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## APPEALS JUDGEMENT SUMMARY

*(Exclusively for the use of the media. Not an official document)*

APPEALS CHAMBER

The Hague, 22 April 2008

### APPEALS JUDGEMENT SUMMARY FOR THE CASE OF HADŽIHASANOVIĆ AND KUBURA.

*Please find below the summary of the appeals judgement today read out by Judge Pocar:*

#### BACKGROUND OF THE CASE

This case concerns certain events that unfolded in Central Bosnia in 1993, particularly in the municipalities of Bugojno, Vareš and Zenica. During the period relevant for the Indictment, the Appellant Enver Hadžihasanović was Commander of the 3<sup>rd</sup> Corps of the Army of Bosnia and Herzegovina. The Appellant Amir Kubura was Commander of the 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade. On 15 March 2006, the Trial Chamber found Hadžihasanović guilty, pursuant to Articles 3 and 7(3) of the Statute, for having failed in his duty as a superior to prevent or punish the murder by his subordinates of Mladen Havranek at the *Slavonija* Furniture Salon in the Bugojno Municipality (Count 3); the murder by his subordinates of Dragan Popović at the Orašac Camp (Count 3); and the cruel treatment by his subordinates at the Zenica Music School, at the Orašac Camp and at various detention centres in Bugojno (Count 4). The Trial Chamber acquitted Hadžihasanović on all other counts of the Indictment. Kubura was found guilty, pursuant to Articles 3 and 7(3) of the Statute, for having failed in his duty as a superior to prevent or punish the plunder by his subordinates in the Ovnak area and in Vareš (Count 6). The Trial Chamber acquitted Kubura on all other counts of the Indictment. Hadžihasanović was sentenced to five years of imprisonment; Kubura was sentenced to two years and six months of imprisonment. Hadžihasanović appealed on 18 April 2006, seeking the reversal of the convictions against him. Kubura appealed on 13 April 2006, challenging both his conviction and the sentence imposed on him. The Prosecution appealed the sentence imposed on Hadžihasanović but not the acquittals. The Prosecution appealed Kubura's acquittal under Count 5 of the Indictment, regarding wanton destruction in the town of Vareš in November 1993, and the sentence imposed on him. The Appeals Chamber heard oral submissions of the Parties regarding these appeals on 4 and 5 December 2007.

Following the practice of the International Tribunal, I will not read out the text of the Judgement except for the Disposition. Instead, I will summarise the issues on appeal and the findings of the Appeals Chamber. I emphasise that this summary is not part of the written Judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons. Copies of the written Judgement will be made available to the Parties at the conclusion of this hearing.

#### GROUND OFS OF APPEAL

I will now address the Parties' grounds of appeal. First, I will address Hadžihasanović's arguments regarding the alleged infringement on his right to a fair trial. Second, I will address the Parties' arguments concerning Hadžihasanović's individual criminal responsibility as a superior. Third, I will address the Parties' arguments concerning Kubura's individual criminal responsibility as a superior. Finally, I will turn to the Parties' arguments regarding the sentences imposed on Hadžihasanović and Kubura.

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**A. *Hadžihasanović's appeal concerning the fairness of the trial and evidentiary issues***

In his first, second, and as part of his third and sixth grounds of appeal, Hadžihasanović submits that the Trial Chamber committed numerous errors infringing upon his right to a fair trial under Article 21 of the Statute.

For the reasons set out in the Judgement, the Appeals Chamber finds that Hadžihasanović failed to demonstrate that the Trial Chamber erred in law or in fact and that his right to a fair trial was infringed.

**B. *Appeal concerning Hadžihasanović's individual criminal responsibility as a superior***

I now turn to Hadžihasanović's individual criminal responsibility as a superior. Under his third ground of appeal, Hadžihasanović argues that the Trial Chamber erred by finding that he failed to take the adequate measures required to punish those responsible for the murder of Mladen Havranek and the cruel treatment of six prisoners at the *Slavonija* Furniture Salon on 5 August 1993, as well as to prevent similar crimes in the other detention facilities in Bugojno.

The Appeals Chamber concurs with the Trial Chamber's finding that the evidence before it provided a sufficient basis to conclude that the perpetrators of the 5 August 1993 *Slavonija* Furniture Salon crimes were held responsible for breaches of military discipline by the military disciplinary organ in Bugojno and that no criminal report was filed with the District Military Prosecutor's Office regarding the matter. The Appeals Chamber agrees with the Trial Chamber that, given the gravity of the offences for which the perpetrators were being punished - murder and cruel treatment - Hadžihasanović could not consider as acceptable punishment the disciplinary sanction of a period of detention not exceeding 60 days.

