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Odjeljenje za sudsku upravu / Одјељење за...
X-KR-07/382
PREVOD 943

Number: X-KR-07/382
Sarajevo, 29 April 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel comprised of Judges Minka Kreho as the President of the Panel, and Roland Dekkers and Tore Lindseth, as members of the Panel, with the participation of the Legal Advisor Amela Skrobo as the Minutes-taker, in the criminal case against the accused Mirko Todorović and Miloš Radić, for the criminal offense of Crimes against Humanity in violation of Article 172 (1) item h), in conjunction with items a) and f), Article 29 and Article 180 (1) of the Criminal Code of Bosnia and Herzegovina, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ:140/05 of 15 June 2007, as amended on 18 April 2008, after the main and public hearing attended by the accused Mirko Todorović and his defense counsels – attorney Hamdo Kulenović until 24 January 2008 and thereafter attorney Žiko Krunić, and the accused Miloš Radić and his defense counsel Stanko Petrović, and the Prosecutor of the BiH Prosecutor's Office, Adnan Gulamović, on 29 April 2008, in the presence of the Accused and their defense counsels, and the Prosecutor of the BiH Prosecutor's Office, Sanja Jukić, publicly rendered and announced the following

VERDICT

The Accused

1. **MIRKO TODOROVIĆ** a.k.a. Banana, son of Đorđe and Smilja, née Šarac, born on 15 May 1954 in Bratunac, residing in Repovac bb */no number/*, Municipality Bratunac, Serb, citizen of BiH, car mechanic, literate, driver by occupation, graduated from the Vocational Secondary School, married, father of three children, served military service in 1974 in Kraljevo and Niš, no ranks, no decorations, registered in the Bratunac Military Records, average financial status, convicted by the Judgments of the Municipal Court in Srebrenica number K.414/88 of 15 December 1987 for the criminal offense referred to in Article 43 of the CC BiH with the pronounced fine in the amount of 60,000 dinars, the Judgment of the Municipal Court in Srebrenica number K.220/87 of 22 September 1987 for the commission of the criminal offense referred to in Article 81(1) of the CC SRBiH with the imposed fine in the amount of 20,000 dinars and the Judgment of the Municipal Court Osječina, number K 125/87 of 30 January 1990 for the criminal offense referred to in Article 201/5 in conjunction with Article 195(3) and 1 of the CC SRS with the pronounced suspended sentence, one year of imprisonment, two years on parole, no proceedings conducted for any other criminal offense, in custody pursuant to the Decision of the Court of BiH, number: X-KRN/07/382 of 24 May 2007,

and

2. **MILOŠ RADIĆ**, son of Mirko and Milosava, née Todorović, born on 5 June 1959 in Srebrenica, residing in Repovac bb/*no number*/, Municipality Bratunac, Serb, citizen of BiH, car mechanic, literate, qualified car mechanic by occupation, married, father of three children, served the Army in 1989/90 in Travnik, registered in the Bratunac Military Records, no ranks, no decorations, average financial status, no prior convictions, no proceedings conducted for other criminal offense, in custody pursuant to the Decision of the Court of BiH, number: X-KRN/07/382 of 24 May 2007.

ARE FOUND GUILTY

Because:

During the armed conflict in Bosnia and Herzegovina when both the army and the police of Republika Srpska launched a widespread and systematic attack against the Bosniak civilian population in the territory of the Municipality of Bratunac, the accused Mirko Todorović and Miloš Radić, members of the Republika Srpska Army, with knowledge of such an attack, persecuted the Bosniak civilians on political, national, ethnic, cultural and religious grounds by depriving them of physical liberty, and by torture and killings, in the following manner:

On 20 May 1992 during the afternoon hours, in the village of Borkovac, the Municipality of Bratunac, in a group with four other members of the Army of Republika Srpska, including Novak Stjepanović a.k.a. Krke, participated in the arrest of a group of 14 (fourteen) Bosniak civilians, namely: Hamed Alić, Hamid Alić, Halima Alić, Maho Avdić, Hamedina Ramić, Munib Sulejmanović, Hajrudin Hasanović, Hamed Velić, Fadil Sulejmanović, Amer Ramić, Naser Sulejmanović, Muharem Salkić, Mehmed Jahić and Ibro Džananović who were hiding due to the fear of the attack by the Republika Srpska army and police in an abandoned quarry, not far from the village of Borkovac where most of them resided, and thereafter took them in a line toward the village, when someone from the group of attackers killed Avdić Maho with a shot from the weapon who was at the back of the line, and thereafter tortured the frightened civilians by punching them, kicking them with boots all over their bodies, seized all their money and valuables, cursing them for their ethnicity, and thereafter took them to a slope toward a nearby creek where they lined them up with their faces turned toward the creek and then shot them from behind their back, due to which their bodies were falling into the creek, on which occasion Hamid Alić, Halima Alić, Munib Sulejmanović, Fadil Sulejmanović, Hajrudin Hasanović, Hamed Velić, Hamedina Ramić were killed due to the shots from the firearms,

Therefore,

As a part of the widespread and systematic attack directed against the Bosniak civilians, with knowledge of such an attack, the accused persecuted the civilian Bosniak population as accomplices on political, national, ethnic, cultural and religious grounds by depriving them of their physical liberty, by torture and killing,

Whereby

they committed the criminal offense of *Crimes against Humanity* in violation of Article 172 (1) item h), in conjunction with item a), e) and f) of the Criminal Code of BiH, all in conjunction with Article 29 and Article 180 (1) of the same Code.

Therefore, pursuant to the stated statutory regulations, and in conjunction with Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the accused Mirko Todorović and Miloš Radić are

SENTENCED

TO IMPRISONMENT FOR A TERM OF 17 (SEVENTEEN) YEARS EACH

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina, the time that the Accused spent in custody shall be credited to the imposed sentence of imprisonment starting from 24 May 2007 and further on, or until a possible committal to serve the sentence.

II

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused *are relieved in part of the duty to compensate the costs of the proceedings,* about which the Court shall render a special decision.

III

Pursuant to Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties shall be instructed to pursue their claims under property law in a civil action.

Reasoning

1. Charges

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, Special Department for War Crimes, number KT-RZ-140/75 of 15 June 2007, the accused Mi

Todorović and Miloš Radić were charged for the commission of the criminal offense of *Crimes against Humanity* in violation of Article 172 (1) item h), in conjunction with items a) and f) of the Criminal Code of Bosnia and Herzegovina.

As referred to in the Indictment, the Accused committed this criminal offense on 20 May 1992, namely the persecution of civilian Bosniak population from the territory of the Municipality of Bratunac, committed by torturing a group of 14 civilians, of whom 8 were killed.

The Indictment was confirmed on 21 June 2007, and the accused, namely Mirko Todorović on 6 July, and Miloš Radić on 12 July 2008, pled not guilty, after which the case was transferred to the Trial Panel, which opened the main trial on 1 October 2007.

During the whole main trial, the Accused were in custody, due to the existence of special circumstances indicating that they would use their release to influence the witnesses or the accomplices, who were identified during these proceedings.

2. Adduced Evidence

a) Evidence for the Prosecutor's Office

During the main trial, the following witnesses were examined: Hamed Alić, Naser Sulejmanović, Elma Kaljević, Hamed Ramić, Safa Sulejmanović, Amer Ramić, Sadeta Hasanović, Rušveta Sulejmanović, Zejneba Avdić, Radoje Živković, Dane Lončarević, Suljo Čakanović, Ljubiša Todorović, Muharem Salkić, Bajro Kulovac and expert witness Vedad Tuco.

The following documentary evidence was adduced: a letter by the survived victim Amer Ramić addressed to his father Hamed Ramić; a copy of the ID card of Miloš Radić; two copies of the ID card of Mirko Todorović with two different photos of the Accused; Excerpt from the criminal record dated 1 June 2005, number 12-1-6/02-235-106/05; Excerpt from the criminal record dated 31 May 2005, number 12-1-7/02-235-89/05; Photo-documentation dated 10 May 2004, number 08-02/3-5-04, 6-3132/04 (containing 78 photos); Sketch of the on-site location dated 4 May 2004, number 08-02/3-5-04,6-3132/04; Military ID record of Republika Srpska for Todorović Mirko, number 338/54; Military ID record of the SFRY for Miloš Radić, number 123997; Official Report on the action pursuant to the Order of the Court of BIH number X-KRN-07/382 of 22 May, number: 17-04/2-04-2-2105 BK of 24 May 2007; Certificate of seizure of the items, number: 17-04/2-04-2-11/07 of 23 May 2007; Record of the search of house, other premises and movable items, number: 17-04/2-04-2-11/07 of 23 May 2007; Record of the handover of the person deprived of liberty, number: 17-04/2-04-2-6/07 of 23 May 2007; Certificate of seizure of items, number: 17-04/2-04-2-12/07 of 23 May 2007; Record of the search of the house, other premises and movable items, number: 17-04/2-04-2-12/07 of 23 May 2007; Record of the handover of the person deprived of liberty, number: 17-04/2-04-2-6/07 of 23 May 2007; Record of exhumation KTA-609/04 of 29 April 2004; Letter of the Cantonal Prosecutor's Office of Tuzla Canton, number: KTA-609/04 of 3 October 2006; Identification Record, number: REP-1/1-b for Hasanović Hajrudin; Death certificate for Hasanović Hajrudin (fee); Report of forensic expert evaluation number REP-1/1b of 7 May 2004; DNA Results number: REP-

1/1b for Hajrudin Hasanović; Identification Record, number REP-1/2b for Halima Alić; Death certificate for Halima Alić (REP-1/2 b); Report of forensic expert evaluation of 6 May 2004, REP-1/2b; DNA Results of 23 December 2004 for Halima Alić; Identification Record, REP-1/3b for Sulejmanović Munib (fee), Death certificate for Munib Sulejmanović; Report of forensic expert evaluation of 6 May 2004 number REP/1/3; DNA Results number 1/3 for Munib Sulejmanović; Identification Record, number REP-1/4b for Alić Hamid, Death certificate for Alić Hamid (fee); Report of forensic expert evaluation of 6 May 2004; DNA Results number 1/4 REP for Hamid Alić; Identification Record for Avdić Maho, Death certificate for Avdić Maho (fee); Report of forensic expert evaluation for Hamed Velić; DNA Results number 1/6b REP; Identification Record for Hamed Velić REP 1/6 b (fee); Death certificate for Hamed Velić (fee); Report of forensic expert evaluation, number REP 1/6b of 6 May 2004; DNA Results (duplicate); Identification Record for Fadil Sulejmanović, number REP 1/7; Death certificate for Fadil Sulejmanović (fee); Report of forensic expert evaluation, number REP 1/7; Death certificate for Fadil Sulejmanović (fee); Report of forensic expert evaluation of 7 May 2004 REP/1/07b; DNA Results for Fadil Sulejmanović, Identification Record number REP 1/8b for Hamedin Ramić; Death certificate for Hamedin Ramić; Report of forensic expert evaluation of 29 April 2004 for the case 1/8 REP; DNA Results for Hamedin Ramić, case REP 1/8b; Items from the processing of the case REP 1/2b and 1/6b (pistol bullet shells); SIPA Witness Examination Record for Ljubiša Todorović, number 17-04/2-04-2-608/07 of 12 June 2007.

b) *Evidence for the Defense*

The following witnesses for the Defense of the accused Mirko Todorović were examined: Živojin Milovčević, Miladin Jovanović, Mehmedalija Ahmić; Dragomir Blagojević; Milorad Nikolić, Safet Hasanović; Ohran Musić, Osman Osmanović, Hanifa Velić, Miloš Todorović, and the witnesses for the defense of the accused Miloš Radić: Ikonija Pavlović, Krstina Petrović, Đurdija Radić, Ramo Smajlović and Sabit Smajlović.
Witness Miloš Todorović also testified for the defense of the accused Miloš Radić.

Documentary evidence of the Defense for the first-accused adduced during the main trial is as follows: Judgment of the Military Court in Bijeljina, No. IK-137/95 of 1 August 1995 against Mirko Todorović, and the SDS Bratunac Certificate, No. 01-01/08 of 11 January 2008 for Mirko Todorović.

The Defense for the second-accused did not offer any documentary evidence.

3. Closing Arguments

a) Prosecutor's Office

In his Closing Argument, the Prosecutor stated that the essential element of the criminal offense of Crimes against Humanity is the existence of a widespread or systematic attack, the directness of such attack against civilian population, the knowledge, or the awareness of the perpetrator about the existence of such attack, and the indication of the adduced evidence that the accused Mirko Todorović and Miloš Radić knew about the existence of such attack, and that by their actions they committed this particular criminal offense. The Accused were aware of the existence of the attack on the civilian Bosniak population, and they also wanted their actions to constitute a part of that attack because, having acted with a discriminatory intention, they committed the persecution and exposed the injured parties to the criminal treatment only because they were members of a particular group of people, namely because of their Bosniak ethnicity. In the Prosecutor's Office opinion, it can be seen from the evidence adduced at the main trial that the attack on the civilian Bosniak population of the city of Bratunac and its outskirts and also the surrounding villages was widespread and systematic in its character, and also from the evidence adduced in other proceedings before the ICTY, that the Court of BiH accepted upon the Motion of the BiH Prosecutor's Office.

With regard to individual charges, the Prosecutor stated, as an indisputable fact, that on 20 May 1992, in the territory of the Municipality of Bratunac, in the Borkovac settlement, eight Bosniak civilians were killed, and the fact that the Accused were at the crime scene *tempore criminis*. In the Prosecutor's Office opinion, it ensues from the testimonies of the survived witnesses Hamed Alić, Naser Sulejmanović, Muharem Salkić and Amer Ramić, of whom some where neighbors and school friends of the Accused and who knew them well, that the Accused participated in the arrest of these civilians, were present when they were mistreated and plundered, and subsequently participated in their taking away to the execution site and at their execution itself.

With regard to the actions of the Accused, their awareness and will, the Prosecutor opines that it has been proved by the adduced evidence that the Accused were aware that in concert with other persons they participated in the commission of this criminal offense, and that having shared the common goal of the group, namely the liquidation of the captured Muslim civilians which followed after their arrest, mistreatment and taking to execution, they undertook the actions which contributed in a decisive manner to the commission of the crime, on which occasion they acted with an intention, in which manner they are fully responsible as accomplices based on the individual criminal responsibility for the actions as charged.

Finally, regarding the Defense evidence adduced at the main trial, and also the thesis that against their will the Accused had been taken by unknown persons to the woods where the crime was committed, the Prosecutor evaluated it as the evidence directed exclusively at avoiding the criminal responsibility of the Accused, and viewed the testimonies of the witnesses for the Defense as contradictory, biased and directed at helping the Accused with whom they have family relations. Thus the Prosecutor pointed out that due to all the foregoing, he proposed the Panel to find the Accused responsible, and to sentence them to a long term imprisonment.

b) Defense

In their Closing Arguments, the defense counsels for the first-accused and the second-accused pointed out that the Defense objected to the application of the Criminal Code of BiH because the Code concerned was not applicable at the time of the commission of the stated criminal offense, and also because the application of this Code is contrary to the general principles of the rule of law and the principle *nullum crimen nulla poena sine legem*, which is also expressed in Article 7 of the ECHR. In the Defense's opinion, it is obvious that due to the abolished death penalty prescribed by the provisions of the SFRY Criminal Code, the SFRY Criminal Code was more lenient to the perpetrator, and that as the more lenient code, it should have been applied in this case too.

