing Persons of the Federation of BiH, confirming that Osman Mandra and Jakub Muslim are registered as missing persons.

Count 3 (b)

The prosecutor also notes that on 3 August 1992 the accused Aškraba took out of the Barutni Magacin Camp Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto. The prosecutor further notes that those prisoners were found dead in the zone of Rogoj on the same day; two by two, their hands were tied with handcuffs. Because of that, the prosecutor charges the accused Aškraba with the murder of those prisoners.

In order to substantiate his allegations, the prosecutor summonsed several witnesses to testify about the alleged event. Fejzija Hadžić testified that on 3 August 1992 the accused Aškraba came into the military barracks with a list of prisoners who allegedly had to go for exchange. He called Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto from the crowd. The witness also testified that prisoners, curious to see what was going on, had climbed to one another's shoulders. They saw that four prisoners, who were handcuffed, were put into a police vehicle. The witness stated that he had heard much later that the bodies of Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto had been found in the zone of Rogoj.

Manojlo Krstović who stood guard in the camp on 3 August 1992 confirmed the testimony by Fejzija Hadžić. He testified that four prisoners had indeed been taken out the camp. However, this witness stated that the prisoners were supposed to go to Kalinovik, not Rogoj where the bodies were found.

The Witness Z testified that he had heard Boško Govedarica asking for a couple of pairs of handcuffs. The rumours had it that those handcuffs were used for four prisoners, that is, for Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto who were exhumed with those handcuffs.

The witness A testified that Boško Govedarica had ordered police officers to hand over handcuffs and that the Prosecution Witness H had signed a receipt for several pairs of handcuffs which he had received on that occasion.¹⁸ Besides, the Witness A testified that he had talked with Boško Govedarica in connection with the execution of those prisoners. According to the witness, Govedarica confided to him that the accused Bundalo personally ordered Boško to execute those prisoners and that Boško was personally present at the time when the execution was performed.¹⁹

Akif Mahmutović, who was a member of the BiH Army forces that were in Trnovo, testified that on 3 August 1992 he received the order to transport several bodies. The

¹⁷ Ibid, p. 50

¹⁸ Transcript of testimony by Witness A of 14 April 2008, pages 101-102

¹⁹ Ibid, pages 102-103

witness recalled that he had seen neither wounds nor blood on the bodies, but that there had been bruises on the faces of the killed persons. The witness also recalled that two by two bodies had been tied and that they had had handcuffs on. The witness stated that he had brought the bodies from the place where they had been found to the village of Dujmovići where they were buried.

Finally, the witness Džafer Hubijar testified that in August 1992 he was in the village of Dujmovići as a refugee. The witness recalled that people who lived in the village buried a certain number of bodies after the fall of Rogoj. The witness also recalled that in early August 1992 he had to bury Zaim Čusto, whom the witness had known from before the war, and three more persons. The witness explained that Zaim Čusto and three more victims had been, two by two, tied with handcuffs and that they had to bury two bodies in a single grave as they were not able to take off their handcuffs. The bodies were buried in the village of Dujmovići.

In addition to testimonies by the witnesses, the prosecutor included four exhumation records into the case record for Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto.

Count 3(c)

The prosecutor also notes that on 4 August 1992 the accused Aškraba released Mustafa Šorlija from the Barutni Magacin Camp. The body of Mustafa Šorlija was exhumed later on in the area of the Foča Municipality. In line with this, the prosecutor charged the accused with the murder of Mustafa Šorlija.

The only Prosecution witness, Fejzija Hadžić testified that the accused Aškraba came to the military barracks on 4 August 1992. He called Mustafa Šorlija who allegedly had been designated for exchange. The witness recalled that, before some prisoners had been taken away, they saw through the window that Mustafa Šorlija had been tied and put into a police vehicle. Finally, the witness stated that he learnt in 2008 that the body of Mustafa Šorlija had been exchanged in Osanice near Goražde, and identified in 2006.

In order to substantiate his allegations, the prosecutor also included documentary evidence referring to the exhumation and identification of Mustafa Šorlija into the case file.²⁰

Count 3(d)

The prosecutor also notes that upon the approval of the Command of the Tactical Group and the chief of the Kalinovik *SJB*, the accused Aškraba allowed Pero Elez and other unidentified soldiers, without any documentation on surrender, to take 12 prisoners from the camp to the Foča *KPD* on 5 August 1992. The prisoners were Salko Bičo, Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Hasan Suljić, Mustafa Mušanović, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić. The prosecutor further states that the prisoners were killed shortly after their departure. The bodies of those prisoners, except for the bodies of Hasan Suljić and Mustafa Mušanović, were exhumed and identified after the war. Hasan Suljić and Mustafa Mušanović are still reported missing. For that reason, the prosecutor charged the accused Aškraba with the murder of Salko Bičo,

²⁰ Prosecution evidence 44 - 51.

Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić. The prosecutor charged the accused Aškraba also with the enforced disappearance of Hasan Suljić and Mustafa Mušanović.

In order to substantiate his allegations, the prosecutor also summonsed several witnesses to testify about the alleged event. Fezija Hadžić testified that a group of soldiers came into the camp on 5 August 1992. The witness did not know the specific commander of that military group, but he was told that Pero Elez led them. According to the witness, Pero Elez and his men were notorious for cruel abuse and murders of Bosniaks in the Foča Municipality, so the people who were incarcerated in the camp knew them. The witness recalled that Pero Elez had told the prisoners to get ready for exchange. He had a list of prisoners and he started to call the roll. He called Salko Bičo, Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Hasan Suljić, Mustafa Mušanović, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić. Those men were loaded on a FAP truck, which was operated by Muharem Nikšić, and were taken into the direction of Foča. The witness also recalled that 10 or 15 minutes upon departure of the truck he heard shootings from weapons and about one hour later the truck returned empty to the camp.

Manojlo Krstović testified that he was a guard in the Barutni Magacin Camp on 5 August 1992. The witness recalled that 15 soldiers came into the camp at around 16:00 or 17:00 hours, demanding to come in. They were armed and seemed dangerous. The witness stated that on 5 August 1992 the accused Aškraba was not in the Barutni Magacin Camp. Because of that, the witness had to call the military command and ask for instructions and help. He was told to call the police. The witness called the police, but was informed that prisoners were the responsibility of the military command. When the witness finished the telephone conversation, the soldiers came into the camp. They asked the guards to give them a cord to tie up the prisoners. The witness also testified that the prisoners were taken away in two groups, with around one hour and a half between them.

In the same manner Witness I testified that he was on duty in the Barutni Magacin Camp when the prisoners were taken away. The witness stated that the event occurred on 2 August 1992, but he did not rule out the possibility that the event took place on 5 August 1992. The witness recalled that Pero Elez and his men had come into the camp. They arrived by a military freight truck and they numbered around 15 to 20. The soldiers took away around 12 prisoners and transported them in the direction of Foča. The witness recalled that 10 to 15 minutes upon departure of the truck he heard shooting from weapons and assumed that the prisoners had been killed. The soldiers returned to the camp later on, loaded on the remaining prisoners and transported them under escort of police in the direction of Miljevina, towards Foča. According to the witness, Pero Elez had documents allowing him to take the prisoners out of the camp. The witness assumed that the accused Aškraba had seen those orders, given that Pero Elez's men had gone into his office. The witness did not personally see the accused Aškraba on that day.

