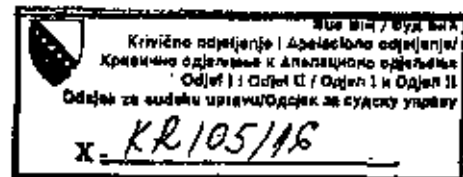


SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KR-05/16
Sarajevo, 26 May 2006



PREVOD DOK. 489

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, sitting as a Panel composed of Judges Davorin Jukić as the Presiding Judge, Lars Folke Bjur Nystrom and Almiro Rodrigues as the Panel Members, with the participation of the legal associate Elvira Begović as the record-taker, in the criminal matter against the Accused Dragoje Paunović, for the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item h) in conjunction with items a) and k) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-9/05 dated 9 September 2005, confirmed on 14 September 2005 after the main trial held with partial exclusion of public, in the presence of the Accused, his defense attorneys Ranko Dakić and Jovo Đukanović, lawyers from Prijedor and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Mirsad Strika, on 26 May 2006 reached and publicly announced the following

VERDICT

THE ACCUSED: DRAGOJE PAUNOVIĆ aka "Špiro", father's name Božidar, mother's name Vidosava (maiden name Stanković), born on 19 June 1954 in Mojkovac, Montenegro, Personal Identification Number 190654190016, of Montenegrin ethnicity, citizen of both Serbia and Montenegro and Bosnia and Herzegovina, clerk by occupation, unemployed, resident of Prijedor, address: Karanska no. 4; in custody since 18 March 2005

IS FOUND GUILTY

of the following:

In the period from May to September 1992, during a widespread and systematic attack of the Army and Police of the so-called Serb Republic of



Bosnia and Herzegovina and paramilitary formations led by the (Serb Democratic Party) SDS directed against the Bosniak civilian population in the territory of Rogatica municipality and Eastern Bosnia region, he ordered and committed persecution of Bosniak civilians, on political, national, ethnic, cultural and religious grounds, by murders and other inhumane acts perpetrated with the intention of inflicting great suffering and serious physical and mental injuries, as outlined below.

1. On 15 August 1992, after Radislav Ljubinac aka "Pjano" had taken twenty-seven Bosniak civilians illegally detained in Rasadnik Camp and driven them near Duljevac village, Municipality of Rogatica, in the capacity of a senior officer of a minor military formation of Rogatica Battalion, issued verbal order to soldiers to tie the hands of the detainees at their backs with ropes and take them to serve as "human shield". The detained civilians were: Edis Čatić, Midhat Čatić, underage Mevludin Čatić, underage Vahudin Čatić, underage Eldin Hodžić, Sulejman Kazić, Nedžad Kazić, Fuad Kazić, Asim Kapo, Besim Kurćehajić, Mujo Pašić, Mesud Pašić, Derviš Pašić, Faruk Isaković, Šukrija Omeragić, Fuad Šetić, Osman Solak, Zajko Salihović, Hamdija Jašarević, Husein Jašarević, Sulejman Jašarević, Mehmed Delija, Mustafa Tanković, Halil Halilović, Ago Kapo, underage Armin Baždar and a person under the pseudonym "A". At Jaćen elevation, in Rogatica municipality, with their hands tied, they were put in front of the military forces of Rogatica Battalion within the Army of the Serb Republic of BiH facing military positions of the Army of BiH. On that occasion the civilians, Hamdija Jašarević and Mustafa Tanković, were wounded.

2. On the same day, after having used the said twenty-seven civilians as "human shield", he ordered soldiers to kill the civilians he had previously lined up; he personally participated in the killing, shooting from his rifle. Consequently, the following civilians were deprived of their lives: Edis Čatić, Midhat Čatić, underage Mevludin Čatić, underage Vahudin Čatić, underage Eldin Hodžić, Sulejman Kazić, Nedžad Kazić, Fuad Kazić, Asim Kapo, Besim Kurćehajić, Mujo Pašić, Mesud Pašić, Derviš Pašić, Faruk Isaković, Šukrija Omeragić, Šetić Fuad, Osman Solak, Zajko Salihović, Hamdija Jašarević, Husein Jašarević, Sulejman Jašarević, Mehmed Delija, Mustafa Tanković and Halil Halilović, whereas Ago Kapo, underage Armin Baždar and a person under the pseudonym "A" survived the execution.

Consequently,



as a part of a widespread and systematic attack directed against civilians, with knowledge of such attack, he perpetrated the persecution of Bosniak civilians on the political, national, ethnic, cultural and religious grounds, by issuing orders for and participating in the killings of civilians and issuing orders to perpetrate other inhumane acts intentionally causing great suffering, serious injury to body or to physical or mental health ("human shield");

Whereby he committed the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item (h) in conjunction with items a) and (k) of the CC of BiH,

Therefore, the Court, in accordance with the above stated provisions and pursuant to Article 42 paragraph 2 of the CC of BiH and Article 48 of the CC of BiH, hereby

SENTENCES HIM TO A LONG-TERM IMPRISONMENT FOR A TERM OF 20 /TWENTY/ YEARS

Based on the application of the legal provision under Article 56 of the CC of BiH, the time the Accused spent in custody, commencing on 18 March 2005, shall be counted as part of the sentence of imprisonment

Pursuant to Article 188, paragraph 4 of the CPC of BiH, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings.

Pursuant to Article 198, paragraph 2 of the CPC of BiH, injured parties protected witness "A", Ago Kapo, Armin Baždar, Jasmina Delija, Damir Šetić, Bisera Bečić, Behija Pašić, Alija Kapo, Alija Isaković, Nada Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Mevlida Čatić, Sanin Tanković, Šehzada Paralović and Mevlida Zimić-Pavica shall be referred to take civil action with their claims under property law.

Reasoning

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-9/05, dated 9 September 2005 and confirmed on 14 September 2005, Dragoje Paunović, aka "Špiro" was accused that he, through the acts described under Counts 1 and 2 of the Indictment, committed the criminal



offense of Crimes against Humanity under Article 172 paragraph 1 items a), h) and k) of the Criminal Code of Bosnia and Herzegovina which was defined by the Prosecutor during the course of the main trial as the criminal offence of Crime against Humanity under Article 172 paragraph 1 item h) in conjunction with items a) and k) of the CC BiH.

The Accused Dragoje Paunović pleaded not guilty for the criminal offense with which he was charged in the Indictment.

Throughout the proceedings, the Court was mindful of the protection of identity of witnesses, the protected witness in particular, by not mentioning the full name of the witness in the Verdict but only his pseudonym whereas the complete data on the said witness are contained in the case file, which is also placed under special protection. In order to ensure adequate protection of the identity of the witness, the Court excluded the public from the part of the main trial held on 6 December 2005, which will be discussed below.

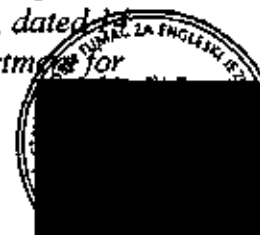
The Prosecutor presented the evidence as follows.

Upon the Motion of the Prosecutor's Office of BiH, Ago Kapo, Armin Baždar, Jasmina Delija, Damir Šetić, Elvedin Kazić, Bisera Bečić, Zaim Čatić, Behija Pašić, Alija Kapo, Šefik Hurko, Alija Isaković, Nada Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Mevlida Čatić, Sanin Tanković, Šehzada Paralović, Mevlida Zimić-Pavica and a protected witness under the pseudonym "A" were examined as witnesses. At the main trial, the Court also examined, as an expert witness, Dr Hamza Žujo, a forensic specialist, and Amor Mašović, the President of the Federation Committee for Missing Persons.

