



No: X-KR-05/41-1
Sarajevo, 29 October 2008

The Court of Bosnia and Herzegovina, in the Panel composed of Judge Jasmina Kosović as the Presiding Judge, Judges Zoran Božić and Mitja Kozamernik as members of the Panel, with the participation of legal officer Lejla Haračić as record taker, in the criminal case against the accused Slavko Šakić, for the criminal offense of War Crimes against Civilians, as referred to under Article 173(1) a), c), e) and f) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina, all in conjunction with Article 29 of the Criminal Code of Bosnia and Herzegovina, following the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No. KT-RZ-39/08, dated 25 July 2008, confirmed on 29 July 2008, following the acceptance of the Plea Agreement dated 5 September 2008 and having held a public sentencing hearing in the presence of the BiH Prosecutor, Slavica Terzić, the accused Slavko Šakić and his Defence Attorney Branka Braljak, lawyer from Novi Travnik, on 26 September 2008, rendered and on 29 September announced the following:

VERDICT

THE ACCUSED:

SLAVKO ŠAKIĆ, son of Stipo and Ana (nee Breljak), born on 18 November 1972, in the village of Zlavast, Municipality of Bugojno, residing in ..., JMBG /personal ID number/: ..., married, father of three underage children, no professional qualifications, unemployed, served the army in 1991/92, holds the rank of reserve military officer – lieutenant, registered in the military records of Livno Municipality and in the military records of Sisak Municipality, Republic of Croatia, no decorations, unemployed, indigent, no prior convictions, no other criminal proceedings pending against him, ethnic ..., citizen of ..., **currently in custody under the BiH Court Decision No. X-KRN-05/41 dated 20 May 2008,**

IS FOUND GUILTY

Because:

During the state of war in Bosnia and Herzegovina, in the period from 17 July 1993 until 28 July 1993, during the armed conflict between the units of the Croat Defense Council and members of the Army of Bosnia and Herzegovina in the territory of Bugojno Municipality, as a member of the HVO Special Purposes Unit - *Garavi*, acted in violation of international humanitarian law, specifically Article 3(1) a) and c), and Article 33(3) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and in violation of Article 51(1)(2)(3) having participated in murder, and having participated, aided and abetted in the preparation and commission of the criminal offenses by treating Bosniak detainees inhumanely and participating in their ungrounded deprivation of liberty and detaining them in the

Akvarijum /Aquarium/ Motel, as well as keeping them in inhumane conditions, participating in torture on several occasions, and coercing them to forced labor, inasmuch as he:

1. In mid July 1993, in the place called Vrbanja, Bugojno Municipality, together with other members of the **HVO** Special Purposes Unit -*Garavi*, participated in the deprivation of liberty of Bosniak civilians coming from a broader region of Bugojno and imprisoned them in the cellar of the *Akvarijum* Motel in Bugojno; thus the following persons were imprisoned: **Abdulah Bevrnja; Zlata Čehaja with underage son; Husein Mlačo; Bahrudin Šeremet; Adis Hakanović; Sihanuk Karabeg; Hidajeta Imširpašić; underage Ethem Čehaja, born in 1977; Muhamed Čehaja, born in 1978; Sulejman Basara; Mehmed Tanković, born in 1929; Selmir Šehić; Šerif Ćatić; Idriz Ćatić, born in 1929; Mustafa Karagić; Suljo Karagić; Vasva Karagić, born in 1929; Mihra Huskić, born in 1938; Sutka Karabeg with underage son Dino born in 1991; Abdulah Karabeg, born in 1933 and other civilians**, whom he searched during their arrest and forcefully confiscated their money and golden jewelry.

2. In the period from 17-28 July 1993, in the cellar and other rooms of the *Akvarijum* Motel in Bugojno, on several occasions, together with other members of the **HVO** Special Purposes Unit – *Garavi*, he participated in the torture of the detained civilians, inflicting upon them serious bodily injuries with a wooden stick, military boots and sometimes even with an automatic rifle; he tortured the following persons: **Vahid Karagić, Ismet Huskić, Suljo Karagić, Ešref Ćatić, Abdulah Karabeg, Husein Karabeg, Mehmed Tanković, Edhem Čehaja, Muhamed Čehaja, Kemal Morić, Smail Ljubunčić, Esad Karamustafić** and other detainees, and in particular he tortured the detained old men **Hidajet Imširpašić and Sulejman Basara** on whose palms, following numerous blows, he carved a cross.

3. On 26 July or 27 July 1993, in the same cellar, together with other members of the HVO, he beat up and abused **Mehmed Tanković, Abdulah Karabeg and Selmir Šehić**, and on the same day, after beating them up, he tied **Selmir Šehić's** hands with a string and made cuts with a knife on his head, telling the other detainees that he was taking him out to cut his throat; then he took **Selmir Šehić** out of the *Akvarijum* Motel premises, and **Selmir Šehić** remained unaccounted for until August 1993 when he was found dead under the *Kandijski* Bridge in the settlement of Vrbanja, Bugojno Municipality, with multiple lethal injuries inflicted by a cutting edge of a knife as well as by fire arms.

4. During the same period as stated under Count 2, on several occasions, he took the detained Bosniak civilians to forced labor to dig dugouts and communication trenches along the front line, on which occasion, on 21 July 1993, detainee **Adis Hakanović** was wounded by a bullet in his ankle joint in a crossfire, while digging communication trenches with other detainees, after which he was returned and detained in the *Akvarijum* Motel cellar.

Therefore, during the war in Bosnia and Herzegovina, and the time of the armed conflict between the HVO and the Army of BiH, in violation of the rules of international humanitarian law, specifically Article 3(1) a) and c) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August

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1949, he committed murder as a co-perpetrator, as well as perpetrated and aided and abetted in the unlawful detention, inhumane treatment, torture and coercing to forced labor,

Whereby Slavko Šakić committed the criminal offense of War Crimes against Civilians referred to in Article 173(1) a), c), e) and f) of the BiH CC in conjunction with Article 180(1) of the BiH CC as read with Article 29 of the BiH CC.

Therefore, pursuant to Article 231(3) of the Criminal Procedure Code of Bosnia and Herzegovina, and Articles 39, 42 and 48, of the Criminal Code of Bosnia and Herzegovina, the Court hereby

**SENTENCES HIM TO IMPRISONMENT FOR A TERM OF 8 (eight) YEARS
AND 6 (six) MONTHS**

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina, the time spent in custody pending trial, starting from 19 May 2008, shall be counted as part of the sentence of imprisonment.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, costs of the criminal proceedings shall be paid from the budget of the Court.

Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, in case of any claims under property law, injured parties are referred to take civil action.

Reasoning

Under the Indictment No. KT-RZ-39/08, dated 25 July 2008, which was confirmed on 29 July 2008, the Prosecutor's Office of Bosnia and Herzegovina brought charges against Slavko Šakić for the criminal offense of War Crimes against Civilians, under Article 173(1) a), c), e) and f) of the Criminal Code of Bosnia and Herzegovina (hereinafter CC BiH) as read with Article 180(1) of the CC BiH, all in conjunction with Article 29 of the CC BiH. At the plea hearing held on 6 August 2008, the Accused pleaded not guilty for the crimes alleged in the Indictment.

