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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 15 March 2005

SUMMARY OF THE JUDGEMENT FOR ENVER HADŽIHASANOVIĆ AND AMIR KUBURA

Please find below the summary of the judgement today read out by Judge Antonetti:

Trial Chamber II, section B, is sitting today to render its Judgment in the case of *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*.

During today's hearing, the Trial Chamber, through me, will give a summary of its observations and findings. The authoritative version of the Trial Chamber's findings may be found only in the written Judgment, copies of which will be made available to the parties and the public tomorrow, thus allowing time for the document to be correctly registered, copied, and bound.

The Trial Chamber will present the procedural background (I), and then deal with the crimes alleged against the Accused Enver Hadžihasanović and Amir Kubura in the Indictment (II). After a summary of the Accused's background (III), the Chamber will recall the principles governing command responsibility (IV). The Chamber will then examine the issue of Amir Kubura's *de jure* command (V). Finally, before reviewing each of the counts (VIII), the Chamber will summarize the analysis given in its Judgment on the Mujahedin, their role in the crimes alleged against the Accused, and the relationship they had with the Army of the Republic of Bosnia and Herzegovina (ABiH) (VI). Finally, the Chamber will read its disposition. (VIII)

I. Procedural Background

The trial of the Accused Enver Hadžihasanović and Amir Kubura commenced on 2 December 2003 and closed on 15 July 2005. During the trial, the Trial Chamber heard 172 witnesses and admitted 33 written witness statements under Rule 92 *bis* of the Rules of Procedure and Evidence, as well as 3 stipulations. In all, 2949 exhibits were tendered into evidence at trial.

II. Crimes Alleged in the Indictment

According to the Prosecution, in 1993 and until 18 March 1994, the Army of Bosnia and Herzegovina ("ABiH") participated in an armed conflict with the Croatian Defence Council ("HVO") in central Bosnia, namely in the municipalities of Travnik, Zenica, Bugojno, Kakanj and Vareš. The Prosecution alleges that units subordinated to the 3rd Corps, including the 7th Brigade under the command of the Accused Kubura, attacked towns and villages mainly inhabited by Bosnian Croats. As a result of the attacks, predominately Bosnian Croat but also Bosnian Serb civilians were subjected to wilful killings and serious injury.

The Prosecution further alleges that Bosnian Croats and Serbs were unlawfully imprisoned and otherwise detained in facilities controlled by units subordinated to the Accused. While imprisoned, Bosnian Croats and Serbs were allegedly subjected to physical and psychological abuse. Prison conditions were allegedly overcrowded and unsanitary, and detainees lacked medical care and were inhumanely deprived of food, water and clothing.

Furthermore, the Prosecution alleges that units subordinated to the Accused plundered and destroyed Bosnian Croat and Bosnian Serb property with no military justification. In addition, Croat buildings, sites and institutions dedicated to religion were allegedly destroyed or otherwise damaged or violated.

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The Prosecution alleges that the Accused knew or had reason to know that their subordinate(s) were about to commit such acts or had done so, and that they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

By those omissions, the Accused are alleged to be criminally responsible for: murder and cruel treatment, violations of the laws or customs of war punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions; wanton destruction of cities, towns or villages, not justified by military necessity, a violation of the laws or customs of war punishable under Articles 3(b) and 7(3) of the Statute of the Tribunal; plunder of public or private property, a violation of the laws or customs of war punishable under Articles 3(e) and 7(3) of the Statute of the Tribunal; and destruction of or wilful damage to institutions dedicated to religion, a violation of the laws or customs of war punishable under Articles 3(d) and 7(3) of the Statute of the Tribunal.

III. The Accused

1. Enver Hadžihasanović

In early April 1992, after leaving the JNA, the Accused Hadžihasanović joined the Territorial Defence ("TO") of the Republic of Bosnia and Herzegovina. On 1 September 1992, Sefer Halilović, Chief of the ABiH Supreme Command Staff, appointed Enver Hadžihasanović Chief of Staff of the ABiH 1st Corps. As part of his mission to consolidate and organize, from Zenica, units from Central Bosnia, Sefer Halilović appointed Hadžihasanović commander of the 3rd Corps around mid-November 1992. The Accused Hadžihasanović held that position until 1 November 1993, when he was promoted to Chief and Deputy Commander of the ABiH Supreme Command Staff by the President of the Republic of Bosnia and Herzegovina, Alija Izetbegović.

2. Amir Kubura

In 1992, the Accused Kubura joined the ABiH after leaving the JNA. On 11 December 1992, he was posted as Assistant Chief of Staff for Operations and Instruction Matters of the ABiH 3rd Corps 7th Muslim Mountain Brigade (7th Brigade"). On 12 March 1993, Sefer Halilović appointed him Chief of Staff and Deputy Commander of the 7th Brigade. On 6 August 1993, Rasim Delić, Commander of the ABiH Supreme Command Staff appointed Kubura commander of the 7th Brigade. He held that position until 16 March 1994, when he was made Commander of the ABiH 1st Corps 1st Muslim Mountain Brigade.

IV. Command Responsibility

The Chamber recalls the importance accorded by international humanitarian to the role of a superior during armed conflicts. For the proper application of the Geneva Conventions that role is recognized as being determinant. Given their authority, superiors are qualified to exercise control over the troops they command and the weapons they use. Nevertheless, criminal command responsibility under Article 7 (3) of the Statute of the Tribunal is not unlimited. A superior may be held criminally responsible only when three conditions are met. Firstly, he must exercise effective control over the alleged perpetrators of the illegal acts at the time they were committed. Secondly, a superior must have known or had reason to know that his subordinates were about to commit such acts or had done so. Thirdly, the superior must have failed to take necessary and reasonable measures to prevent or punish the crimes. Furthermore, the Chamber recalls that a superior incurs command responsibility on the basis of his material capacity to prevent or punish the illegal acts, and not on the sole basis of his official position as a superior.

