

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-96-23/2-PT

IN THE REFERRAL BENCH

Before Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr Hans Holthuis

Date Filed: 20 March 2007

THE PROSECUTOR

v.

RADOVAN STANKOVIĆ

PROSECUTOR'S SIXTH PROGRESS REPORT

The Office of the Prosecutor

Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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PROSECUTOR'S SIXTH PROGRESS REPORT

1. In accordance with the "Decision on Referral of Case Under Rule 11 *bis*"¹ of 17 May 2005 ("Decision") the Prosecutor hereby files her sixth progress report in this case.
2. The Decision requires that following the initial report, six weeks after transfer of material, the Prosecutor must file a report every three months on the course of the proceedings before the State Court of Bosnia and Herzegovina.²
3. The Office of the Prosecutor filed its fifth progress report on 20 December 2006.³
4. Following the agreement between the Chairman in Office of the Organisation for Security and Co-operation in Europe Mission's to Bosnia and Herzegovina (the "OSCE") and the Prosecutor, the Prosecutor received OSCE's fifth report on 14 March 2007.⁴ The Report outlines the main findings of trial monitoring activities to date in the *Stanković* case, from the perspective of international human rights standards.⁵

¹ *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-PT, Decision on Referral of Case Under Rule 11bis, 17 May 2005.

² Decision, p. 34.

³ See *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-PT, Prosecutor's Fifth Progress Report, 20 December 2006.

⁴ Fifth OSCE Report, Case of Defendant Radovan Stanković, Transferred to the State Court Pursuant to Rule 11bis, 14 March 2007 ("Report").

⁵ Report, Executive Summary. p. 1.

5. The OSCE identified some issues of interest related to the trial which generally have been raised in the Parties' appeals of the first instance verdict and can therefore only be adequately assessed once the Appellate Panel's decision is delivered.

6. The OSCE summarises the proceedings in the *Stanković* case to date as follows:

- The first instance verdict was delivered on 14 November 2006. Its written copy was issued on 25 December 2006. The Defendant was found guilty on four counts of the indictment for committing crimes against humanity and was sentenced to 16 years' imprisonment. He was acquitted of the two counts that were added to those included in the ICTY indictment.⁶
- On 12 January 2007, the additional Defence Counsel appealed the first instance verdict, proposing that the Appellate Panel revoke the verdict and orders a retrial. This appeal claimed essential violations of the Criminal Procedure Code, violations of the Criminal Code, and argue that facts were incorrectly and incompletely established. For instance, Defence Counsel claimed that the Court violated the Criminal Procedural Code by holding the main trial without the presence of the Accused, it excluded the public, and took judicial notice of facts adjudicated in proceedings before the ICTY. Moreover, it argued that the application of the new Criminal Code of BiH constituted a violation of the Criminal Code.
- On 13 January 2007, the principal Defence Counsel filed an appeal against the sentencing part of the verdict on the bases of essential violations of the provisions of the Criminal Procedure Code, violations of the provisions of the Criminal Code, and incorrectly and incompletely established facts. Counsel also appealed the decision on the criminal sanction. She moved the Appellate Panel to revoke the first instance verdict and order a retrial, or to revise the first instance verdict and pronounce a lesser sentence. The main grounds for her appeal were the following: the applicability of the new Criminal Code BiH; the fact that the Court reversed its decision to conduct psychiatric evaluation of the Accused for the purpose of establishing whether he was able to stand trial, without providing proper reasoning; taking judicial notice of established facts; the decision to exclude the public; conducting the trial without the presence of the Accused; and rendering the verdict based solely on "fabricated" testimonies of protected witnesses, which she also considered to present unlawfully collected evidence.
- On 15 January 2007, the Prosecution filed an appeal against the acquitting and sentencing part of the verdict, on the bases of incorrectly established facts and the violation of the Criminal Code and

⁶ The Prosecutor notes that the State Court acquitted Radovan Stanković only of count six. The State Court dismissed count five after the BiH Prosecution dropped it.

the decision on the sanction. It proposed to the Appellate Panel to modify the verdict in its acquitting part and subsequently sentence the Accused more severely. Both Defence Counsel responded to the Prosecution appeal.

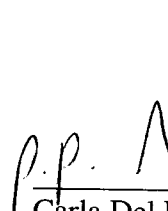
- On 12 February 2007, the Defendant himself filed an appeal against the verdict and the decision on sanction, because of essential violations of the Criminal Procedure Code and the erroneously and incompletely established state of facts. In his appeal, apart from the grounds already pointed out by his Counsel, he criticized the work of his court-appointed Attorneys mentioning, among others, that they had not made use of any evidence previously gathered while at the ICTY and put forward by his former Defence Counsel. He moved the Appellate Panel to revoke the contested verdict in its entirety and order a retrial or else to reserve it by acquitting him of all charges.
- On 8 February 2007, the case file was sent to the Appellate Panel for review and deliberation on the appeals. The session of the Appellate Panel is scheduled for 28 March 2007.⁷


2. The Prosecutor notes that the OSCE intends to share this Report with actors in the domestic justice system.

3. Attached to this report are the following annexes:

- (i) Annex A: a copy of the OSCE's Report; and,
- (ii) Annex B: a copy of the written verdict of the Trial Panel of the BiH State Court in the present case, issued on 25 December 2006.

Word Count: 911


Carla Del Ponte
Prosecutor



Dated this twentieth day of March 2007
At The Hague
The Netherlands

⁷ Report, p. 1.

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ANNEX A
TO
PROSECUTOR'S SIXTH PROGRESS REPORT



**Organization for Security and Co-operation in Europe
Mission to Bosnia and Herzegovina**

**Fifth Report in the
Case of Defendant Radovan Stanković
Transferred to the State Court pursuant to Rule 11*bis***

March 2007

SUMMARY OF DEVELOPMENTS

This constitutes the fifth OSCE Report in the case of Radovan Stanković (hereinafter also "Defendant" or "Accused"), the first case transferred from the ICTY to the BiH State Court pursuant to Rule 11b^{is} of the ICTY Rules of Procedure and Evidence, covering the period between 14 November 2006 and 12 March 2007.

During the reporting period, the Mission identified certain issues of interest. However, it appears that generally these issues have been raised in the Parties' appeals on the first instance verdict and are still pending the Appellate Panel's decision. Therefore, the present Report is limited to summarizing the developments in this case.

- As stated in the previous Report on this case, the first instance verdict was delivered on 14 November 2006. Its written copy was issued on 25 December. The Defendant was found guilty on four counts of the indictment for committing crimes against humanity and was sentenced to 16 years' imprisonment. He was acquitted of the two counts that were added to those included in the ICTY indictment.
- On 12 January 2007, the additional Defence Counsel appealed the first instance verdict, proposing that the Appellate Panel revoke the verdict and order a retrial. This appeal claimed essential violations of the Criminal Procedure Code, violations of the Criminal Code, and argued that facts were incorrectly and incompletely established. For instance, Defence Counsel claimed that the Court violated the Criminal Procedure Code by holding the main trial without the presence of the Accused, it excluded the public, and took judicial notice of facts adjudicated in proceedings before the ICTY. Moreover, it argued that the application of the new Criminal Code of BiH constituted a violation of the Criminal Code.
- On 13 January 2007, the principal Defence Counsel filed an appeal against the sentencing part of the verdict on the bases of essential violations of the provisions of the Criminal Procedure Code, violations of the provisions of the Criminal Code, and of incorrectly and incompletely established facts. Counsel also appealed the decision on the criminal sanction. She moved the Appellate Panel to revoke the first instance verdict and to order a retrial, or to revise the first instance verdict and pronounce a lesser sentence. The main grounds for her appeal were the following: the applicability of the new Criminal Code BiH; the fact that the Court reversed its decision to conduct psychiatric evaluation of the Accused for the purpose of establishing whether he was able to stand trial, without providing proper reasoning; taking judicial notice of established facts; the decision to exclude the public; conducting the trial without the presence of the Accused; and rendering the verdict based solely on "fabricated" testimonies of protected witnesses, which she also considered to present unlawfully collected evidence.
- On 15 January 2007, the Prosecution filed an appeal against the acquitting and sentencing part of the verdict, on the bases of incorrectly established facts and the violation of the Criminal Code and the decision on the sanction. It proposed to the Appellate Panel to modify the verdict in its acquitting part and subsequently sentence the Accused more severely. Both Defence Counsel responded to the Prosecution appeal.
- On 12 February 2007, the Defendant himself filed an appeal against the verdict and the decision on sanction, because of essential violations of the Criminal Procedure Code and the erroneously and incompletely established state of facts. In his appeal, apart from the grounds already pointed out by his Counsel, he criticised the work of his court-appointed Attorneys mentioning, among others, that they have not made use of any evidence previously gathered while at the ICTY and put forward by his former Defence Counsel. He moved the Appellate Panel to revoke the contested verdict in its entirety and order a retrial or else to reverse it by acquitting him of all charges.
- On 8 February 2007 the case file was sent to the Appellate Panel for review and deliberation on the appeals. The session of the Appellate Panel is scheduled for 28 March 2007.

ANNEX

LIST OF RELEVANT SUBMISSIONS

- i. First instance verdict, dated 14 November 2006.
- ii. Additional Defence Counsel's Appeal against the first instance verdict, dated 12 January 2007.
- iii. Principal Defence Counsel's Appeal against the first instance verdict, dated 13 January 2007.
- iv. Prosecution Appeal against the first instance verdict, dated 15 January 2007.
- v. Defendant's Appeal against the first instance verdict, dated 23 January 2007.
- vi. Defendant's Supplement to the appeal against the first instance verdict of 23 January 2007, dated 7 February 2007.
- vii. Principal Defence Counsel's Response to the appeal of the Prosecutor's Office, dated 25 January 2007.
- viii. Second Defence Counsel's Response to the appeal of the Prosecutor's Office, dated 30 January 2007.

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ANNEX B
TO
PROSECUTOR'S SIXTH PROGRESS REPORT

11-01-2007

BK

SUD BOSNE I HERCEGOVINE



Number: X-KR-05/70
Sarajevo, 14 November 2006

	Sud BiH / Суди БиХ Krivično odjeljenje I / Апелациони одјелjenje / Суд БиХ / Апелациони одјелjenje / Одијел за судску управу / Одијел за судску управу
	X-KR/05/70

P126V0D 0010.1070

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, sitting as a Panel composed of Judges Davorin Jukić as the Presiding Judge, Lars Folke Bjur Nystrom and Almiro Rodrigues as the Panel Members, with the participation of the legal officer Elvira Begović as the record-taker, in the criminal case against the Accused Radovan Stanković, for the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item c), e), f) and g) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-45/05 dated 28 November 2005, after the main trial partly closed to the public, without the presence of the Accused and in the presence of his Defense Attorneys Dragica Glušac and Nebojša Pantić, lawyers from Banja Luka, and the Deputy Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Vaso Marinković, on 13 November 2006 reached and on 14 November 2006 publicly announced the following

VERDICT

RADOVAN STANKOVIĆ aka "Rašo", son of Todor and mother Joka née Dorem, born on 10 March 1969 in the village of Trebičina, municipality of Foča, permanent resident of Miljevina, citizen of Serbia and Montenegro, married, father of three minor children, literate, secondary school qualifications, served the army in Ljubljana in 1988/89, Personal Identity Number: 1003969131547, no prior convictions, apprehended by SFOR on 9 July 2002, taken to the ICTY Detention Unit in The Hague on 10 July 2002 and transferred to the Court of BiH Detention Unit on 29 September 2005, where he is currently detained.

I

IS FOUND GUILTY

of the following:

Between August and October 1992, in the Miljevina area and in the town of Foča itself, as a member of the Miljevina Battalion subordinated to the Foča Tactical Brigade, as part of a systematic and widespread attack of the Army of the Serb Republic of Bosnia and Herzegovina (hereinafter "soldiers"), members of the police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, which lasted from April 1992 to February 1993, when those civilians were being killed, detained – men mostly in a camp – Foča Correctional Facility, and other civilians in detention centers such as the Miljevina Motel, Buk Bijela, Foča High School and Partizan Sports Hall, where they were subjected to physical and mental abuse and many women often to sexual abuse by the acts described below:

1.