Furthermore, during the main trial, the Court carried out the inspection of the following evidence submitted by the Prosecutor's Office of BiH: Record on examination of witness Ago Kapo, number KT-RZ-9/05 of 12 August 2005; Record on examination of witness Ago Kapo, number Ki-188/99 of 15 March 2000; Record of the MUP, CSB Sarajevo of 18 February 1993; Statement of the Institute for the Investigation of Crimes against Humanity and International Law, number 212-VIII/93 dated 3 August 1993; Record on photo identification of the person, witness Armin Baždar, KT-12/99-RZ of 19 May 2005 (5 photographs); photo-documentation- identification KT-12/99-RZ of 19 May 2005; Official note of the Agency for Investigation and Documentation-Sector AID dated 28 October 1998, Record on examination of witness Hamza Ž.



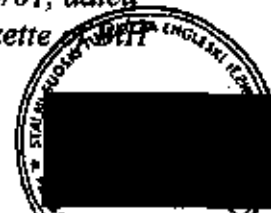
number KRI 165/98 dated 1 October 1998 (expert's findings); Photograph of the suspect Dragoje Paunović; Index-card of the identity card for the person Dragoje Paunović; Job application by the applicant Dragoje Paunović; Copy of identity card under the name of Dragoje Paunović number 8064/86 issued in Zenica on 29 October 1986 and „the Substitution card“ of 30 January 1997; Photograph of the person Zlatko Subotić under ordinal number 1; Photograph of the person Mladen Posavljak under ordinal number 2; Photograph of the person Mario Tenžera under ordinal number 3; Photograph of the suspect Dragoje Paunović under ordinal number 4; Photograph of the person Marinko Krneta under ordinal number 5; Photograph of an unidentified person with the suspect Dragoje Paunović; Record on identification of the persons from the photographs of the Cantonal Prosecutor's Office number KT-12/99-RZ, dated 19 May 2005; Photo-documentation-identification MUP, Sarajevo Canton number 02/2-6-04-09-10-2883, dated 19 May 2005; Official note of the Cantonal Prosecutor's Office number KT12/99-RZ, dated 19 May 2005; Official note of the Cantonal Prosecutor's Office Sarajevo KT-12/99-RZ, dated 19 May 2005; Official note of the Cantonal Prosecutor's Office Sarajevo KT-12/99-RZ, dated 18 March 2005; Official note of the Cantonal Prosecutor's Office Sarajevo KT-12/99-RZ, dated 18 March 2005; Official note, MUP of the Sarajevo Canton number 01/2.5-1-ć/98, dated 8 October 1998; Official note of the AID in relation to the identification of the person from the photograph, dated 28 October 1998; Official note of the AID in relation to the identification of the person from the photograph, dated 29 October 1998; Official note of the AID in relation to the identification of the person from the photograph number 02-47/98, dated 11 November 1998; Request to order exhumation by the State Commission for Missing Persons number 06/5-628/98, dated 5 August 1998; Decision of the Cantonal Court in Sarajevo number Kri: 165/98, dated 25 August 1998, to conduct exhumation, autopsy and identification; Record on exhumation of the Cantonal Court in Sarajevo Kri-165/98 dated 31 August - to 4 September 1998; Photo-documentation taken during exhumation, autopsy and identification of 24 bodies from the place of Duljevac, Rogatica, number K.U.BR.2071/98 dated 2 October 1998; Sketch of the scene by the Forensic Department Sarajevo number 2071/8, dated 17 September 1998; Video cassette on exhumation in Rogatica, Duljevac site, dated 17 April 1998 (CD); Record of the Cantonal Court in Sarajevo on taking DNA samples for analysis, number Kri 165/98, dated 8 October 1998; Decision of the Cantonal Court in Sarajevo number Kri 165 and 168/98, dated 15 October 1998 to cover expenses of the forensic expert Dr Hamza Žujo; Bill of costs in respect to the costs of the forensic expert Dr Hamza Žujo, dated 14 October 1998; Record of the crime scene investigation by the Department for



Crime Scene Investigation number 2071/98, dated 16 September 1998; Official note of the MUP Sarajevo number 01/2.5-A-C/98, dated 8 October 1998, on exhumation, autopsy and identification of bodies from the territory of Rogatica Municipality; Official note of the Cantonal Court in Sarajevo, number Kri-165/98, dated 9 October 1998; Document of the MUP 03-858/98, dated 28 October 1998 (information on the performed exhumation in the village of Duljevac); Record of identification of the body of Mesud Pašić, by the MUP in Sarajevo, number 01/2.5-/98, dated 29 September 1998; Record of identification of the body of Mujo Pašić, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Record of identification of the body of Asim Kapo, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Record of identification of the body of Eldin Hodžić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Sulejman Kazić, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Record of identification of the body of Edis Čatić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Šukrija Omeragić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Faruk Isaković, by the MUP in Sarajevo, number 01/2.5-/98, dated 29 September 1998; Record of identification of the body of Mevludin Čatić, by the MUP in Sarajevo, number 01/2.5-/98, dated 29 September 1998; Record of identification of the body of Mehmed Delija, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Record of identification of the body of Vahudin Čatić, by the MUP in Sarajevo, number: 01/2.5-/98 dated 29 September 1998; Record of identification of the body of Husein Jašarević, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Official note Record of identification of the body of Midhat Čatić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Hamdija Jašarević, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Nedžad Kazić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Fuad Šetić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Derviš Pašić, by MUP in Sarajevo, number 01/2.5-/98, dated 30 September 1998; Record on identification of the body of Zajko Salihović, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Halil Halilović, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Record of identification of the body of Besim Kurćehajić, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Fuad K



by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Osman Solak, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Sulejman Jašarević, by the MUP in Sarajevo, number 01/2.5-/98, dated 28 September 1998; Record of identification of the body of Mustafa Tanković, by the MUP in Sarajevo, number 01/2.5-/98, dated 2 October 1998; Certificate of transfer of the deceased Fuad Šetić number 113/98, dated 12 October 1998; Certificate of transfer of the deceased Zajko Salihović number 126/98, dated 12 October 1998; Delivery note of the Public Utilities Enterprise "Gradska groblja" Visoko for the deceased Zajko Salihović number 169/98; License for conducting a funeral of the deceased Zajko Salihović number 231/98; Report of a war crime and the perpetrator, dated 12 April 2005, submitted by Armin Baždar; Medical documentation for Armin Baždar, including medical findings and specialists' opinion with 19 documents enclosed); Certificate of the Commission for Collection of Information on War Crimes in BiH, number 1-III/93 dated 12 March 1993; Certificate of the Red Cross of RBiH number: 512/93, dated 21 March 1994; Decision of the Municipality of Novi Grad, Sarajevo, Department of Labor and Social Welfare, Health, Refugees and Displaced Persons number 10-560-90, dated 1 September 1998, by which Armin Baždar, son of Meho, was given the status of a civil war victim with permanent physical disability of 60%; Document of the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia, reference number 993366/GB/DFG/RR383, dated 23 June 1999 (in English and Bosnian language); List of expenses, Document of the Prosecutor's Office of BiH number KT-RZ-9/05, dated 8 September 2005; Instruction on organization and activities of Serb people authorities in Bosnia and Herzegovina in state of emergency, SDS BiH-Main Board, strictly confidential 101-3, dated 19 December 1991; Decision of the Presidency of the Republic of Bosnia and Herzegovina to declare imminent war threat ("Official Gazette of BiH" number 1/92); Decision of the Presidency of the Republic of Bosnia and Herzegovina to declare state of war ("Official Gazette of BiH" number 7/92); Constitution of Republika Srpska ("Official Gazette of Republika Srpska" number 21/1992); Decision of the Constitutional Court of Bosnia and Herzegovina, dated 18 and 19 February 2000; Decision of the Constitutional Court of Bosnia and Herzegovina, dated 18 and 19 August 2000; Decision of the Constitutional Court of Bosnia and Herzegovina number U-5/98 -III, dated 30 June and 1 July 2000; Decision of the Constitutional Court of Bosnia and Herzegovina number U-5/98 -IV, dated 28, 29 and 30 January 2000; Decisions of the Constitutional Court of Bosnia and Herzegovina number U-44/01, dated 27 February 2004 and 22 September 2004, published in Official Gazette



