

**SUD BOSNE I HERCEGOVINE  
ХЕРЦЕГОВИНЕ**



**СУД БОСНЕ И**

**COURT OF BOSNIA AND HERZEGOVINA**

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**Case No.: X-KR-07/430**

**Date: Delivered 29 June 2009  
Published 14 September 2009**

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**Before: Judge Tihomir Lukes, Presiding  
Judge Carol Peralta  
Judge David Re**

**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

**v.**

**FERID HODŽIĆ**

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**VERDICT**

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**Counsel for the Prosecutor's Office of Bosnia and Herzegovina:**

**Ms. Sanja Jukić, Prosecutor**

**Counsel for Ferid Hodžić:**

**Mr. Asim Crnalić, Lawyer**

## INDEX TO VERDICT

<b>A. OPERATIVE PROVISION</b> .....	3
<b>B. REASONING</b> .....	6
<b>The indictment</b> .....	6
<b>Existence of an armed conflict</b> .....	7
<b>Detention of prisoners in a stable in Rovaši</b> .....	9
<b>Breaches of Article 3 (1) (a) and (c) of the Geneva Conventions of 1949 and Articles 173 and 175 of the Criminal Code of BiH – beatings and mistreatment of the prisoners</b> .....	13
<b>Torture</b> .....	16
<b>Death of Dušan Čestić</b> .....	18
<b>Applicability of Article 121 of the Third Geneva Convention Relative to the Treatment of Prisoners of War of 1949</b> .....	20
<b>Conditions of confinement in the stable – whether they constituted inhuman treatment</b> .....	22
<b>Alleged breach of Article 27 of Fourth Geneva Convention</b> .....	25
<b>Allegation that Ferid Hodžić ordered the illegal apprehension and detention of prisoners of war and civilians</b> .....	26
<b>Command Responsibility of Ferid Hodžić in Cerska between May 1992 and January 1993</b> .....	27
<b>Responsibility for control over the detention stable</b> .....	35
<b>C. CONCLUSION</b> .....	39
<b>Decision on the Costs of the Proceedings and Claim under Property Law</b> .....	40
<b>ANNEX 1 PROCEDURAL HISTORY</b> .....	41
<b>ANNEX 2 TRIAL RECORD</b> .....	43
<b>Prosecution witnesses</b> .....	43
<b>Prosecution documents</b> .....	43
<b>Defense witnesses</b> .....	47
<b>Defense documents</b> .....	48

## **A. OPERATIVE PROVISION**

**Number: X-KR-07/430**  
**Sarajevo, 29 June 2009**

### **IN THE NAME OF BOSNIA AND HERZEGOVINA!**

The Court of Bosnia and Herzegovina, the Panel comprising Judge Tihomir Lukes as the Presiding Judge and Judges David Re and Carol Peralta as the Panel members, with the participation of the legal advisor Sabina Hota Čatović as the record-keeper, in the criminal case against the accused Ferid Hodžić for the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c) and (e) of the Criminal Code of Bosnia and Herzegovina and the criminal offense of War Crimes against Prisoners of War in violation of Article 175 (1) (a) and (b) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180 (2) of the Criminal Code of Bosnia and Herzegovina, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-160/07 of 23 November 2007, following the main trial which was public and attended by the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, the accused Ferid Hodžić and his Defense Counsel, attorney Asim Crnalić, rendered and on 29 June 2009 publicly announced the following

### **V E R D I C T**

#### **THE ACCUSED**

**FERID HODŽIĆ**, son of Avdo and mother Safeta, born on 2 December 1959 in Vlasenica, residing in Stupine B No. 11, Tuzla municipality, high school teacher, married, father of four children, indigent, held the rank of captain in the former of JNA, unemployed, Bosniak by ethnicity, citizen of BiH, no previous convictions and no pending criminal proceedings for another criminal offense,

**Pursuant to Article 284 (c) of the Criminal Procedure Code of Bosnia and Herzegovina**

**IS ACQUITTED OF THE CHARGE**

**that**

during the armed conflict between the Territorial Defense of the Republic of Bosnia and Herzegovina (the TO R BiH) and the Army of the Serb Republic of Bosnia and Herzegovina in the territory of the municipality of Vlasenica, acted in violation of the rules of International Humanitarian Law, specifically Article 3 (1) (a) and (c) and Article 27 of the Geneva Convention on the Protection of Civilians in Time of War of 12 August 1949, as well as Article 3 (1) (a) and (c) and Article 121 of the Geneva Convention on the Treatment of Prisoners of War of 12 August 1949, by doing the following:

during the period from May 1992 to 26 January 1993, as the Commander of the Territorial Defense of the Municipality of Vlasenica, as part of the TO R BiH, with its command post in the hamlet of Rovaši in Cerska, the municipality of Vlasenica, he ordered that ethnic Serb civilians and prisoners of war from the Army of the Serb Republic of BiH be unlawfully apprehended and held in the so-called *Štala*, or stable, prison facility located in Cerska, which was normally used for keeping cattle, where they were held for seven months in inhumane conditions without electricity, heating, appropriate sleeping conditions, hygiene, and were subjected to inhumane treatment by Bosnian soldiers from the TO R BiH, who, coming from the front lines to Rovaši, entered the stable without authorization, and insulted, cursed and beat Rade Pejić, Anđa Obradović, minor Dragan Ilić, Jakov Đokić, Branko Sekulić and Dušan Čestić, punching and kicking them all over their bodies, causing severe physical and mental pain and which, *inter alia*, resulted in the death of Dušan Čestić, which the accused, as the superior knew of, but failed to open any investigation into his death, or to take necessary and reasonable measures in order to prevent the wrongdoings and to punish the perpetrators who on one occasion even announced in the command post that they would beat the prisoners, including accused Veiz Bjelić whom he appointed the prison guard, as person responsible for security of the prisoners,

**and that consequently,**

during the war in Bosnia and Herzegovina and the armed conflict in Bosnia and Herzegovina between the units of the Territorial Defense of the Republic of Bosnia and Herzegovina and the Army of the Serb Republic of Bosnia and Herzegovina, in violation of the rules of International Humanitarian Law, he committed inhumane treatment,

torture, and that as the superior and responsible person, he failed to take necessary and reasonable measures to prevent the commission of the offences and to punish the perpetrators

**whereby:**

**he would have committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c) and (e) of the Criminal Code of Bosnia and Herzegovina and the criminal offense of War Crimes against Prisoners of War in violation of Article 175 (1) (a) and (b) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180 (2) of the Criminal Code of Bosnia and Herzegovina.**

## I

Pursuant to Article 189 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, the costs of criminal proceedings referred to in Article 185 (2) subparagraphs (a) through (f) of this Code and the necessary expenditures of the accused and the necessary expenditures and remuneration of defense attorney shall be paid from budget appropriations.

## II

Pursuant to Article 198 (3) of the Criminal Procedure Code of Bosnia and Herzegovina, aggrieved parties are hereby referred to pursue their potential claims under property law in a civil action.

## **B. REASONING**

1. The Court carefully evaluated the testimony of every witness heard and every document admitted into evidence. It has referred to the evidence necessary to reach this verdict and has referenced by footnote, where necessary, the source of the testimony or other evidence supporting a finding. The procedural history of the trial is in Annex 1 and the presentation of evidence is in Annex 2. These annexes are an integral part of the reasoning.

### **The indictment**

2. The indictment charges the Accused Ferid Hodžić under the Criminal Code of Bosnia and Herzegovina with one count contrary to Article 173 (1) (c) and (e) of war crimes against civilians and Article 175 (1) (a) and (b) of war crimes against prisoners of war, in conjunction with Article 180 (2) of the Code.
3. The criminal responsibility alleged appears to be a combination of command responsibility for failing to prevent and punish crimes of murder and torture (including ordering an inquiry into death of a prisoner in custody) and direct responsibility for ordering the unlawful apprehension of Serb prisoners of war and civilians. The relevant breach of the laws of war derives from Article 3 (1) (a) and (c) common to the Geneva Conventions of 1949 and the Additional Protocols of 1977.
4. The events charged occurred in the hamlet of Rovaši in the village of Cerska in the Municipality of Vlasenica between May 1992 and January 1993. They relate to the apprehension and detention of Serb civilians and prisoners of war in a stable, normally used for keeping cattle, in Rovaši. The stable was in an area then under the control of the Bosnian military forces. The indictment charges the Accused with criminal liability for:

- Ordering ethnic Serb civilian and prisoners of war of the VRS be unlawfully apprehended and detained in the stable;
- Detaining them in inhumane conditions without electricity, heating, appropriate sleeping conditions and hygiene;
- Subjecting them to inhumane treatment by Bosnian Army Territorial Defense (TO) soldiers who insulted cursed and beat six prisoners – by punching and kicking them, causing severe physical and mental pain;
- The death of Dušan Čestić from his injuries after being kicked and punched;
- As a commander, knowing of the death and failing to take necessary and reasonable measures to prevent and punish the perpetrators;
- As a commander, failing to order an investigation into the death of a prisoner as prescribed by Article 121 of the Third Geneva Convention; and
- Of inhuman treatment of civilians contrary to Article 27 of the Fourth Geneva Convention.

### **Existence of an armed conflict**

5. The existence of an armed conflict and its connection with the offences charged is a jurisdictional requirement and a *chapeau* element of Articles 173 and 175 of the Criminal Code of BiH. The parties and Defense counsel agreed that an armed conflict was in existence in BiH during the time period and geographical area pleaded in the indictment.
6. Whether the armed conflict is international or internal is relevant for proof of certain offences proscribed by international humanitarian law. In this

7. The Prosecution informed the Court, upon its inquiry during the trial, that it was alleging that the conflict was of an internal rather than an international character. The Defense submitted, in its written closing submissions, that the conflict was an international one. The evidence presented during the main trial was of an armed conflict between forces loyal to the internationally recognized Government of Bosnia and Herzegovina, on one hand, and JNA and Bosnian Serb armed forces, on the other, from the beginning of April 1992 onwards. From this evidence the Court has concluded that an armed conflict occurred on the territory of BiH and, most specifically, in Vlasenica municipality at the relevant time between April 1992 and February 1993.
8. The evidence established that, in early April 1992, Serb forces attacked the non-Serb civilian population of Vlasenica municipality, then an ethnically mixed area of small villages and hamlets. In the weeks following, the attack against the non-Serb civilian population continued in villages throughout the municipality. By late April, Serb forces controlled numerous localities, including Nova Kasaba,<sup>1</sup> Neđeljište, Konjević Polje, Pijuci and Poverdža. The villages of Bećirovići, Šipovići, Hajdurovići, Čamdžići, Čelebići and Šadići were burned and their population driven from their homes by the attacking Serb forces.<sup>2</sup> Thousands of Bosnian Muslim refugees flooded into Cerska and Rovaši,<sup>3</sup> some having fled there through the woods.<sup>4</sup>
9. The intensified conflict resulted in the Presidency of BiH declaring a “state of imminent danger of war.”<sup>5</sup> On 8 April 1992, the President of the Presidency of BiH formed a Staff of the Territorial Defense of the Republic of Bosnia and Herzegovina. The Bosnian Army was formally established on

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<sup>1</sup> Ejub Hadžić, (testimony of) 18 April 2008.

