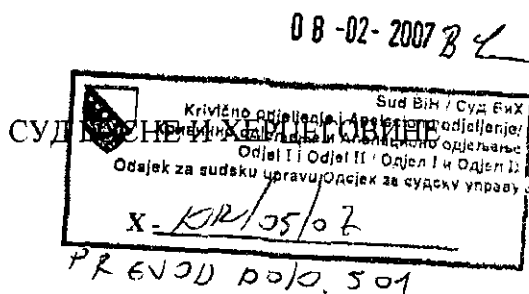


SUD BOSNE I HERCEGOVINE



Number: X-KR-05/07
Sarajevo, 3 November 2006



IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel composed of Judge Zorica Gogala, as the Presiding Judge, and Judges Tore Lindseth and Roland Dekkers, as the Panel members, with the participation of Legal Officer Amela Skrobo, as the record-taker, in the criminal case against the Accused Marko Samardžija for the criminal offense of Crimes against Humanity in violation of Article 172 (1) a) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-4/05 dated 8 September 2005, following the main trial, parts of which were closed for the public, in the presence of the Accused and his Defense Counsel, Attorney Zlatko Knežević from Novi Grad, and the Prosecutor of the Prosecutor's Office of BiH, Vesna Ilić, on 3 November 2006, reached and publicly announced the following

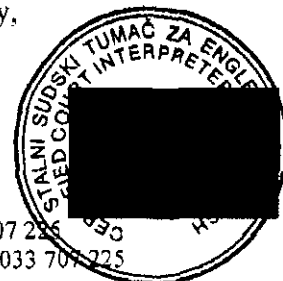
VERDICT

ACCUSED MARKO SAMARDŽIJA, son of Miloš and Anda, née Radulović, born on 1 December 1936 in Gornja Prisjeka, the Municipality of Ključ, with residence in Prijedor, 38 Vuka Karadžića Street, Serb, citizen of BiH, retired educational worker by profession, married, father of two children of age, no previous convictions, in custody since 21 March 2005,

HAS BEEN FOUND GUILTY

In as much as he:

During a widespread or systematic attack by the army and police of the so-called Serb Republic of Bosnia and Herzegovina directed against civilian Bosniak population in the territory of the Municipality of Ključ, in the capacity of Commander of the 3rd Company of the Sanica Battalion, which was within the composition of the 17th Light Infantry Brigade, together with other soldiers from that brigade, police officers in active service and in reserve with the Police Department in Sanica, headed by Commander Milan Tomić, and members of the Department of Military Police, upon the written order for further activities of the command, military postcode 2207 Ključ, "strictly confidential" number 03-135 dated 9 July 1992, issued by the commander of the 17th Light Infantry Brigade, Lt Col Drago Samardžija, to carry out a total blockade, search and mopping up of the terrain in the area of the village of Donji Biljani, i.e. the hamlets of Domazeti, Botonjići, Jabukovac and Brkići, with the determined combat disposition, unit assignments and combat security,



on 10 July 1992, he ordered to soldiers of the 3rd Company, who were under his command, that men – Bosniak civilians from the hamlets of Brkići and Balagića Brdo come out of the houses, then to head toward the Jezerine meadow, where he awaited them with his subordinate armed soldiers with rifles pointed at them and then escorted those older than 18 and younger than 60 with their hands at the back in a line to the yard of the Primary School in Biljani, where soldiers of a part of the 17th Light Infantry Brigade and members of the police brought in men – Bosniak civilians from the other mentioned hamlets, stayed with his soldiers near the school when soldiers of a part of the 17th Light Infantry Brigade and police members detained one part of the Bosniak men in the school classrooms, from where they subsequently took them out in groups of 5 to 10 and killed them, while they forced the remaining men to run the gauntlet, hitting them on their way to the buses by which they were transported in the direction of Lanište, where majority of them was killed, and after that, in the evening, when the dead bodies of the killed people were being collected and taken away, he took part in it; the bodies of at least 144 men – Bosniak civilians who were killed on that day mostly by fire arms were exhumed during 1996 from the mass graves of Lanište, Crvena zemlja and Biljani, as follows:

From the Lanište I mass grave:

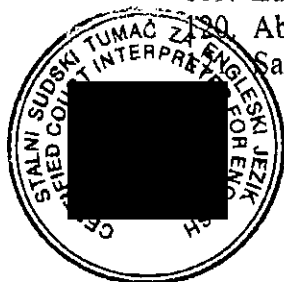
1. Najil (Redžo) Botonjić, born on 24 March 1927
2. Husein (Huso) Dervišević, born on 13 August 1959
3. Džemal (Mehmed) Omeradžić, born on 22 July 1934
4. Almir (Sabit) Jašarević, born on 15 January 1974
5. Rifet (Paša) Botonjić, born on 27 August 1936
6. Osman (Ibro) Hodžić, born on 19 February 1934
7. Smail (Ale) Muahmetović, born on 19 November 1928
8. Hazim (Smajil) Zukanović, born on 17 September 1951
9. Nijaz (Osmo) Avdić, born on 4 June 1966
10. Zijad (Atif) Domazet, born on 23 June 1952
11. Elvir (Samed) Čehić, born on 9 May 1971
12. Adnan (Hamdija) Čehić, born on 17 February 1972
13. Ćamil (Sulejman) Botonjić, born on 18 September 1930
14. Feriz (Omer) Botonjić, born in 1937
15. Jasmin (Bećir) Kapidžić, born on 21 March 1969
16. Ramiz (Omer) Botonjić, born on 15 May 1925
17. Vehbija (Daut) Džaferagić, born on 4 December 1962
18. Nedžad (Hakija) Čehić, born on 17 August 1960
19. Zuhdija (Mehmed) Botonjić, born on 17 November 1933
20. Muharem (Sulejman) Mujezinović, born on 19 July 1931
21. Hilmo (Redžo) Botonjić, born on 1 May 1933
22. Bećir (Bećo) Kapidžić, born on 1 August 1945
23. Kemal (Bego) Jašarević, born on 16 May 1941
24. Nail (Huso) Mujezinović, born on 18 January 1927
25. Mehmed (Sulejman) Domazet, born on 6 February 1971
26. Enes (Rasim) Jašarević, born in 1963
27. Avdo (Luftija) Balagić, born on 20 February 1964



28. Besim (Bego) Jašarević, born on 13 March 1939
29. Samir Pehadžić, born in 1972
30. Fadil (Ahmo) Domazet, born on 4 May 1946
31. Muhamed (Huso) Botonjić, born on 29 June 1964
32. Fuad (Abid) Avdić, born on 10 June 1961
33. Asmir (Hamdija) Domazet, born in 1969
34. Asmir (Meho) Mujezinović, born in 1919
35. Vehbija (Mustafa) Balagić, born on 13 May 1937
36. Husein (Zejnil) Botonjić, born on 25 March 1942
37. Emid (Hilmo) Omanović, born on 31 December 1964
38. Almedin (Meho) Šušnjar, born on 14 February 1973
39. Aiz (Ibro) Botonjić, born on 1 June 1932
40. Derviš (Ibrahim) Domazet, born on 25 October 1932
41. Ahmet (Hakija) Džaferagić, born on 1 July 1955
42. Ismet (Osman) Mujezinović, born on 26 May 1971
43. Raif (Rasim) Jašarević, born in 1961
44. Emsud (Jusuf) Avdić, born on 7 February 1953
45. Suad (Latif) Mešanović, born in 1957
46. Hilmo Mujezinović, born on 20 February 1932
47. Omer (Feto) Dervišević, born on 9 November 1964
48. Saudin (Aiz) Omanović, born on 19 July 1970
49. Ifet (Safet) Domazet, born on 1 July 1968
50. Safet (Ibrahim) Domazet, born on 17 January 1936
51. Saim (Aiz) Botonjić, born on 25 March 1967
52. Hamid (Ćerim) Domazet, born on 3 September 1931
53. Muharem (Huso) Kuburaš, born on 23 February 1933
54. Feriz (Aziz) Avdić, born on 13 July 1926
55. Abid (Meho) Balagić, born on 12 May 1921
56. Ale (Muharem) Čajić, born on 9 April 1955
57. Smail (Crnko) Avdić, born on 19 August 1949
58. Zifad (Adem) Mujezinović, born on 24 March 1962
59. Fikret (Arif) Balagić, born on 17 April 1940
60. Sadik (Dedo) Botonjić, born on 23 November 1961
61. Hakija (Hamdo) Avdić, born on 18 May 1937
62. Šefko (Rašid) Avdić, born on 6 May 1937
63. Hikmet (Huso) Botonjić, born on 23 May 1966
64. Efrajim (Abid) Čehić, born on 1 May 1946
65. Sulejman (Haso) Čehić, born on 7 May 1924
66. Šerif (Ćerim) Pehadžić, born on 13 May 1962
67. Muhamed (Ekrem) Mešanović, born on 16 March 1966
68. Sulejman (Ćamil) Botonjić, born on 28 August 1965
69. Osman (Haso) Mujezinović, born on 26 June 1934
70. Ahmo (Hašim) Čehić, born on 19 August 1925
71. Husein (Husein) Zukanović, born on 6 April 1925
72. Adil (Aziz) Hodžić, born on 15 May 1923
73. Muharem (Hamid) Avdić, born on 12 March 1950
74. Hamid (Ćamil) Botonjić, born on 22 June 1962



