



**Number: X-KR-05/96-3**  
**Sarajevo, 29 October 2009**

### **IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting as the Panel consisting of Judge Minka Kreho as the Presiding Judge and Judges Željka Marenčić and Ljubomir Kitić as members of the Panel, with the participation of legal officer Emil Pinkas as the record-taker, in the criminal case against the accused Zoran Marić, for the criminal offense of War Crimes against Civilians in violation of Article 173(1)c) in conjunction with Article 29 and Article 180(1) of the Criminal Code of BiH (CC BiH), deciding on the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-56/09 of 14 July 2009, whereafter the parties, on 14 October 2009, reached a plea agreement, on 29 October 2009 during a public session attended by the accused Zoran Marić and his Defense Counsel – Attorney Goran Nešković, and the Prosecutor of the Prosecutor's Office of BiH - Mirko Lečić, accepted the agreement and rendered the following

### **VERDICT**

**THE ACCUSED: ZORAN MARIĆ, a.k.a. „Đole“**, son of Branko and Stoja née Dobretić, born on 15 April 1964 in Ljoljići – Jajce Municipality – Jezero, residing in Stara Pazova, at Njegoševa Street bb /no number/ – Republic of Serbia, Orthodox Serb by ethnicity, national of BiH, Personal Identification Number 1504964102084, mason by occupation, married, father of three underage children, served the army in Novi Sad/Petrovaradin in 1985, no previous convictions, no other criminal proceedings pending against him, currently in custody pursuant to the Decision of the Court of BiH No. X-KRN/05/96 of 8 July 2009.

### **IS FOUND GUILTY**

#### **Because:**

During the state of war in Bosnia and Herzegovina and the armed conflict in the territory of Jajce Municipality between the Army of Republika Srpska, on one side, and the Army of BiH and HVO /Croat Defense Counsel/ on the other, as a member of the Army of Republika Srpska, he acted in violation of Article 3(1)a) and c) in conjunction with Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, by doing the following:

On 10 September 1992, after the burial of a killed soldier of the Army of Republika Srpska, Rade Savić, as a member of an organized group of armed people, which consisted of Jovo Jandrić, Mirko Pekez, son of Špiro, Simo Savić, Mirko Pekez, son of Mile, Milorad Savić, son of Ljupko, Slobodan Pekez, Ilija Pekez, Milorad Savić, son of Đuro, and Blagoje Jovetić, which was organized by Jovo Jandrić, having mutually agreed on the plan to round

up Bosniak civilians located in Ljoljići and Čerkazovići – Jajce Municipality, whose movement of freedom was limited since they had to respond to the roll-call on a daily basis, intending to take them away and kill them at the place called *Tisovac*, so they went to these places armed with automatic and semi-automatic rifles, and under the threat of using the firearms unlawfully arrested and forcibly took out the Bosniak civilians from their houses, rounded up women, men and children in the place called *Osoje*, and thereupon took them all together to the place called *Draganovac*, with the rifles in their hands, threatening that they would kill whoever tried to escape, insulting and physically harassing them along the way by calling them different names, by punching and kicking them and by hitting them with rifles, and when they reached the place called *Draganovac* they stopped them there and Mirko Pekez, son of Mile, ordered them to put on his jacket, that he had taken off, all valuable items they had on them, such as gold jewelry, watches and money, and when they did so, he took away those items, and thereupon they took them to the place called *Tisovac*, where they ordered them to line up against the edge of an abyss, and when they did so, they opened a burst of fire from the rifles pointed at them, intending to kill them, thus on that occasion they killed **Nedžib Mutić**, son of Osman, born in 1936, **Šećo Malkoč**, son of Ibro, born in 1933, **Irhad Bajramović**, son of Mustafa, born in 1971, **Adnan Zobić**, son of Sabahudin, born in 1979, **Fikreta Zobić**, daughter of Arif, born in 1956, **Fahra Balešić**, daughter of Musla, born in 1928, **Faza Balešić**, daughter of Avdo, born in 1918, **Derviša Mutić**, daughter of Hadžo, born in 1933, **Latif Bajramović**, son of Mujo, born in 1959, **Senad Karahodžić**, son of Omer, born in 1968, **Ibrahim Karahodžić**, son of Alija, born in 1933, **Mujo Bajramović**, son of Ibro, born in 1927, **Asmer Zobić**, son of Nurija, born in 1977, **Zarifa Karahodžić**, daughter of Latif, born in 1928, **Đula Zobić**, daughter of Avdo, born in 1924, **Ramiza Mutić**, daughter of Šerif, born in 1936, **Adis Zobić**, son of Nurija, born in 1983, **Fikreta Zobić**, daughter of Tahir, born in 1957, **Fatima Mutić**, daughter of Huso, born in 1963, **Ekrema Bajramović**, daughter of Latif, born in 1939, **Mustafa Bajramović**, son of Aslija, born in 1946, **Mustafa Balešić**, son of Ibro, born in 1950, and **Sabahudin Bajramović**, son of Šemso, born in 1979, while **Zejna Bajramović**, **Nurija Zobić**, **Omer Karahodžić** and **Mustafa Bajramović** survived the execution but sustained physical injuries, while **Fahrija Mutić** suffered no injuries.

