

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-01-47)

HADŽIHASANOVIĆ & KUBURA

The Prosecutor v. Enver Hadžihasanović and Amir Kubura



ENVER HADŽIHASANOVIĆ

Convicted of cruel treatment



Senior officer of the Army of Bosnia and Herzegovina (ABiH), holding positions of Commander of the ABiH 3rd Corps, Chief of the Supreme Command Staff of ABiH and member of the Joint Command of the Army of Bosnia and Herzegovina; from December 1993, held rank of Brigadier General

- Sentenced to three and a half years' imprisonment

Crimes convicted of (examples):

Cruel treatment (violations of laws or customs of war)

- Enver Hadžihasanović was found 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;

AMIR KUBURA

Convicted of plunder of public or private property



Senior ABiH officer, holding positions of Chief of Staff of the 7th Muslim Mountain Brigade of the ABiH 3rd Corps, acting Commander and Commander of the 7th Muslim Mountain Brigade

- Sentenced to two years' imprisonment

Crimes convicted of (examples):

Plunder of public or private property (violations of laws or customs of war)

- Amir Kubura failed to take necessary and reasonable measures to punish plundering in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993 and in Vareš in November 1993;

MEHMED ALAGIĆ

Indicted for murder, violence to life and person, cruel treatment, wanton destruction of cities, towns or villages, not justified by military necessity, plunder of public or private property and destruction or willful damage done to institutions dedicated to religion, wilful killing, wilfully causing great suffering or serious injury to body or health, inhuman treatment, unlawful confinement of civilians and extensive destruction of property, not justified by military necessity



Senior ABiH officer, holding positions of commander of ABiH 3rd Corps and 7th Corps

- Deceased on **7 March 2003**
- Proceedings terminated on 21 March 2003

ENVER HADŽIHASANOVIĆ

| | |
|----------------------------------|---|
| Born | 7 July 1950 in Zvornik, Bosnia and Herzegovina |
| Indictments | Initial: 13 July 2001, made public on 2 August 2001; first amended: 11 January 2002; second amended: 15 August 2003; third amended: 26 September 2003 |
| Arrested | 2 August 2001 |
| Transferred to ICTY | 4 August 2001 |
| Initial appearance | 9 August 2001, pleaded not guilty to all charges |
| Trial Chamber Judgement | 15 March 2006, sentenced to five years' imprisonment |
| Appeals Chamber Judgement | 22 April 2008, sentence reduced to three and a half years' imprisonment |
| Sentence served | Released on 23 April 2008 upon completion of his sentence |

AMIR KUBURA

| | |
|----------------------------------|---|
| Born | 4 March 1964 in Kakanj, Bosnia and Herzegovina |
| Indictments | Initial: 13 July 2001; first amended: 11 January 2002; second amended: 15 August 2003; third amended: 26 September 2003 |
| Arrested | 2 August 2001 |
| Transferred to ICTY | 4 August 2001 |
| Initial appearance | 9 August 2001, pleaded not guilty to all charges |
| Trial Chamber Judgement | 15 March 2006, sentenced to two and a half years' imprisonment; early release granted on 11 April 2006 |
| Appeals Chamber Judgement | 22 April 2008, sentence reduced to two years' imprisonment |

STATISTICS

| | |
|---------------------------------|----------------------------------|
| Trial days | 219 |
| Witnesses called by Prosecution | 100 |
| Witnesses called by Defence | Hadžihasanović: 62 Kubura: 13 |
| Exhibits | 2949 |

| TRIAL | |
|-----------------------------|--|
| Commenced | 2 December 2003 |
| Closing arguments | 12 - 15 July 2005 |
| Trial Chamber II | Judge Jean-Claude Antonetti (presiding), Judge Vonimbolana Rasoazanany, Judge Albertus Swart |
| Counsel for the Prosecution | Daryl A. Mundis, Tecla Henry-Benjamin, Stefan Waespi, Matthias Neuner |
| Counsel for the Defence | For Enver Hadžihasanović: Edina Rešidović, Stéphane Bourgon For Amir Kubura: Fahrudin Ibrišimović, Rodney Dixon |
| Judgement | 15 March 2006 |

| APPEALS | |
|-----------------------------|--|
| Appeals Chamber | Judge Fausto Pocar (presiding), Judge Mohamed Shahabuddeen, Judge Theodor Meron, Judge Mehmet Güney, Liu Daqun |
| Counsel for the Prosecution | Peter Kremer, Shelagh McCall, Marwan Dalal, Xavier Tracol, Barbara Goy, Katharina Margetts, Matteo Costi |
| Counsel for the Defence | For Enver Hadžihasanović: Edina Rešidović, Stéphane Bourgon For Amir Kubura: Fahrudin Ibrišimović, Rodney Dixon |
| Judgement | 22 April 2008 |

| RELATED CASES | |
|-----------------------------|--|
| <i>by geographical area</i> | |
| DELIĆ (IT-04-83) | |

