

COURT OF BOSNIA AND HERZEGOVINA

**Number: X-KR-09/662**

**Sarajevo, 24 December 2009**

**IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting as the Panel composed of Judge Mira Smajlović as the Presiding Judge, and Judges Senadin Begtašević and Zoran Božić as the Panel members, with the participation of the Legal Officer Lejla Haračić as the record taker, in the criminal case against the Accused Stojan Perković, for the criminal offence of Crimes against Humanity in violation of Article 172(1)h) in conjunction with items a), e), f), g), i) and k) of the Criminal Code of Bosnia and Herzegovina, as read with Article 29 and Article 180(1) and (2) of the CC of BiH, upon the Amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-203/06 dated 17 December 2009, following the acceptance of the Plea Agreement No. KT-RZ-203/06 entered into on the same day, and the hearing for the pronouncement of the criminal sanction that was partly closed to the public, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Božidarka Dodik, the Accused Stojan Perković and his Defense Counsels, Attorneys Radivoje Lazarević and Miodrag Stojanović, rendered and on 24 December 2009 publicly announced the following:

**VERDICT**

**The Accused STOJAN PERKOVIĆ**, son of Pero and Savka nee Delić, born on 03 October 1944 in the village of Lađevine, the municipality of Rogatica, JMBG 0310944173233, Serb by ethnicity, citizen of BiH, pensioner by occupation, indigent financial standing, resident at Miloša Forcana Street bb, Rogatica, performed military service in Bileća in 1965, reserve military officer with the rank of major, married, father of three children, no previous criminal record, held in custody based on the Decision of the Court of BiH, No. X-KRN-09/662, of 16 January 2009

**IS GUILTY**

**Because:**

During the period from June until late 1992, within the widespread and systematic attack by the army and police of so-called Serb Republic of BiH, as well as paramilitary formations, directed against the non-Serb civilian population of the municipality of Rogatica, having knowledge of such an attack, as a member of the Army of Republika

Srpska (VRS) – Company Commander from the village of Lađevine, perpetrated, and knew, but neither prevented nor punished: killings; enforced disappearance of persons, severe depriving of physical freedom contrary to the basic rules of international law; rapes; persecution of non-Serb civilian population on national, ethnic, religious and sexual grounds; as well as other inhuman acts committed with the intent to cause great suffering, serious physical injuries and health damage, in the manner that:

- 1) In June 1992, he demanded that the inhabitants of the village Surovi surrender the weapons they had at their disposal, and after they had surrendered the weapons to him, on or around 28 June 1992, he came to the village under arms and accompanied by a dozen members of his unit, and unlawfully arrested the following civilians: Rušid Makaš, Sulejman Makaš, Ismail Makaš, Amir Makaš, Rasim Makaš, Nuhan Makaš, Jusuf Haliti and Rifet Ajanović, and physically abused Rušid Makaš by hitting him with a rifle butt on his head, causing him to fall down, and continued to beat him severely with a rifle butt and kick him all over his body; and Amir Makaš whom he severely hit several times with his rifle butt on his shoulders and head; whereupon he let all prisoners go home except Amir Makaš, Rušid Makaš and Rifet Ajanović, whom he took towards the village of Lađevine when they disappeared without trace; due to this incident, all villagers left the village out of fear for their lives and physical integrity, except Razija Makaš who then disappeared without trace; as a result of this event, all villagers left the village fearing for their lives and physical integrity except Razija Makaš who then disappeared without trace, as well as Almasa Golić and Šaćira Grabovica, who were deprived of their lives by unidentified members of his unit, which the suspect must have been aware of, but he did not undertake anything to prevent that or to punish the perpetrators,
- 2) In June 1992, in the village of Mesići, alongside with some other members of VRS, he unlawfully arrested civilians Nurija Kujović and Mehmed Bajić, who were subsequently unlawfully held in a hut in the village of Lađevine and were individually taken out of the hut blindfolded to be physically abused in the presence of the Suspect by the members of his unit; specifically they physically maltreated Nurija Kujović first by ordering him to sit on a chair, whereupon they were beating him with rifle butts on his head and body, which caused swellings and contusions in the area of his chests and a cut on his head; and then they physically maltreated Mehmed Bajić who was also ordered to sit on a chair, which is when he received a severe blow on his head which caused him to faint and sustain a cut, thus causing great physical pain and suffering, until the suspect ordered them to stop,
- 3) On or around 14 August 1992, in the village of Kosova, together with Rajko Kušić and a few other members of the VRS, he took part in the unlawful detention of civilians Fejzo Hurko, Šefik Hurko, Abdulah Hurko and Izo Hurko, in the garage owned by Mićo Andrić, where he subsequently, together with certain Krsmanović aka „Pipa“, physically maltreated and humiliated Šefik Hurko - by punching him in his head, holding a knife to his throat and forcing him to eat bullets caliber 7,62 mm; Fejzo Hurko – by punching him on his head and kicking him on the body, which caused him to faint; and Abdulah Hurko - by punching him on the head, causing

severe physical pain and suffering upon them, whereupon they took Abdulah Hurko out of the garage and he disappeared without trace,

- 4) In late summer 1992, he unlawfully arrested civilians Šaha Kulić, Suljo Kulić, Hajrija Kulić aka “Dika” and minor Amela Kulić, and unlawfully detained them in his old family house in the hamlet of Maljevići-Ladevine, where they were seen alive for the last time in September 1992, which is when they disappeared without trace,
- 5) In mid-December 1992, in the village of Varošište, where the Command of his unit was located at that time, unidentified members of VRS who were under his actual control, deprived old woman Hanifa Ajnadžić of her life, the crime of which he must have been aware of, but he failed to undertake anything to prevent it or to punish the perpetrators,
- 6) During the period from the summer until the end of 1992, in the village of Varošište, on many occasions, using force and threats, he forced a female person with pseudonym X-1 to sexual intercourse, by coming under arms and late by night to the house she was staying in and threatening her that he would kill her close family member if she failed to do whatever he would request of her, and while pushing her vigorously, he forced her to lay in bed removing her lower parts of clothes and raped her.