**Whereby** as a co-perpetrator he committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), in conjunction with Article 29 and Article 180(1) of the CC BiH.

Thus, for the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) in conjunction with Article 29 and Article 180(1) of the CC BiH, applying the mentioned provisions and provisions from Articles 39, 42 and 48 of the CC BiH, the Court

## S E N T E N C E S

### THE ACCUSED TO 15 (FIFTEEN) YEARS OF IMPRISONMENT

Pursuant to Article 56 of the CC BiH, the time the Accused spent in custody shall be credited towards his sentence of imprisonment, specifically from 18 August 2008 onwards.

Pursuant to Article 186(1) and Article 188(4) of the CPC BiH, the accused Zoran Marić is hereby relieved of the duty to reimburse the costs of the criminal proceedings.

Pursuant to Article 198(2) of the CPC BiH, the injured persons and families of the killed persons are instructed to take civil action to pursue their possible claims under property law.

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

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

The Indictment of the Special Department for War Crimes of the Prosecutor's Office of BiH number: KT-RZ-56/09 of 14 July 2009, which was confirmed on 16 July 2009, charges the accused Zoran Marić with the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) in conjunction with Article 29 and Article 180(1) of the Criminal Code of BiH.

On 30 July 2009, the Accused entered a plea of not guilty of the charges under the referenced Indictment, whereafter the case file was referred to the Trial Panel. On 9 September 2009, the Trial Panel held a status conference and on 14 October 2009 opened the main trial at which the Prosecutor's Office of BiH tendered into the case file a Plea Agreement which was concluded on the same day between the Prosecutor's Office of BiH, on one side, and the Accused and his Defense Counsel on the other.

Under the Agreement, the accused Zoran Marić pleaded guilty of the criminal offense of War Crimes against Civilians in violation of Article 173(1)c) in conjunction with Article 29 and Article 180(1) of the CC BiH, which was committed in the manner and under the circumstances set forth in the operative part of the referenced Indictment of the Prosecutor's Office of BiH. The Accused committed to testify as a witness in the case of the Prosecutor's Office No. KT-RZ-65/08 against Jovo Jandrić and Slobodan Pekez, and the Prosecutor's Office of BiH consented that for this criminal offense a sentence of imprisonment between 14(fourteen) and 16(sixteen) years be meted out and imposed on the Accused by the Court.

Under the Indictment, during the state of war in Bosnia and Herzegovina and the armed conflict in the territory of Jajce Municipality between the Army of Republika Srpska, on one side, and the Army of BiH and HVO /Croat Defense Counsel/ on the other, as a member of the Army of Republika Srpska, Zoran Marić is charged that on 10 September 1992, violating Article 3(1)a) and c) in conjunction with Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, after the burial of a killed soldier of the Army of Republika Srpska, Rade Savić, as a member of an organized group of armed people, which consisted of Jovo Jandrić, Mirko Pekez, son of Špiro, Simo Savić, Mirko Pekez, son of Mile, Milorad Savić, son of Ljupko, Slobodan Pekez, Ilija Pekez, Milorad Savić, son of Đuro, and Blagoje Jovetić, which was organized by Jovo Jandrić, having mutually agreed on the plan to round up Bosniak