Miloš Crnjak testified that he was a guard in *Gornji Logor* on 5 August 1992. The witness recalled that he had seen military trucks passing by and travelling in the direction of Foča. The trucks transported the prisoners from the *Barutni Magacin* Camp. The witness explained that he had seen the military trucks with prisoners twice on that day; the interval between the passing by of each of the trucks was two hours. The witness recalled that two

soldiers had been on each of the trucks, but he had not seen that the prisoners had been tied up. The witness further recalled that he had been told that the prisoners had been taken for exchange. However, he did not know if the prisoners had been exchanged.

In order to substantiate his allegations, the prosecutor also included documentary evidence referring to the exhumation and identification of Salko Bičo, Ismet Hatić, Fikret Karaman, Mirsad Karaman, Salko Kurtović, Safet Suljić, Vehbija Dudo, Šaban Pločo, Meša Sačić and Edin Hadžić. The prosecutor also included into the case record two certificates of missing persons for Hasan Suljić and Mustafa Mušanović.

Count 3(e)

The prosecutor also notes that on 5 August 1992 the accused Aškraba allowed Pero Elez and his soldiers to take out of the camp Nedžib Pervan, Zijo Pervan and Muzafer Sačić who are still unaccounted for. For that reason, the prosecutor charged the accused Aškraba with the enforced disappearance of Nedžib Pervan, Zijo Pervan and Muzafer Sačić.

The only witness, Fejzija Hadžić, testified that on 5 August 1992 Pero Elez and his men came into the military barracks. They told the prisoners to get ready for exchange and called Nedžib Pervan, Zijo Pervan and Muzafer Sačić. They took away the three men who have been unaccounted for ever since.

In order to substantiate his allegations, the prosecutor included into the case file the certificates issued by the Commission for Missing Persons of the Federation of BiH, confirming that Nedžib Pervan, Zijo Pervan and Muzafer Sačić are registered as missing persons.

Counts 3(f) and 3(g)

The prosecutor also notes that the accused Aškraba, having known that the prisoners would be killed, allowed Pero Elez and his soldiers to take out the remaining prisoners out of the camp on 5 August 1992. The prosecutor further notes that the prisoners were loaded onto three trucks and were taken under the escort of soldiers and police officers in the direction of Miljevina, the Foča Municipality. The prosecutor argues that the column stopped in the village of Ratine, the Foča Municipality, where twenty four (24) prisoners were killed, and their bodies were set on fire. Those prisoners were Enes Hadžić, Esad Hadžić, Hasan Hadžić, Selim Hadžić, Mehmed Ahmethodžić, Avdija Škoro, Salko Vranović, Dr. Abdurahman Filipović, Almir Čusto, Husnija Rogoj, Refik Rogoj, Elvir Suljić, Ramiz Suljić, Emir Suljić, Ramo Kurtović, Mirso Suljić, Damir Suljić, Edin Suljić nicknamed Čiča, Suda Suljić nicknamed Medo, Sado Suljić, Ismet Smječanin, Adil Mulaomerović and Sabahudin Juković. Fejzija Hadžić was the only one to survive the execution. Hence, the prosecutor charged the accused with the murder of the twenty three (23) above mentioned prisoners.

Finally, the prosecutor notes that the remaining two trucks with prisoners were driven to the place of Tuneli /tunnels/, the Foča Municipality, where the soldiers killed the remaining prisoners from the *Barutni Magacin*. Those prisoners were: Adem (Hasim) Hatić, Adem (Began) Mustajbegović, Ramiz (Avdo) Kešo, Asim (Hamid) Pervan, Veiz (Hasan) Hadžić,

Bećir (Bajro) Pervan, Hamdo (Hasan) Pervan, Hasan (Alija) Mušanović, Hilmo (Meša) Suljić, Ibrahim (Fadil) Bajrić, Kasim (Meša) Suljić, Fehim (Meša) Suljić, Bajro (Hasan) Pervan, Avdo (Šaban) Kešo, Safet (Avdo) Mušanović, Vejsil (Nasuf) Kečo, Nasuf (Ramo) Hadžić, Munib (Adem) Velić, Ramo (Mujo) Suljić, Fehim (Omer) Srnja, Jusuf (Huso) Hadžić, Muharem (Mujo) Bičo, Edhem (Smajo) Hadžić, Vahid (Omer) Hadžić, Adem (Bećir) Hatić, Ibro (Bajro) Pervan, Salko (Nasuf) Suljić, Rašid (Murat) Redžović, Hilmo (Meho) Jašarević, Adem (Meša) Suljić, Smajl (Smajo) Hadžić, Esad (Ahmed) Hadžimuratović and Ahmet Hadžić. Those victims were exhumed and identified after the war. Hilmo Rogoj, Muhamed Čusto, Džafer Kešo, Sevdo Suljić, Smajo Ćemo, Alija Šemić are still reported missing.

Fejzija Hadžić, the only survivor of the massacre, testified that Pero Elez had come into the military barracks on 5 June 1992. He told the prisoners to get ready for exchange and started calling the names of men from the list. Pero Elez was accompanied by around 10 up to 15 soldiers. They wore military uniforms, but the witness did not see any insignia. The prisoners were loaded onto 3 military trucks and taken in the direction of Foča. The witness recalled that at some point the column stopped and the following twenty four prisoners were unloaded from one of the trucks: Enes Hadžić, Esad Hadžić, Hasan Hadžić, Selim Hadžić, Mehmed Ahmethadžić, Avdija Škoro, Salko Vranović, Dr. Abdurahman Filipović, Almir Čusto, Husnija Rogoj, Refik Rogoj, Elvir Suljić, Ramiz Suljić, Emir Suljić, Ramo Kurtović, Mirso Suljić, Damir Suljić, Edin Suljić nicknamed Čiča, Suda Suljić nicknamed Medo, Sado Suljić, Ismet Smječanin and Adil Mulaomerović, Sabahudin Juković and the witness Fejzija Hadžić personally. The prisoners, including the witness, were taken to a stable which was across the road. Four men were separated - Edin (Cico) Suljić, Suda (Medo) Suljić, Elvir Suljić and Mirsad Suljić. They were ordered to bring the other prisoners into the stable. After the prisoners had been lodged in, the soldiers started shooting and they executed those four men as well as the other prisoners. Before they left, the soldiers torched the stable. The witness explained that, although he was wounded, he was able to flee from the stable through an opening on the floor.

Fejzija Hadžić further testified that the prisoners from the other two trucks watched the killing from the road, and then they were transported in the direction of Foča after the stable had been torched. The witness identified the names of the persons who were listed in the Indictment and in the Operative Part of the Verdict. He stated that he knew all the prisoners, because they had been detained in the same military barracks from 25 June until 5 August 1992. The witness stated that he learnt later on that they had been killed at the location of Tuneli. In 1999 the witness went to the stable and Tuneli with representatives of the Commission for Missing Persons to identify the bodies.

Fejzija Hadžić's statement about taking the prisoners by Pero Elez and his men out of the *Barutni Magacin* Camp was confirmed by the evidence given by the witnesses Manojlo Krstović, Witness I and Miloš Crnjak, which has already been explained in detail in the previous sub-counts.

In addition to the statements by the witnesses, the prosecutor called the expert witnesses Vedo Tuco and Hamza Žujo, specialists in forensic medicine. Those expert witnesses gave statements about the exhumation and forensic examination which they performed on the

mortal remains of detainees from the Barutni Magacin. Their reports were admitted into the evidence.