INDICTMENT AND CHARGES

The initial indictment was confirmed on 13 July 2001. Pursuant to the Trial Chamber's decision on the form of the indictment dated 7 December 2001, the first amended indictment was filed on 11 January 2002.

The initial and first amended indictments also included charges against Mehmed Alagić. It was alleged that from 8 March 1993, he was appointed as the Commander of the ABiH 3rd Corps Operational Group "Bosanska Krajina", that he was appointed Commander of the ABiH 3rd Corps on 1 November 1993, and commander of ABiH 7th Corps on 26 February 1994. He was charged with murder, violence to life and person, cruel treatment, wanton destruction of cities, towns or villages, not justified by military necessity, plunder of public or private property and destruction or wilful damage done to institutions dedicated to religion (violations of the laws or customs of war) as well as wilful killing, wilfully causing great suffering or serious injury to body or health, inhuman treatment, unlawful confinement of civilians and extensive destruction of property, not justified by military necessity (grave breaches of the Geneva conventions). Mehmed Alagić died on 7 March 2003 and on 21 March 2003, the Tribunal issued an order terminating proceedings against him.

Following the order of the pre-trial judge of 5 August 2003, the second amended indictment was filed on 15 August 2003. In compliance with the order of the Trial Chamber of 17 September 2003, the Prosecution filed the third amended indictment on 26 September 2003. This is the operative indictment in the case.

The indictment alleged that, 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) and the Army of the Republic of Croatia (HV). In particular, in April 1993 and early summer 1993, ABiH 3rd Corps units launched a series of heavy attacks against the HVO. The attacks culminated in a massive attack between 7 June and 13 June 1993 within, among others, the municipalities of Kakanj, Travnik and Zenica.

The ABiH 3rd Corps allegedly attacked towns and villages, subjecting predominantly Bosnian Croat, but also Bosnian Serb civilians, including women, children, the elderly and the infirm, to wilful killings and serious injuries. Further, in the course of, or after the attacks, at least 200 Bosnian Croat and Bosnian Serb civilians were killed and many more were wounded or harmed while attempting to hide or escape. In several instances, ABiH forces killed HVO troops after their surrender.

It was alleged that mainly Bosnian Croats, but also Bosnian Serbs, were unlawfully imprisoned and otherwise detained, killed and beaten, subjected to physical and/or psychological abuse, intimidation and inhuman treatment, including being confined in overcrowded and unsanitary conditions.

ABiH forces allegedly plundered and destroyed Bosnian Croat and Bosnian Serb property with no military justification.

Enver Hadžihasanović and Amir Kubura were responsible for ensuring that military units under their command and effective control respected and applied the rules of international law. They were obliged by superior order to initiate proceedings for legal sanctions against individuals under their command and effective control who had violated the international law of war.

The indictment charged the accused as follows:

Enver Hadžihasanović was charged on the basis of superior criminal responsibility (Article 7(3) of the Statute), with:

- **Murder; cruel treatment; wanton destruction of cities, towns or villages, not justified by military necessity; plunder of public or private property; destruction or wilful damage done to institutions dedicated to religion** (violations of laws or customs of war, Article 3)

Amir Kubura was charged on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- **Murder; cruel treatment; wanton destruction of cities, towns or villages, not justified by military necessity; plunder of public or private property** (violations of laws or customs of war, Article 3)

PRE-TRIAL PROCEEDINGS (PROVISIONAL RELEASE)

Enver Hadžihasanović was provisionally released from 19 December 2001 until 27 November 2003 and from 18 January 2004 until 20 January 2004 in order to attend the funeral of his brother.

Amir Kubura was provisionally released from 19 December 2001 until 27 November 2003; and from 13 March 2004 until 15 March 2004 in order to attend the funeral of his mother.