The Appeals Chamber however finds that no reasonable trier of fact could have found beyond reasonable doubt that the 3<sup>rd</sup> Corps failed to initiate an investigation or criminal proceedings against the perpetrators of the murder and cruel treatment by filing a report with the Bugojno municipal public prosecutor. The report of 20 August 1993 from the chief of the civilian police in Bugojno regarding alleged war crimes committed against Croats, which establishes that the Bugojno municipal public prosecutor met with European Community observers to discuss alleged war crimes committed against Croats, including the murder of Mladen Havranek, indeed raises a reasonable doubt as to whether the 307<sup>th</sup> Brigade, subordinated to the 3<sup>rd</sup> Corps headed by Hadžihasanović, filed a criminal report regarding the 5 August 1993 *Slavonija* Furniture Salon crimes with the Bugojno municipal public prosecutor.

The Appeals Chamber recalls that a superior need not dispense punishment personally and may discharge his duty by reporting the matter to the competent authority. In the present case, the Appeals Chamber finds that the reporting of the 5 August 1993 *Slavonija* Furniture Salon crimes to the Bugojno municipal public prosecutor, in conjunction with the disciplinary sanctions imposed by the military disciplinary organ, constituted necessary and reasonable measures to punish the perpetrators.

For the reasons set out in the Judgement, the Appeals Chamber reverses Hadžihasanović's convictions for having failed to take the adequate measures required to punish those responsible for the murder of Mladen Havranek and the cruel treatment of six prisoners at the *Slavonija* Furniture Salon on 5 August 1993.

Under his third ground of appeal, Hadžihasanović also contends that the Trial Chamber erred in finding that he had reason to know of the acts of mistreatment committed in the Bugojno Detention Facilities as of 18 August 1993.

To reach this conclusion, the Trial Chamber mainly relied on its previous finding that Hadžihasanović had failed to take adequate measures to punish the perpetrators of the 5

August 1993 crimes. However, the Appeals Chamber found that this latter finding was in error. Considering that none of the Trial Chamber's remaining findings, whether taken individually or collectively, sufficiently supports the Trial Chamber's conclusion that Hadžihasanović had reason to know of the acts of cruel treatment in the Bugojno Detention Facilities as of 18 August 1993, the Appeals Chamber finds that no reasonable trier of fact could have concluded, given the evidence, that Hadžihasanović possessed the requisite knowledge under Article 7(3) of the Statute, which would trigger his responsibility to prevent or punish such acts.

For the reasons set out in the Judgement, the Appeals Chamber reverses Hadžihasanović's convictions for having failed to take adequate measures to prevent or punish the acts of mistreatment in the Bugojno Detention Facilities as of 18 August 1993.

**Under his fourth ground of appeal** concerning the cruel treatment at the Zenica Music School from May to September 1993, Hadžihasanović argues that the Trial Chamber erred by finding that he failed to take the reasonable measures necessary to punish the perpetrators and prevent such acts.

**First**, Hadžihasanović argues that the Trial Chamber failed to properly consider the evidence provided by Witness Džemal Merdan - his Deputy-Commander - and Witness HF - a senior officer of the 3<sup>rd</sup> Corps Command - that measures were taken by the 3<sup>rd</sup> Corps to investigate allegations of mistreatment at the Zenica Music School. The Appeals Chamber notes that the Trial Chamber did not ignore the testimony of these two witnesses but, after reviewing the totality of the evidence before it, decided to accord greater weight to other evidence. The Trial Chamber found, based on the many accounts by former prisoners at the Music School, that the Zenica Music School's basement consistently housed between ten and thirty detainees from 18 April 1993 until 20 August 1993. The Trial Chamber further found that Hadžihasanović received alarming information from other sources, which established the need for further inquiry based on allegations of mistreatment. Thus, the Trial Chamber's finding that an investigation of the allegations of cruel treatment would have enabled Hadžihasanović to identify the persons responsible for the violence does not turn solely on the truthfulness of Witnesses Džemal Merdan and HF.