V. The Command of Amir Kubura

The Trial Chamber notes that on 12 March 1993, the Accused Kubura was appointed Chief of Staff and Deputy Commander of the 7th Brigade while Asim Koričić was appointed commander of the 7th Brigade. On 6 August 1993, Amir Kubura succeeded Asim Koričić as the official commander of the 7th Brigade. The Judges have examined the question as to whether the Accused Kubura acted as commander of the 7th Brigade prior to his official appointment to that post on 6 August 1993.

The evidence shows that Asim Koričić, appointed official commander of the 7th Brigade on 12 March 1993, left Bosnia and Herzegovina around 12 April 1993 and no longer held his position after that date. On the basis mainly of a review of the orders given in the absence of Asim Koričić, the Trial Chamber finds that the Accused Kubura was the *de facto* commander of the 7th Brigade as from 12 April 1993 at the latest. He commanded all units of the 7th Brigade, including the security organ and the military police of the Brigade.

VI. The Mujahedin

Several cases before this Tribunal occurred in the context of the armed conflict between the ABiH and the HVO in central Bosnia in 1992 and 1993. However, this case is the first to deal with the question of the presence of foreign Muslim or Mujahedin combatants in central Bosnia in 1992 and 1993, and of their subordination to the ABiH, specifically to the 3rd Corps and the 7th Brigade.

The evidence shows that foreign Mujahedin arrived in central Bosnia in the second half of 1992 with the aim of helping their “Muslim brothers” against the Serbian aggressors. Mostly they came from North Africa, the Near East and the Middle East. The foreign Mujahedin differed considerably from the local population, not only because of their physical appearance and the language they spoke, but also because of their fighting methods. Initially, the foreign Mujahedin gave food and other basic necessities to the local Muslim population. Once hostilities broke out between the ABiH and the HVO, they also participated in battles against the HVO alongside ABiH units.

Lacking basic necessities, most of the Muslim people were grateful for the assistance given to them by the foreign Mujahedin. The foreign Mujahedin actively recruited young local men, offering them military training, uniforms, and weapons. As a result, local people joined the foreign Mujahedin and in the process became local Mujahedin. They imitated the foreigners in both the way they dressed and behaved, to such an extent that it was sometimes difficult to distinguish between the two groups. For **that** reason, in the Judgement, the Trial Chamber shall use the term “Mujahedin” to designate foreigners from Arab countries, but also local Muslims who joined the Mujahedin units.

The first Mujahedin training camp was located in Poljanice next to the village of Mehurići, in the Bila valley, in Travnik municipality. The Mujahedin group established there included Mujahedin from Arab countries as well as locals. Amongst the local Bosnians were former members of the Muslim Forces of Travnik and soldiers who were *de jure* members of 3rd Corps units, namely of the 7th and 306th Brigades.

The Mujahedin from Poljanice camp were also established in the towns of Zenica and Travnik and, from the second half of 1993 onwards, in the village of Orašac, also located in the Bila valley.

The Trial Chamber has considered whether that group of Mujahedin was subordinated to the Accused. To that effect, the Trial Chamber made a distinction between two time periods: the period preceding the establishment of an independent Mujahedin detachment, the so-called “El Mujahed”, on 13 August 1993; and the period following the establishment of the El Mujahed.

During the months preceding the establishment of the El Mujahed detachment, the Trial Chamber finds that the foreign Mujahedin established at Poljanice camp were not officially part of the 3rd Corps or the 7th Brigade of the ABiH. Accordingly, the Prosecution failed to prove beyond reasonable doubt that the foreign Mujahedin officially joined the ABiH and that they were *de jure* subordinated to the Accused Enver Hadžihasanović and Amir Kubura.

However, as regards the “local” Mujahedin, the Chamber finds that some of them belonged *de jure* to units of the 3rd Corps. The same goes for members of the 7th and 306th Brigade, such as Ramo Durmiš, who left their own units to join the Mujahedin at Poljanice camp.

The Chamber has examined the *de facto* relationship between the Mujahedin and the 3rd Corps in a portion of the Judgement that includes some one hundred pages. In this summary, the Chamber will limit itself to the essential points of the analysis:

The Chamber points out that there are significant indicia of a subordinate relationship between the Mujahedin and the Accused prior to 13 August 1993. Testimony heard by the Trial Chamber and, in the main, documents tendered into evidence demonstrate that the ABiH maintained a close relationship with the foreign Mujahedin as soon as these arrived in central Bosnia in 1992. Joint combat operations are one illustration of that. In Karaula and Visoko in 1992, at Mount Zmajevac around mid-April 1993 and in the Bila valley in June 1993, the Mujahedin fought alongside ABiH units against Bosnian Serb and Bosnian Croat forces.

However, the Trial Chamber could not establish that the Accused Hadžihasanović or the Accused Kubura gave any orders to the Mujahedin and that those orders were implemented. Moreover, in the 3000 or so documents the Trial Chamber has analyzed, there is no combat report from the Mujahedin to the Accused, nor any other document which indicates that the Mujahedin were answerable to the Accused. However, in their combat reports, the commanders of the 3rd Corps units often complained of the undisciplined behaviour of the Mujahedin during joint combat operations. The Trial Chamber also notes that prior to 13 August 1993, the 3rd Corps war diaries hardly mention the Mujahedin.

Regarding specifically the relationship between the Mujahedin and the 3rd Corps brigades, the evidence does not confirm that there was a close relationship between the Mujahedin and the 306th Brigade. Moreover, a close analysis of the possible links between the Mujahedin and the 7th Brigade fails to establish beyond reasonable doubt that the Mujahedin were under the effective control of the 7th Brigade command.

For those reasons in particular, the Trial Chamber is unable to conclude beyond reasonable doubt that the Accused exercised effective control over the Mujahedin prior to the establishment of the El Mujahed detachment on 13 August 1993.

There is no denying that the Mujahedin always held a special status compared to other 3rd Corps units, even after the El Mujahed detachment was established. Nevertheless, as the Trial Chamber explained in its Judgement, the fact remains that the Accused Hadžihasanović exercised effective control over that detachment.