TRIAL

The trial of Enver Hadžihasanović and Amir Kubura started on 2 December 2003 and concluded on 15 July 2005. The Prosecution called 100 witnesses and the defence called 75 witnesses in total, 62 for Enver Hadžihasanović and 13 for Amir Kubura.

RULE 98*bis* PROCEEDINGS

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule of whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charge(s), it can dismiss those charges and enter a judgement of acquittal before the beginning of the presentation of defence evidence.

In the decision dated 27 September 2004 pursuant to Rule 98*bis*, the Trial Chamber acquitted Enver Hadžihasanović on the part of the indictment concerning cruel treatment in Dusina, a village near Zenica, on 26 January 1993. It further acquitted Enver Hadžihasanović and Amir Kubura on the parts of the indictment concerning:

- Cruel treatment in Miletići, a village in Travnik municipality, on 24 April 1993, and in Maline, also in Travnik municipality, on 8 June 1993;
- The killings of Jozo Maračić at Zenica Music School on 18 June 1993 and a Croatian detainee in the former JNA barracks in Travnik in May 1993;
- The wanton destruction of towns and villages unjustified by military necessity in April 1993.

The Trial Chamber also took note of the Prosecution's withdrawal of the part of the indictment concerning:

- The wanton destruction of towns and villages unjustified by military necessity in Dusina in January 1993; and
- Pillage in Dusina in January 1993.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber convicted Enver Hadžihasanović and Amir Kubura for failing to take necessary and reasonable measures to prevent or punish several crimes that forces under their command committed in central Bosnia and Herzegovina in 1993 and the beginning of 1994. The Trial Chamber acquitted the accused of a number of other crimes and sentenced Enver Hadžihasanović to five years' imprisonment and Amir Kubura to two and a half years.

In the first Tribunal judgement to deal with the presence of foreign Muslim or Mujahedin combatants in central Bosnia and Herzegovina, the Trial Chamber found that the evidence showed 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.

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.

On 13 August 1993, an independent Mujahedin detachment, the so-called “El Mujahed” was established.

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. However, as regards the “local” Mujahedin, the Chamber found 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.

In terms of the *de facto* relationship between the Mujahedin and the 3rd Corps, the Chamber pointed 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 Enver Hadžihasanović or Amir 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 was no combat report from the Mujahedin to the accused, nor any other document which indicated 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 noted 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 did 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 failed 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 was 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.

The Trial Chamber found that 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, the fact remains that Enver Hadžihasanović exercised effective control over that detachment.

In respect of the specific crimes charged against the accused, the Trial Chamber ruled as follows:

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

The Trial Chamber found that Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović were killed in Miletići by the foreign and local Mujahedin from the camp in Poljanice. However, since these Mujahedin were not under the effective control of the accused in April 1993, they cannot be held criminally responsible for the murder of the four Croatian men.

The Trial Chamber also found that, on 8 June 1993, 23 Croatian men and one young woman from the village of Maline were executed while they were being held prisoner. The Trial Chamber found 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 was not satisfied that members of the 306th and 7th Brigades participated in the massacre. Accordingly,

the Trial Chamber found that the accused cannot be held criminally responsible for the murders committed in Maline.

The evidence presented before the Trial Chamber showed that Bosnian Croat and Bosnian Serb civilian men and HVO members were detained in the Zenica 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 found 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 noted that during that period more than one hundred detainees were imprisoned and abused at the Music School.

The Chamber found beyond all reasonable doubt that as of 8 May 1993 Enver 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 constituted cruel treatment. On the other hand, the Chamber found that the accused did not know of the poor living conditions at the Music School. It was established that the accused 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. Enver 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, Enver Hadžihasanović failed to discharge his duty and prevent the further commission of the crime of cruel treatment of prisoners detained in the Music School.

The Trial Chamber also found 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.

The Trial Chamber found 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 found 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 showed that the guards in the Barracks beat, repeatedly and for several hours, the detainees by hitting them with different objects and kicking them. The Chamber concluded 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 found 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.

The Chamber found that, on two occasions, around 250 Bosnian Croat civilians and 20 to 30 HVO soldiers were detained by the 306th Brigade in the Elementary School and the Blacksmith Shop in the village of Mehurići: 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. 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 found that it has not been established beyond reasonable doubt that Enver Hadžihasanović knew of the cruel treatment committed by his subordinates in the Mehurići Blacksmith Shop, given that he was not informed of the facts.