**Second**, Hadžihasanović argues that the Trial Chamber failed to properly consider evidence that the arrest, detention and alleged mistreatment of detainees at the Music School was concealed by some members of the 7<sup>th</sup> Brigade. The Appeals Chamber finds that the Trial Chamber noted that there was an intention on the part of the soldiers present at the School to conceal the mistreatment inflicted on the detainees but concluded that this had no bearing on Hadžihasanović's criminal responsibility. Indeed, the Trial Chamber found that Hadžihasanović had received information that his subordinates were committing mistreatment at the Zenica Music School from sources outside the 7<sup>th</sup> Brigade, such that any attempted concealment by members of the 7<sup>th</sup> Brigade was rendered secondary.

**Third**, Hadžihasanović submits that the measures he took with respect to the Zenica Music School were necessary and reasonable. The Trial Chamber considered Hadžihasanović's arguments that he had taken preventive measures to ensure that civilians and prisoners of war were treated in accordance with international humanitarian law and that he took steps to investigate allegations of mistreatment. The Trial Chamber nevertheless concluded that Hadžihasanović did not make genuine efforts to initiate an appropriate investigation into the allegations of cruel treatment whereas such an investigation would have enabled him to discover the identity of the persons responsible for the violence.

For the reasons set out in the Judgement, the Appeals Chamber finds that Hadžihasanović failed to demonstrate that no reasonable trier of fact could have concluded that, given the evidence, he failed to take necessary and reasonable measures to punish the perpetrators of the cruel treatment at the Zenica Music School and prevent further mistreatment.

I now turn to Hadžihasanović's arguments under his fifth ground of appeal concerning the murder and cruel treatment in Orašac in October 1993.

Hadžihasanović submits that the Trial Chamber erred by finding that he failed to take necessary and reasonable measures to prevent the murder of Dragan Popović and the cruel treatment committed by the *El Mujahedin* detachment in the Orašac Camp against five civilians abducted on 19 October 1993. He argues that the Trial Chamber erred in finding that he had *de jure* authority over the members of the *El Mujahedin* detachment and in finding that he exercised effective control over the *El Mujahedin* detachment. Since *de jure* authority is only one factor that helps to establish effective control, and because the question is resolvable on the basis of effective control alone, the Appeals Chamber declines to address whether Hadžihasanović had *de jure* authority over the *El Mujahedin* detachment.

The Trial Chamber found that Hadžihasanović exercised effective control over the *El Mujahedin* detachment on the basis that the evidence before it showed that three types of indicia of effective control were satisfied, namely: the power to give orders to the *El Mujahedin* detachment and have them executed, the conduct of combat operations involving the *El Mujahedin* detachment, and the absence of any other authority over the *El Mujahedin* detachment.

**First**, the Appeals Chamber recognises that the power to give orders and have them executed can serve as an indicium of effective control. In the present case, the Trial Chamber took certain orders of re-subordination into account, though to varying degrees, as indicia of effective control. However, for the reasons set out in the Judgement, the Appeals Chamber finds that none of the re-subordination orders, either individually or collectively, is sufficient to establish the existence of effective control.

**Second**, the Appeals Chamber finds that while the findings relied upon by the Trial Chamber confirm that the *El Mujahedin* detachment took part in several combat operations in September and October 1993 and that this occurred within the framework established by the Operational Group *Bosanska Krajina* and the 3<sup>rd</sup> Corps, they do not necessarily provide sufficient support for the conclusion that Hadžihasanović had effective control over the *El Mujahedin* detachment in the sense of having the material ability to prevent or punish its members should they commit crimes. Notably, several findings of the Trial Chamber demonstrate that the *El Mujahedin* detachment maintained a significant degree of independence from the units it fought alongside on various issues, which belies the Trial Chamber's conclusion that the *El Mujahedin* detachment was under the effective control of the 3<sup>rd</sup> Corps. The Trial Chamber found, for example, that the detachment members were anxious to maintain their independence and reserved the right to decide whether they would take part in combat operations.

Thus, while these Trial Chamber's findings indicate that the 3<sup>rd</sup> Corps cooperated with the *El Mujahedin* detachment, they are insufficient to establish the existence of a relationship of effective control between the 3<sup>rd</sup> Corps and the *El Mujahedin* detachment.