- In a house belonging to Nusret Karaman, located in the village of Miljevina, municipality of Foča, in the immediate vicinity of the Miljevina Battalion Headquarters, after on 3 August 1992 Dragoljub Kunarac aka "Žaga" brought to Miljevina four girls, specifically A., D., B. and C., who had previously been detained and abused in an apartment at 16 Osmana Đikića Street in Foča, and handed them over to the Battalion Commander, and at his order the accused Radovan Stanković together with other persons established a women's detention center at the Karaman's house, which was referred to by the soldiers as the "Brothel", where they brought and detained and supervised the detention center, where at least nine female persons were detained, specifically: A., D., N., B., M., AB., J., JG., C. most of whom were underage, while AB. and JG. were 12-year-old girls,

- the accused removed AB. in Foča from a bus going to Goražde in the presence of her mother, and took her to the detention center, and she has been missing ever since,

- incited other soldiers, who occasionally visited the detention center, to rape and abuse the detainees, having full control over their lives and bodies, and after the Commander assigned B. to him, whom he forced to sleep in the same bed with him but did not rape her because he did not like her, the accused claimed C. for himself; another person claimed JG., another person claimed J., while two detainees D. and A. were claimed by another person, and like M., N. and AB. were raped by other soldiers who occasionally visited the detention center, including soldiers and civilians who were allowed in the house by the accused Radovan Stanković and other persons, while the accused himself brought some persons to the detention center, whom he assigned the following detainees to rape: AS., who was raped by one person, and A., who was raped by another person;

2. In the same detention center the detainees, specifically: A., D., N., B., M., AB., J., JG., C., were compelled to forced labor, which included cooking for the soldiers, cleaning the house, washing uniforms and bathing soldiers. He also ordered three detainees A., D. and C. to do physical labor outside the detention center, which included cleaning apartments and rooms and painting window-frames in apartment blocks and apartments in Miljevina, including the cleaning of the apartment used by the accused Radovan Stanković, who would, during that time, verbally insult the detainees and call them „Bule“ or other derogatory names;

3. During the same time period, at the same detention center, from among the detainees: A., D., N., B., M., AB., J., JG., C., the accused claimed the detainee C. for himself and forcibly engaged in sexual intercourse with her (vaginal, oral and anal) every night, except for a couple of days when he was wounded, with her in the living room, often in the presence of other people, and also in the bathroom, while on one occasion, in the presence of C., he raped her underage sister D. and then, in the month of October 1992, he took her from the detention center to an apartment in the center of Miljevina, where he kept her in detention for about 10 days and then moved her to an apartment in the apartment block called "Lepa Brena" in Foča and kept her in detention in that apartment until 1 November 1992 and during this entire time of her detention he continued forcibly engaging in sexual intercourse with her, also compelling her to forced labor which included washing

his clothes, cooking, cleaning the apartments where she was detained, and then, on 1 November 1992, he transported her illegally across the state border between Bosnia and Herzegovina and Montenegro and on 2 or 3 November 1992 took her to the bus station in Nikšić and released her;

4. During the same time period, on an unknown day and date, at the detention center, during the daytime, the accused forcefully took the underage D., sister of C., to a room upstairs in the house and forcibly raped her, while on another occasion, in the evening hours, after she was forced to drink alcohol, he took her to the living room in the house, where he had previously sent her sister C., and ignoring the fact that she was crying and begging him to stop, he forcibly engaged in sexual intercourse with her in the presence of her sister, and he forcibly raped and abused her on several other occasions by hitting her and causing visible injuries, such as bruises and swellings, to her face;

Whereby

Under Counts 1-4 he committed the criminal offense of Crimes against Humanity in violation of Article 172, paragraph 1, item c), e), f) and g) of the CC of BiH,

Count 1, item c), f) and g) of the CC of BiH;

Count 2, item c) and f) of the CC of BiH;

Count 3, item e), f) and g) of the CC of BiH;

Count 4, item f) and g) of the CC of BiH;

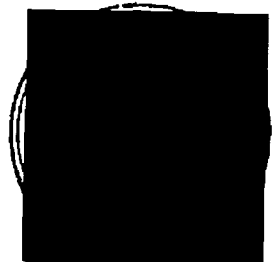
Therefore, the Court, in accordance with the above stated provisions and pursuant to Article 42 and Article 48 the CC of BiH, hereby

SENTENCES HIM TO 16 /sixteen/ YEARS OF IMPRISONMENT

Based on the application of the legal provision under Article 56 of the CC of BiH, the time the Accused spent in custody, commencing on 9 July 2002, shall be credited towards the sentence of imprisonment.

Pursuant to Article 188, paragraph 4 of the CPC of BiH, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings.

Pursuant to Article 198, paragraph 2 of the CPC of BiH, the injured parties -- protected witness A., B., C., D., E., G., H., I., J., K. and N. are hereby referred to take civil action with their claims under property law.



II

Pursuant to Article 283, item c) of the Criminal Procedure Code of Bosnia and Herzegovina, the following charges against the Accused Radovan Stanković are hereby

DISMISSED

1. In the month of May 1992, on an unknown day, in the afternoon hours, he came to the detention center located at the Miljevina Motel, municipality of Foča, where civilians from the area of Foča municipality were detained, and armed with a rifle and intoxicated he went to one of the rooms where H. was detained, he forcibly undressed her and forcibly engaged in sexual intercourse with her despite her protests.

III

Pursuant to Article 284, item c) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused Radovan Stanković is hereby

ACQUITTED OF THE CHARGES

That

1. Between June and December 1992, armed with a rifle and a knife, he went to the hospital in Foča, where G. was admitted as a patient, and forcibly took her out of the hospital and to an apartment in Foča, where he forcibly raped her and then took her back to the hospital comforting her and saying that he was going to become very good friends with her.

Pursuant to Article 189, paragraph 1 of the CPC of BiH, the costs of criminal proceedings referring to the part of the verdict dismissing the charges and acquitting the accused of the charges shall be paid from within budget appropriations.

Reasoning

I

1. Transfer of the case from the ICTY

By the Third Amended Indictment of the Prosecutor of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), the accused Radovan Stanković was charged with individual criminal responsibility pursuant to Article 7(1) of the ICTY Statute, under four counts for Crimes against Humanity (two counts for Enslavement in violation of Article 5 (c) and two counts for Rape in violation of Article 5 (g)); and under four counts for Violations of the Laws or Customs of

War (two counts for Rape and two for Outrages Upon Personal Dignity in violation of Article 3), indicating that the above mentioned criminal offenses were committed in the area of the Municipality of Foča in Bosnia and Herzegovina.

Pursuant to Rule 11bis of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, the Decision on Referral rendered on 17 May 2005 by the Referral Bench of the International Tribunal in The Hague, which became final by the Decision of the Appeals Chamber of that Court dated 1 September 2005, the case against the Radovan Stanković was referred to the authorities of Bosnia and Herzegovina, which were to forward the case to the competent court without delay (in the concrete case it is the Court of Bosnia and Herzegovina) for trial in Bosnia and Herzegovina.

On 29 September 2005, the accused Radovan Stanković was transferred from the UN Detention Unit in The Hague to the authorities of Bosnia and Herzegovina and surrendered to this Court for further proceedings.

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ-45/05 dated 28 November 2005, which pursuant to the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected from the ICTY in the Proceedings Before the Courts in BiH (Law on Transfer) was accepted as adapted in respect to Counts 1 through 4, and in respect to Counts 5 and 6 it was confirmed on 7 December 2005, Radovan Stanković aka Rašo was charged, by the actions described in Counts 1 through 6 of the Indictment, with the commission of the criminal offense of Crimes against Humanity in violation of Article 172, paragraph 1, item c), e), f) and g) of the Criminal Code of Bosnia and Herzegovina.

The accused Radovan Stanković did not enter the plea of guilty or not guilty for the criminal offense he is charged with because he was removed from the courtroom for disruptive conduct.

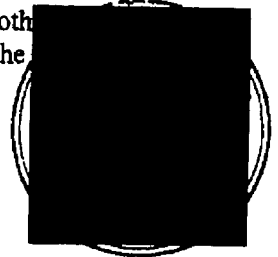
2. Presented Evidence

The Prosecutor presented the following evidence:

On the proposal of the Prosecutor's Office of BiH, the following persons were heard as witnesses: protected witness with pseudonyms: A., B., C., D., E., G., H., I., J., K. and N. At the main trial, the Court also heard Prof. Dr. Abdulah Kučukalić, neuropsychiatrist, as a forensic expert witness.

The Court notes that it has the personal data of the protected witnesses, which are declared confidential, therefore, they will not be indicated in the Verdict.

In terms of the provisions set forth in Article 273, paragraph 2 of the CPC of BiH, the statement of the witness N. was read out. In other words, Prof. Dr. Abdulah Kučukalić, in the capacity as a forensic expert, carried out a psychiatric evaluation of this witness, in order to establish the mental condition of the witness and whether the witness is capable to testify in this criminal case. In his findings and opinion, the expert witness, among other things, said that he had carried out a psychiatric examination of the witness and that "the

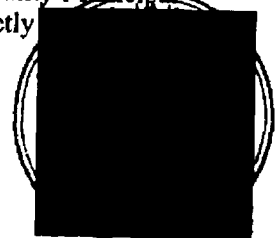


not demonstrating symptoms of temporary mental disorder or of a permanent mental disease of psychotic character, she is not mentally retarded", that she is "currently ongoing an intensification of a post-traumatic stress disorder." Finally, the expert proposed in his findings that the witness "should not participate in ... the proceedings as a witness because it would be...a strong secondary traumatization..." At the main trial, during which the expert witness presented his findings and opinion, he explained and stated definitely that although it was indicated in the findings that the witness did not demonstrate symptoms of temporary mental disorder or of a permanent mental disease of psychotic character, the witness did have a post-traumatic stress disorder, which is a permanent mental illness, and as such is registered in medicine and assigned a special code. Following such explanation of the expert, the Court decided to allow the reading of the statement of the witness N. The objection of the defense that the statement of the witness should not be read out was refused as ungrounded considering the mentioned explanation of the expert referring to fact that the witness suffered from mental disorder. In reference to the motion of the defense that the Victim and Witness Protection Section of the Court of BiH should psychologically prepare the witness to testify, the Court took into consideration that the Section had tried to do that but after a contact with the witness an official note was made according to which the witness was traumatized and not able to testify.

Furthermore, during the main trial, the Court inspected the following evidence submitted by the Prosecutor's Office of BiH: Record on the statement of the protected witness A. No. KT-RZ-45/05 dated 30 December 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness A. conducted before the ICTY in the period 15-18 November 1995, on 6 March 1998 and on 20, 21 and 22 October 2003, in Bosnian and English language; Record on the statement of the witness B. No. KT-RZ-45/05 dated 27 October 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness B. conducted before the ICTY dated 8 June 1998 in Bosnian and English language; Record on the statement of the witness G. No. KT-RZ-45/05 dated 17 November 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness J. No. KT-RZ-45/05 dated 28 October 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness I. No. KT-RZ-89/05 dated 25 October 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness H. No. KT-RZ-45/05 dated 17 November 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness C. No. KT-RZ-45/05 dated 12 November 2005 conducted on the premises of the Prosecutor's Office of BiH; Record on the statement of the witness C. before the ICTY in the period 11-12 October 2003 and 6 December 2003, in Bosnian and English language; Record on the statement of the witness E. before the ICTY dated 21 August 1997, in Bosnian and English language; Record on the statement of the witness K. before the ICTY dated 15 and 17 August 1997, in Bosnian and English language; Record on the statement of the witness D. before the ICTY dated 19 and 20 January 1996, in Bosnian and English language; Record on the statement of the suspect Radovan Stanković No. KT-RZ-45/05 dated 28 November 2005; ICTY Indictment against Radovan Stanković, in Bosnian and English language (Third Amended Indictment in the case number IT-96-23/2-PT dated 8 December 2003); Final Judgment of the ICTY Trial Chamber Ref. No. IT-96-23-T and IT-96-23/1-T dated 22 February 2001 in the case Dragoljub Kunarac et al.; ICTY Appeals Chamber Judgment in the case of Dragoljub Kunarac et al., Ref. No. IT-96-23 and IT-96-23/1-A dated 12 June 2001; Crime scene sketch No. 14-13/1-7-257/05

dated 18 October 2005 produced during forensic examination of the house owned by Nusret Karaman; Photo documentation No. 14-13/1-7-257/05 dated 18 October 2005 compiled during forensic examination of the house owned by Nusret Karaman; Photo documentation compiled by ICTY investigators dated July 1996 (panoramic view of Foča, Partizan Sports Hall, Miljevina Motel, Karaman's house); List of occupied apartments in Miljevina dated 7 September 1992; Request to station the Garrison in Foča dated 17 March 1992 and submitted to JNA General Staff by Foča Serb Municipal Assembly; Order issued by the President of Republika Srpska, Dr. Radovan Karadžić, Ref. number 01-653/95 dated 7 April 1995, including a list of military conscripts who are to be reassigned from the Army of RS to the Ministry of Internal Affairs; Order on deblocking Goražde, Ref. number Strictly Conf. No. 01/113-1 dated 7 July 1992, issued by the Commander of the Foča Tactical Group; ICRC List of Missing Persons in the territory of BiH dated 15 January 1997, in English language; Miljevina 3rd Light Infantry Brigade List of soldiers who were wounded between 6 October 1992 and 30 September 1993, Ref. number 472/93 dated 6 October 1993; Findings and opinion of the committee of doctors in charge of the examination of persons falling under the Law on the Rights of Disabled Veterans and Families of Killed Soldiers, Ref. number 34/95 dated 28 March 1995; Certificate issued by the Foča Military Post 7141, Ref. number 05-1/640 dated 29 September 1993; Certificate issued by the Foča Military Post 7141, Ref. number 04/1-6-165 dated 22 June 1994; Document issued by the Ministry of Interior of RS, East Sarajevo, Public Security Center – Foča Public Security Station, for Radovan Stanković, Ref. number 13-1-8/02-2-248-19-479/05 dated 22 November 2005; Document of the Foča Public Security Station, Crime Police Department, criminal records No. 13-1-8/02-2-248-19-479/05 dated 22 November 2005; Report on the escape of detainee Radovan Stanković from the Foča Correctional Facility, Ref. number 56/93 dated 6 May 1993; Psychiatric Forensic Expertise of Prof. Dr. Abdulah Kučukalić on the protected witness N. No. KT-RZ-45/05 dated 26 June 2006; Official Note of the Victim and Witness Protection Section dated 14 June 2006; Konjic War Prisoners Exchange Commission records No. 01/1-114/92 dated 15 December 1992; ID card issued by the International Committee of the Red Cross under number 311419 to the witness B.; Certificate of the Ilidža – Sarajevo Municipality War Prisoners Exchange Commission number 1110/93 dated 9 November 1993 issued to the witness B.; Certificate of the BiH State Missing Persons Commission No. 06/5-15-R-98 dated 23 March 1998 issued to the witness B.; Displaced Persons records dated 3 November 1992 regarding witness C.; Approval for Exchange issued by the BiH State War Prisoners Exchange Commission, Ref. number 02-153-691/93 dated 24 March 1993; Report on Exchange by the Republic of BiH State War Prisoners Exchange Commission, Ref. number 02-153-692/93 dated 25 March 1993; Record on the statement of the witness N. Ref. No. KT-RZ-45/05 dated 26 October 2005.