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 found 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. Evidence has indicated that after such brutalities some of the victims suffered several broken ribs, dislocated kidneys, and damaged spinal columns. The Chamber found 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 found that the Enver Hadžihasanović knew of the cruel treatment committed on 18 and 19 May 1993 by his subordinates in Motel Sretno. However, the Chamber found that the Prosecution failed to prove that he failed to take measures in regards to those crimes.

With regard to Amir Kubura, the Chamber was 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.

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, that is, the Slavonija Furniture Salon, the Bugojno Convent Building, the secondary school (*Gimnazija*) Building, the "Vojin Paleksić" Elementary School Building, the FC "Iskra" Stadium and the BH Bank Building. The Trial Chamber noted that minors and families were among the civilian prisoners.

The Trial Chamber considered that with the exception of the BH Bank detention facility, it had 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 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. After repeated beatings, Mladen Havranek was unable to walk and was dragged down the stairs to the cell in the basement. Mladen 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 concluded 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 considered, 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 Trial Chamber noted that the 3rd Corps was the authority having the power to detain, keep in detention, and transfer persons who were held in the detention centres set up in Bugojno and 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, Enver 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 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 considered 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 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 believed that the accused failed to intervene in order to prevent any mistreatment from occurring after 18 August 1993.

The El Mujahed detachment which was incorporated into the ABiH in August 1993 had a camp in the village of Orašac. 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 considered that it has not been established beyond reasonable doubt that the prisoners from the first wave of abductions were subjected to cruel treatment. However, it was established 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 considered 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 noted 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 considered that it has been proven beyond reasonable doubt that, on 20 October 1993, 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. The evidence also showed that on 20 October 1993, the accused had been informed of the measures taken until then by Mehmed Alagić, the commander of the "Bosanska Krajina" Operative Group, 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, Enver 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 considered 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 concluded that Enver 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 was furthermore of the opinion that, as soon as the El Mujahed detachment was incorporated into his forces, the accused 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 was clear, in the opinion of the Trial Chamber, that Enver 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 was not 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.

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.

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 considered, 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 noted 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 found that Enver Hadžihasanović and Amir Kubura cannot incur responsibility for this destruction of property.

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 considered, therefore, that the partial or total destruction of buildings and dwellings was extensive. Furthermore, the destruction was in no way justified by military necessity and it was committed deliberately by the soldiers of the 7th Brigade, with the specific aim of plundering property. The Trial Chamber considered, however, that the Prosecution has not proved beyond reasonable doubt that Amir Kubura had knowledge of the destruction committed by his subordinates in Vareš on 4 November 1993, as he was not informed of the destruction.

The Trial Chamber found that plundering took place in Miletići in April 1993. The Trial Chamber noted, 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 Trial Chamber found 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. The dwellings of the Croats and Serbs in the region had been searched and 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 was of the opinion that this plundering was repeated and widespread. Furthermore, the Trial Chamber considered that property was seized illegally and deliberately.

The Trial Chamber was of the view that the Enver 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 considered that the Prosecution had not proved that the accused failed to take preventive and punitive measures against the perpetrators of this plundering. The Trial Chamber considered, furthermore, that the accused 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 was of the opinion that Amir Kubura cannot be held responsible for the plundering which took place in Maline, since the Prosecution had 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 was of the opinion that the accused 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 Trial Chamber found that the 7th Brigade plundered Bosnian Croat and Bosnian Serb dwellings, buildings and personal property 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 was therefore in no doubt that the plundering was extensive and repeated. Furthermore, the Trial Chamber considered that property was seized illegally and deliberately. The evidence showed 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 was satisfied beyond reasonable doubt that, as of 4 November 1993, Amir Kubura had information that his subordinates were plundering in Vareš. It has been established that the accused, 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 also failed to take action against the perpetrators of these crimes and even organised the distribution of the plundered goods.

The Trial Chamber concluded 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 was in no doubt that this damage amounted 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.

On 15 March 2006, the Trial Chamber convicted the accused as follows:

Enver Hadžihasanović was found guilty on the basis of superior criminal responsibility (Article 7(3) of the Statute of the Tribunal) of:

- **Murder and cruel treatment** (violations of the laws or customs of war, Article 3)

Sentence: Five years' imprisonment.