Finally, the prosecutor presented a number of documents referring to the exhumation and DNA identification of the above mentioned victims, as well as certificates on disappearance for the victims whose mortal remains have not yet been found and identified.

ARGUMENTATION BY DEFENCE

The Defence does not challenge the fact that the accused Aškraba took the mentioned prisoners out of the camp on 2, 3 and 4 August, but it maintains that he did so with the approval of Boško Govedarica, Chief of the Kalinovik Public Security Station. The Defence explains that all acts of provisional taking out of the camp were approved by superiors' orders, in accordance with the document entitled "House Rules and Discipline in Prison"²¹. Specifically, Item 8 of the House Rules stipulates that taking prisoners out of the Barutni Magacin can be approved by the commander, security chief and chief of the Serb Public Security Station. The document was signed by the Prosecution Protected Witness H, assistant security commander of the Kalinovik Tactical Group, who testified at the main trial that he personally had brought in and hung the House Rules on the given place in the Barutni Magacin Camp.²² In that regard, the Defence notes that the accused Aškraba did not have any discretion to decide on the release of detained persons and that he did not have any choice but to carry out orders by his superiors.

Further, the Defence maintains that the prisoners, including Osman Mandra, Jakub Muslim, Mustafa Šorlija and others, were taken out of the camp either to perform forced labour or for medical reasons or for exchange, and that all acts of leaving the facility provisionally were recorded. All of those prisoners were brought back to the camp uninjured. In that regard, the Defence contests that the accused knew or had reason to know that the alleged victims were taken out of the camp because of some other reason and not because of exchange. The Defence maintains that, as far as the accused Aškraba knew, the prisoners were taken out for exchange. At the referenced time he approved of their leaving the facility, being confident that they would be exchanged.

In order to substantiate its allegations, the Defence submitted the Exit Log²³ which the accused Aškraba and others kept in the camp in accordance with the House Rules adopted. The Exit Log provides different pieces of information relating to the acts of taking prisoners out of the camp provisionally, that is, the name of the prisoner coming out of the camp, date and time of taking the prisoner out and bringing him back to the camp, reason for his being taken out provisionally, the place where he was taken and, finally, the name of the person who approved his being taken out of the camp.

The Defence also called witnesses who talked about the functioning of the camp and about the referenced events. The witness Neđo Vuković, who was a guard in the Barutni Magacin at the material time, testified that members of military or police regularly took prisoners out

²¹ Defence Exhibit OIII-4

²² Statement by Witness H

²³ Defence Exhibit OIII-3 (Notebook)

of the camp, but they always did so upon the approval by their superiors. Orders came from different superiors, that is, from Boško Govedarica, Neđo Zeljaja, Command (referring to military command), etc. and they were issued by members of the military or police, depending on who requested the prisoners.

This witness further stated in his testimony that men had been taken away no matter whether the accused had been present in the camp or not, and that all pieces of information relating to taking the prisoners out of the facility provisionally had been recorded in the Exit Log. The witness explained that the Exit Log was kept at the sentry box A which stood at the entrance of the camp, and that the record was always made by the guard who was on duty there, including the accused Aškraba. Further, Neđo Vuković reviewed the Exit Log at the main trial and confirmed its authenticity. He also separated and recognized the notes which he personally made into the Exit Log. Therefore, the witness stated that he personally had recorded the acts of taking the prisoners out of the camp on 12 occasions, that is, on 7, 8, 9, 13, 14, 16, 22, 24, 25, 27, 28 and 30 July 1992 and that, on those occasions, the acts of taking them out provisionally had been approved by Boško Govedarica, Neđo Zeljaja and the Command (referring to the military command), as was recorded in the Exit Log.

His testimony was also confirmed by the expert witness in graphology Esad Bilić, the expert witness of the Prosecutor's Office. The expert witness reviewed the witness's handwriting and compared it with notes which he had made in the Exit Log. The expert witness confirmed that the notes which Neđo Vuković identified as his own had indeed been made in the Exit Log by this witness.

The Defence notes that the prosecutor does not challenge the authenticity of the Exit Log, nor does he challenge its veracity. The prosecutor does not challenge the findings by the expert witness either relating to the fact that the records in the Exit Log were made by different persons. Finally, the Defence remarks that the Prosecutor's Office does not contest the consistency of the notes in the Exit Log with other pieces of evidence which were presented during the main trial, either. Accordingly, the Defence notes that the Trial Panel should pay due attention to the notes made in the Exit Log.

Finally, the Defence contests that the accused was present in the camp on 5 August 1992. The Defence maintains that the accused was not in the camp on the referenced day and that he did not approve or know anything about taking the prisoners out of the camp by Pero Elez and his men. In that regard, the Defence presented the evidence by hearing the witnesses.

CONCLUSIONS BY THE COURT

By virtue of the evidence presented, the Court established that the accused Đorđislav Aškraba held the position of the commander of the guards in the *Barutni Magacin* at the material time, that is, from 7 July 1992 until 5 August 1992. This conclusion ensues from the following:

The review of the Decision by the MUP of the SR BiH of 1 April 1992 indicates that Đorđislav Aškraba, upon the establishing of the MUP of the Srpska Republika, was provisionally assigned to duties and tasks of the assistant commander of the Ilidža SJB.

It ensues from the Personal Questionnaire by the RS MUP of 9 December 1993 that Aškraba was in the RS MUP, Ilidža SJB, from 1 April 1992 until 1 May 1992, that he was in the Kalinovik SJB from 4 May 1992 until 7 July 1992, whereas he was in the RS Army, VP 7223, from 7 July 1992 until 9 September 1993. Afterwards, he was in the Foča SJB until 30 October 1993, and then until 9 December 1993 he was again in the Kalinovik SJB. It is also recorded that he had a knee injury.

The review of the Personal Questionnaire by the RS MUP, Police Station KPDG Srbinje, for Đorđislav Aškraba indicates that the entry on his career gives the information that he was in the Ilidža SJB until 1 May 1992, and then he was in Kalinovik SJB during the period from 1 May 1992 until 28 May 1992, and from 9 September 1993 until 24 April 1995. The same information about Aškraba was also given in the Letter by the Kalinovik SJB which was sent to the Trebinje CJB on 11 June 1999.

Also, it ensues from the Certificate which was issued by the Kalinovik SJB on 8 April 1993 and signed by the chief Boško Govedarica that Đorđislav Aškraba signed up for the work in the Serb Police Station Kalinovik on 4 May 1992. From 4 May 1992 until 7 July 1992 he performed duties of public security and during that period he spent 35 days on the front line.

From 7 July 1992 until 7 August 1992, with the approval of the SJB, Aškraba was transferred to the Republika Srpska Army to perform duties and tasks of the security commander in charge of detained persons of Muslim ethnicity. It is further noted that on 7 August 1992 he suffered an injury of his right leg at work and from that day he was on sick leave until 25 March 1993.

The similar Certificate was issued to the accused Aškraba by the Kalinovik SJB on 13 September 1993. It reads that he was in the Kalinovik SJB during the period from 3 May until 28 May 1992 when he joined the RS Army according to an arrangement with the Kalinovik military command. The Certificate was signed by the chief Boško Govedarica and the correction of the year was signed by the accused Zeljaja.

On the basis of the Certificate by the Kalinovik SJB of 6 March 1996, as a MUP member, Đorđislav Aškraba participated in the armed conflicts during the period from 1 May 1992 until 28 May 1992 and during the period from 9 September 1993 until 24 April 1995.