**Whereby he committed the criminal offence of Crimes against Humanity in violation of Article 172(1) of the CC of BiH:**

- subparagraph h), in conjunction with subparagraphs a), e), f), i) and k) as read with Article 29 and Article 180 (1) and (2), in respect of Section 1,
- subparagraph h), in conjunction with subparagraphs e) and f), as read with Article 29 and Article 180(1) of the CC of BiH, in respect of Section 2,
- subparagraph h), in conjunction with subparagraphs e), f) and k), as read with Article 29 and Article 180(1) of the CC of BiH, in respect of Section 3,
- subparagraph h), in conjunction with subparagraphs e) and i), as read with Article 180(1) and (2) of the CC of BiH, in respect of Section 4,
- subparagraph h), in conjunction with subparagraph a), as read with Article 180(2) of the CC of BiH, in respect of Section 5,
- subparagraph h), in conjunction with subparagraph g), as read with Article 180(1) of the CC of BiH, in respect of Section 6

Thus this Court, applying the above mentioned legal provisions and Articles 39, 42 and 48 of the CPC of BiH, imposes on him the

**SENTENCE**

**of 12 (twelve) years of imprisonment**

Pursuant to Article 56 of the CC of BiH, the time the Accused spent in custody commencing on 14 January 2009 until the beginning of serving his term shall be credited towards the imposed sentence.

## II

**Pursuant to Article 283b) of the CPC of BiH, the following charges against the Accused**

**ARE HEREBY DISMISSED**

That:

In June 1992, he demanded that the inhabitants of the villages of Kukavice, Kujundžijevići and Mesići surrender the weapons they had at their disposal, and after they had surrendered the weapons to him, on or around 9 October and 11 July 1992, an artillery attack was launched against those villages, which was subsequently followed by an infantry attack lead by the Suspect together with the members of his unit, which is when a greater number of civilians were killed, including: Nail Ajnadžić, Čamka Ajnadžić, Fatima Imširević, Sadik Jukić, Fatima Nevorić, Hadžira Šišić, Mujo Alić, Haša Šišić, Ragib Žiga, Ahmo Šuša, Devla Šuša, Jusuf Makaš, Nura Džindo, Hadžira Bajraktarević, Hajra Bajraktarević, Nezira Bajraktarević, while Memiš Bajraktarević disappeared without trace, and a large number of houses were put on fire, and property was pillaged,

**Whereby he would have committed** the criminal offence of Crimes against Humanity in violation of Article 172(1)h) in conjunction with subparagraphs a) and i) as read with Article 29 and Article 180(2) of the CC of BiH:

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused shall be fully relieved of the duty to reimburse the costs of criminal proceedings, which shall be covered from the Court budget.

Pursuant to Article 198(2) of the CPC of BiH, the injured parties and the relatives of the victims are hereby referred to take civil action with their claims under property law.

## **R e a s o n i n g**

### **1. Charges and Agreement**

By the Indictment of the Prosecutor's Office of BiH number: KT-RZ-203/06, dated 8 April 2009, which was confirmed on 20 April 2009, the Accused Perković was charged with the criminal offence of Crimes against Humanity in violation of Article 172(1)h) in conjunction with items a), e), f), g), i) and k) of the CC of BiH.

At the plea hearing held on 21 May 2009 before the Preliminary Hearing Judge, the Accused pleaded not guilty to all Counts of the Indictment, and the main trial in this case commenced on 26 June 2009.

During the main trial, on 17 December 2009, the Prosecution filed with the Court the Amended Indictment No. KT-RZ-203/06, having deleted Count 3 of the original Indictment from the factual description, at the same time submitting the Plea Agreement concluded on the same date between Prosecutor Božidarka Dodik and the Accused Perković, represented by his Defense Counsel Radivoje Lazarević and Miodrag Stojanović. According to this Agreement, the Accused pleaded guilty to the criminal offence of Crimes against Humanity in violation of Article 127(1)h), in conjunction with subparagraphs a), e), f), i) and k) of the CC of BiH, in the manner as factually described under Counts 1) through 6) of the Amended Indictment, accepting to be sentenced to a punishment of imprisonment ranging from 10 (ten) to 14 (fourteen) years.

For the purpose of deliberating on the concluded Agreement, at the hearing held on 22 December 2009 the Court, in direct contacts with the parties and Defense Counsels, examined the existence of necessary and legally prescribed requirements for the acceptance of the Agreement. The actual will of the Accused was examined on that occasion, specifically whether the Agreement was concluded voluntarily, consciously and with understanding. The Accused was warned that by his guilty plea he waives the right to a trial as guaranteed by the Constitution and Law, and that he will not be able to file an appeal against the criminal sanction that will be imposed on him. Finally the Court is satisfied that the Accused has understood all the possible consequences in relation to the claim under property law and the expenses of the criminal proceedings.

At the same hearing, the Prosecutor said that the guilt of the Accused resulted from the evidence presented by the Prosecution during the criminal proceedings, as well as the evidence tendered into evidence on that day. The Defense said on that occasion that it examined all the presented evidence and that it did not have any objections regarding its lawfulness, authenticity and relevance.