No. 18/2004 and No. 46/04, Decision on the return of emigrants to the territory of the Serb Republic of Bosnia and Herzegovina ("Official Gazette of Republika Srpska" number 8/92); Declaration on the system of government and political order of the state ("Official Gazette of Republika Srpska" number 14/92); Law on Serb Citizenship ("Official Gazette of Republika Srpska" number 19/92); Law on Refugees ("Official Gazette of Republika Srpska" number 5/93); Decision on Strategic Objectives of the Serb People in Bosnia and Herzegovina ("Official Gazette of Republika Srpska" number 22/93); Resolution on Housing and Planned Settlement of Serb Refugees ("Official Gazette of Republika Srpska" number 5/94); Extract from the Report on the devastation of cultural and historic natural inheritance of Bosnia and Herzegovina, by the Institute for Preservation of Cultural, Historical and Natural Inheritance of Bosnia and Herzegovina number M.H.4.01., dated 11 November 1996; Map of the Municipality of Rogatica; Data on the 1991 Census in Rogatica Municipality; Lists of Bosniak civilians murdered on the territory of the Municipality of Rogatica; Newspaper article taken from the column named "news from the country" titled "A Thousand Houses Set on Fire"; Copy of a photo of Veljko Vlahović High School Center; Copy of a photo of Rasadnik Sladara Camp; Copy of a photo of Arnaudija Mosque, (CD); ICTY Judgment in Duško Tadić case (IT-94-1-T); ICTY Judgment in the case against Mitar Vasiljević (IT-98-32-A); ICTY Judgment in the case against Dragan Nikolić (IT-94-2-A); ICTY Judgment in the case against Goran Jelisić (IT-95-10-T); ICTY Judgment in the case against Ranko Česić (IT-95-10/1-S); ICTY Judgment in the case against Miroslav Deronjić (IT-02-61); ICTY Judgment in the case against Simo Zarić (IT-95-9); ICTY Judgment in the case against Milomir Stakić (IT-97/24); ICTY Judgment in the case against Radislav Krstić (IT-98-33); ICTY Judgment in the case against Vidoje Blagojević (IT-02-60); ICTY Indictment against Biljana Plavšić (IT-00-38&40-PT); ICTY Judgment against Biljana Plavšić (IT-00-39&40/1-S); Witness examination record of Maida Selimbegović number Ki-286/94, dated 15 March 2000; Witness examination record for witness Mahir Jašarević, number Ki-188/99, dated 20 March 2000; Document of SIPA number 17-04/1-541-2/05, dated 4 January 2006; Letter number 06- 618/95, dated 28 September 1995 (list of wounded members); Expert evaluation of the fire arms, findings and opinion, dated 23 November 1998.

Having the consent of the Parties, the Court inspected the statements of the Prosecution witnesses Maida Selimbegović and Mahir Jašarević in view of the provisions of Article 273 of the CPC of BiH, because it follows from the SIPA Report number 17-04/1-541-2/05, dated 4 January 2006, that the above



mentioned witnesses are not available and cannot be found, as Mahir Jašarević is in America at an unknown address and the whereabouts of Maida Selimbegović have been unknown since 2002.

The Defense for the Accused presented the following evidence:

The following persons were examined in the capacity of witnesses: Armin Baždar, protected witness under the pseudonym "A", Mile Ujić, Goran Kozić, Zoran Bojević, Miroslav Obradović, Duško Štica and Vesna Behlilović.

The Court inspected the following documents, submitted as evidence during the main trial, by the Defense for the Accused Dragoje Paunović: Record on examination of Armin Baždar, dated 20 February 1993; Record on examination of witness Armin Baždar, dated 13 April 2005; Record on additional examination of witness Armin Baždar, dated 15 April 2005; Record on additional examination of witness Armin Baždar, dated 15 February 1994; Record on additional examination of witness Armin Baždar, dated 7 July 2005; Record on examination of witness „A“, dated 12 January 1994; Record on examination of witness „A“, dated 20 March 2000; Record on examination of witness „A“, dated 18 October 2004; Record on examination of witness „A“, dated 7 July 2005; Information on the manner of apprehension; Certificate by the SDS, dated 30 November 2005; Decision of the „Narodna stranka radom za boljitak“; Certificate dated 5 March 2003; Contract on giving the house for use entered into between Hazim Huzejrović and Dragoje Paunović; Statement of Mahir Jašarević, dated 12 October 1994.

Pursuant to Article 235 of the CPC of BiH, on 6 December 2005, after hearing the parties, the Court excluded the public from the part of the main trial to deliberate the Motion of the Prosecutor's Office of BiH for the protection of a witness, since the Panel deemed it necessary to protect the interest of the witness, taking into account that the request for protective measures was also submitted by the witness in person due to fear that the personal safety of the witness and the safety of the witness' family would be endangered because of testifying in the proceedings. In accordance with the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Court rendered a Decision on 8 December 2005 ordering protective measures for all the personal data of the witness and determined the pseudonym („A“), under which the witness would testify. During the proceedings, witness „A“ was enabled to testify by utilizing electronic distortion of voice and image.



On 21 April 2006, pursuant to Article 93 of the CPC of BiH, a partial reconstruction of the event was performed in Duljevac village, Rogatica municipality, in order to verify the presented evidence and establish the facts of relevance for the case. The Court introduced as its evidence the photo-documentation on the performed reconstruction under number 17-13/1-7-14/06 dated 4 May 2006, the sketch of the scene number 17-13/1-7-14/06 made by the State Investigation and Protection Agency, the Record of the reconstruction of the event performed made on 21 April 2006 and the audio-video recording on the reconstruction performed. After the reconstruction of the event, the Court presented evidence by an additional examination of witness Armin Baždar who participated in the reconstruction of the event.