VII. Findings on the crimes alleged and the individual criminal responsibility of the Accused

A. Count 1: Murder

1. Dusina - Count 1: Murder (the Accused Hadžihasanović)

(The murder of Zvonko Rajić)

As a result of the armed conflict between the HVO and ABiH in early 1993 in Central Bosnia, in the morning of 26 January 1993 the 2nd Battalion and the 7th Brigade were engaged in combat in Dusina, in the Lašva Valley. At 05:00 or 06:00 hours, the 7th Brigade took the village of Dusina and took Croatian civilians and several HVO members prisoners.

However, in the hamlet of Brdo, near Dusina, a group of HVO soldiers under the command of Zvonko Rajić continued to resist the attack of the 7th Brigade. To force them to surrender, the 7th Brigade soldiers threatened to execute the civilians they had already captured. As a result of the threats, Zvonko Rajić's unit surrendered. According to the case file, Zvonko Rajić tried to escape, prompting the 7th Brigade members to open fire. One 7th Brigade soldier drew his automatic pistol and, in cold blood, fired several shots into Zvonko Rajić, who was already wounded and begging for mercy.

(The murder of Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš and Vojislav Stanišić)

At that same time, the 7th Brigade was holding some 45 prisoners in a house in Dusina. A witness recounted how Vehid Subotić, a 7th Brigade member, had ordered the execution of 6 prisoners. On that day in Dusina, 5 captured HVO members and a Serbian civilian were executed machine-gun fire.

The Chamber therefore finds that Zvonko Rajić, 5 other HVO members, and a Serbian civilian, none of whom were taking active part in the hostilities, were executed in Dusina on 26 January 1993 by members of the 7th Brigade. (Zvonko Rajić, Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš and Vojislav Stanišić)

With regard to the individual responsibility of the Accused Hadžihasanović for that crime, the Chamber considers that he was informed of allegations of a massacre on 26 January 1993. The Chamber finds, in light of evidence in the case file, that the duty judge of the Zenica District Military Court was seized of the matter by the 3rd Corps and, pursuant to Article 41 of the Military Security Service Guidelines of the armed forces of the Republic of Bosnia and Herzegovina and pursuant to Article 156 of the Code of Penal Procedure in force at the time, the judge initiated an investigation. Consequently, the Accused Hadžihasanović, having referred the case to the competent judicial authorities, cannot be held criminally responsible for failing to take the necessary measures to punish the crimes committed in Dusina on 26 January 1993.

2. Miletići (Count 1: Murder)
(The murder of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović)

On 24 April 1993, an Arab Mujahedin was wounded near Miletići - a small village in the Bila Valley in the Travnik municipality. As a result, a dozen foreign Mujahedin and 20 to 30 local Mujahedin attacked Miletići. Having been warned of the arrival of the Mujahedin by their Muslim neighbours, the Croatian villagers, fearing for their lives, took refuge in the house of Stipo Pavlović. When the Mujahedin tried to force open the door of the house, Stipo Pavlović killed one of them. The Mujahedins responded by throwing a grenade into the house, which killed Stipo Pavlović. The Mujahedin captured all the Croatian villagers and three Muslims from Miletići, and took them to the camp in Poljanice. However, four Croatian civilians of military age (Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović) were forced to remain in the village. They were seen on their knees with their hands tied behind their backs.

Following negotiations between the commander of the 1st Battalion of the 306th Brigade stationed in Mehurići and the Mujahedin, the prisoners were released in the evening.

The next day, on 25 April 1993, the bodies of 4 Croatian men were found mutilated and covered in blood. Their hands were still tied behind their backs. The 4 men had their throats slit open and their blood had been collected in a pan.

Considering how the events unfolded, the Chamber is satisfied that the four Croatian men were killed by the foreign and local Mujahedins from the camp in Poljanice. The Chamber has seen no evidence indicating that members of the 306th or 7th Brigades took part in the crime. Since the Mujahedin based in the camp in Poljanice were not under the effective control of the Accused Hadžihasanović and Kubura in April 1993, the Accused cannot be held criminally responsible for the murder of the 4 Croatian men in Miletići.

3. Maline (Count 1: Murder)
(The murder of 24 Croats)

On 8 June 1993, the village of Maline in the Bila Valley was attacked by forces of the 1st Battalion of the 306th Brigade. After the village was taken, the captured Croatian civilians and HVO soldiers were rounded up in the village centre.

At around 10:00 hours, a military police unit of the 306th Brigade arrived in Maline. According to the Defence, these policemen were to evacuate and protect the civilians in the villages taken by the ABiH. The wounded were left on-site and around 200 people, including civilians and HVO soldiers, were taken by the police officers towards Mehurići. The commander of the 306th Brigade authorised the wounded be put onto a truck and transported to Mehurići. Suddenly, a number of Mujahedin stormed the village of Maline. Even though the commander of the 306th Brigade forbade them to approach, the Mujahedin commandeered the truck and left with 8 of the wounded, making signs that they would cut their throats.

The 200 villagers who were being escorted to Mehurići by the 306th Brigade military police were intercepted by masked and armed foreign and local Mujahedin at the Mujahedin

camp in Poljanice. The Mujahedin took 20 military-aged Croats and a young woman wearing a Red-Cross armband. The prisoners were taken to Bikoći, between Maline and Mehurići.

According to witnesses, the wounded in the truck abducted by the Mujahedin were taken towards Bikoći. Not far from there, they were forced to leave the truck and continue on foot. They were joined by the column of 20 men and the young woman. Escorted by around 10 foreign and local Mujahedin, they all moved ahead, their heads bowed. Suddenly, one of the prisoners had an epileptic fit and started shouting. At that point in time, the Mujahedin opened fire on the prisoners, first with machine-guns and then with single shots. One witness who escaped the massacre stated that he hid under the body of a killed prisoner to avoid being shot. He testified that he saw the Mujahedin finish off the Croats with single bullets to their heads.

The Trial Chamber finds that on 8 June 1993, 23 Croatian men and one young woman were executed in Bikoći while they were being held prisoner. The Trial Chamber finds that the perpetrators of the massacre were foreign and local Mujahedin based in Poljanice camp who, on 8 June 1993, were not under the effective control of the 3rd Corps and the 7th Brigade. Furthermore, the Chamber is not satisfied that members of the 306th and 7th Brigades participated in the massacre. Accordingly, the Trial Chamber finds that the Accused cannot be held criminally responsible for the murders committed in Maline.