On 8 September 2008, along with the confirmed Indictment, the Court received the Agreement on the Admission of Guilt, which was concluded between the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: Prosecutor's Office of BiH), the accused Slavko Šakić and his Defence Attorney Branka Praljak, lawyer from Novi Travnik. By this Agreement, the Accused admits the guilt for the criminal offense charged in the Indictment and agrees to be sentenced to imprisonment ranging between 7 (seven) and 10 (ten) years.

At the hearing held on 26 September 2008, before deliberation on the Agreement, an official letter of the BiH Prosecutor's Office dated 25 September 2008 was read out, correcting a typing error in Count 2 of the Indictment, whereby penultimate line of Count 2 of the operative part reads "whose" /*transl. note: singular in BSC*/, instead of "whose" /*transl. note: plural in BSC*/. The Accused and his Defense Attorney agreed with this since the change was in favour of the Accused.

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During the deliberation on the Agreement on the Admission of Guilt, pursuant to Article 231 of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC BiH), the Court found that the accused Slavko Šakić entered into the Agreement on the Admission of Guilt voluntarily, consciously and with understanding, including the consequences related to possible claims under property law and costs of the criminal proceedings. The Court also found that the Accused understood that he waived his right to trial by the agreement on the admission of guilt, and that he could not appeal the criminal sanction imposed on him should the Court accept the Agreement on the Admission of Guilt.

In support of their allegation on the guilt of the accused Slavko Šakić for the criminal offense he is charged with, the BiH Prosecutor's Office presented and tendered into the case file, and the Court examined the evaluated the evidence as follows:

Record on Examination of Suspect Slavko Šakić, No. KT-RZ-37/05 dated 19 May 2008; Record on Examination of Witness Adis Hakanović, No. KT-RZ-37/05 dated 20 June 2006, Record on Examination of Witness Abdulah Bevrnja, No. KT-RZ 37/05 dated 6 June 2007, Record on Examination of Witness Husein Mlaćo, No. KT-RZ 37/05 dated 6 June 2007, Record on Examination of Witness Abdulah Karabeg, No. KT-RZ 37/05 dated 5 June 2007, Record on Examination of Witness Kemal Morić, No. KT-RZ 37/05 dated 6 June 2008, Record on Examination of Witness Mehmed Tanković, No. KT-RZ 37/05, dated 22 April 2008, Record on Examination of Witness Krešimir Zelić, No. KT-RZ 37/05 and KT-RZ 39/08 dated 18 July 2008, Record on Examination of Witness Mirsad Teskeredžić, No. KT-RZ-37/05 and KT-RZ-39/08 dated 7 June 2007, Record on Examination of Witness Tonko Dilber, No. KT-RZ-37/05 and KT-RZ-39/08 dated 23 May 2008, Record on Examination of Witness Asim Balihodžić, No. KT-RZ-37/05, dated 8 October 2007; Record on Examination of Witness Muhamed Čahaja, No. KT-RZ 37/05 dated 6 May 2008; Record on Examination of Witness Zijad Redžić. No. KT-RZ-37/05 dated 6 May 2008; Record on Examination of Witness H.K. No. KT-RZ-37/05 dated 18 July 2007; Record on Examination of Witness Mihra Huskić, No. KT-RZ 37/05, dated 18 July 2007; Record on Examination of Witness Vasva Karagić, No. KT-RZ 37/05 dated 18 July 2007; Record on Examination of Witness Sejid Karagić, No. KT-RZ 37/05, dated 18 July 2007; Record on Examination of Witness Ešref Čatić, No. KT-RZ-37/05 dated 4 July 2007; Record on Examination of Witness Sutka Karabeg, No. KT-RZ 37/05, dated 20 June 2006; Record on Examination of Witness Sihanuk Karabeg, No. KT-RZ 37/05, dated 20 June 2006; Witness Examination Record No. KT-RZ 37/05 dated 5 June 2007 (not to be submitted to the Defence); Record on Examination of Witness Bahrudin Šeremet, No. KT-RZ 37/05 dated 7 June 1997; Record on Examination of Witness Šerif Čatić No. KT-RZ 37/05, dated 20 June 2006; Record on Examination of Witness Idriz Čatić No. KT-RZ 37/05 dated 4 July 2007; Record on Examination of Witness Smail Ljubunčić No. KT-RZ 239/08 dated 26 June 1994; Record on Examination of Witness Mustafa Čolak, No. KT-RZ 239/08 dated 26 June 1994; Record on Examination of Witness Soraja Kovač No. KT-RZ 239/08 dated 26 June 1994; Record on Examination of Witness Esad Karamustafić, No. KT-RZ 39/08 dated 26 June 1994; Record on Examination of Witness Vahid Karagić, No. KT-RZ 37/05 dated 18 July 2007; Record on Examination of Witness Hasem Hodžić, No. KT-RZ 37/05 dated 4 July 2007; Unit File of the Armed Forces of Croatian Community of Herzeg-Bosna, No. 6231/5 for the Suspect Slavko Šakić; *Garavi* Unit Payroll No. 01-2135/93 dated 17 August 1993 with

the suspect Slavko Šakić under number 5; SJB /Station of Public Security/ Bugojno Official Note dated 16 September 1993 with Selmir Šehić under number 13; Decision of the War Presidency of Bugojno Municipality pertaining to the establishment of the Commission for Identification of Killed People, No.01-V-18/93 dated 25 July 1993; Regular Combat Report of the Bugojno Municipality Defence Staff, No. 02-263-83 dated 27 July 1993; Extract from the Protocol of Patients No. 995/96 dated 10 December 1996; Death Certificate for Selmir Šekić, No. 5581 dated 3 July 2008; Letter with the standard mark "A" of the ICTY Prosecutor's Office for the suspect Slavko Šakić, No. 014832/GB/RR471 dated 20 June 2001; Copy of the Personal ID Card for Slavko Šakić, No. 15018448; MUP Petrinja – Republic of Croatia; Decision of the Presidency of the Republic of Bosnia and Herzegovina on Proclamation of the State of War (Official Gazette of the R BiH, No. 7/92 dated 20 June 1992); Conclusion and Opinion of the expert witness Dr. Hamza Žujo, forensic medicine specialist, dated 8 July 2006, pertaining to the injuries sustained by the victims; Extract from the Criminal Record for the suspect Slavko Šakić; Combat Report of the Military Police, 307 Motorized Brigade, for the period from 18 July 1993 to 31 July 1993, No. 1100-1083/93, dated 10 August 1993; Analysis of Recruitment by the Croatian Defence Council in Bugojno Municipality dated 6 June 1993; Official Letter of the Ministry of Interior pertaining to the conflicts between the ARBiH /Army of the Republic of BiH/ and the Croatian Defence Council, No. n-4-2351 dated 7 August 1993 /sic!/; Certificate on the Recognition of the Status of Camp Inmate in Bosnia and Herzegovina for Abdulah Karabeg, dated 25 July 2002; Findings of the Specialist Service Bugojno JU /Public Institution/ Medical Centre, dated 30 August 2006 for Witness X, and dated 16 November 2008 for witness Abdulah Karabeg; Certificate of the Union of Camp Inmates pertaining to the establishment of the prison in Vrpeč settlement, Municipality of Bugojno, *Akvarijum* camp, dated 29 August 2006; Certificate on the Recognition of the Status of Camp Inmate in Bosnia and Herzegovina for the protected witness, dated 25 July 2002; Findings and Opinion of the Psychologist of the Specialist Service of Bugojno JU Medical Centre for protected witness, dated 16 November 2006; Statement of Abdulah Jeleč dated 25 April 2002 pertaining to the exchange of wounded soldiers of HVO Bugojno and of the detainees in the *Akvarijum* Motel; Album of Photographs of Vrbanja Settlement, Bugojno Municipality, July 1993.