<sup>2</sup> Murat Šiljković, 18 April 2008.

<sup>3</sup> Murat Šiljković, Salih Jusić, 21 May 2008, Ćamil Talović, 21 May 2008.

<sup>4</sup> Dževad Musić, 28 April 2008.

<sup>5</sup> Exhibit T-23.

15 April 1992.<sup>6</sup> In May and June 1992, the President created municipal TO units throughout BiH. Some municipalities, including Vlasenica, remained *de jure* without a TO unit. On 20 June 1992, the Presidency proclaimed a “state of war” and identified the aggressors as “the Republic of Serbia, the Republic of Montenegro, the Yugoslav Army and the terrorists of the Serbian Democratic Party”.<sup>7</sup>

10. However, in the circumstances of this case – namely an acquittal and the Court's legal findings of breaches of Common Article 3 (1) (a) of the Geneva Conventions (which is applicable both in internal and international conflicts)<sup>8</sup> – the Court need not make a legal finding as to whether the conflict was of an internal or international character.

### **Detention of prisoners in a stable in Rovaši**

11. The Court heard evidence and found that in late May or early June 1992, a detention centre was established in a stable (*štala*) in Rovaši, a hamlet in Cerska, for prisoners who were to be exchanged. Jakov Đokić was the first Serb prisoner taken; he was considered to be a prisoner of war. He was initially detained in a cottage in the village of Selimovići, where he was to be held until exchange. However, shelling forced his relocation to the stable, which was considered to be a safer location.<sup>9</sup>

12. The stable was about four to five meters squared in size and was divided into an upper and lower part. Its openings were closed with blocks. The roof was of metal sheeting and the door and the attic were wooden. It had a covered opening in the ceiling.<sup>10</sup> It was the only detention facility in the area and it initially housed both Bosniak and Serb prisoners. The Defense

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<sup>6</sup> Exhibit T-24.

<sup>7</sup> Exhibit T-26.

<sup>8</sup> See paragraphs 19-33 below.

<sup>9</sup> Salih Jusić, 21 May 2008; Džemil Babić, 23 May 2008 (“...after the refugees arrived the public peace and order was disturbed thus the police commander ordered to establish a facility where people could be brought in and detained. There was a cottage in Selimovići and it was a detention facility where initially Bosniaks were detained for minor offences... but when the shelling started he was transferred to a stable a kilometer away from that place...”).

<sup>10</sup> Rade Pejić, 25 April 2008.

did not challenge that the six Serb prisoners named in the indictment were in fact detained in the stable at various times between May 1992 and January 1993.

13. The Prosecution proved beyond reasonable doubt that the apprehension of the Bosnian Serb civilians and prisoners of war was connected with the armed conflict. The Court is satisfied that the stable functioned as a detention facility that was used by the Bosnian military forces. The Court is also satisfied that at least three Bosniaks were detained in the stable for several months from May 1992 on suspicion of collaboration with the enemy forces.

14. The circumstances of apprehension and detention of the six Serb prisoners were:

- **Jakov Đokić** was the first Serb prisoner detained in the stable. On about 17 May 1992 he was captured near Konjević Polje by the residents of the village of Kostijerevo and detained in the stable (after being initially detained in a cottage in Selimovići).<sup>11</sup> When captured he was wearing a JNA military uniform and was armed.<sup>12</sup> He spent eight months in the stable until he was taken to Srebrenica for exchange on about 26 January 1993.<sup>13</sup> He died sometime that year in Srebrenica.<sup>14</sup>
- **Rade Pejić**, a.k.a. Mišo, a Serb civilian from Radava, Gobelj, was arrested around the end of April or beginning of May 1992 by the civilian police for refusing to surrender his rifle and join the territorial defense of

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<sup>11</sup> Vidoslav Đokić, 18 April 2008 (“...my son set off to Han Pijesak wearing a green military uniform, he did not have arms... The courier Marko told me that he had been captured in Konjević Polje around 17 May and that he was in Cerska...”).

<sup>12</sup> Salih Jusić (“...he was captured by residents of Kostijerevo... he was wearing a uniform... I know for sure that he was fully equipped for the combat and he had ammunition...“); Džemil Babić (“...that evening the village of Kostijerevo was burnt down... Jakov Đokić who was captured was wearing the JNA olive drab and was armed...”); Adil Omerović, 14 May 2008.

<sup>13</sup> Exhibit T-39 - List of detained persons made by the Srebrenica Armed Forces No.108/93, 3 February 1993.

<sup>14</sup> T-5- Copy of the Decision by the Basic Court of Vlasenica No. R-17/98, 17 June 1998 declaring the missing Jakov Đokić dead; Exhibit T-7 - Death Certificate issued by the Municipality of Šekovići for Jakov Đokić, No.05/10-202-290/07, 23 April 2007.

Cerska.<sup>15</sup> When he arrived at the stable Jakov Đokić and three Muslim prisoners were already detained there.<sup>16</sup>

- **Dragan Ilić**, then aged 16 or 17, was captured by members of Nova Kasaba Territorial Defense in June 1992.<sup>17</sup> At the time of his capture he was armed.<sup>18</sup> He was detained for about seven months in the stable and in January 1993 was taken to Srebrenica.<sup>19</sup> He died in Srebrenica some time in 1993.<sup>20</sup>
- On about 30 June 1992, **Branko Sekulić** was captured by members of the Territorial Defense of the villages of Sebiočine and Burmice during combat with Bosnian military forces.<sup>21</sup> He was wounded in the leg just above his ankle. He was taken to the stable and detained there for seven months, that is, until January 1993.<sup>22</sup> He was taken to Srebrenica with other prisoners. He died there sometime in 1993.<sup>23</sup>
- **Anda Obradović**, the only female prisoner, was captured in Novo Selo by the Kamenica Territorial Defense in a military operation on about 17 September 1992.<sup>24</sup> She was brought to the stable on about 4 October 1992 and remained there for three and a half months. She testified that she had been mobilized into the VRS but denied being a soldier. She testified that

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<sup>15</sup> Salih Jusić (“...he was apprehended by civil police... The chief of the police station during the war was Munib Avdić...”); Džemil Babić (“...Mišo was not captured but apprehended by me, following the conversation with him... We asked him to join the defense forces anywhere, but he refused stating that he wanted to be exchanged...”).

<sup>16</sup> Rade Pejić.

<sup>17</sup> Slađan Ilić, 15 May 2008 (“...my brother set off to our grandfather’s in the village of Vukšići on 26 June 1992 and he never came back... He was wearing training shoes, trousers and a multi-colored jacket...”).

<sup>18</sup> Ejub Hadžić, 18 April 2008 (“...Dragan Ilić arrived in Kasaba armed, the commander Esad Dedić told me that they had captured him because he had arms and he was supposed to be interrogated... They took him to Cerska where he should have been exchanged for a woman, but the exchange did not take place...”); Fajko Kadrić, 22 May 2008 (“...I heard that a Serb was captured when Arkan’s men attacked Nova Kasaba... They wanted to exchange him for a woman, but they failed and then he was taken to Cerska in detention...”).

<sup>19</sup> Exhibit T-39 - List of detained persons made by the Srebrenica Armed Forces No. 108/93, 3 February 1993.

<sup>20</sup> Exhibit T-22 - Death Certificate for Dragan Ilić, No. 03-202-698/2007, 13 April 2007.

<sup>21</sup> Džemil Babić, Adil Omerović.

<sup>22</sup> Rade Pejić.

<sup>23</sup> Exhibit T-39; Rajko Sekulić, 18 April 2008.

<sup>24</sup> Džemil Babić.

she was wearing civilian clothes when captured. However, a soldier who had her in his custody after her capture testified that she was wearing a military jacket at the time and that she was a cook in the army.<sup>25</sup>

- **Dušan Čestić**, born in 1937, was captured on the front line between the village of Gobelj and Korijen.<sup>26</sup> He was brought to the stable by civilian police on about 30 September 1992.<sup>27</sup> He was found dead in the stable in early October in the days immediately after his apprehension.

15. On about 26 January 1993, Cerska was attacked by Bosnian Serb forces. The five living prisoners described above were escorted on foot from the stable to Srebrenica for the purposes of exchange.<sup>28</sup>

16. The evidence establishes that: the prisoners were apprehended by the Bosnian military or civilian authorities; each was apprehended for reasons closely connected with the armed conflict; and that they did not actively participate in hostilities after their apprehension. The initial detention of suspected Muslim collaborators in the same facility supports these findings.

17. In its closing arguments, the Prosecution argued that Rade Pejić, Anđa Obradović, Dragan Ilić, and Jakov Đokić were civilians and that Branko Sekulić and Dušan Čestić were prisoners of war.

18. The evidence has established that Rade Pejić was a civilian, while Jakov Đokić, Branko Sekulić and Dušan Čestić were combatants. The Court could not with certainty determine the status of Anđa Obradović and Dragan Ilić at the time of their capture. In accordance with Article 50 (1) of Additional

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<sup>25</sup> Muharem Sinanović, 23 May 2008.

<sup>26</sup> Željko Čestić, 25 April 2008 (“...my father was engaged in the army defending the village of Korijen. He had a role on the front line, and to my knowledge he was a member of a canteen staff... He was issued with an automatic gun which he kept with him...”).

<sup>27</sup> Džemil Babić, (“...Dušan Čestić was captured by the units of the Cerska Detachment under command of Bećir Mekanić. A civil police unit escorted him through the villages to Cerska... He was brought to the school and interviewed and a half an hour later a security officer with a moustache appeared and gave me an envelope to deliver him to the prison in Rovaši...”).