The review of the Certificate by the RS Ministry of Defence, Kalinovik Section, indicates that Đorđislav Aškraba participated continuously in the armed conflicts in the territory of BiH from 28 May 1992 until 9 September 1993 without a break. The section of that Certificate under "Notes" reads that the time covered by medical treatment was credited towards the referenced time.

On the basis of the Decision by the Bijeljina RS MUP of 30 August 1996, the employment of the accused Đorđislav Aškraba ceased on 31 August 1996.

Đorđislav Aškraba was registered by the Personnel Service which was headed by Milovan Purković and which covered all military conscripts in Kalinovik. He was registered in the logistics unit with his personal data.

The witness Manojlo Krstović stated that in early August he met Đorđislav Aškraba who told him that he was a guard commander in the *Barutni Magacin*, and he engaged him to work as a guard in the *Barutni Magacin*.

Also, a great number of other witnesses, both his colleagues who worked together with Aškraba and the witnesses who came to the *Barutni Magacin*, consistently stated that Đorđislav Aškraba was a guard commander.

The most convincing statement is that by Witness A who was an active police officer and who stated that all active police officers had been interested in being appointed a guard commander in the *Barutni Magacin*, because it meant that they would not be sent to the frontline, and also they all thought that the captured civilians would be soon exchanged. The witness further stated that the reserve police officer Đorđislav Aškraba had been appointed a guard commander in the *Barutni Magacin*, which provoked anger among the then active police officers from the Kalinovik SJB.

The Court could not establish beyond any reasonable doubt that Đorđislav Aškraba was at the same time a camp warden, in other words, that he also performed duties of a person who commanded this camp, as was noted by the Prosecutor's Office under Count 3 of the Indictment, nor did it accept the position by the Defence that Aškraba was an ordinary guard or, at most, a guard shift leader, as was concluded by the expert witness, Prof. Dr. Radovan Radinović, in his Finding and Opinion, given that the documentary evidence tendered, as well as statements by witnesses, clearly indicate that he was a guard commander.

Specifically, not a single piece of evidence suggests that the *Barutni Magacin* had its management, nor does there exist a single piece of documentary evidence on the basis of which it could be concluded that Aškraba had the duty to command that camp. Only the witness Fevzija Hadžić stated in his testimony that, upon coming to the *Barutni Magacin*, the accused Aškraba had told the detained civilians that he was a camp warden, which was not confirmed by any other evidence. The prosecutor himself gives in the Indictment a different description of duties Aškraba performed in the *Barutni Magacin*. Thus, he notes in the introductory part of the Operative Part of the Indictment that, in addition to the duty of guard commander, he performed duties as the camp warden, whereas he notes under Count 3 of the Indictment that he also performed duties of a person who commanded that camp, therefore, there is no implication that he was a prison warden.

The review of the Official Note made on 14 July 1992 shows that guards in the *Barutni Magacin* turned to the Command of the Kalinovik Tactical Group and the chief of the Kalinovik SJB for help, requiring that specific problems which were perceived in their work be resolved. That document bears the signature "guards of the *Barutni Magacin*", and below it there is a signature by the accused Đorđislav Aškraba. It does not ensue from that document that any management of the camp existed, nor did the accused use the title of the camp warden for himself.

The review of the Exit Log, which the Defence for the third accused included into the case file of the Court as evidence, indicates that the accused Đorđislav Aškraba was one of the

major scriptors of the book, that is, the person who entered the most details into the book and who, according to the Finding by the expert witness in graphology Zlatko Dugandžić, systematized that book.

Also, the accused Aškraba included the Duty Roster in the *Barutni Magacin* into the case record. The review of the Duty Roster indicates that assignments to sentry boxes started on 10 July 1992 and that the Duty Roster was drawn up to cover the period until 6 August 1992. On the basis of the Finding and Opinion by the expert witness Radovan Radinović, it concerns the physical security of the facility by means of guard service. The Duty Roster contains pieces of information about when and how the internal service was arranged in *the Barutni Magacin*. The referenced document corresponds to the military document "Feasibility Study of Guards". The document contained pieces of information on distinctive signs. The fact that the referenced book was with the accused Aškraba all the time also indicates that it was he who was in charge in the *Barutni Magacin* and who entered data in the referenced document and kept it under his control.

The expert witness Radinović maintained in his Finding and Opinion that the accused Đorđislav's top role was that of a guard shift leader in the Barutni Magacin facility, and that he was superior only to guards, remarking in that connection that there did not exist any document which would indicate that he had been appointed to any position. The Court did not accept such opinion by the expert witness Radinović, seeing that it is evident from statements by numerous witnesses as well as from the Certificate by the Kalinovik SJB which was issued on 8 April 1993 that, from 7 July 1992 until 7 August 1992, Đorđislav Aškraba was transferred, with the approval of the SJB, to the Republika Srpska Army to perform duties and tasks of the security commander for the detained persons of Muslim ethnicity.

The Court also had in mind the document called the House Rules and Discipline in Prison. The Witness H said about the document that he personally had drawn it up at the accused Ratko Bundalo's dictation in the Command of the Kalinovik TG and that he had brought it into the *Barutni Magacin* and hung it at a visible place. The head of the same document reads that the document had been drawn up by the Kalinovik Tactical Group. The first seven items of that document refer to the internal order and activities to be undertaken, whereas the last two items define somewhat more specifically the powers of the military, police and municipal authorities and their leading figures.

Item 8 of the House Rules reads: "Under the written approval by the commander, the security chief and the chief of the Serb Public Security Station, persons can be taken outside the prison complex". Analysing this item, the Court concluded that it concerns the commander of the Kalinovik TG, assistant security chief in the TG Kalinovik Command and the chief of the Kalinovik Public Security Station.

Item 9 of the House Rules further develops the procedure for taking the prisoners outside the facility complex and it reads that, under the decision by the security chief of the Serb Public Security Station, the persons can be used for performing labour as requested by the president of the Kalinovik Municipal Assembly.

Also, the review of the Exit Log shows that taking the detained persons out to perform compulsory work service was possible only upon the approval by the commander and chief of the Kalinovik SM.

Bearing in mind those two documents, as well as the statement by the witness Neđo Vuković, the Court established that guards, as well as the accused Aškraba took some prisoners outside the complex of the prison only upon the approval of authorised persons.

There is also documentary evidence about the injury received by Aškraba in August. The Patients Protocol of the Kalinovik Health Centre for the period from 24 July until 7 September 1992 shows that Đorđislav Aškraba was recorded as a patient on 7 August 1992 and that he was on a sick-leave from that day and that medical check-up was scheduled for 10 August 1992. The review of the Patients Protocol it is evident that Đorđislav Aškraba was recorded as a person who came for the change of dressing in a dressing station on 10 August 1992.

The referenced evidence clearly indicates that Đorđislav Aškraba held the position of the guard commander in the *Barutni Magacin* at the material time

By virtue of the evidence presented, the Trial Panel accepts that the prisoners who were mentioned under Counts 3a), 3b), 3c), 3d), 3e), 3f) and 3g) of the Amended Indictment were taken out of the camp on the mentioned days, and that the accused Aškraba personally took prisoners out on 2, 3 and 4 August 1992. The Court also accepts that the majority of these prisoners were killed, whereas the others are reported missing. However, the Court is not satisfied that the accused knew or could have known that the prisoners were taken out of the camp for some other reason, but not for exchange, because the acts of coming in and leaving the facility were recorded in the Exit Log. The Court is also not satisfied that the accused Aškraba was present in the camp on 5 August 1992, when Pero Elez and his men took the majority of prisoners out of the camp. Consequently, the Court acquitted the accused of the charges brought under Count 3 of the Indictment.