The Defence for the Accused has not presented any evidence to the Court.

The Court determined all necessary and subjective elements of the relation of the accused Slavko Šakić to the Agreement on the Admission of Guilt in the deliberation on and examination of the Agreement, and found that the Prosecutor's Office of BiH provided sufficient evidence on the guilt of the Accused for the crime he is charged with; therefore, the Agreement on the Admission of Guilt was accepted pursuant to Article 231(6) of the CPC BiH.

Having considered all pieces of evidence attached to the Agreement, primarily statements of witnesses heard during the investigation, the Court has indisputably found that the accused Slavko Šakić committed the criminal offense of War Crimes against Civilians, under Article 173(1) a), c), e) and f) of the CC BiH, and sentenced him to imprisonment for a term of 8 (eight) years and 6 (six) months, finding that this punishment has been meted out pursuant to Article 231(3) of the CPC BiH, and Articles 39, 42 and 48 of the CC BiH.

- **Applicability of the Criminal Code of Bosnia and Herzegovina**

With reference to the substantive law that should be applied, taking into account the time of perpetration of the criminal offense, the Court accepted the legal qualification of the prosecution and found the accused Slavko Šakić guilty of the criminal offense of War Crimes against Civilians, under Article 173(1) subparagraphs (a), (c), (e) and (f) of the CC BiH.

Taking into account the obligation to apply the law more lenient for the perpetrator, specifically Article 142 of the CC SFRY, which was in force at the time of perpetration of the criminal offense, the Court analyzed Articles 3 and 4 of the CC BiH and viewed them in relation to Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which has the priority over all other laws in BiH (pursuant to Article 2.2 of the BiH Constitution), stipulating that “*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*” However, paragraph 2 of this Article provides an exception in order to allow for the application of both national and international legislation that entered into force during and after the World War II. This paragraph stipulates that “*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.*” The aforementioned should also be viewed in the context of Article 4a) of the Law on Amendments to the Criminal Code of BiH (Official Gazette of BiH, No.61/04), stipulating 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*”, which is in fact a provision taken over from Article 7(2) of the ECHR that allows for an exceptional deviation from the principle under Article 4 of the CC BiH, as well as deviation from the mandatory application of a more lenient law for acts that constitute criminal offenses under international law. This position is also corroborated by the Constitutional Court Decision in the case Abdulahim Maktouf (AP-1785-06), which implies that the application of the BiH Criminal Code in war crime cases is in accordance with the ECHR and the Constitution of Bosnia and Herzegovina.

Therefore, it is clear that the punishability of war crimes is a mandatory rule of international law, so it is justified to conclude that the principle of application of a law more lenient to the perpetrator cannot be absolutely applicable in the prosecution of criminal offenses which obviously constituted violation of basic principles of both international and national law at the very time of their perpetration.

The Indictment alleges that Šakić is guilty of War Crime against Civilians, under Article 173(1) of the CC BiH, a), c), e) and f) of the CC BiH, as read with Article 180(1) of the CC BiH, all in conjunction with Article 29 of the same Code.

Firstly, Article 180(1) stipulates that:

“A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171

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(Genocide), 172 (*Crimes against Humanity*), 173 (*War Crimes against Civilians*), 174 (*War Crimes against the Wounded and Sick*), 175 (*War Crimes against Prisoners of War*), 177 (*Unlawful Killing or Wounding of the Enemy*), 178 (*Marauding the Killed and Wounded at the Battlefield*) and 179 (*Violating the Laws and Practices of Warfare*) of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.”

Furthermore, Article 173(1) a), c), e) and f), of the CC BiH, stipulates:

(1) 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;
- 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;
- 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 labour, 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.

When interpreting Article 173 of the CC BiH, it is evident that the existence of this criminal offense requires the existence of the following general elements:

- Perpetration of the crime must involve violation of international law by being aimed against civilians, that is, persons who do not take part in the armed conflict or have laid their arms or have been disabled for combat, and who are protected by the Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949;
- Violation of the stated provisions must take place in time of war, armed conflict or occupation;
- Act of the perpetrator must have a link (nexus) with that war, armed conflict or occupation;

- The perpetrator must commit *actus reus* of the offense by perpetrating or ordering some of the acts alternatively provided in the subparagraphs of this Article.

Prior to reasoning on the individual criminal responsibility of the Accused under counts of the Indictment, the Court shall note the existence of all the stated general elements.

- **Violation of the provisions of international law**

To determine the existence of one of the elements of this criminal offense, it is necessary to consult relevant international conventions, specifically the Geneva Convention on Protection of Civilian Persons in Time of War dated 12 August 1949. Regarding the criminal offenses against humanity and values protected by international law, the perpetrator does not necessarily have to be aware of the violation of blanket regulations, but it is enough that his actions objectively constitute violation of the rules of international law.

The actions of perpetration of this criminal offense are stipulated alternatively, as stated earlier, and the Accused in the specific case is charged with taking the action of perpetration under Article 173 a), c), e) and f) of the CC BiH.

Specifically, the Prosecution alleges that the accused Slavko Šakić, during the armed conflict, violated the rules of international humanitarian law, specifically Article 3(1) a) and c) of the Geneva Convention Relative to Protection of Civilian Persons in Time of War dated 12 August 1949, and Article 51(1)(2)(3) of ECHR, as he took part in unlawful detention, torturing of civilians and forcing them to labor.

In order to determine the violation of the stated provisions, it is necessary to analyze their content and the domain of their application in the specific case. To wit, Article 3(1) a) and c) of the Geneva Conventions from 1949, which is applied in Bosnia and Herzegovina on the grounds of Annex 6 of the Dayton Agreement, stipulates 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, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

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

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

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Common Article 3 of all Geneva Conventions sets forth a minimum core of mandatory rules, reflects the fundamental humanitarian principles upon which the Geneva Conventions in their entirety are based, and it is applicable in the non-international conflicts. Additionally, the viewpoint that the Common Article 3 is a part of customary international law is broadly accepted¹, so that all the actions listed in this Article of the Conventions constitute serious violation of the international humanitarian law,² and as such incur individual criminal responsibility.³

Since it has been indisputably concluded in the proceedings that during the period relevant to the Indictment, in the territory of Bugojno Municipality and a wider area, there was an internal armed conflict, so it is justified to conclude that the Common Article 3 of the Conventions had to be applied all the time during the armed conflict.

Therefore, pursuant to the Convention, the Accused violated basic guaranties of the protected category of population through the perpetration of the criminal offenses of which he has been found guilty, that is, through his actions, he violated Article 3(1)(a)(c) of Geneva Conventions from 1949. It is the same when it comes to the violation of Article 51 of the mentioned Convention, which stipulates the conditions and types of forced labour. The stated provisions precisely state that individuals can be subjected to forced labour under certain circumstances, whereby they cannot be placed in the position of participants in the armed conflict. In further reasoning, the Court shall point out that this Article was violated by the Accused through the criminal actions under Count 4 of the Indictment. Additionally, we should also refer to Article 33 of the Convention, stipulating prohibition of use of any repressive measures in relation to the protected persons and their property. The Accused violated this Article of the Convention by taking the criminal actions under Count 1 of the Indictment.