During the main trial, the defense for the accused submitted the following evidence: List of the Logistics Platoon dated 10 August 1992; List of Jelečani-newsletter Ekskluziv dated 15 January 1993; List of Transferred Soldiers from the Logistics Platoon pursuant to the schedule of 28 August 1992; Order - Organization of Communications in the Sutjeska Battalion; Republic of Bosnia and Herzegovina-Foča Municipality-Municipal Headquarters of the Territorial Defense, Joint Solemn Oath Ref. No.-strictly confidential No. 01/1-3 dated 25 May 1992; Republic of Bosnia and Herzegovina-Foča Municipality-Municipal Headquarters of the Territorial Defense, platoon composition, Ref. No: strictly No. 01/1-12/92 dated 6 June 1992.



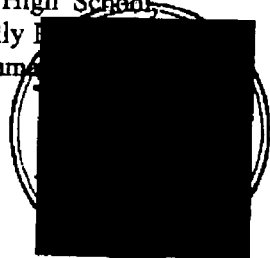
Following the presentation of material evidence at the hearing held on 12 September 2006, the defense for the accused proposed his psychiatric expert evaluation to be carried out by Dr. Nera Zivlak-Radulović, psychiatrist from Banja Luka. The Court, after deliberation, accepted this proposal the same day and ordered the above mentioned doctor to carry out the expert evaluation. Based on the decision of the Court, on 27 September 2006, expert witness Dr. Nera Zivlak-Radulović came to the state-level Detention Unit, with the aim to establish contact with the accused Radovan Stanković for possible agreement on further visits and/or method of expert evaluation, however, the accused refused to meet and see doctor Zivlak-Radulović, at the same time refusing any kind of expert evaluation and indicating explicitly, in his submission to the Court dated 27 September 2006, among other things, that he "does not need any kind of expert evaluation whatsoever." In such a situation, due to the lack of possibility to make any sort of contact with the accused, the expert witness proposed to refer the accused, for observation, to the Forensic Department of the Psychiatric Clinic in Sokolac, stating that without direct observation and examination she could not reach any conclusions. She also stated that, in case of further refusal of the accused to cooperate regarding expert evaluation, in her opinion, it would not be appropriate to use force to possibly take him to Sokolac, in which case the expert evaluation could not be carried out, that is, she in the capacity as an expert witness could not offer her opinion relating to the mental condition of the accused. Before it rendered a decision, on 25 October 2006, the Court had sent a letter to the accused inviting him to finally present his opinion about the expert evaluation, and advising him that in case of further refusal it would not be carried out at all, and that if the Court did not get an answer within a set deadline or if he refused to receive the letter, it would be understood that he stood by his previous position, meaning the refusal of the expert evaluation concerned. On 26 October 2006, the Court received a submission from the accused whereby he refused any expert evaluation. Considering such position of the accused, as well as the above mentioned opinion of the expert witness that expert evaluation could not be carried out without cooperation of the accused, and the fact that in any case it would not be appropriate to use force for the purpose of expert evaluation, on 27 October 2006 the Court rendered a procedural decision according to which expert evaluation would not be carried out.

3. Closing Arguments

The Prosecutor, during the presentation of closing arguments, stated that based on the evidence presented at the main trial, it could be concluded beyond any doubt that the accused Radovan Stanković was guilty on all the counts of the Indictment (except for Count 5), as well as that the presented evidence resulted in the fact that all elements of the criminal offense of Crimes against Humanity existed in this case. The existence of a widespread and systematic attack of the Bosnian Serb Forces against the Bosniak civilian population in the territory of Foča and Miljevinina arises from the legally valid facts established by the ICTY in the case against Dragoljub Kunarac et al, No. IT-96-23-T and IT-96-23/1-T which the Court accepted as established. The protected witnesses with the initials A., B., C., D., E., I., J., G., E. and K. explicitly describe the difficult and dreadful events in Foča and its surroundings during the period indicated in the Indictment. The statements of these witnesses as well as the statement of the protected witness N. which was read out, in the opinion of the Prosecutor, clearly describe the situation of Bosniak civilians in the Municipality of Foča and the surrounding settlements. All the heard witnesses gave consistent statements about

the above mentioned events and their statements are identical to the statements given to the ICTY investigators and some of them to the Prosecutor's Office of BiH. Then, based on the presented evidence, the trial panel can conclude beyond any reasonable doubt that the accused Radovan Stanković was a member of the Miljevina Battalion as well as that he was wounded as a member of the Army of Republika Srpska.

Further, the Prosecutor's Office stress in particular that the accused Radovan Stanković had knowledge of the attack on Bosniak civilians in the municipality of Foča and, as he stated himself, he participated in the above mentioned attack. In reference to the above mentioned, the accused was particularly aware of the situation of Bosniak women, primarily of young women and little girls, that is, that they had no protection and were under the control of Serb military and paramilitary forces. The majority of heard witnesses, who were victims of rape and sexual abuse in Karaman's house, stated that the Accused was in charge of the house and living in that house and, according to the statement of the witness K., the accused was present on the Drina bridge in Foča and removed underage girl A.B. from the bus, meaning that the accused was present and aware of the sufferings experienced by Bosniak civilians in Foča, that is, within the widespread and systematic attack of the Army of Republika Srpska and paramilitary formations against Bosniak civilians in Foča, having knowledge of such an attack, he committed the following: enslavement, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international humanitarian law, torture, coercing another by force or threat of immediate attack upon his life to sexual intercourse, sexual slavery and any other form of sexual violence of comparable gravity. Based on the evidence presented at the main trial, primarily based on hearing the protected witnesses A., B., C. and D. and the read-out statement of the protected witness N., it can be concluded with certainty that the accused Radovan Stanković participated in the establishment of a women's detention center in Karaman's house in Miljevina, where the witnesses with initials A., B., C. and D. were detained for several months, and where other young women, even 12-year-old girls, were brought later. The witness with initials A. specifically describes the fate of the underage girl A.B., who was 12 years old at the time and has been missing ever since, who had told the witness that on the Drina bridge in Foča the accused Radovan Stanković had removed her from a bus transporting Bosniak civilians from Miljevina to Goražde, separated her from her mother and two sisters and brought her to the detention center in Karaman's house. This statement is fully consistent with the statements of the protected witnesses J., I. and K. All the witnesses who were detained in Karaman's house and testified at the main trial stated that the underage A.B. was in Karaman's house and that she had been subjected to rapes and sexual abuse by the soldiers who had lived in Karaman's house as well as by the soldiers who had been allowed to enter the house and rape the girls. The witness B. explained in details her apprehension and taking to the school in Kalinovik and later to Foča, after which, together with the witnesses A., C. and D. she was moved to Miljevina, to Karaman's house. The witness states that she was originally assigned to the accused Radovan Stanković and forced to sleep with him for a couple of days but that he did not rape her or insist on sexual intercourse because she looked very bad after she had been raped by another soldier in Foča. The key witness for the Prosecutor's Office is the witness with the initial C., who, identically to the statements of the witnesses A. and D., describes the apprehension of civilians and their taking to detention centers such as Buk Bijela, Foča High School, Partizan Sports Hall as well as to buildings and apartments in Foča and finally to Karaman's house. The witness C. described in the same manner the situation in the Karaman's house.



The witness, as well as previous witnesses, points out that she was originally assigned to other person, who did not rape her during the first days of her stay in Karaman's house. In particular, the witness C. describes the event related to the accused Radovan Stanković and the manner in which Radovan Stanković claimed her from another person as his own, stressing the fact that the accused Stanković raped her on a daily basis while she stayed in Karaman's house. The witnesses gave precise testimonies in respect to the fact that the accused Stanković compelled them to forced labor outside Karaman's house. The witness C. gave a particularly moving description of the rape committed against her sister by the accused Radovan Stanković, which fully corresponds to the statement of the protected witness D., who indicates that she was raped by the accused in Karaman's house. The witness D. really cannot remember whether the accused raped her in front of her sister because she was not aware of it. Correlating the statements of the witnesses C. and D., the Prosecutor suggests that the panel should be able, beyond any reasonable doubt, to establish the existence of criminal offenses referred to in Count 2, 3 and 4 of the Indictment, while correlating the statements of the witnesses C. and D. and statements of the witnesses A. and B. and the read-out statement of the protected witness N., the panel should be able, beyond any reasonable doubt, to conclude that the accused committed the criminal offenses described under Count 1 of the Indictment. During the main trial, the trial panel was also able to hear statements of the protected witnesses with initials I., J., E. and K., who repeated their statements given to the ICTY investigators, that is, to the Prosecutor's Office of BiH, and who described their situation in Foča, Miljevina and surrounding places in a consistent manner. The witness K. in her statement clearly described the situation in Miljevina in 1992, the persecution of the Bosniak population from Miljevina, as well as how the underage A.B. was removed from the bus by the accused Radovan Stanković. When the statement of this witness is linked with the statements of the witness A., who confirmed that the underage girl A.B. told her in Karaman's house that the accused had separated her from her mother and taken to Karaman's house, it could be clearly concluded that the accused has committed the above mentioned offense. The statement of the witness K. is supported by the statement of the witness I., who stressed that the accused Stanković addressed A.B. when entering the buses and told her to get off the bus. The statement of the witness J. is consistent with the statements of the above mentioned witnesses. Also, based on the statement of the witness E., the trial panel could satisfy itself that the statement of the witness given to the Prosecutor's Office of BiH is true. This witness confirmed that she had seen C. and D. and two other frightened girls in front of Karaman's house. In the opinion of the Prosecutor, during the testimony of the protected witness under pseudonym G., the trial panel could satisfy itself that the accused Radovan Stanković committed the criminal offenses described under Count 6 of the Indictment because the witness G. clearly stated that the accused Radovan Stanković had forcibly taken her out of the Foča hospital, where she had been hospitalized, and moved her to an apartment in Foča, where he raped her, and then took her back to the hospital, comforting her and saying that he was going to become very good friends with her.

Finally, the Prosecutor deems that considering all the above mentioned statements as well as material evidence, the trial panel can, beyond any reasonable doubt, establish the facts described under Counts 1-4 and 6 of the Indictment, and render a decision finding the accused Radovan Stanković guilty of the incriminated criminal offenses. In respect to the severity of the punishment, the Prosecutor deems that the aggravating circumstances justify

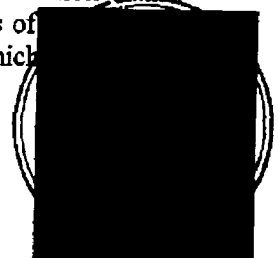
imposing a long-term imprisonment sentence, which would be appropriate to the crime committed and serve the purpose of punishment in terms of general and special prevention.

The Defense Attorney for the accused, Dragica Glušac, presenting the defense of the accused in the closing arguments, in the first place stressed the following objections referring to the criminal proceedings against the accused Radovan Stanković: in the concrete case the law applicable at the time of commission of the criminal offense should be applied, that is, the law which is more lenient to the perpetrator, that is, the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY). In reference to the above mentioned, the Indictment against Radovan Tanovic has not been adequately adapted by the Prosecutor's Office, because he is not charged with criminal offenses committed pursuant to the law applicable at the time of commission of the criminal offense. Then, as for the right to a fair trial in terms of Article 6 paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR), the accused should be entitled to be present at the trial, whilst in the case concerned the entire proceedings were conducted without the presence of the accused, whereby he was prevented to follow the course of the main trial and rebut the evidence, which, as deemed by the defense, violated his right to a fair trial. The defense further alleges that no force should be applied against the accused, but also that abandoning the expert evaluation that had previously been accepted is contradictory and that the Court should have found appropriate manners and methods to conduct the expert evaluation. Then, the defense is of the view that accepting the facts established by another trial panel is prejudiced and violating the imminent presentation and adversarial principle. Finally, in reference to the presented evidence of hearing of the protected witnesses for the Prosecution, the defense holds that they were "rigged" and prepared, and the reasons for testimonies were of personal, political or even emotional nature. The accused Radovan Stanković was a member of the Miljevina Battalion, but he was an ordinary soldier and his contribution was negligible in relation to others who made decisions, and he could possibly be liable for having been a member of the RS Army. Due to all the above mentioned, the defense moves the Court, if it finds the accused guilty, to credit the time spent in custody, including the proceedings before the ICTY, to the term of the pronounced sentence, given that the duration of custody is sufficient for the sentence and proportionate to the circumstances. Finally, the defense kindly asks the Court, in the decision-making process, not to evaluate the conduct of the accused within the context of aggravating circumstances but to judge all the circumstances of cumulative events in this area and terminate custody against the accused.

The accused voluntarily did not attend the main trial at which closing arguments were presented, that is, he refused to answer the summons of the Court to attend the scheduled hearing. In reference to the refusal of the accused to attend the trial, on 4 July 2006, the Court rendered the decision to hold the trial without the presence of the accused (the decision is elaborated hereinafter).

4. Procedural Decisions of the Court:

The accused Radovan Stanković was transferred from the ICTY to the jurisdiction of the Prosecutor's Office of BiH and the Court of BiH pursuant to the provisions of the Transfer. Since then, the Court has rendered several procedural decisions which



direct consequence of the transfer of this criminal case or a consequence of and an answer to the conduct of the accused before the Court of BiH.

A) Decisions on Protection of the Witnesses

By the Decisions (3 decisions) number X-KRO-05/70 dated 28 November 2005, the Court ordered protection measures for 14 witnesses in total in these proceedings, while a certain number of them were already granted protection measures in the proceedings against the accused Radovan Stanković before the ICTY. By these decisions all the personal details of the protected witnesses, real names and surnames and other personal data were declared confidential, while during the proceedings the witnesses were enabled to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound. On 5 June 2006, the Court rendered the Decision on changing the previously assigned pseudonyms for increased and more appropriate protection of personal data and identity of the witnesses.

During the proceedings, the protected witnesses were enabled to testify from another room, utilizing electronic distortion of voice or image; however, this possibility was used only by the protected witnesses with pseudonyms A. and H., while the other protected witnesses testified in the courtroom without electronic distortion of voice or image, in a manner that those present in the courtroom could directly see and hear them. They made such a decision after they were informed by the Court that the public was excluded from the main trial and that the accused Radovan Stanković was not present in the courtroom. The reasons for the absence of the accused from the main trial during the evidentiary procedure are explained in the Decision of the Court dated 4 July 2006 and elaborated hereinafter.