Following the hearing for deliberation on the Plea Agreement, the Court was satisfied that all requirements stipulated in Article 231(6) of the CPC of BiH were met, and that the Prosecution submitted to the Court sufficient evidence corroborating the guilt of the Accused Perković, so that the acceptance of the concluded Agreement was publicly announced on the same day.

On 24 December 2009, the hearing for criminal sanction pronouncement was held; the parties and Defense Counsels were given the opportunity to present the arguments that might have impact on meting out the punishment within the range provided for by the Agreement, as well as their closing arguments.

During this hearing the Prosecutor proposed that the Accused be sentenced to a punishment of imprisonment within the range provided for by the Agreement. She also pointed at the existence of the mitigating circumstances: the fact that the Accused confessed that he had committed the criminal offence; he had a significant cooperation with the Prosecutor's Office of BiH in the past period, which resulted in revealing a mass grave; this cooperation will be continued in the future. However, the fact that he

confessed that he had committed the crime does not diminish its gravity and its consequences either, which resulted in the loss of lives, injury of physical integrity and serious violation of the victims' dignity. Also, the Accused had a command role during the incriminated period, and he expressed a particular brutality in the perpetration of crimes, while all the victims were civilians in an inferior position, not having any actual possibility to offer resistance, so, on meting the punishment, such circumstances have to be considered as aggravating.

In their closing arguments, the Defense Counsels for the Accused Perković, Attorneys Radivoje Lazarević and Miodrag Stojanović expressed their compassion for all relatives of the victims. They pointed at the personality of the Accused who is now at his old age. He suffered personal losses as his son and sister got killed during the war in BiH. He is a category VII invalid and retired. In addition, the Accused accepted to be sentenced to a term of imprisonment within the range of 10 (ten) to 14 (fourteen) years, which has a more devastating impact at his age.

Pursuant to Article 235 of the CPC of BiH, the public was excluded during the presentation of one part of Defense's closing arguments due to disclosing the data that might jeopardize the Accused or his family, therefore, this measure was applied in order to protect the life of the Accused.

Finally, the Defense Counsels pointed at the mitigating circumstances existing on the part of the Accused, which should be taken into consideration by the Panel when meting out the punishment. The circumstances are reflected in the fact that the Accused, having pleaded guilty, showed a proper attitude towards the Court and the Prosecutor's Office, as well as the victims and witnesses, because he prevented them from being traumatized again by appearing before the Court to testify about the distressful events. The Accused also sincerely repented of the committed criminal offences, which he could not have prevented. According to the Defense Counsels, no aggravating circumstances exist on the part of the Accused apart from those that at the same time constitute the characteristics of the underlying crime he is charged with.

The Accused Stojan Perković, in his closing arguments, expressed his sincere remorse and compassion for the victims of the committed crime, pointing out that during the incriminated period he had helped as many people as he could, and that he had acted by the orders of his superiors; despite that he held himself fully responsible for his actions.

## **2. Presented Evidence**

That the Accused Stojan Perković committed the criminal offence he is charged with follows from the evidence that the Prosecution presented in the proceedings and based on the evidence tendered into the Court file at the hearing for deliberation on the Plea Agreement.

During the main trial, the Prosecution heard the following witnesses: Jusuf Haliti, Fadil Grabovica, Fata Makaš, Zahida Oglečevac, Rasim Makaš, Ahmed Kulić, Kasim Makaš,

Muhamed Makaš, Witness X5, Mehmed Bajić, Hajrija Kujović, Fejzo Hurko, Muhamed Hurko, Šefik Hurko, Alija Šišić, Ramiz Šišić, Ejub Bajraktarević, Ziba Ajnadžić, Suada Garagić, Ata Ćutahija, Devla Suša, Hamdo Bajić, Sulejman Bajraktarević, Ismet Ajnadžić and Hilmija Imširović.

Pursuant to Article 273(2) of the CPC of BiH, the statement of witness Kadrija Alić (Record on Witness Examination for Alija Kadrić, of 12 March 2009) was read out, as he was not able to appear at the main trial due to his health condition, which was supported by the material documentation (Decision of the Public Institution Cantonal Center for Social Welfare, of 27 August 2007 for Kadrija Alić).

The physical evidence tendered into the Court file at the hearing of 22 December 2009, which also deliberated on the Plea Agreement, include: Instructions on the organization and operations of the Serb people authorities in BiH in extraordinary circumstances, the Main Board of the SDS BiH dated 19 December 1991; Decision on verification of the proclaimed Serb autonomous regions in BiH (Excerpt from Official Gazette of the Serb People in BiH number 1/92 dated 15 January 1992); Decision on strategic objectives of the Serb People in BiH dated 12 May 1992 (Official Gazette of Republika Srpska number: 22/93 dated 26 November 1993); Decision of the Presidency of R BiH on the declaration of imminent war threat dated 8 April 1992 (Official Gazette of R BiH number 1/92); Decision of the Presidency of R BiH on the declaration of the state of war dated 20 June 1992 (Official Gazette of R BiH number 7/92); Excerpt from the document of the R BiH Statistics – ethnic composition of population in 1991, for the region of the Municipality of Rogatica; Report on work of the Rogatica Municipality Assembly, the executive board and the municipal administration for the period July 1992 - September 1993, number 01/1-012-54/93 dated 1 October 1993; (ICTY number 02159609-02159637); Report on work of the Crisis Staff of the Serb Municipality of Rogatica for the period from April - June 1992, (ICTY number 04654759-04654767); Certificate of the Department for General Administration of the Rogatica Municipality number 03/1-10-835-63 dated 27 November 2007 in the name of suspect Stojan Perković; Personal file in the name of suspect Stojan Perković; Unit personal file in the name of suspect Stojan Perković; Excerpt from VOB-8 book for VP 7084 Rogatica, ordinal number 25-the Suspect Stojan Perković; Letter of the Command of the 1st Podrinje Light Infantry Brigade confidential number: 06-1269-1/94 dated 23 November 1994, with an attachment- document titled „List of Military Senior Officers“ VP 7084 Rogatica, (ICTY number 04412053-04412071); Letter of the Rogatica Brigade Command number 55-1/92 dated 30 September 1992 sent to suspect Stojan Perković; Order by Commander of the 1st Podrinje Light Infantry Brigade strictly confidential No. 01-87/92 dated 15 December 1992; Order by Commander of the 1st Podrinje Light Infantry Brigade strictly confidential number 01-465/93, of 04 March 1992 (ICTY number 04410143); Letter of the Command of the 1st Podrinje Light Infantry Brigade number 05-1205/93 dated 7 July 1993, (ICTY number 04419419); Certificate of the Command of the 1st Infantry Battalion Command, of 05.12.1993, (ICTY number 04410463); Document titled „Statement of Chetnik Vinko Mačar from the region of Varošište“ (ICTY No. 01857215-01857218); Letter (in handwriting) addressed to „Aga“, signed by S. Perković; Receipt on handover of a pistol in the name of Ibrahim Ajnadžić dated 6 June 1992, signed by