**Third**, with regard to the absence of any other authority over the *El Mujahedin* detachment, the Appeals Chamber finds that some of the Trial Chamber's findings suggest that the *El Mujahedin* detachment was more under the influence of Muslim clerics, than under that of the 3<sup>rd</sup> Corps. However, the Appeals Chamber disputes the relevance of the criterion identified by the Trial Chamber as an indicator of the existence of effective control. Hadžihasanović's effective control cannot be established by process of elimination. The absence of any other authority over the *El Mujahedin* detachment in no way implies that Hadžihasanović exercised effective control in this case.

**Last**, I turn to Hadžihasanović's argument that he could not have effective control over the *El Mujahedin* detachment if the only way for the 3<sup>rd</sup> Corps to obtain the release of the civilians abducted on 19 October 1993 was to use force.

The Appeals Chamber finds that the military operation that the Trial Chamber expected the 3<sup>rd</sup> Corps to undertake to rescue those hostages would be comparable to that necessary to obtain the release of hostages from an enemy force rather than a force under its effective control. Regardless of whether the use of force was materially feasible or advisable to save the lives of the hostages, the facts of the case reveal a situation in which the relationship between the *El Mujahedin* detachment and the 3<sup>rd</sup> Corps was not one of subordination. Instead, it was close to overt hostility since the only way to control the *El Mujahedin* detachment was to attack them as if they were a distinct enemy force. This scenario is at odds with the premise of the Trial Chamber that the *El Mujahedin* detachment was subordinated to the 3<sup>rd</sup> Corps. This conclusion further confirms that Hadžihasanović did not have effective control over the *El Mujahedin* detachment.

For the reasons set out in the Judgement, the Appeals Chamber concludes that no reasonable trier of fact could have concluded that it was established beyond reasonable doubt that Hadžihasanović had effective control over the *El Mujahedin* detachment between 13 August and 1 November 1993. As a result, the Appeals Chamber reverses Hadžihasanović's conviction for having failed to prevent the crimes of cruel treatment committed between 19 and 31 October 1993 and the murder of Dragan Popović.

### ***C. Kubura's and Prosecution's appeals concerning Kubura's individual criminal responsibility as a superior***

I now turn to Kubura's individual criminal responsibility as a superior. Under his first ground of appeal, Kubura submits that the Trial Chamber erred in convicting him of failing to take necessary and reasonable measures to punish the acts of plunder committed in June 1993 in the Ovnak area. He argues that the Trial Chamber erred in finding that the 7<sup>th</sup> Brigade was involved in the plunder committed in the Ovnak area and/or that he knew of First, the Appeals Chamber notes that the Trial Chamber examined Kubura's claim that members of the 7<sup>th</sup> Brigade could not have been responsible for the plunder because they had already left the Ovnak area on 8 June 1993 but, following its review of the evidence, concluded otherwise. While, as Kubura argues, the Trial Chamber indeed found that members of the 7<sup>th</sup> Brigade did not enter the villages where the plunder was committed and left the sector on 9 June 1993, it also found that, following the end of combat operations, members of the 7<sup>th</sup> Brigade's military police units entered and systematically plundered the Ovnak area as of 9 June 1993 prior to their departure.

The Appeals Chamber finds that Kubura failed to establish that, given the evidence, no reasonable trier of fact could have concluded that members of the 7<sup>th</sup> Brigade committed plunder in the Ovnak area in June 1993.

Second, with regard to Kubura's argument that the Trial Chamber only relied on one witness to conclude that he had knowledge of the plunder committed in the Ovnak area on 9 June 1993, the Appeals Chamber finds that he ignores the additional evidence considered by the Trial Chamber and its resulting findings. Moreover, the Trial Chamber noted that Kubura received orders alerting him to plunder in the Ovnak area generally, which Kubura acknowledged and responded to. In addition, the Trial Chamber found that Kubura issued a report on 20 June 1993 to the 3<sup>rd</sup> Corps Command acknowledging that a standardised procedure for war booty had been implemented by the 7<sup>th</sup> Brigade. The Appeals Chamber finds that Kubura failed to demonstrate that, given the evidence, no reasonable trier of fact could have concluded that he had knowledge of plunder by his subordinates in the Ovnak area in June 1993.

In light of the foregoing, the Appeals Chamber accordingly upholds Kubura's conviction for failing to take necessary and reasonable measures to punish the plunder committed by his subordinates in June 1993 in the Ovnak area.

Under his second ground of appeal, Kubura submits that the Trial Chamber erred in convicting him of failing to take necessary and reasonable measures to prevent or punish

the plunder which took place in Vareš in November 1993. He argues that the Trial Chamber erred in finding that the 7<sup>th</sup> Brigade was involved in the commission of acts of plunder in Vareš in November 1993 and/or that he knew or had reason to know of these acts.