<sup>28</sup> Salih Jusić testified that the exchange of prisoners was attempted while they were still detained in the stable; exhibit T-39.

Protocol I to the Geneva Conventions which provides, “In case of doubt whether a person is a civilian, the person shall be considered a civilian”, the Court considers them to be civilians within the context of their detention.

**Breaches of Article 3 (1) (a) and (c) of the Geneva Conventions of 1949 and Articles 173 and 175 of the Criminal Code of BiH – beatings and mistreatment of the prisoners**

19. Those charged with the custody of prisoners (civilian or prisoners of war) have duties under the laws of war, and most specifically the Geneva Conventions of 1949, to treat their captives humanely, and to protect them from mistreatment by others. The Court is satisfied that they did not do so here. The Court is satisfied beyond reasonable doubt that the six prisoners were subjected to frequent beatings by soldiers from some units, including some units outside Cerska, who entered the stable to beat the prisoners in “revenge” attacks.<sup>29</sup>

20. The Court heard evidence from two prisoners and three guards of the mistreatment of the prisoners during their confinement in the stable. Witnesses described frequent beatings by soldiers returning from the front-line, coming into the stable and beating the prisoners who, because of their confinement, had no way of avoiding the physical abuse. The Court is satisfied that the beatings occurred as described by Rade Pejić and Anđa Obradović. The Court is also satisfied that they were subjected to humiliation by being sworn at and called “Četniks” while in detention.

21. Stable guard Ismet Hurić testified of the occasional beatings of the prisoners. He testified that on one occasion, Nurif Rizvanović, who he thought was a Bosnian military commander in Tuzla, came to the prison with some soldiers. They kicked open the locked stable door and entered the stable and physically abused the prisoners. Veiz Bjelić, who was also a

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<sup>29</sup> Bešir Aljukić, 13 May 2008 (“...the rumors were spread among the soldiers that inhumane things were happening there, and when someone lost a beloved person, he would go there to take revenge...”); Slađan Ilić, (“... Rade Pejić told me that nobody maltreated them, except for the soldiers in passing who lost their closest ...”).

guard on shift, then repaired the door and concealed any visible traces of their presence. Nobody in the command was notified of the incident. Another stable guard, Dževad Musić, testified of another incident involving Nurif Rizvanović who came with four armed men and entered the stable through a hayloft. The witness heard cries of pain and the soldiers swearing inside the stable. They threatened to kill him if he reported it. In fear of his life, he did not report it to his superiors.

22. In relation to the allegations in the indictment about maltreatment and beatings of the six named Serb prisoners, the Court makes the following specific findings:

23. **Rade Pejić** was beaten and mistreated on numerous occasions during his confinement, not by the prison guards, but by others who came into the stable and kicked and beat him, including with rifle butts. On one occasion he was beaten with a 2 meter long stick while being held down by another person. He testified that the beatings seemed to depend upon the day to day success of the Bosnian army. On bad days they were beaten repeatedly, while on a good day they were not abused at all. He testified that he was beaten many times, and, on one occasion, after being hit against the wall, he lost consciousness. Those who beat the prisoners frequently swore at them and called them Četniks.

24. **Anda Obradović** testified that during her detention she and the other prisoners were frequently beaten and physically mistreated by soldiers coming from the front lines. The beatings occurred inside the stable where they could not escape the ongoing abuse. She testified that she was beaten less frequently than the men.

25. Rade Pejić testified that he only saw the male prisoners being beaten. His testimony, however, does not exclude that the sole female prisoner was beaten in the manner she described. The Court has no reason to disbelieve the prisoner's own testimony that she was frequently beaten and finds that she was beaten in the manner she described in her testimony.

26. Rade Pejić also provided evidence that the three prisoners who died after being taken to Srebrenica, **Dragan Ilić**, **Jakov Đokić** and **Branko Sekulić**, were beaten while detained. Anđa Obradović also testified that all the prisoners were beaten.

27. **Dušan Čestić**, according to Rade Pejić, was also beaten in the days before he was found hanged in the stable. The Court heard no evidence of any injuries he may have suffered as a result of the beating.

28. As described above, the Court found that groups of up to five Bosnian military soldiers, at different times, entered the stable to beat the prisoners and subjected them to ethnic insults. The Court is satisfied that each of these prisoners was subjected to physical and mental mistreatment during the period of their incarceration in the stable.

29. The ICTY Appeals Chamber has defined the elements of cruel treatment as a violation of the laws or customs of war, in relation to Common Article 3 (1) (a) of the Geneva Conventions as:<sup>30</sup>

- (i) an intentional act or omission ... which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
- (ii) committed against a person taking no active part in hostilities.

30. The Court is satisfied beyond reasonable doubt that the prisoners in the stable – civilian and military – were subjected to cruel treatment, prohibited by Common Article 3 (1) (a) of the Geneva Conventions – during their detention.

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<sup>30</sup> *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, IT-96-21-A, Judgment, 20 February 2001, para. 424 (“*Delalić Appeal Judgment*” – also known as the “*Čelibići Appeal Judgement*”).

31. The ICTY has defined an outrage on personal dignity as “any act or omission which would *generally* be considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity”.<sup>31</sup> The Court is also satisfied, based on the same evidence, that the prisoners were subjected to outrages upon personal dignity during their confinement.
32. The Criminal Code of BiH does not define “inhuman treatment”. The ICTY has defined “inhuman treatment” as “an intentional act or omission committed against a protected person, causing serious mental harm, physical suffering, injury or constitutes a serious attack on human dignity”.<sup>32</sup> This definition applies materially in respect of breaches of Article 3 common to the Geneva Conventions (without requiring the victim be a “protected person”).<sup>33</sup>
33. The Court is satisfied that the cruel treatment and outrages upon personal dignity committed meet the requirements of inhuman treatment within Articles 173 (1) (c) (War Crime against Civilians) and Article 175 (1) (a) (War Crime against Prisoners of War) of the Criminal Code of BiH.

## **Torture**

34. The indictment also alleges that that Ferid Hodžić committed torture by failing to prevent or punish the perpetration of the crime. It does not, however, specify which acts are alleged to amount to torture. In its closing submissions the Prosecution submitted that each of the beaten prisoners was subjected to torture by virtue of the severe physical pain that was inflicted upon them.

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<sup>31</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, IT-96-23/1-A, Judgment, 12 June 2002, para 163 (“*Kunarac* Appeal Judgment”).

<sup>32</sup> Within the context of breaches of Article 2 of the ICTY Statute, grave breaches of the Geneva Conventions; *Delalić* Appeal Judgment, para. 426; *Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-A; Judgment 17 December 2004, para. 39.

<sup>33</sup> The ICTY has held that, materially, the elements of cruel treatment and inhuman treatment are the same; *Prosecutor v Mladen Naletilić a.k.a “Tuta” and Vinko Martinović a.k.a “Stela”*, IT-98-34-T, Judgment, 31 March 2003, para. 246, and that “inhuman treatment” under Common Article 3 has an equivalent meaning to inhuman treatment contrary to Article 2 (grave breaches); *Prosecutor v. Dario Kordić and Mario Čerkez*, No. IT-95-14/2-T; Judgment, 26 February 2001, para. 265.

35. The ICTY case-law defines torture *as a war crime* under customary international law as having the following elements:<sup>34</sup>

- (i) . . . the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
- (ii) this act or omission must be intentional;
- (iii) it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person;
- (iv) it must be linked to an armed conflict; and
- (v) at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, *e.g.*, as a *de facto* organ of a State or any other authority-wielding entity.

36. Article 172 (2) (e) of the Criminal Code of BiH defines torture (in respect of a crime against humanity) as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under control of the accused, not including pain or suffering arising as a consequence of lawful sanctions.<sup>35</sup>

37. The Court sees no reason to depart from the definition of torture applicable under customary international law at the time (and as defined by the ICTY). The Court is not satisfied that conduct constituting the cruel treatment and the attacks on human dignity rose to the level of severity of pain and

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<sup>34</sup> *Prosecutor v. Ante Furundžija*, IT-95-17/I-A, Judgment, 21 July 2000, para 111; *Kunarac* Appeal Judgment, paras. 142-148.

<sup>35</sup> Mirroring the definition in Article 7 (1) (e) of the Rome Statute of the International Criminal Court, in respect of crimes against humanity, which entered into force on 1 July 2002. The definitions in Article 172 CC BiH and Article 7 of the Rome Statute do not require a “prohibited purpose” in relation to war crimes, under element (iii) as defined by ICTY case-law.

suffering required to make such a finding under international humanitarian law.

### **Death of Dušan Čestić**

38. One prisoner, Dušan Čestić, died while detained in the stable. The indictment charges Ferid Hodžić with command responsibility for this death by failing to prevent it or to punish the perpetrators. A breach of Common Article 3 (1) (a) of the Geneva Conventions, which includes murder, is charged. The indictment alleges the prisoner was beaten by punching and kicking, and that his death resulted from this physical abuse.

39. The evidence, however, establishes that the prisoner was found hanging from the ceiling of the stable shortly after he was detained in the building. Three witnesses testified that the prisoner committed suicide. An exhumation of the remains in 2006 was inconclusive about the cause of death.<sup>36</sup> Officials and medical staff visited the stable to examine the scene after being notified of the death.<sup>37</sup>

40. Three witnesses testified that Dušan Čestić was brought into the stable in late September or early October 1992.<sup>38</sup> One stated that he was there for about ten days,<sup>39</sup> while three witnesses said that he died on the same night of his arrest.<sup>40</sup> The night before his death, Dušan Čestić complained about a pain in his kidneys,<sup>41</sup> and was crying.<sup>42</sup> (A cousin of the deceased confirmed his existing kidney condition and that he was in poor health).<sup>43</sup> Dušan Čestić did not think he would live and told Rade Pejić to tell his

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<sup>36</sup> Findings and opinion of the forensic expert Dr. Željko Karan, 13 May 2008.

<sup>37</sup> Džemil Babić, (“...I was the duty officer the next morning when a courier arrived saying that Dušan Čestić had hanged himself... The Commander Zuhdija Agić took two police officers to investigate the crime scene in the presence of Bećir Mekanić and medical staff...”).

<sup>38</sup> Rade Pejić, Dževad Musić, Ismet Hurić.

<sup>39</sup> Rade Pejić.

<sup>40</sup> Dževad Musić, Ismet Hurić, 28 April 2008 and Džemil Babić.

<sup>41</sup> Rade Pejić.