Perković S.; Receipt on handover of a pistol in the name of Jusuf Makaš dated 7 June 1992, signed by Perković S; Two (2) Receipts on handover of a pistol/rifle in the name of Zajko Makaš dated 7 June 1992, signed by Perković S.; Two (2) Receipts on handover of a pistol/rifle, in the name of Ahmed Kulić dated 7 June 1992, signed by S. Perković; Indisputable handwriting of suspect Stojan Perković (1 page, A4 format), Findings and Opinion of expert witness graphologist Esad Bilić dated 24 February 2009; Diary of Muhamed Makaš titled: „War Diary 1992 – the Last Days I spent in my native area“; Medical documentation in the name of the protected witness X-1, namely: - findings of a neuropsychiatrist dated 14 December 2000, 22 January 2001 and 20 February 2008, - findings of a gastroenterohepatothologist dated 15 March 2005, 15 February 2007 and 19 March 2007, - findings of a radiologist dated 01 February 2007 and 6 February 2007; Findings and Opinion of a team of expert witnesses – a neuropsychiatrist / psychologist, on the state of the mental health of the protected witness X-1 dated 9 February 2009; Certificate of killing of Predrag Perković confidential number 47-59 dated 10 July 1993; Death Certificate for Predrag Perković dated 29 January 2009; Death Certificate for Nebojša Kanostrevac dated 18 February 2009; Photo-documentation of the State Investigation and Protection Agency number 17-14/1-7-22/09 dated 3 March 2009; Excerpt from the criminal record in the name of Stojan Perković dated 9 February 2009; Record of Exhumation by the Cantonal Court in Sarajevo number: Kri 165/98 compiled in the period from 31 August to 4 September 1998; Photo-documentation of the Cantonal MoI Sarajevo number: KU 1937, 1946, 1949, 1956/98 compiled on 11 September 1998 ( page 133 to 166 and page. 267 through 281); Record of the Cantonal MoI Sarajevo on Establishment of Identity of Hanifa Ajnadžić dated 10 September 1998; Report on the autopsy of the mortal remains of Hanifa Ajnadžić, Fatima Imširović, Nail Ajnadžić, Sadik Jukić, Čamka Ajnadžić made for the record of the Cantonal Court in Sarajevo number Kri-165/98, of 1 October 1998; Record on the exhumation by the Cantonal Court in Sarajevo number Kri 228/98 dated 4 November 1998; Photo-documents of the Cantonal MoI Sarajevo number KU 2541, 2542, 2552, 2553, 2554, 2557, 2597, 2598/98 dated 3 December 1998 (pages 1 through 26.); Record of the Cantonal MoI Sarajevo on Establishment of Identity of Šaćira Grabovica dated 18 November 1998; Record of the Cantonal MoI Sarajevo on Establishment of Identity of Almasa Golić dated 18 November 1998; Report on the autopsy of the mortal remains of Almasa Golić, Šaćira Grabovica, Ahmo Šuša and Nura Šuša, made for the record of the Cantonal Court in Sarajevo number Kri-228/98 dated 16 November 1998; Excerpt from the ICRC Register of Missing Persons for Hajrija Kulić; Excerpt from the ICRC Register of Missing Persons for Šaha Kulić; Excerpt from the ICRC Register of Missing Persons for Suljo Kulić; Excerpt from the ICRC Register of Missing Persons for Amela Kulić; Excerpt from the ICRC Register of Missing Persons for Razija Makaš; Excerpt from the ICRC Register of Missing Persons for Rušid Makaš; Excerpt from the ICRC Register of Missing Persons for Amir Makaš; Excerpt from the ICRC Register of Missing Persons for Rifet Ajanović; Excerpt from the ICRC Register of Missing Persons for Abdulah Hurko; Decision of the Basic Court in Višegrad on declaring missing person Abdulah Hurko dead, number 91-0-V-000-989-08-V dated 2 October 2008; Death Certificate for Abdulah Hurko dated 13 October 2008; Records of the Prosecutor's Office of BiH on examination of the Suspect Stojan Perković, number KT RZ-203/06, dated 14 January 2009, 15 January 2009 and 23 March 2009; Records of the Prosecutor's Office