**First**, with regard to the 7<sup>th</sup> Brigade's involvement, the Appeals Chamber finds that the documents relied upon by the Trial Chamber in reaching the finding that Kubura's subordinates engaged in plunder in Vareš specifically refer to the 7<sup>th</sup> Brigade's involvement in these acts. The Appeals Chamber finds that Kubura failed to demonstrate that, given the evidence, no reasonable trier of fact could have concluded that members of the 7<sup>th</sup> Brigade committed plunder in Vareš in November 1993.

**Second**, with regard to Kubura's knowledge of the acts of plunder in Vareš triggering his duty to prevent them, the Appeals Chamber notes that the Trial Chamber focused its reasoning on Kubura's failure to punish his subordinates' plunder in the Ovnak area some five months earlier. While portions of the Trial Judgement demonstrate that the Trial Chamber considered factors other than Kubura's past failure to punish his subordinates in determining whether he had reason to know of their acts of plunder in Vareš on 4 November 1993, the Trial Judgement suffers, at the very least, from a lack of clarity as to whether and, if so, how the Trial Chamber took into account the circumstances of the case in determining that Kubura had reason to know sufficient to trigger a duty to prevent his subordinates' plunder in Vareš. The Appeals Chamber deems it of significant import that the Trial Chamber found that, irrespective of the measures taken by Kubura to stop the acts of plunder in Vareš once he had knowledge of them, Kubura remained responsible for failing to prevent these acts in the first place based *exclusively* on his past failure to punish similar acts in the Ovnak area. Such a conclusion implies that the Trial Chamber considered Kubura's knowledge of and past failure to punish his subordinates' acts of plunder in the Ovnak area as automatically entailing that he had reason to know of their future acts of plunder in Vareš. The Appeals Chamber finds that this constitutes an error of law.

Having applied the correct legal standard to the evidence contained in the trial record, the Appeals Chamber recognises that Kubura's knowledge of and failure to punish his subordinates' past acts of plunder was likely to be understood by his subordinates at least as acceptance, if not encouragement of such conduct, such that it increased the risk that further acts of plunder, such as those in Vareš, would be committed again. The Appeals Chamber notes, however, that the acts of plunder committed by Kubura's subordinates in the Ovnak area on 9 June 1993 and in Vareš on 4 November 1993 were separated by some five months and some 40 kilometres. While the plunder was widespread on each of these two occasions, Kubura's subordinates were not found to have engaged in plunder on a frequent basis while under his command. The Appeals Chamber recalls that the Trial Chamber did not find that Kubura had any other knowledge regarding his subordinates' acts of plunder in Vareš prior to their commission, other than the knowledge it inferred from his past failure to punish.

However, with respect to Kubura's knowledge of his subordinates' acts of plunder whilst they were ongoing, the Appeals Chamber recalls that Kubura received orders on 4 November 1993 alerting him to the ongoing acts of plunder in Vareš and holding him responsible for stopping them. Indeed, the Trial Chamber found that Kubura received orders from the 3<sup>rd</sup> Corps Command directing him to use military police to prevent property from being plundered in Vareš, as well as instructions from the Operational Group East to cease all unauthorised acts, stop anything from being removed and withdraw his troops from the town.

While Kubura's knowledge of his subordinates' past plunder in Ovnak and his failure to punish them did not, in itself, amount to actual knowledge of the acts of plunder in Vareš, the Appeals Chamber concurs with the Trial Chamber that the orders he received on 4 November 1993 constituted, at the very least, sufficiently alarming information justifying further inquiry.

The Appeals Chamber accordingly finds that Kubura possessed knowledge sufficient to trigger a duty to prevent his subordinates from committing further plunder in Vareš as of his receipt of the orders alerting him to the ongoing plunder. For the reasons set out in the Judgement, the Appeals Chamber also finds that Kubura's knowledge of his subordinates' acts of plunder in Vareš was also sufficient to trigger his duty to punish them.

With regard to the measures taken by Kubura to prevent his subordinates from committing further acts of plunder in Vareš, the Appeals Chamber recalls that, following the order of 4 November 1993 from the Operational Group *Istok* Command, Kubura withdrew his troops from Vareš the very same day and then forbade the members of the 7<sup>th</sup> Brigade from entering or staying in Vareš on 5 November 1993.