B. Counts 3 and 4: Murder and Cruel Treatment (crimes linked to detention)

1. Zenica Music School: (Crimes committed at the Zenica Music School)

The evidence presented before the Trial Chamber shows that Bosnian Croat and Bosnian Serb civilian men and HVO members were detained in the Music School by members of the 7th Brigade on three separate occasions: first, at the end of January 1993 after fighting in Dusina; second, in the latter half of April 1993 after fighting in the region of Zenica, Vitez and Busovača; and third, in June 1993 after hostilities in Kakanj broke out.

The Chamber finds that from 26 January 1993 to 20 August 1993 and on 20 September 1993 the prisoners in the Music School, who were taking no active part in the hostilities, were victims of cruel treatment and physical and psychological abuse, and from April to June 1993 they were victims of conditions of detention inflicted on them by the members of the 7th Brigade. The Chamber notes that during that period more than one hundred detainees were imprisoned at the Music School. The Chamber heard some 10 detainees describe the violence they were subjected to. In its Judgement the Chamber describes in detail the cruelties the victims suffered, however, given the time constraints, it shall limit itself today to the testimony of one witness. That witness told how during the night, detainees were taken out one by one from their cells upstairs at the Music School and that, with the lights out, they had to go through a line of soldiers who beat them with wooden shovel handles. The same witness stated that one day a military policeman ordered a father to beat his mentally handicapped son. When the father refused to do so, another detainee was forced to carry out the order. He said that on another occasion his arms were broken as he had to protect his head from the blows. This witness described how the detainees did not get enough food which consisted mainly of mouldy bread. Only three or four wooden planks were provided for their accommodation. Other witnesses also stated that they lacked adequate sanitary facilities and medical care.

The Chamber finds beyond all reasonable doubt that as of 8 May 1993 the Accused Hadžihasanović had at his disposal alarming information that his subordinates carried out physical and psychological violence against the detainees at the Zenica Music School, violence which constitutes cruel treatment. On the other hand, the Chamber finds that the Accused Hadžihasanović did not know of the poor living conditions at the Music School. It was established that the Accused Hadžihasanović failed in his duty as a superior to take the necessary and reasonable measures called for in this case to prevent and punish these crimes. The Accused Hadžihasanović did not make sufficient efforts to open an appropriate investigation into the allegations of cruel treatment which would have helped him identify those responsible for the cruel treatment. Moreover, he failed to carry out his duty and take all necessary measures to put an end to the cruel treatment his subordinates inflicted on the detainees. He also failed to carry out his duty to punish those soldiers who, had he opened an investigation, would have been identified as those responsible for the cruel treatment and to

take measures to have them punished. Finally, by failing to punish the perpetrators of the committed crimes, the Accused Hadžihasanović failed to discharge his duty and prevent the further commission, in the Music School, of the crime of cruel treatment of prisoners detained in the Music School.

However, the Chamber finds that the Prosecution failed to prove beyond reasonable doubt that the Accused Amir Kubura knew of the crimes committed by his subordinates at the Zenica Music School given that he was in no way informed of what had happened there.

2. Former JNA barracks in Travnik

According to evidence in the case, the Chamber finds that from May to October 1993 Bosnian Croat and Bosnian Serb civilians as well as HVO members were detained in the cellar of the former JNA barracks in Travnik.

The Chamber finds that it was established beyond reasonable doubt that during that period prisoners who were taking no active part in the hostilities were victims of cruel treatment inflicted on them by members of the 17th Brigade military police. Witness statements show that the guards in the Barracks beat, repeatedly and for several hours, the detainees by hitting them with different objects and kicking them. For example, a witness stated that on the first night of his detention he was beaten with such violence by three or four soldiers that he lost consciousness. The next 50 days he went through the same ordeal and he is even today suffering from the consequences of the cruel treatment he was exposed to during his detention in the Barracks. Another witness stated that from his cell he could hear the cries and moans of the other detainees as well as the kicking of the guards. The Chamber finds that the acts perpetrated against the detainees in the former JNA barracks are constitutive of cruel treatment.

However, based on assessment of the evidence in the case, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that the Accused Enver Hadžihasanović knew of the cruel treatment committed by his subordinates in the former JNA barracks in Travnik, given that he was not informed of the said facts.

3. The Mehurići Elementary School and the Mehurići Blacksmith Shop:

The Chamber finds that on two occasions around 250 Bosnian Croat civilians and 20 to 30 HVO soldiers were detained by the 306th Brigade in the Mehurići Elementary School and the Mehurići Blacksmith Shop: on 6 June 1993 after the sporadic fighting in Velika Bukovica and Ričice, and on 8 June 1993 after another outbreak of hostilities between the HVO and ABiH in Maline. The Mehurići Elementary School was guarded and managed by the 1st Battalion of the 306th Brigade.

The Prosecution failed to prove beyond reasonable doubt that the Croatian civilians locked up in the Mehurići Elementary School were victims of grave physical abuse and conditions of detention constituting cruel treatment. However, the detainees locked up in the Mehurići Blacksmith Shop, mainly HVO members, were beaten by members of the 1st Battalion of the 306th Brigade. With regard to the conditions of detention, a witness stated that he shared a cell with 10 to 15 other prisoners. They were crammed in such a small space, two by three metres, that it was impossible for them to sleep. The only source of light in the cell was obstructed in such a way that the prisoners were left in the dark. During the first days of their imprisonment in the Blacksmith Shop, practically no water or food was distributed. After that, the detainees in the Blacksmith Shop received, from time to time, a can of food and some bread to share among themselves. These conditions of detention lasted for around a month. It has been demonstrated that such deprivation was the result of a deliberate decision and not a necessity. The Chamber has no doubt that the treatment of the Blacksmith Shop prisoners, who were taking no active part in the hostilities, constitutes cruel treatment.