<sup>42</sup> Nurija Hurić, 15 May 2008.

<sup>43</sup> Rajko Čestić, 15 May 2008.

family about where and how he died. Rade Pejić woke up next morning to see the guards taking Dušan Čestić's body out of the stable.<sup>44</sup>

41. Three stable guards testified that the deceased hanged himself from a pole in the stable.<sup>45</sup> Dževad Musić himself took the body down from the pole.<sup>46</sup>
42. Dušan Čestić was captured on about 30 September 1992. Anđa Obradović, who was brought to the stable around 3 to 4 October 1992, did not see him in the stable. No documents providing precise evidence of the date of death were tendered (with the possible exception of exhibit T-10).<sup>47</sup> The Court has found that the evidence establishes that Dušan Čestić died in the stable between about 30 September 1992 and about 4 October 1992.
43. The Court heard evidence that civilian police and a military commander, Bećir Mekanić, came to the stable after the death to investigate what had happened to Dušan Čestić.<sup>48</sup> Police commander Zuhdija Agić and medical staff also visited the stable after the death, and, Džemil Babić testified, “established that he had committed suicide by hanging himself”. No records of any such visit or inquiry were tendered into evidence.
44. The Prosecution provided no evidence which could definitively prove the cause of death. The prisoners detained in the stable did not see how he came to be hanging. In closing submissions the Prosecutor herself submitted that the cause of death was unknown, submitting that Dušan Čestić did not hang himself, yet pointing out that his last known words were “I cannot stand this any longer”.
45. In these circumstances the only conclusion of the Court is that the prisoner died while in custody. This was of course a tragic event. The Court,

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<sup>44</sup> Rade Pejić.

<sup>45</sup> Ismet Hurić, Nurija Hurić and Dževad Musić.

<sup>46</sup> Dževad Musić.

<sup>47</sup> Exhibit T-10 - Death Certificate issued by the Municipality of Šekovići for Dušan Čestić, No. 05/10-203-689/07, 7 September 2007. This evidence could not establish the exact date of death as it states the date of death was based on the Decision declaring the missing person dead.

<sup>48</sup> Bešir Aljukić. See also Nurija Hurić and Dževad Musić.

however, in the circumstances described cannot attribute responsibility for the death to anyone. The Prosecution did not present evidence that the prisoner was murdered – or that his death occurred as a result of injuries sustained from being kicked and beaten – nor that Ferid Hodžić bore any direct responsibility for the death.

46. Ferid Hodžić is directly charged with command responsibility for failing to prevent the murder of the prisoner and failing to punish the perpetrators of the murder. As the Prosecution has not proved that the prisoner Dušan Čestić was murdered, that is, that his death was caused by the beatings, this charge must fail.

#### **Applicability of Article 121 of the Third Geneva Convention Relative to the Treatment of Prisoners of War of 1949**

47. Ferid Hodžić is also charged with breaching Article 121 of the Third Geneva Convention of 1949 in failing to order an official inquiry, as is required after every death or serious injury caused or suspected to have been caused by a sentry, another prisoner of war or another person. The Court has already found that in the circumstances of this case – namely the acquittal and the finding under Article 3 (1) (a) common to the Geneva Conventions – the classification of the conflict is unimportant. However, it deals with this legal issue because the indictment specifically charged the Accused with breaching Article 121.

48. Whether the Accused *could* be accused and convicted of the breaches of Article 121 of the Third Geneva Convention depends upon two issues. The first is whether the Prosecution proved that Ferid Hodžić bore command responsibility for the detention facility. This is dealt with below.

49. The second issue is the applicability of this particular provision in an internal armed conflict (which is how the Prosecution has defined this particular conflict). The Third Geneva Convention, relative to the treatment of prisoners of war, with the exception of Article 3, common to the four

conventions and the two additional protocols, is expressed to apply in international armed conflicts. The ICTY's *Tadić* Jurisdiction Appeals Chamber decision held:<sup>49</sup>

The emergence of the aforementioned general rules on internal armed conflicts does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts.

50. The *ICRC* (International Committee of the Red Cross) *Customary International Humanitarian Law Rules and Study 2005* concludes that some articles of this Convention, additional to Common Article 3, have attained customary law status and are now applicable in both internal and international armed conflicts. It is, however, silent as to the current customary law status of Article 121 in internal armed conflicts. In addition, the relevant sections of Additional Protocol II contain no provision similar to Article 121. The Prosecution has provided no submissions, legal authority or material evidencing that Article 121 has obtained customary status applicable in internal armed conflicts. It has also made no submission as to how a breach of its provisions is criminalized in international humanitarian law.

51. In these circumstances, the Court – having found it unnecessary to define the armed conflict as internal or international – is not prepared to find any breaches of Article 121 by anyone at the relevant time. The Court therefore also finds it unnecessary to determine whether the inquiry, consisting of an examination of the body by a doctor and a visit to the detention centre by an

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<sup>49</sup> *Prosecutor v. Duško Tadić*, IT-94-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para.126.

official fell short of the “official inquiry” demanded by Article 121 of the Third Geneva Convention.

**Conditions of confinement in the stable – whether they constituted inhuman treatment**

52. The indictment charges that the conditions of confinement constituted inhuman treatment contrary to Articles 173 and 175 of the Criminal Code of BiH. The Court is satisfied that the conditions of incarceration were inhuman treatment insofar as the prisoners were subjected to beatings and humiliation. However, the Court does not find that the *other conditions* of detention violated Common Article 3 and thus breached Articles 173 and 175 as inhuman treatment.

53. The Court heard much evidence about the conditions of confinement of the prisoners. The Court is satisfied that the prisoners were detained in a stable for up to seven months in very bad conditions, with little food and water, with no electricity, using a bucket as a toilet, sleeping on straw on a floor normally used for cattle, and using old coats for warmth at night. The prisoners were taken outside occasionally for exercise and fresh air. Food was brought to them daily and water was brought into the stable in a bucket. The female and the male prisoners used the same bucket to relieve themselves; the female prisoner had to do so in the presence of the males. There were no washing facilities and the atmosphere in the stable was stifling.<sup>50</sup>

54. Rade Pejić and Anđa Obradović described sleeping on dirt or concrete floors covered with straw and using old coats to cover themselves during the cold season. They became lice infested and dirty. Rade Pejić described that when the days became colder, the commander Muradif brought a heater and firewood to the stable to keep the prisoners warm. The prisoners were occasionally allowed outside for fresh air and to warm up around a fire used

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<sup>50</sup> Rade Pejić and Anđa Obradović, 28 March 2008.

by the guards. Muradif also brought razors to the detainees to shave and wash themselves and helped those who could not shave themselves.

55. No medical care was provided, even for Branko Sekulić, who had a gunshot wound to his leg. The medical treatment provided to Branko Sekulić (except for that given him immediately after his capture before his detention in the stable)<sup>51</sup> consisted of the guards washing the wounds with water.<sup>52</sup> The prisoners generally received food, soup or bread twice a day from Muradif and the guards. Anđa Obradović described the food as looking more like animal fodder than anything that was fit for humans. However, she also said that the prisoners ate what the other people ate. A guard, Salko Hurić, brought additional food to the detainees from home and treated the Muslim and Serb detainees equally. Prisoners also received additional food from Muslim refugees from Gobelija.<sup>53</sup> Stable guards gave similar evidence about the food provided to the prisoners.<sup>54</sup>

56. In determining whether the conditions of confinement amounted to inhuman treatment, the Court has compared and contrasted the general living conditions of the civilian and military population of Cerska to those of the detainees.

57. The Court heard substantial evidence from both Prosecution and Defense witnesses of the appalling living conditions of the entire population in Cerska at that time. By the summer of 1992 a humanitarian disaster was looming. The refugee influx had made the living conditions unbearable. Cerska was overcrowded with, some estimate, 30,000 inhabitants, including refugees fleeing attacks from the JNA and the Bosnian Serb Army. Constant shelling had made most of the houses in Cerska unsuitable for habitation. Refugees were accommodated in the local school, and with the residents and village guards, in the undamaged houses. Estimates were

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<sup>51</sup> Fajko Kadrić was the chief of medical service. He stated that the wound was thoroughly cleaned, and attended by the rules of the war surgery, and that it was bandaged.

<sup>52</sup> Rade Pejić.

<sup>53</sup> Such as Hasan Gobeljić and Fadil Burić and Rade Pejić.

<sup>54</sup> Nuriya Hurić, Dževad Musić and Ismet Hurić.

given of 40 to 50 people being packed into single houses and of 35 to 40 people living in each classroom.<sup>55</sup> However, even these efforts to accommodate the internally displaced were inadequate to house the thousands of refugees. Many had to sleep in the fields, barns and huts, without toilet facilities, and using the river for washing.<sup>56</sup> Civilians were sleeping in barns normally used to house livestock; three stable guards lived in a barn and slept on planks above the animals.<sup>57</sup>

58. Most of those then living in Cerska had no access to toilet facilities. Witnesses said that they did not bathe for around nine months. They did not eat regularly. Their living conditions, they said, were little different to those of the detainees. People lived without electricity and water while experiencing a chronic shortage of food.<sup>58</sup> The area was also surrounded by enemy forces.

59. Prosecution witnesses testified that the food situation in Cerska was disastrous. The village was overcrowded with refugees and the village guards had difficulty finding food. Prison guard Dževad Musić, for example, testified of losing 20 kilograms over six months. The food situation was so grim that people were forced to rely on oats for food.<sup>59</sup> Witnesses testified that the prisoners received the same food as front line soldiers. Ćamil Talović, who worked as a chef in the joint canteen for refugees and soldiers, stated that the prison provided food from the joint canteen and that the guard Hurić sometimes asked him for additional food for the prisoners during the holidays. On some days the Serb prisoners were fed while the rest of the Rovaši population went hungry.<sup>60</sup>

60. The indictment alleges, and the Prosecution submitted in its closing, that the conditions of confinement in the stable amounted to inhuman treatment, punishable under Articles 173 and 175 of the CC of BiH. As noted above,

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<sup>55</sup> Salih Jusić.

<sup>56</sup> Dževad Musić, Salih Jusić, Ćamil Talović, Nuriya Hurić.

<sup>57</sup> Nuriya Hurić, Dževad Musić and Ismet Hurić.

<sup>58</sup> Muharem Sinanović.

<sup>59</sup> Bešir Aljukić and Sejfudin Hodžić, 23 January 2009.