The Court was mindful of the protection of identity of the protected witnesses during the entire proceedings, making sure that no identity data would be mentioned, so even in the Verdict these witnesses are not fully named but are mentioned under assigned pseudonyms, while the complete data on the protected witnesses are included in the court case file which is also specially protected.

B) Decision on Exclusion of the Public

At the hearing held on 23 February 2006, the Prosecutor of BiH moved the Court to exclude the public for the entire course of the proceedings, while the Defense Attorney for the accused did not want to state her opinion in reference to this motion given that on the hearing held on 23 February 2006 the accused Radovan Stanković was removed from the courtroom due to disruptive conduct in violation of Article 242, paragraph 2 of the CPC of BiH. The Court instructed the Defense Attorney to consult the accused and allowed time for that purpose.

After hearing the Prosecutor and the Defense Attorney for the accused, pursuant to Article 235 of the CPC of BiH, the Court decided to exclude the public for the entire main trial as a rule. In the opinion of the panel, that was necessary to preserve morality and protect the personal and intimate life of the injured parties and the interests of the witnesses, given that these are the witnesses who should testify in respect to a great number of rapes and other


humiliating procedures, which might tarnish their reputation and damage family life, that majority of them were very young at the time of commission of the criminal offense who, in the meantime, founded their families and have new personal and family life. Testifying in public about such delicate and sensitive matters, even with certain measures of protection, in the opinion of the Court, always represents a risk for private and personal lives of the witnesses-victims, because in a small community a not controlled small detail of the story might be enough to reach the identity of a protected witness. The Court also took into consideration the fact that the accused Stanković threatened before the Hague Tribunal to disclose the identities and addresses of the witnesses for the prosecution, and he did it at the status conference in this case held on 20 November 2003, threatening to disclose the identities and photographs of the witnesses. He repeated the same threat in his letter sent to the trial chamber of the Tribunal dated 28 November 2003. Therefore, the Court deemed necessary rendering the decision on the exclusion of the public both for protection of personal lives of the witnesses-victims and for fear that the accused would disclose the names of protected witnesses, in which case the damage resulting from the disclosure of the identities of witnesses would be absolutely beyond repair.

Meanwhile, in terms of the provisions of Article 236 paragraph 2 of the CPC of BiH, the Court allowed that officials, that is, representatives of the OSCE and other international institutions - trial monitoring teams, be present at the main trial from which the public is excluded.

Some exceptions were made to the exclusion of the public at the stage of the Prosecutor's presentation of evidence. However, after hearing the witnesses for the Prosecution, the continuation of the main trial was public, except at times, when the subject of discussion was protected witnesses or their statements.

C) Decision Refusing the Request of the Accused to Self-Representation

On 6 April 2006, the Court decided to refuse the request of the accused Radovan Stanković to defend himself in person in this case, due to the fact that Article 45 of the CPC of BiH stipulates that the accused must be represented by defense counsel. In addition to that, the Court observes that the accused has no professional qualifications required to defend himself in person adequately in such a complex case, in which it is an absolute priority and duty of the Court to provide the Accused with a quality defense, that is, a defense requiring particular legal expertise, considering the right of the accused to defense in terms of the Criminal Procedure Code of Bosnia and Herzegovina and Article 6 of the ECHR. Further, the Court observed that according to the jurisprudence of the European Court of Human Rights there is no violation of Article 6 of the ECHR if the Court appoints a defense attorney against the will of the accused, if it is done in the interest of justice and adequate defense (See *Croissant v. Germany*, Judgment of 25 September 1992). Finally, the Court holds that the concrete case is such that the Court has to take into account the balance and need to protect the rights of the accused to adequate defense as well as the rights of vulnerable witnesses-victims in this case, therefore, it was necessary for the Accused to be represented by persons qualified for the job, that is, by lawyers. In reference to the defense of the accused, the Court also considers the fact that the Trial Chamber I of the ICTY, by its decision dated 19 August 2005, refused the request of the accused Radovan Stanković for self-representation. The final Decision in writing No. X-KRN/05/70 dated 6



specifies the reasons for such decision. The decision also includes the dismissal of the former defense attorney for the accused on his request due to the deteriorated relations as well as lack of cooperation with the accused, and the appointment of new defense attorneys for the accused – a lead counsel and an additional counsel, in the interest of justice and efficient conduct of the proceedings.

D) Decision on Communication Limitations with Outside World

On 28 June 2006, the Court decided to restrict the accused Radovan Stanković's communication and his right to correspondence with the outside world pursuant to the provisions of Article 144 of the CPC of BiH, in order to preserve the authority and dignity of the judiciary, to ensure proper, timely and efficient conduct of the criminal proceedings, to protect effectively the life, the rights to privacy and security of the protected witnesses, and to prevent the defendant from committing a criminal offense under Article 240 or under Article 241 of the CC of BiH by influencing those witnesses or by revealing their identity. The final Decision in writing No. X-KRN/05/70 dated 28 June 2006 specifies different restrictions of communications of the accused and presents the grounds which guided the Court in decision-making, and in doing so the Court also took into account the jurisprudence of the European Court of Human Rights, as indicated in the Decision.

On 29 September 2006, the Court rendered the decisions in writing, prohibiting telephone communication and visits to the accused due the fact that his aggressive behavior had intensified over the previous couple of months, ever since when the accused, in a very brutal and offensive manner, using extremely vulgar language, in his submissions displayed hatred and made threats against representatives of judicial institutions in Bosnia and Herzegovina, especially against the trial panel members in this case. This, in the opinion of the Court, represented realistic endangerment to the life and health of people. Therefore, the Court, pursuant to the provision of Article 144, paragraph 4 of the CPC of BiH, in conjunction with Article 141, paragraph 2 of the same Law, and Article 10 of the ECHR, rendered the Decision prohibiting the accused any communication with the outside world except for the closest family members and defense attorneys. This Decision was confirmed by the decision of the Appellate Panel of the Court of BiH No. X-KR-05/70 dated 31 October 2006.

E) Decision to Hold the Main Trial without Presence of the Accused

At the hearing held on 23 February 2006, the accused Radovan Stanković, after several warnings by the Presiding Judge, had to be removed from the courtroom for disruptive conduct pursuant to Article 242, paragraph 2 of the CPC of BiH. Then, at the hearing held on 6 June 2006, due to insults to the Court and members of the Panel the accused was transferred to a special room from which he could follow the trial, wherefrom, due to continued disruptive conduct, he had to be removed from this hearing too and from the premises of the Court pursuant to Article 242 of the CPC of BiH. The accused refused to come to the hearing scheduled for 16 June 2006, and then also the hearing scheduled for 4 July 2006, to which, according to the official notes of the authorized officer of the State Level Detention Unit, he refused to appear, sending a message that he could only be brought to the Court with the use of force in which case he would appear at the trial in his underwear. Furthermore, as of 29 September 2005, when he was transferred to the Court of BiH, State Level Detention Unit, the accused has constantly demonstrated aggressive

On 13 July 2006, the Court accepted the Motion of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ/05 dated 27 February 2006, based on Article 4 of the Law on Transfer, related to the acceptance as proven of the facts established by ICTY.

With this Decision, the Court also expressed its agreement with and accepted as valid the ICTY Trial Chamber Decision of 16 May 2003 related to the acceptance of the Prosecutor's Motion for Judicial Notice. In addition to that, the Panel accepted the facts established with the above mentioned decision as proven in the proceedings before the Court of BiH.

1. The Prosecutor's Office of BiH proposed accepting as proven the following facts: the fact that from April 1992 until February 1993 there was an armed conflict between Bosnian Serbs and Bosnian Muslims in the territory of Foča Municipality. Non-Serb civilians were killed, raped or otherwise abused as a direct result of the armed conflict; the fact that there was a systematic attack by the Bosnian Serb Army and paramilitary units against the Muslim civilian population of the municipalities of Foča, Gacko and Kalinovik; the fact that the conflict involved a systematic attack by the Bosnian Serb Army and paramilitary groups against the civilian population of Foča municipality. The campaign was successful in its aim of cleansing the Foča area of non-Serbs. One specific target of the attack were Muslim women, who were detained in intolerably unhygienic conditions in places such as the Kalinovik school, Foča High School and the Partizan Sports Hall, where they were mistreated in many ways, including being raped repeatedly.

These facts were established in the ICTY first-instance and the Appeals Panel Judgments in the case against Kunarac et al. (IT-96-23-T and IT-96-23/1-T). The above stated facts are relevant for the criminal case against Radovan Stanković conducted before the Court of BiH, given that he is charged with the criminal offenses that were indeed committed within the widespread and systematic attack by the Army of the Serb Republic of Bosnia and Herzegovina, police forces and paramilitary formations against the non-Serb civilian population, conducted in the broader territory of the Foča municipality. In other words, this is a kind of criminal offense committed in the same geographical area and at the same time and in the same operation.

The Court did not accept the objection of the defense referring to the acceptance of the established facts as proven, because the defense failed to substantively challenge the Motion of the Prosecutor. The objections of the defense boil down to the position that in case those facts were accepted in the criminal case against Radovan Stanković, the principle of equality of arms and the principle of immediacy, set forth under CPC BiH, would be violated, all in conjunction with the statement of the Prosecutor that, should the established facts be accepted as proven, there would be no need to hear 11 witnesses.

First of all, according to Article 4 of the Law on Transfer, the Court may, at the request of a party or proprio motu, decide to accept as proven facts that are established by legally binding decisions in proceedings before the ICTY. The Law on Transfer is a *lex specialis*, and, as such, it can be applied in the proceedings before the Court of BiH, which was not challenged by the defense. The primary purpose of Article 4 of the Law on Transfer is the efficiency and effectiveness of the proceedings; however, one has to be very cautious when applying this legal provision, insofar as not to challenge the fairness of the trial, and not to accept the facts that would directly or indirectly incriminate the accused.

conduct, either in his submissions sent to the Court or each time he came to the hearing. Therefore, on 4 July 2006, due to all the above mentioned, the Court rendered the Decision that the main trial in the Radovan Stanković case should be held even without his presence in case the accused refuses to attend the scheduled session to which he was duly summoned. Pursuant to this Decision, during the course of the main trial, the accused shall have the right to appear before the Court at all times (the right which he never exercised). Also, pursuant to the Decision, the defense attorneys attended the hearings held without the presence of the accused. During the entire course of the proceedings, the Court was reviewing this decision and estimating its applicability. However, the circumstances and reasons for rendering the decision in question did not change by the time the proceedings were completed. The accused was informed on regular basis about the course of the proceedings without delay, in a manner that the recording of the entire proceedings would be forwarded to him on the day of the hearing, but the accused kept on refusing to accept recordings from the day of rendering of the decision until the end of the trial, which is confirmed by the official notes of the authorized officers of the State Level Detention Unit included in the case file.

Therefore, based on the overall conduct of the accused, including the refusal to appear before the Court of BiH, the Court concluded that it was a calculated conduct, the aim of which was to hinder and delay the criminal proceedings, that is, the failure of the accused to attend the scheduled hearings was an act of free will of the accused not to appear at the trial. On the other hand, forceful apprehension of the accused duly summoned pursuant to Article 246 paragraph 1 of the CPC of BiH refers to the situation in which the accused is out of custody, and its primary purpose is to inform the accused about the criminal proceedings against him when he is not available to the court and make the accused aware of the consequences. Thus, forceful apprehension and use of physical force are not an adequate manner to give notice to the accused that the trial will continue even without his physical presence, because he is in custody, already a measure to secure his presence and successful conduct of the criminal proceedings in accordance with Article 123 and Article 131 paragraph 1 of CPC of BiH and Article 5 of the ECHR. Indeed, bringing the accused to the court in his underwear, with the use of physical force, could actually represent inhumane treatment against the accused, and would, at the same time, contribute to undermining the authority and dignity of the Court, while bearing in mind the conduct of the accused at the previous sessions, it was reasonable to expect that bringing him in with the use of force would only contribute to the accused repeating the conduct which results in his removal from the courtroom.

Such a position of the court is also known in international jurisprudence (See for example the International Criminal Tribunal for Rwanda in the case against Jean-Bosco Barayagwiza, ICTR-97-19-T). Anyway, the Court, when it considered this issue and rendered the decision, took account of the jurisprudence of the European Court of Human Rights referring to the application of Article 6 of the ECHR and the ban on trial in absentia. This decision was made in writing, providing a more detailed reasoning of the decision as well as of the said international jurisprudence.

F) Decision on Accepting as Proven the Facts Established by ICTY



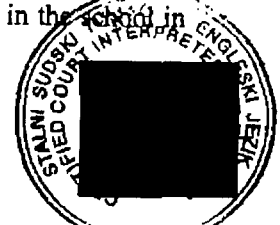
It was disputable whether the accused took part in the criminal offenses in the manner as presented in the Indictment. Deciding on this disputable and the most important circumstance, the Court started from the indisputably established fact that the accused was staying in a wider area of Foča and Miljevina at the time of the incriminated events.

The protected witnesses and in particular the witnesses who were detained in Karaman's house claimed categorically that Radovan Stanković had committed the criminal offenses referred to in Counts 1-4 of the Indictment.

Count 1 (establishment of detention centre called Karaman's house, destiny of underage A.B. and assigning of detainees to different soldiers)

The sworn witnesses A., B., C., E., and D., testify before the Court about the circumstances related to the detention of women and young girls in Karaman's house, the presence and status of the accused Radovan Stanković in Karaman's house (that the accused was a person "in charge of the house" and had the key role in assigning the detained girls to different Serb soldiers), and the circumstances of raping the girls in this house. Among these testimonies, the statements of the protected witnesses C. and D. are especially convincing. They are both categorical in their claims that Radovan Stanković also raped them.