The defense counsels for both the Accused pointed out their opinion that the actions of their clients had not satisfied the essential elements of the criminal offense as charged. Primarily, they are of the opinion that the widespread and systematic attack on Muslims in the territory of the Municipality of Bratunac did not exist because the organized action concerning the persecution of Muslim population in the territory of the Municipality of Bratunac had been completed on 10 May 1992, namely 10 days before the critical event concerned, and that the Bosniak population of Borkovac and the surrounding villages had already left these territories, due to which, in the opinion of the Defense, no widespread and systematic attack could have existed. No piece of evidence was adduced so as to prove that any civil or military authority of the Municipality of Bratunac ordered any attack against the group of civilians who had been hidden in the woods in the territory of the village of Borkovac, or that any legal authority had planned the attack. Therefore, in the opinion of the Defense, the accident in Borkovac was an isolated case.

The defense counsel for the first-accused Mirko Todorović pointed out that the Accused had not taken any action which would constitute torture or depriving another person of his life, nor persecution of the civilian population in relation to that, that none of the witnesses charged him with any mistreatment and seizure of valuable items as arbitrarily referred to in the Indictment, while witness Muharem Salkić explicitly confirmed that the Accused had not mistreated him or seized any valuable items from him. Regarding the presence of the Accused at the crime scene at the time of the crime commission, the Defense points out that he had been forced by the volunteers, including "Krke", to set off toward the area where the accident concerned subsequently occurred, and that the Accused admitted that he had been at the crime scene for a while, but had left it before the execution of the captured civilians. Only the first-accused was not masked at the critical time, which, in the opinion of the Defense, indicates his honorable intentions on that occasion, as also indicated by the fact the during the period from 10 May 1992 through 12 May 1992, Todorović, helped by a guard, managed to help his Muslim neighbors and acquaintances to leave the sports hall in which they had been detained. This event points to the fact that it is impossible that the Accused could transform himself from a positive person into a criminal in only 7 days. In the opinion of the Defense, the fact that the Accused was not at the crime scene at the critical time, namely that shortly before the tragic event he went home, is confirmed by the consistent testimonies of the accused Miloš Radić and witnesses Muharem Salkić and Hamed Alić, who stated that the Accused had not been there at the time of the critical event. In the Defense opinion, the testimonies of witnesses Naser Sulejmanović and Amer Ramić concerning the same circumstance should be evaluated as negatively motivated against the Accused, and particularly the testimony of Amer Ramić, which should be taken within the context of inadmissible examination by the Prosecutor who had asked this witness leading questions concerning the presence of the Accused during the event. These differences in the testimonies are of decisive importance for the evaluation concerning the lack of existence of the responsibility of the accused Todorović.

The defense counsel for the second-accused Miloš Radić pointed out, *inter alia*, that it ensues from the testimonies of the examined witnesses that the Accused was a peaceful and honest man who mostly socialized together and cooperated with his Muslim neighbors, was not a member of any political party and therefore could not have known about the ideas of either the Republika Srpska or the Municipality of Bratunac. He repeated that the Defense does not contest the fact that at the critical time the Accused was present at the crime scene, but that according to his own statement he was forced to it against his will by the persons who had come there to commit crimes. These allegations were also confirmed at the main trial by the Defense witnesses. It became clear to the Accused what would happen with the arrested civilians only after they had been lined up along the creek. After that, he tried to escape, but slipped and fell down. Thereupon, he was ordered to come back. In the opinion of the Defense, the Prosecutor's Office failed to prove that at the critical time the Accused had a camouflage cap on his head, which was stated in the investigation only by witness Muharem Salkić, while the other witnesses stated this only at the main trial. The Defense concludes from this that they acted in concert before their giving evidence. In the Defense opinion, it is clear from the adduced evidence that on the critical occasion the accused Miloš Radić did not arrest, torture in any manner, seize money or any other valuable items from the arrested Muslim civilians, that he did not shoot them, kill or injure any of them. In the opinion of the Defense, on the critical occasion, the Accused was not in a position to objectively help the injured-parties in any way because he was afraid that he could be also killed.

The defense counsels for both the Accused contested the legality of the statement taking from witness Ljubiša Todorović in the investigation because the examiner was a record-taker at the same time, and also the confrontation of the SIPA inspector and this witness at the main trial because it is contrary to the CPC BiH provisions. Finally, they pointed out that the BiH Prosecutor's Office failed to prove beyond any reasonable doubt that their clients were guilty of the criminal offense as charged and proposed that they be acquitted of the charges.

4. Procedural decisions

a) Decision on the Motion of the BiH Prosecutor's Office, number KT-RZ-140/05 of 22 October 2007 to accept certain facts established in the ICTY cases and certain written evidentiary material used by the ICTY; and about the proposal by the Defense for the accused Mirko Todorović of 13 March 2008 to accept certain facts adjudicated before the ICTY

Pursuant to Article 4 of the Law on Transfer of Cases by the ICTY, in conjunction with Articles 261 (1) and 15 of the CPC BiH, the BiH Prosecutor's Office filed on 22 October 2007 the motion to accept certain facts adjudicated by the ICTY and the written evidentiary material from the proceedings before the ICTY of importance for the case at hand.

Under item A of the Motion, the Prosecutor's Office stated the facts established in the case against: Mitar Vasiljević, concerning the existence of a widespread and systematic attack in the territory of the Municipality of Višegrad; and in the cases against Milorad Krnojelac and

Dragoljub Kunarac concerning the existence of a widespread and systematic attack in the territory of the Municipality of Foča.

Under item B of the Motion, the Prosecutor's Office proposed the acceptance of the evidentiary material from the *Vidoje Blagojević* case, namely the statement of the witness Miroslav Deronjić - the Miroslav Deronjić case, the Decision on Strategic Goals of the Serb People in BiH, number: 02-130/92 of 12 May 1992, the Instruction on Organization and Activities of the Serb People Authorities in BiH in Extraordinary Circumstances of 19 December 1991; Momčilo Krajišnik, the Decision Declaring Extraordinary Circumstances due to Imminent War Danger in the Territory of the Serb BiH of 16 April 1992, the Order on General Mobilization by the Crisis Staff of the Municipality of Bratunac of 16 April 1992, Bratunac Crisis Staff Order prohibiting the activities of all paramilitary formations and illegal citizens in the territory of the Municipality of Bratunac of 1 May 1992 and the BiH Census from April 1991.

By his submission of 10 December 2007, at the time defense counsel for the first-accused Mirko Todorović, attorney Hamdo Kulenović, objected to this Motion and proposed its refusal as unfounded.
The defense counsel particularly referred to the Motion to Accept Established Facts, pointing out that they concerned the territory which was not the subject of these criminal proceedings, namely the Foča and Višegrad territory.
He also contested the use of the statement of Miroslav Deronjić from the proceedings in the *Vidoje Blagojević* case since he considered it inapplicable because this witness entered a plea agreement in the proceedings conducted against him as the accused.
Therefore, he proposed that the Prosecutor's Office Motion be refused as unfounded.
The defense counsel for the second-accused, attorney Stanko Petrović, supported this objection and particularly emphasized that the proposed established facts did not concern the territory of the Municipality of Bratunac.

The Prosecutor's Office supplemented this Motion by its submission of 19 December 2007, specifying the proposed established facts in terms of the first instance, or the second instance establishment of those facts by the ICTY Judgments in these cases, and clarified the proposed statement of witness Miroslav Deronjić referred to in the *Vidoje Blagojević* case in terms of its taking and using during this witness testimony at the main trial before the ICTY.

Thereafter, on 15 January 2008, and upon the Court's request, the Prosecutor delivered the entire paragraphs' content of the ICTY Judgments proposed for the established facts acceptance.

With regard to such specified factual arguments, the new defense counsel for the first accused, attorney Žiko Krunić, gave his comments on 11 March 2008, and upheld the original proposal by his client's defense, namely that the Prosecutor's Office Motion be refused as unfounded.

On the same day, the defense counsel for the second-accused also gave his comment and maintained his first response, additionally emphasizing that the paragraphs referred to in the Judgment in the *Milorad Krnojelac* case concerned the command responsibility, with his client Miloš Radić was not charged, and that none of the three stated cases has nothing to do both in terms of space and time with the events for which the accused Miloš Radić was tried.

However, on 13 March 2008, the defense counsel for the accused Mirko Todorović, attorney Žiko Krnić, filed the proposal to accept the established facts, namely the facts referred to in paragraphs: 311, 312, 314, 315, 320 and 709 of the ICTY Judgment in the *Momčilo Krajišnik* case, number IT-00-39-T of 27 June 2006.
According to the averments referred to in the proposal, the proposed facts are relevant to the presentation of the context of the events at the time for which Mirko Todorović is charged, and although the Judgment in the *Momčilo Krajišnik* case has not become final, these facts can be taken into consideration since they were not the subject of an appeal from the Judgment.

In deciding about the foregoing proposals, the Court was led by the following:

aa) Applicable Law – Acceptance of the Established Facts

Article 4 of the Law on Transfer reads as follows:

"At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings."

The Court found that the formal requirement referred to in Article 4 requesting that the parties be granted a hearing, was satisfied.

Article 4 provides the Court the discretion to decide whether to accept the proposed facts. Neither the Law on Transfer nor the Criminal Procedure Code of Bosnia and Herzegovina establishes any criteria based on which the Court could exercise its discretion.

Article 4 of the Law on Transfer is drafted similarly to the ICTY Rule 94 (B) of the Rules of Procedure and Evidence.[1] Therefore, the ICTY case law concerning this provision can ensure the convincing guidelines for the interpretation and application of Article 4 of the Law on Transfer.

In the Decision in the *Prosecutor v. Momčilo Krajišnik* case (Decision in the *Krajišnik case*), the following criteria[2] for the adjudicated facts acceptance are stated, namely that the fact:

[1] Rule 94(B) reads as follows: "At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings."
This principle is common in international criminal law. The Rules of Procedure and Evidence of the Special Court in Sierra Leone, for example, contains an almost identical provision as Rule 94 (B).
[2] Prosecutor v. Krajišnik, case number IT-00-39-PT, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis, of 28 February 2003. All ICTY Panels did not formulate these criteria in the same manner. See, for example, the Prosecutor v. Popović et al. case number

(i) it is *distinct, concrete and identifiable*;
(ii) it is restricted to *factual* findings and does not include *legal* characterizations[3];
(iii) it was *contested* at trial and forms part of a judgment which has either *not been appealed* or has been *finally settled* on appeal; or
(iv) it was *contested* at trial and now forms part of a judgment which is under appeal, but falls within issues which are *not in dispute* during the appeal;
(v) it does *not attest to criminal responsibility* of the Accused;
(vi) it is *not the subject of (reasonable) dispute* between the Parties in the present case[4];
(vii) it is *not based on plea agreements* in previous cases; and
(viii) it does not impact on the *right of the Accused to a fair trial*[5].

The Court would add the following to the criteria established in the Decision: in order to accept the fact as established it must not be a conclusion, an opinion or an oral testimony; it must contain the ICTY essential findings that are not significantly altered; and it must be established in the proceedings in which the accused had a common interest with the accused in this case and in which the accused is guaranteed the right to a defense counsel and also the right and a possibility to defend himself on his own from the charges against him. See, for example, the *Popović* case, as referred to above.

The Court also finds, same as the International Criminal Tribunal for Rwanda did in the *Karemera* case, that it would not be appropriate to interpret the foregoing criterion (v) to such a wide extent so as to give it the primacy over the rules allowing the adjudicated facts:

"The Appeals Chamber, however, has never gone so far as to suggest that judicial notice under Rule 94(B) cannot extend to facts that "go directly or indirectly" to the criminal responsibility of the accused (or that "bear" or "touch" thereupon). With due respect to the Trial Chambers that have so concluded, the Appeals Chamber cannot agree with this proposition, as its logic, if consistently applied, would render Rule 94(B) a dead letter. The purpose of a criminal trial is to adjudicate the criminal responsibility of the accused. Facts that are not related, directly or indirectly, to that criminal responsibility are not relevant to the question to be adjudicated at trial, and, as noted above, thus may neither be established by evidence nor through judicial notice. " (Deleted quotation)[6]

IT-05-88-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts, of 26 September 2006, paragraphs 5-14 (Decision in the Popović case).

[3] It is not fully clear what constitutes a legal characteristic. In the reasoning of its version of the same standard, the Panel wrote in the *Popović* case that it only upheld the suggestion of the Panel in the *Krajišnik* case, and that in any case it should be examined individually. Decision in the *Popović* case, supra, par. 10.

[4] See also *Prosecutor v. Slobodan Milošević*, case number IT-02-54-AR73.5, *Decision on the Interlocutory Appeal of the Office of the Prosecutor against the Decision of the Trial Chamber* (of 10 April 2003) upon the *Prosecution Motion for Judicial Notice of Adjudicated Facts* (28 October 2003) (the Decision in the *Milošević* case), Dissenting Opinion of Judge Shahabudden.

[5] See *Prosecutor v. Krajišnik*, case number IT-00-39-PT, *Decision on the Third and Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts*, of 25 March 2005. This text was, *inter alia*, applied in the Decision in the *Ljubinac* case, referred to above, and the *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, case number IT-01-47-T, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts upon the Motion filed by the defense counsel for the accused Hadžihasanović and Kubura on 20 January 2005, of 14 April 2005.*

[6] *Prosecutor v. Karemere et al.*, case number MKSR-98-44-AR73(C), *Decision on Interlocutory Appeal of* *from the Decision the Prosecution Motion for Judicial Notice of Adjudicated Facts*, 16 June 2006, par. 48

Accordingly, the Panel correctly concluded that the facts indicating the acts, the behavior or the mental state of the accused cannot be accepted as established facts. However, the facts indicating the criminal responsibility of the accused in other ways (for example, the existence of a widespread and systematic attack in the criminal prosecution upon the charges for the crimes against humanity) can be accepted as established facts.[7]

The Court upholds such perception, and only adds that the traditional rule against excess excludes the interpretation of Article 4 of the Law on Transfer by which this Article would be made a dead letter. Instead, the courts are led by this traditional rule to conclude that the intention of the authors of the Law on Transfer is to give a meaning to Article 4, and to the extent in which the foregoing interpretation of the fifth principle referred to in the *Krajišnik* case would make Article 4 irrelevant, the Court is prevented from adopting it. Indeed, the rule prohibiting excess would primarily prevent the Panel in the *Krajišnik* case to include such factor in its test, had they really intended to prevent the adjudication of any relevant fact.