Following the completion of the evidentiary proceedings, the Prosecutor submitted in his closing argument that an essential element of the criminal offense of crime against humanity was the existence of a widespread and systematic attack and added that, according to the Prosecution all the presented evidence indicated that it followed from the acts perpetrated by Dragoje Paunović that he had committed this particular criminal offense. It was established in the ICTY final judgments that, when the crime was committed, the persecution of the Bosniak civilians was underway and that the facts referring to a systematic attack in Eastern BiH were undoubtedly established in the abovementioned judgments. Furthermore, it follows from the statements of the witnesses that the persecution of the civilians, formation of detention camps, killings of detainees, rapes of Bosniak women and other grave violations of the 1949 Geneva Conventions were committed. The Instruction on organization and operation of the Serb people authorities in BiH in state of emergency was the basis for the decisions and orders rendered and given not only by the Crisis Staff but also by the military forces. The SDS of Rogatica was creating conditions for the persecution of the Bosniak population. During the persecution of the Bosniak population, the military and paramilitary formations destroyed the property owned by Bosniaks. The criminal offense committed by Dragoje Paunović was not an isolated incident. According to the Prosecutor, Dragoje Paunović was making decisions in the incriminating event on the taking of twenty-seven civilians to serve as human shield, as well as on their execution, while the other soldiers were only executing the orders. With the words "kill them", he was shooting together with the other soldiers. He was a senior officer as well as a direct perpetrator of the killings. The possession of a walkie-talkie, by which he most probably was communicating with Rajko Kušić, a yellow band around his head and giving orders to the soldiers, indicate that he was the superior to these soldiers. In connection with the testimonies of



witnesses „A“, Ago Kapo and Armin Baždar, the Prosecutor pointed out that all of their testimonies were consistent in so far as the essential parts are concerned and their testimonies differed only in some small points, which speaks in favor of the fact that they did not consult each other about their testimonies. Armin Baždar remembered well the face of the person who wanted to execute him and he confirmed before the Court that the Accused was the said person. While being examined under protective measures, witness „A“ identified the Accused as the perpetrator of the rounding up of people to serve as human shield. Afterwards, at the order of the Accused, these people were taken to a meadow where the Accused ordered and took part in the execution. Witness Ago Kapo did not recognize the Accused. However, during the investigation, he described Špiro saying that he was a tall, corpulent man with fair hair and prominent sideburns. In addition, all the witnesses spoke about a person by the nickname of Špiro as the person who committed the crime. All Defense witnesses also identified the Accused by the nickname of Špiro. In the summer of 1992, the witnesses-injured parties lived in different parts of Rogatica and all of them testified about circumstances under which they were forced to leave their homes. It is an indisputable fact that mass graves were found in Rogatica municipality and Amor Mašović testified about this. He also testified how they had found a mass grave in the territory of Duljevac with the help of witness „A“. All the mortal remains of the victims were identified with the help of the families by using the traditional method, i.e. identification. The Prosecutor noted that it had not been possible to carry out DNA analyses at that time in BiH. The Prosecutor further submitted that all the evidence corroborated the testimonies and the reconstruction of the event performed upon the order of the Court confirmed the allegations outlined in the Indictment. Dragoje Paunović ordered and participated in taking the civilians to serve as human shield and their execution only because these civilians were Bosniaks. The Defense witnesses stated that the Accused had been armed with an M-48 rifle and that he had participated together with them in the operations of taking over Jačén elevation, which represents an unsuccessful attempt made by the Defense to produce an alibi for the Accused in order to avoid liability of the Accused. However, the list of the wounded soldiers shows that the witnesses, Štica and Bojović were wounded on 16 August 1992 and yet they stated that they had participated in the operation of taking over of Jačén elevation only on the day when they were wounded. It can be seen from their testimonies that the operation of taking over Jačén elevation lasted for several days. Only witness Mile Ujić said that he had heard about the crime on the same day or the following day and added that it had been committed by some extremists. In the view of the Prosecutor's Office, the Defense evidence is not



relevant to this case. Considering that Dragoje Paunović is responsible for the perpetration of this criminal offense, the Prosecutor proposed to the Panel to find the Accused guilty on all counts of the Indictment and to accordingly pronounce against him a long-term imprisonment, taking into account the manner of perpetration of the criminal offense, the circumstances under which the criminal offense was committed and the gravity and consequences resulting from the offense.

Defense attorney Ranko Dakić, presenting the Defense for the Accused in his closing argument, pointed out, first of all, the following objections in connection with the criminal proceedings conducted against the Accused Dragoje Paunović: the statements of witnesses-injured parties, according to the Defense, are not relevant to the proceedings; the exhumation as well as the identification of the victims were not performed in accordance with the rules of the profession meaning that the DNA analysis of the mortal remains was not made. Defense attorney Dakić further objected that there were some discrepancies between the statements of the witnesses-eyewitnesses; that is, the surviving victims. He also made an objection to the status of the protected witness. In addition, the Defense for the Accused also objected to the manner of the identification of the Accused by the witnesses, pointing out that it was not carried out in accordance with Article 85 of the CPC of BiH. To wit, as to the previous identifications of the Accused, the defense attorney pointed out that the identification made by witness Armin Baždar was not in accordance with the law taking into account that he had only three photographs at his disposal during the identification. The identification performed by witness „A“ was done in the manner that he was offered a photograph-identity card of Dragoje Paunović, with his personal data-first and last name. In connection with the identification performed by the witnesses during the main trial, defense attorney Dakić found it to be irrelevant taking into account that it was easy to reach a conclusion as to who the Accused in the proceedings was based on the seating arrangement in the courtroom. In its closing argument the Defense further objected to the reconstruction of the event by referring to the fact that the reconstruction scene was marked with a yellow band on which it was written “crime scene”, which questioned the entire reconstruction taking into account that witness Armin Baždar, who participated in the reconstruction, could have the orientation just by looking at the marked place to provide the Court with the requested information. Finally, in connection with the ICTY judgments which the Prosecutor tendered into evidence in order to accept the adjudicated facts in accordance with the Law on the Transfer of Cases by the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected



the ICTY in Proceedings before the Courts in BiH, defense attorney Dakić stated that their acceptance constituted a breach of the right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention) and that these judgments did not contain facts relevant for this case. In connection with the presented evidence, defense attorney Dakić stated the position of the Defense that the testimonies of the witnesses-eyewitnesses were of subjective nature, illogical (it is not logical that the face of Špiro „carved“ into the memory of witness Armin Baždar so clearly but not the face of the other soldier) and that his previous testimonies were contradictory to his testimony given at the main trial. Finally, defense attorney Dakić concluded that the commanding role of Špiro is „out of question“, in particular taking into account that Špiro was a „stranger“ in the territory of Rogatica and claiming that the attack was led by Ljupče while Špiro was wounded at the very beginning of the operation.

Lawyer Jovo Đukanović, additional defense attorney for the Accused, in presenting the Defense for the Accused as part of his closing argument, objected to the protective measures applied to witness „A“, pointing out that the measures were ordered after the Indictment had become public, containing personal data of all of the witnesses. He also referred to the statements of the witnesses-injured parties and maintained that they were inconsistent, even contradictory, and mentioned witness Ago Kapo as „insincere“. Defense attorney Đukanović also maintained that it followed from the information of the Commission for the Exchange of Prisoners of War (Prosecution evidence) that the witness left the village on 3 June 1992. At the end of their closing arguments, both defense attorneys proposed that the Accused be released due to the lack of evidence that he had committed any of the acts he is charged with in the Indictment.