75. Hamdija (Hamed) Domazet, born on 15 April 1946
76. Rasim (Ahmet) Čehić, born on 17 May 1932
77. Derviš (Nurija) Hodžić, born on 13 August 1931
78. Hamed (Hakija) Botonjić, born on 1 March 1960
79. Adil (Abid) Omanović, born in 1937
80. Suad (Ahmo) Čehić, born on 16 March 1963
81. Suad (Hilmo) Botonjić, born on 14 September 1965
82. Hilmo (Hamid) Omanović, born on 27 February 1934
83. Zijad (Muho) Botonjić, born on 14 April 1953
84. Asim (Latif) Čehić, born on 21 February 1951
85. Sabahudin (Ramiz) Botonjić, born on 9 October 1967
86. Nihad (Ramiz) Kuburaš, born on 11 May 1970
87. Sabrija (Sabit) Botonjić, born on 12 April 1966
88. Hamed (Avdo) Domazet, born on 1 September 1922
89. Miralem Čehić, born on 23 August 1932
90. Habir (Feriz) Avdić, born on 5 February 1955
91. Meho (Ibro) Domazet, born in 1932
92. Islam (Feho) Domazet, born on 31 March 1923
93. Nail (Adem) Avdić, born on 21 May 1928
94. Asim (Dedo) Avdić, born in 1928
95. Omer (Mustafa) Omanović, born on 19 July 1910
96. Mujo (Muharem) Botonjić, born on 20 May 1930
97. Fadil (Adil) Subašić, born on 10 July 1931
98. Nail (Adil) Domazet, born on 19 October 1931
99. Ejub (Musa) Botonjić, born on 27 February 1932
100. Smajil (Šerif) Avdić, born on 7 November 1946
101. Nijaz (Mujo) Botonjić, born on 7 October 1965
102. Vehbija (Latif) Botonjić, born on 21 May 1945
103. Izedin (Nazif) Subašić, born on 5 September 1964
104. Hamdija (Musa) Džaferagić, born on 15 July 1932
105. Enes (Ramiz) Avdić, born on 13 September 1953
106. Besim (Rasim) Avdić, born on 24 April 1957
107. Abid (Muharem) Hodžić, born on 2 April 1930
108. Teufik (Čazim) Čehić
109. Omer (Hamid) Botonjić, born on 10 January 1931
110. Fahrudin (Safet) Domazet, born on 2 January 1970
111. Nail (Smajo) Čehić, born on 21 May 1931
112. Ibrahim (Ibro) Bajrić, born on 12 May 1931
113. Fuad (Feriz) Domazet, born on 3 February 1962
114. Emir (Rasim) Mujezinović, born on 30 June 1964
115. Elkaz (Osmo) Omanović, born in 1936
116. Mustafa (Mujo) Omanović, born in 1928
117. Džafer (Rifet) Botonjić, born on 3 January 1974
118. Latif (Meho) Čehić, born in 1922
119. Zuhdija (Husein) Omanović, born on 10 June 1925
120. Abid (Ibrahim) Omanović, born in 1907
- Samir (Ale) Mulahmetović, born on 1 October 1974



122. Bego (Ibrahim) Jašarević, born in 1951
123. Abid (Crnko) Avdić, born in 1933
124. Salko (Osman) Omeradžić, born on 10 March 1944
125. Omer (Nazif) Omanović, born in 1937
126. Mehmed (Muho) Džaferagić, born on 11 August 1914
127. Smail (Mehmed) Zukanović, born on 1 July 1926
128. Hajrudin (Fehim) Domazet, born on 16 May 1971
129. Meho (Latif) Šušnjar, born in 1941
130. Fadil (Ragib) Botonjić, born on 27 January 1968
131. Mesud (Fejzo) Crnalić, born in 1953
132. Rufad Hodžić, born on 17 October 1956
133. Abid (Muho) Avdić, born on 16 October 1933
134. Refik (Hamid) Avdić, born on 20 August 1964
135. Ermin (Osmo) Avdić, born in 1968
136. Asmir (Vehbija) Mešanović, born on 21 April 1972