<sup>60</sup> Sejfudin Hodžić.

the Court has applied the definition of inhuman treatment under customary international law as defined in ICTY case-law.

61. Conditions of detention must not be allowed to fall below a minimum threshold. This threshold, however, cannot be applied in the abstract, and in this respect the Court has evaluated the living condition of the population in Cerska by comparing it to that of the prisoners.

62. The evidence shows that the living conditions in the stable were similar to those in Cerska, Rovaši and the Vlasenica municipality. The Defense written submissions even conceded that the conditions of detention in the stable were “not adequate”. However, notwithstanding the manifest deficiency in the conditions of detention, the Court is not satisfied that the prisoners were confined in conditions very different to the prevailing living conditions of the free civilian population. The Court is not satisfied that the conditions of confinement of themselves – without the beatings and humiliations – amounted to an intentional act or omission causing serious mental or physical suffering or injury, or constitutes a serious attack on human dignity.

63. The Court is not satisfied that the actual conditions of confinement – as opposed to the beatings and humiliations – amount to cruel treatment, or an outrage on personal dignity contrary to Common Article 3 (1) (a) of the Geneva Conventions.

### **Alleged breach of Article 27 of Fourth Geneva Convention**

64. The indictment also alleges a breach of Article 27 of the Fourth Geneva Convention, applicable in international armed conflicts. Despite having defined the conflict as internal, the Prosecution has not charged a breach of Article 5 of Additional Protocol II which provides for the humane treatment of civilians in an internal armed conflict.<sup>61</sup> Having made a finding that the

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<sup>61</sup> Article 5 – “Persons whose liberty has been restricted”.

conditions of incarceration of themselves do not breach Article 3 (1) (a) of the Geneva Conventions, but that the physical mistreatment of the prisoners did breach that Article, the Court need make no finding as to whether Article 27 was breached.

**Allegation that Ferid Hodžić ordered the illegal apprehension and detention of prisoners of war and civilians**

65. The indictment contains an averment, unsustainable in law, that the Accused ordered the unlawful apprehension of prisoners of war. The indictment also does not particularize that anything was unlawful about the manner of their apprehension. The Prosecution also provided no evidence that Ferid Hodžić ordered the apprehension of prisoners of war. It made no submission that it had proved such a case, or indeed that it could be unlawful for one side to an armed conflict to apprehend enemy soldiers as prisoners of war. The Court does not understand this pleading: capturing and detaining prisoners of war is not, of itself, a criminal offence.

66. The indictment also charges that Ferid Hodžić ordered the unlawful apprehension and detention of civilians. However, no evidence was led that he had in fact done so. The Prosecution's closing submissions do not refer to this pleading. The Defense written submissions evaluated the evidence in relation to the capture of each prisoner and submitted that no evidence existed that Ferid Hodžić had participated in their arrest. The Prosecution, on the other hand, submitted that the detention of the civilian prisoners was unlawful because they were not informed of the reason for their detention, or were charged with any offence or tried. (The Court notes that the detention of civilians by a party to an armed conflict is not necessarily of itself an unlawful act).

67. The Prosecution, however, provided no evidence to support the charge that Ferid Hodžić ordered the apprehension of any Serb civilian (in a manner lawful or unlawful) or ordered their detention in the stable. To the contrary, the evidence established that Jakov Đokić was captured by the inhabitants of

the village of Kostijerevo; Dragan Ilić by the Nova Kasaba Territorial Defense, which was under the command of Esad Dedić; Anđa Obradović by the Kamenica Territorial Defense which was under command of Esad Dedić; and Rade Pejić by the civilian police whose commander was Zuhdija Agić. No evidence was led from which the Court could conclude that Ferid Hodžić ordered their apprehension or detention. The Court is accordingly not satisfied that Ferid Hodžić ordered the detention of any civilian in the stable.

### **Command Responsibility of Ferid Hodžić in Cerska between May 1992 and January 1993**

68. The indictment charged that Ferid Hodžić was the commander of the Territorial Defense of Vlasenica with its command post in the hamlet of Rovaši in Cerska. A superior or commander may be held criminally responsible for the offences of subordinates if the following legal elements are proved:<sup>62</sup>

- (i) the existence of a superior-subordinate relationship between the commander or the superior and the alleged principal perpetrator;
- (ii) the superior knew or had reason to know that a crime was about to be committed or had been committed, and
- (iii) the superior did not take the necessary and reasonable measures to prevent such offences or to punish the perpetrators.

69. The Prosecution must prove beyond reasonable doubt that a superior exercised effective control over a subordinate in that the superior had the material ability to prevent or punish the criminal conduct of the

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<sup>62</sup> For example, *Prosecutor v. Sefer Halilović*, IT-01-48-A, Judgment, 16 October 2007, para. 55 (“*Halilović* Appeal Judgment”); *Delalić* Appeal Judgment, paras. 189-198, 225-226, 238-239, 256, 263 and 346; *Prosecutor v. Zlatko Aleksovski*, IT-95-14/1-A, Judgment, 24 March 2000, para. 72.

subordinate.<sup>63</sup> The ICTY has held that “it is the threshold to be reached in establishing a superior-subordinate relationship”.<sup>64</sup>

70. The evidence establishes that Ferid Hodžić was appointed the commander of the Bosnian TO forces in Vlasenica before the outbreak of the conflict in early April 1992 and remained in that position until at least 26 April 1992. However the Court is unable to make positive findings about his command role, if any, in Cerska or the period in which he was present there. It is unable to find that he had effective control over anyone who committed the crimes alleged in the indictment.

71. The evidence about who was in command of the military forces in Cerska between May 1992 and January 1993 was unclear, confused, and, at times contradictory. Some witnesses stated that Ferid Hodžić had some command responsibility upon his arrival in Cerska in April 1992. Others stated that during a conflict between members of a command staff, he lost out to Bećir Mekanić.

72. Only one witness, Bego Uvalić, gave direct evidence that the Accused was the military commander in Cerska and had command responsibility for the detention stable and its personnel. This witness, however, was untruthful in important aspects of his testimony, such as denying that he was the President of the War Presidency in Vlasenica and that he had signed numerous documents bearing his signature. The Defense led evidence from a hand-writing expert, whom the Court considered credible and reliable, proving that Bego Uvalić had signed a number of documents in the capacity as President of the War Presidency.<sup>65</sup> Bego Uvalić, however, denied signing the documents or ever holding that position. The Prosecution, in the closing arguments, conceded that Uvalić had occupied that position at the time but argued that, notwithstanding this, the Court should find Uvalić's

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<sup>63</sup> *Prosecutor v. Naser Orić*, IT-03-68-A, Judgment, 3 July 2008 para. 91; *Prosecutor v. Enver Hadžihasonović and Amir Kubura*, IT-01-47-A, Judgment, 22 April 2008, para. 20; *Delalić* Appeal Judgement, paras. 196, 256.

<sup>64</sup> *Halilović* Appeal Judgement, para. 59; *Delalić* Appeal Judgement, para. 256.

<sup>65</sup> Findings and Opinion of hand-writing expert Zlatko Dumančić.

testimony credible and reliable in relation to Ferid Hodžić. In the Prosecution's submission his denials were a consequence of pressure being placed on him to deny that Ferid Hodžić was a commander.

73. Command responsibility, however, was alleged in respect of the mistreatment of the prisoners in the stable, and the Court heard some evidence that the War Presidency was in fact responsible for the detention stable. Bego Uvalić, therefore, had a clear motive to state that someone else (such as Ferid Hodžić) may have had this responsibility. In these circumstances, the Court cannot accept as reliable or credible his evidence as to whether Ferid Hodžić bore command responsibility over the military forces and or the detention of prisoners in the stable.

74. The evidence in fact suggests that there was no unified military command structure in Cerska during the indictment period. One witness described Cerska as "in a state of anarchy and chaos" and that people were coming from all directions with their weapons and bringing all kinds of commanders with them, and that "the functioning of the authorities collapsed as a house of cards."<sup>66</sup> This may be an accurate description of what was then occurring.

75. Witnesses referred to the Accused as "a commander" but, in the context of their evidence, it is apparent that there were other commanders. The evidence suggests that at least three others appeared to be competing for the position of commander of the soldiers in Cerska. Documents tendered into evidence did not provide sufficient evidence of a unified command structure, the role of the Accused in any chain of command, nor of his responsibility for the operation of the detention stable.

76. Vahid Karavelić testified, and the Court accepts his evidence on this point, that Ferid Hodžić was appointed as a commander of the TO in Vlasenica before the outbreak of war and that he remained in that position until the fall

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<sup>66</sup> Ćamil Talović.

of Vlasenica on 26 April 1992, when he effectively ceased to have any powers.<sup>67</sup> The evidence, however, as to what happened after that and as to his role once he arrived in Cerska was inconsistent and conflicting. The Defense written submissions argue that from late May to mid-June or July 1992, Ferid Hodžić was the joint HQ commander of Vlasenica, Bratunac and Zvornik, but without having any effective control.<sup>68</sup>

77. When Vlasenica fell in April 1992, Ferid Hodžić and a small number of armed men hid with a large group of refugees in the woods, hoping to return to the town. Upon realizing that return to Vlasenica was impossible, they headed to Cerska, the only territory still under the control of the Bosnian forces.<sup>69</sup>

78. By the beginning of May 1992, the defense of Cerska was organized locally. Almost every village in the area had an armed group organized around local leaders. The size and composition varied from village to village. The groups were named after their respective villages, e.g. Cerani, Rogosani, Skugurcani. The groups had little co-operation, and, where it existed, it was always on a voluntary basis.<sup>70</sup>

79. Once in Cerska, Ferid Hodžić attempted to integrate the local armed groups under a single military authority. He called a meeting in a house and asked them for their military ranks. He then made appointments.<sup>71</sup> However, despite his efforts the TO of Cerska did not appear to have been transformed into a single entity. Numerous impediments obstructed his efforts, one of which was the intense competition among the local leaders, which resulted in their remaining separated and isolated from each other. The Court heard evidence that Rovaši in fact, at the relevant time, had several commanders, including Ferid Hodžić, Nurif Rizvanović, Bećir Mekanić and Velid Šabić,

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<sup>67</sup> Vahid Karavelić, 12 September 2008. See also Ilijas Jašarević, 14 May 2008, Sejfudin Hodžić.

<sup>68</sup> Defense written submissions, para. 50.

<sup>69</sup> Fajko Kadrić.