Regarding the events of 2, 3, 4 and 5 August 1992, the Court holds that the statement by Fejzija Hadžić about taking the prisoners out of the military barracks by the accused is credible and reliable, especially because the defence does not contest those facts, and also because the statement by this witness is supported and confirmed by the notes made in the Exit Log and by the statements by other witnesses or other materials that go in favour of that assertion.

The Court also received voluminous forensic evidence pertaining to the identity of the persons who were detained in the *Barutni Magacin* Camp and killed during the period from 2 until 5 August 1992. That evidence was made at different time and at different locations, because the bodies were exhumed from different graves and the investigations bear different dates. The complete list of all of those pieces of evidence was given at the beginning of the Verdict, individually for each mentioned victim, including the missing persons.

The expert witness, Dr. Vedo Tuco, specialist in forensic medicine, testified about forensic examination and identification by means of DNA, which were carried out on the bodies of the victims from the *Barutni Magacin* Camp. He stated that he made the examination in

December 2004 under the Order by the Cantonal Court Goražde. Dr. Vedo Tuco concluded on the basis of injuries that all victims mentioned at the main trial had been killed by projectiles fired from hand weapons at point-blank range. His report was admitted into evidence and makes unavoidable part of evidence from the trial.

Having examined the thorough forensic evidence and reports by the expert witness, the Court estimated that the referenced evidence was reliable in terms of identification of the victims who were taken out of the *Barutni Magacin* between 2 August and 5 August 1992 and killed in the events that are described under Count 3 of the Indictment.

The Trial Panel paid special attention to the Exit Log which was included into the evidence by the Defence. The Court made a careful assessment of the statements by the expert witnesses, graphologists Zlatko Dugandžić and Esad Bilić, which were presented in this case both by the Prosecution and Defence in connection with the authenticity of the records in the book which refer to the acts of taking the prisoners out of the camp provisionally. The expert witness Zlatko Dugandžić stated in his Finding that the accused Đorđislav Aškraba had systematized the Exit Log and that there are three scriptors therein, one of whom is the accused Aškraba. The same expert witness noted that the accused Đorđislav Aškraba is a scriptor in this book for the days 2, 3, 4 and 5 August 1992. The Court accepted the Findings and Opinions by the expert witnesses in graphology. Assessing the probative value of those pieces of evidence, the Court had in mind the professional competence of the expert witnesses, the methodology used by the expert witnesses and the credibility of the conclusions drawn in view of these factors and the other evidence accepted by the Court.

The Court did not accept the proposal by the Defence for the second-accused that an additional expert analysis be made in respect of the exact time of entering data into the Exit Log, seeing that the Finding by expert witness Esad Bilić shows that at least five years passed from the entry, and according to the witness Vuković who was a scriptor in the same book, it can be seen that he entered data into that book when prisoners were taken out of the camp, which means that the book was kept on a daily basis. In that connection, the Court also had in mind the Opinion by the expert witness Dugandžić in the part where he notes that, as for the writing in a ball-point pen, it is very difficult to specify the date or the year of writing, and that such attempts would be a waste of time. Also, the same expert witness noted that remarks for the day of 5 August 1992 were written in different pencil regarding the names of persons and the horizontal line below those names, and that the remarks were not made at the same time when the names were written down, although they were not made much later. The Court established that a number of witnesses, who personally kept the records in that book at the given period of time or who knew about its existence, the expert witness in graphology and the other documentary evidence, which proves the given assertions, confirmed the authenticity, consistency and veracity of the contents of the Exit Log.

It is clear from the close inspection of the Exit Log that many prisoners, including Osman Mandra, Jakub Muslim, Nezir Rogoj, Mustafa Šorlija, Hasan Hadžić and others were taken out of the camp on a regular basis and led to perform forced labour under orders of Boško Govedarica, military command or Neđo Zeljaja. Those persons were the accused Aškraba's superiors. For instance, the Exit Log shows that Osman Mandra was taken out of the camp and brought back on 7 July 1992, 11 July 1992, 13 July 1992, 14 July 1992, 15 July 1992,

21 July 1992, 23 July 1992, 25 July 1992, 27 July 1992, 29 July 1992 and 30 July 1992²⁴. The Exit Log also shows that Jakub Muslim was taken out of the camp and brought back on 7 July 1992, 10 July 1992, 14 July 1992, 15 July 1992, 21 July 1992, 23 July 1992, 25 July 1992, 27 July 1992, 28 July 1992 and 30 July 1992²⁵. Nezir Rogoj was taken out on 15 July 1992, 16 July 1992, 18 July 1992, 18 July 1992 and 21 July 1992²⁶. Mustafa Šorlija was taken out of the camp on 9 July 1992, 10 July 1992, 14 July 1992, 15 July 1992, 22 July 1992, 24 July 1992, 25 July 1992, 27 July 1992 and 28 July 1992.²⁷ Hasan Hadžić was taken out on 7 July 1992, 9 July 1992, 10 July 1992 (p. 2), 13 July 1992, 14 July 1992, 15 July 1992 (p. 6), 16 July 1992 (p. 8), 17 July 1992, 18 July 1992 (10), 21 July 1992 (p. 14), 23 July 1992 (16), 24 July 1992 (16), 27 July 1992 (22), 29 July 1992, 30 July 1992 (24). Adem Mustajbegović was taken out on 9 July (2), 10 July, 11 July (4), 14 July (6), 16 July (8), 22 July, 23 July (16), 24 July, 25 July (18), 28 July (22), 29 July 1992. These are only some instances of taking the prisoners provisionally out of the camp.

The Exit Log further reads that Osman Mandra and Jakub Muslim were taken out of the camp on 2 August 1992. The records show that they were taken out at 17:15 hours for exchange, under the order of Boško Govedarica.²⁸

The Exit Log also indicates the taking of Remzo Suljić, Nasuf Bičo, Nezir Rogoj and Zaim Čusto out of the *Barutni Magacin* Camp on 3 August 1992. According to the records, the prisoners were taken out at 11:30 hours for exchange, under the order of Boško Govedarica.²⁹

The Exit Log also indicates that Mustafa Šorlija was taken out of the camp on 4 August 1992. He was taken for exchange at 15:00 hours, under the order of Boško Govedarica.³⁰

Finally, the Exit Log reads that the remaining prisoners of the *Barutni Magacin* Camp were taken to the KPD Foča on 5 August 1992 and that their taking was approved by Boško Govedarica.³¹

These records go in favour of the testimony by Fejzija Hadžić who stated that prisoners had allegedly been taken out for exchange. The records also support the testimony by the Prosecution witnesses, as well as the assertion by the Defence that prisoners were released only upon the approval by different senior officers from Kalinovik. Thus, Witness H stated that the accused Aškraba had not been allowed to make decisions as to who would go out of the camp. That the referenced statement is correct ensues also from the statement by the witness Fejzija Hadžić who stated that Aškraba had read the names of persons who were to be taken out, which means that he had received the list, and that authorized persons had been deciding about that.