- **Status of protected persons – civilian population**

When it comes to the applicability of Article 3 of Geneva Conventions in internal conflicts, it is necessary to determine whether the international law has been violated in relation to the special category of population that is protected by the Geneva Convention Relative to Protection of Civilian Persons in Time of War dated 12 August 1949. Pursuant to this Convention, the status of protected persons is given to all persons who do not take any part in the hostilities during the armed conflict, which includes even members of military and police formations who laid their arms or persons disabled for combat.

¹ Jurisdiction Decision, *Tadić*, paragraph 89; Appeals Chamber Judgment, *Čelebići*, paragraph 143.

² Prosecutor v Tihomir Blaškić, No. IT-95-14-T, Judgment dated 3 May 2000 (Trial Chamber Judgment, *Blaškić*), paragraph 176.

³ Appeals Chamber Judgment in *Čelebići* case, paragraph 153-174, particularly paragraph 167. The Trial Panel notes that provisions of the SFRY Criminal Code that were applied in Bosnia and Herzegovina in April 1992 (SFRY Criminal Code, 1990, Article 142-143), stipulate jurisdiction of Bosnian courts for crimes committed during the war, armed conflict or occupation, without making any difference between internal and international armed conflicts. Thus, the accused in this case, according to the national legislation, can be regarded as individually criminally responsible for crimes alleged in the Indictment.

In the specific case, persons who are direct victims of the crime were not members of any military force in conflict in the critical moment, nor did they take active role in the hostilities. To wit, it is obvious from the testimonies of victims who survived the crime that all the persons had the status of civilians at the time of unlawful arrest and detention. The testimonies evidently imply that the persons were deprived of liberty while they were in their houses or moved in the street as a part of their work obligations, when none of the witnesses had weapons or uniform in the moment of arrest.

In July 1993, only the witness Karabeg Sihanuk was a member of Army of BiH, Construction Platoon; however, he was arrested on a weekend while he was in the family house of his father with his wife and parents. The situation regarding the witness Mustafa Čolak is similar. On 12 December 1992, he was mobilized as soldier in the 770 Sbr /Glorious Mountain Brigade/, Army of BiH; however, he was arrested while driving bicycle to Vrbanja, wearing civilian clothes. Therefore, in the moment of unlawful arrest and detention, even these persons who were given the status of soldiers can be regarded as civilians, since Article 3 of Geneva Conventions stipulates that protected persons are “*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.*”

- **Existence of Armed Conflict**

Furthermore, Article 173(1) of the CC BiH, stipulates the existence of armed conflict or occupation as a general requirement for the existence of crime, without insisting on the character of the conflict itself, that is, there is no distinction between internal and international conflicts. In international case law, an armed conflict exists “whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.”⁴

Making connection between the violation of international law and the existence of armed conflict, we should point out that the international humanitarian law is still applied “in the whole territory of the warring states or in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not the actual combat takes place there, and continue to apply until the general conclusion of peace or, in the case of internal armed conflict, until a peaceful settlement is achieved.”⁵

Therefore, it is evident that the compliance with the generally accepted principles of rules and customs of war, and guarantees provided in the common Article 3 of Geneva Conventions is related to the conflicts of international character as well as to internal conflicts within a state. Therefore, where the accused is charged with the violation of Article 173 of the CC BiH, on the grounds of violation of common Article 3 of the

⁴ Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, No. IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002 (Kunarac, et al, Appeals Judgment, paragraph 56)

⁵ Kunarac, et al, Appeals Chamber Judgment, paragraphs 57 and 64. In para 64, the Appeals Chamber holds „Appeals Chamber considers that the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

Conventions, as in the case at hand, it is irrelevant whether the armed conflict had the character of international or internal conflict.⁶

In the specific case, based on the Prosecution evidence, the Panel has concluded that there was an internal armed conflict in a wider territory of Bugojno Municipality during the period in question, involving the Croat Defence Council (HVO) on one side, and members of the Army of Bosnia and Herzegovina (Army of BiH) on the other side. Since the application of the international humanitarian rules does not require that the actual combat takes place at a specific location, the Panel did not confine itself to determining the existence of armed conflict in Bugojno Municipality, but to its existence in a wider territory, a constituent part of which is this Municipality.

To wit, all witnesses agree that the armed conflict between the HVO and the Army of BiH started in mid July 1993, more precisely on 17 or 18 July 1993, while tensions between the mentioned parties could be noticed even before. Witness Edhem Čehaja, who lived in Kordići, Bugojno Municipality, in 1992, says in his statement given in the Investigation that in mid July the inhabitants of this settlement could clearly notice certain negative tensions between members of the BiH Army and HVO units. Additional anxiety among people was also caused by stories about “war events” in the place of Crkvine, as well as about preparations for the attack on Kordići village. Generally speaking, it ensues from the statements of all witnesses heard during the investigation that the armed conflict between the mentioned parties was particularly intensive in the settlements of Vrbanja, Kordići, Crniče and Vrpeč, which were a part of Bugojno Municipality at the time.

As a confirmation of the aforementioned, it is necessary to mention only statements of certain witnesses. For example, witness Abdulah Karabeg claims that on 17 July 1993, while he shortly left the basement of his house in Vrbanja settlement, he noticed that the neighbouring houses were shelled, which is also confirmed by Idriz Čatić who definitely claims that in summer 1993, the villages of Crniče and Vrbanja were shelled and, according to him, there was “shooting from all directions”.

Witness Zijad Redžić describes the period from 18 July to 27 July 1993 in more details, saying that he could not go to Vrbanja, Crnići and Vrpeč at the time, because the conflicts were also intensive in the place of Porič where he was, as well as in a wider territory of Bugojno, so movements during that period were restricted, while a protected witness states that she clearly remembers that Bugojno was terribly shelled on 17 July 1993, which lasted the whole day.

The existence of armed conflict during the relevant period is corroborated by information from the Ministry of Interior, State Security Service Sarajevo, pertaining to conflicts between the Army of BiH and HVO units in Bugojno of 7 August 1993, which specifically states that the conflicts between the Army of BiH and the HVO in Bugojno Municipality commenced on Saturday, 17 July 1993. The report reads that HVO members started arresting civilians at the check points in Ristovi and Vrbanja villages on the same day, and at the check point near the Okašnica River, which was

⁶ Prosecutor v. Duško Tadić, No. IT-94-1-AR-72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, dated 2 October 1995 (Jurisdiction Decision in *Tadić* case), paragraph 137; Appeals Chamber Judgment in *Čelebići* case, para 140 and 150.

confirmed by a great number of witnesses who had been arrested at the mentioned locations. On 19 July 1993, HVO units opened fire on facilities of the BiH Army, using all available artillery pieces, so that the “intense combat” took place in all parts of the town and in a wider area of Bugojno Municipality. Also, the Information further alleges that parts of the HVO together with Croat civilians from Bugojno withdrew from the locations of Kandij, Crniče, Vrbanja and Crnički Podovi in the evening hours on 28 July 1993, and went in the direction of Mračaj, Kupres and Tomislavgrad.