In applying Article 4, the Court must also establish a balance between the judicial economy and the right of the accused to a fair trial and the presumption of innocence referred to in Article 6 of the ECHR, and the procedural guarantees referred to in Article 6 of the CPC BiH. Due to these reasons, the Court of BiH reiterates that the acceptance of established facts as "proven" pursuant to the criteria referred to in the *Krajišnik* case does not release the Prosecutor from his burden to prove, nor does it in any way decrease the presumption of innocence[8]. The acceptance of a certain fact as proven only means that the Prosecutor has satisfied his burden of convincing with regard to a certain fact, and that he does not have to prove it any further during the presentation of the Defense evidence. The accused withholds the right to contest any of the accepted facts in his defense from the charges pressed against him[9], and also any factual assertion offered in support of the charges and with regard to which the Prosecutor adduced the evidence. If the accused actually contests any established fact, the Prosecutor must then adduce additional evidence so as to dispute the contests of the

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[7] Ibid. par. 50. see the Decision in the *Popović case*, par. 12-13, and particularly footnote 45 (stating that the proposed fact concerning the existence of a terror campaign against refugees, Bosnian Muslims which does not fit into the narrow exemption prohibiting the acceptance of adjudicated facts concerning the acts, behavior or mental state of the accused). See also the *Prosecutor v. Galić*, case number IT-98-29-AR73.2, Decision on Interlocutory Appeal cocnerning Rule 92 bis (C), 7 June 2002, par. 8-9 (in which it is concluded that it is allowed to accept as adjudicated the facts concerning the acts and behavior of those whose superior was the accused, even when the prosecution continued in part with the theory of responsibility of the superior); the *Prosecutor v. Dragoje Paunović* case No. X-KRŽ 05/16. Judgment upon the Appeal, par. 5
(27 October 2006). (The existence of a widespread and systematic attack against non-Serb civilians in the stated territory consitutes just such general fact which is clear, precise and as such does not confirm the criminal responsibility of the accused). But, see also the *Prosecutor v. Željko Mejakić et al.* Case, IT-02-65, *Decision upon the Prosecution Motion for Judicial Notice of Adjudicated Facts pursuant to Rule 94 (B)*, 1 April 2004, when the Panel refused to accept as adjudicated facts in relation to the existence of an armed conflict based on the consideration of the facts as "too wide, tendentious and that they contain a legal characterization of the facts."

[8] See, for example, the *Salabiaku v. France* case, European Court of Human Rights (7 October 1998)(who presented his view in the relevant part that the transfer of the burden to prove on the accused in certain circumstances does not constitute a violation of the presumption of innocence as guaranteed by the European Convention when it is resticted to "reasonable boundaries which take into account the importance of the matter at issue and the protection of the right of the accused", id, par. 28, and that the accused is not left "entirely without the means for defense", or to interfere with the capacity of the court to freely evalaute the evidence tendered by the parties to the proceedings, id. par.29).

[9] See the *Prosecutor v. Slobodan Milošević* case, number IT-02-54-AR73.5, *Decision on the Interlocutory Appeal of the Office of the Prosecutor against the Decision of the Trial Chamber* (of 10 April 2003) upon the *Prosecution Motion for Judicial Notice of Adjudicated Facts* (28 October 2003).

Defense. Similarly to this, the established facts, if accepted, shall be viewed in the light of the overall circumstances and all the evidence adduced from all the sources. They are not dispositive nothing more than any other fact.[10]

Based on the foregoing, Article 6 of the ECHR or Article 6 of the CPC BiH is not violated by the practice of established facts. In addition to this, the Court applies the rule referred to in the *Krajišnik* case before the ICTY which, *inter alia*, ensures the refusal of the proposal to accept the adjudicated facts if the acceptance of such proposal would "affect the right of the accused to a fair trial". Furthermore, by offering the party objecting the Motion, namely the defense, to contest the motion concerned at the main trial, and a possibility to file a submission in response, the Court undertook additional measures so as to ensure the fairness and the integrity of the current proceedings. When the Court ensures the required procedural rights for the Defense, then it can decide to accept as proven the facts established under the final decision in the other proceedings before the ICTY pursuant to Article 4 of the Law on Transfer.

ab) Acceptance of Written Evidentiary Materials

The Court also finds that the Prosecutor's Office requests the Court to accept the written evidentiary material used in the proceedings before the ICTY. The Court found that in this situation, the Law on Transfer is the law appropriate to be applied. The Law on Transfer is a *lex specialis* and it is designed with an objective to remove any risk that the CPC BiH renders the ICTY evidence inapplicable. The *lex specialis* status constitutes special rules that have primacy over the CPC BiH in relation to the evidence collected by the ICTY, the rules on admissibility and use of such evidence.[11]

Article 3 (1) of the Law on Transfer reads as follows:

> *"Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH."*

The Court finds this provision (concerning the written evidentiary material) a supplement to Article 4 of the Law on Transfer which provides, as in the established facts case "the courts may decide to accept documentary evidence from proceedings of the ICTY *relating to matters at issue in the current proceedings.*"

Article 8 of the Law on Transfer prescribes that this documentation can be accepted in the proceedings before the courts and that it shall be deemed as obtained by competent local authorities as long as it is "Original documents, certified copies, certified electronic copies and copies authenticated as unaltered in comparison to their originals". The Court does not

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[10] See the foregoing, footnote 6, par. 42 .. "... the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point: the defense may then put the point into question by introducing reliable and credible evidence to the contrary. This approach is consistent with practice in national jurisdictions: whereas judicial notice of facts of common knowledge may be treated as conclusive, the final adjudication of facts in judicial proceedings is treated as conclusively binding only, at most, on the parties to those proceedings."

[11] *Prosecutor v. Gojko Janković*, case number X-KR-05/161, Verdict, 16 February 2007, pg.22, see als *Miloš Stupar* et al., case number X-KR-05/24, Decision on the acceptence of the evidence collecte December 2006, pg. 4.

see any other requirement in the Law on Transfer or in the CPC BiH related to the acceptance of the written evidentiary materials obtained from the ICTY.

If it is taken into account that one of the documents proposed by the Prosecutor is a witness statement, the Court will now consider the requirements to accept such forms of evidence.

The Court is of the opinion that Article 273 (2) of the CPC BiH prescribes the possibility that records on testimony given during the investigative phase may be read or used as evidence at the main trial without examining the persons who gave those testimonies. This exemption from the general rule of direct presentation of evidence can be approved if, *inter alia*, those persons "are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons."

Furthermore, Article 7 of the Law on Transfer prescribes the possibility that the witnesses' statements given to the ICTY investigators during the investigation may be read before the courts in BiH. In addition to this, Article 5 (1) of the Law on Transfer prescribes the acceptance of the transcripts of testimonies given before the ICTY, and also that the records of out of trial depositions of witnesses made before the ICTY are acceptable before the courts in BiH.

Nevertheless, Article 5 (3) of the Law on Transfer provides that this admissibility shall not prejudice the defendant's right to request the attendance of witnesses for the purpose of cross-examination.

Regardless of whether the evidence is accepted pursuant to the CPC BiH or the Law on Transfer, it is still the subject of the Court's evaluation regarding fairness, reliability, credibility and correctness as established by the most important requirements referred to in the ECHR.[12]

With regard to Article 6 (3) of the ECHR, the European Court established that courts must: "establish whether the proceedings in their entirety, including the manner of the evidence taking, were fair."[13] This includes, pursuant to Article 6 (3) of the ECHR, the defendant's right to confront the witness and the evidence at the public hearing and the important right to contest the evidence and cross-examine the witness.[14]

However, these rights of the accused are not unlimited. The European Court did not establish any proving rules, but it will check whether the accused was denied the right to a fair trial by the evidence accepted by a violation of the rights of the accused. For example, if the witness testimony is exclusive, or is the basis for the conviction of the accused to a decisive extent, and if he did not have an opportunity, in any phase of the investigation or the trial, to cross-examine or to examine the stated witness, this lack of confrontation will deprive him of certain aspects of a fair trial.[15]

This view is also contained in Article 3(2) of the Law on Transfer which stipulates that "The courts shall not base a conviction of a person solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial."

[12] *Prosecutor v. Gojko Janković*, case number X-KR-05/161, Verdict, 16 February 2007, pg.23.
[13] *Kostovski v. Holland*, Judgment, 20 November 1989, request number 11454/85, par. 39.
[14] *Barbera, Messegue and Jabardo v. Spain*, Judgment, 6 December 1988, request number 10590/83, par. 78
[15] *Saidi v. France*, Judgment, 20 September 1993, request number 14647/89, par.44.

The Court further states that in the proceedings before the ICTY, pursuant to Rule 92*bis* of the Rules on Procedure and Evidence: "A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment." This can be done, for example, in cases when a relevant historical, political or military framework is ensured by the witnesses' evidence.

ac) **Conclusions of the Court**

Bearing in mind the foregoing, the Court decided as follows:

With regard to the Motion of the Prosecutor's Office to accept as evidence the documents referred to in items B-2 and B-3 of the Motion, the Court finds that these documents do not differ in any way from the other documents which the parties to the proceedings can offer. They in fact do not differ from any other certified and relevant document which the Prosecutor's Office could obtain from the ICTY. The Court found that the Defense did not object to the acceptance of these documents as evidence on any ground referred to in the CPC BiH (for example, relevance, credibility and lawfulness). Furthermore, the Court found irrelevant the fact that these documents had been already used in the proceedings before the ICTY. The greatest responsibility of the Court will be to decide on the credibility, the weight and the evidentiary value of all the evidence to be adduced before the Court.

With regard to the statement of Miroslav Deronjić in the *Blagojević* case referred to in item B-1 of the Motion, the Court would firstly like to note that the Defense failed to explain why it objected to the acceptance of this statement: they only explain the objection against the evidence referred to in the *Deronjić* and *Krajišnik* cases. Nevertheless, the Court considered the proposed statement based on the statutory provision related to this, and primarily concluded that the statement had not been given during the investigation. Deronjić gave this statement on 25 November 2003, while the trial against Deronjić had already started on 14 May 2003. The Court also opines that this statement cannot be considered a written record of the testimony given before the ICTY or the record of a deposition before the ICTY pursuant to Rule 71 of the ICTY Rules on Procedure and Evidence. The Court concluded that these facts put out of force the application of Articles 5 and 7 of the Law on Transfer and Article 273 (2) of the CPC BiH. In this manner, the general provisions referred to in Article 3 and 4 of the Law on Transfer remain, and also the above mentioned requirements referred to in the ECHR.

The Court established that Deronjić had died last year in the prison while serving his sentence. Therefore, any cross-examination related to his statement became impossible. However, although the Court is not bound by the ICTY Rules on Procedure and Evidence, and taking into account the content of the statement, the Court concluded that the statement is more an evidence of certain matters rather than the acts and behavior of the accused as charged in the Indictment. Bearing in mind the requirements referred to in Article 3(2) of the Law on Transfer, the Court will therefore accept this statement as evidence.

The Court therefore accepted the following evidentiary material used in the proceedings before the ICTY:

1. From the *Vidoje Blagojević* case, number IT-02-60 of 17 January 2005 - the statement of witness Miroslav Deronjić of 25 November 2003: that the attack against civilian non-Serb population in the territory of East Bosnia and Herzegovina, including Bratunac, was widespread and organized undoubtedly ensues from the statement of this witness, which contains 68 pages of text, which particularly ensues from paragraph 63 which reads as follows: "There existed a certain chronology, a certain sequence of events that occurred. Similar things happened in Bijeljina, Zvornik and to the extent unknown to me, in Višegrad. First volunteers would come to a certain place and then the rest would follow: murders, liquidations, intimidation of inhabitants, panic, etc. Thereupon, the army would arrive, the JNA with a deceptive intention to establish order. However, all this would cause the intimidation of inhabitants, Muslims, after which the ethnic cleansing would follow. The fact that the Army arrived in Bratunac two or three days after the arrival of volunteers, indicates that the same scheme of events was to occur in Bratunac as well. All these events were devised with the goal that Serbs take over the power, and all this is connected with the implementation of the Plan A and the Plan B and the creation of Republika Srpska" (Tape T000-2073, pages 33-34 of the English transcript).

2. From the *Miroslav Deronjić* case, number IT-02-61-S of 30 March 2004:

a) Decision on the Strategic Goals of the Serb People in BiH, number 02-130/92 of 12 May 1992, which also confirms the existence of the widespread and systematic attack which should have as a result the establishment of a corridor in the Drina River valley, and thereby the elimination of Drina as the border between the Serb states.
b) Instructions for the Organization and Activity of the Organs of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances of 19 December 1991, from which the manner and the structure of organization of Bosnian Serbs in the planning of a widespread and systematic attack against non-Serb population ensues.

3. From the *Momčilo Krajišnik* case, number IT-00-39 of 27 August 2006:

a) Decision Declaring Extraordinary Situation due to Imminent Danger of War in the Territory of the Serb BiH of 16 April 1992, from which it ensues that due to the extraordinary situation the territorial defense of the Serb BiH was established, general mobilization ordered in the entire territory of the Serb BiH and that all military conscripts must be put at the disposal of the municipal staffs of the SBiH.
b) Order of the Crisis Staff of the Municipality of Bratunac on General Mobilization of 16 April 1992 from which it ensues that during the critical period in the territory of the Municipality Bratunac a general mobilization of the Serb people was declared (about which, as further follows, the accused speak)
c) Order of the Crisis Staff of the Municipality of Bratunac prohibiting activities of all paramilitary formations and illegal citizens in the territory of the Municipality Bratunac of 1 May 1992, from which it ensues that during the critical period in the territory of the Municipality Bratunac, the Army of the S BiH (VRS) was the only one with legal activities, whose members were the accused as well.
d) The BiH Population Census from April 1991 from which undisputable changes in the national composition of the entire BiH population, including Bratunac, ensue.

Acceptance of the established facts referred to in items A-1, A-2 and A-3 of the Motion is refused because the Court finds that the proposed Judgments concern the events in different parts of Bosnia, and that therefore they are not relevant to the allegations referred to in the Indictment.

The Court finds that the assertion of the Prosecutor's Office, that the Panel in the *Momčilo Mandić* case in fact accepted the facts from the judgments in the *Krnojelac* and *Kunarac* cases, is not founded. Momčilo Mandić was charged because of the responsibility for the events which occurred in the Correctional Facility in Foča, thus there is a visible, albeit geographical connection with the judgments in the *Krnojelac* and *Kunarac* cases. However, the current proceedings conducted against the Accused do not have such a connection with the events described in these judgments.

On the other hand, in deciding upon the proposal of the defense counsel for the accused Mirko Todorović to accept the established facts from the ICTY Judgment in the *Momčilo Krajišnik* case, the Court decided to accept parts of the following paragraphs of the Judgment IT-00-38-T:

1. Paragraph 311: "On 16 April, the TO in Bratunac was mobilized and in the following days, Arkan's and Šešelj's paramilitary units, and a JNA unit under the command of Captain Reljić, arrived in the municipality."