²⁴ Id, p. 2, 4, 6, 14, 16, 18, 20, 24

²⁵ Id, p. 2, 4, 6, 8, 14, 18, 20, 22

²⁶ Id, p. 8, 10, 12, 14

²⁷ Id, p. 2, 4, 6, 8, 16, 18, 22,

²⁸ Id, p. 24-25

²⁹ Id, p. 24-25

³⁰ Id., p. 24-25

³¹ Id., p. 24-26

Given that the prosecutor did not challenge either the authenticity and the very contents of the Exit Log or the testimony by Neđo Vuković, Manojlo Krstović, Witness I, Miloš Crnjak, the expert witness in graphology Esad Bilić, regarding the notes in the Exit Log, the Court does not have reason to doubt the correctness of the notes in the Exit Log, including the notes for the period from 2 until 5 August 1992. Consequently, the Court accepts that prisoners were taken out of the camp on a regular basis during the relevant days and that their taking out provisionally was carried out upon the approval by Boško Govedarica, Neđo Zeljaja or military command.

The Trial Panel has also assessed that the prosecutor did not present clear evidence indicating beyond doubt that the accused Aškraba knew or had reason to know that, on 2, 3 and 4 August 1992, the prisoners were taken out of the camp with a view to being killed or forcibly disappeared. The Panel holds that the accused Aškraba handed the prisoners over by the order of Boško Govedarica, the chief of the Kalinovik SJB, under whose approval he was obliged to act, which he did many a time before, and that therefore such acts on his part do not constitute a criminal offence. According to the Court, as a guard commander, the accused Aškraba did not have the power to challenge the approval given by Boško Govedarica for taking the persons out of the camp. In the present case, the accused acted in line with the House Rules and Discipline, the document which was drawn up in the Command of the Kalinovik TG whose member he was. The Prosecutor's Office used the expression "he took out" in the factual description of the offence, under Counts 3a, 3b and 3c, which is, to some extent, an imprecise expression, given that it was established during the proceedings that the accused Aškraba took the mentioned persons only out of the facility where they were lodged, and some other persons would take them further out of the *Barutni Magacin* complex, whose names he entered into the Exit Log. On the basis of the evidence presented, the Court could not establish beyond any reasonable doubt that Aškraba knew or had reason to know what would happen to the prisoners after they are handed over to persons who received the approval from the authorized persons referred to in the House Rules and Discipline for their taking out. Also, the Court holds that the accused Aškraba could primarily be responsible for what was happening to prisoners within the *Barutni Magacin* complex, which he was not charged with by the Indictment. His responsibility for further destiny of the prisoners, as a rule, ceased with the moment of their being turned over to the authorized persons, in other words, it was upon the Prosecutor's Office to prove that the responsibility for the treatment of the persons taken out of the *Barutni Magacin* rooms could have been ascribed to the accused Aškraba.

The Panel has further established that the prisoners, who were taken out of the camp on 2, 3 and 4 August, were turned over into the hands of the Kalinovik police and that the prosecutor did not manage to establish any nexus between the accused Aškraba and further actions of the persons to whom the prisoners were turned over, as well as his responsibility for the consequence arisen. Finally, the Panel holds that the prosecutor also did not present clear evidence indicating how the accused Aškraba allowed the taking over of the prisoners referred under Count 3.d., e. and f. Consequently, the Panel has no other choice but to acquit the accused of the charges against him.

The Trial Panel has further concluded that the prosecutor did not manage to challenge the "alibi" presented by the defence regarding the absence of the accused from the *Barutni Magacin* Camp on 5 August 1992. Because of the referenced absence, the Defence

maintains that the accused could not have possibly approved the release of the prisoners who were taken out on that day or known that all of the prisoners or some of them would actually be taken out of the camp on that day.

Testimonies by the Prosecution witnesses are of special relevance for the accused's alibi.

Manojlo Krstović, a guard in the *Barutni Magacin*, stated that he did not see the accused Aškraba in the camp on 5 August 1992 and because of that he had to call the Military Command and Police Station Kalinovik to ask for instructions and directives when Pero Elez and his men came into the camp.

Witness I, also a guard in the *Barutni Magacin*, testified that Pero's men had come into the prison warden's office to submit papers by which they were authorized to take away the prisoners detained in the camp. However, the witness did not state at all that he had seen the accused Aškraba in the camp on the referenced day. What is more, during the cross-examination, the witness stated that soldiers had submitted the papers with the approval to Neđo Vuković, who also was a guard in the *Barutni Magacin*, not to Đorđislav Aškraba.

Fejzija Hadžić presented a somewhat different version of the accused's movement on 5 August 1992. He stated that he saw the accused Aškraba in the morning on 5 August 1992, when the accused offered the prisoners to bring them some food. However, the witness Neđo Vuković explained that the accused brought food, cigarettes and different necessities to prisoners from Kalinovik several times. The witness Fejzija recalled that he saw the accused money for food that morning. The witness also recalled that it was the last time he saw the accused in the camp.

In assessing this evidence, the Panel has taken into account the circumstances in which each witness maintained that he had seen or had not seen the accused on the relevant day. The ample evidence presented completely excludes the presence of the accused in the camp on that day and it does not allow the Panel to draw a conclusion that the accused Aškraba was in fact present in the *Barutni Magacin* when Pero Elez and his men took the prisoners out of the camp. The Prosecutor's Office did not present any evidence proving that the accused was present in the camp at the relevant time, which, according to the statements of witnesses of the same Prosecutor's Office, means at around 16-17 hours. It is not sufficient that the Prosecutor's Office simply conclude that the accused was present there on that day on the basis of Fejzija Hadžić's memory that he had seen the accused in the morning on 5 August. It is not sufficient that the Prosecutor's Office call the Court to draw such conclusion and render decision on the guilt. It was established beyond any reasonable doubt that the prisoners had been taken out of the *Barutni Magacin* Camp late in the afternoon on 5 August 1992, between 16 and 17 hours in the afternoon. Even if we accept that the accused was in the camp that morning, the accused had more than enough time during the remaining part of the day to leave the camp on any business.

In presenting the 'defence' by alibi, universally accepted is the legal principle that the accused is not responsible to establish that alibi. The burden of responsibility rests on the Prosecutor's Office to present sufficient evidence to eliminate any reasonable possibility that the alibi is true. Hence, it is not sufficient for the Prosecutor's Office only to show beyond a reasonable doubt that the alibi is false in order that a conclusion is drawn that his

guilt was proved beyond a reasonable doubt. The fact that it was proved that the alibi was false does not mean that the opposite of what the alibi supports was proved beyond reasonable doubt. The Prosecutor's Office must present for consideration convincing evidence about the guilt of the accused. The Prosecution must also show that facts mentioned in the Indictment are veracious beyond reasonable doubt in order that the guilt of the accused could be established.

Sub-counts d), e) and f) of the factual description referring to the listing of the acts of commission of the criminal offence by the accused Aškraba for the date of 5 August 1992 read that Đorđislav Aškraba allowed Pero Elez and other unidentified soldiers to take over a certain number of detained civilians named above. In that connection, it is not evident from the factual description of those sub-counts whether he allowed it by the acts of commission or omission. In other words, it cannot be seen at all what specific actions the accused Aškraba took in order to allow the referenced persons to take over the Bosniak civilians from the *Barutni Magacin*. Specifically, the Prosecutor's Office completely vaguely mentions the expression "allowed", without any concretization of the acts and behaviour of the accused Aškraba. Because of that the Court could not establish the particular role of the accused Aškraba at the time of taking the captured persons away on that day, nor could it establish specific actions he potentially took and the procedures he followed, which would indicate that he "allowed" their taking out. At the beginning of the Reasoning of Count 3 of the Indictment, in the part referring to the accused Đorđislav Aškraba, it is stated that in the factual description the Prosecutor's Office did not charge the accused Aškraba with any responsibility for the acts which his subordinates may have undertaken. For that reason, the Trial Panel could not conclude that some other persons were allowed to take over the captured civilians at an order, with the approval or with agreement of the accused Aškraba. Finally, the manner in which the act of commission of the criminal offence referred to in Count 3 d), e), and f) in respect of the accused Đorđislav Aškraba was described the Court finds completely imprecise, vague and unclear. Also, without a clearly defined act of commission, in the present case, the Court could not establish the potential responsibility of the accused Aškraba.