Amir Kubura was found guilty on the basis of superior criminal responsibility (Article 7(3) of the Statute of the Tribunal) of:

- **Plunder of public or private property** (violations of the laws or customs of war, Article 3)

Sentence: Two and a half years' imprisonment.

Credit was given for time served since his transfer on 4 August 2001. On 11 April 2006, Amir Kubura was granted early release.

APPEALS CHAMBER JUDGEMENT

Amir Kubura filed his notice of appeal on 13 April 2006. Enver Hadžihasanović filed his notice of appeal on 18 April 2006. The Prosecution filed its notice of appeal on 18 April 2006.

On 3 July 2006, the Prosecution submitted its appeal brief. Both Enver Hadžihasanović and Amir Kubura have been given permission by the Appeals Chamber to submit their appeal briefs following the completion of the translation of the judgement.

On 22 January and 5 February 2007, respectively, Amir Kubura and Enver Hadžihasanović submitted their appeal briefs.

On 20 June 2007, Enver Hadžihasanović was granted provisional release for the remainder of the duration of the appeal proceedings.

On 14 November 2007, the Appeals Chamber ordered Enver Hadžihasanović to be present for the duration of the appeals hearing, which was held on 4 and 5 December 2007.

On 15 April 2008, the Appeals Chamber terminated the provisional release of Enver Hadžihasanović and ordered him to return to the UN Detention Unit due to the forthcoming pronouncement of the appeals judgement.

The Appeals Chamber judgement took place on 22 April 2008.

Firstly, with regard to the appellant's first, second and as part of his third and sixth grounds of appeal, the Appeals Chamber found 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.

Under his third ground of appeal, Hadžihasanović argued 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 agreed 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 found that no reasonable trier of fact could have found beyond reasonable doubt that the 3rd 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 Appeals Chamber recalled that a superior did not need to dispense punishment personally and may discharge his duty by reporting the matter to the competent authority. In the present case, the Appeals Chamber found 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. Therefore, the Appeals Chamber reversed 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.

Hadžihasanović also contended 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 supported 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 found 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. Therefore, the Appeals Chamber reversed 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 argued that the Trial Chamber erred by finding that he failed to take the reasonable measures necessary to punish the perpetrators and prevent such acts. The Appeals Chamber found 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 7th Brigade, such that any attempted concealment by members of the 7th Brigade was rendered secondary. Furthermore, Hadžihasanović submitted 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. The Appeals Chamber found 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.

Under his fifth ground of appeal Hadžihasanović submitted 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 argued 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 was only one factor that helped to establish effective control, and because the question was resolvable on the basis of effective control alone, the Appeals Chamber declined to address whether Hadžihasanović had *de jure* authority over the *El Mujahedin* detachment and concluded 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 reversed 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.

Under his first ground of appeal, Kubura submitted 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. The Appeals Chamber found that Kubura failed to establish that, given the evidence, no reasonable trier of fact could have concluded that members of the 7th 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 found that he ignored the additional evidence considered by the Trial Chamber and its resulting findings. The Appeals Chamber found 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 upheld 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 submitted 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. The Appeals Chamber deemed 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 implied 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 found that this constituted an error of law and concluded 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 found 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 upheld 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 was accordingly maintained.

Regarding the Prosecution's 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, the Appeals Chamber found 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 was not established beyond reasonable doubt.

Turning to the appeals concerning the sentences rendered by the Trial Chamber, the Appeals Chamber first allowed Hadžihasanović's arguments and corrected the Disposition of the Trial Judgement concerning the temporal scope of the cruel treatment at the Zenica Music School, but found that this correction to the Disposition of the Trial Judgement had no impact on the sentence.

With regards to the appeals by Kubura (who considered his sentence as manifestly excessive) and by the Prosecution (who appealed both Hadžihasanović and Kubura's sentences as manifestly inadequate), the Appeals Chamber dismissed the appellant's arguments. It found 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.

In light of the various reversals of convictions it entered in its Judgement, the Appeals Chamber reduced the sentences for Enver Hadžihasanović and Amir Kubura to three and a half years and two years respectively.

Enver Hadžihasanović was given credit for the time already spent in detention and was released in the wake of the Appeals Chamber's Judgement.

Amir Kubura had been granted early release on 11 April 2006.