2. Paragraph 312: "Serb authorities issued a 29 April deadline by which non-Serbs, almost exclusively Muslims, had to sign oaths of loyalty to Serb rule in the municipality. Most Muslims had left Bratunac municipality by that date. Serb soldiers looted the abandoned Muslim properties."

3. Paragraph 320: "The Chamber finds that already between 10 and 29 April 19
the Muslim population left the municipality due to threats by Serb paramilitary

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4. Paragraph 709: "Although the Chamber finds that this was the general pattern followed in the municipalities, it recognizes that there were differences, mostly depending on the ethnic composition of the municipality in question. In municipalities where Muslims were a majority and had control over local institutions, such as Bratunac, Rogatica, Vlasenica, and Zvornik, local Serb civilians were evacuated, whereupon Serbian paramilitary forces launched attacks, expelling the Muslims and Croats and repopulating the areas with displaced Serbs."

The facts established in the foregoing paragraphs satisfy the criteria for the acceptance of established facts, as described in the introductory part of the text.

On the other hand, the Court did not accept the facts established in paragraphs 314 and 315 of the Judgment against Momčilo Krajišnik.
To wit, in paragraph 314, the concrete event was established during which a particular person had been killed, which in terms of time and space is not connected with the charges against Mirko Todorović and Miloš Radić referred to in the Indictment.

Paragraph 215 also establishes a situation which in terms of time and space is not connected with the charges laid down in the Indictment against Todorović and Radić, or rather it refers to the existence of prisoners in the *Vuk Karadžić* school in Bratunac, during the period from 11 to 14 May 1992, including a person unknown to our case.

For all the foregoing reasons, the Court decided to accept in part both proposals.

b) Manner of witness examination and the Decision refusing the proposal filed pursuant to Article 273 (2) of the CPC BiH

ba) All the witnesses in this case were examined during the public main trial, without any special protective measures or facilitated testimony prescribed under the CPC BiH and the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses.

However, on 7 April 2008, two witnesses for the Defense summoned for that day expressed their fear of the public disclosure of their names and photos.
These witnesses are of the same ethnicity as the victims and their neighbors, who although being afraid that their environment would not understand it, agreed to give their statements at the main trial before this Court, but they asked for the protection of their identity from both print and electronic media.

The Prosecutor of the BiH Prosecutor's Office did not oppose this proposal, and therefore, before the beginning of these witnesses examination, the Court rendered and publicly announced the decision that the names and photos would not be reproduced in public, as well as the DVD recording of the trial of 7 April 2008, with regard to the part concerning these two witnesses.

bb) In deciding upon the Prosecutor's Office Motion of 14 April 2008 to read out pursuant to Article 273 (2) of the CPC BiH during the main trial the statement of the witness who although hidden, watched from the direct vicinity the incriminating event, Abdulah

Sulejmanović, who died on 21 June 2006, the Court heard the defense counsels for the Accused who explicitly objected to this motion, and on 18 April 2008 rendered the decision refusing the Motion.

The proposed statement was given before the police organs, namely the Canton Sarajevo MoI, on 12 November 2004, number 02/2-2-240/04, that is, without the obligatory instructions and cautions prescribed by the Criminal Procedure Code that ensure the lawfulness of the statement taken from the witness in such manner.
On the other hand, this statement was not given following a summons to testify in the investigation which was conducted against the Accused, but self-initiatively, in 2004, while the investigation into the incriminating events was opened no sooner than in 2005.

In considering the foregoing pursuant to Article 273 (2) of the CPC BiH, which prescribes under certain circumstances the use of the records given "in the investigation", the Court decided to refuse the proposal to read out the statement of witness Abdulah Sulejmanović.

c) Decision of the Court to Confront the Witnesses

During the main trial held on 14 April 2008, when witness Ljubiša Todorović gave his statement as a witness for the Prosecution, the explicit inconsistency became obvious between the statement of this witness given during the investigation, namely on 12 June 2007 on the premises of the Police Station in Bratunac, when following the order by the BiH Prosecutor's Office the witness was examined by an investigator of the State Investigation and Protection Agency, and the statement given during the main trial.

According to the witness, this inconsistency was a result of the pressure and the threats under which the statement was taken by the SIPA investigator.

The Prosecutor introduced the disputed statement pursuant to Article 273 (1) of the CPC BiH, and the defense for the first-accused and the second-accused contested the introduction of the statement concerned by asserting that: the statement was taken by an unauthorized organ; that it was obviously taken under pressure and threats, that the record was not made in accordance with the CPC provisions concerning records, and that the examination lasted for 6 hours while the record was made on only three pages, which obviously points to certain irregularities.

The Prosecutor considered these objections unfounded. He presented the disputed statement to witness Ljubiša Todorović, after which the witness confirmed his signature on each and every page of the statement.

Baring in mind all the foregoing, particularly the CPC provisions concerning the obligation of the record taking, the manner of its taking and its content, namely Articles 151 – 154, from which it ensued that the SIPA investigator correctly kept and made the record, that he was authorized to conduct investigation alone and to make the record (which affected the examination duration and the length of the record), and also the fact that the witness confirmed his signature on the disputed statement – the record, and primarily in orde
establish the real situation known to witness Ljubiša Todorović, the Court accep

introduction of the record on witness examination for Ljubiša Todorović, number 17-04/2-04-2-608/07 of 12 June 2007, while the final evaluation of credibility of both statements of this witness will be presented in section 6.c of the Verdict.

On the other hand, in order to establish the truth, particularly bearing in mind the grave accusations against the authorized official person of the State Investigation and Protection Agency, the Court also decided to summon witness Bajro Kulovac, the investigator who had examined the witness Ljubiša Todorović on the premises of the PS Bratunac, for examination on 18 April 2008.
Witness Ljubiša Todorović was again summoned before the Court for the same day, in order to provide for his possible confrontation with the SIPA investigator pursuant to Article 85(2) in conjunction with Article 86(9) of the CPC BiH.

Considering that with regard to the decisive facts the statement of witness Bajro Kulovac was not consistent with the statement of witness Ljubiša Todorović, the Court confronted these two witnesses on 18 April 2008, and the evaluation of their statements will be given in section 6.c of the Verdict.

5. Applicable Law

With regard to the applicable substantive law, the Defense objected to the application of the Criminal Code of BiH emphasizing that the Criminal Code of the SFRY that was in force at the time of the events concerned should be applied. The Defense considers that the application of any other law instead of the CC SFRY that was applicable during the period relevant to this case constitutes a violation of the principle of legality. The Defense refers to Article 7 (1) of the European Convention and Article 15 (1) of the International Covenant on Civil and Political Rights.

Article 3 of the CC BiH prescribes the principle of legality, namely that criminal offenses and criminal sanctions are prescribed only by law, and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. In addition to this, Article 4 of the Criminal Code of BiH prescribes that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence; if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Article 7 (1) of the European Convention also prescribes the principle of legality. Pursuant to Article 2.2 of the Constitution of BiH, the European Convention for the Protection of Human Rights has primacy over all laws in BiH. Furthermore, this provision of the European Convention prescribes the general principle prohibiting imposing a more severe punishment than the one which was prescribed at the time of the commission of the criminal offense, but it does not prescribe any application of the most lenient law.

Article 4a of the CC BiH prescribes that Article 3 and Article 4 of the CC BiH do not prevent trial and punishment of a person for an action or an omission that was at the time of commission *"considered a criminal offense pursuant to general principles of international law"*.
Article 7 (2) of the European Convention prescribes the same exemption prescribing that paragraph 1 of the same Article *"shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations"*. (See also Article 15 (1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions. The state of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.

This provides a possibility in the described circumstances to depart from the principle referred to in Articles 3 and 4 of the CC BiH (and Article 7 (1) of the European Convention), and also from the application of the Criminal Code which was in force at the time of the criminal offense commission and the application of a more lenient law in the proceedings constituting criminal offenses pursuant to international law.

In considering the objection of the Defense, it should be stated that no provision of the CC SFRY, that was applicable during the relevant period, addressed exclusively crimes against humanity in the manner in which it is prescribed by Article 172 of the CC BiH. However, taking into account other provisions of the applicable substantive law, and also the general principles of international law, this objection of the Defense could not be accepted as founded.

The Court points out that the criminal offenses of which the Accused are found guilty constitute criminal offenses pursuant to international customary law and therefore fall under *"general principles of international law"* prescribed by Article 4a of the Law on Amendments of the CC BiH, and *"general legal principles of law recognized by civilized nations"* prescribed by Article 7 (2) of the European Convention, and therefore the CC BiH can be applied in this case on the basis of these provisions.

The status of crimes against humanity in international customary law and the attribution of individual criminal responsibility in the period relevant for the Indictment is, *inter alia*, referred to in the Report by the UN Secretary General pursuant to Article 2 of Resolution 808 of the Security Council of 3 May 1993, International Legal Commission, Commentary on the draft Code of Crimes against the Peace and Security of Mankind (1996) and the case law of the ICTY and ICTR. These institutions find that that the punishment of crimes against humanity constitutes an imperative among the international law standards or *jus cogens* (International Law Commission, Commentary on the draft Articles on State Responsibility for International Unlawful Offenses (2001), Article 26). Therefore, it ensues as irrefutable that in 1992 crimes against humanity constituted a part of international customary law.

Furthermore, the fact that the criminal actions listed in Article 172 of the CC BiH can be also found in the law that was applicable at the relevant period of time – at the time of the criminal offense commission, namely in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186, namely that the incriminating actions were also punishable u criminal code applicable at the time, additionally contributes to the conclusion of the Court regarding the principle of legality.

Finally, the application of the CC BiH is additionally justified with the fact that the imposed sentence is in any case more lenient than the capital punishment that was in force at the time of the commission of the criminal offense whereby the principle concerning the period of applicability of the criminal code, that is, the application of a more lenient law, has been satisfied.

The foregoing is in accordance with the view of Section I of the Appellate Division of the Court of BiH referred to in its Verdict in the *Abduladhim Maktouf* case, number KPŽ 32/05 of 4 April 2006, and the Verdict in the *Dragoje Paunović* case, number KPŽ 05/16 of 27 October 2006. The Constitutional Court of Bosnia and Herzegovina considered this issue in the appeal filed by A. Maktouf (AP 1785/06), and in its Decision of 30 March 2007 stated: "68. *In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of Krstic, Galic, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law.*" "69. *In this context, the Constitutional Court holds that it is simply not possible to "eliminate" the more severe sanction under both earlier and later laws, and apply only other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned.*"

Also, the customary status of the criminal responsibility for crimes against humanity of individual responsibility for war crimes committed in 1992 is also confirmed by the UN Secretary General[16], International Law Commission[17], and the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)[18]. These institutions established that the criminal responsibility for the crime against humanity constituted an imperative standard of international law or *jus cogens*.[19] Therefore, it is indisputable that the crime against humanity constituted in 1992 a part of international customary law.

Principles of International Law recognized in the Resolution 95 (I) of the UN General Assembly (1946), and also by the International Law Commission (1950) concern the "Charter of the Nurnberg Tribunal and Judgments of the Tribunal", and thereby war crimes in general. "Principles of International Law recognized in the Charter of the Nurnberg Tribunal and Judgments of the Tribunal", adopted by the International Law Commission in 1950 and delivered to the General Assembly prescribe in Principle I "*Any person who*

[16] UN Secretary General Report pursuant to Paragraph 2 of the Security Council Resolution 808 of 30 May 1993, paras 34-35, and 47-48.
[17] *International Law Commission, Commentary on the draft Law on Crimes against the Peace and Security of Mankind* (1996)
[18] ICTY, Appellate Chamber, *Tadić* case, *Decision on the Defense Interlocutory Appeal on Jurisdiction*, 2 October 1995, par. 151; ICTY,Trial Chamber, Judgment in the *Tadić* case of 7 May 1997, par. 618-623.
[19] *International Law Commission, Commentary on the draft Provisions concerning State responsibility for the unlawful actions pursuant to international law (2001), Article 26.*

commits an act which constitutes a crime under international law is responsible therefore and liable to punishment." Principle II also prescribes: "*The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.*"

Therefore, the criminal offense of crime against humanity should in any case be classified under "general principles of international law" referred to in Articles 3 and 4. (a) of the CC BiH. Therefore, regardless of viewing it from the aspect of international customary law, treaty law, or the "principle of international law", it is indisputable that the crime against humanity constituted a criminal offense at the critical period, namely that the principle of legality was also satisfied in terms of *nullum crimen sine lege* and *nulla poena sine lege*.

Accordingly, the criminal offense of crimes against humanity should by all means be classified under "international law", that is "general principles of international law" referred to in Articles 3 and 4. (a) of the CC BiH. Therefore, it is indisputable that the crime against humanity constituted a criminal offense during the incrimination period.

6. Findings of the Court

a. General considerations with regard to the evidence evaluation

The Court evaluated the evidence in this case in accordance with the applicable procedural law, namely the Criminal Procedure Code of Bosnia and Herzegovina. The Court applied to the Accused the presumption of innocence referred to in Article 3 of the CPC BiH which embodies the fundamental legal principle so that the Prosecutor's Office bears the burden of proving the guilt of the Accused, which must be proven beyond any reasonable doubt.
In evaluating the testimonies of the witnesses who testified before the Court, the Court took into account their conduct, behavior and character to the extent to which it was possible. Regarding all the witnesses, the Court also took into account the probability, the consistency, the other evidence, and the circumstances of the case. Furthermore, during the entire proceedings, the Court was aware of the fact that the witnesses' credibility depended on their knowledge concerning the facts about which they testified, their integrity, sincerity and the fact that they obliged themselves to tell the truth in terms of the oath they had given.

It is not sufficient that the witness only gives his statement sincerely. The right question regarding the statement by which the recognition is made is not whether the statement was given sincerely, but also whether it is reliable. During the entire proceedings, the Trial Panel was aware that a certain uncertainty was present in the depositions concerning the facts which occurred sometimes (many) years before the deposition giving due to the variability of the human perceptions of traumatic events and their memories.

With regard to the indirect evidence, the Court emphasizes that a view was adopted in the Court's case law according to which the indirect evidence is admissible. In addition to this, pursuant to Article 15 of the CPC BiH, the Court is free in its evaluation of evidence. The view of the Court was that the Court must be satisfied that the statements were reliable, namely that they were given on a voluntary basis, that they were truthful and

Furthermore, the evidentiary value of the indirect evidence will depend on the context and the character of the statement concerned and/or on whether the statement is also supported by other evidence.

The Court finds that the indirect evidence constitutes the evidence on the facts concerning the event or the criminal offense from which the fact concerned logically arises. Since the criminal offense was committed, by all indications, at the time when there were not many witnesses at the crime scene, and since the possibility to determine the incriminating issues by direct and explicit statements of the eye-witnesses or the irrefutable documents is problematic or impossible, the indirect evidence can become a key element not only for the Prosecutor's Office but also for the Accused. Taken individually, such evidence can itself be insufficient for a certain fact establishment, but if considered in its entirety, then its collective and cumulative character can be a disclosing one, and sometimes a decisive one.