<sup>70</sup> Salih Jusić, Čamil Talović, Adil Omerović, Bešir Aljukić and Esad Maljišević.

<sup>71</sup> Bešir Aljukić.

and that each of them led their own group.<sup>72</sup> Other local leaders, Mirsad Sulejmanović from Skugrići, Šemso Salihović from Cerska, Šaban Muminović, Bešir Aljukić, Fikret Mustafić from Tumače, and Maćesi and Esad Dedić from Nova Kasaba were also competing for the command position.<sup>73</sup> Almost every group operated in the same manner and was exclusively controlled by its local leaders.<sup>74</sup> Lack of arms and ammunition and resources and the time and effort devoted to alleviating the dire humanitarian situation in Cerska caused by the Serb attacks in the Vlasenica municipality added to the difficulties of attaining a proper hierarchical military organisation.<sup>75</sup>

80. In about June 1992, Nurif Rizvanović arrived in Cerska with around 500 armed men and introduced himself to the local fighters as “the commander”. The Court heard evidence that he was the most successful in establishing his control and imposing himself as the overall commander of the fighting groups in the area. He distributed membership cards to the local residents who wanted to be a part of the 282<sup>nd</sup> unit. Some local group leaders, including Ferid Hodžić, contested his command aspirations, but the local fighters followed Rizvanović’s orders because they feared him and considered him, rather than Ferid Hodžić, as their commander.<sup>76</sup> Fajko Kadrić testified that Nurif Rizvanović had arrived with a document authorizing him to take full control over the forces in Cerska.

81. Murat Šiljković testified that he had joined the local territorial defense when he arrived as a refugee in Cerska. No formal procedures for joining the army existed because the unit was formed locally to protect the village and its residents. Every village protected its own defense lines, and, he testified, no chain of command existed and there were no weapons and uniforms. His

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<sup>72</sup> Muharem Sinanović and Murat Šiljković.

<sup>73</sup> Ejub Hadžić testified that he joined the Nova Kasaba Territorial Defense and that Esad Dedić was his commander and that he issued the territorial Defense ID card to him

<sup>74</sup> Muharem Sinanović testified that the commanders in Rovaši were: Ferid Hodžić, Bećir Mecanić and Velid Šabić. According to rumors, Nurif Rizvanović was the Commander of the Drina Division which covered all free parts of the BiH territory.

<sup>75</sup> Fajko Kadrić.

<sup>76</sup> Ejub Hadžić.

superior was Sadif Šiljković. The witness saw Ferid Hodžić only once before the fall of Cerska. He had heard that Ferid Hodžić had helped to establish the unit and that he was in the Cerska area from April 1992 to June 1992.<sup>77</sup> He testified that the commander of the military in Cerska was Nurif Rizvanović, who came from Tuzla and replaced Ferid Hodžić in June 1992.

82. The Court also heard evidence that a Joint Command was established at the end of May 1992 to liberate Muslim prisoners from Liplija camp. Ferid Hodžić was appointed as a commander and led a group of 150 local fighters to accomplish the mission. On 2 June 1992, the Muslim prisoners were liberated and the Joint Command was dissolved. The Court finds, however, that the evidence does not establish that Ferid Hodžić led this action as the Commander of the Vlasenica Territorial Defense. Rather, it establishes he had a temporary command over a distinct group for a limited and specific purpose.

83. The evidence does establish that Ferid Hodžić then unsuccessfully tried to re-establish a connection and cooperation with the local commanders.<sup>78</sup> It does not establish, however, that he had any command responsibility past this point. In fact the evidence does not establish that from 2 June 1992 Ferid Hodžić had any command responsibilities or effective control over subordinates.

84. Between June and July 1992, a War Presidency was established in Cerska. Its function was to take over all existing duties of the civilian organs in Cerska. Bego Uvalić was its President and his deputy was Šaban Avdić. Merima Telalović was the secretary.<sup>79</sup>

85. Ferid Hodžić was not a member of this War Presidency. The evidence established that from its establishment onwards he became more

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<sup>77</sup> “He came in May 1992 to June 1992 to help us to form the unit”.

<sup>78</sup> Fajko Kadrić, Sejfudin Hodžić.

<sup>79</sup> Sejfudin Hodžić, Merima Telalović.

marginalized.<sup>80</sup> The War Presidency established the 1<sup>st</sup> Cerski Detachment (or Cerani Detachment) and appointed Bećir Mekanić as the commander. But even then few local leaders pledged their alliance and agreed to that command. In November 1992, Bećir Mekanić left Rovaši for Kladanj and Šemsudin Salihović became a commander of the Cerani Detachment, which later became a part of the Cerska Brigade.

86. Sefudin Hodžić testified that the Cerani Detachment had around ten companies with around 3,000 soldiers. The Court also heard evidence from members of the Cerani Detachment that Ferid Hodžić was not taken seriously and he was no more than a communication link between Tuzla command post and the Ceranski Detachment.<sup>81</sup> He had no operational command or authority; soldiers executed orders of Bećir Mekanić.<sup>82</sup>

87. One document tendered by the Prosecution,<sup>83</sup> “Proposal to appoint senior military officers of the Tuzla District TO Staff, No. 1/409 dated 30 June 1992” stated that Ferid Hodžić, a reserve captain, was proposed as the commander of the TO of the Municipality of Vlasenica. However, as the Defense written submissions point out, the document has the status of a proposal only.<sup>84</sup> No evidence was led that the proposal was ever adopted or that any decisions were made in relation to this proposal. The Prosecution submitted that other two other military documents assisted its case that the Accused was a commander with effective control.<sup>85</sup> However, the undated exhibit T-35 “Report on combat readiness”, signed by Ferid Hodžić as “Commander of the Vlasenica Armed Forces”, actually complains of “the lack of cooperation from the Tuzla District Armed Forces Staff, and thus after five months of war, a unique system of command and control has not come into existence”. This document in reality provides evidence of the

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<sup>80</sup> Sejfudin Hodžić.

<sup>81</sup> In response to Defense questioning as to the attitude of the combatants toward Ferid Hodžić, Bešir Aljukić said: “Disappointing, when he appeared without anything, in his overalls, we figured out that something was wrong...it was the appearance of Nurif Rizvanović that gave us the only reason for optimism....”.

<sup>82</sup> Bešir Aljukić and Esad Maljišević.

<sup>83</sup> Exhibit T-33.

<sup>84</sup> Defense written submissions, para 58.

<sup>85</sup> Exhibits T-32 and T-35.

lack of a command hierarchy in Cerska in about August 1992. The other document, exhibit T-32 “Report on established staffs, institutions and units of the Armed Forces” dated 29 August 1992 does not, as the Prosecution submits, prove that Ferid Hodžić appointed Bećir Mekanić the commander of the Cerska Detachment.

88. The Court finds that Ferid Hodžić at least had considerable influence among the soldiers during the indictment period. He was one of few soldiers in the area with the military background and the knowledge necessary to establish and organize a military defense.<sup>86</sup> Some witnesses indicated that he was one of the most respected individuals and that people spoke of him as being a good person.<sup>87</sup>

89. However, in evaluating this evidence and in the totality of the evidence at trial, the Court cannot determine who, if anyone, was the commander of the Bosnian military forces in Cerska between May 1992 and January 1993. Nor can it establish whether any unified command actually existed in that period. It cannot establish with any certainty the role of Ferid Hodžić, beyond that he was influential and attempted to organize the forces into a disciplined military unit in the early stages of the war and participated in some military operations.

90. The essence of a superior subordinate relationship is the existence of effective control over the subordinates. The evidence however falls far short of establishing that Ferid Hodžić had effective control over anyone responsible for any of the crimes committed in the detention stable. Mere or even substantial influence does not establish effective control or the existence of a superior subordinate relationship.<sup>88</sup> In the face of the conflicting evidence as to existence of a unity of military command and the role of the Accused within the military hierarchy in Cerska, the Court cannot

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<sup>86</sup> Murat Šiljković.

<sup>87</sup> Muharem Sinanović and Adil Omerović.

<sup>88</sup> *Delalić* Appeal Judgment, paras. 265-266.

find established the existence of any unified military command over the various armed groups.

### **Responsibility for control over the detention stable**

91. The Court heard conflicting evidence as to who exactly had responsibility for running the detention stable and who was in command of the stable guards. Some witnesses testified that the prison was under the control of the Accused, others that the prison was under the jurisdiction of the Ministry or the Defense Department, while a third group of witnesses said that it was the civilian Crisis Staff or the War Presidency. Some also mentioned that the “court” had responsibility. The evidence was so unclear that the Court could not determine who or what authority had responsibility for the care and custody of the Serb detainees and the detention facility where they were detained. The Court could not determine who actually ordered that the stable be used for detaining prisoners.

92. Some witnesses testified that “civilian police” were involved with the running of the detention facility. The Court heard evidence that a civilian police commander was assigning guards to duties at the stable and that the civilian police took control of the facility from July 1992. Other evidence suggested that Ferid Hodžić himself gave the orders relating to prison guard duties. No documents tendered, however, shed any light on this.

93. The two detainees who testified, Rade Pejić and Anđa Obradović, provided no evidence connecting Ferid Hodžić with their apprehension or detention. Rade Pejić did not know who arrested him or who was in charge of the detention stable prison. He thought the commander was one Muradif who came frequently to the stable with food, cleaning supplies, and firewood for the heater. The guards wore mixed uniforms – military trousers and civilian jackets. He did not notice any insignia. He could not identify the Accused in court. The three stable guards Ismet Hurić, Nurija Hurić and Dževad Musić testified that commander Muradif came to the prison frequently

94. These three stable guards also testified that civilian police were involved with the stable. Evidence was given that the civilian police and commander Bećir Mekanić came to prison in relation to the death of Dušan Čestić.<sup>89</sup> Ismet Hurić testified that Avdija Omerović assigned him to guard duties at the stable in July 1992. He also testified that Muradif and Avdija Omerović decided on the assignment of the guard shifts and that only Muradif, and later Veiz Bjelić, who was appointed by Muradif, had a key to the prison. Avdija Omerović, however, testified that he only typed the orders dictated to him by Ferid Hodžić, who, he said, could actually issue the orders to anyone. Ćamil Talović, working in logistic in civil defense, testified that Avdija Omerović took charge of the stable in July 1992. Except for the testimony of Avdija Omerović, no other evidence was led that the civilian police or the civilian defense was subordinated to the Territorial Defense Command in Vlasenica or to Ferid Hodžić.