Following the closing argument of his defense attorneys at the main trial, the Accused alleged that he had found himself at the territory of Rogatica in the incriminating period, because he came to Kozići village, in Rogatica municipality, to take care of his son who was with his relatives, i.e. in-laws of Accused Paunović, due to his poor health and that he could not return to Zenica, place of his permanent residence, due to the events in the territory of Rogatica and added that he did not possess any qualifications or characteristics of a person who might commit such an act with which he is charged in the Indictment. Moreover, as to the evidence presented at the main trial, the Accused was of the opinion that the testimonies of the witnesses



eyewitnesses were contradictory when compared to their previous statements. In addition, as to the witnesses-injured parties, the Accused argued that they had given their statements based on the information obtained from the eyewitnesses and that it followed from the statements of some of the witnesses-injured parties (Jasmina Delija, Elvedin Kazić and Mevlida Zimić-Pavica), inter alia, that witness „A“, as a matter of fact, was a member of the Army of BiH in Ustiprača and that he might have been present at Jačen elevation as a member of the Army of BiH. He further alleged in the defense that the Prosecution evidence contained confirmation, according to his allegations, that clearly showed that witness Armin Baždar was registered as a refugee on 3 June 1992 and an issue arose as how this could be possible bearing in mind the fact that the relevant event occurred on 15 August 1992. The Accused claimed that he was not the man to whom the witnesses referred as the perpetrator of the acts contained in the Indictment, since he did not have any predispositions necessary to commit such an offense. He did not have the necessary qualifications and was not familiar with the terrain or the territory of Rogatica municipality to the extent necessary to be entrusted with the commanding role. He categorically denied the allegations made in the Indictment, stating that it was a mistake and that he had not committed any of the incriminating actions referred to in the Indictment and proposed that the Court should acquit him of the charges.

Evaluating all the presented evidence individually and in their mutual correlation, the Court established reliably and unequivocally that the Accused had resided in Rogatica territory in the incriminating period and that he had committed the criminal acts described in detail under Counts 1 and 2 of the Verdict within a widespread and systematic attack of the army and police of the Serb Republic of Bosnia and Herzegovina and paramilitary formations lead by the SDS directed against the Bosniak civilian population in the territory of Rogatica municipality and the region of Eastern Bosnia in the capacity of senior officer of a minor military formation of the Rogatica Battalion.

The only fact that the Court did not establish is the fact that Rajko Kušić had given the order for the perpetration of this crime for which reasons the Court, without going into the identity of the Indictment, left out the part referring to Rajko Kušić. On the other hand, all the other facts have been established beyond doubt.

As it follows from the Indictment, the Accused Dragoje Paunović is charged with committing the criminal offense of Crimes against Humanity in violation



of Article 172 paragraph 1 items h) in conjunction with items a) and k) of the CC of BiH and the burden of proof rested with the Prosecutor's Office with regard to all the essential elements of this offense, i.e. existence of a widespread or systematic attack directed against any civilian population, knowledge of the perpetrator of such an attack and that the act of the perpetrator is part of the attack, i.e. that there is a nexus between the act of the Accused and the attack against the civilian population.

It is beyond dispute that a widespread and systematic attack against non-Serb civilian population was taking place in Rogatica municipality and Eastern Bosnia region when the incriminating event took place. That was established in ICTY judgments, primarily in the Final Judgment of the ICTY (IT-98-32-A) in the Mitar Vasiljević case. It was established therein that there was a widespread and systematic attack against the non-Serb civilian population of Višegrad municipality during the incriminating period. Višegrad municipality is the neighboring municipality to Rogatica municipality. By a comprehensive assessment of evidence, the Court, bearing in mind the vicinity of Višegrad and Rogatica municipalities, i.e. the fact that both municipalities belong to the same geographic region and bearing in mind the statements of the witnesses-injured parties who lived in Rogatica municipality at that time and were expelled from that area, established that the elements of the term „attack“ within the meaning of Article 172 paragraph 1 of the CC of BiH (that this is a course of conduct involving the „multiple perpetrations“, that it is directed „against any civilian population“ and that it is „pursuant to or in furtherance of a State or organizational policy to commit such attack“) also pertain to Rogatica municipality, i.e. that the activities and policy of the SDS Rogatica, Crisis Staff of the SDS Rogatica and the Army of the Serb Republic of BiH corresponded to the activities of the Army of the Serb Republic of BiH and the role of the SDS and crisis staffs in the territory of other municipalities in BiH in that period, which was also established in ICTY judgments, primarily in the Final Judgment of the ICTY (IT-02-61) against Miroslav Deronjić, ICTY Judgment (IT-95-9) against Simo Zarić and in the Final Judgment of the ICTY (IT-97/24) in the Milomir Stakić case. The Court found the role of the JNA and its transformation, i.e. the role of the VRS (Army of Republika Srpska) in Bosnia and Herzegovina, established in the Final Judgment of the ICTY (IT-94-1-T) in the Duško Tadić case. In the Final Judgment of the ICTY (IT-00-39&40/1-S), Biljana Plavšić pleaded guilty to all crimes with which she was charged, including the execution of civilians from Rasadnik Camp in Rogatica that took place on 15 August 1992.



*The Court accepted these facts as established by admitting the Prosecutor's Motion based on Article 4 of the Law on the Transfer of Cases by the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in BiH. The Court did not admit the objection of the Defense pertaining to the acceptance of the established facts on the ground that the Defense failed to adduce legitimate reasons to contest the Prosecutor's Motion regarding the acceptance of these facts. In other words, concerning the Defense allegations that the pertinent judgments of the ICTY did not contain an explicit reference to the Accused Dragoje Paunović and that they were not relevant to the present criminal case, the Court finds them to be insufficient and too general in order to result in the refusal of the Motion for the acceptance of the established facts. Likewise, the Court finds that the acceptance of the established facts, not directly related to the responsibility of the accused, did not amount to a breach of Article 6 of the European Convention as maintained by the Defense in view of the fact that such acceptance of the established facts is in keeping with a *lex specialis* law. In addition, the use of evidence obtained by the ICTY and acceptance as proven the facts established in the proceedings before the ICTY is not in opposition to the European Convention provided that the use of the said evidence must not call into question the fairness of the proceedings as a whole and the responsibility of the accused. By offering to the opposing party to the proceedings, i.e. the Defense, an opportunity to state its position regarding the Motion for the acceptance of the established facts and to contest such Motion, the Court took into consideration the fairness of the criminal proceedings concerned. On the other hand, pursuant to the said legal provision of Article 4 of the Law on the Transfer of Cases by the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Obtained from the ICTY in Proceedings before the Courts in BiH, at the request of a party or proprio motu, the court, 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. As the Motion refers to the ICTY judgments that pertain to the existence of elements of a widespread and systematic attack and the role of the JNA, the VRS in BiH and crisis staffs, the Court accepted this Motion after having heard the parties.*

The examined Prosecution witnesses Ago Kapo, Armin Baždar, Jasmina Delija, Damir Šetić, Elvedin Kazić, Bisera Bečić, Zaim Čatić, Behija Pašić, Alija Kapo, Šefik Hurko, Alija Isaković, Nađa Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Mevlida Čatté, Sanin Tanković, Šehzada Paralović, Mevlida Zimić-Pavica and witness "A" certainly



contributed to this conclusion of the Court. They all testified as to how and under what circumstances they themselves and their family members were expelled from Rogatica municipality. Witnesses Jasmina Delija, Damir Šetić, Elvedin Kazić, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Šefik Hurko, Mevlida Zimić-Pavica, Alija Isaković and Nađa Isaković spoke about the shelling and attacks of the Serb army on Rogatica town, whereas other Prosecution witnesses testified about the attacks on the surrounding villages in Rogatica municipality (the villages of Borovsko, Seljani, Vragolovi, Kozadre, Mađar, Kovanj) where they or their family members (hence, the Bosniak population) lived in 1992, as well as about expulsion from their homes, imprisonment and stay in collection points and camps, such as Veljko Vlahović High School, Sladare building and state-run farm "Rasadnik". On the other hand, as already noted, in contesting the Prosecution Motion to accept as established the existence of a widespread and systematic attack directed against the Bosniak civilian population in Rogatica municipality, the Defense failed to adduce evidence in order to convince this Court that the attack was not directed against the non-Serb population in this area.