of BiH on examination of Witness X-1, number KT RZ-203/06, dated 25 January 2008 and the State Investigation and Protection Agency, number 17-14/3-1-3/08, dated 9 January 2008; The SIPA Witness Examination Record for Kadrija Alić, No. 17-04/2-3-04-2-242/09, dated 12 March 2009; The SIPA Witness Examination Record for Jusuf Ajnadžić, No. 17-04/2-3-04-2-238/09, dated 10 March 2009; The SIPA Witness Examination Record for Zahida Oglečevac, No. 17-04/2-3-04-2-182/09, dated 14 February 2009; The BiH Prosecutor's Office Witness Examination Record for Fadil Grabovica, No. KT-RZ-203/06, dated 18 February 2009; The BiH Prosecutor's Office Witness Examination Record, No. KT-RZ-203/06, dated 16 February 2009; The Prosecutor's Office Witness Examination Record for Muhamed Hurko, No. KT-RZ-203/06, dated 16 February 2009; The SIPA Witness Examination Record for Izo Hurko, NO. 17-04/2-04-2-801/07, dated 8 August 2007; The SIPA Witness Examination Record for Fejzo Hurko, No. 17-04/2-04-2-16/07, dated 10 January 2007; The SIPA Witness Examination Record for Šefika Hurko, No. 17-04/2-04-2-17/07, dated 10 January 2007; The BiH Prosecutor's Office Witness Examination Record for Memsud Osmanspahić, No. KT-RZ-203/06, dated 4 February 2009; The Prosecutor's Office Witness Examination Record for Muhamed Makaš, No. KT-RZ-203/06, dated 28 January 2009; The Prosecutor's Office Witness Examination Record for Rasim Kulić, No. KT-RZ-203/06, dated 27 January 2009; The SIPA Witness Examination Record for Fata Makaš, No. 17-14/3-1-91/07, dated 5 June 2007; The SIPA Witness Examination Record for Jusuf Halili, No. 17-14/3-1-97/07, dated 12 June 2007; The SIPA Witness Examination Record for Rasim Makaš, No. 17-14/3-1-90/07, dated 4 June 2007; The Prosecutor's Office Witness Examination Record for Ahmed Kulić, No. KT-RZ-203/06, dated 17 February 2009 and the SIPA Witness Examination Record No. 17-14/3-1-88/07, dated 31 May 2007; The SIPA Witness Examination Record for Ismet Kulić, No. 17-14/3-1-87/07, dated 31 May 2007; The Prosecutor's Office Witness Examination Record for Kasim Makaš, No. KT-RZ-203/06, dated 5 February 2009 and the SIPA Witness Examination Record No. 17-14/3-1-77/07, dated 10 May 2007; The SIPA Witness Examination Record for Amir Ajnadžić, No. 17-13/3-1-65/06, dated 14 June 2006; The SIPA Witness Investigation Record for Stana Obradović, No. 17-04/2-3-04-2-93/09, dated 26 January 2009; The SIPA Witness Examination Record for Ramiz Jukić, No. 17-04/2-04-2-214/07, dated 15 February 2007; The SIPA Witness Examination Record for Refik Jukić, No. 17-04/2-04-2-335/07, dated 26 March 2007; The SIPA Witness Examination Record for Hajrija Kujović, No. 17-04/2-3-04-2-258/09, dated 12 March 2009; The SIPA Witness Examination Record for Mehmed Bajić, No. 17-04/2-04-2-138/07, dated 8 February 2007; Instruction on the organization and operations of the Serb people authorities in BiH in extraordinary circumstances, the main Board of the SDS BiH, dated 19 December 1991.

Finally, at this hearing, the Prosecution tendered into the Court file the new evidence obtained as a result of the cooperation of the Accused with the Prosecution: Record on the exhumation by the Cantonal Court in Sarajevo number KTA-81/09-RZ (Ref. TBiH KT-RZ-203/06), dated 28 September 2009; Official Note of the Cantonal MoI Sarajevo, Department for Homicide, Sexual Abuse and Crimes, No. 02/2-2-1-369/09, dated 2 October 2009; Report of the Cantonal MoI Sarajevo Criminal Police, Department for Criminal Techniques and Forensic Medicine, No. K.U. 2263/09, dated 5 October 2009,

Photo documentation of the crime scene (Rogatica, the village of Ladevine), prepared by the Cantonal MoI Sarajevo, No. K.U. 2263/09, dated 5 October 2009; Crime Scene Sketch by the Cantonal MoI Sarajevo, dated 28 September 2009; Report on the autopsy associating No. X-KRN-09/797 with the body No. 1, dated 2 October 2009; Report on the autopsy of the body No. 2 associated to No. X-KRN-09/797, dated 2 October 2009; Report on the autopsy of the body No. 3 associated with No. X-KRN-08/797, dated 2 October 2009; Record of the public utilities company *Gradska groblja, Visoko*, No. 190-427/09, dated 2 October 2009 on delivery of the DNA samples; Receipt on delivery of the DNK samples to the International Commission for Missing persons, specifically the samples for three persons, dated 2 October 2009; Official Note of the Prosecutor's Office of BiH, No. KT-RZ-203/06, dated 8 December 2009.

At this hearing the Defense stated that they were familiar with the contents of the new evidence and did not object to it being tendered into evidence.

### **3. Applicable Law**

By signing the Agreement No. KT-RZ-203/06 dated 17 December 2009, the Accused Stojan Perković admitted his guilt for the perpetration of the criminal offense of Crimes against Humanity or the criminal offence which, such as this, was not specifically prescribed by the Criminal Code of the Socialist Federative Republic of Yugoslavia, which was in effect at the time of the perpetration of the above mentioned criminal offence, however it is prescribed by the applicable Criminal Code of BiH.