The documentary evidence adduced during the main trial was not extensive. Bearing in mind its character of an indirect or a corroborating evidence, that is, the fact that it mostly concerns the evidence of objective nature confirming certain conditions, for example, the death of a certain person, a membership in the army, prior convictions, which constitute public documents, and also the fact that the Defense did not contest these "confirmations", the Court will not now separately explain the manner of evaluation and the use of this evidence, because its application will be strictly stated within the context of the final evaluation of the decisive evidence related to the charges against the Accused.
Evaluation of the evidentiary material admissibility which the Defense explicitly contested, namely the Witness Examination Record made by the SIPA investigator, is presented in Section 4c of the Verdict, while the evidentiary strength of this evidence will be explained in the text below, namely in Section 6.c herein.
The evaluation of the evidentiary strength of the documentary evidence used before the ICTY, and accepted as already explained at the Prosecutor's proposal, will also be provided in the text below, specifically in Section 6c.

b. General elements of the criminal offense of Crimes against Humanity and the awareness of the Accused

The Accused are charged with the criminal offense of Crimes against Humanity in violation of Article 172 (1) item h), in conjunction with items a) and f) of the CC BiH.
In order to qualify a certain offense as a crime against humanity, the law prescribes that in addition to concrete elements of individual offenses, the Prosecutor's Office must prove general or *chapeau* elements of crimes against humanity, more precisely:

> 1. *the existence of a widespread or systematic attack against civilian population:*
> 2. *the awareness of the accused about the existence of such attack:*
> 3. *that the actions of the accused constituted a part of that attack and that he was aware that his actions constituted the part of that attack.*

The existence of a widespread or systematic attack in the territory of the Municipality of Bratunac, directed against the civilian Bosniak population, during which the incriminating event occurred, was indisputably established from all the testimonies of the witnesses, not only for the Prosecution, but also for the Defense, who were heard during the main trial, who consistently spoke about: the beginning of extraordinary events in the territory of their municipality, the establishment of joint-neighbors' guards, the general mobilization which occurred on 16 April 1992, the arrival of paramilitary formations from Serbia and the JNA activities, and the take-away of Bosniak population to the city stadium, after which the enforced resettlement followed.

Such conclusion of the Court is supported by the documentary evidence used before the ICTY, which was accepted as relevant to this case, as already explained, in particular: the Decision Declaring Extraordinary Situation due to Imminent Danger of War in the Territory of the Serb BiH of 16 April 1992; the Order of the Crisis Staff of the Municipality of Bratunac on General Mobilization of 16 April 1992; the Order of the Crisis Staff of the Municipality of Bratunac prohibiting activities of all paramilitary formations and illegal citizens in the territory of the Municipality Bratunac of 1 May 1992; the Decision on the Strategic Goals of the Serb People in BiH, number 02-130/92 of 12 May 1992; and also the statement of witness Miroslav Deronjić of 25 November 2003, who as one of the active participants of the events at the time, presents the summary of the events within the widespread and systematic attack.

The existence of the incriminating wide and spread attack ensues from the facts established by the ICTY in the *Momčilo Krajišnik* case, which the Court accepted upon the proposal by the Defense for the first-accused, as reasoned in the foregoing text. These are the facts established in paragraphs 311, 312, 320 and 709 of the Judgment, number IT-00-38-T of 27 September 2006. Such conclusion is particularly supported by the fact established in paragraph 312: "*Serb authorities issued a 29 April 1992 deadline by which non-Serbs, almost exclusively Muslims, had to sign oaths of loyalty to Serb rule in the municipality. Most Muslims had left Bratunac municipality by that date.*"

With regard to other obligatory key elements of crimes against humanity, having evaluated the adduced evidence individually and mutually, the Court established beyond any reasonable doubt that during the incriminating period the accused Mirko Todorović and Miloš Radić were members of the VRS and VP Bratunac, and that thereby they were aware of the widespread and organized attack against civilian Bosniak population, particularly against their neighbors, who are in fact the victims of the incriminating behavior of the Accused.
This ensues not only from the general situation of the evidentiary proceedings, but also from the testimonies of the Accused themselves who emphasize 16 April 1992 as the day of general mobilization in the territory of the Municipality of Bratunac.

The Court concluded beyond any reasonable doubt that the actions of the Accused also constituted a part of this attack, which will be explained in the text below, whereby the essential elements of Crimes against Humanity in violation of Article 172 of the CC BiH were satisfied.

c. Charges against the Accused

The Court found that, as members of the Republika Srpska BiH Army, on 20 May 1992 during the afternoon hours, in the village of Borkovac, the Municipality of Bratunac, in a group with four other members of the Army of Republika Srpska, including Novak Stjepanović aka "Krke", the Accused participated in the arrest of a group of 14 (fourteen) Bosniak civilians, namely: Hamed Alić, Hamid Alić, Halima Alić, Maho Avdić, Hamedina Ramić, Munib Sulejmanović, Hajrudin Hasanović, Hamed Velić, Fadil Sulejmanović, Amer Ramić, Naser Sulejmanović, Muharem Salkić, Mehmed Jahić and Ibro Džananović who were hiding due to the fear of the attack by the Republika Srpska army and police in an abandoned quarry, not far from the village of Borkovac where most of them resided, and thereafter took them in a line toward the village, when someone from the group of attackers killed Avdić Maho with a shot from the weapon who was at the back of the line, and thereafter tortured them by punching them, kicking them with boots all over their bodies, seized all their money and valuable items, cursed them on a national basis, and thereafter took them to a slope toward a nearby creek where they lined them up with their faces turned toward the creek, and then shot them from behind their back, due to which their bodies fell into the creek, on which occasion Hamid Alić, Halima Alić, Munib Sulejmanović, Fadil Sulejmanović, Hajrudin Hasanović, Hamed Velić, Hamedina Ramić were killed due to the shots from the firearms,

That within the widespread and systematic attack directed against the civilian Bosniaks from the Municipality of Bratunac, with the knowledge of such attack, and as the accomplices, the Accused persecuted the civilian Bosniak population by arresting, torturing and killing, whereby they committed the criminal offense of *Crimes against Humanity* in violation of Article 172 (1) item h), in conjunction with items a), c) and f) of the Criminal Code of BiH, all in conjunction with Article 29 and 180 (1) of the same Code.

The Court found indisputable the existence of a widespread and systematic attack as the basic element of the criminal offense of Crimes against Humanity, as explained in Section 6. b. of the reasoning of this Verdict, which ensued not only from the testimonies given during the main trial, the documentary evidence used in the proceedings before the ICTY, but also from the facts adjudicated in the ICTY case against *Momčilo Krajišnik*, as accepted upon the proposal by the Defense for the first-accused.

The knowledge of the Accused that during the relevant period, in the territory of their Municipality Bratunac, the widespread and systematic attack was launched against civilian Bosniaks, thereby against their neighbors with whom they had extremely good-neighborly relations (as pointed out by all the witnesses, but also by the Accused themselves), ensues not only from the general situation of extraordinary circumstances which had started already in early 1992, but also from the fact that both the Accused were members of the Army of Serb Republic of BiH already since April 1992, which also ensues from the military ID records, namely: the military ID record for the accused Mirko Todorović, number: 338/54 of 17 August 1994 indicating that the Accused has been kept in the Bratunac military records since 15 February 1971, and that from 18 April 1992, within the Bratunac military post VP 7042 Bratunac, he participated in the war; and the military ID record for the accused Miloš Radić, number: 123997, which indicates that the Accused was kept in the Bratunac military records since 22 October 1980, and that he participated in the war from 18 April 1992 through 4 March 1994, and from 17 June 1995 through 12 September 1995, all within the Bratunac military post 7042.

It was indisputably proved that the incriminating attack on the group of civilians hidden in the abandoned quarry near Borkovac occurred precisely on 20 May 1992 during the afternoon hours, which ensues not only from the chronological presentation of the beginning of hiding and the final shelter in the quarry, but also from the fact that it was an extremely traumatic event which has stayed deep in the memories of all the witnesses.

It was also proved indisputable that the attacked group consisted of 14 members, civilians, all Bosniaks, and that 8 of them were killed, namely that Maho Avdić was killed on the way to the execution site, and the others by the firing squad, above the creek, facing their executors.

This ensues from the testimonies of the witnesses – the survived victims from the group: Hamed Alić, Naser Sulejmanović, Amer Ramić and Muharem *Salkić, and the others* – the indirect witnesses for the Prosecution – the witnesses whose closest family members were killed, namely: Hamed Ramić, Safa Sulejmanović, Elma Kaljević, Safa Sulejmanović, Rušveta Sulejmanović, Sadeta Hasanović and Zejneba Avdić.

The indisputability of the conclusion that 8 captured civilians were killed also ensues from the testimonies of witnesses Dane Lončarević and Radoje Živković, at the relevant time members of the civil protection in charge of the utility services.

To wit, witness Radoje Živković remembers that in the creek, near the house of Nedo Marković, they found 7 or 8 bodies, including two female bodies, namely, as he says *"one of them was the woman who had worked in the Post Office in Bratunac"*, and the other was the body of a "young girl", and that thereupon they put the bodies in black bags, loaded them onto a tractor, and drove some 200-300m further away from the creek to somebody's courtyard, where they buried them. The witness pointed out in his testimony that among the killed persons he had recognized Maho, and also Halima Alić and Hamedina Ramić.
Regarding the bodies of the killed persons, witness Dane Lončarević also stated in his testimony that he had driven the tractor in which Radoje Živković had put, as far as he remembered, 6 black bags containing the bodies of the killed persons. He also pointed out that he had unloaded the bodies into a pit dug out near the Sulejmanović family house.

Although the Defense contested the validity of the witness testimony of Radoje Živković, considering that the witness himself said that he had health problems caused by a stroke, and thereafter by a severe traffic accident due to which he had been in a coma for around 6 hours, and that he used certain tranquillizing tablets, the Court found the testimony of this witness acceptable and credible, considering that during his giving evidence at the main trial the witness concerned showed that he had remembered the critical event extremely well, and that his former illness had no influence whatsoever on his understanding of the proceedings in which he testified.
The Court rendered such decision by considering this witness' testimony in the conte[xt of] the testimonies of witness Dane Lončarević, but also of witness Hamed Ramić, wh[o]

witness Radoje Živković had helped to find the grave in which the body of his daughter Hamedina had been buried.

This conclusion is also supported by the Exhumation Record carried out at the locations of Repovac (Borkovac) and Suha, the Municipality of Bratunac, number KTA: 609/04 of 29 April 2004, and the identification records for the exhumed bodies marked as REP -1/ and the following numbers: 1-B for Hajrudin Hasanović – born in 1954; 2-B for Halima Alić – born in 1949; 3-B for Munib Sulejmanović – born in 1942, 4-B for Hamid Alić – born in 1921; 5-B for Maho Avdić – born in 1943; 6-B for Hamed Velić – born in 1946; 7-B for Fadil Sulejmanović – born in 1957 and 8-b for Hamedina Ramić – born in 1970.
Forensic analysis reports for all the victims confirm that the injuries had been caused by fire arms, while this could not be confirmed 100 % in the case of Hamedina Ramić, which nevertheless, bearing in mind all other evidence, particularly the testimonies of the witnesses Amer Ramić and Hamed Alić, does not dispute the Court's conclusion concerning the execution of Hamedina Ramić by a firing squad.

It, however, appeared disputable whether, in the manner described in the amended Indictment, the Accused participated in the arrest and torturing of 14 civilians found in the quarry near the village, namely whether they participated in the killing of 8 persons.

However, from the consistent testimonies of the survived victims from the group of civilians, namely of: Hamed Alić, Naser Sulejmanović, Amer Ramić and Muharem Salkić, and the supporting testimonies of the indirect witnesses, namely: Hamed Ramić, Elma Kaljević, Safa Sulejmanović, Rušveta Sulejmanović, Sadeta Hasanović and Zejneba Avdić, and particularly from the testimony of witness Ljubiša Todorović, who had been with the Accused on that critical day, and of the Accused themselves who had not contested their presence at the crime scene, the Court drew its conclusion beyond any reasonable doubt concerning the incriminating participation of the Accused, namely that the Accused Mirko Todorović and Miloš Radić were accomplices in the unlawful arrest of the attacked group of 14 civilians, their subsequent torture and the killing of 8 persons, which will be reasoned in the text below.
In drawing such conclusion, the Court also considered the testimonies of the witnesses for the Defense, particularly the testimony of Miloš Todorović, and the witnesses who are close relatives of the accused Miloš Radić.

During the entire proceedings, the Court paid a special attention to the identity of the Accused as the perpetrators of the criminal offense concerned, in particular Miloš Radić, bearing in mind the fact that, according to the testimonies of all 4 survived victims from the captured group, this Accused had a certain type of cap – a mask on his head all the time until the moment of their being lined up above the creek.
The identity was especially considered in the context of good-neighborly relations, due to which, according to the assertions of the Defense, it was impossible for the Accused to commit such crime.
The Court, however, established beyond any reasonable doubt the identity of the Accused Mirko Todorović and Miloš Radić, which will be explained through the further evaluation of the testimonies of all the witnesses.

As established, the widespread and systematic attack against the non-Serb civilian population of the Municipality of Bratunac with the goal of expulsion had started much before the 20 May 1992 critical event.

Witness Hamed Alić remembers that he and his wife – Alić Halima, left their family house in Borkovac, much before the critical event, and thereafter, in search for a shelter with their relatives in Hranča, and thereupon in Suha, with the family of Hamed Ramić, were expelled from Suha on 10 May together with all other Muslims.

The exile trip through the woods in the Suha surroundings, during which the refugees had scattered in several directions, lasted until 20 May 1992 for the group which also included the Alić spouses.

On 20 May 1992, they were hidden in the abandoned quarry, in the creek, exhausted and exposed to inhumane living conditions.

The witness remembers that it was slowly getting dark and that all of a sudden a terrible scream was heard *"Throw the weapons down, hands up!"*. The weapons, remembers the witness, which they did not have.

He further states that a group of 6-7 soldiers, armed with automatic and semi-automatic rifles had appeared among whom the witness immediately recognized his neighbor Mirko Todorović.

Having no doubts even for a second concerning the recognition of his neighbor Mirko Todorović as one of the soldiers who attacked them, the witness explains in the cross-examination: *"You see, that's a neighbor..... to me, in my tradition, a neighbor is more important than a brother."*

The witness undoubtedly knew the accused Mirko Todorović and he recognized him on the spot on that critical day.

The witness particularly emphasizes: *"Not even an American GPS could have found us, if it had not been for the inhabitants"*.

Thereafter, they were captured, and in the line, looking down to the ground, taken to the house of Abdulah Sulejmanović, along which road, immediately by the creek, Maho Avdić was killed. The witness did not see who had killed him, while at that moment, the accused Mirko Todorović walked beside the witness.

In front of the house of Abdulah Sulejmanović, as he further states, the captured persons were met by another couple of soldiers, among whom the witness recognized Novak Stjepanović aka Krke. The witness remembers that they started mistreating them there. *"They requested us to take out our money, gold, jewellery, and they started insulting us on ethnic grounds"*. The witness also remembers the slap he had received from Krke, due to which, as he subsequently found out, his tympanic membrane was damaged 60%.