Additionally, combat report of the military police, 307 Motorized Brigade, Army of BiH, covering the period from 18 July 1993 to 31 July 1993, also clearly states the locations where the armed conflict between the Army and the HVO took place, and number of military police members who were engaged “*at the base and in the field during the most intensive conflicts*”. The report also describes in detail the strongholds of parties to the conflict and quantity of weapons used in direct conflicts, which ended, according to this report, on 31 July 1993, when the aforementioned settlements of Bugojno Municipality were taken under the control of the BiH Army.

- **Relation between the crime of the perpetrator and the armed conflict**

The status of the Accused during the relevant period is significant from the aspect of another requirement necessary for the existence of this criminal offense, that is, the perpetrated crime must be connected to the war, armed conflict or occupation.

Therefore, in order to determine the existence of the mentioned element, it is necessary to view the status of the accused during the relevant period of time, as well as the existence of interconnectedness and interdependence between the perpetration of the crime and the existence of the described armed conflict in a wider territory of Bugojno Municipality. In the specific case, the Panel examined whether “*the existence of an armed conflict have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed.*”⁷

The evidence submitted to the Court indisputably imply that the crimes of which the accused Slavko Šakić is found guilty were committed exactly at the time and as a part of the armed conflict between the HVO and the BiH Army in the territory of Bugojno Municipality, and the Accused himself, as a member of the HVO Special Purpose Unit *Garavi* obviously participated in it as a member of one of the parties in conflict.

The mentioned capacity of the Accused ensues from documentary evidence as well as from witness statements. For example, it ensues from the statement of Abdulah Bevrnja that HVO members who participated in the unlawful detention of civilians wore black uniforms with black barrettes, Croatian coat of arms, and *Garavi* insignia, while the witness Vahid Karagić describes in more details that the ATG /Anti Terrorist Group/ *Garavi* unit was actually in the composition of 104 Brigade - *Eugen Kvaternik*, with its seat in Gornji Vakuf, the commander of which was Vinko Žuljević a.k.a. Klica. This witness also claims that the accused Šakić boasted a few times in the presence of detained civilians that he was a member of this “elite” unit.

⁷ Prosecutor v. Kunarac, et al, case no. IT-96-23 & IT-96-23/1-A, Judgment dated 12 June 2002, para 58.

This fact is corroborated by information from the letter of the Municipal Staff in Bugojno- Personnel Service, number; 02-109/92 dated 12 October 1992, which was sent to the *Eugen Kvaternik* Brigade Command. The letter evidently implies that the *Garavi* unit, which was a part of this Brigade, has the total of 40 members. Furthermore, based on the unit file of the HVO 104 Brigade *Eugen Kvaternik*, it is obvious that Vinko Žuljević a.k.a. Klica is under number 135, marked as the commander of *Garavi* unit, while the accused Slavko Šakić is under number 111 of the same list, as a member of this unit. Finally, the payroll of *Garavi* unit, No. 01-2135/93 dated 17 August 1993 clearly shows that the accused Slavko Šakić is under number 5.

Anyway, for the existence of the criminal offense, it is essential that, because of the existence of the armed conflict, the Accused was engaged in the HVO military structures and due to such a status, he was in a position to commit the criminal offenses as charged.

- **The next requirement that must be met in order for the stated criminal offense to exist is that the perpetrator ordered or committed some of the actions stated under Article 173(1) a), c), e), f) of the CC BiH.**

Under the Agreement, the Accused pleaded guilty of all the offenses he is charged with by the Indictment of the BiH Prosecutor's Office, No. KT-RZ-39/08; however, the Court was under the obligation to assess the validity of that admission, which has been done, and also to determine if there is sufficient evidence indicating the criminal responsibility of the accused Slavko Šakić under all counts of the Indictment.

The Court holds that the responsibility of the Accused for the criminal actions under Count 1 of the Indictment indisputably follows from the submitted evidence. Many people who were deprived of liberty and detained in the cellar and other premises of the *Akvarijum* motel have testified about this circumstance.

According to the ICTY practice, in order to find unlawful detention of civilians, it is necessary to establish the existence of individual elements, primarily to establish that a person was deprived of liberty, then that the deprivation was done arbitrarily, meaning that there was no legal ground that would justify the deprivation of liberty, and that the act or omission by which an individual was deprived of liberty was committed by the Accused or persons under his responsibility, with an intention to deprive a person of his/her physical liberty, or being reasonably aware that his action or omission might cause arbitrary deprivation of physical liberty.

Based on the evidence attached to the Agreement, it is indisputable that the Accused, in mid June 1993, in Vrbanja settlement, Bugojno Municipality, together with other members of the HVO Special Purpose Unit *Garavi*, participated in the arrest of Bosniak civilians from a wider area of Bugojno, who were then detained in the cellar of *Akvarijum* motel in Bugojno. First of all, all witnesses agree that during their deprivation of liberty and the detention in the motel, they did not get any explanation from the HVO members, nor were they ever served with a written document stating legal grounds for their detention. Witness Abdulah Bevrnja describes a situation that happened in front of his house, when HVO set up a checkpoint where soldiers with black uniforms and black barrettes and *Garavi* insignia stood guard. According to him, they started arresting Bosniaks from Vrbanja settlement as early as 17 July 1993. He

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noticed that Bahrudin Šeremet, Esad Karamustafić, Ševala Smajić and Husein Mlaćo were arrested on that day, while this witness was deprived of liberty on the following day, that is, on 18 July 1993; he was arrested in front of his house by armed members of *Garavi* unit, among which he recognized Ivica Vučak, Kristijan Pocrnja, Slavko Šakić and few more neighbours.

Therefore, all the witnesses agree that members of *Garavi* unit, which certainly included the Accused, participated in the unlawful deprivation of liberty and escorting of civilians to the *Akvarijum* motel, while some witnesses confirmed that members of this unit were also engaged in plundering after they brought civilians in front of the motel. Witness Mihra Huskić claims that a group of civilians including her was ordered to lie down facing the ground when they arrived in front of the motel; she could notice that men were beaten, and then “*they listed down our names and took our gold by ripping it off our necks and fingers*”. This has been confirmed in the statements of Ešref Čatić and Idriz Čatić, who were brought from the village of Crniče, Bugojno Municipality, like the woman witness Huskić. They also stated that the civilians, when they arrived in front of the motel, were ordered to lie down facing the asphalt; that soldiers then requested their documents and maltreated men by kicking them and beating them with rifle butt, while they took off earrings from women and other jewelry they were wearing. In addition to taking the jewelry, Šerifa Čatić testifies about a search conducted by the soldiers when DEM 2,500 was taken away from her. She claims that “*they took away money from other people too*”. According to witness Soraja Kovač, the money and jewelry was never returned to the civilians.

In addition to the unlawful deprivation of liberty and detention, it is indisputable that civilians were treated inhumanely, because in addition to them being beaten at the very arrival, they were placed in entirely ill-conditioned cellar of the motel, which follows from statements of all witnesses. For example, Esad Karamustafić explains that they even made holes on the doors in order to have enough air. This witness also states that prisoners received insufficient portions of food, because three kilograms of bread would arrive for 26 prisoners. They could go to toilet once a day and had very little water.