The issue of applicability of the CC of BiH is therefore considered in the context of Article 4a) of the same Code and Article 7 of the European Convention on Human Rights and Fundamental Freedoms, particularly taking into regard the “*general principles of international law*” in terms of Articles 3 and 4 of the CC of BiH. Since the Crime against Humanity constituted a criminal offence in the relevant period as well, the application of the Criminal Code of Bosnia and Herzegovina remains the only possibility. This position is upheld by the jurisprudence of the Court of BiH as well as the Decision of the Constitutional Court<sup>1</sup> of BiH in the Abduladhim Maktouf Case<sup>2</sup>.

### **4. Crimes against Humanity**

Therefore the Panel finds that there exists sufficient evidence indicating that the Accused Stojan Perković committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraphs a), e), f), g), i) and k) of the CC of BiH.

The Accused admitted that, within the widespread and systematic attack directed against non-Serb civilian population of the municipality of Rogatica, having knowledge of such an attack, as a member of VRS – Company Commander from the village of Ladevine,

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<sup>1</sup> Inter alia, the first instance and the second instance verdicts in the case of Dragoje Paunović, NO. X\_KR-05/16, dated 26 May 2006

<sup>2</sup> Decision on Admissibility and Merits of the Constitutional Court of BiH in the case of Abduladhim Maktouf, No. AP 1785/06, dated 30 March 2007

perpetrated, and knew, but neither prevented nor punished killings, enforced disappearance of persons, severe depriving of physical freedom contrary to the basic rules of international law, rapes, torture and persecution of the non-Serb civilian population on national, ethnic, religious and sexual grounds, as well as other inhuman acts committed with the intent to cause great suffering, serious physical injuries and health damage.

Prior to reasoning the individual incriminations, it is necessary to list the evidence used as a basis for the existence of the general elements of this criminal offence, which include:

- Existence of the widespread and systematic attack directed against the non-Serb civilian population
- Nexus between the acts of the Accused and the attack - specifically the acts of the Accused constitute part of the attack
- Knowledge of the Accused about the attack.

The existence of this general element of the stated criminal offense requires violent acts, which is not limited to the use of armed force; it encompasses any mistreatment of the civilian population, but it requires a widespread and systematic attack, or widespread and systematic practice of the commission of crimes, and not individual or isolated incidents. While evaluating the nature of the attack, this Panel has been governed by the jurisprudence of this Court and ICTY, so that the word “widespread” depicts a wide scope of the attack and the number of persons being targeted by it, while the word “systematic” depicts the organized nature of violent acts and low probability that those acts were committed at random.

Based on the circumstances, the Prosecution proposed a certain number of established facts from the ICTY final judgments, thus the Panel accepted as proven the facts that were established in the first instance final ICTY Judgment – *Prosecutor vs. Mitar Vasiljević No. IT-98-32-T*, dated 29 November 2002 as follows:

1. The number of disappearances peaked in June and July 1992 (...) Most if not all of those who disappeared were civilians. The pattern and intensity of disappearances in Višegrad paralleled that of neighboring municipalities which now form part of Republika Srpska. Disappearances in those various neighboring municipalities occurred at approximately the same time (...) (*paragraph 53 of the Verdict*)
2. Non-Serb citizens were subjected to other forms of mistreatment and humiliation, such as rapes or beatings (...) (*paragraph 54 of the Verdict*)
3. The Trial Chamber is satisfied upon the evidence before it that there was a widespread and systematic attack against the non-Serb civilian population of the municipality of Višegrad at the time relevant to the Indictment. The attack took many forms, starting with the Serb take-over of the town and the systematic and large-scale criminal campaign of

murders, rapes and mistreatment of the non-Serb population of this municipality, particularly the Muslims, (...)  
(paragraph 58 of the Verdict)

All of the examined Prosecution witnesses testified to the same circumstance, as well as the witnesses whose statements were tendered into the Court file, giving rise to the conclusion that all villages populated predominantly with Muslims were subjected to the attack, specifically the villages of Surovi, Brčigovo and others, or the wide area of the Rogatica municipality, which is additionally supported by material documentation, specifically Decision of the Crisis Staff of the Serb Municipality of Rogatica declaring the state of war in the territory of the municipality (Report of the Work of the Crisis Staff April – June 1992) and Decision on the declaration of imminent threat of war dated 9 April 1992 and Decision on the declaration of the state of war in the territory of RBiH dated 20 June 1992.

Following the conclusion based on the evidence that the attack was a widespread or that it included a wider area of the Rogatica municipality, the Panel found that it was at the same time systematic.

Specifically, the pattern of repetition of certain events can be clearly observed in the tendered evidence, such as the attack on the villages predominantly populated with Bosniaks, violent treatment of the non-Serb civilians that were being killed, taken away in a unknown direction, unlawfully deprived of liberty without any legal grounds or any explanation and subsequently detained and kept in extremely inhumane conditions and subjected to torture and inhumane treatment.

All criminal acts that were perpetrated during the incriminated period of time by the Accused Perković and his subordinates as well as other members of military and paramilitary forces of Republika Srpska, which operated in the territory of the Rogatica municipality, clearly do not have the characteristics of random, isolated actions, but they constitute a typical pattern of the violent treatment of the non-Serb civilian population in that territory, which undoubtedly points at the systematic character of the attack.

It is clear from the testimonies of all examined witnesses and tendered physical evidence that the attack was directed against the civilian population. Specifically, the persons against whom the crime was committed were not members of any military force at the critical point of time, and they did not offer any armed resistance or undertake an active part in the hostilities.