95. Nuriya Hurić described that when he arrived in Rovaši a civilian police officer nicknamed *Zelena Beretka* (“Green Beret”) and two other police officers registered his arrival and assigned him to stable guard duties. Dževad Musić testified that when he came to Rovaši, he learned that the civilian force was in charge of the stable and that the commander of that force was Muradif, whom he knew from before the war. His immediate commander was Muradif. Esad Maljišević testified that the guards were in the police and that Avdija Omerović gave orders relating to the prison in June and July 1992.

96. Salih Jusić gave evidence that the prison was under the jurisdiction of the “court” and that the prison warden, Muradif Mujanović, was in charge of the guards at the stable. The stable guards were assigned their duties by the

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<sup>89</sup> Bešir Aljukić, Nuriya Hurić, Ismet Hurić and Dževad Musić.

prison warden.<sup>90</sup> Esad Maljišević and Adil Omerović both testified that Merima Telalović from the Misdemeanor Court handled issues related to the prison.

97. Sefudin Hodžić worked as a clerk attached to the Crisis Staff/War Presidency. He testified that, in May 1992, Merima Telalović, a judge from Srebrenica, and lawyers Ramiz Durić and Esad Mehmedović established a court to deal with serious crimes in the area. Civilian police under the Court's jurisdiction established a prison to detain convicted prisoners. A jury of ten decided what to do with the prisoners upon recommendations of Ramiz Durić, who was both President and the Prosecutor of the Court. Mirhad Selimović, head of the defense department in Rovaši, upon Ramiz Durić's request, appointed Muradif Mujanović as the prison warden. Mujanović reported directly to Durić. Durić left Rovaši in mid July 1992 and some of his responsibilities were delegated to Judge Merima Telalović. The Crisis Staff drafted rules for the prison. Under these rules the guards were assigned duties by the prison warden and they were a part of the compulsory labor section of the defense department. They were not linked to any military structure.

98. Merima Telalović, the President of the Misdemeanor Court in Vlasenica, testified, describing arriving in Cerska as a refugee on 14 June 1992, reporting to the Defense Department, and being assigned to work as the Misdemeanor Judge in Cerska. A sort of "military disciplinary" court, headed by Ramiz Durić, was also operating and was in the same house as the joint command and joint staff. The Crisis Staff, headed by Bego Uvalić, was also in that building. The prison warden was appointed by the Crisis Staff and he filed reports to the Crisis Staff.<sup>91</sup>

99. In circumstance involving a lack of uniforms, insignia and other means of identification the two Serb detainees who testified could not distinguish between civilian police and village TO guards. The Court has therefore

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<sup>90</sup> Salih Jusić.

<sup>91</sup> Merima Telalović, 24 April 2009.

given greater weight to the evidence of the three stable guards, Nuriya Hurić, Ismet Hurić and Dževad Musić, who had frequent and sometimes daily contacts with Muradif, whom they described as their commander. The Court has carefully weighed their evidence against that of Avdija Omerović. Avdija Omerović was a police officer before the war and appears to have had greater responsibility in Cerska that he was prepared to admit to in his testimony.<sup>92</sup> The evidence reveals that, by virtue of his position, he had some knowledge of the events in the stable. Therefore, if his duties and responsibility were greater than being a mere recording clerk (as he claims) he had an obvious interest in distancing himself from what happened in the stable. Salih Jusić and Sefudin Hodžić also testified that the civilian police were involved in running the detention stable. Adil Omerović's testimony indicated the involvement of the War Presidency and Merima Telalović in matters connected with the management of the detention stable.

100. The Prosecution submitted in their closing arguments that Ferid Hodžić knew that "his subordinate" Veiz Bjelić allowed other soldiers to commit the offences against the prisoners. However, for this submission to have any weight the Prosecution had first to prove that Bjelić was in fact Ferid Hodžić's subordinate. The Court is not satisfied that the Prosecution did prove this allegation – having led no evidence of this – and notes that the Prosecutor herself made no closing submission pointing to any evidence establishing how the Prosecution had proved it. Furthermore, no evidence was presented about the actions of Veiz Bjelić, except that he was one of the guards in the prison who, after the forcible entries into the stable and maltreatment of prisoners, repaired the door.

101. The Prosecution also submitted – based on the testimony of Adil Omerović – that Ferid Hodžić had notice that soldiers had threatened to beat the prisoners, and, from then onwards had the obligation to prevent it (that is, he was on notice of the crimes). However, the Court could only accept this submission if the Prosecution had proved that Ferid Hodžić had

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<sup>92</sup> Ismet Hurić, Čamil Talović.

effective control over either those who committed the crimes or those responsible for operating the detention stable, and hence a legal obligation to take all reasonably necessary measure to prevent or punish the crimes. The Prosecution did not refer the Court to any evidence capable of establishing this allegation in the indictment beyond reasonable doubt.

102. In the circumstances described above, the Court cannot determine who was responsible for the stable detention facility, much less whether Ferid Hodžić had any role in its operation. The Prosecution failed to prove that the stable guards were under Ferid Hodžić's effective control.

103. The evidence as described above also establishes that the crimes of cruel treatment committed against the detainees were committed by soldiers coming from the front-lines. The Prosecution has not established that these soldiers were under Ferid Hodžić's effective control, and thus that he had any command responsibility in respect of their conduct. The Accused therefore has been acquitted of this charge.

### **C. CONCLUSION**

104. The evidence established that crimes of cruel treatment and outrages upon personal dignity contrary to Article 3 (1) (a) of the Geneva Conventions were committed upon six Serb civilians and prisoners of war detained in a stable in Rovaši between May 1992 and January 1993. The crimes were committed by soldiers entering the detention stable and physically and mentally abusing and humiliating the prisoners. These crimes amount to breaches of Article 173 (1) (c) and Article 175 (1) (a) and (b) of the Criminal Code of BiH.

105. The evidence however did not establish that the Accused Ferid Hodžić had a superior subordinate relationship with those who committed these crimes. The Prosecution did not prove that Ferid Hodžić had effective control over anyone concerned with the operation of the detention stable or

the stable guards and it did not prove its case against the Accused beyond reasonable doubt. The Court has accordingly acquitted him of all charges in the indictment, pursuant to Article 284 (c) of the Criminal Procedure Code of BiH.

**Decision on the Costs of the Proceedings and Claim under Property Law**

106. Pursuant to Article 189 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, the costs of criminal proceedings referred to in Article 185 (2) subparagraphs (a) - (f) shall be paid from budget appropriations.

107. Pursuant to Article 198 (3) of the Criminal Procedure Code of Bosnia and Herzegovina, aggrieved parties are instructed to pursue potential claims under property law in a civil action.

**RECORD KEEPER  
LEGAL ADVISOR**

**Sabina Hota Čatović**

**PRESIDING JUDGE  
JUDGE**

**Tihomir Lukes**

LEGAL REMEDY: An appeal from this Verdict may be submitted to the Appellate Division of this Court within 15 days from when a written copy of the Verdict is received.

## ANNEX 1

## PROCEDURAL HISTORY

1. The indictment of the Prosecutor's Office of BiH number KT-RZ-160/07 of 23 November 2007 charged Ferid Hodžić and Veiz Bjelić with committing the criminal offenses of War Crimes against Civilians in violation of Article 173 (1) (c) and (e) and War Crimes against Prisoners of War in violation of Article 175 (1) (a) and (b) of the Criminal Code of Bosnia and Herzegovina, as read with Article 31 of the Code. At the plea hearing held on 8 January 2008, Ferid Hodžić entered a plea of not guilty.
2. The main trial before the Trial Panel, Judge Tihomir Lukes as the Presiding Judge and international judges Elisabeth Fahey and Carol Peralta as the Panel members, commenced on 12 March 2008 with the reading of the indictment and presentation of opening statements by the Prosecution and Defense counsel for Ferid Hodžić and Veiz Bjelić. Veiz Bjelić entered into a plea agreement with the Prosecutor's Office of BiH, and the Court rendered a Decision on 28 March 2008 to sever the criminal proceedings. The criminal proceedings against Veiz Bjelić resumed under number X-KR-07/430-1 and against Ferid Hodžić under number X-KR-07/430.
3. The health of Ferid Hodžić prevented him at times from following and participating actively in the proceedings, causing the Court to postpone the main trial on several occasions for more than 30 days. During the main trial, the composition of the Trial Panel changed due to the expiration of the mandate of international judge Elisabeth Fahey at the Court of BiH and, with the agreement of the parties and Defense counsel, her place as the Panel member was taken by international judge David Re.
4. Upon agreement between the parties and the Defense Counsel, pursuant to Article 251 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the Panel decided that witnesses and expert witnesses shall not be re-examined, but that their testimonies given at the previous main trial would be used.
5. Following the evidentiary proceedings, the Prosecution and the Defense filed their final briefs and presented their closing arguments before the Trial Panel.

6. The Court delivered its Verdict on 29 June 2009.

## ANNEX 2 TRIAL RECORD

### Prosecution witnesses

7. The following witnesses for the prosecution were examined in the course of the main trial: **Anđa Obradović, Ejub Hadžić, Murat Šiljković, Rajko Sekulić, Vidosav Đokić, Željko Čestić, Rajko Čestić, Muharem Sinanović, Rade Pejić, Ismet Hurić, Dževad Musić, Bešir Aljukić, Esad Maljišević, Adil Omerović, Ilijas Jašarević, Avdiya Omerović, Nuriya Hurić, Slađan Ilić and Bego Uvalić.** In the course of the main trial and upon the motion of the Prosecution, the Court heard the expert witness in forensics, **Dr Željko Karan** whose finding and opinion was admitted into evidence. The statement of witness **Samir Musić** given to the Prosecutor's Office on 10 July 2007 in the case number KT-RZ-160/07 was read out at the main trial.<sup>93</sup>

### Prosecution documents

The Court read and reviewed the following documentary evidence of the Prosecution:

- **T-1** - Letter of Discharge from the Psychiatric Clinic in Sokolac and accompanying medical documentation for Anđa Obradović;
- **T-2** - Decision on Disability Percentage of Anđa Obradović No. 06-560-57/00, 11 March 2005;
- **T-3** - Certificate of the Republika Srpska Office for Missing and Captured Persons No. 104/03, 14 October 2003;
- **T-4** - Letter of the Department for Protection of Veterans and Invalids Zvornik No. 06-835-1-28/07, 16 May 2007 for the injured person Anđa Obradović;

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<sup>93</sup> The Court established that the conditions set out in Article 273 (2) of the CPC of BiH were met, that is, that the witness Samir Musić was not able to testify at the main trial as a result of his mental illness and consequently rendered a procedural decision to allow the witness statement to be read out at the main trial. See the prosecution exhibit T-44.