civilians located in Ljoljići and Čerkazovići – Jajce Municipality, whose movement of freedom was limited since they had to respond to the roll-call on a daily basis, intending to take them away and kill them at the place called *Tisovac*, so they went to these places armed with automatic and semi-automatic rifles, and under the threat of using the firearms unlawfully arrested and forcibly took out the Bosniak civilians from their houses, rounded up women, men and children in the place called *Osoje*, and thereupon took them all together to the place called *Draganovac*, with the rifles in their hands, threatening that they would kill whoever tried to escape, insulting and physically harassing them along the way by calling them different names, by punching and kicking them and by hitting them with rifles, and when they reached the place called *Draganovac* they stopped them there and Mirko Pekez, son of Mile, ordered them to put on his jacket, that he had taken off, all valuable items they had on them, such as gold jewelry, watches and money, and when they did so, he took away those items, and thereupon they took them to the place called *Tisovac*, where they ordered them to line up against the edge of an abyss, and when they did so, they opened a burst of fire from the rifles pointed at them, intending to kill them, thus on that occasion they killed 23 persons, while 5 persons survived the execution, of whom 4 sustained physical injuries, while one person suffered no injuries.

On 28 October 2009, a hearing was held to consider the relevant agreement, specifically whether the agreement had been made willingly, consciously and with understanding, whether the Accused understood the legal consequences arising from signing the agreement, in particular that by doing so he waived the right to a trial and the right to an appeal from the criminal sanction to be imposed on him, as well as whether he understood the consequences relative to the claim under property law and the costs of the criminal proceedings. At the hearing, the Prosecutor's Office of BiH explained that there was an error in the Indictment in the part charging Zoran Marić with the criminal offense of War Crimes against Civilians in violation of Article 173, paragraph 1, subparagraph c) and f), whereas it should read subparagraph c) only, whereafter the Prosecutor's Office presented and tendered material evidence in the case file.

Having considered the referenced agreement, the Panel was convinced that it had been made willingly, consciously, and with understanding, that the Accused was aware of and that he understood the legal consequences thereof, as well as that there existed sufficient evidence of the guilt of the Accused, whereafter the agreement was accepted and the sentencing hearing was resumed to impose the sentence of imprisonment between 14 and 16 years, as proposed in the agreement.

## **2. Presented evidence**

The Prosecutor's Office of BiH adduced and tendered in the case file the following documentary evidence: Transcript of interview of the witness Jovo Jandrić dated 7 April 2009 with a CD; Transcript of statement of the suspect Mirko Pekez examined at the Court of BiH on 10 March 2008 with a CD; Record on hearing the witness Omer Karahodžić, No. KT-RZ 116/05 of 5 November 2007 together with medical documentation issued by the Travnik hospital; Record on hearing the witness Fahrija Mutić, No. KT-RZ 116/05 of 6 June 2007; Record on hearing the witness Zejna Bajramović, No. KT-RZ 116/05 of 13 November 2007 with medical documentation issued by the Clinical-Medical Centre in Banja Luka and a CD with a statement of the witness Zejna Bajramović; Record on

Examination of Witness Miroljub Perlaš, No. KT-RZ-116/05 of 17 March 2008; Record on hearing the witness Nurija Zobić, No. KT-RZ 116/05 of 27 April 2007 with medical documentation issued by the Clinical-Medical Centre in Banja Luka; Record on hearing the witness Pero Savić, No. KT-RZ 116/05 of 6 November 2007; Record on hearing the witness Nedeljko Jandrić, No. KT-RZ 116/05 of 6 November 2007; Record on hearing the witness Rajko Todorčević, No. KT-RZ 116/05 of 14 November 2007; Finding on exhumed and autopsied corpses in the territory of the Municipality of Jajce, made by Dr. Hamza Žujo; Decision on the Proclamation of the State of War in the Territory of the Republic of Bosnia and Herzegovina of 20 June 1992; Regular Operations Report of the 5th Corps Command of the Army of Republika Srpska, op. strictly confidential No. 84-84, of 23 April 1992; Regular Combat Report of the Command of the 1<sup>st</sup> Krajina Corps of the Army of Republika Srpska, No. op. confidential 44-1/160 of 3 June 1992, 14 June 1992, 23 June 1992, 20 July 1992, 9 August 1992, 31 August 1992 and 26 October 1992; Order of the Command of the 1<sup>st</sup> Krajina Corps, op. strictly confidential No. 535-1 of 19 June 1992; On-site Investigation Report of the Basic Court in Mrkonjić Grad, No. Kri: 57/92 of 12 September 1992; Finding and opinion of dr. Rajko Todorčević, of 12 September 1992; Official letter to the Basic Public Prosecutor's Office sent by the Military post No. 868-2 of 1 July 1992; Official letter of the Ministry of the Interior of Republika Srpska, Crime Police Administration No. 02-11347/07 of 18 October 2007; Decision of the Travnik Cantonal Court No. Kri 5/99 of 27 April 1999;