According to the following requirement for the existence of the criminal offence of Crimes against Humanity, the acts of an Accused must be part of a widespread or systematic attack, and that the Accused is aware of such circumstance. The fulfillment of this element first of all results from the fact that during the incriminated period the Accused was a member of the Army of the Serb Republic of Bosnia and Herzegovina, specifically Commander of the Ladevine Unit, which is clear from the tendered physical evidence such as Certificate of the Department for general Administration of the Rogatica Municipality No. 03/1-10-835-63 dated 27 November 2007 for the Accused Stojan Perković, Personal file and Unit personal file for the Accused, Excerpt form VOB-8 book

for VP 7084 Rogatica, ordinal number 25 – his name, Letter of the Command of the 1<sup>st</sup> Podrinje Light Infantry Brigade confidential number 06-1269-1/94, dated 23 November 1994 with an attachment – document titled “List of Reserve Military Officers” VP 7084 Rogatica, (ICTY number 04412053-04412053-04412071), Letter of the Rogatica Brigade Command No. 55-1/92 dated 30 September 1992 sent to the Accused Stojan Perković

The testimonies of almost all witnesses corroborate the aforementioned, and the Court has undoubtedly concluded that the Accused, by acting as a Commander in the territory and at the time relevant for the Indictment, was fully aware not only of the actual circumstances of the attack but also that his actions constituted part thereof.

### **Individual Incriminations**

Pursuant to Article 231(6)b) of the CPC of BiH, the Panel has found that the Prosecution tendered into the Court file the sufficient evidence unquestionably confirming the criminal responsibility of the Accused Stojan Perković exactly in the manner as factually described under Counts 1) through 6) of the Amended indictment.

The Accused is charged that during the relevant period, within the widespread and systematic attack by the army and police of so-called Serb Republic of BiH, as well as paramilitary formations, directed against the non-Serb civilian population of the municipality of Rogatica, having knowledge of such an attack, as a member of VRS – Commander of the Lađevine Company, perpetrated, and knew, but neither prevented nor punished the persecution of the non-Serb civilian population on national, ethnic, religious and sexual grounds by committing crimes against them, specifically a) depriving another person of his life (murder), e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, f) torture, g) coercing another by force or by threat of immediate attack upon his life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, i) enforced disappearance of persons; and k) other inhuman acts of a similar character intentionally causing great suffering or serious injury to body or to physical or mental health.

The Accused entered into the Plea Agreement for the perpetration of the criminal offence of Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraphs a), e), f), g) and k), as read with Articles 29 and 180(1) and (2) of the CC of BiH, which are the acts described under Sections 1) through 6) of the operative part of the Verdict, such as:

- subparagraph h), in conjunction with subparagraphs a), e), f), i) and k) as read with Article 29 and Article 180 (1) and (2), in respect of Section 1,
- subparagraph h), in conjunction with subparagraphs e) and f), as read with Article 29 and Article 180(1) of the CC of BiH, in respect of Section 2,
- subparagraph h), in conjunction with subparagraphs e), f) and k), as read with Article 29 and Article 180(1) of the CC of BiH, in respect of Section 3,

- subparagraph h), in conjunction with subparagraphs e) and i), as read with Article 180(1) and (2) of the CC of BiH, in respect of Section 4,
- subparagraph h), in conjunction with subparagraph a), as read with Article 180(2) of the CC of BiH, in respect of Section 5,
- subparagraph h), in conjunction with subparagraph g), as read with Article 180(1) of the CC of BiH, in respect of Section 6.

With respect to Section 1 of the operative part of the Verdict, the factual allegations are also confirmed by the testimonies of Witness X 5, Jusuf Haliti, Rasim Makaš, Kasim Makaš, Muhamed Makaš, Fata Makaš, Rasim Kulić, Ismet Kulić, Ahmed Kulić, Memsud Osmanspahić, Zahida Oglečevac and Fadil Grabovica. All these witnesses, some of them being the eyewitnesses of the critical event, gave clear statements the essential parts of which are consistent, on the basis of which the Court concluded that there existed sufficient evidence about the guilt of the Accused or that he acted exactly in the manner as charged with in the Amended Indictment. Also, the testimonies of these witnesses are corroborated with the physical evidence such as the diary of Muhamed Makaš titled “War Diary 1992 – Last Days I Spent in My Native Area“, a letter addressed to “Aga”, receipts on delivery of arms, and findings and opinion of graphologist Esad Bilić, dated 24 February 2009, establishing that the handwriting of the Accused appears on the receipts on delivery of arms.

With respect to Section 2 of the operative part of the Verdict, the factual allegations are also confirmed by the testimony of the injured party Mehmed Bajić who described in detail at the main trial the participation of the Accused Perković in the relevant event, which is additionally corroborated by the testimony of Hajrija Kujović, wife of the injured party Nurija Kujović, so the Panel concludes that there exists sufficient evidence about the guilt of the Accused.

With respect to Section 3 of the operative part of the Verdict, the factual allegations are also confirmed by the testimony of the injured parties Fejzo Hurko and Šefik Hurko who consistently described how they had been deprived of liberty and unlawfully detained in the garage of Mićo Andrić’s house located in the village of Kosova, where they were subjected to torture and inhuman treatment by the Accused and soldiers subordinated to the Accused. The above mentioned is corroborated also by witnesses Izo Hurko and Muhamed Hurko, so the Panel finds that there exists sufficient evidence about the guilt of the Accused.