Consequently, it is taken as an established fact that there was a widespread and systematic attack against the non-Serb civilian population of Rogatica municipality during the period relevant to the Indictment (May-September 1992). In doing so, the Court observes that according to customary international law, an attack in the context of crimes against humanity is not restricted solely to the existence of an "armed conflict"; i.e. it is not required that an attack be part of a conflict.

As regards the remaining essential elements of crimes against humanity, it is beyond dispute that the Accused Dragoje Paunović came to the territory of Rogatica municipality in the spring of 1992, that he was a member of the Serb army at the time of perpetration of the crime and that he was present in Duljevac region, Rogatica municipality, and participated in the fighting at Jačén elevation. The Accused did not contest that fact and many Defense witnesses confirmed it as well. Accordingly, the Accused undoubtedly had knowledge of existence of an attack against the Bosniak civilian population during that period. Given the nature and consequences of the committed offense, the Court concludes that the Accused was not only aware of this attack and conceded that his actions be part of that attack but also that was exactly what he wanted. This follows from the testimonies of the witnesses, particularly the testimony of witness „A“ who stated that the Accused said: „I decide on



this”, when referring to a group of imprisoned civilians who were brought to Duljevac area to serve as human shield. Consequently, the Court established that the Accused had knowledge of a widespread and systematic attack that was carried out against the Bosniak civilian population and his actions constituted part of that attack. Therefore, **all essential elements of crime against humanity are fulfilled.**

Furthermore, it is not disputable that, on 15 August 1992, twenty-four civilians were killed in the place of Duljevac, Rogatica municipality. The Defense did not contest the fact and much of the subjective and objective evidence confirmed this, particularly the finding and opinion of Dr. Hamza Žujo, a forensic expert. The Court made a thorough analysis of the finding of this expert dated 1 October 1998 and gave credit to it in its entirety as being an objective finding based on the rules of medical profession. According to the said finding, which was presented by the expert at the main trial and by which he stood in its entirety, medical examination of bodies recovered from Duljevac mass grave showed that there was a total of twenty-four bodies. The expert found on the majority of the bodies injuries to the heads of which most were inflicted in the temporal and frontal area as well as the bases of the skulls. Injuries to the pelvic area and thigh bones were found on some of the bodies. The expert further found that bullets discharged from firearms caused the injuries. The expert clarified at the main trial that ordinal numbers 18 and 21 were missing from the finding and opinion because twenty-six tags were originally used to mark the bodies. Following the medical examination, it turned out that there were twenty-four bodies, which was the reason why the said two numbers were omitted from the finding. Moreover, Dr. Žujo clarified at the main trial that the reason for not stating his position as to the cause of death and the mechanism of inflicting injuries of some bodies was that those were skeletonized bodies and he could not state his position in cases where he did not find an injury on the bones of the skeletons. He did not rule out the possibility that the injuries might have been inflicted on organs that disappeared in the meantime. Finally, the expert could not state a reliable opinion as to the DNA analysis. However, he did say that the identification that was carried out with the use of the traditional method removed any doubt as to the established identity of the victims. Other evidence from the case-file pertaining to the exhumation that was completed on 16 and 17 September 1998, the autopsy and identification of twenty-four bodies recovered from Duljevac mass grave and the supporting photo documentation as well as the testimony of witness Amor Mašović referring to the detection and exhumation



from Duljevac mass grave, also suggest the fact that, on 15 August 1992, twenty-four civilians were killed in Duljevac.

It is also beyond dispute that, at the time, the Accused had a nickname „Špiro“.

What was in dispute was whether or not the Accused took part in the execution of the civilians in the manner referred to in the Indictment. In an attempt to resolve this disputable and most important circumstance, the Court set off from the indisputably established fact that the Accused was in Duljevac region at the time when the event took place, that he was armed, that he participated in the fighting at Jačen elevation and that he had a nickname Špiro at the time. This was confirmed by the testimonies of the witnesses Armin Baždar, Ago Kapo and witness „A. The Accused did not contest that he was in Duljevac area and that he took part in the operation at Jačen elevation at the incriminating time. Defense witnesses Zoran Bojević, Miroslav Obradović and Duško Štica also testified about the participation in the operation at Jačen elevation together with „Špiro“ and alleged that between four and five of them set off from Izborine village, including Špiro. These Defense witnesses testified that they knew the Accused at the incriminating time and they referred to the Accused Dragoje Paunović as „Špiro“ during their testimonies at the main trial.

The eyewitnesses, Armin Baždar and protected witness „A“ in particular, alleged categorically that Dragoje Paunović aka Špiro was the person who ordered and participated in the execution. Witness Armin Baždar, by pointing to the Accused in court, stated that the Accused was the man who ordered the civilians, after serving as human shield, to be taken to a nearby meadow that was next to the road, ordered a soldier who was standing in front of the civilians to stop, asked the civilians how many of them were wounded and, after he received a reply, ordered the execution of the civilians by saying: "Kill them!", referring to the civilians who were standing in front of him whereupon he, too, started shooting at the civilians. The witness also alleged that the Accused had and used a walkie-talkie. After the execution, when Rajko Kušić asked him „Who's shooting?“, Dragoje Paunović replied through this walkie-talkie by using his nickname: "Špiro, Špiro is shooting!" The witness further stated that the Accused was wearing an olive-drab shirt at the time. The collar on the left side of his shirt was stained with blood and a plaster covered half of his left ear. Witness Baždar also firmly stated that the Accused Paunović was standing right in front of him during the execution at a distance between five and seven meters. Protected witness "A" confirmed during the testimony that, after he had been brought to Duljevac region, along with other civilians, there



was one person among the soldiers who were on the left side and others would address him as "Špiro". He had a yellow band around his head, whereas others had yellow bands on their epaulettes. He had a walkie-talkie that he used for communication. According to the testimony of this witness, Špiro, once the civilians got off the minibus, said that "he decides about this", as a comment to the words of a soldier who said that "we should slaughter all of them", both of them referring to the civilians who were brought there. After the civilians had served as human shield and after the shooting subsided, the soldier with a yellow band around his head and with a walkie-talkie ordered them to march in a single file. He ordered one of the Serb soldiers to be at the head of the column and one Serb soldier to be at the rear. The Accused was walking on the right side of the column. Witness „A“ also confirmed that the man whom others referred to as „Špiro“ ordered the column to turn right to a meadow and asked how many wounded were there, while commenting „I have far more wounded men“, referring to wounded Serb soldiers. After that, the same man, referred to as „Špiro“, ordered the soldier who was to his left to kill off the civilians., Witness „A“ stated that he had seen all three men (soldiers) who were in front of them, including "Špiro" „shooting bursts of fire“ at the civilians. Witness „A“, even testifying from a separate room with the use of technical means for image transmission, recognized the Accused in courtroom.

The examined witnesses-injured parties Jasmina Delija, Damir Šetić, Elvedin Kazić, Zaim Čatić, Behija Pašić, Alija Kapo, Alija Isaković, Nađa Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Sanin Tanković, Šehzada Paralović and Mevlida Zimić-Pavica indirectly confirmed that Špiro ordered and participated in the execution of the civilians. Their statements are consistent insofar as they stated hearing, personally or from family members or witnesses-eyewitnesses, that "Špiro" was the one who ordered and personally participated in the execution of the civilians. The majority of these witnesses stated that the true information about the perpetrator of the crime was that the person was a certain "Špiro". Some added that this person came from Zenica and that he was "the son-in-law from Kozići". Several witnesses (Damir Šetić, Nisveta Halilović and Šehzada Paralović) mentioned the name of Dragoje Paunović in their respective testimonies.