- **T-5** - Copy of the Decision by the Basic Court of Vlasenica No. R-17/98, 17 June 1998 declaring the missing Jakov Đokić dead and the Official Letter was sent under the Ref. No. 092-0-U-07-000-206, 7 May 2007;
- **T-6** - Certificate by the Ministry of Defense, Office in Šekovići No. 02-835-18/98, 28 January 1998;
- **T-7** - Death Certificate issued by the Municipality of Šekovići for Jakov Đokić, No.05/10-202-290/07, 23 April 2007;
- **T-8** - Electronically verified copy of the history of the illness for the injured Rade Pejić;
- **T-9** - Decision by the Basic Court of Vlasenica No. R-25/98, 7 October 1998 declaring the missing Dušan Čestić dead;
- **T-10** - Death Certificate issued by the Municipality of Šekovići for Dušan Čestić No. 05/10-203-689/07, 7 September 2007;
- **T-11** - Record on Examination of the Witness Dževad Musić, 20 June 2007;
- **T-12** - Record on the Post Mortem Forensic Examination, No. IS-15/2006-OT, 3 October 2006;
- **T-13** - Record on Identification of the Remains of Dušan Čestić, No. 72/07, 25 June 2007 with the DNA Analysis;
- **T-14** - Photo-documents of Post Mortem Examination No. IS-15/2006-OT, 3 October 2006 of Dušan Čestić;
- **T-15** - Record on Examination of the Witness Bešir Aljukić, 10 September 2007;
- **T-16** - Certificate issued by the Patriotic League of BiH No. 01-63/97, 11 November 1997 for Esad Maljišević;
- **T-17** - Record on Examination of the Witness Esad Maljišević, 7 September 2007;
- **T-18** - Record on Examination of the Witness Adil Omerović, 7 September 2007;
- **T-19** - Order of the Territorial Defense HQ of the Tuzla County to the Municipal HQ of Vlasenica No. 01/92, 9 August 1992;
- **T-20** - Photograph No. 4;

- **T-21** - Record on Examination of the Witness Nurija Hurić, 4 September 2007;
- **T-22** - Death Certificate for Dragan Ilić, No. 03-202-698/2007, 13 April 2007;
- **T-23** - Decision of the Presidency of the Republic of Bosnia and Herzegovina Declaring the Imminent Threat of War (Official Gazette of R BiH No. 1/92, 9 April 1992) and Decree of the Presidency of the Republic of Bosnia and Herzegovina on Cessation of the Former Republic HQ of the Territorial Defense and Establishment of the HQ of the Territorial Defense of the Republic of Bosnia and Herzegovina (Official Gazette of R BiH No. 1/92, 9 April 1992);
- **T-24** - Decree-law of the Presidency of the Republic of Bosnia and Herzegovina on the Armed Forces of the Republic of Bosnia and Herzegovina (Official Gazette of R BiH No. 4, 20 May 1992);
- **T-25** - Decision of the Assembly of the Serb People in Bosnia and Herzegovina on Formation of the Army of the Serb Republic of Bosnia and Herzegovina (Official Gazette of Serb People in BiH No. 6/92, 12-17 May 1992);
- **T-26** - Decision of the Presidency of the Republic of Bosnia and Herzegovina on Declaring the State of War (Official Gazette of R BiH No. 7/92, 20 June 1992);
- **T-27** - Order by the Presidency of the Republic of Bosnia and Herzegovina on Application of the Rules of the International War Law in the Armed Forces of the Republic of Bosnia and Herzegovina, No. 1291/92, 23 August 1992 (Official Gazette of R BiH No. 4/92, 6/92, 12/92);
- **T-28** - Instruction by the Minister of Defense on Application of the Provisions of the International Law of War in the Armed Forces of the Republic of Bosnia and Herzegovina (Official Gazette of R BiH No. 15/92, 15 December 1992);
- **T-29** - Decree-law on Ratification of the International Conventions related to Law of War and Judiciary (Official Gazette of the Army BiH No. 1/92, 15 November 1992) and Order on Application of the rules of the International Law of War in the Armed Forces of the Republic of Bosnia

- **T-30** - Decision on Formation of the Corpses of the Army of the Republic of Bosnia and Herzegovina, published in the Official Gazette No. 4/92;
- **T-31** - Map of area of responsibility of the 2<sup>nd</sup> Corps;
- **T-32** - Electronically verified copy of the document of the District HQ of the Tuzla Defense - strictly confidential No. 03/92, 29 August 1992;
- **T-33** - Territorial Defense HQ of the Tuzla County - Proposal for the appointment of senior military officers No. 01/409, 30 June 1992;
- **T-34** - Electronically verified copy of the document of the Drina Division Command – War Order, 30 September 1992;
- **T-35** - Electronically verified copy of the document entitled “Briefing of the Commander Ferid Hodžić”;
- **T-36** - Patrol orders and reports of the Duty Service, 26 January 1993;
- **T-37** - Document of the HQ of Srebrenica Armed Forces with Ref. No. 7/93, 31 January 1993;
- **T-38** - Death Certificate for Branko Sekulić, No. 03-202-14/2007, 13 April 2007;
- **T-39** - List of detained persons made by the Srebrenica Armed Forces No. 108/93, 3 February 1993;
- **T-40** - Letter of the RS Government, Office for the Missing and Captured Persons No. 588-1/2007, 18 July 2007, regarding the information about the missing Dušan Čestić;
- **T-41** - 6 photos of the area where the prison was located, more specifically the area of Rovaši-Cerska with the video footage of that area;
- **T-42** - CD with electronically verified copies of the evidence;
- **T-43** - Book entitled “Aggression on BiH – Northeastern Bosnia 1991-1992” by Vahid Karavelić;
- **T-44** - Forensic psychiatric finding for Samir Musić No. KT-RZ-160/07;
- **T-45** - Record on Examination of the Witness Samir Musić, 10 July 2007;
- **T-46** - Record on Examination of the Witness Bego Uvalić, 9 October 2007;

- **T-47** - Letter of the FBiH Ministry for Issues of War Veterans and Disabled Veterans from the Homeland War No. 01/1-41-5/07, 11 January 2008 with the application of Ferid Hodžić for recognition of his membership in the Armed Forces of RBiH;
  - **T-48** - Letter of the Ministry of Interior, Public Security Center Bijeljina, Police Station Vlasenica (excerpt from the criminal record) No. 12-1-8/02-235-369, 5 November 2007; and
  - **T-49** - Certificate of the Vlasenica Armed Forces, 27 October 1992.
8. The Defense objected to the admission of Prosecution exhibits T-23 through T-30 on the grounds that laws and regulations cannot constitute evidence in the criminal proceedings. The Defense also objected to Prosecution exhibit T-25, “Decision of the Assembly of the Serb People in Bosnia and Herzegovina on Formation of the Army of the Serb Republic of Bosnia and Herzegovina” (Official Gazette of Serb People in BiH No. 6/92. 12-17 May 1992) on the grounds that the decision was made by the body that at the time was not established and recognized by the legitimate authorities of BiH.
9. The Defense contested the authenticity of the signature of the Accused on Prosecution exhibits T-19, T-35 and T-49. The Court admitted these documents into evidence finding that the authenticity of each document as a whole was not contested, but only the authenticity of the Accused’s signature. The Panel considered this when evaluating the probative value of each piece of evidence.

#### **Defense witnesses**

10. The following witnesses for the defense were examined in the course of the main trial: **Salih Jusić, Ćamil Talović, Fajko Kadrić, Atif Siréo, Džemil Babić, Sejfudin Hodžić and Merima Telalović**, and professional witness **Vahid Karavelić**.

11. Pursuant to Article 261 (2) (e) of the CPC of BiH, the Panel ordered the presentation of evidence in the form of a confrontation between the Prosecution witness Bego Uvalić and Defense witness Merima Telalović.

### **Defense documents**

12. The Court read and reviewed the following documentary evidence of the Defense:

- **O-1** - Decision of the War-time Presidency of the Municipal Assembly Vlasenica No. 3/92, 10 August 1992;
- **O-2** - Decision of the Vlasenica Territorial Defense No. 359/92, 2 October 1992;
- **O-3** - Decision of the War-time Presidency of the Municipal Assembly Vlasenica No. 1/92, 10 August 1992;
- **O-4** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 60-01/92, 23 October 1992;
- **O-5** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No.16/92, 16 October 1992;
- **O-6** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 61-01/92, 23 October 1992;
- **O-7** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 24/92, 24 October 1992;
- **O-8** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 29/92, 29 October 1992;
- **O-9** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 28/92, 28 October 1992;
- **O-10** - Certificate of the Municipal Territorial Defense Staff for Vlasenica and Cerska No. 10/92, 10 October 1992;
- **O-11** - Copy of the page from the transcript of the Record of the session of the RBiH Assembly and FBiH constituent assembly, 18 July 1994;
- **O-12** - Document written on the sheet of paper entitled “*Permission to leave in the direction of Vlasenica*”, Cerska, 1 October 1992;

- **O-13** - Order of the RBiH, Command of the 16th Muslim Brigade, Zlača, 7 July 1992;
- **O-14** - War Order, RBiH, Armed Forces of BiH- Command of the Joint Units of Bratunac, Vlasenica and Zvornik, 26 October 1992;
- **O-15** - Decision of the RBiH Presidency on the appointment of the president and members of the War-time Presidency of Municipal Assembly Vlasenica, 21 December 1992;
- **O-16** - Certified copy of the Sales contract, 6 September 1989;
- **O-17** - Certified copy of the Contract of the Agricultural Cooperative “27 July” Vlasenica, 3 January 1991; and
- Finding and opinion of the expert witness, document examiner **Zlatko Dugandžić**.

13. The Prosecution objected to the relevance of the Defense exhibits O-11, O-13 and O-15 and to the legality of exhibit O-12 because the left corner of the sheet of paper on which the document is written is missing from being torn or cut out. The Court overruled as unfounded the objections concerning relevance. The Court overruled the objection to the legality of exhibit O-12 ruling that the document was authentic regardless of the fact that one eighth of the sheet of paper was missing (the bottom left corner of the document).