Bearing in mind all the aforementioned, the Trial Panel has assessed that the prosecutor did not manage to prove beyond a reasonable doubt that the accused Aškraba had been present in the camp at the time when Pero Elez and his men came into the *Barutni Magacin* on 5 August 1992 and took the prisoners away, and also that the guilt of the accused Aškraba in respect of the consequences arisen was not incontestably proved during the proceedings.

Given that the responsibility of the accused Aškraba for the offences with which he was charged in the Indictment under Count 3 could not be incontestably established during the proceedings, the Panel acquitted the accused Aškraba of the charges against him.

Count 4

Đorđislav Aškraba is the only person who is charged under Count 4 of the Indictment. The prosecutor maintains that the accused Aškraba bears the criminal responsibility for the grave maltreatment of Muradif Jašarević who was detained at the Kalinovik SJB on 30 June 1992. The prosecutor states in particular that on the referenced day the accused Aškraba struck the detained Jašarević hard with his fist, threatened him that he would cut off his

arms and legs and pushed a pistol barrel into his mouth.³² The prosecutor, finally, notes that the accused Aškraba, with his acts, caused severe physical and mental injuries to that prisoner and that he bears the criminal responsibility for his acts.³³

In his response, the defence counsel for the accused Aškraba maintains that the testimony by Muradif Jašarević was fabricated. As a proof, he notes that the witness gave different views of the event in all of his previous statements.³⁴ Consequently, the defence counsel argues that the accused Aškraba should be acquitted of the charges that he committed the criminal offence at issue.

Following a thorough review and analysis of all the pieces of evidence presented, the Trial Panel finds that the prosecutor did not manage to prove beyond any reasonable doubt that the accused Aškraba committed the criminal offence with which he is charged. The Trial Panel particularly notes that the evidence referring to this count is based solely on the statement by the witness Muradif Jašarević whose statement not only differs from what he stated about the referenced event in his previous statements, but is also not substantiated by any other evidence. Hence, the Trial Panel was guided by the *in dubio pro reo* principle and acquitted the accused Aškraba of the charges under Count 4 of the Indictment.

Consideration of the evidence presented

Regarding the referenced criminal offence, the prosecutor relied solely on the testimony by Muradif Jašarević who mentioned in his statement that he had been arrested and brought to the Kalinovik SJB on 30 June 1992.³⁵ Further, this witness stated that during his stay in the Kalinovik SJB he had been interrogated by the police inspector Rajko Višnjevac³⁶, and that during the interrogation he had been abused by the accused Aškraba whom the witness had known from the time before the war.³⁷ The witness specifically stated that the accused Aškraba had punched him on his face, swung the pistol in front of his head and threatened him that he would cut his legs and arms off.³⁸ Then, the accused told the witness to look at his eyes and when he did so, the accused pushed the pistol barrel into his mouth.³⁹ This is the only evidence adduced by the Prosecutor's Office.

During the cross-examination, the Defence to a large extent challenged the referenced testimony and presented documentary evidence contesting the credibility of this witness and reliability of his testimony. The Defence referred to the three previous statements given by the witness to crime investigation inspectors in 1992, 1994 and 2007. The Defence too called the witnesses who gave a statement about the referenced event.

The Trial Panel carefully reviewed the statements submitted. The witness gave the first statement to the Public Security Service in Trnovo on 5 September 1992, immediately upon his being exchanged. In his statement, the witness described his arrest and detention in the

³² Amended Indictment, p. 8

³³ Amended Indictment, p. 8-9, See: Closing Arguments by the Prosecutor's Office, p. 49-50 (English version)

³⁴ Closing Arguments by the Defence for Đorđislav Aškraba, p. 45 (English version).

³⁵ Transcript of testimony by Muradif Jašarević, dated 3 October 2008, p. 6s

³⁶ Id., p. 7

³⁷ Id., p. 9

³⁸ Id., p. 9

³⁹ Id., p. 9

Kalinovik SJB. He stated that he was arrested on 30 June 1992, while standing guard in the vicinity of the village of Hreljići in the Kalinovik Municipality. He stated that he had been arrested by three "chetniks" (Petar Jovović, Puhalo and an unknown soldier), that they had approached him from behind, pointed the pistol at him and tied his hands behind his back.⁴⁰ Thereafter, they brought him to the Kalinovik Police Station where Rajko Višnjevac and a certain Željko interrogated him. The witness did not state that he had been physically or mentally abused during the interrogation, but he stated that a man named Bele Stanković had slapped his face once during his thirty-five day detention in the Kalinovik SJB.⁴¹

This witness gave his second statement in the Public Security Station in Kalinovik on 20 April 1994. He stated that he had been on the line of defence in Jakomišlje when three chetniks (Petar Jovović aka Bene, Gordan Puhalo and an unknown soldier) "appeared in front of him" and captured him.⁴² The witness was taken to the Kalinovik SJB where he was interrogated by Rajko Višnjevac, crime investigation inspector, and Željko Govedarica, the member of the Goražde Sabotage Battalion.⁴³ The witness recalled that Đorđislav Aškraba, together with Duško Cerovina, Predrag Terzić and another police officer, at a certain point came into the room. The witness stated explicitly: "Željko Govedarica was putting the pistol into my mouth and on my forehead, and he threatened me that he would kill me"⁴⁴, as well as that Aškraba had struck his head once with his fist and threatened to cut his legs and arms off.⁴⁵

The witness gave his last statement in the Prosecutor's Office of BiH on 17 April 2007. As in his previous statements, the witness recounted that he had surrendered himself to Petar Jovović aka Bene, Gordan Puhalo and an unknown member of the Serb Army on the defence line in Jakomišlje.⁴⁶ It is unclear, however, whether they approached him from his back or front. The witness described how Rajko Višnjevac and Željko Govedarica, whom he had known "from the fifth grade"⁴⁷, had interrogated him in the Kalinovik SJB. He also stated that Đorđislav Aškraba, Duško Cerovina and Predrag Terzić had attended his interrogation, adding: "Đorđislav Aškraba struck me once on my head with his opened fist, threatened that he would cut my legs and arms off. Then, he took a firearm and pushed a barrel into my mouth, which caused my great fear and suffering"⁴⁸.