For the reasons set out in the Judgement, the Appeals Chamber finds that Kubura took necessary and reasonable measures, given the circumstances of the case, to *prevent* the plunder by putting a stop to the plunder once it had started so it would not be repeated. The Appeals Chamber however upholds the Trial Chamber's finding that Kubura failed to take necessary and reasonable measures to *punish* his subordinates' acts of plunder in Vareš on 5 November 1993. Kubura's conviction as a superior under Article 7(3) of the Statute for the plunder in Vareš is accordingly maintained.

**I now turn to the Prosecution's second ground of appeal** that Kubura should have been convicted under Article 7(3) of the Statute for the wanton destruction committed by his subordinates in Vareš on 4 November 1993.

The Trial Chamber found that Kubura's subordinates committed wanton destruction in Vareš on 4 November 1993 but that it was not proven beyond reasonable doubt that he knew or had reason to know of this crime.

**First**, as to whether Kubura received information concerning the destruction of property in Vareš, the Trial Chamber found, as correctly remarked by the Prosecution, that the Operational Group *Istok* issued a combat report to the 3<sup>rd</sup> Corps Command on 4 November 1993 noting the chaotic situation in Vareš. In this report, the Operational Group *Istok* requested that the 3<sup>rd</sup> Corps Command send police military units to the town of Vareš. In response, the 3<sup>rd</sup> Corps Command issued a combat report stating that it had issued orders that brigades use military police forces to prevent chaos and the destruction of property in Vareš. The Trial Chamber found that the 7<sup>th</sup> Brigade neither received the 4 November 1993 Operational Group *Istok* combat report to the 3<sup>rd</sup> Corps Command nor the 3<sup>rd</sup> Corps Command's combat report in response. Yet, from the content of the 3<sup>rd</sup> Corps Command combat report, it inferred that the 7<sup>th</sup> Brigade "must have received" orders to use military police forces to prevent chaos and the destruction of property in Vareš given that the 7<sup>th</sup> Brigade was subordinated to the 3<sup>rd</sup> Corps Command and present in Vareš. The 3<sup>rd</sup> Corps Command combat report, however, failed to make explicit the identity of the perpetrators of the acts of wanton destruction in Vareš. The Appeals Chamber notes that other brigades were also present in Vareš on 4 November 1993.

The Trial Chamber also found that the Operational Group *Istok* issued a separate order on 4 November 1993, specifically directed to the 7<sup>th</sup> Brigade Commander, which explicitly refers to activities of plunder and the need to prevent them but does not mention acts of destruction. The Appeals Chamber concurs with the Trial Chamber that, given the evidence taken as a whole, the inference that the 7<sup>th</sup> Brigade must have received orders from the 3<sup>rd</sup> Corps Command on 4 November 1993 does not establish, by itself, Kubura's knowledge of his subordinates' acts of wanton destruction.

**Second**, the Appeals Chamber considers that Kubura's knowledge of the acts of wanton destruction cannot automatically be inferred from his awareness of the plunder in Vareš on 4 November 1993. Indeed, the Trial Chamber's finding regarding Kubura's knowledge of the plunder in Vareš on 4 November 1993 rests on a much broader evidentiary basis. Furthermore, the Trial Chamber relied on Kubura's knowledge of and failure to punish

his subordinates' past acts of plunder. The Trial Chamber made no such findings with respect to any past acts of wanton destruction by Kubura's subordinates. Thus, while there was a sufficient evidentiary basis for the Trial Chamber to conclude that Kubura had knowledge of the acts of plunder in Vareš, it was reasonable for it to conclude that his knowledge as regards the acts of wanton destruction was not established beyond reasonable doubt.

In light of the foregoing, the Appeals Chamber finds that the Prosecution failed to establish that no reasonable trier of fact could have concluded, on the basis of all the admitted evidence, that Kubura's knowledge of wanton destruction in Vareš on 4 November 1993 was not established beyond reasonable doubt. Kubura's acquittal is confirmed.

#### ***D. Appeals concerning the sentences imposed on Hadžihasanović and Kubura***

Finally, I turn to the appeals concerning the sentences rendered. Hadžihasanović did not specifically appeal his sentence but alleged that the Trial Chamber erred in that the Disposition of the Trial Judgement does not adequately reflect some of the findings made by the Trial Chamber in the body of the Trial Judgement. Kubura appealed his sentence as manifestly excessive, and the Prosecution appealed both Hadžihasanović and Kubura's sentences as manifestly inadequate.