However, what the witness particularly remembers, and as he points out, what he will not forget while alive, is that the mistreatment was carried out with terrible passion and pleasure.

The witness also remembers that two soldiers, unknown to him, had singled out Hamedina Ramić - at the time a second-year-student at the Faculty of Philosophy in Sarajevo, and took her to the house.

He saw Hamedina next time in the creek. She was killed.

The witness remembers that a soldier taller than the others, with a mask on his head, was present all the time while they were abused.

Mali Rašo, the person whom the witness knew only by his nickname and whom he describes as the person with dark complexion, was also there.

After the abuse in front of the family Sulejmanović house, the remaining 12 persons were taken in the direction from which they had come earlier.
After their arrival in the creek vicinity, the masked soldier tried to climb up to the woods, but he slipped and fell down. Then he took off the mask, and the witness realized, as he states, that another neighbor of his was hiding behind the mask – Miloš Radić. The witness emphasizes that they did not know each other too well, but that he gave some money to the accused Miloš Radić himself as a fee for the telephone which had been installed in the village.

Furthermore, the witness remembers in his testimony that the captives were ordered to line themselves up along the creek, with their faces turned toward soldiers. At that moment, although they had to keep their heads bowed down, the witness again saw the accused Miloš Radić. The accused stood in front of him.
At that moment, from the distance of around 5-6 m in a straight line, Mali Rašo dug in his rifle, cocked it and told the persons in the line to pray to God.
The witness describes that he and his wife held each others hands.

The execution started and the witness and his wife, hand in hand, fell down to the creek full of brushwood and nettle. They fell on their backs. They were both alive. The squeeze of the hand did not let up.
The witness also remembers new, single shots at those who did not die immediately.
He remembers when the executors brought Hamedina Ramić and told her to look down at those in the creek, and thereafter they shot her. Her dead body fell down with her head over the head of her brother, Amer Ramić.

The witness still had a hope. He and his wife were alive. They held their hands. He was happy.
Then, he suddenly heard again the executor's voice: "See *that woman!*"
His wife was the only woman there.
"There was a shot.....I cannot forget that....simply.....and there was a bird sound...and the squeeze of the hand.....of my wife....which we held together.....and that is why it is difficult to me to understand....the time passes by...her hand is still in my hand, but it is getting colder...I felt her dying in my hands......".

They killed Halima Alić too.

The time passed by and suddenly people started "arising from the dead".
The witness remembers that they had to call him three times before he realized that the survived victims had called him, not the executors.
Amer Ramić, Naser Sulejmanović, Muharem Salkić, Ibro Džananović and Mehmed Jahić arose from the dead.
The dead bodies of the wife of witness Hamed – Halima Alić, his father Hamid Alić, Hamedina Ramić, Munib Sulejmanović, Fadil Sulejmanović, Hajrudin Hasanović and Hamed Velić remained in the creek.

He states that the survived victims thereupon escaped from the crime scene and found their way to Srebrenica through the woods.

Witness Amer Ramić, at the time of age 18, experienced a similar way of hiding and suffering all through 20 May 1992.
The witness remembers that after leaving Bratunac together with his sister Hamedina, he firstly hid in Suha, and after the population of Suha had been expelled around 10 May, he found his shelter in the abandoned quarry up from the village of Borkovac.
His relatives Hamed and Halima Alić were with them.
He remembers that on 20 May 1992, a couple of hours before the dark, with the shouts and curses *"Balijas, surrender yourselves!"*, a group of around 6 armed soldiers approached them. The witness points out that his neighbor Mirko Todorović walked first.
"When I saw Mirko, it was easier to me, I knew him, I thought he would save us...", the witness remembers.
There was also a soldier with a mask on his head.
However, the captives were taken in a line, one-by-one toward the Sulejmanović family house, where the witness also recognized Krke, while he describes the other soldiers as follows: a blond one around age 24 and one with curly hair. The soldier with the mask on his head and Mirko Todorović were standing aside, while Krke and the other soldiers were abusing, beating the captives and seizing from them their valuable items. The witness thinks that the accused Mirko and the soldier with the mask kept guard..
The witness remembers that the blond soldier himself, around age 24, took his sister Hamedina to the Sulejmanović family house.
Thereafter, they were lined up, and again in the line returned in the direction from which they had come.
At one moment, remembers the witness, the masked soldier took off his mask. It was his neighbor Miloš Radić, and the witness again felt a salvation hope. He emphasizes *"I looked at him in order to establish any eye contact, but he only watched me coldly as if he had never seen me before"*.

They reached the creek, and thereafter, they were lined up with their backs turned toward the creek.
The witness describes that the accused Miloš Radić stood in front of him, at his left.
The soldier with curly hair started the execution. The witness slipped and fell in the creek with his face down. The execution continued and the bodies were falling into the creek. At one moment, he heard the executors showing that some of those in the creek had been still alive and he heard them killing them with pistol shots.
"Someone said this one is moving, I thought it was me, for a moment you are glad that it is not you...then again, another one....and then they killed Hamed's wife, Halima."
He further states that he heard when they had brought his sister Hamedina to the creek, he heard but did not understand what they had told her, and thereafter he heard her sigh and a shot, a shot into her head.
Hamedina fell over him. Her head was on his head. *"I felt the blood pouring down my face...even the brain traces could be seen leaking across my head...."*
"For a moment, it is as if you are dreaming...you think that this did not happen at all...", and then, the witness remembers, firstly Hamed Alić started arising from the dead, and then Mehmed Juhić, Ibro Džananović, Muharem Salkić and Naser Sulejmanović. Seven bodies, including the body of his sister Hamedina, remained in the creek.

The witness pointed out in the end that only the Accused had known the terrain because the other 4 soldiers were from somewhere else. At least, he gained such impression of them.

The survived victims left the crime scene and went toward Srebrenica.

Witness Naser Sulejmanović had the same experience.
After leaving his house in Suha and the shelter in Glogova, which was burnt down, together with another couple of Bosniak civilians, this witness came near the abandoned quarry where he found around 10 persons.
They stayed in the quarry all through the afternoon hours on that 20 May 1992, when he was awakened by a call *"Muslims, balijas, surrender yourselves, you are surrounded"*.
He remembers that among 3-4 armed soldiers who had surrounded them he recognized Mirko Todorović, his neighbor, the man he had known for all his life.
Mirko, who had a long-barrel rifle, approached him and apologized to him, and told him that there was nothing he could do to help him.
Thereupon they were lined up in a line and brought almost to the witness's house, where they found another couple of soldiers, namely one with a mask on his head, and Novak Stjepanović aka Krke. They were subjected to mistreatment there, particularly on the part of Krke, while their valuable items were seized from them. The witness points out that he did not see Mirko Todorović abusing anybody.
He also remembers that two soldiers singled out Hamedina Ramić from the group and took her into the house.
The captives were then taken in the direction from which they had earlier come, toward the creek, in whose immediate vicinity the witness noticed the body of Maho Avdić, who had been walking together with the others from the group in the direction of the Sulejmanović family houses.
Near the creek, at the very entrance to the woods, the witness states that the masked soldier took off his mask, and that he thereupon recognized the accused Miloš Radić, his neighbor.
As he further states, the captives were ordered to line themselves up with their backs turned toward the creek, while, the witness remembers, Mirko Todorović, Miloš Radić and Novak Stjepanović – Krke stood in front of them.
They were ordered to pray to God, and then the execution started.
The witness does not remember whether someone had pushed him away, or whether he fell by himself, but he knows that he fell in the creek, and somebody's legs fell over him. He subsequently realized those were the legs of Amer Ramić.
He also heard when they again fired a shot at Halima Alić, and after a while, when they brought Hamedina Ramić, and told her *"You see that we did not lie to you, we killed them all."* Then they shot her and Hamedina fell over her brother Amer.

After a while, the survived victims stood up and left the crime scene. Ibro Džananović, Hamed Alić, Muharem Salkić, Amer Ramić and Mehmed Jahić were among them.
The rest of the group including the witness' uncle Munib Sulejmanović were killed.

In responding to the Defense questions, the witness asserts that the Accused did not abuse them or seize their valuable items, but that they stood aside, with their cocked rifles, which according to the opinion of the Court, in the situation as it was, prevented the captives from leaving the crime scene, namely from leaving freely.

The testimony of witness Muharem Salkić is consistent with the foregoing testimonies. This witness remembers that, after Bosniaks had been rounded up at the city stadium, he had guessed what would happen, and therefore he escaped to the woods.
On 20 May 1992, he was in the woods around 1km far away from his house. The witness remembers that it was a sort of a quarry. He says that around 18:00 hrs, Mirko Todorović appeared with another unknown soldier and shouted *"Stop, you are arrested"*. He had a rifle ready to shoot. He remembers that the soldiers came from three directions so that *"we could not escape"*, concludes the witness.
Mirko was a school friend and a neighbor of this witness. When the witness approached him and asked for help, Mirko responded that he could not help them and asked them why they had not surrendered themselves.

He further states in his testimony that the captives were escorted to the Sulejmanović family house, where they were exposed to mistreatment, beating, and seizure of valuable items. Maho Avdić, who was at the back of the line, was killed on this road.
All soldiers were present during this mistreatment, while Krke, who was described by the witness as *a corpulent man, with red-skin and sunspots* had been the most active one in all that.
There was also the soldier with the mask on his head. He had a *papovka* semi-automatic rifle.
He remembers that they took Hamedina Ramić into the house, and that after a while, Krke ordered that the remaining 12 persons be taken toward the creek.
The soldier with the mask on his head escorted them to the creek, thereafter took off the mask and then: *"I was so surprised....if someone had told me, I would not have believed him"*. The accused Miloš Radić – his neighbor, the man with whom he had spent a large part of his life, with whom he used to go to work, etc. stood in front of the witness.
Then the execution followed. The witness fell into the creek. Other bodies were falling over him. Then there was a subsequent shot by which Halima Alić was killed. He also remembers well when they brought Hamedina Ramić to the creek and told her *"Go to them"*, and when she shouted that they had not been there, she was told, *"Look down there"*, which was followed by a bullet. Hamedina was shot into her head, and the witness remembers well that she fell over her brother Amer.

After a certain period of time, which was an eternity for the witness, the survived victims started getting up and then headed toward Srebrenica.
The killed persons stayed in the creek, namely: Hamid Alić, Halima Alić, Munib Sulejmanović, Fadil Sulejmanović, Hajrudin Hasanović, Hamed Velić, Hamedina Ramić.

The witness pointed out in the end that only the inhabitants could know that terrain, namely, Miloš and Mirko, but not Krke who lived some 15km away from that location.

This witness also confirmed that the accused Mirko Todorović and Miloš Radić did not participate in the abuse and the seizure of valuable items, but that they were present during all that with their cocked rifles.

Indirectly, as the witnesses for the Prosecution, the following persons also testify ab
critical event: the father of the killed Hamedina Ramić – Hamed Ramić; the dau

killed Hamed Velić – Elma Kaljević; the wife of the killed Fadil Sulejmanović – Safa Sulejmanović; the wife of the killed Maho Avdić – Zejneba Avdić; the wife of the killed Munib Sulejmanović – Rušveta Sulejmanović, and the wife of the killed Hajrudin Hasanović – Sadeta Hasanović.

None of these witnesses was present at the crime scene, but they all heard from the survived victims, public media or even through the International Committee of the Red Cross that their beloved ones had been killed precisely on 20 May 1992.
Witnesses Elma Kaljević, Hamed Ramić and Zejneba Avdić also heard that their neighbors – Mirko Todorović and Miloš Radić had participated in the killing of their beloved ones.
Witness Zejneba Avdić also heard that her husband Maho Avdić had been killed first.

The witnesses found out that they were subsequently buried in a mass grave in the courtyard of the Sulejmanović family house through Hamed Ramić, who being in search for the truth about the destiny of his daughter Hamedina, went to Bratunac in 1998, and with the help of his colleague Stanko Đokić, and witness Radoje Živković, managed to locate the mass grave in the courtyard of the Sulejmanović family house.
As it obviously ensues from the photo-documentation made before the exhumation – at the moment of the arrival of representatives of the State Commission for Tracing Missing Persons, the grave was invisible, covered with grass, but the excavations confirmed that the bodies of 8 killed persons had been buried there.

On the other hand, intending to remove any suspicion from the Accused as to their involvement in the incriminating event, except for their indisputable presence in the vicinity of the crime scene, the Defense for both the Accused focused itself on the good neighborly relationships among the families of the Accused and their Muslim neighbors and their going to the crime scene under coercion.

The following persons testified for the Defense of the accused Mirko Todorović: Živojin Milovčević, Miladin Jovanović, Mehmedalija Ahmić, Dragomir Blagojević, Milorad Nikolić, Safet Hasanović, Orhan Musić, Osman Osmanović, Hanifa Velić and Miloš Todorović. The Accused himself presented his defense at the end of the evidentiary proceedings.
None of the foregoing witnesses, except for Miloš Todorović, spoke about the critical event. They spoke about the personality of the Accused, his pre-war and post-war relations with Muslim neighbors.

The witness Miloš Todorović states that on the critical day, namely on 20 May 1992, he was mowing grass in a field together with witness Ljubiša Todorović, when a group of soldiers of a certain paramilitary formation came and ordered them to follow them. As he states in his testimony, among those soldiers, he recognized the accused Mirko Todorović and Miloš Radić, who were in civilian suits opposite to the soldiers in camouflage uniforms and with caps on their heads.
One of the soldiers told them that they had been mopping up the terrain. The witness points out that he and Ljubiša had to follow those soldiers because otherwise they would have shot them.

The witness further points out: "*We knew about the behavior of these paramilitary units, you did not dare look at their eyes, they had nicknames, there were all sorts of them. I do not know where from..* "
The witness remembers that the group split at one moment and went in several directions. All of a sudden, they heard "*Come here, here they are!*" He points out that he and Ljubiša Todorović used their position at the back of the line, and returned back from where they had come, namely they returned to the field and continued mowing grass.
The witness also points out that subsequently nobody looked for two of them. His opinion is that the Accused could not return as they were at the top of the line.

Witnesses Dragomir Blagojević and Živojin Milovčević pointed out in their statements that they had heard when the Accused had been collected from the field and taken to the critical event site, while witness Osman Osmanović, pointing out that he did not want to refer to any "hearsay" information, nevertheless said that he had heard that the accused Mirko Todorović also attended the critical event.