Nevertheless, the Chamber finds that it has not been established beyond reasonable doubt that the Accused Hadžihasanović knew of the cruel treatment committed by his subordinates in the Mehurići Blacksmith Shop, given that he was not informed of the facts.

4. Motel Sretno

The Chamber finds that on 18 May 1993, immediately after the signing of a cease-fire agreement between the HVO and the ABiH, new hostilities between the two armed forces broke out in Kakanj. After the HVO ambushed and captured several military police of the 7th Brigade, 16 Bosnian Croat and Bosnian Serb civilians and HVO members were arrested by members of the 7th Brigade military police and local soldiers of the 3rd Battalion of the 7th Brigade. The 16 Croats and Serbs were detained in Motel Sretno which housed the 3rd Battalion of the 7th Brigade.

The Chamber finds beyond reasonable doubt that the 16 persons taken to Motel Sretno on 18 May 1993, who were taking no active part in the hostilities, were beaten several times until the next morning, 19 May 1993, when they were set free. In the first phase of the interrogation, they were kicked with boots and beaten with rifle butts and fists. In the second phase, the detainees were forced to hit each other. In the third phase, they were forced to go through a row of soldiers who beat them with rifle butts. A witness told how he did not get up and how he lost consciousness after being beaten a dozen times by a truncheon on the head. In the fourth and last phase, the detainees were made to place their heads between the bars of their cells and were then beaten by pieces of wood. Evidence has indicated that after such brutalities some of the victims suffered several broken ribs, dislocated kidneys, and damaged spinal columns. The Chamber finds that soldiers of the 3rd Battalion of the 7th Brigade were among the perpetrators of that cruel treatment.

It has been proven beyond reasonable doubt that between 18 and 21 June 1993 a Bosnian Serb also suffered serious physical abuse but it has not been established that it was carried out by the members of the 3rd Battalion of the 7th Brigade.

The Chamber finds that the Accused Hadžihasanović knew of the cruel treatment committed on 18 and 19 May 1993 by his subordinates in Motel Sretno. However, the Chamber finds that the Prosecution failed to meet its burden to prove that the Accused Hadžihasanović failed to act on crimes at Motel Sretno and, consequently, failed to prove that the Accused Hadžihasanović failed to take measures. The Prosecution failed to submit sufficiently probative evidence to show that the Accused Hadžihasanović failed to impose punitive measures after the crimes committed in Motel Sretno.

With regard to the Accused Kubura, the Chamber is not satisfied beyond reasonable doubt that he knew of the crimes committed by his subordinates in Motel Sretno, given that he was not informed of the said facts.

5. Detention facilities at Bugojno

In July 1993 hostilities broke out between the HVO and ABiH in Bugojno. On 24 July 1993 about 100 HVO soldiers and 150 civilians were captured by soldiers of the 307th Brigade in Bugojno. Most of them were transferred to the various detention facilities identified in the Indictment, *i.e.* the *Slavonija* Furniture Salon, the Bugojno Convent Building, the *Gimnazija* School Building, the *Vojin Paleksić* Elementary School Building, the FC *Iskra* Stadium and the BH *Banka* Building. The Trial Chamber notes that minors and families were among the civilian prisoners.

The Trial Chamber considers that with the exception of the BH *Banka* detention facility, it has been established beyond reasonable doubt that the detainees imprisoned in each of these facilities, who had not participated directly in the hostilities, were subjected to cruel treatment. The evidence presented has made it possible to establish that the detention conditions were insufficient and inadequate. Depending on the detention facility, the food was insufficient, at times even nonexistent, and inadequate; access to proper sanitary facilities was limited without good reason or nonexistent; accommodation conditions were poor or nonexistent; detention facilities lacked light or were too small in relation to the number of detainees. Furthermore, evidence has shown that the prisoners were subjected to repeated physical violence during their detention. In late July or early August 1993, several detainees, including Mario Zrno, a prisoner of war, were taken outside the Bugojno Convent and subjected to severe beatings. Mario Zrno did not survive. On the night of 5 August 1993, five or six prisoners, including Mladen Havranek, a prisoner of war, were severely beaten on the upper floor of the *Slavonija* Furniture Salon. Several witnesses stated that from the cell in the basement they heard Mladen Havranek screaming and begging for the beatings to cease. After repeated beatings, Mladen Havranek was unable to walk and was dragged down the stairs to

the cell in the basement. Malden Havranek died as a result of his injuries that same night. The Trial Chamber finds that the killings of Mario Zrno and Mladen Havranek have been established beyond reasonable doubt.

The Trial Chamber concludes that it has been established that the cruel treatment to which the detainees in the above-mentioned detention facilities were subjected was inflicted by members of the 307th Brigade. It considers, however, that it has not been established that the men who beat the detainees taken outside of the Bugojno Convent and who murdered Mario Zrno were members of the 307th Brigade, and that the 307th Brigade guards who were present at the crime scene could have prevented these crimes.

The Defence for the Accused Hadžihasanović alleges that the interference of the Bugojno War Presidency in the running of the detention centres in Bugojno had the effect of altering the command exercised by the Accused Enver Hadžihasanović over OG *Zapad* and the 307th Brigade. The Trial Chamber notes that the 3rd Corps was in fact the authority having the power to detain, keep in detention, and transfer persons who were held in the detention centres set up in Bugojno. Although there was some coordination between the civilian and military authorities in order to regulate certain aspects of the operation of these detention centres, the Trial Chamber is of the opinion that responsibility for the prisoners lay entirely with the 3rd Corps.

The evidence presented has made it possible to establish beyond reasonable doubt that, as of 18 August 1993, the Accused Hadžihasanović had knowledge of a report denouncing the cruel treatment of five or six prisoners of war and the murder of one of them, Mladen Havranek, in the Slavonija Furniture Salon. The information available to him at the time, however, could not lead the Accused Hadžihasanović to conclude that other crimes of mistreatment had been committed by his subordinates before 18 August 1993, or that detention conditions were unsatisfactory.