Witnesses-eyewitnesses previously made statements and their statements and testimonies are consistent and, what is very important, they mentioned Špiro in their first testimonies as the person who ordered and perpetrated the crime. Witness Ago Kapo mentioned Špiro in his first testimony, but he did not



recognize him in courtroom. However, the Court noted, during the examination, that this witness was in an advanced age and of deteriorated health, and, given his condition, one could not expect him to remember persons he last saw fifteen years ago. Nevertheless, the witness remembered, during his testimony before the Court, that another soldier addressed Špiro with the words „Špiro, Špiro“, that „Špiro“ had a yellow band around his head and a walkie-talkie and that he was a tall man with fair hair and sideburns.

Consequently, the Court gave credit to the witnesses Armin Baždar and „A“ who, while testifying under the oath before the Court, recognized the Accused in the courtroom and confirmed categorically that the Accused was the person who ordered and participated in the execution of the civilians. These two witnesses are survivors of that particular execution.

The witnesses who survived testified about the circumstance of surviving the execution and the manner in which they saved themselves after the execution. The testimonies of these witnesses about the circumstances that immediately followed the execution, like untying, fleeing from the crime scene and final arrival to the territory controlled by the Army of BiH, are consistent insofar as all these witnesses testified that they kept quiet for a while immediately after the execution out of fear that their surviving the execution would be detected, whereupon they untied each other's hands (Ago Kapo untied his own hands) and they went away from the spot and ran into a nearby grove. All three surviving witnesses remembered and mentioned a certain boy who was wounded during the execution. It turned out that he was an under-aged boy by the name of Mevludin Čatić who survived the execution. However, when the Serb soldiers realized that he survived, they killed him. The testimony of the survivor Armin Baždar was particularly convincing. He was fifteen at the time of the execution and he gave details before the Court as to how he, although wounded in both arms as a result of the shooting, managed to leave the crime scene, flee across the meadow to a nearby grove where he, according to his account, lost consciousness most probably due to hemorrhage and pain. When he regained consciousness, he continued to wander around and he finally managed to reach Brčigovo village and the territory controlled by the Army of BiH on the following day. Medical documents, enclosed to the case-file, confirm that Armin Baždar was wounded and that he has scars caused by entry-and-exit wounds on both of his upper arms.

During the reconstruction, witness Armin Baždar pointed to the spot without hesitation. Admittedly, the place of execution was marked on the spot and the



Defense raised a legitimate objection in this regard. However, this witness showed no hesitation when pointing to other important positions on the spot, like the place where he was with a group of prisoners, the place where the minibus arrived and unloaded them, the place where their hands were bound, etc. It is also true that the witnesses-eyewitnesses made statements on several occasions and that those statements contain certain discrepancies and inconsistencies. However, those discrepancies did not affect the Court's conviction with regard to the establishment of a decisive fact about the identity of the Accused. As for the discrepancies legitimately referred to by the Defense, they are obviously a result of circumstances under which the statements were taken or, in general, due to the normal psychological factors of the retrieving information from memory.

The Court established that the Accused, on the relevant day, was in the capacity of senior officer of a minor military formation that took part in the operation of taking over Jačén elevation and was responsible for the civilians who were brought to serve as „human shield“ and that he subsequently ordered their execution on the basis of the testimonies of the witnesses-eyewitnesses who testified about the commanding role of „Špiro“, i.e. Dragoje Paunović. The conclusion follows from the fact that Špiro had a yellow band around his head (as opposed to other soldiers who had a yellow band tied around their epaulettes), that he had and talked on a walkie-talkie and the by him pronounced words „I decide on this“ and „kill them“.

The Court took into consideration other evidence produced at the main trial. Nevertheless, the Court did not attach special importance to that evidence and it did not find it necessary to analyze it in more detail since it did not affect substantially the final establishment of the facts and the conclusions reached by the Court on the basis of the evidence evaluated herein.

Application of the substantive law

Regarding the issue of the substantive law to be applied, given the time of perpetration of the criminal offense, the Court accepted the legal qualification of the Prosecution and convicted the Accused for the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item h) in conjunction with items a) and k) of the Criminal Code of Bosnia and Herzegovina.



Given the time of perpetration of the criminal offense and the substantive law then in force, the Court considers two legal principles to be relevant in this regard: principle of legality and principle of time constraints regarding applicability.

Article 3 of the Criminal Code of BiH stipulates the principle of legality. According to that provision, 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 offense by law or international law, and for which a punishment has not been prescribed by law. Article 4 of the Criminal Code of BiH (time constraints regarding applicability) stipulates that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense; if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

The principle of legality is laid down in Article 7 paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) which, under Article 2 paragraph 2 of the BiH Constitution, has priority over all other law in BiH. According to the aforementioned Article of ECHR, "no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed." Consequently, it is prohibited to impose a heavier penalty than the one that was applicable at the time the criminal offense was committed. Therefore, this provision stipulates a prohibition of imposition of a heavier penalty without determining an obligatory application of a more lenient law to the perpetrator in relation to the penalty that was applicable at the time of perpetration of the offense. Paragraph 2 of Article 7 of the ECHR sets forth that "this 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".

Article 15, paragraph 1 of the International Covenant on Civil and Political Rights reads as follows: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of



the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”.

Paragraph 2 of Article 15 of the International Covenant on Civil and Political Rights stipulates that “nothing in this article shall 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 the community of nations”.

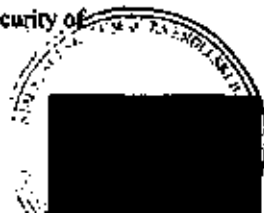
Finally, Article 4 (a) of the CC of BiH stipulates that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed, was criminal according to the general principles of international law, effectively adopting the provision of Article 7 paragraph 2 of the ECHR whereby it was made possible to depart, in exceptional cases, from the principle laid down in Article 4 of the CC of BiH and to depart from an obligatory application of a more lenient law in proceedings constituting criminal offenses under international law, as is the case with the proceedings against the Accused for it concerns an incrimination that involves a breach of the rules of international law. This position was taken by the Section I of the Appellate Division of the Court of BiH in its Verdict against Abduladhim Maktouf, no. KPŽ 32/05, dated 4 April 2006.

Article 172 of the CC of BiH stipulates crime against humanity as it is stipulated in Article 5 of the ICTY Statute (Article 5 of the ICTY Statute defines crime against humanity as certain specific acts „when committed in armed conflict, whether international or internal in character, and directed against any civilian population”). Crime against humanity was not explicitly foreseen in the criminal legislation in Bosnia and Herzegovina at the incriminating period.

Customary status of punishing crimes against humanity and attribution of individual criminal responsibility for their commission in the period of 1992 was confirmed by the UN Secretary-General¹, the International Law Commission² as well as the jurisprudence of the ICTY and the International

¹ Report of the UN Secretary-General pursuant to paragraph 2 of UN Security Council Resolution 808, 3 May 1993, paragraphs 34-35 and 47-48.

² International Law Commission, Comments on the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 18.