Therefore, it is clear that the accused Slavko Šakić, together with other members of *Garavi* unit, participated in the unlawful deprivation of liberty and detention of civilian population and taking them to the *Akvarijum* motel, where he and other soldiers took away jewelry and money from the civilians. It is also indisputable that the civilians were subjected to beating at their very arrival and placed on the premises completely inadequate for a whole-day stay. Therefore, the Accused, by taking the actions stated under Count 1 of the Indictment, committed the criminal offense under Article 173(1) e) pertaining to the unlawful detention of civilians, and the criminal offense under subparagraph (f) of the same Article pertaining to the property confiscation or pillaging of people, as well as the inhuman treatment under Article 173(1) c), as read with Article 29 of the CC BiH. In the commission of the incriminating actions, the Accused acted with direct intent, being aware of the unlawfulness of depriving those civilians of liberty and unlawfulness of their property confiscation and holding the prisoners in inhuman conditions, but he anyway openly showed his will and volition to cause prohibited consequences of this criminal offense.

Furthermore, the evidence submitted to the Court imply that the accused Slavko Šakić, through his actions on the premises of *Akvarijum* motel, participated in the torturing of

detained civilians in the relevant period, inflicting numerous bodily injuries upon them by kicking them with military boots on, and beating them with rifle butt and wooden baton.

Witnesses who were tortured by the accused Slavko Šakić and by other members of *Garavi* unit testify about these circumstances. For example, Vahid Karagić points at Slavko Šakić in his statement as the most brutal person who came to the premises where civilians were detained. The reason for this is that this Accused, according to the witness, often fiercely beat the detained civilians by kicking them with his boots on, beating them with wooden batons and rifle butts. This would often happen when some of his dear ones would get killed. He would vent his rage in that way. He clearly remembers that the Accused once gave him a few blows to his head and left arm using a police baton. He still feels the consequences of this beating. Abdulah Karabeg, who was also detained in the cellar of *Akvarijum* motel, points out that the soldier Slavko Šakić mostly demonstrated his hatred against him. This witness remembers that on 28 July 1993, when the exchange of prisoners was planned, the Accused entered the hotel cellar together with Željko Pavić, sat on a chair holding a baton in one hand and a pistol in the other hand and pointed it at the witness and “pounced upon” him by ordering him to lie down on the floor with his face down and to hold out his right arm on which he then put off a cigarette, and when he threw it away he ordered the witness to swallow it threatening that he would be killed if he did not obey. Later he requested the witness to lick his dirty boots. He also spit over the floor while the witness had to lick it. All this time the Accused “unsparingly” hit him with baton over his back, as a consequence of which the witness occasionally lost his consciousness. He did the same to the witness’ brother, Husein Karabeg, whom he beat with baton over various parts of his body and ordered him to lick his own blood of the floor, and the witness did so. During this time, according to Ešref Čatić, the Accused insulted Husein telling him “lick the blood Balija!” In his statement made during the investigation, witness Kemal Morić also pointed at the accused Slavko Šakić and at a person whom the prisoners knew as Vučko’s uncle, as persons “who beat, maltreated and tortured us every day”, while Mehmed Tanković, in addition to the name of Slavko Šakić, mentions certain Pavković, describing them as the cruelest HVO members who came to the motel every day and beat the prisoners with various objects, batons, rifles, boots. He was personally beaten by the accused Šakić several times. The beating and maltreatment of prisoners by the Accused using the aforementioned objects was confirmed by witnesses Edhem Čehaja and Muhamed Čehaja, who also singled out the Accused as a person who maltreated, insulted and beat them and other prisoners every day using various objects. How unnecessary and arbitrary the abuse was is best described in the statement of Esad Karamustafić who claims that a reason to beat a prisoner was when he would not know the month of his birth in the Croatian calendar.

Additionally, it indisputably ensues from the evidence that the Accused in particular tortured the detained old men Hidajet Imširpašić and Sulejman Basara on whose palms, following numerous blows, he carved a cross. This is corroborated by the statement of Abdulah Karabeg who claims that the Accused particularly abused an elderly man from Vrbanja who passed away after a few days, and statement of the witness Ešref Čatić, who knows that in addition to every-day maltreatment of prisoners the accused Šakić carved crosses on Sulajman Basara’s palms.

In order to establish the responsibility of the Accused for the criminal offenses he is charged with, that is, the responsibility for taking part in the torturing of detained civilians, it is first necessary to point at Article 173(1) c) of the CC BiH, which requires that the pain and suffering be “severe”, which is quite an imprecise standard. Since the national law does not provide a clear definition of the word “torture”, the Court referred to legal regulations on torture in the customary international law, which is also used by ICTY and ICTR.

For the criminal offense of torture to be regarded as war crime, the following requirements should be met:

- (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.
- (ii) The act or omission must be intentional.
- (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.⁸

Since the statements of the witnesses point at every-day, repeated beating of prisoners by the Accused, and by other soldiers from the *Garavi* unit who accompanied him occasionally, it can be concluded beyond doubt that the Accused participated in the torturing of detained civilians by beating them with batons, rifle butt, kicking them with his boots on, as a consequence of which some of them lost consciousness. Taking into account that this conduct of his was accompanied by humiliating actions as described by the witnesses, it is justified to claim that the prisoners were subjected to severe physical and mental pain and suffering, wherefore the Court finds that the Accused, through his actions described under Count 2 of the Indictment, committed the criminal offense of torture under Article 173(1) c) of the CC BiH, as read with Article 29 of the CC BiH.

During the commission of the crime, the Accused acted with direct intent, being aware of the possibility of producing prohibited consequences, because injuries on the prisoners who were beaten every day were clearly visible, which is corroborated by statement of the witness Sutka Karabeg, whom they took one night in a room where men were staying, and she states that the “men looked terrible; they all had visible injuries and bruises”. Additionally, the Accused clearly showed through his actions that he wanted the prohibited consequences to arise in relation to each person abused. During the perpetration of this criminal offense he demonstrated particular cruelty and brutality towards the unlawfully detained civilians, some of which were old. He also demonstrated particular persistence since the beating took place almost every day.

Therefore, it is clear that the Accused followed the well-established pattern in the abuse of inferior victims, detained civilians, guided by prohibited discriminatory goal. This goal ensues from statements of witnesses who claim that the Accused insulted prisoners on ethnical basis every time he beat them, using abusive language and subjecting them to various humiliating acts.

⁸ Appeals Chamber Judgment, *Kunarac*, para 142.

We should also point out that Article 173(1) c) sets forth that the commission of this criminal offense includes “killings, intentional infliction of severe physical or mental pain or suffering upon a person (...)”, and based on the presented evidence it is evident that the actions of the Accused produced serious consequences for the physical and mental integrity of the victims.

In the specific case, the results of such behaviour of the Accused, in addition to the mental pain and trauma existing in the case of each witness, the consequences of violation of bodily integrity are also clearly noted, as explained in detail in the findings and opinion of the certified court expert Dr. Hamza Žujo, dated 8 July 2008, which is based on the medical documentation of the JU Medical Centre Bugojno where the civilians detained in the *Akvarium* motel were examined immediately after the exchange on 28 July 1993. The findings pertain to the following victims: Abdulah Karabeg, Abdulah Bevrnja, Idriz Ćatić, Bahrudin Šeremet, Esad Karamustafić, Mustafa Čolak, Smail Ljubunčić, Mustafa Morić, Adis Hakanović and Kemo Morić. The findings establish that the injuries sustained by the victims were mostly inflicted by punches and blows delivered by mechanical blunt objects used by the inflictors and with fists, which supports statements of witnesses who described the manner and means of abuse during their detention.