The Trial Chamber considers that it has been established that, in spite of his knowledge of the cruel treatment of six prisoners of war in the Slavonija Furniture Salon and of the murder of one of them, the Accused Hadžihasanović applied no more than disciplinary measures to punish the perpetrators of these crimes. In failing to take the necessary measures in this instance, the Trial Chamber believes that the Accused Hadžihasanović failed to intervene in order to prevent any mistreatment from occurring after 18 August 1993 in the *Slavonija* Furniture Salon, the *Vojin Paleksić* Elementary School, the *Gimnazija* School Building and the FC *Iskra* Stadium.

6. The Orašac Camp

As indicated previously, the El Mujahed detachment was incorporated into the ABiH in August 1993. This unit had a camp at Orašac. Evidence has made it possible to establish that after the death of several Mujahedin and the detention of a Mujahedin wounded during an HVO ambush, members of the El Mujahed detachment abducted five Croatian civilians in the centre of Travnik on 15 October 1993 and took them to the Orašac camp. The last prisoners from this first wave of abductions were released on 20 October 1993. On 19 October 1993, members of the detachment abducted five other civilians from the Croatian and Serbian community in Travnik. They released one prisoner several days later, two on 6 November 1993 and the last prisoner, who was a minor at the time, around 7 December 1993.

The Trial Chamber considers that it has not been established beyond reasonable doubt that the prisoners from the first wave of abductions were subjected to cruel treatment. However, the evidence presented has made it possible to establish that the prisoners from the second wave of abductions, who did not participate directly in the hostilities, were subjected to severe beatings and psychological abuse inflicted by members of the El Mujahed detachment. The Trial Chamber considers furthermore that it has been proven beyond reasonable doubt that, on 21 October 1993, Dragan Popović, who was not actively involved in the hostilities, was executed by members of this detachment. The Trial Chamber notes that this murder was particularly heinous. Dragan Popović was taken with three other prisoners to a meadow where a pit had been dug. About 50 to 100 soldiers from the El Mujahed detachment stood around the pit shouting. Dragan Popović was pushed to the edge of the pit and fell on his side after being tripped. One soldier then tried unsuccessfully to behead him with a hatchet,

so another soldier had to finish the execution. The other prisoners were then forced to kiss the head of the deceased while the soldiers shouted in ritual celebration.

The Trial Chamber considers that it has been proven beyond reasonable doubt that, on 20 October 1993, the Accused Enver Hadžihasanović knew that five Croat and Serb civilians had been abducted the day before by his subordinates. He also had reason to know that the said subordinates were about to mistreat and murder the abducted civilians or had already committed these crimes. He had knowledge that the Mujahedin had massacred Croatian civilians in Maline, Miletići and abducted Živko Totić. He also knew that the Mujahedin had not received any instruction whatsoever on the most fundamental rules of international humanitarian law. Evidence has also made it possible to prove that, on 20 October 1993, the Accused Hadžihasanović had been informed of the measures taken until then by Mehmed Alagić, the commander of OG *Bosanska Krajina*, to resolve the ongoing crisis. He knew that Mehmed Alagić had threatened the Mujahedin that he would use force against them if they did not release the abducted civilians and that these threats had failed.

Despite the real risk of his subordinates repeating their previous crimes, the Accused Hadžihasanović decided in favour of passive negotiations with his subordinates to obtain the release of the abducted civilians. It has been established that the ABiH 3rd Corps never intended to use military means against the El Mujahed detachment. The Trial Chamber considers that the circumstances were such that, as of 20 October 1993, the 3rd Corps should have used force as the sole necessary and reasonable means to prevent the crimes committed at Orašac. The Trial Chamber concludes that the Accused Hadžihasanović had the material capacity to use force against his subordinates and had sufficient time to put concrete and specific measures into effect in order to obtain the release of the abducted civilians.

The Trial Chamber is furthermore of the opinion that, as soon as the El Mujahed detachment was incorporated into his forces, the Accused Hadžihasanović had information allowing him to conclude that there was a real and reasonably foreseeable risk of violations by members of the El Mujahed detachment. He was familiar with their violent and dangerous behaviour. He did not instruct the members of the detachment in complying with the most basic rules of international humanitarian law. In spite of this alarming information, he decided to gain military advantage with the detachment although nothing compelled the 3rd Corps to use the Mujahedin in combat. It is clear, in the opinion of the Trial Chamber, that the Accused Hadžihasanović put himself in a situation where he ran the risk of not being able to take appropriate measures as and when required. However, he will not be found guilty of having failed to punish the perpetrators of this crime since he only became aware of it on 6 November 1993 when he had already left his post.

C. Count 5: Wanton destruction in the municipalities of Zenica, Travnik and Vareš not justified by military necessity

According to the Indictment, unlawful and arbitrary destruction not justified by military necessity was committed against Bosnian Croat and Bosnian Serb dwellings, buildings and civilian personal property by the forces of the 3rd Corps in Guča Gora, Maline, Šušanj, Ovnak, Brajkovići, Grahovčići and Čukle in June 1993.

According to the case file, although the Trial Chamber considers it has been established that certain buildings and dwellings belonging to the Croatian Community in Bosnia were destroyed or damaged during combat operations in Guča Gora, Maline, Šušanj, Ovnak, Brajkovići, Grahovčići and Čukle on 8 June 1993, the Prosecution has not proved beyond reasonable doubt that the destruction was extensive and was not justified by military necessity.

International observers who were present during the hostilities only noted several burning or destroyed houses. They considered that this damage was not intentional but had been caused by shrapnel. The Trial Chamber considers, in view of all the evidence, that it has not been established that the destruction was extensive and that it was not justified by military necessity. Furthermore, the Trial Chamber notes that the evidence in the case file concerning the destruction that took place after the combat operations does not make it possible to identify the perpetrators, the dates or the circumstances in which property was destroyed.

The Trial Chamber therefore finds that the Accused Hadžihasanović and the Accused Amir Kubura cannot incur responsibility on this count for the locations concerned.

The Prosecution also alleged that 7th Brigade units were responsible for destruction in the village of Vareš during November 1993.

According to the evidence, when the 2nd and 3rd battalions of the 7th Brigade entered the town of Vareš on 4 November 1993, the residents had fled. HVO forces had also left the town.