On the other hand, in speaking about the behavior of the Accused at the beginning of the war events in Bratunac, the witness Osman Osmanović said that the accused Mirko Todorović himself had saved him from the sports hall of the *Vuk Karadžić* Primary School in Bratunac, where he had been detained with many other non-Serbs, having connected him with a convoy of women and children leaving Bratunac.
Velić Hanifa, a returnee to Repovac and a neighbor of the Accused who remembers well her husband's words that the accused Mirko Todorović had saved him and his brother from that sports hall, also testifies that the Accused saved other detainees from this camp.
Witness Mehmedalija Ahmić states how the Accused saved his father too.
The witness stated in his testimony that he had been detained at the Bratunac stadium, that his father, in his declining years, had stayed alone in the house at the outskirts of the town, and that the witness asked the Accused to bring there his father too. The witness remembers that the Accused did not manage to find him, and that thereupon, together with the witness's mother, who had been also detained at the stadium, he went to the father's house and brought him to the stadium in the end.
Nevertheless, in response to the Prosecutor's questions, the witness remembers that for him, the stadium constituted the camp - the humiliation.

When speaking about the personality of the accused Mirko Todorović, all the witnesses said that he had always been an extremely business-like and successful merchant, always ready to help others.

Safet Hasanović, a returnee to Borkovac also testified at the main trial about the personality of the Accused and the unchanged good-neighborly relations. According to him, the Accused has been helping him since he had returned to his pre-war place of residence, and driving his son to school whenever he met him waiting for a bus. The witness also remembered that his aunt Hanifa had told him about the Accused saving people from the detention.

Witness Orhan Muslić pointed out that he had always had good relations with the Accused, that they had always worked in cooperation, and that they only continued from whe
had left off when the witness returned to Bratunac in 2000. As if nothing had hap

witness particularly emphasizes in his statement that he had spoken with many persons, former detainees in the *Vuk Karadžić* Primary School in Bratunac, but that they never mentioned the Accused as someone who used to come to the School and abuse the detainees.

Dragan Blagojević and Milorad Nikolić testify about the relation of the Accused toward war events, particularly about the membership in the RS Army.
Witness Nikolić pointed out at the main trial that he heard that the Accused had deserted to Serbia and that the RS Army members opened fire on him while he was crossing the Drina River in order to prevent him from escaping.
Witness Blagojević stated in his testimony that he remembered that during 1993 he worked in the logistics and that on one occasion he had to provide uniforms for deserters, and that the accused Mirko Todorović was among those deserters.
These witnesses had no information about the critical event. They had only heard something, but as the witness Nikolić said, they did not want to get involved.
Witness Živojin Milanović also remembers that the accused Mirko Todorović deserted. Witness Miladin Jovanović asserted in his testimony that it was anyway very difficult to avoid the compulsory military service.
It ensues from the verdict of the Military Court in Bijeljina, number IK-137/95 of 1 August 1995 that the Accused was found guilty of deserting during the period from 8 January 1993 until 1 March 1993.

The Accused himself presented the critical event in the following manner:

On that critical day, he was on the way to his uncle's house in order to fix his bicycle. In a small narrow street, he was stopped by unknown soldiers wearing uniforms and caps only with eye-openings and ordered him to follow them, which he did. They went together toward the house of Miloš and Ljubiša Todorović. When they did not find them there, as he further states, they went to the field in which two of them had mowed grass, according to their household members. Miloš and Ljubiša Todorović did not respond to the first call of these soldiers, after which a shot into air followed, and they responded then.
The soldiers then asked about the location of the Sulejmanović family house, and then split in two groups: Miloš and Ljubiša Todorović and another unknown soldier were in one group, while the accused Mirko Todorović, the accused Miloš Radić, Krke and other soldiers unknown to the Accused were in the other group.
After some 15 minutes walk through the woods, as he states, someone shouted "*Come down, here they are*". The Accused and a soldier unknown to him then took one way, while Ljubiša and Miloš Todorović went the other way. Miloš and Ljubiša Todorović did not return. When the Accused and the unknown soldier came "*down*", as the Accused states, they found the accused Miloš Radić with an unknown soldier.
They told the Accused that Bosniaks were in the house, but regardless of his interest, they did not let him enter the house.
He alleges that he therefore left the place, went down to the main road and returned home.
According to him, only the following day he found out what had happened with his neighbors.
Both the Accused and his wife cried. They mourned after honorable and honest people, their neighbors whom they all had known.

When asked by the Prosecutor to explain the fact that Miloš and Ljubiša Todorović left the site without any obstruction, the Accused clarified that he walked with the uniformed soldier who had not known the road and that therefore he had to show him the way.
The Accused also said: *"I had no chance to return beside such man. God, don't let anybody find himself in such situation!"*
On the other hand, the Accused pointed out that Miloš and Ljubiša Todorović walked at the back of the line which helped them to leave the line without being noticed.

When asked by the Prosecutor whether he had seen Muharem Salkić and helped him on that critical day, the Accused responded that he did not see him. The Accused also denied the Prosecution averments that he had been armed.
On the other hand, the Accused emphasized that he was not masked, that he had no need to hide, and that the Prosecution witnesses had also said so.

The following persons testified for the Defense of the accused Miloš Radić: Miloš Todorović, Ikonija Pavlović, Kristina Petrović, Đurđija Radić, Ramo Smajlović, Sabit Smajlović, and also the Accused himself, who presented his defense following the completion of the evidentiary proceedings.

All the witnesses, except for the Smajlović brothers, testified about the critical event, namely about the manner in which the Accused had found himself in the group of soldiers unknown to him.
Witnesses Ramo and Sabit Smajlović testified about their extremely good friendly and neighborly relations with the Accused, pointing out that they had seen him last time on 11 May 1992 after which they were forced to leave Bratunac.
Witness Sabit Smajlović particularly pointed out that the accused Miloš Radić had given him the money for his trip. To tell the truth, that was the trip which meant the beginning of exile for the witness.
In his first after-war visit to Bratunac, Ramo Smajlović firstly visited the accused Miloš Radić, and only thereafter he went to his home.
The Smajlović brothers point out that they are not interested in anything that happened in their village after 11 May 1992 and that therefore they know nothing about the critical event.
Thereupon they agreed with the Prosecutor's note that they did not know what the accused Miloš Radić had done during the period from 11 May 1992 through 2000.

As already stated in the reasoning of the Defense for the accused Mirko Todorović, witness Miloš Todorović also saw the accused Miloš Radić in the group of soldiers which had found him in the field. Considering that the witness and Ljubiša Todorović soon left the line, he did not see the accused Miloš Radić any more.

Witness Ikonija Pavlović remembers 20 May 1992 as a sunny day during which she and her cousins – Miloš Radić and his wife Đurđija, Miloš's sister Kristina Petrović and the brother Milenko Radić farmed corns in Miloš's field in the afternoon hours.
She points out that her cousins were in black clothes since their father had died some time before that day.
She remembers that some soldiers suddenly appeared, a paramilitary group, and sh
"Miloš, Milenko, come up here!"

The witness opines that those soldiers knew them since they called them by their names.

The sister of the accused Miloš – Kristina Petrović, also remembers the critical day and the moment when an impudent voice called up her brothers.
Her brothers left and the witness continued working in the field with the remaining two women.
She never spoke with her brother Miloš about this event.

The wife of the Accused, Đurđija Radić, confirms such sequence of the events and points out that her husband and her brother-in-law had to respond to that call.
She, her sister-in-law and her cousin continued working in the field, and thereupon returned home.
It was already getting dark when her husband returned home *"all good for nothing, with his eyes full of tears".*
"He told me not to ask him anything....and then he told me that they had gone, and that they met a group of Muslims, and that they were all killed....and I said why didn't you protect them.....he asked how when they had told me that I could also go down with them ...".

The witness points out that at the time the Accused was neither mobilized nor had any weapons, but that he had a hunting rifle in the house since he was a hunter.
She does not remember whether he brought the rifle with him on that night.

In confirming that on the critical day he was in his field with the foregoing witnesses and farmed corns, the Accused stated the following:

Some 40 minutes after the arrival in the field, he saw Miloš and Ljubiša Todorović passing by the field and driving a hand-car, and thereafter he heard a voice: *"Miloš, and you, Milenko, what are you waiting for, I will shoot!"* A shot was fired in the air.
The Accused states that he had to join them as there were 5-6 soldiers on the one side, and another 3-4 soldiers on the other side.
One of the soldiers whom he describes as *"with blond beard and hair, around 170-180cm height"* cocked the rifle and pointed it at the back of the Accused, and forced him to go to the creek and thereupon said: *"You are digging here and collaborating with Muslims, while they are cutting throats of our people ".*
He remembers him walking toward the creek which was grown all over with thorns and nettle, and that at one moment he also saw the accused Mirko Todorović.
He also remembers that they had already sent away his brother–Milenko Radić with the other part of the group.
Furthermore, he states that while he was walking toward the family Sulejmanović house, he heard a shot and the shout *"We found them!"*
He also points out that although nobody had told him why he had to go with them, everything became clear to him then.
As he states, Amer i Hamedina Ramić stood in front of the house, namely the shed of Fadil Sulejmanović, together with two other soldiers unknown to him. They were brother and sister, his neighbors.
He further states that he wanted to move away, and escape from the spot, but he was stopped by a soldier who told him *"You are that Miloš who collaborates with Muslims."*
The Accused, as he alleges, tried to explain him that he should return home, to the field

where his wife and his sister had been waiting for him, but the soldier forced him to go back, where he suddenly found his neighbors. Then the blond soldier and another one with a mask on his head ordered the gathered Muslims to line up and follow him – the accused Miloš Radić.

After reaching the creek, the Accused tried to leave again, but because of the steep side, he states that he slipped and fell down, which those soldiers noticed and ordered him to stay.

He particularly remembers a soldier with curly hair, around 180cm height, who ordered his neighbors to line up above the creek, with their faces turned toward him, to pray to God in their manner and thereafter shot them.

The Accused remembers that Ibro Džananović was also among the persons lined up there, who at the moment looked at the Accused as if he was asking for help with that look. The Accused only shrugged his shoulders.

The men fell in the creek, and then that soldier took out a pistol and *"finished the ones who had fallen down and stayed alive"*.

He states that thereupon he went home alone and told his wife everything, pointing out that for three days he only cried, ate nothing, and felt so sorry for his neighbors.

The Accused points out that he tried to explain to those unknown soldiers how much these neighbors of his had meant to him, how much they had been good to him, but after the rifle had been cocked behind his back, he did not dare do anything else.

He is sure that except for Ibro Džananović, none from among the lined up persons addressed him any more.

In responding to the Prosecutor's question, the Accused was not able to explain the assertion of 4 survived witnesses that he had a cap on his head on that critical day.

He also was not able to explain why the survivors charged him particularly.

The Accused himself states that to this date he still has good relations with his Muslim neighbors, the rare returnees to Repovac, the same ones as before the critical event.

Speaking about the beginning of the war events, witness Ljubiša Todorović remembers that he kept village guards with his neighbors, including Miloš and Milenko Radić. He remembers that they were all issued with the arms, while he himself was issued with a *PAP* semi-automatic riffle, Miloš with a *Cza* machine gun, Milenko with a *PAP*, Miloš Todoroć with an automatic riffle, and Rade Filipović a *PAP*. They were issued with the weapons by Marko Blagojević from Repovac, at the time the company leader.

He also remembers when Serb soldiers expelled the Muslim population from Hranča and Repovac during the time when together with 4 mentioned persons he had held the combat position Pajići above Hranča.

The witness also states that he participated in the Glogova cleansing operation after they had been lined up together at the location called "Separacija" (the brothers Miloš and Milenko Todorović were also there). He remembers that only Miloš Radić had a machine gun at the time. This cleansing implied shooting in the air in order to frighten Muslims and force them to leave Glogova, which actually happened.

Without remembering the precise date, but knowing that it was May 1992, the witness points out that together with his cousin Miloš Todorović he set off to the *Pan*

around 06:00 hrs to mow grass, and that on the way to the field they passed by the house of Miloš Radić, whom they greeted and told him where they had been going.
The witness states that almost near the mowing completion a group of 8-9 soldiers passed by them wearing olive-grey uniforms and caps or multi-colored scarves on their heads, and called them from the distance of around 500m to go with them, namely to clean the creek in which, according to rumors, a group of Muslims had been hidden. They joined them and went in the direction of the house of Miloš Radić, but when they saw that the group was heading toward the creek up from the Borkovac settlement, the witness and Miloš Todorović, as he further states, stopped and remained sitting on a meadow, looking the soldiers entering the woods, namely the creek and going out of their sight.
The witness points out that they did not want to follow those soldiers because they knew that their Muslim neighbors had been hidden in the creek, and that they might recognize them.
They had been sitting on the meadow for 1-2 hours, when they heard single shots in 5 minute periods, after which the witness told Miloš to go home, so they went to their homes.

As the witness further states, the following day he heard that 8 Muslims had been killed in the creek, including one girl whose father had worked in Germany, then Hajrudin Hasanović, a friend of the witness from the primary school, neighbor Maho and Fadil and Munib Sulejmanović.
He also heard that the following day, workers of the utility services buried the bodies of the killed persons beside a tree in the courtyard of the house of Bekir Sulejmanović, where he saw a pile of freshly dug-up earth while passing along that road on the following days.
The witness also remembers that it was raining in the afternoon hours on that day.

He asserts that he does not know who killed these men, namely whether the accused Mirko Todorovoć and Miloš Radić participated in it.

Also stated was a part of the witness's statement given during the investigation, namely on the premises of the Police Station Bratunac, which was used for the interview purposes by an authorized SIPA investigator.
However, at the main trial, the witness changed his statement almost entirely.
Although he maintained the averment that together with the accused Miloš Radić, his brother Milenko, and the other neighbors he had kept village guards, the witness asserted at the main trial that although they had uniforms, they were not armed.
At the main trial, the witness does not remember the Glogova cleansing operation about which he had spoken during the investigation, although he maintains the part of the statement concerning the line-up at the "Separacija" location led by Lazar Blagojević. He also denies the knowledge about the Pajić settlement, and the Crisis Staff existence in Bratunac, as he had described in detail during the investigation.

The witness points out at the main trial that he does not know who was killed in Borkovac, not even when the Prosecutor specifically listed him the victims' names.

The witness explains such change of the statement at the main trial with the fact that the statement during the investigative phase was given under pressure, namely that the SIPA official person told him that he would send him to the Sarajevo prison if he did not tell him everything.

He asserted that he even had not read the record, that he had signed it in fear, and that a vehicle had been parked in front of the building which would take him to Sarajevo.

Witness Bajro Kulovac, the SIPA investigator who had questioned this witness, stated at the main trial that in taking actions upon the BiH Prosecutor's Office Order, supported by the Police Station Bratunac, he managed to contact the witness who worked in Belgrade, and that the witness's wife, who worked in the PS Bratunac gave him the home phone number so that he can obtain the information about the witness arrival, and that around ten days after that contact, Ljubiša Todorović reported himself after his arrival from Belgrade, after which the witness went to Bratunac.
They made the interview in the office of the PS Bratunac Deputy Chief.
Witness Kulovac remembers that Ljubiša Todorović was a very cooperative witness and that they had a coffee during one of the breaks.
He points out that the interview lasted from 10:15 to 15:40 hrs, that the witness was alone, and that the record writing lasted a bit longer.
Witness Bajro Kulovac was visibly surprised at the main trial, and he denied any threats to the witness, Ljubiša Todorović, which he maintained even when two of them were confronted.
In addressing witness Todorović, he particularly pointed out: "*How could I have known, if you did not tell me*", having in mind the detailed description of not only the critical event, but many other events unrelated to this incriminating event.
On the other hand, witness Todorović maintained his assertion that he had said everything under pressure and threats with the prison in Sarajevo, and also that witness Bajro Kulovac head been shouting all the time, due to which he, as he alleges, "immediately got confused" */as rendered in the original/*.