The Court further finds that the responsibility of the Accused for the criminal actions under Count 3 of the Indictment ensues from the filed evidence. Specifically, all the prisoners testified about the killing of Selmir Šehić.

Witness Abdulah Karabeg remembers well that the incident in question took place on 26 July 1993, since in the afternoon that day the accused Slavko Šakić “kicked him fiercely in his head and over various parts of his body with his shoe on”, and he clearly remembers that in the evening of the same day he took away Selmir Šehić, who was then lost without a trace. Muhamed Tanković, who was beaten with other prisoners in the afternoon of the same day, precisely states that it was done by Slavko Šakić, certain Pavković and Pocrnja. This is described in more details by Sihanuk Karabeg, who also claims that the incident described in the Indictment occurred two days before the exchange, that is, on 26 July 1993. As he could notice, in the afternoon of the same day, Slavko Šakić, Željko Pavić, Kristijan Pocrnja and a soldier a.k.a. Tiki came to premises where the detainees were placed and beat up other prisoners.

In the same evening Slavko Šakić singled out 4 or 5 prisoners including Selmir Šehić whom he first interrogated about family matters, just like he did with the others, and then he fiercely beat him and took him into unknown direction. Based on his conduct, this witness concluded that Slavko knew Selmir Šehić from before, because he was the only one whom he called by full name in a manner indicating that these persons had some unsettled relations from before. Furthermore, Ešref Ćatić claims in his statement that, after Selmir Šehić was taken away from the detention premises, Željko Pavić from Karadže, who guarded the prisoners, said: “I know that they will kill Selmir, but I cannot prevent it”, while Mustafa Čolak remembers that the soldier who then took away Selmir Šehić said to everyone in the room: “If anyone ever asks you, tell that it was the chief in *Garavi*, and this is the last time you see Selmir”.

Evidence further imply that the offense was committed in the manner described in the operative part of the Indictment. Specifically, witness Edhem Ćehaja explains in his

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statement how a group of soldiers including the Accused treated a boy who could be 17 or 18 years old at the time, and whose name was, as he found out later, Selmir Šehić. The accused Slavko tied this person's hands with a rubber cord and took him out of the cellar telling the witness to follow them. At the exit from the room, the witness was ordered by other soldiers to take garbage and throw it away. On that occasion he observed the incident from a corridor separated with a glass, so he could clearly see how Slavko took Selmir to a group of soldiers, where he was beaten with everything within their reach. Then Slavko "threw him in" a reddish vehicle and sat on the driver's seat. This was also confirmed by the witness Soraja Kovač who clearly saw from a motel window upstairs that soldiers were putting Selmir Šehić into *Jugo* vehicle. She knew this person from before. After that, he was never brought back to the motel. Witness Smail Ljubunčić stated that one day after taking away Selmir Šehić, HVO members ordered him and another two boy to wash the car, which was full of blood. This was confirmed by Muhamed Čehaja because the soldiers ordered him and his cousin Abdulah to clean the vehicle that had a puddle of blood on the back seat.

Witness Rusmir Alispahić was a member of the Commission that took part in the exhumation of killed persons after the conflict between the HVO and the BiH Army ended. After the team received report about a body found under *Kandijski* Bridge, he and his colleagues Dr. Softić, Amela Kahvedžić and two policemen went to the site. On a concrete sub-wall under the bridge they found a corpse dressed in a sweater. Upon the inspection of the documents they established that it was Selmir Šehić. On that occasion stabbing wounds were visible on the upper part of the body – rib cage and stomach, and on his back. According to the witness, one of the upper or lower arms was broken. The witness could not tell about injuries on the face, since the body was already in the state of decay, but he remembers that the corpse had a noose tied under the chests and concludes that the person was probably led in that way.

This person's death was recorded in the official note of the SJB /Public Security Station/ Bugojno dated 16 September 1993, which reads the names of all persons killed in the conflicts between the HVO and the BiH Army during the period 18 July 1993 – 28 July 1993. Bodies of those persons were later found and identified by the Commission for Identification of Killed Persons established by the War Presidency under the Decision No.01-V-18/93 dated 25 July 1993. In the mentioned official note the name of Selmir Šehić is under number 13. The injuries are described in the same manner as stated by witness Rusmir Alispahić, while the official note points out that the corpse was found in civilian clothes, massacred, with stabbing wounds that were not deep; therefore, according to doctor's opinion, the blows were delivered for the purpose of inflicting pain upon the victim and not for the purpose of killing him.

Therefore, all the witnesses agree that the accused Slavko Šakić stood out in particular for the brutal and cruel treatment of prisoners. Furthermore, it is indisputable from statements of the witnesses that the critical event took place on 26 July 1993, when the accused Šakić, together with several members of *Garavi* unit, participated in the beating and abuse of the detained civilians, including Selmir Šehić. After the beating he tied up this person's hands and took him into an unknown direction. In late August 1993, he was found dead under *Kandijski* Bridge. By the mentioned actions, accused Šakić committed the criminal offense of attack on individual civilians as set forth under 173(1)(a) of the CC BiH, as read with Article 29 of the CC BiH. This action resulted with the death of Selmir Šehić. The Accused committed these criminal offenses with

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direct intent, being aware that prohibited consequences might arise in relation to the abused persons, particularly in relation to Selmir Šehić, whom he treated with particular ruthlessness and mercilessness, while his further actions additionally point at an open intention for this person to die as a final result of the abuse.

Finally, the Panel holds that the file contains sufficient evidence that undoubtedly indicate that the Accused participated in the actions alleged under Count 4 of the Indictment, that is, during the period referenced in the Indictment, on a number of occasions he took detained Bosniak civilians from the cellar of *Akvarijum* motel to the front lines to perform forced labor of digging dugouts and trenches. As a result, on 21 July 1993, detainee Adis Hakanović, while digging communication trenches with other detainees, was wounded by a bullet in his right ankle joint due to a cross fire of the parties to conflict. After that, he was returned and detained in the cellar of *Akvarijum* motel.

All witnesses confirmed in their statements that most men, during their stay in the motel, were taken to the front lines every day to dig trenches, communication trenches, so they were often used as “human shield”. Additionally, they were taken to perform labor consisting of clearing up the terrain and digging graves for killed HVO members.

The aforementioned ensues primarily from statements of the witnesses who were taken to perform forced labor. For example, Adis Hakanović claims that the men were taken to dig trenches and communication trenches from the cellar room where he was detained, and occasionally they were taken to clean motel rooms where soldiers stayed. He clearly remembers that on 21 July 1993, while digging trenches on the front line he was wounded in his right ankle joint. He also remembers that a prisoner who worked with him got him out of the trench and that the soldiers who guarded them were asked for help.

Then, witness Hakanović was taken to the stairs of *Akvarijum* motel and ordered to wait there, when an HVO member, certain Vučak, asked him “Who wounded you, Balija?” and “threw” him from the stairs, jumped on his chests, and “made a cut under his throat from ear to ear” using a bayonet he carried in his hand. He then sustained some more beating and was transferred to the motel cellar. This was also confirmed by witness Karabeg Sihanuk who was taken with his nephew on the critical occasion to dig trenches. He remembers that he and his nephew were digging grave sites when soldiers came carrying a wounded Bosniak and ordered them to take him to the cellar of *Akvarijum* motel, while witness Muhamed Smajić remembers a boy about 25 years old whom they “threw in” the cellar on one occasion, and he could clearly see that the person was wounded in his leg. However, all witnesses agree that on that occasion the soldiers warned all the present prisoners in the cellar that they must not go near the injured boy or help him in any way.