Exhumation Record of the Travnik Cantonal Court, No. Kri. 5/99 of 28 April 1999; Death certificates for Sabahudin Bajramović; Mustafa Balešić; Mustafa Bajramović; Ekrem Bajramović; Fatima Mutić; Fikreta Zobić; Adis Zobić, Ramiza Mutić, Džula Zobić, Zarifa Karahodžić; Asmer Zobić, Mujo Bajramović; Ibrahim Karahodžić; Senad Karahodžić; Latif Bajramović; Derviša Mutić; Faza Balešić, Fahra Balešić; Fikreta Zobić; Adnan Zobić; Irhad Bajramović, Šećo Malkoč and Nedžib Mutić.

The Defense for the Accused adduced and in the case file tendered a health sheet and the medical record card for the accused Zoran Marić.

### **3. Closing arguments – submitted during the presentation of reasons for the sentence range**

As extenuating circumstances the Prosecutor's Office of BiH stated that the Accused was in poor health, that he had no prior convictions, that he is a father of three underage children and that he had testified in another case of the Prosecutor's Office of BiH and thus contributed to finding the truth in this criminal event.

As extenuating circumstances the Defense for the Accused primarily stated that the Accused was in poor health, that he was a family man, a father of three underage children, that he had entered the plea of guilty and offered his sincere repentance, that he had no prior convictions, and proposed that, considering his poor financial situation, the Accused be relieved of the duty to reimburse the costs of the criminal proceedings.

#### **4. Applicable Law**

With regard to the issue of substantial law to be applied, considering the time of the commission of the crime, the Court accepted the legal qualification of the Prosecution, and convicted the Accused of the criminal offense of War Crimes against Civilians in violation of Article 173(1) subparagraph c), in conjunction with Article 29 and Article 180(1) of the CC BiH.

Considering the time of the commission of the crime and the provisions of substantive law applicable at the time, the Court considers relevant two legal principles: the principle of legality and the principle of time constraints regarding applicability of the criminal code.

Article 3 of the CC BiH prescribes the principle of legality pursuant to which 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, while Article 4 of the CC BiH (Time Constraints Regarding Applicability) 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, and 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.

The issue of applicability of the CC BiH is considered in the context of Article 4(a) of the same Code, and Article 7 of the European Convention on Human Rights and Fundamental Freedoms, particularly in view of the “general principles of international law” as provided for in Article 3 and Article 4 of the CC BiH. Considering that War Crimes against Civilians constituted a criminal offence also in the relevant period, the application of the Criminal Code of Bosnia and Herzegovina is the only possibility. Such stance finds support in the hitherto case law date of the Court of BiH<sup>1</sup> as well as in the Decision of the Constitutional Court of BiH in the Abduladhim Maktouf case<sup>2</sup>.

#### **5. Findings of the Court**

##### **D) General elements of the criminal offense of War Crimes against Civilians**

According to the Indictment of the Prosecutor's Office, the Accused is charged with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, which reads:

*“Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:*

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<sup>1</sup> *Inter alia*, the First Instance and the Second Instance Verdict in the Dragoje Paunović case, No. X–KR–05/16 of 26 May 2006.

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

*c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*

*shall be punished by imprisonment for a term not less than ten years or long-term imprisonment”.*

The following general (chapeau) elements follow from the legal definition of the criminal offense of War Crimes against Civilians:

- i. The act of the perpetrator must be committed in violation of the rules of international law;
- ii. The violation must take place in time of war, armed conflict or occupation;
- iii. The act of the perpetrator must have a nexus with the war, armed conflict or occupation;
- iv. The perpetrator must order or commit the criminal offense.

**i. The act of the perpetrator must be committed in violation of the rules of international law;**

The Indictment charges the accused Zoran Marić with a crime against civilians in violation of Article 173(1)c) of the CC BiH, that during the relevant period he acted contrary to Article 3(1)a) and c) and Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Geneva Convention).