According to the international observers present in Vareš on 4 November 1993, chaos reigned: soldiers of the 7th Brigade first fired shots in the air to uncover possible ambushes, and then in celebration. They broke windows, broke down doors in order to seize property inside the houses and shops of the Croatian inhabitants of Vareš; almost all the shop windows were broken.

The Trial Chamber considers, therefore, that the partial or total destruction of buildings and dwellings was extensive. Furthermore, evidence makes it possible to establish that the destruction was in no way justified by military necessity and that it was committed deliberately by the soldiers of the 7th Brigade, with the specific aim of plundering property.

The Trial Chamber considers, however, that the Prosecution has not proved beyond reasonable doubt that the Accused Kubura had knowledge of the destruction committed by his subordinates in Vareš on 4 November 1993, as he was not informed of the destruction.

D. Count 6: Plunder of private or public property in the municipalities of Zenica, Travnik and Vareš

The Prosecution alleges that the 7th Brigade and the 306th Brigade plundered Bosnian Croat and Bosnian Serb dwellings, buildings and civilian personal property in Miletići in April 1993.

Evidence indicates that plundering took place in Miletići in April 1993. The Trial Chamber notes, however, that neither the units of the 7th Brigade nor those of the 306th Brigade were present in Miletići during the attack and that they did not take part in the plundering.

The Indictment alleges that 3rd Corps forces plundered Bosnian Croat and Bosnian Serb dwellings, buildings and personal property in Guča Gora, Maline, Čukle, Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993.

Evidence indicates that plundering was committed by members of the 306th Brigade in Guča Gora and Maline, by members of the 7th Brigade in Čukle and by members of the 314th and 7th Brigades in Šušanj, Ovnak, Brajkovići and Grahovčići - following the fighting that took place in June 1993.

Numerous witnesses have stated that the dwellings of the Croats and Serbs in the region had been searched and that ABiH soldiers loaded property from the dwellings onto trucks. When they returned home, the residents saw that their houses had been vandalised. Property such as household appliances, furniture, clothing, cars, food, livestock and construction material were stolen from the residents of the towns and villages referred to in the Indictment.

The Trial Chamber is of the opinion that this plundering was repeated and widespread. Furthermore, the Trial Chamber considers that property was seized illegally and deliberately.

The Trial Chamber is of the view that the Accused Hadžihasanović had knowledge of the plundering committed by his subordinates in June 1993 in Guča Gora, Maline, Čukle, Šušanj, Ovnak, Brajkovići and Grahovčići. However, the Trial Chamber considers that the Prosecution has not proved that the Accused Hadžihasanović failed to take preventive and punitive measures against the perpetrators of this plundering. The Trial Chamber considers, furthermore, that the Accused Hadžihasanović was not indifferent to the problem he faced in

June 1993 and that he clearly intended to find an effective solution to this matter with the means available to him.

The Trial Chamber is of the opinion that the Accused Kubura cannot be held responsible for the plundering which took place in Maline, since the Prosecution has not proved beyond reasonable doubt that the 7th Brigade was present in Maline.

However, with regard to the plundering in the towns of Šušanj, Ovnak, Brajkovići and Grahovčići, the Trial Chamber is of the opinion that the Accused Kubura had knowledge of the plundering committed by the 7th Brigade military police in June 1993, and that he gave his consent to members of the 7th Brigade to share the plundered goods. The Accused Kubura failed to punish the perpetrators of these crimes.

The Prosecution alleges that the 7th Brigade plundered Bosnian Croat and Bosnian Serb dwellings, buildings and personal property in Vareš in November 1993.

According to the evidence, the Trial Chamber notes that this plundering was committed by soldiers of the 7th Brigade in Vareš on 4 November 1993. All international observers reported random plundering. The soldiers of the 7th Brigade plundered everything they found: cars, food, household appliances and furniture.

The Trial Chamber is therefore in no doubt that the plundering was extensive and repeated. Furthermore, the Trial Chamber considers that property was seized illegally and deliberately. The evidence shows in particular that the appropriation of food supplies was a logistical matter for the 7th Brigade and that the collection of goods was organised by the command of the 7th Brigade.

The Trial Chamber is satisfied beyond reasonable doubt that, as of 4 November 1993, the Accused Kubura had information that his subordinates were plundering in Vareš. It has been established that the Accused Kubura, in failing to take punitive measures against the perpetrators of the plundering committed in June 1993 of which he had knowledge, failed to prevent plundering in Vareš in November 1993. Furthermore, the Accused Kubura also failed to take action against the perpetrators of these crimes and even organised the distribution of the plundered goods.

E. Count 7: Destruction or wilful damage of institutions dedicated to religion in the municipality of Travnik

Evidence presented to the Trial Chamber indicates that the Monastery of Guča Gora and the Church of St. John the Baptist in Travnik were damaged in June 1993. Members of the 306th Brigade Military Police and international observers noted that in the Monastery of Guča Gora - which was both a sacred and historical site for the Croatian Catholic community - steles and the organ were destroyed, and the frescoes and walls were partially covered with inscriptions in Arabic. Similar destruction and damage was recorded at the church in Travnik: paintings, organs and windows were destroyed or vandalised and the statues of saints were decapitated.

The Trial Chamber is in no doubt that this damage amounts to acts of profanation. According to the case file, however, the perpetrators of these acts were the Mujahedin. As the Trial Chamber noted, the Prosecution was unable to establish that the Mujahedin were at the relevant time subordinated to the 3rd Corps.

The Trial Chamber will now read out the disposition.

[The Accused Enver Hadžihasanović, please stand up]

I. (IX) DISPOSITION

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER, ruling unanimously,

CONSIDERING Articles 23 and 24 of the Statute and Rules 98 *ter*, 101, 102, and 103 of the Rules of Procedure and Evidence,

SITTING in open session,

FINDS the Accused Hadžihasanović, as a superior pursuant to Articles 3 and 7 (3) of the Statute:

COUNT 1

- **COUNT 1: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of seven Bosnian Croat and Bosnian Serb men in Dusina on 26 January 1993;
- **Count 1: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of four Bosnian Croat men in Miletići on 24 April 1993;
- **Count 1: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of 23 Bosnian Croat men and a Bosnian Croat girl in Maline on 8 June 1993.