In evaluating the testimony of witness Ljubiša Todorović given during the investigation, in the context of all other testimonies, particularly the survived victims from the captured group, but also of the Accused themselves, including witness Miloš Todorović, the Court accepted as credible the statement of this witness given during the investigation, while the one given at the main trial, was considered an obvious result of the intention to help the Accused to avoid the criminal responsibility.
The Court rendered such decision particularly bearing in mind the facts that: the interview was made on the premises of the PS Bratunac during the work hours, and that in case of any shouting and yelling, as stressed by the witness Todorović, it would be realistic to expect that any of the present policemen or other personnel, including the wife of this witness, would check what was happening on their official premises, particularly because it is not logical that a SIPA official person acted in such unprofessional manner, as the witness tried to present the investigator.

The Court evaluated the testimony of the witness Bajro Kulovac, the SIPA investigator, as clear and convincing ,"particularly having in mind the fact that he himself noticed that he could not have written about something which he did not know, namely: he does not know the people, the place or the events described by the witness Ljubiša Todorović in his statements when he talked about his relatives, persons of the same ethnicity, his place-Bratunac and the events which are deeply cut in his memory, in particular, about the event when 8 of his neighbors, civilians were executed one day in May 1992.

Thus, bearing in mind all the foregoing, the consistent assertions of the witnesses for the Prosecution concerning the criminal behavior of the Accused, and on the other hand, the illogic statements of the witnesses for the Defense in many parts, who, intending to help the Accused to avoid criminal responsibility, quite consciously created the circumstances which are not consistent with the place and the time of the charges in terms of the place and the time, the Court established beyond any reasonable doubt that the accused Mirko Todorović and Miloš Radić, intending to expel the Bosniak civilian population from the territory of the Municipality of Bratunac, including their neighbors, participated in the commission of the actions as charged, in the manner that as the local inhabitants, they showed the way to the place where their neighbors were hidden, the forest path which the soldiers from aside could not have known at all, and thereafter, by their presence with cocked rifles, participated in the unlawful arrest, and by standing around the gathered group, enabled the remaining 4 soldiers to abuse, beat and seize valuable items from the captured civilians, even that two of them singled out from the group a 20-year old girl Hamedina Ramić and took her to the house in which she was kept, and finally, when returning the civilians again toward the place where they had been found, again with cocked rifles, looking at them in their faces, enabled one of the soldiers to execute the group of the remaining 12 civilians. Although armed, the Accused failed to prevent the soldiers from abusing their neighbors, failed to let them leave the crime scene unnoticed, although the terrain allowed so, and failed to prevent one of the soldiers from opening the fire at their neighbors.

Their behavior, although passive at first sight, had a decisive importance for the commission of this crime. Had the Accused, as asserted by the Defense, been forced to be at the crime scene, a logical issue arises as to how come that the Accused did not try to prevent the remaining 4 soldiers from their intentions. In the opinion of this Court, two armed soldiers like them, helped by 12 civilians, could have quite certainly resisted four soldiers from aside. This is in particular so bearing in mind the advantage of the terrain knowledge, which was on the side of the captured civilians.

The Court does not have any doubts as to the statements of the witnesses who survived the execution, particularly the identity of the Accused, while the assertions of the Defense for the accused Miloš Radić, that these statements are the result of an arrangement, which ensues from the sole fact that, allegedly, during the investigation only one survived victim said that the accused Radić had a mask on his head, while during the main trial all survived victims said so, the Court finds unfounded in their entirety, and points to the lack of logic: to wit, only an opposite situation could have brought under suspicion the testimonies of the witnesses, namely if only one survived victim had said during the investigation that the accused Miloš Radić did not have a cap – a mask, and all the others stated that he had it. If the witnesses, in a situation set up in that way, stated at the main trial that the Accused did not have a mask, this would indeed bring under suspicion the truthfulness of the testimonies of the witnesses, and also their honorable intentions.

However, bearing in mind the reactions of all the survived victims when they saw that their neighbor and friend had been hidden behind a mask, which had raised a sort of hope in them, the Court accepted the testimonies of these witnesses in their entirety.

The Court particularly had in mind the fact that none of the survived victims blamed the Accused for more than they had actually done, namely for what the witnesses had seen. The witnesses could have also said that the Accused abused them, seized their valuable items, that the Accused fire at them but they did not do so.

The survived victims only said what they had seen the Accused had done. They are consistent in stating that the Accused stood with their cocked rifles, describing that identically as: "guards keeping ".

The Court also considered the illogic facts ensued from the testimonies of the Defense witnesses, starting from the field where the accused Radić, allegedly farmed corns, and from which he was "taken away" by certain paramilitary soldiers, who nevertheless knew his name and his brother's name. At one moment, witnesses Ljubiša and Miloš passed by that field with a hand-chart, which is all that the Accused mentions in relation to these two witnesses.

On the other hand, witness Ljubiša Todorović asserts that he and his cousin Ljubiša Todorović were taken by some unknown soldiers from the field where they had mowed grass, but that he recognized among them the accused Mirko Todorović and Miloš Radić. In walking behind him, at the moment when they split in several directions and said they were going to cleanse the terrain, the witness states that he and Ljubiša Todorović immediately turned around and returned from where they had come, namely that they used their position at the back of the line.

However, witness Ljubiša Todorović does not remember in his statement that the Accused were also among those soldiers, but he points out that he and Miloš Todorović, at the moment when they realized that the line had been moving toward the house of Miloš Radić, namely in the direction of the creek up from Borkovac, stopped and stayed for 1-2h sitting on the meadow. Only when they heard shots from the creek direction, he states, they returned home.

Bearing in mind the statements of Miloš Todorović, and also of the accused Mirko Todorović himself, who are speaking about those unknown soldiers as very dangerous men who should not be even looked at, the Court considers it illogical that witnesses Miloš and Ljubiša could have easily left the group of soldiers which forced them to follow them under the threat of weapons.

The testimony of the accused Mirko Todorović himself is contradictory. He firstly states that he had to show the way to the uniformed soldier, and when they reached the house in which his neighbors had been allegedly interned, and those soldiers forbade him to see them, he simply moved away from the site, went down the forest to the main road where he found the accused Miloš Radić.

The accused Radić, however, does not mention this house, but he points out that he met the accused Mirko Todorović while walking through the creek, namely in the direction of the Sulejmanović family house.

Subsequently, however, he states that witnesses Ljubiša and Miloš Todorović could leave the group of soldiers because they walked at the back of the line, and that he himself had no chance of returning because of "such" a man, wishing nobody to face such situation.

According to this second part of his statement, the Accused did not leave the scene because he did not dare.

This ensues from his further statement when he denies that he also, like the accused Radić, had a mask because he had no reason to hide, as said, according to him, by the witnesses for the Prosecution too. These are the same witnesses for whom he originally asserts that he did not see them at all.

The conclusion of the Court is also confirmed by the testimony of the witness for the Defense, the wife of the accused Miloš Radić, who states that in the evening of 20 May 1992 Miloš told her that he had been present at the killing of his neighbors.

On the other hand, the Court also considered certain differences in the testimonies of the witnesses for the Prosecution, from the fact that not all survived victims saw both the Accused at the moment of execution, which is logical, considering that the witnesses stood in a line of 12 men who were forced to keep their heads bowed down, while some of them secretly looked at the ones who stood in front of them, and thus saw the accused Miloš Radić, while the others saw the accused Mirko Todorović, and even Krke.
All the witnesses, however, are consistent in the matters essential for the establishment of the responsibility of the Accused.

The Court particularly considered the form of participation of the Accused in the commission of this criminal offense, and starting from Article 29 of the CC BiH which prescribes: *If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence*, concluding that the Accused were aware of the circumstances of the relevant time of the particularly widespread and systematic attack launched in the territory of their municipality against non-Serb civilian population, that they showed the way to the place where their neighbors had been hidden, and thereafter with cocked rifles secured the terrain and prevented the captured civilians from leaving the scene (although they had a chance for that if only the Accused had let them do so), and with such behavior enabled the execution of the captured civilians.
The Accused, the Court concludes, were aware of their actions and they wanted its commission, because had they not, the Court is convinced, they could have prevented it.

Also, although the Accused are charged with the commission of the criminal offense of persecution as the crime against humanity by killings and tortures, as prescribed by Article 172 (1) item h), in conjunction with items a) and f) of the CC BiH, the evidentiary proceedings showed that the actions of the Accused also satisfied the elements of the criminal offense of deprivation of liberty as the crime against humanity, prescribed by item e) of the same paragraph.
Therefore, by applying Article 280, particularly paragraph 2 of the CPC BiH, the Court found the Accused guilty of the commission of the criminal offense of Crimes against Humanity in violation of Article 172 (1) item h), in conjunction with items a), f) and e) of the CC BiH.

7. Meting Out Punishment

In deciding upon the duration of punishment for a term of 17 years, pursuant to Article 48 of the CC BiH, the Court particularly took into account the fact that the criminal offenses of which the Accused are found guilty were committed with a direct intention, namely, with an undoubted knowledge of the Accused about the character of their actions and their consequences, that is, consciously and willingly.

In deciding about the duration of punishment, the Court took into account all the circumstances of influence on it, and it particularly considered the level of their responsibility, the motives due to which the offense was committed, the strength of endangering or the violation of the protected goods, as well as the circumstances in which the offense was committed. Also, in deciding about the duration of punishment, the Court took into account the former life of the Accused, their personal circumstances, their behavior during these proceedings, that is, the Court evaluated both the aggravating and the extenuating circumstances concerning the Accused.

Aggravating Circumstances

With regard to Mirko Todorović and Miloš Radić, the Court firstly considered the gravity of the criminal offenses of which they were found guilty.

The gravity of the criminal offenses with which the Accused are charged was determined based on the effect on the victims or the persons related to the criminal offenses and their closest family. The gravity is determined *in personam*, not in terms of universal circumstances. The Court found that although the guilt of the accused can be related to a particular and general evil inflicted on the victim and his/her family, it would have gone too far if each incident that occurred in the local community was attributed to the accused who was found guilty.

Although the criminal offense against the values protected under international law is punishable with the sentence of long term imprisonment, the Court did not impose it considering the form of the contribution of the Accused to the commission of this criminal offense.

In this particular case, the Court took into account the following elements generally considered in meting out the duration of the punishment:

In deciding on the duration of the punishment, the Court firstly considered the manner in which a decision can influence the protection of society against the accused persons who were found guilty, which constituted an important factor in meting out an appropriate punishment. The protection policy depends on the criminal offense nature and the behavior of the accused. The protection of society often implies the sentences of long term imprisonment in order to protect the society against the hostile and criminal behavior of the guilty accused. This factor is important and relevant when the guilty accused is considered risky for the society.

In the case at hand, the Court considered the contribution of the accused in the commission of the criminal offense, that is, the fact that by their presence, both in the discovery of their neighbors in the place where they were hidden, and in their escort to the place where they were killed, while the Accused, their neighbors, with their cocked riffles pointed at them, calmly watched their execution.

Furthermore, the Court also took into account the rehabilitation factor which addresses the circumstances of the reintegration of the accused found guilty into society. This is usually the case when younger, or less educated members of the society are found guilty of criminal offenses. Therefore, it becomes necessary to reintegrate them into the society so they can become useful members and in order to enable them to live a normal and pro after their release from prison, which the Court also took into account regarding the Accused in meting out their punishment.

In addition to the fact that by an appropriate punishment the Accused should be prevented to a sufficient extent from ever thinking of participating again in such crimes, in rendering its decision, the Court also took into account the persons who might in the future find themselves in similar situations, who also should be deterred from participating in such criminal offenses.

A decisive contribution which the Accused gave in the killings of civilians, their neighbors, and the immeasurable consequences which have permanently affected the life in the relevant territory, led the Court to impose the punishment of 17 years of imprisonment.

Although the consequences of this criminal offense are immeasurable and permanent, which most vividly ensues from the testimony of Rušveta Sulejmanović *"and my Munib is missing and missing"*, the Court finds that such punishment will contribute to an increase of the awareness about the consequences and punishability of such crimes, that is, the justness of punishing the perpetrators.

Mitigating Circumstances

In meting out the appropriate punishment to be imposed after finding the Accused guilty, in addition to general factors, it is important to also take into account the personal factors such as the age of the Accused and their prior behavior. The general reputation of the Accused is also a detail which the Court took into account.

The Defense for both the Accused submitted evidence that the Accused have good characters. Many witnesses for both the Defense and the Prosecution pointed out that the Accused had neither seized valuable items from the captives nor did they shoot them at the time of the critical event, that before the critical events they had extremely good relations with their Muslim neighbors, with some even after the war events too. Also, according to the statements of certain witnesses, using his authority the accused Todorović Mirko even managed to release certain Muslims detained before the critical event.

The Court also took into account the fact that both the Accused are family men, that each is a father of three children and that during the proceedings they behaved correctly before the Court.

Conclusion

Bearing in mind all the foregoing aggravating and extenuating circumstances evaluated by the Court, the Court finds that the imposed sentence is proportional to the gravity of the committed criminal offense, the extent of the criminal responsibility of the Accused, the circumstances under which the crime was committed and the motives of the Accused to commit the criminal offense, and that the purpose of punishment in terms of special and general prevention will be achieved by the imposed punishment.

Pursuant to Article 56 of the CC BiH, the time that the Accused spent in custody, starting from 24 May 2007, will be credited to the sentence of imprisonment.

8. Decision on Costs and Claims under Property Law

Pursuant to Article 188 (4) of the Criminal Procedure Court of Bosnia and Herzegovina, the Accused are relieved in part of the duty to compensate the costs of the proceedings considering that from the case file development it ensues that the duty to reimburse the overall costs of the proceedings could jeopardize economically the support of the Accused, or their families.
The Court will determine the amount of theses costs in a separate decision pursuant to Article 186 (2) of the CPC BiH.

In instructing the injured parties to take civil actions in order to pursue their claims under property law, the Court was led by the fact that there is a fairly large number of injured parties in these proceedings, that a longer period of time would be required to determine the amount based on the claims under property law, and that thereby the proceedings would be delayed. Therefore, it was decided pursuant to Article 198 (2) of the CPC BiH.

RECORD-TAKER
LEGAL ADVISOR
AMELA SKROBO

PRESIDENT OF THE PANEL
MINKA KREHO

NOTE ON LEGAL REMEDY: An appeal may be filed from this Verdict with the Appellate Division of this Court within 15 days after the receipt of a written copy of the Verdict.

I hereby c [redacted] *t is a true translation of the original written in Bosnian/Serbian/Croatian.*
Sarajev [redacted]
Certi [redacted]