Article 3(1)a) and c) of the Geneva Convention:

*“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum the following provisions:*

*1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

*c) outrages upon personal dignity, in particular humiliating and degrading treatment;*

*Article 147 prescribes, “Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture, or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health...”*

In order to establish violation of the rules of international law, it is necessary to establish who the act of perpetration was directed against, or more precisely whether the act of perpetration was directed against a special category of population protected by Article 3(1) of the Geneva Convention.

According to the definition of the protected category set forth in Article 3(1) of the Geneva Convention, the term civilians refers to persons not taking part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat*.<sup>3</sup>

Therefore, taking into account the definition of the term “civilian” which explicitly defines civilians to be persons not taking part in hostilities and not being members of armed forces, it is clear that persons referred to in the Indictment, specifically those for whose death and injury to body the Accused is charged with, were civilians who in no way took part in the armed forces and who were protected under international law. Under the rules of international law, violence to life and person and outrages upon personal dignity, in particular humiliating and degrading treatment, are especially prohibited against this category of persons. Therefore, it is obvious that the criminal acts referred to in the Indictment and those which the Accused committed, as will be reasoned hereinafter, were contrary to the rules of international law, in particular contrary to Article 3(1)a) and c) of the Geneva Convention.

## **ii. The violation must take place in time of war, armed conflict or occupation**

Article 173 of the CC BiH prescribes that a criminal offense must have a nexus with the violation of the rules of international law during, *inter alia*, an armed conflict. An armed conflict exists whenever there is a resort to armed conflict between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. Within the meaning of common article 3 of the Geneva Conventions, the nature of this armed conflict is not relevant. It is irrelevant whether a grave breach occurred in the context of international or internal armed conflict if the following requirements are met: a violation must represent a breach of the international humanitarian law; the regulation must be customary law in nature or if it belongs to the law of treaties the required conditions must be met; the breach must be grave, or more precisely it must represent the breach of the regulation protecting important values, and the breach must include severe consequences for the victim, and the breach must include individual responsibility of the person violating the regulation.

The documentary evidence which the Prosecutor’s Office of BiH adduced and tendered in the case file indisputably points at the existence of an armed conflict at the time and place relevant to the Indictment, which undoubtedly follows from the Decision of the Presidency

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<sup>3</sup> *Prosecutor v. Blagojević and Jokić*, case No. IT-02-60-T, Judgement, 17 January 2005, paragraph 544.



on the Declaration of State of War (Official Gazette of R BiH No. 7/92) of 20 June 1992 and the records of witness interviews.

**iii. The act of the perpetrator must have a nexus with the war, armed conflict or occupation**

The third condition permits a distinction whereby not all crimes committed during an armed conflict must automatically be regarded as war crimes. International case-law has firmly established that for an offense to be considered a war crime there ought to be a sufficient nexus with the armed conflict, namely the acts of the accused must be “closely related to the armed conflict”.<sup>4</sup>

This close relation does not necessarily require that fighting be taking place in the territory where the acts are being committed. In the *Tadić* case, the ICTY Appeals Chamber found that: „International humanitarian law applies in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there, and it continues to apply until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.”<sup>5</sup>

Furthermore, “the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”.<sup>6</sup>

Taking into consideration the evidence adduced, the Court is satisfied that the acts of the accused were sufficiently related to the armed conflict, particularly in view of the fact that at the relevant time the accused was a member of the Army of Republika Srpska and therefore there can be no doubt about his knowing of and the participation in the armed conflict.

**iv. The perpetrator must undertake the act of perpetration of the offense which consists of the commission or ordering of any of the actions alternatively listed in subparagraphs of this Article.**

It undoubtedly arises from the evidence adduced that the accused Zoran Marić as a co-perpetrator partook in the commission of the crime that he is charged with under the Indictment, in the manner as described therein.

Considering the presented evidence, the Court indubitably determined that the accused Zoran Marić, as a co-perpetrator, together with Jovo Jandrić, Mirko Pekez, son of Špiro, Simo Savić, Mirko Pekez, son of Mile, Milorad Savić, Slobodan Pekez, Ilija Pekez, Milorad Savić, son of Ljupko, and Blagoje Jevtić co-participated in the forcible taking out and

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<sup>4</sup> See, *inter alia*, *Prosecutor v. Kunarac*, case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paragraph 55; *Prosecutor v. Vasiljević*, case No. IT-98-32-T, Judgement, 29 November 2002, paragraph 24; Decision on Jurisdiction of the Court in the *Tadić* case, paragraph 70.