COUNT 2:

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal found the Accused Hadžihasanović:

- **Count 2: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the cruel treatment of seven Bosnian Croat and Bosnian Serb men in Dusina on 26 January 1993;
- **Count 2: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the cruel treatment of four Bosnian Croat men in Miletići on 24 April 1993;
- **Count 2: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the cruel treatment of 27 Bosnian Croat men and a Bosnian Croat girl in Maline on 8 June 1993.

COUNT 3

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal found the Accused Hadžihasanović:

- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of a Croatian detainee in the former JNA Barracks in Travnik in May 1993;
- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of Jozo Maračić at the Zenica Music School on 18 June 1993.

Now finds the Accused Hadžihasanović:

- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to prevent the murder of Mladen Havranek at the *Slavonija* Furniture Salon in Bugojno on 5 August 1993;
- **Count 3: GUILTY** of failing to take necessary and reasonable measures to punish the murder of Mladen Havranek at the *Slavonija* Furniture Salon in Bugojno on 5 August 1993;
- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of Mario Žrno at the Bugojno Convent in early August 1993;
- **Count 3: GUILTY** of failing to take necessary and reasonable measures to prevent the murder of Dragan Popović by ritual beheading at the Orašac camp on 21 October 1993;

- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to punish the murder of Dragan Popović by ritual beheading at the Orašac camp on 21 October 1993.

COUNT 4

- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Zenica music school from around 26 January 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the former JNA Barracks in Travnik from around May 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Mehurići Elementary School from around 6 June 1993 until at least 24 June 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Mehurići Blacksmith Shop from around 6 June 1993 until at least 13 July 1993;
- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent cruel treatment at the Orašac camp from 15 October to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to punish cruel treatment at the Orašac camp from around 15 October 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Motel Sretno from around 15 May 1993 until at least 21 June 1993;
- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the *Lycée Gimnazija* in Bugojno, from around 18 July 1993 until at least 13 October 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Bugojno Convent from around 24 July 1993 until at least early August 1993;
- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the *Slavonija* Furniture Salon in Bugojno from around 24 July 1993 until at least 18 August 1993;
- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the *Iskra* FC Stadium in Bugojno from around 30 July 1993 to 31 October 1993;
- **Count 4: GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Vojin Paleksić Elementary School from around 31 July 1993 until at least September 1993;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the BH Banka in Bugojno from around September 1993 until 31 October 1993.

COUNT 5

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal, took note of the Prosecution's withdrawal of:

- **Count 5:** in respect of the responsibility of the Accused Hadžihasanović for failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Dusina in January 1993.

AND FOUND on that occasion the Accused Hadžihasanović:

- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Miletići in April 1993.

NOW FINDS the Accused Hadžihasanović:

- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Guča Gora in June 1993;
- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Maline in June 1993;
- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Čukle in June 1993;
- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993.

COUNT 6

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal, took note of the Prosecution's withdrawal of:

- **Count 6:** in respect of the responsibility of the Accused Hadžihasanović for failing to take necessary and reasonable measures to prevent or punish plundering in Dusina in January 1993.

NOW FINDS the Accused Hadžihasanović:

- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Miletići in April 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Guča Gora in June 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Maline in June 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Čukle in June 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993.

COUNT 7

- **Count 7: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the destruction of or wilful damage to institutions dedicated to religion in Guča Gora and Travnik in June 1993.

SENTENCES the Accused Hadžihasanović to a term of imprisonment of 5 years to run as of this day, subject to credit that shall be given, pursuant to Rule 101 (C) of the Rules, for the 828 days in total that the Accused Hadžihasanović has already spent in detention.

You may be seated.

The Accused Amir Kubura, please stand up.

FINDS the Accused Kubura, as a superior pursuant to Articles 3 and 7 (3) of the Statute:

COUNT 1

- **Count 1: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of four Bosnian Croat men in Miletići on 24 April 1993;
- **Count 1: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of 23 Bosnian Croat men and a Bosnian Croat girl in Maline on 8 June 1993.

COUNT 2

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal, found the Accused Kubura:

- **Count 2: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the cruel treatment of four Bosnian Croat men in Miletići on 24 April 1993;
- **Count 2: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the cruel treatment of 27 Bosnian Croat men and a Bosnian Croat girl in Maline on 8 June 1993.

COUNT 3

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal, found the Accused Kubura:

- **Count 3: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the murder of Jozo Maračić at the Zenica Music School on 18 June 1993.

COUNT 4

NOW FINDS the Accused Kubura,

- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Zenica music school from 1 April 1993 until at least January 1994;
- **Count 4: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish cruel treatment at the Motel Sretno from around 15 May 1993 until at least 21 June 1993.

COUNT 5

RECALLS that the Trial Chamber, in its 27 September 2004 Decision on Motions for Acquittal, found the Accused Kubura:

- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Miletići in April 1993.

NOW FINDS the Accused Kubura,

- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Maline in June 1993;
- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 5: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Vareš in November 1993.

COUNT 6

NOW FINDS the Accused Kubura,

- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Miletići in April 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in Maline in June 1993;
- **Count 6: NOT GUILTY** of failing to take necessary and reasonable measures to prevent plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 6: GUILTY** of failing to take necessary and reasonable measures to punish plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 6: GUILTY** of failing to take necessary and reasonable measures to prevent or punish plundering in the village of Vareš in November 1993.

AND SENTENCES the Accused Kubura to a term of imprisonment of 2 and a half years to run as of this day, subject to credit that shall be given, pursuant to Rule 101 (C) of the Rules, for the 828 days in total that the Accused Kubura has already spent in detention.

You may be seated.

Pursuant to Rule 103 of the Rules, pending an agreement for the transfer of the convicted persons to a State where they will serve their sentence, the convicted persons shall remain in the custody of the Tribunal.

These proceedings are adjourned.

Courtroom proceedings can be followed on the Tribunal's website.