The Appeals Chamber allows Hadžihasanović's arguments and corrects the Disposition of the Trial Judgement concerning the temporal scope of the cruel treatment at the Zenica Music School to render it consistent with the Trial Chamber's findings. As regards the impact of this shorter period of responsibility on Hadžihasanović's sentence, the Appeals Chamber first recalls that the Trial Chamber, in its sentencing determination, correctly determined that the cruel treatment at the Zenica Music School took place over approximately seven months and not nine months as erroneously indicated in the Disposition of the Trial Judgement. The Appeals Chamber further notes that the Trial Chamber's finding regarding the large number of victims involved in the detention facilities in Zenica, which was considered an aggravating circumstance, remains valid for the relevant period. Thus, these factors remain unaffected by the above correction to the Disposition of the Trial Judgement and there is no impact on the sentence.

For the reasons set out in the Judgement, the Appeals Chamber dismisses the Prosecution's and Kubura's arguments. The Appeals Chamber finds that the Trial Chamber properly considered the gravity of the crimes, the relevant aggravating and mitigating factors, and the sentencing practices in the former Yugoslavia.

I will now read out in full the operative paragraphs of the Appeals Chamber's Judgement, that is, the Disposition. Mr. Hadžihasanović and Mr. Kubura, will you please stand.

#### **DISPOSITION**

For the foregoing reasons, **THE APPEALS CHAMBER**

**PURSUANT TO** Article 25 of the Statute and Rules 117 and 118 of the Rules;

**NOTING** the respective written submissions of the Parties and the arguments they presented at the hearings of 4 and 5 December 2007;

**SITTING** in open session, unanimously:

**ALLOWS** Hadžihasanović's appeal, in part, with respect to Ground 3; **REVERSES** his conviction for failing to take the necessary and reasonable measures to punish those responsible for the murder of Mladen Havranek (Count 3 of the Indictment) and the cruel treatment of six prisoners at the *Slavonija* Furniture Salon on 5 August 1993 (Count 4 of the



Indictment), as well as his conviction for failing to take the necessary and reasonable measures to prevent or punish the cruel treatment at the *Gimnazija* School Building, the *Slavonija* Furniture Salon, the *Iskra* FC Stadium and the *Vojin Paleksić* Elementary School in Bugojno as of 18 August 1993 (Count 4 of the Indictment);

**ALLOWS** Hadžihasanović's appeal, in part, with respect to Ground 4, concerning certain errors in the Disposition of the Trial Judgement with regard to his conviction entered under Count 4 of the Indictment for his failure to prevent or punish the cruel treatment at the Zenica Music School; **SETS ASIDE** the related portion of the Disposition of the Trial Judgement and **REPLACES** it with the following:

COUNT 4: GUILTY of failure to prevent or punish cruel treatment at the Zenica Music School from 8 May 1993 to 20 August 1993 or 20 September 1993, in addition to failure to punish cruel treatment at the Zenica Music School from 26 January 1993 to 8 May 1993.

**ALLOWS** Hadžihasanović's appeal, in part, with respect to Ground 5; **REVERSES** his conviction for failing to take the necessary and reasonable measures to prevent the murder of Dragan Popović on 21 October 1993 (Count 3 of the Indictment) and his conviction for failing to take the necessary and reasonable measures to prevent cruel treatment at the Orašac camp from 15 October 1993 to 31 October 1993 (Count 4 of the Indictment);

**REDUCES** the sentence of five years of imprisonment imposed on Hadžihasanović by the Trial Chamber to a sentence of three years and six months of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period Hadžihasanović has already spent in detention; and

**DISMISSES** Hadžihasanović's appeal in all other respects;

**ALLOWS** Kubura's appeal, in part, with respect to Ground 2; **REVERSES** his conviction for failing to take the necessary and reasonable measures to prevent, though not to punish, plunder in Vareš on 4 November 1993 (Count 6 of the Indictment);

**REDUCES** the sentence of thirty months of imprisonment imposed on Kubura by the Trial Chamber to a sentence of two years of imprisonment; and

**DISMISSES** Kubura's appeal in all other respects;

**DISMISSES** the Prosecution's appeal in its entirety;

**ORDERS** that this Judgement shall be enforced immediately pursuant to Rule 118 of the Rules.

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