With respect to Section 4 of the operative part of the Verdict, the factual allegations are also confirmed by the testimonies of Witness X-1 and Stana Obradović who had the opportunity to visit the injured parties in the old house of Stojan Perković in the village of Maljevići, as well as the witnesses Amir Ajnadžić and Ahmed Kulić, whose testimonies are corroborated with the physical evidence – the photo documentation of the old house of the Accused in the village of Maljevići, Excerpts of the ICRC Register of Missing Persons for Šaha Kulić, Suljo Kulić, Hajrija Kulić aka Dika and minor Amela Kulić, so the Panel finds that there exists sufficient evidence about the guilt of the Accused.

With respect to Section 5 of the operative part of the Verdict, the factual allegations are also confirmed by the testimonies of Witness X-1 and Stana Obradović who had the opportunity to see the injured party after she had been killed, and she was present when the Accused learned that the murder had been committed by a member of the Ladevine Company whose Commander he was. The following witnesses also testified to this circumstance: Amir Ajnadžić and Jusuf Ajnadžić. Their testimonies are corroborated with the physical evidence such as: Record on exhumation and photo documentation about the exhumation and identification as well as the findings of the autopsy of the mortal remains of the injured party. Therefore, based on the above mentioned, the Panel finds that there exists sufficient evidence about the guilt of the Accused.

With respect to Section 6 of the Verdict, the factual description of the events was given in detail by the protected Witness X-1. Her testimony is corroborated by the medical documentation as well as the findings and opinion of the expert witnesses - a neuropsychiatrist and a psychologist, and it is indirectly supported with the testimony of the witness Stana Obradović who confirmed that the Accused had a contact with the injured party who used to live nearby. Therefore, the Panel finds that there exists sufficient evidence about the guilt of the Accused.

By the criminal acts described under Counts 1) through 6) of the Amended Indictment, the Accused committed also the criminal offence of persecution in violation of **Article 172(1)h) of the CC of BiH** because while perpetrating the individual incriminations, he acted with a discriminatory intent against the non-Serb civilian population of the Rogatica municipality. Consequently, in this particular case, the ethnicity of the victims constituted the grounds on which they were subjected to killings, torture, rape and inhuman treatment by the Accused and his subordinates.

The command responsibility stipulated in Article 180(2) of the CC of BiH has been established in relation to individual Counts of the Indictment. Specifically, it follows from the collected evidence that the Accused had a clear superior position in relation to lower ranked soldiers as well as actual power to control their actions. Therefore he is responsible for the actions of his subordinates when he was present but failed to prevent them, as well as for the actions of his subordinates when he was not present but was aware of them or they could not remain unknown to him, but he failed to punish the perpetrators upon finding about the actions.

Consequently, by entering into the Plea Agreement, the Accused has admitted the perpetration of the criminal offence of Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraphs a), e), f), g), i) and k), as read with Article 180(1) and (2) and Article 29 of the CC of BiH, and the Panel has found that there exists sufficient evidence about his guilt under each Count of the Amended Indictment number: 203/06, dated 17 December 2009.

Due to the fact that based on the evidence presented during the main trial, the Prosecution amended the Indictment No. 203/06, dated 8 April 2009 (confirmed on 20 April 2009),

by withdrawing the charges under Count 3 of the original Indictment related to the attack on the villages of Kukavice, Kujundžijevići and Mesići, the Panel dismissed these charges pursuant to Article 283(1)b) of the CPC of BiH.

### **5. Decision about Punishment**

A term of imprisonment of at least 10 years or a long-term imprisonment is prescribed by the law for the criminal offence the Accused Stojan Perković is charged with.

As aforementioned, the Plea Agreement provides for the Accused to be sentenced to a term of imprisonment ranging from 10 (ten) to 14 (fourteen) years and it is obvious that the proposed range already constitutes the punishment reduced below the legal minimum.

As expressly stipulated in Article 231(3) of the CPC of BiH, the Court, while meting out the punishment, stayed within the proposed punishment range, taking into account all the circumstances that currently exist on the part of the Accused.

Thus the Court took into account as a mitigating circumstance the fact that the Accused expressed his sincere remorse for the committed criminal offences, while his cooperation that he undertook by the Agreement has already produced some results. In addition, the Accused suffered personal losses as his son and sister got killed during the war, and he himself is a category VII invalid and is in his old age.

However, the Court took into account as an aggravating circumstance a considerable number of the criminal acts and a large number of victims, which points to the high level of the criminal responsibility of the Accused in perpetration of the relevant criminal offences. Thus based on all the above mentioned it has been concluded that the purpose of punishment stipulated in Article 39 of the CC of BiH will be fully achieved by the pronouncement of a term of imprisonment of 12 (twelve) years.

### **6. Decision about Costs**

Pursuant to Article 188(4) of the CPC of BiH, the Court decided to fully relieve the Accused of the duty to reimburse the costs of criminal proceedings, having in mind that he is retired, being in custody for a relatively longer period of time, and that he is about to serve a long-term imprisonment in the forthcoming period. Therefore, putting him under the obligation to reimburse the costs of the proceedings would unquestionably jeopardize the subsistence of his family and his own.

### **8. Claims under Property Law**

When deliberating on this issue, the Panel particularly took into regard that during the main trial some injured parties were given the opportunity to declare themselves directly about their claims under property law and the amounts thereof. However, it has been concluded that the facts established during the proceedings so far do not offer a reliable basis for full or partial judgment, so the injured parties as well as the relatives of the



victims are, pursuant to Article 198(2) of the CPC of BiH, hereby referred to take civil action with their claims under property law.

**Record-Taker**

**PRESIDING JUDGE**

**Lejla Haračić**

**Mira Smajlović**

**LEGAL REMEDY NOTE:** An appeal from this Verdict may be filed with the Panel of the Appellate Division of this Court within 15 (fifteen) days of the receipt of the Decision, except with regard to the imposed criminal sanction.