<sup>5</sup> Decision on Jurisdiction of the Court in the *Tadić* case, paragraph 70.

<sup>6</sup> *Prosecutor v. Kunarac et al.*, case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paragraph 58.

conducting of civilians to the place of Tisovac where 23 Muslim civilians were executed, 4 persons of Muslim ethnicity sustained physical injuries, while only one person suffered no injuries.

The aforementioned has been also confirmed by witness statements of Nurija Zobić, Zejna Bajramović, Fahrija Mutić, Omer Karahodžić who survived the execution. They testified to have recognized the accused among the armed persons who on the relevant night took them out of their homes and rounded them up in the place of Osoje and thereafter took them towards Draganovac.

The fact that all members of the group who took part in the shooting were armed with automatic and semi-automatic weapons was, apart from the survived victims, corroborated by the witness Nedeljko Jandrić who at the relevant time was Chief of Public Security Station in Bravnice and who testified that all members of active and reserve police forces were during the relevant period issued with automatic and semi-automatic weapons as side arms, which they always carried on them.

Therefore, it is undisputable that the actions of the Accused constitute the elements of the criminal offense of War Crimes against Civilians, in violation of Article 173(1)c), in conjunction with Article 29 and Article 180(1) of the CC BiH.

## **6. Meting out the Sentence**

With regard to the criminal sanction which was imposed on the accused Zoran Marić, it should be stated that the Panel first and foremost took into account the gravity of the criminal offense that the accused is charged with and the degree of his criminal responsibility, the purpose of the punishment and all extenuating and aggravating circumstances, and thereafter imposed on the accused the sentence of fifteen years of imprisonment.

In meting out the sentence, the Court took into account the fact that by entering the plea of guilty the Accused is effectively facing the consequences of his actions, which constitutes the key aspect of the guilty plea even if, as in this case, he did so through a plea agreement. The admission of guilt is not only conducive to the establishment of the truth but also to reconciliation in these territories, of which the Panel is convinced, and which considerably affected the decision on the weight that should be given to the guilty plea.

Undoubtedly, while too lenient to some, this sentence will appear too severe to others. Nevertheless, within the range between 14 to 16 years (as foreseen by the agreement) and primarily taking into account the admission of guilt of Zoran Marić, the level of his criminal responsibility, and the extenuating circumstances for the Accused, the Panel finds the sentence of 15 years of imprisonment commensurate and adequate to achieve the purpose of the punishment in this specific case.

As the extenuating circumstances the Court considered the Accused's being a family man, father of three underage children, that he had no prior convictions, that he had comported himself properly before the Court, as well as his serious health condition, all of which, when

taken together, warrant the sentence imposed on the Accused, all the more so because the Court found no aggravating circumstances on the part of the Accused.

In view of the foregoing, the Court found the purpose of the punishment with regard to the Accused to be fully achieved by the sentence of fifteen years of imprisonment. Therefore, pursuant to Articles 39, 42 and 48 of the CC BiH, the Court decided as stated in the operative part of this Verdict, and on the basis of Article 56 of the CC BiH the time the Accused spent in custody starting from 18 August 2008 until 29 October 2009 will be credited towards the imposed punishment of imprisonment.

#### **7. Decision on the costs of the criminal proceedings and on the claim under property law**

Taking into account the family situation of the Accused and the fact that he is not in permanent employment, pursuant to Article 188(4) of the CPC BiH the Court relieved the Accused of the duty to reimburse the costs of the criminal proceedings considering that their payment would put into question the livelihood of the Accused and his family members.

While instructing the injured parties – the survived victims of the crime, as well as the injured parties – family members of the killed civilians to file civil suits in order to achieve their possible claims under property law; the Court took into account the fact that determining the amount of property claims would require a considerable period of time, whereby these criminal proceedings would be prolonged. Therefore, the decision has been made in accordance with Article 198(2) of the BiH CPC.

**RECORD-TAKER – LEGAL OFFICER  
EMIL PINKAS**

**PRESIDENT OF THE PANEL  
MINKA KREHO**

**INSTRUCTION ON LEGAL REMEDY:** An appeal from this Verdict may be filed within 15 days after the receipt of the Verdict, but not in the part relative to the Decision on criminal sanction.

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