The witness under pseudonym A. indicates in her statement that before the beginning of the armed conflict she lived with her family in a certain village in the municipality of Foča and that after the village was seized in July 1992, she was captured with other civilians and transported to Buk Bijela, then to the Foča High School and Partizan Sports Hall in Foča, and finally, in early August 1992, together with the other three girls, including her relatives C. and D., she was transferred to Karaman's house in Miljevina. In her statement she said that she found three soldiers in Karaman's house, whose names she learned subsequently, and one of them was Radovan Stanković. Later on, the other three girls, A.B., M. and N., were also brought to the house. The witness described the conditions in Karaman's house in details, stating that it was referred to by the soldiers as the "Brothel". In no uncertain terms she also claims that the accused Stanković was "in charge" of the house, making such positive conclusion based on her stay in the house. The witness A. stated that, being 24 at the time, she was the oldest of the detained girls and the others were between 12 and 19 years old. In reference to the rapes in Karaman's house, this witness stated that the detainees were raped in all possible ways, such as vaginal penetration, oral sex and anal penetration, while as regards the participation of the accused in these actions, the witness explicitly stated that he was also "beating and raping them all". As for the conduct of the accused, the witness A. also described the situation in which one day the accused forced the detainee-witness D. to bathe him in a bathroom and she was not willing to do it immediately. The witness A. recalls that on that occasion, because she did not obey immediately, Radovan Stanković punched her so hard that she was all blue. These allegations were corroborated by the witness D. herself, who said that Radovan Stanković, generally speaking, "always looked sulky and strict", then that he was making noise from time to time and sometimes he would hit them. Then, the witness D. confirmed that the accused hit her, a consequence of which was a bump on her head and blue eye, which will be specified later in the explanation of the criminal offenses referred to in Count 4. The witness under pseudonym B., subsequently to her capture and detention in the school in her village, then in the school in

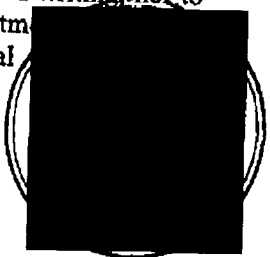


The facts concerned are general in nature and they pertain to the existence of the armed conflict, existence of the widespread and systematic attack in the territory of the Foča municipality, and the fact that the attack was directed against the civilian population of the Foča, particularly targeting Muslim women. Besides, the facts related to the incriminating actions of the accused Radovan Stanković, whether his actions were part of the widespread and systematic attack and whether the accused knew of the attack, were established by the Court during the evidentiary procedure through direct presentation of evidence by the parties to the proceedings. So, the facts related to the accused's attitude towards the criminal offense he was charged with and his possible criminal responsibility were established by the Court during the evidentiary procedure, as set forth under CPC of BiH, respecting the principle of immediacy and equality of arms.

In the written Decision on Acceptance of Established Facts as Proven, the Court also considered the Decision on Prosecutor's Motion for Judicial Notice Pursuant to Rule 94(B) issued on 16 May 2003 by the ICTY Trial Chamber, by which it accepted 36 facts. Considering that the case against the accused Radovan Stanković was transferred from the ICTY to the Court of BiH pursuant to Rule 11bis of the Rules on Procedure and Evidence, that after the case was referred, the Indictment brought against Radovan Stanković was accepted as adapted in Counts 1 - 4, while it was confirmed in new counts, Counts 5 and 6, that the Rule 94(B) of the Rules on Procedure and Evidence pertaining to the judicial notice of the adjudicated facts corresponds with Article 4 of the Law on Transfer which refers to the acceptance of the established facts as proven, and that the taken judicial notice of facts by the Decision of the ICTY Trial Chamber (36 facts) include the established facts proposed by the Prosecutor's Office to be accepted as proven, the Court fully agreed and accepted as valid the Decision of the ICTY referring to the established facts in the Radovan Stanković case. In its written Decision dated 13 July 2006, the Court gave a more detailed reasoning of the decision on the acceptance as proven of established facts, while the significance of the established facts for these criminal proceedings is given hereinafter and refers to the existence of a widespread and systematic attack as a key element of the criminal offense the accused is charged with.

Although some of the above mentioned decisions are procedural decisions of the trial panel (Decision on Exclusion of the Public, Decision to Hold the Main Trial without Presence of the Accused and Decision on Acceptance of Established Facts) which, according to Article 239, paragraph 4 of the CPC of BiH, are always "announced and entered in the main trial record with a brief summary of the facts considered" and can be contested only in the appeal against the verdict, the Court decided that even these decisions, after their announcement at the main trial, should be rendered in writing as special decisions and important for the jurisprudence of the Court. The Court has been primarily led by the fact that public was excluded from a part of the main trial in these criminal proceedings and that the accused was not present at the main trial, therefore, the Court, through these written decisions, provided for the accused and the public to be better informed about the course of these criminal proceedings.

Also, the Court decided when pronouncing the verdict and elaborating it in writing, not to mention in any way the persons indicated in the operative part of the Indictment by the Prosecutor's Office of BiH as possible co-perpetrators of the criminal



Indictment, whose full names and surnames or nicknames are given in the Indictment. So, the Court has decided instead of their names or nicknames to use the term "another person" or "other persons", given that these persons are not subject to charges in this criminal case. The exception is Dragoljub Kunarac aka Žaga, whom the Court considered acceptable to be mentioned in the Verdict by name and surname, given the fact that he was sentenced to 28 years of imprisonment by a legally valid ICTY Judgment against Dragoljub Kunarac et al. No. IT-96-23&23/1 dated 22 February 2001 and given the content of the Judgment.

Further, instead of the initials J.B. from the Indictment, the Court decided to use the designation J., because during the evidentiary procedure it was positively established that it is the person whose name starts with that letter, while the Court was not able to establish the precise identity of that person, that is, name and surname, therefore, the initials were replaced with the designation J.

5. Evidence Evaluation

By evaluation of all the presented evidence individually and in their correlation, the Court established beyond any reasonable doubt that in the incriminated period the accused was staying in the area of Miljevina and Foča and as a member of the Miljevina Battalion commanded by Pero Elez and subordinated to the Foča Tactical Brigade, as part of a systematic and widespread attack of the Army of the Serb Republic of Bosnia and Herzegovina, members of Police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, which lasted from April 1992 to February 1993, he committed the criminal offenses specified under Sections 1-4 of the sentencing part of the Verdict.

As it arises from the Indictment, the accused Radovan Stanković is charged with the criminal offense of Crimes Against Humanity under Article 172 paragraph 1 item c), e), f) and g) of the CC of BiH. The burden of proof of all essential elements of that criminal offense, that is, the existence of a widespread or systematic attack targeting any civilian population, knowledge of such an attack by the perpetrator and that the action of the perpetrator was part of the attack, and the fact that there is a nexus between the act of the accused and the attack against civilian population, lay with the Prosecutor's Office of BiH.

The Court found indisputably and it considers established the fact that at the time of incriminated events in the territory of Foča Municipality there was a widespread and systematic attack targeting non-Serb civilian population, as stated in the reasoning of the Decision on Acceptance of Established Facts dated 13 July 2006, with such an attack, in the context of Crimes against Humanity, pursuant to international customary law, not being limited exclusively to the existence of the "armed conflict".

In relation to the other necessary key elements of Crimes against Humanity, it is indisputable that in the period relevant to the Indictment the accused was a member of the Miljevina Battalion subordinated to the Foča Tactical Brigade and that he was in a wider area of Foča, which is not contested by the accused himself or his defense. Therefore, the Court found that the accused had the knowledge of the widespread and systematic attack targeting non-Serb civilian population and his acts were part of that attack, thus all the essential elements of Crimes against Humanity are met.

Kalinovik and abuse in the apartment in Foča, was brought to Karaman's house, together with the witnesses-sisters C. and D. She also describes the house in details, indicating that it was a two-storey house, with two entrances, that a living room, bathroom and kitchen were located on the ground floor and that upstairs there were two or three rooms, given that the house was not completed, that is, furnished. The witness B. told the Court that after her arrival at the house she was assigned to Radovan Stanković, with whom she slept the first night, but he did not rape her because, as the witness assumes, he did not find her attractive given that she had been tortured by the rapes from the night before her arrival at Karaman's house and was bleeding massively. However, she added that Radovan Stanković treated her as his property and that he could do whatever he wanted with her, and anyway he acted arrogantly and carelessly during her stay in the house which lasted approximately 5 to 10 days. Karaman's house, according to the testimony of this witness as well, had a status of a "brothel" where Serb soldiers used to come to rape girls. She remembers that when they met in Foča later on, one of the two sisters who had been detained in Karaman's house told her that Radovan Stanković had raped her. In addition, the witness B. said that 12 and 13 years old girls were also detained in the house, and indicates that a Serb soldier who "regularly" raped girl J. was staying in the other part of the room in which she stayed and slept with the accused, which is actually the living room of the house. She could watch that and she also knows that other detainees were raped too, because, as the witness says, "nothing was hidden". Referring to one soldier, who mainly had sexual intercourse with very young girls, she said that when he arrived he would take upstairs two and sometimes even three young girls in one day. The witnesses C. and D., full sisters, were also brought to Karaman's house at the same time, after their capture and stay in different detention centers. The sworn witness C. gave a very detailed and comprehensive statement before the Court about the time period she spent in Karaman's house and the role of Radovan Stanković in it. In other words, the witness C. remembers that, after she had been abused the night before in Foča, she was brought to Miljevina and Karaman's house together with her sister and witness A. She also describes the house in the same manner as previous witnesses – that there were a living room, a kitchen and a bathroom on the ground floor and three rooms upstairs. The house, according to the testimony of the witness C. as well, was not fully constructed, that is, completed. When they arrived in front of the house, two girls whom she did not know from before were taken out and they were brought into the house. She found witness J. in the house who was doing something in the kitchen. After their arrival, they were taken to the neighboring house to take a shower, and when they returned to Karaman's house, after she prepared food, she went upstairs with a soldier who had told her previously that she had been assigned to him. She knows that her sister stayed in the living room with a person who claimed her as his own, and she thinks that this person raped her sister that night, although she did not see it. The witness C. stated that she was not sexually abused that night or the following couple of nights by a soldier to whom she was originally assigned, because she had a period. She remembers that on the fifth day of her stay Radovan Stanković followed her into the room upstairs, but after he spoke with a person who claimed her as his own, Stanković left. The witness C. further remembers that a girl from Gacko, captured in Kalinovik, was brought to Karaman's house the following morning. She was very young, that is, she was maybe 12-13 years old. After the arrival of that young girl, Radovan Stanković convinced the soldier who claimed her as his own that it would be better for him to take that young girl for himself, while Stanković claimed the witness C. as his own. The witness was present when the accused was telling this. She stressed that, contrary to the soldier to whom she had been assigned before and who was even-tempered, Radovan

Stanković was arrogant, speaking in a raised voice and acting like an order-issuing authority, that he had to have it his way and that nobody opposed him. She remembers that, in addition to the three of them who were claimed by three different soldiers (she was claimed by Radovan Stanković), her sister, who had not turned 16, and the witness-injured party A. were also in the house, and that later another three girls were brought in, including a girl who was 12 years old at the time (A.B.). Actually, these girls were not claimed by anyone, that is, different soldiers who came there would take them upstairs for sexual abuse and rape. In her statement given before the ICTY she stated that J., her sister D., then A., B., J.G., M., N. and A.B. were also detained Karaman's house when she was detained there. The witness C. explicitly confirmed that the rooms in Karaman's house were used for rapes by soldiers who came there and that the house was referred to as the Brothel. The said witness D., who also testified under oath before the Court, stated that on 3 July, after the Serb forces attacked the village in Foča Municipality in which she had lived with her parents, sister (witness C.) and brother, on which occasion her father was killed, she was captured and with the rest of her family transported to Foča, Buk Bijela settlement. There, she was raped by Serb soldiers for the first time, then transported to the Foča High School wherefrom she was also taken out and brought to the apartments and houses for rape. After that, she was transported to the Partizan Sports Hall in which she was detained for a period of 20 days to one month, and wherefrom she was also taken out and raped. After that she was taken to one house in which they stayed overnight and then she was taken to Miljevina, to Karaman's house, together with her sister (witness C.), relative (witness A.) and a girl whom she did not know before but thinks she was from Kalinovik. As far as she can remember, Radovan Stanković, one soldier and one girl were in the house when they were brought there. The witness D. remembers, as the witness C. said in her statement, that the girls were going to the neighboring house to take a shower. At that time, the witness D. was underage and attended the second grade of high school prior to the incriminated events and stopped attending in the spring of 1992. The witness recalls that, among the soldiers who were staying in the house, Radovan Stanković was always there, that in her opinion he was "in charge" of the house and that he was one of the two men who were approving other soldiers to enter the house, that is, the person without whose approval unknown soldiers could not enter Karaman's house. The witness D. confirmed that her sister, witness-injured party C., was originally assigned to another soldier, but that after a couple of days she was claimed by Radovan Stanković as his own, in reference to which the witness indicates that she would not be in a better position if Radovan Stanković had protected her more because, as the witness states, "he did not protect anyone", and she remembers him as somebody who was constantly sulky and strict. In reference to the establishment of a women's detention center in Karaman's house, the statement of the witness E., girl from Miljevina, corresponds to the statements of the above mentioned girls who testified before the Court. This girl had been taken away from her house some 3-4 months before that and detained in the house owned by Alija Hrbenić, relative of Ramiza Kariman, where Ramiza was also accommodated. The houses of Alija Hrbenić and Ramiza Kariman are some 10 meters apart. The witness E., who was 16 at that time, indicated that at that time Karaman's house was occupied – one member of the Serb Guard was living there for several weeks, and soldiers would drop by, including Radovan Stanković. She knew Stanković, as she states, "almost all her life", because he had lived upstairs. She remembers that on the day when she was taken away from the house in which she was detained, other girls were brought to Karaman's house. She was in front of Karaman's house and she saw Radovan Stanković in front of the house, three other men and four or five girls, including the sisters D.