The injury sustained by Adis Hakanović was also recorded in the medical documents of the JU Medical Centre Bugojno, where he was examined just before the exchange dated 28 July 1993, when it was established that Hakanović sustained injuries consisting of an entry-exit wound in both lower legs. Certified court expert witness, Dr. Hamza Žujo defined this as a severe bodily injury in his report dated 8 July 2008.

Therefore, statements of witnesses heard during the investigation undoubtedly imply that HVO soldiers, more precisely soldiers of *Garavi* unit, whose member was the accused Šakić, took the detained men every day to perform forced labor, primarily consisting of digging trenches, dugouts and communicating trenches. They performed these jobs at the front lines, being exposed to cross fire all the time, which is why most witnesses claim that they were at the same time used as a “human shield”. When it comes to this type of labor, voluntariness was absolutely excluded. Witnesses agree that the soldiers issued them orders and assignments which they had to obey, often under the threat of being killed, so they could not refuse going there. This is corroborated by witness Mustafa Čolak, who points out that the soldiers would first take the prisoners to the corridor, beat them there, and then they would take them to labour, which additionally implies that it was forced labour and points to the fact that they never had a choice.

Taking into account the aforementioned, the Accused acted with direct intent in the commission of the criminal offenses under this Count of the Indictment, because he was aware of the possibility of causing forbidden consequences in relation to the persons who were taken to dig trenches and dugouts. Therefore, although he was aware of the danger that prisoners, while performing labor at the front lines, were exposed to cross fire every day, the Accused participated with other soldiers in taking them to perform the forced labor. Acting in this manner, he openly showed an intention for these persons to be killed or injured as a result of such exposure. This intention was best demonstrated in the case of injured Adis Hakanović, whom the soldiers returned to the motel premises forbidding other prisoners to offer any help to the injured.

In accordance with the aforementioned, the Court has found that the case file contains sufficient evidence that the Accused committed the criminal offense under Article 173(1) f) of the CC BiH, as read with Article 29 of the CC BiH.

Based on the statements of witnesses and attached documentary evidence, it is obvious that the offenses committed by the Accused were aimed at depriving others of the right to life, freedom and safety, which is contrary to the international humanitarian law or common Article 3 of Geneva Conventions. Furthermore, the offenses were committed against unarmed persons, that is, against persons who were protected under the Convention, during the armed conflict that the Accused knew of and in which he undoubtedly participated.

Therefore, during the armed conflict in BiH between the HVO and the BiH Army, in the period between 17 July 1993 and 28 July 1993, the Accused violated international humanitarian law, specifically Article 3(1) a) and c) of the Geneva Convention Relative to Protection of Civilian Persons in Time of War dated 12 August 1949, together with other HVO members, that is, members of *Garavi* unit, which was a part of the 104 Brigade – *Eugen Kvaternik*, by committing and contributing to a decisive extent to the perpetration of criminal acts consisting of torture and unlawful detention of civilians and forcing them to labour.

Based on the filed evidence, the Court has found that the actions of the Accused contain elements of the criminal offense of War Crimes against Civilians, set forth under Article 173(1) a), c), e) and f), and that he is individually responsible for their perpetration, as set forth under Article 180(1) of the CC BiH, as read with Article 29 of the CC BiH.

- **Fashioning the sentence**

The criminal offense of which the Accused is found guilty is punishable by imprisonment for a term of not less than 10 years or a long-term imprisonment.

At the sentencing hearing dated 26 September 2008, parties presented circumstances existing on the part of the Accused that had been taken into consideration by the Court in the course of deciding on the duration of the sentence.

At the mentioned hearing, the Prosecutor stated that she maintained her position on the range of punishment as proposed in the Agreement. As a mitigating circumstance she presented the fact that the Accused admitted his guilt for the criminal offenses as charged, and that he was not subject to any criminal proceedings after the period in question. She stated that the Accused was a young adult at the time of perpetration of the criminal offenses.

The Defence Attorney for the Accused stated, inter alia, that the Accused admitted the perpetration of the crimes and expressed his deep regret for everything he had done. Furthermore, it is a person who had a marginal role in the perpetration of the crimes and a person who was only 20 years old at the relevant time. Furthermore, she pointed out that the Accused was a viceless person who had not been criminally prosecuted or tried hitherto. Additionally, the Accused is ... and suffers from ...; his financial status is poor since he is unemployed, and so is his wife; they have three underage children whom they support. The situation is additionally aggravated by the fact that they have not even solved their housing problem. Accordingly, the Defence holds that the threshold of punishment should not exceed 7 years, which is the lower limit of the sentence proposed by the Agreement.

The Accused agreed with the arguments of the Defense Attorney and once again expressed his deep regret for the crimes he admitted.

In the course of fashioning the sentence, the Court was guided by the range of sentence envisaged in the Agreement on the Admission of Guilt, pursuant to Article 231(3) of the CPC BiH, and the evaluation of all circumstances pertaining to the Accused. In the course of meting out the sentence, the Court took into account the fact that the Accused admitted the criminal offense and expressed his regrets for the commission of the crime. Furthermore, the Accused has no prior convictions; he is a father of three children; at the time of perpetration of the crime he was a young adult. However, in the course of deciding on the sentence, the Court also took into account that the Accused committed many criminal offenses against many civilians, acting with direct intent, and that he did it with particular cruelty and brutality, as confirmed by all the witnesses.

Taking into account all the aforementioned, as well as the degree of participation of the Accused and his contribution to the perpetration of criminal offense, the Court holds that the pronounced sentence has been fashioned pursuant to Article 48(1) of the CC BiH, and that the pronounced sentence will achieve the purpose of punishment stipulated under Article 39 of the CC BiH.

Pursuant to Article 56 of the CC BiH, the time spent in custody pending trial, starting from 19 May 2008, shall be counted as part of the sentence of imprisonment.

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- **Decision on costs**

The accused Slavko Šakić, by signing the Agreement on the Admission of Guilt dated 5 September 2008, took the obligation under Article 4 that he would bear the costs of the criminal proceedings. However, pursuant to Article 188(4) of the CPC BiH, the Court has decided that the costs of these proceedings shall be paid from the budget funds, since the Accused is unemployed and father of three underage children, wherefore his payment of the costs would threaten his sustenance and that of his family.

- **Decision on the property claim**

Taking into account that the Accused entered into the Agreement on the Admission of Guilt with the BiH Prosecutor's Office, and that the main trial was not held where the injured parties could state their positions regarding a claim under property law and its amount, the Court has referred them to take civil action pursuant to Article 198(2) of the CPC BiH.

Record taker

Lejla Haračić

/hand signature duly affixed/

PRESIDING JUDGE

Jasmina Kosović

/hand signature duly affixed/

LEGAL REMEDY: This Verdict may be appealed with the Appellate Panel of this Court within 15 days following the date of its reception. Pursuant to Article 231(6) c) of the CPC BiH, an appeal as to the sentence imposed shall not be allowed