During the main trial the Defence indicated numerous inconsistencies and omissions in the mentioned statements, as well as in previous statements and the testimony which this witness gave "live" before the Court. The Defence noted in particular that the witness had not mentioned the accused Aškraba at all in the statement he gave in 1992, immediately after he was exchanged, when his memory was most clear. Further, the Defence examined the witness about the 1994 statement, too, especially about the assertion that Željko Govedarica pushed the pistol into his mouth and threatened to kill him. Finally, the Defence asked the witness to compare the referenced statement with the one he gave to the

⁴⁰ Defence Exhibit OIII-5

⁴¹ Defence Exhibit OIII-5

⁴² Defence Exhibit OIII-6, p. 1 (English version)

⁴³ Id., p. 2

⁴⁴ Id., p. 2 (English version)

⁴⁵ Id., p. 2

⁴⁶ Defence Exhibit OIII-7, p. 3

⁴⁷ Id., p. 4

⁴⁸ Id., p. 4

Prosecutor's Office in 2007, as well as with his statement in which he contended that the accused Aškraba had pushed the pistol into his mouth and threatened to kill him.

The witness stated that he had been too much confused and shaken up when he was giving the statement in 1992, so that he did not mention the name of the accused,⁴⁹ although he remembered the mentioned event well. Regarding the 1994 statement, the witness said that it contained what he had stated, that both Aškraba and Govedarica had threatened him with a pistol. As for the inconsistencies and omissions in the statement, he stated that entries had certainly been incorrectly entered into the record or had been omitted. He put forward a theory that the record-taker who was typing his statement from 1994 most probably made a mistake, that he did not hear him well, or that he did not enter into the record all that he stated on that occasion concerning the accused Aškraba.⁵⁰ The witness confirmed that he had read and signed all of the three statements at the time when they had been made.

The Trial Panel, however, has not found that the inconsistencies in the previous statements by this witness are a consequence of an incorrect entry into the record. The witness gave a very detailed description of the manner in which he had been arrested, interrogated and, then, detained. However, in one of his statements he stated that he had been captured from his back, whereas in the other he stated that they had approached him from his front. Besides, he stated the names not only of the persons who had captured him, but also the persons who had interrogated him, even the police officers who had attended the interrogation. In addition, he gave a very detailed description of the places where he had been from the time of his arrest, that is, 30 June 1992, until his exchange in August 1992. Although it is possible that not all that the witness recounted in detail was entered into the record by mistake, it is nevertheless difficult to believe so, taking into account the very detailed and extensive statement which the witness gave to the relevant authorities in 1994.

A greater weight should, most likely, be attached to the very conspicuous fact that the witness did not mention the accused in his statement from 1992. Although the witness maintained that it happened because of his chaotic mental state, this explanation was not convincing and it evoked further doubts about his credibility. The witness was examined in 1992, immediately after he was exchanged and some three months after he was captured, when his memories of that dramatic event were still clear and did not change due to the lapse of time, influence by the mass media or memories by other victims. Although the witness's statement from 1992 is not as detailed as the statements which he gave in 1994 and 2007, he nevertheless gave the key information about the agony which he experienced, in other words, about the following: the place where he was captured, identity of persons who captured him, interrogation, identity of persons who examined him, places of detention, names of other prisoners, etc.

The Trial Panel may accept that the imprecision contained in the statement from 1992 are a consequence of the wartime situation, and it allows the possibility that the witness had a better opportunity to describe the endured sufferings in the statements from 1994 and 2007. However, the fact that the witness's memories of the arrest and detention were relatively clear must be taken into account. Thus, his omission to mention the name of the accused whom he knew from the time before the war as well as the active participation of the

⁴⁹ Record of testimony by Muradif Jašarević, p. 22

⁵⁰ Record of testimony by Muradif Jašarević, p. 21

accused in the alleged event which, according to him, was dramatic and which caused great pain and suffering to this witness, are not irrelevant points, and they directly refer to the criminal offence at issue. As the witness did not mention the name of the accused, he only further brought into doubt his own credibility, so that his testimony cannot be accepted unless substantiated by additional evidence.

The witness Vuk Jašar, who was detained in the basement rooms of the Kalinovik SJB at the same time as Muradif Jašarević, stated in his testimony that he knew that Jašarević had recounted that his next-door neighbour had abused him physically, but that the same witness did not know the name of that neighbour to tell it.

It is necessary to analyse the statements by all or by some of the persons who attended the interrogation of this witness. Although the prosecutor did not call any other witness to testify about the referenced event, the Defence contested this testimony through the testimony by Rajko Višnjevac, the inspector, who interrogated the witness Jašarević in the Kalinovik SJB in 1992. Višnjevac stated in his testimony that he had worked as an inspector during the war and that his job was to interrogate war prisoners.⁵¹ This witness stated that he could not remember that he had interrogated Muradif Jašarević, but that he did not exclude the possibility that he indeed had interrogated him. He stated that police officers had attended the interrogations, but that it had been solely for security reasons and that he had never allowed any unlawful acts in his presence. He also stated that he could not remember that the accused Aškraba had been present during the interrogation, but that there existed the possibility that he really had.

The Defence contested the testimony by Jašarević also through the statements by Rajko Macan and Ranko Bozalo, Jašarević's Serb neighbours. Both Rajko Macan and Ranko Bozalo stated that they were captured at Rogoj on 30 July 1992 and taken to Trnovo. Both of them testified that Muradif Jašarević had come to visit them at the detention centre in Trnovo late in August or early in September 1992. The witnesses recalled that Mr. Jašarević had told them that he had been detained in the Kalinovik SJB, but none of them could recall that Muradif Jašarević had complained of having been abused while detained in the Kalinovik SJB, or that he had mentioned the name of the accused Aškraba to them.⁵²

The previous statements by Muradif Jašarević, his evidence and the evidence by the previously mentioned Defence witnesses are consistent in respect of the facts that Muradif Jašarević was arrested on 30 June 1992, that Rajko Višnjevac and Željko Govedarica interrogated him and that thereafter he was detained in the Kalinovik SJB. However, that the referenced witness did not provide a consistent description of the sufferings he had experienced and a description of the gravity of those sufferings has left numerous reservations in the Trial Panel in respect of the credibility of Muradif Jašarević and reliability of his statement.

In order to ensure the fairness and correct application of legal regulations, the Court accepted the principle prescribing that, in circumstances when the testimony of the aggrieved party is the only evidence in some particular case, "it is absolutely necessary to consider that testimony very carefully" and that the testimony "must not raise any suspicion

⁵¹ Record of testimony by Rajko Višnjevac of 12 May 2009.

⁵² Record of testimony by Rajko Macan of 4 May 2009; Testimony by Ranko Bozalo of 12 May 1992

as to its exactness and truthfulness⁵³, taking into account the gravity of the criminal offence with which the accused was charged.⁵⁴

In the present case, the Trial Panel has found that the omissions and inconsistencies in the testimonies by Muradif Jašarević are of such nature that the Trial Panel should have been guided by the *in dubio pro reo* principle and should have acquitted the accused of the guilt for this criminal offence.

Pursuant to Article 189(1) of the BiH CPC, the accused Đorđislav Aškraha is entirely relieved of the duty to reimburse the criminal proceedings costs, which shall be paid from the budget appropriations of the Court, given that the Verdict against him was handed down wherewith he is acquitted of the guilt.

RECORD-TAKER
Šaćir Hadžić

PRESIDENT OF THE PANEL
J U D G E
Staniša Gluhajić

LEGAL REMEDY:

This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 (fifteen) days upon receipt of the written copy of the Verdict.

⁵³ *Prosecutor versus Radmilo Vuković*, X-KRŽ-05/217, second-instance Judgement of 13 August 2008, p. 5 (English version);

⁵⁴ *Prosecutor versus Zigiranyirazo*, ICTR-01-73-A, second-instance Judgement of 16 November 2009, paras 51 and 73.