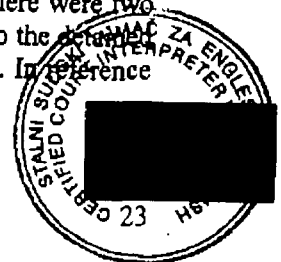


her classmate, and C., whom she also knew from the school. She remembers seeing that Žaga-Dragoljub Kunarac drove them in a car and after the girls dropped off the car she asked the witness D.: "What are you doing here?". The girls who came in the car, states the witness E. further, looked scared and under stress. After that, Dragoljub Kunarac forced her into the car and she and Ramiza Kariman were taken away from that place to the village of Trnovača. Based on the records of the hearing of the witness N. given to the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-45/05 dated 26 October, which was read out at the main trial, it is visible that this witness was also one of the detained girls in Karaman's house in the incriminated period of time. In her statement, the witness N. indicates that in early September 1992 three soldiers brought her into Karaman's house in which she positively found the following girls C., D., J., A. and A.B. and of the soldiers Radovan Stanković and another soldier. This witness described Karaman's house and its location in the same manner. She also stated that Radovan Stanković, in addition to another person, was the "boss" in the house, claiming that he had knowledge of all the rapes ongoing there, that many things happened with his approval, and she remembers him well as a rude and emotionless person. The witness N. knew him since before that, because their fathers worked in the same company and were good colleagues and she used to see him practically every day. The witnesses-eyewitness who were detained in Karaman's house state consistently that they could not escape from the house even when they were alone and had the house key, because, as they state, where they would flee to, given that Serb soldiers were everywhere.

In reference to the fate of the **underage girl A.B.**, who was only 12 years old at the time, in particular regarding her removal in Foča from a bus going to Goražde, the fact that she was brought to the detention center and has been missing since, the Court based its conclusions on the heard witnesses and in particular the witnesses A., C., J., I. and K., given that the witnesses A. and C. were also detained in Karaman's house at the time when A.B. was detained there, while the witnesses J., I. and K. testified about the circumstances of her removal from the bus. So, the witness A. remembers that the girl was originally claimed by the soldier who preferred younger girls, and, later on, when she was assigned to other soldiers during her detention in Karaman's house, she was assigned by Radovan Stanković. The witness C. testified that the girl A.B., who was 12 years old at the time as far as she, too, can remember, was detained in Karaman's house, and she assumes that the girl was also raped because all the detainees were brought to Karaman's house for the purpose of being raped. The witness under pseudonym I., who used to reside in Miljevina, mother of the girl A.B., confirms that her daughter was born in 1980 and that her daughter was taken to Karaman's house on several occasions. As for the house, the witness says that it was used by Serb soldiers, stating: "Well, entered when the war had already started and.....occupied the house and opened a brothel." In reference to the removal of her daughter from the bus, she recalls that on the day concerned, more precisely, around the Partizan Sports Hall and the bus, she saw Radovan Stanković and asked him to save her daughter because some persons wanted to take her away when she was entering the bus. She remembers that the bus in which she was with her three children, with A.B. being the eldest of the children, stopped because a police car blocked its way, that soldiers entered the bus, called A.B. by name and surname, who was appealing "There is no use of me, 12 years old", and with an excuse that they were taking her to see some relative they removed the girl from the bus. The witness I. could not confirm that she herself saw whether Radovan Stanković participated in the removal of A.B., but she knows that she spoke about it with the witnesses

A. and J., who told her that another person had removed the girl from the bus but the accused Stanković had taken her to Karaman's house. In her statement before the Court, the witness J. said that on the day concerned she was also with her children in the same bus as the girl A.B. She remembers that the girl, with her mother and two sisters, was sitting in the front part of the bus. She cannot remember seeing Radovan Stanković, but she remembers that the A.B., after she was removed from the bus, clutched at the bridge railing and wanted to jump from the bridge. However, one of the men grabbed her by her hair and prevented her from jumping. She also remembers that at the time the rumor was that the girl said: "Please, Radovan, save me." Witness J. has known Radovan Stanković, as she states, ever since she arrived in Miljevina in 1983. They lived in the same neighborhood, that is, one apartment building was between their places of residence and her brother-in-law was also the next-door neighbor of his parents, so she has known him since his childhood. The heard witness K. was also in the same bus on the day concerned. She knew Radovan Stanković from before that, because they were neighbors, they were living in the same building, that is, the witness K. and her family lived on the first floor and Radovan Stanković, his mother and brother lived on the second floor. Witness K. remembers that the bus in which they were was stopped on the bridge. Radovan Stanković and another person entered the bus and removed the girl A.B. from the bus and she was saying: "Rašo, please don't let them take me away". The witness K. remembers that all people in the bus could see that the girl clutched at the bridge railing, probably because she wanted to jump into the water, but that she was prevented from doing that. This witness also confirmed that the girl was sitting in the front part of the bus, that is, the third row starting from the front, and the witness herself was sitting in the center of the bus. The statement of the witness A. is fully consistent with the above mentioned statements, according to which the girl A.B. was taken from Karaman's house together with another girl, and after a certain period of time following her separation from her mother and removal from the bus, Radovan Stanković brought her back to Karaman's house. The witness A. is familiar with this situation referring to the removal from the bus because the girl A.B. herself told her about it after she returned to Karaman's house.

In reference to the assignment of the girls, the witness A. is categorical in her statement that Radovan Stanković was assigning the girls to different soldiers, and among other things she stated the following: "Radovan was there constantly, he was deciding who would be ... with whom", then "he was the person who did the assignment, he was bringing other men to the house, deciding who would go with whom and who would rape whom and the like", including those who were coming from Montenegro for rape every weekend. So, the witness A. also said before the Court that on one occasion Radovan Stanković forced M. and D. to go upstairs with Montenegrins who slapped, beat and finally raped them both. As a punishment, he brought into the house two men, one of whom did not have one eye. The witness-injured party D. had to go upstairs with them as a punishment. However, he kept her with him and sent two other detainees to the room, of whom M. was screaming and asking for help, so Radovan kicked them out. Then, M. went to the corridor, fell, slipped down against the wall and fainted. During her testimony, the witness A. specifically reiterated that the accused himself brought some individuals to the house and assigned them the detained girls for rape. The witness D indicated in her statement that, in reference to the assignment of the girls to different soldiers who came to Karaman's house, there were two persons, one of whom was Radovan Stanković, deciding what would happen to the detained girls and without whose approval the other soldiers could not enter the house. In reference



to the assigning of the girls, the witness D. also stated that the girls who were not "assigned" in advance were nobody's, that is, everybody's, including herself. The witness D. also stated that the underage A.B. was one of the girls who were not assigned and who were "available" when other soldiers came.

Therefore, in reference to Count 1 of the sentencing part of the Verdict, the Court gave full credence to the heard witnesses, because the statements of certain witness given before the ICTY, that is, the Prosecutor's Office of BiH and at the main trial, were clear and convincing to the Court, mutually consistent, as well as the statements of different witnesses who testified about the same circumstances. Also, in reference to the first paragraph of Count 1 - bringing of the girls and establishment of the Karaman's house detention center, the Court established the facts that the girls A., D., B. and C. were captured, then detained in different locations and abused in an apartment at *Osmana Đikića Street* in Foča, wherefrom Dragoljub Kunarac aka Žaga took them to Miljevina on 3 August 1992. After that they were moved to Karaman's house, women's detention center referred to as the "Brothel", established by the accused Radovan Stanković and three other soldiers, in which at least nine women were detained and abused. All the witnesses identically described Karaman's house, its purpose at the time concerned, the presence and role of the accused in the house. The description of the house corresponds to the material evidence: photo documentation and a drawing of the house owned by Nusret Karaman. In reference to the above mentioned, it should be certainly taken into consideration that the statements of the above mentioned witnesses cannot correspond exactly, that is, in all the details. In fact, they were personally subjected to different forms of physical and psychological abuse before their arrival and subsequently after the arrival in Karaman's house, thus constantly in fear for their personal security and fate. Nevertheless, it is important to note that they are correspondent in their important elements. All the witnesses who were personally detained in Karaman's house are also stating consistently that the accused was arrogant, rude, always speaking in voice raised, that nobody dared to oppose him, so considering also the conduct of the accused he has been demonstrating since his arrest, both before the ICTY and the Court of BiH, the Court irrefutably reaches the conclusion that the witnesses are telling the truth, both in relation to the conduct of the accused and his role in Karaman's house.

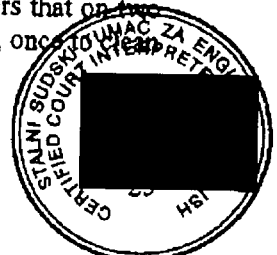
In reference to the second paragraph of this Count, based on the statements of the above mentioned witnesses heard in respect to the circumstances of removal of the underage A.B. from the bus and the fact that once again she was taken to Karaman's house, the Court found that the accused has committed the criminal offenses related to the incriminated event. Based on the List of Missing Persons in BiH of the International Committee of the Red Cross dated 15 January 1997, it arises that A.B. is registered as a missing person and still unaccounted for, as can be seen from the testimony of her mother.

The third paragraph of Count 1 of the sentencing part of the Verdict relates to the criminal offenses of inciting other soldiers to rape and abuse the detainees, that is, assigning girls to himself and other Serb soldiers for rape, approving other soldiers to enter Karaman's house, as well as personal bringing of other soldiers. The Court indisputably and positively found that the accused has committed these criminal offenses based on the statements of the witnesses heard in respect to these circumstances, which correspond in important elements, primarily in reference to the fact that the accused had the status of the person "in charge" of the house, that he personally claimed the witness-injured party C. as his own, treated her as

his property, approved other soldiers to enter the house, that is, assigned the detained girls for rape to other soldiers who were coming to the house, as well as that he himself brought soldiers into the house on several occasions.

Count 2: (subjecting female detainees to forced labor, verbally insulting them and calling them derogatory names)

With regard to Count 2, which deals with forcing the captive girls to do various work, and insulting the girls, the Court reached the conclusion that the accused committed the incriminated actions primarily on the basis of the convincing and consistent testimonies of the witnesses-injured parties, who did that work and suffered insults from the accused during the time of their detention in Karaman's house, and also on the basis of testimonies of other witnesses who testified on these circumstances indirectly. First of all, witness A. testified before the Court that during the time she spent in Karaman's house, she was in charge of the kitchen work, she had to get up at five o'clock every morning because the soldiers would leave for operations early, and it was her duty to wake the soldiers, prepare coffee and tea, prepare food, or, as the witness A. says, she prepared „everything she was ordered to, whatever anyone wanted“. Also, she would bake the bread, work, clean and wash every day. With respect to the work she did in the kitchen, the witness also mentioned that, in the beginning, since for a while she was assigned to a person everybody referred to as "Major", she was nicknamed "Majoroka", i.e. as she says: "Then, Radovan laughed and called me Majoroka for a while, and then, since I was in the kitchen non-stop, they started calling me Maja". Witness A. especially pointed out that once she had to wash Radovan Stanković's uniform stained with blood, which she found especially difficult and distressing, since the uniform was full of blood and even after three hours of scrubbing and washing she was unable to clean it, which the witness says she will never be able to forget. Finally, regarding the forced labor and the work that the captive girls had to do in Karaman's house, witness A. concluded: "We all did everything". Regarding the work they did outside that house, this witness stated that during the period of her detention at Karaman's house, together with female detainees – protected witnesses C. and D., she went to clean the apartment of the accused that he was allocated in Miljevina. In her testimony before the Court, witness B. also confirmed that the captive girls had to, as she says: "wash, clean, wash their clothes, cook, everything that needed to be done in that house". Witness C. also confirmed that female detainees had to clean Karaman's house and that the house was full of garbage, so they had to take the garbage out and burn it, they also had to prepare the food for the soldiers who stayed at that house and wash their clothes. Witness C. especially mentions that Radovan Stanković would often call the girls to the bathroom to bathe him. She also stated that Radovan Stanković once took her out together with witness A. to go and clean and paint the apartment he had been "allocated" in Miljevina. Later on, it was exactly that apartment that Radovan Stanković took witness C. to from Karaman's house. She stayed at that apartment for about 10 days, in which period of time, as the witness alleges, she had to "do all daily chores, wash and cook and sexually please, everything she did at Karaman's house". After that, Radovan Stanković took witness C. to an apartment he had been allocated in Foča, in the apartment block called "Brena", which she also had to clean. The testimonies mentioned above are fully supported by the testimony of witness D., who confirmed that the captive girls did the housework at Karaman's house, specifically mentioning washing, cooking, cleaning and washing uniforms. She remembers that on two occasions she was taken out of the house to other locations to do the cleaning, once



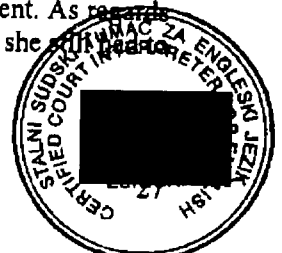
some kind of a workshop which they were taken to by a soldier, and the second time when the accused Radovan Stanković took them to clean the apartment. In her statement given before the ICTY on 19 and 20 January 1996, witness D. stated that on that occasion A., C. and she herself were taken to "scrub the wallpapers, paint the window frames and generally clean the whole apartment". That the accused subjected the girls to forced labor is also indicated in the record on witness N. statement, who stated that she had to do housework at Karaman's house, specifically, the cooking, tidying, cleaning, all that as ordered by Radovan Stanković and another soldier.