*Criminal Tribunal for Rwanda (ICTR)*³. These institutions determined that punishability of the crimes against humanity represents an imperative norm of international law or *jus cogens*⁴; as a result, it seems to be indisputable that crime against humanity constituted part of customary international law in 1992.

Article 4(a) of the CPC of BiH speaks of "general principles of international law". As neither international law nor the ECHR are familiar with the identical term, this term actually represents a combination of, on one side, "principles of international law" as used by the UN General Assembly and the International Law Commission and, on the other, "general principles of law recognized by civilized nations" as referred to in the Statute of the International Court of Justice and Article 7 paragraph 2 of the ECHR.

The principles of international law as referred to in the UN General Assembly Resolution 95(I) (1946) and the International Law Commission (1950) pertain to the "Charter of the Nurnberg Tribunal and the judgment of the Tribunal", hence, crimes against humanity. In the "Principles of international law recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal" that the International Law Commission adopted in 1950 and submitted to the General Assembly, Principle VI(c) foresaw punishment of crime against humanity as a crime under international law. Principle I determines as follows: "Any person who commits an act which constitutes a crime under international law is responsible thereof and liable to punishment". Principle II determines as follows: "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".

The case-law of the European Court of Human Rights places emphasis on the application of the provision of paragraph 2 of Article 7 rather than the application of paragraph 1 of Article 7 of the ECHR in several similar cases⁵ in which the subject of deliberation was the existence and punishability of crime against humanity as a criminal offense. What is more, in the *Kolk and Kislyiy v. Estonia* case, the European Court "recalls that the interpretation and

³ ICTY, Appeals Chamber, *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 141; ICTY, Trial Chamber, *Tadić*, Judgment of 7 May 1997, paragraphs 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraphs 563-577.

⁴ International Law Commission, Comments on the Draft Text of Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

⁵ E.g. see the ECHR Decision in the *Nalatić v. Croatia* case, application no. 51891/99



application of domestic law falls in principle within the jurisdiction of the national courts...⁶ This also applies where domestic law refers to rules of general international law or international agreements.

Accordingly, the criminal offense of crime against humanity can at any rate be subsumed within the "general principles of international law" referred to in Article 4(a) of the CC of BiH. Consequently, regardless whether it is considered from the viewpoint of customary international law or the viewpoint of "principles of international law", it is beyond dispute that crime against humanity constituted a criminal offense in the incriminating period: in other words, the principle of legality is satisfied.

The Court's conclusion as to the principle of legality is additionally supported by the fact that the criminal acts enumerated in Article 172 of the CC of BiH could also be found in the code that was in force at the relevant time period-perpetration of the offense: Article 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY; in other words, the incriminating actions were punishable under the then applicable criminal code. Finally, with regard to Article 7 paragraph 1 of the ECHR, the Court observes that the application of Article 4(a) is additionally justified by the fact that the imposed sentence is in any event more lenient than death penalty that was applicable at the time of perpetration of the offense, thereby satisfying the principle of time constraints regarding applicability of the criminal code, i.e. application of a "law that is more lenient to the perpetrator".

The Court found that the elements necessary for the existence of the criminal offense of persecution as a crime against humanity were met in the criminal actions of the Accused:

1. That the perpetrator committed a discriminatory act or omission;
2. That this act or omission denied or violated a fundamental right defined under international customary or treaty law;
3. That the perpetrator committed the act or made the omission with a view to discrimination on racial, religious or political grounds;
4. That the general conditions for the crime against humanity referred to in Article 172 of the CPC of BiH have also been met.

⁶ See *Papon v. France*, no. 54210/00, ECHR 2001-XII and *Touvier v. France*, no. 29420/95, Commission decision of 13 January 1997.

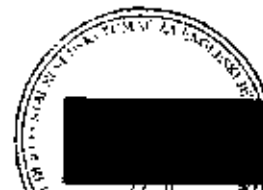


The Accused committed the aforementioned criminal offense with direct premeditation because it follows from the evidence presented during the proceedings that, at the moment of perpetration of the act, the Accused was aware that he was violating the rules of international law by his actions and it is evident that he wanted to give rise to a prohibited consequence by his actions and, regardless of the fact that that the Accused committed several different acts (murder, persecution and other inhumane acts of a similar character) as well as several acts of the same kind (murder of several persons), the Court finds that the present case concerns only one criminal offense, crime against humanity referred to in Article 172 paragraph 1 item h) of the CC of BiH-persecution. In fact, there is a cumulative criminal offense regardless of the number of executed actions. In other words, the elements of the criminal offenses of murder and other inhumane acts in the present case are subsumed within the criminal offense of persecution (Article 172 paragraph 1 items a) and k). The ICTY took this view. According to its jurisprudence, where the criminal offense of persecution was accomplished through murder or inhumane acts, the elements of the criminal offense of murder and other inhumane acts become subsumed within the criminal offense of persecution⁷.

In view of the established facts and the consequence thereof as well as the casual link between the two, the Court found the Accused guilty of the criminal offense of Crimes against Humanity in violation of Article 172 paragraph 1 item h) in conjunction with items a) and k) of the Criminal Code of Bosnia and Herzegovina and sentenced him for the said criminal act to a long-term imprisonment for a term of 20 /twenty/ years. In doing so, the Court opined that the imposed criminal sanction, by its type and duration, was commensurate to the threat that the act posed to the public, the gravity of the offense and the Accused's participation and role, and that the general purpose of criminal sanctions and the purpose of punishment within the meaning of the provisions of Article 39 of the CC of BiH would be achieved by it.

While meting out the punishment, the Court took as extenuating circumstances on the part of the Accused the fact that the Accused behaved properly before the Court, that he was never subject to Prosecution and he was a family man. The Court also took into consideration, as aggravating circumstances, the number of captured civilians who were brought to the crime scene on the relevant day to serve as human shield and subsequently executed (twenty-seven persons), four of which were under-aged persons.

⁷ ICTY, Appeals Chamber Judgment in the Krstić case, paragraphs 231-232.



Pursuant to Article 56 of the CC of BiH, the time that the Accused spent in custody from 18 March 2005 onwards shall be counted as part of the sentence of imprisonment. Pursuant to Article 188 paragraph 4 of the CPC of BiH, the Accused is relieved of the duty to reimburse the costs of criminal proceedings as he is currently in custody and unemployed. In the Court's view, the Accused does not have funds to reimburse the costs.

Deciding on the claims under property law by the injured parties, the Court, pursuant to the provision of Article 198 paragraph 2 of the Criminal Procedure Code of Bosnia and Herzegovina, instructed the injured parties: protected witness „A“, Ago Kapo, Armin Baždar, Jasmina Delija, Damir Šetić, Bisera Bečić, Behija Pašić, Alija Kapo, Alija Isaković, Nađa Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčehajić, Enisa Čatić, Mevlida Čatić, Sanin Tanković, Šehzada Paralović and Mevlida Zimić-Pavica to take civil action to pursue their claims under property law since establishment of facts concerning the amount of claims under the property law would require considerable time. This would prolong the present proceedings and this is the reason why the Court referred the abovementioned parties to take civil action.

RECORD-TAKER

Elvira Begović

(signature)

PRESIDING JUDGE

Davorin Jukić

(signature)

REMEDY: *An appeal against this Verdict may be filed with the Appellate Panel of the Court of BiH within 15 /fifteen/ days after the date of receipt of a written copy of the verdict.*

Note:

We hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian language.

Sarajevo, 21 July 2006

Certified Court Interpreters for the English language