With regard to the verbal insults and referring to the girls as "bulas" and using other derogatory names, witness A. stated that, whenever he came to the house, Stanković would address the captive girls by saying: "Bulas, how's it going my Bulas, Bulas", and he also always made them don mini-skirts and make themselves pretty. These allegations are also supported by witness C., who states in her testimony that the accused often called the captive girls "Bulas", sneering while saying that. Witness C. mentioned the same term, „Bula“, when explaining the assignment of girls to different soldiers, which was done by the accused Radovan Stanković, too. So, the witness C. says about him: "Well, he would often call me 'my Bula'." Witness C. also stated that, during her stay in Karaman's house, the accused Stanković would often say to the captive girls: "Your destinies have been written, we have to kill you sooner or later, because we must not leave traces behind us or witnesses for anything that is being done", which is why, as witness C. says, the girls „were scared, of course“. The witness adds that she herself took this threat seriously, that the accused never spoke in a „normal“, but always in a heightened tone of voice, and that she could never trust him, not even after she left Karaman's house and stayed in the apartments with Radovan Stanković, or later on after going across the border, but it was only later, after a while, that she realized that she was free. Witness C. finished her testimony about the humiliation of girls at Karaman's house by saying: "So, all these things were done in fear, under pressure, under coercion, under orders ... While at Karaman's house, only Muslim girls were brought there, exclusively to be raped, humiliated, mistreated and humiliated in every aspect..." The fact that the captive girls were insulted by the accused and how he treated them was also confirmed by witness N. in her statement given to the Prosecutor's Office. She stated that: "He addressed us women using derogatory names, at first Ustashas, later Balijas and then Bulas, we had to do what he ordered".

Count 3 (forcing detainee C. to sexual intercourse, raping her younger sister, underage D. in her presence and taking C. to apartments in Milievina and Foča, where the accused continued raping her and subjecting her to forced labor)

As regards the incriminated acts under Count 3, the Court first of all notes that when evaluating evidence for the criminal acts under two previous Counts, we have already somewhat discussed the acts under this Count, which are mostly related to the accused's treatment of witness C. For that reason, when examining the relevant issue of whether the accused committed the criminal acts under this Count of the Indictment and in the way as presented in the Indictment, the Court primarily relied on the testimony of this witness. The Court bases its conviction that the accused has committed the incriminated acts described in more detail in Section 3 of the sentencing part of the Verdict on a detailed and comprehensive statement about the relevant circumstances given by protected witness C., whose statement was also supported and corroborated by statements of witnesses A. and D.

Witness C. first of all gave clear and detailed account of the situation and circumstances surrounding her capture and detention at the Foča High School, then in Partizan, and her taking to the house at the Osmana Đikića Street in the vicinity of the Aladža mosque, and the time she spent at that house and then her taking to Karaman's house. As has already been mentioned, according to what this witness remembers, she, her cousin and her underage sister were taken to Karaman's house in the critical period by one of the soldiers whose name she would find out later. Upon her arrival at the house, she was initially assigned to another soldier, and then, five days later, Radovan Stanković claimed her for himself, following the negotiations with that soldier and persuading him that he had better claimed the underage girl, who had been brought in the meantime, for himself, the accused Stanković did "get" witness C. Witness C. is categorical in her allegations that, the first night when he claimed her, Radovan Stanković raped her, vaginally, on the ground floor, in a room first initially occupied by him and detainee B. and another soldier with detainee J. from Kalinovik. She further alleges that, at that time, she did not use any protection from unwanted pregnancy, and that Stanković later on brought her some pills that he said were "protection" and she used 2-3 of those and then stopped using them because she was suspicious about them, or, more precisely, they were not in a pill packet or had anything written on the packet. Witness C. categorically alleges that from then on, every night during the time she spent at Karaman's house, Radovan Stanković raped her in the living room in the house, where the other soldier also and the girl assigned to him slept. Since these two were on the other couch, at the distance of some two meters, the witness says she could see and hear the other men rape this other girl. She further alleges that, in addition to raping her there, Radovan Stanković also raped her in the bathroom, in the bath tub, and that he forced her to oral sex and she says that on those occasions Stanković did not care whether anyone else was there, or, in other words, the soldiers did not pay attention to each other. The accused also raped her sister – witness D. in her presence, and that happened one night when the soldiers brought wine and ordered the girls to drink too. Radovan Stanković was nervous that evening and he kept shouting and forced the girls to drink too. After a while, he told witness C. to go to sleep in the room which the two of them used and she did what he told her. After a while, the accused came to that room bringing her sister with him. The light in the room was off, but the light in the hall, which was big, was on and the witness could see the accused bringing her sister in holding the sister's hand, i.e., the sister's elbow. The underage D. was crying, begging him, asking him "why are you taking me in", and then he raped her on the bed where that other soldier and the girl assigned to him usually slept, while witness C. was on the three-seater couch where she usually slept. She recognized her sister by the sister's crying and voice, but she also clearly saw when the door opened and when the accused Stanković brought her into the room, because the bed she was in was right next to the door. After he raped her sister, the accused and the sister, i.e. witness D. left the room. In regard to this criminal offense of rape of witness D., who at that time was underage and had not yet turned 16, witness C. stated that, had she had enough strength at that moment, she would have strangled, i.e. killed the accused without any consideration of the consequences. She further adds that she did not discuss this with her sister later because, as she says, she thinks her younger sister was aware that she was there all the time, and she also adds that the accused did it that way intentionally. From Karaman's house, Radovan Stanković took witness C. to the apartment in Miljevina, the same apartment he had previously taken them to clean. The accused and witness C. slept in that apartment alone, and his mother came a couple of times, and his sister once, to see the apartment. As regards the treatment in this apartment, witness C. stated that, as at Karaman's house, she

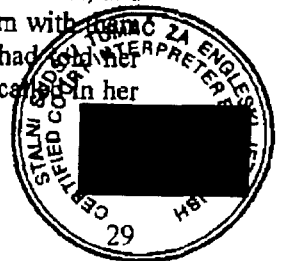


do all the work, i.e. "wash, cook and sexually please, so absolutely nothing changed". As regards the conduct of the accused during sexual intercourses, witness C. stated that the accused was the same as at Karaman's house. Having spent about 10 days in that apartment, the accused took witness C. to the apartment in Foča located in the "Lepa Brena" apartment block. During the time they spent in that apartment in Foča, the accused was absent 2-3 days, because, as he told the witness, he went to Igalo for rehabilitation, and he had been wounded at the time when the witness was held captive at Karaman's house. Documentary evidence (List of Soldiers Wounded in the Time Period between 6 April 1992 and 30 September 1993 and the Certificate No. 05-1/640 dated 29 September 1993) also shows that the accused was wounded in October 1992. Witness C. stayed in that apartment until early November, i.e. until 1 or 2 November, when the accused took her across the state border and to the Nikšić bus station, put her on the bus to Podgorica and in that way released her from captivity. The witness remembers that, at first, she could not believe she was actually free and that only the next day did she become partly aware of that, but she was still distrustful of people, because she recalls she had problems when contacting people from Merhamet and Red Cross in Podgorica and that people she contacted tried to convince her that they were not like the people who had held her and that she could trust them. Witness C. gave statements both to ICTY and to the Prosecutor's Office of BiH; the statement given before the ICTY on 11 and 12 October and 6 December 2003 corresponds to the said testimony before the Court. Also, in that statement, in regard to the detention and abuse at Karaman's house by the accused, she said: "He raped me every night. Sometimes he raped me vaginally, sometimes orally. I think he also raped me anally, but I am not sure now. Sometimes he would lie down and tell me what to do to take more active participation. He mostly raped me in the dark. He maybe raped me in the bathroom a couple of times, in the bath tub, and the light was on. I had to bathe him, a couple of times he raped me during the bathing". In regard to the raping of her sister, she is categorical in this statement: "That night, I remember that Stanković raped my sister in my presence. He did that on purpose". In her statement given before the ICTY, the witness stated the following about the later abuse following her taking from Karaman's house: "I also had to submit to his sexual demands as before. He continued raping me in the same way he raped me before, whenever he chose and against my will". These allegations are consistent with the statement No. KT-RZ-45/05 which witness C. gave to the Prosecutor's Office of BiH on 12 November 2005 and which she ended by saying: "Yes. I was Stanković's property". The Record of the statement by witness N. also indicates that Radovan Stanković treated witness C. "as his property". The fact that the accused Stanković claimed witness C. as his own and that she was subjected to physical labor was also confirmed by witness A. She said in her statement: "Then Stanković claimed C. as his own", and further "later, when he claimed C. as his own, she had to wash the things belonging to him", referring to the clothes and uniform belonging to the accused Stanković. Witness D. also confirmed that her sister – witness C. belonged to Radovan Stanković and that he raped her during the time spent in the Karaman's house, and that later, when she met Radovan Stanković in the street, he told her that her sister had been sent to Montenegro.

Count 4 (rape and abuse of underage detainee D.)

The Court established that Radovan Stanković committed the criminal offenses closely described under Count 4 of the Indictment, specifically that, in Karaman's house detention center, he took underage D. to a room upstairs and forcibly engaged in sexual intercourse

with her, and that, on a different occasion, he took her to the living room, where he had previously sent her sister C., and forcibly engaged in sexual intercourse with her in the presence of her sister, that he also forcibly engaged in sexual intercourse with her on several other occasions, and also beat her causing her visible injuries, all this was primarily established on the basis of the testimony of witness-injured party D. herself, who was examined before the Court in the course of the main hearing, but also on the basis of testimonies of other witnesses which support one another and are consistent. A closer account of witness D.'s statement detailing the circumstances surrounding the capture, detention at other centers and final taking to Karaman's house is given in relation to Section 1 of the Verdict. With regard to the criminal offenses of sexual and other forms of abuse she was subjected to following her taking to Karaman's house, witness D. categorically confirmed in her statement that she was raped by almost all soldiers who were there, some of whom she saw only once and whose names she does not know, and among the names of those she knows she mentioned Radovan Stanković and four other men. However, she was unable to state precisely how many times Radovan Stanković exactly raped her. In her statement given before the ICTY on 19 and 20 January 1996, witness D. also said that, during the time she spent in Karaman's house, she was raped by seven men, whose names she gives, including Radovan Stanković. In this testimony, witness-injured party D. stated: "During my detention at Partizan and later in Miljevina, I was raped vaginally, anally and orally. When I say I was raped orally, I mean that soldiers forced me to perform fellatio on them. When I say I was raped anally, I mean that soldiers forcibly inserted their penis into the anal opening". During her testimony before the Court, the witness recalls that the accused Stanković sometimes yelled at her, and that he would even hit somebody, and so he hit her too and caused her injuries. According to her, she also had a bump on her head and bruise on her eye and she remembers that this happened in the bathroom, when her head hit the wall, the tiles, which caused the bruise. However, she does not remember whether he also raped her then, but she knows that the reason for this was her refusing to do something he wanted her to do. Witness D.'s statement detailing her physical abuse she was subjected to by the accused in the bathroom is fully consistent with the statement by witness A., who also described in detail this bathroom incident, which is closely described under evaluation of evidence for Section 1 of the Verdict detailing the conduct of the accused and his treatment of the girls detained in Karaman's house. Thus, witness A. also confirmed that on that occasion witness-injured party D. suffered injuries caused by the accused, and she says: "He punched her so hard that she was all black and blue". As regards the rape of witness D. in the presence of her elder sister – witness C., witness D. stated that she remembered that Radovan Stanković had threatened her that he would "take both of them and rape them together", but she could not remember whether this actually had happened. However, the Court was able to determine beyond doubt that this incriminated action had taken place in the way as described under Count 4 of the Indictment. Namely, the elder sister – witness C. (whose statement has been presented in the previous Section) gave an extremely detailed and convincing account of the situation when her younger sister, at that time still underage, was raped in her presence exactly in the same manner as described in the Indictment, and of her feelings at that moment, saying that had she been able to, she would have "strangled, killed Stanković there on the spot". In addition to that, witness A. also said in her statement that she knew that witness D. had been raped in the presence of her sister – witness C., and so she stated that, at the time of this incident, she had not been in the same room with them – in the living room, but she was upstairs in the house, but that both sisters had cried about this later, and that they had both cried because of this. Witness A. also recalled in her



statement an occasion when the accused Stanković had sent witness D. and another girl upstairs, beaten them and then raped both of them.

As regards the sentencing part of the Verdict, the Court gave full credence to the said witnesses, also taking into consideration the fact that, regardless of the previously ordered protective measures, which enabled them to testify via video-link from a different room, all protected witnesses, except witnesses A. and H., agreed to come to the courtroom and give evidence directly before the trial panel and in the presence of the Defense Attorney for the accused. The discrepancies in the witnesses' statements obviously result from the circumstances under which those statements were taken or generally from the usual psychological factors common for the process of perception and recollection, and especially bearing in mind the character of the criminal offenses that the accused is charged with (forcible sexual intercourse – rape), and the fact that some of the protected witnesses were underage. Also important here is the fact that the criminal offense of rape did not occur as a single, solitary case, like the situations where one victim is raped once by a single perpetrator, on the contrary, this is the case of multiple rapes of girls detained at Karaman's house, who, as a rule, were raped by several persons (except witness C., who was raped by the accused Radovan Stanković only) and over quite a long period of time. Besides, before they were taken to the women detention center called Karaman's house, the girls had already been subjected to various physical and psychological torture, including multiple sexual abuse and rape, which for women – victims carries a specific significance and weight and causes a special kind of trauma, psychological pain and violates human dignity. Therefore it is completely normal and acceptable that due to physical and especially psychological situation they were in at the time of their taking and stay in Karaman's house, and also due to their being distressed and worried about their final destiny, they were focused on the things that happened to them personally and not those happening to other girls, which logically results in discrepancies in their statements about the details they personally saw at the critical period or those they indirectly testified about. That the proved allegations from the Indictment caused specific psychological states and traumas in the women, who at the critical period were young, and most of them even underage, was stated by witnesses themselves in their statements, and so witness A., in her statement No. KT-RZ-45/05 of 30 December 2005 given to the Prosecutor's Office of BiH, says that she herself cried the most, and so, for a while, she was even called "Suzana". The name contains the local word "suza" which translates into English as "tear", so "Suzana" could be figuratively interpreted as "the woman in tears" or "the one who cries". She says that she always found strength to comfort the other girls, because the other girls were young, so maybe they did not understand the situation they were in, so she gave them hope for life telling them that they would go to her brother's abroad. Witness C. also stated before the Court that her sister, for example, would often confine herself to a room, the one to which she was mostly taken, and would spend half a day or more there, and the girls generally lived in fear and were in an extremely difficult condition. Witness D. herself stated that she did not remember some things, not because of memory problems, but because those were things she wanted to forget and leave behind her. She also stated that, because of the abuse she had been through, she underwent a therapy with a psychologist, which lasted for approximately a year and a half. The traumas that the girls who were detained and abused in Karaman's house in the critical period suffered and the possible consequences resulting from those traumas, are also indicated in the Report on Neuro-psychiatric Evaluation of the Protected Witness N., Ref. number KT-RZ-45/05 of 26 June 2006 by Prof. Dr. Abdulah

Kučukalić. However, even in spite of the psychological state they were in at that time and the specific circumstances in the incriminated period, the witnesses managed to observe and memorize what the accused Radovan Stanković looked like at that time. Thus witnesses A., B., D., E., and K. in their testimonies before the Court and witness N. in her statement given to the Prosecutor's Office, which was read out at the main hearing, agreed that this was a person of medium height and average build, with dark hair and somewhat dark complexion. In addition to that, witness C. stated before the Court that she would be able to recognize him even nowadays, and witnesses E., I., J., K. and N. had known him from before – witnesses E., I., J. and K. had been his neighbors, and witness N. knew him because he had worked at the same company with her father.

In the process of evaluation of evidence, the Court also took into consideration the other evidence presented at the main hearing. However, the Court did not give special significance to that evidence and did not find it necessary to analyze it in detail because it did not have significant influence on the finally established state of the facts and inferences of the Court made on the basis of evidence evaluated herein.

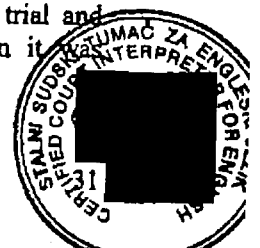
6. Application of Substantive Law

As regards the substantive law to be applied given the time of the perpetration of offense, the Court has accepted the legal qualification of the charges and sentenced the accused for the criminal offense of Crimes against Humanity, in violation of Article 172 paragraph 1 item c), e), f) and g) of the Criminal Code of Bosnia and Herzegovina.

Given the time of the perpetration of the offense and the substantive law in effect at that time, the Court finds relevant the principle of legality and the principle of time constraints regarding the applicability of the criminal code:

Article 3 of the CC of BiH stipulates the principle of legality according to which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law. Article 4 of the CC of BiH (Time Constraints Regarding Applicability) stipulates that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, and if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

The principle of legality is also stipulated in Article 7 (1) of the ECHR which supersedes all national legislation of BiH (Article 2.2 of the BiH Constitution). The said Article of the ECHR reads: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed". Thus, a heavier penalty than the one that was applicable at the time the criminal offense was committed is prohibited. Therefore, this provision bars the imposition of a heavier penalty without prescribing mandatory application of the law that is more lenient to the accused in comparison with the penalty applicable at the time of the perpetration of criminal offense. Article 7 (2) of the ECHR stipulates that: "This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it



committed, was criminal according to the general principles of law recognized by civilized nations”.

Article 15 (1) of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) stipulates: “No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed if, subsequent to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.”

Article 15 (2) of the ICCPR prescribes that “nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.

Finally, Article 4a) of the CC of BiH stipulates that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law, whereby provision of Article 7 (2) of the ECHR has actually been adopted enabling a significant departure from the principles of Article 4 of the CC of BiH, as well as a departure from the mandatory application of a more lenient law in proceedings conducted for acts which are criminal according to international law, which is exactly the case in the proceedings against the accused, because this is exactly an incrimination which includes a violation of international law. This is the position so far taken in the Court of BiH case law.

The State of Bosnia and Herzegovina, as a successor to the former Yugoslavia, ratified the ECHR and the ICCPR. Therefore, these treaties are binding on the State of Bosnia and Herzegovina and they must be applied by the authorities of BiH. Therefore, Article 4a) of the CC of BiH is only a domestic legal reminder, as it would not be necessary for the application of these treaties. For the same reason, all the courts in BiH are bound by the mentioned treaties and a provision like Article 4a) of the CC of BiH is not needed for its application.

Article 172 of the CC of BiH prescribes Crimes against Humanity like Article 5 of the ICTY Statute (Article 5 of the ICTY Statute defines Crimes against Humanity as specific individual acts “when committed in armed conflict, whether international or internal in character, and directed against any civilian population”). At the critical period, Crimes against Humanity were not explicitly prescribed by the criminal legislation in Bosnia and Herzegovina.

Customary status of punishability of Crimes against Humanity and individual responsibility for its commission in 1992 has been confirmed by the UN Secretary General¹, International Law Commission², as well as the jurisprudence of ICTY and the International Criminal

¹ Report of the UN Secretary General Pursuant to Paragraph 2 of the Security Council Resolution 808, 3 May 1993. Sections 34-35 and 47-48.

² International Law Commission, Commentary on the Draft Code of Crimes Against the Peace and Security of Mankind (1996), Article 18.

Tribunal for Rwanda (ICTR)³. These institutions found that the punishability of crimes against humanity represents an imperative standard of international law or *jus cogens*⁴, therefore, it appears to be beyond dispute that in 1992 Crimes against Humanity were part of International Customary Law. That conclusion was confirmed by the Study on Customary International Humanitarian Law⁵ of the International Committee of the Red Cross. According to that Study "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).

Article 4a) of the CPC of BiH mentions "general principles of international law". Article 7 (2) of the ECHR is about "general principles of law recognized by civilized nations" and Article 15 (2) of the ICCPR is about "general principles of law recognized by the community of nations". As neither the ECHR nor the ICCPR recognize a term identical to that one used by Article 4a) of the CPC of BiH, the used phrase is then a combination of the "principles of international law", as recognized by the UN General Assembly and the International Law Commission on the one hand, and the "general principles of the rights recognized by a community of nations, as recognized by the Statute of the International Court of Justice and Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR on the other hand.

Principles of international law as recognized by the General Assembly Resolution 95 (I) (1946) and the International Law Commission (1950) are related to the "Nuremberg Charter and Judgment of the Tribunal", and therefore to the crimes against humanity as well. Principle VI.c. of the "Principles of the International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal" adopted by the International Law Commission in 1950 and submitted to the General Assembly, sets out crimes against humanity as a crime punishable under international law. Principle I stipulates that: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II stipulates that: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law."

The case-law of the European Court of Human Rights stresses the application of the provision of Article 7 (2) in relation to the application of Article 7 (1) of the ECHR in several similar cases⁶ which discuss the existence and punishability of Crimes against Humanity as a criminal offense. What is more, in the case of *Kolk and Kislyiy versus Estonia*, the European Court "recalls that the interpretation and application of the national in

³ ICTY, Appeals Chamber, *Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Paragraph 141; ICTY, Trial Chamber *Tadic* Judgment of 7 May 1997, Paragraphs 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, Paragraph 563-577.

⁴ International Law Commission, *Commentary on Draft Articles on State Responsibility for Internationally Wrongful Acts* (2001), Article 26.

⁵ Jean-Marie Henchaerts and Louise Doswald-Beck: *Customary International Humanitarian Law*. ICRC, Cambridge University Press, 2005.

⁶ See e.g. ECtHR Judgment in the case of *Naletilić v Croatia*, 51891/99 and Judgment.



principle fall within the competence of national courts⁷ This is also applicable in cases when national law is related to the rules of general international law or international agreements.

Therefore, the criminal offense of Crimes against Humanity can, in any case, be classified under "general principles of international law" under Article 4a) of the CC of BiH. Thus, regardless of whether it is seen from the aspect of international customary law or the "principles of international law", it is beyond dispute that Crimes against Humanity represented a criminal offense in the critical period, i.e. that the principle of legality has been satisfied.

The fact that the criminal acts set forth in Article 172 of the CC of BiH can also be found in the law which was in effect at the critical time period – at the time of the perpetration of the offense, specifically under Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY, or, in other words, that the criminal acts were punishable under the criminal code then in effect, additionally supports the inference of the Court regarding the principle of legality. Finally, as regards Article 7 (1) of the ECHR, the Court notes that the application of Article 4a) is further justified by the fact that the imposed punishment is definitely more lenient than the death penalty applicable at the time of the perpetration of the offense, which satisfies the principle of time constraints regarding applicability, or, in other words, the application of a "law more lenient to the perpetrator".

Conclusion

The accused committed the said criminal offense with direct intent, because the evidence presented in the course of the proceedings shows that, at the moment of the perpetration of the criminal offense, the accused knew that, by his acts, he was violating the rules of international law and it is obvious that, by his acts, he wanted to cause prohibited consequence. Therefore, notwithstanding the fact that the accused has committed several different offenses (enslavement, imprisonment, torture and rape), as well as several identical acts (enslavement, imprisonment, torture and rape of several persons), the Court finds that in this particular case this represents only one criminal offense, Crimes against Humanity under Article 172 paragraph 1 item c), e), f) and g), because this is a single criminal offense regardless of the number of committed acts, or, in other words, in this particular case, different criminal acts that have been committed (enslavement, torture, imprisonment/deprivation of liberty, rape/sexual abuse) contain elements of criminal acts under Article 172 paragraph 1 item c), e), f) and g).

Bearing in mind the established state of the facts and the resulting consequence, as well as the causal connection between those two, the Court has found the accused guilty of the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item c), e), f) and g) of the Criminal Code of Bosnia and Herzegovina, and sentenced him to 16 /sixteen/ years of imprisonment, finding that this criminal sanction was proportionate to the gravity of the offense and the involvement and the role of the accused, and also that it will serve the purpose of sanctioning set forth in provisions of Article 39 of the CC of BiH.

⁷ See *Papon versus France* No. 54210/00, ECtHR 2001-XII and *Touvier versus France*, No. 29420/95, Commission decision of 13 January 1997.

In meting out the punishment, the Court accepted as extenuating circumstances the fact that the accused is a family man with three underage children, while the Court identified as aggravating circumstances the number of captured women who, at the critical time, were subjected to sexual torture and other forms of abuse, some of them were underage, aged between 12 and 16, as well as the inappropriate conduct of the accused before the Court, which is why he had to be removed from the courtroom twice, plus the constant insults directed against the Court of BiH and the judges of this Court, both national and international, and insults against the representatives of other institutions of BiH judiciary – Prosecutor's Office of BiH, Detention Unit and, finally, his very Defense Attorneys.

Pursuant to Article 56 of the CC of BiH, the time the accused spent in pre-trial custody from 9 July 2002 onwards shall be calculated towards the sentence of imprisonment, while, pursuant to Article 188 paragraph 4 of the CPC of BiH, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings, because he is currently in pre-trial custody and, at the same time, he is unemployed, and thus the Court finds that he does not have the financial means to pay those costs.

Ruling on the injured parties' claims under property law, pursuant to Article 198 paragraph 2 of the Criminal Procedure Code of Bosnia and Herzegovina, the Court referred the injured parties: A., B., C., D., E., G., H., I., J., K. and N. to civil action since the establishment of facts about the amount of the property claim would take a long time, which would then prolong these proceedings and for that reason the Court referred the persons mentioned above to civil action.

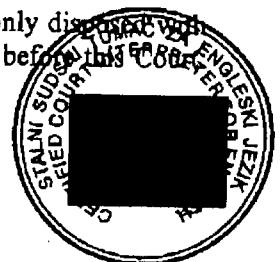
II

At the main hearing held on 27 October 2006, the Prosecutor abandoned prosecution of the accused under Count 5 of the Indictment. Given such state of facts, and pursuant to Article 283 c) of the CPC of BiH, the Court had to dismiss charges against Radovan Stanković under that Count of the Indictment, mentioned in the dismissing section of the Verdict, related to the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item g) of the CC of BiH.

III

Count 6 of the Indictment alleges that the accused has committed a criminal offense of rape against the person under pseudonym G., i.e. that Radovan Stanković took her out of the Foča hospital, where she was admitted as a patient, and took her to an apartment, where he forcibly engaged in sexual intercourse with her and then took her back to the hospital. The Court has heard the witness – injured party, who is allegedly a victim of this offense. Since, based on witness G's testimony, given its incompleteness and imprecision, and having no other available evidence, the Court was unable to determine in a reliable way and beyond reasonable doubt that the accused did commit the said crimes, pursuant to Article 284 (c) of the CPC of BiH, the Court acquitted the accused of this Count of the Indictment.

In other words, in reference to this Count of the Indictment, the Court only disposed with the testimony of the above-mentioned witness G. given at the main trial before this Court.



The Court carried out a comprehensive and detailed analysis of this witness' testimony, based on which it could not reliably establish that the accused committed the criminal offense in the manner described in this Count of the Indictment. To wit, the testimony of this witness is unreliable, partially also confusing, in particular when it concerns the identification of the accused, which is completely imprecise. The Court did not dispose with other evidence, either of the subjective or the objective nature, which could be correlated to the testimony of witness G. and which would directly or indirectly incriminate the accused. No witness who would in any way confirm the testimony of this witness was proposed, nor had witness G. been interviewed in reference to these circumstances previously, therefore, as stated already, the Court acquitted the accused of this charge due to the unreliability of the evidence.

Pursuant to Article 189 paragraph 1 of the CPC of BiH, costs of the criminal proceedings related to the dismissing and the acquitting part of the Verdict shall be paid from the budget.

RECORD-TAKER
Elvira Begović
[signature affixed]

PRESIDING JUDGE
Davorin Jukić
[signature affixed]
[seal of Court of BiH affixed]

LEGAL REMEDY: This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 /fifteen/ days of the receipt of a written copy.

We hereby confirm that this document is a true translation of the original written in Bosnian/Croatian/Serbian.

Sarajevo, 5 January 2007

██████████
*Certified Court Interpreter
for English Language*

██████████
*Certified Court Interpreter
for English Language*