From the Crvena zemlja II mass grave:

1. Hamdija (Iso) Botonjić, born on 15 March 1939
2. Ibrahim (Hamed) Avdić, born on 10 February 1958
3. Nail (Abid) Botonjić, born on 10 August 1932
4. Mujaga (Adil) Zukanović, born on 30 September 1954
5. Asim (Hamed) Domazet, born on 12 April 1948

From the individual grave Biljani III – Domazeti:

1. Smajil (Hasib) Mujezinović, born on 20 September 1954

From the individual grave Biljani IV – Domazeti:

1. Husein (Dervo) Domazet, born on 2 May 1965

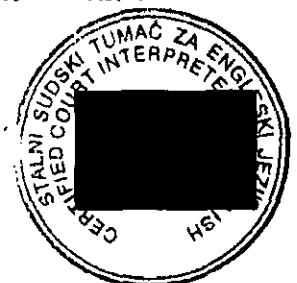
From the individual grave Biljani VI – Domazeti – Čehići:

1. Ćazim (Ale) Botonjić, born in 1938

Therefore,

as part of a widespread or systematic attack against civilian population, being aware of such an attack, he aided and abetted in depriving other persons of their lives (murder),

whereby he committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) a) in conjunction with individual criminal responsibility referred to in Article 180 (1) of the Criminal Code of Bosnia and Herzegovina;



therefore, the Court, on the ground of the mentioned legal provisions and applying Articles 39, 42 (2) and 48 of the Criminal Code of Bosnia and Herzegovina, hereby

**SENTENCES HIM TO A LONG-TERM IMPRISONMENT FOR A TERM OF
26 YEARS (TWENTY-SIX YEARS)**

Based on Article 56 of the Criminal Code of Bosnia and Herzegovina, the time the Accused has spent in custody from 21 March 2005 onwards shall be counted as part of the sentence of imprisonment.

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

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

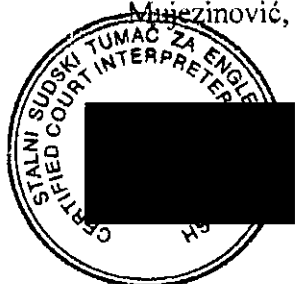
R e a s o n i n g

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-4/05 of 8 September 2005, Marko Samardžija was accused before this Court for the criminal offense of Crimes against Humanity in violation of Article 172 (1) a), in conjunction with individual criminal responsibility referred to in Article 180 (1) of the Criminal Code of Bosnia and Herzegovina, committed at the time and in the manner described in detail in the Indictment.

The cited Indictment was confirmed on 13 September 2005 by the Preliminary Hearing Judge, before whom the Accused Marko Samardžija pleaded not guilty in relation to all the criminal acts he was charged with. After that, the file was referred to this Panel for trial.

During the trial, in the evidentiary procedure, the following prosecution evidence was presented at the main trial:

The following witnesses have been heard: Feriz Dervišević, Rasema Mujezinović, Husein Balagić, Ismet Zukanović, Munira Avdić, Husein Čajić, Ziba Hodžić, Šećira Avdić, Ferid Avdić, Mujo Čajić, Mile Pešević, Dragan Vukić, Dušan Samardžija, Miroslav Samardžija, Hasiba Mulahmetović, Šefika Domazet, Hata Hajdarević, Zuhra Avdić, Nesima Avdić, Ifeta Džaferagić, Asim Vučkić, Enisa Čehić, Asif Medić, Mustafa Džaferagić, Munib Hodžić, Šemso Džaferagić, Azemina Mujezinović, Makbula Mešanović, Dževad Džaferagić, Subhija Domazet, Zlata Pehadžić, Naja Botonjić, Šemsudin Omanović, Zejna Mujezinović, Ale Mujezinović, Hatidža Čehić, Amira Čehić, Smajil Džaferagić, Nedim Omanović, Ema

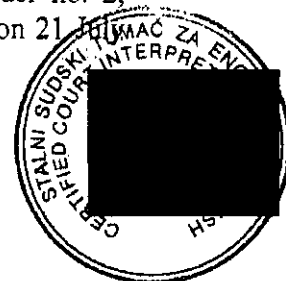


Mujezinović, Aziz Gromilić, Ale Mulahmetović, Džemka Crnolić, Seida Balagić, Amira Džaferagić, Sadika Botonjić, Nesma Avdić, Senada Avdić and Hasan Zukanović, and the medical expert witnesses, Dr Hamza Žujo and Dr Semira Mešić, forensic medicine specialists.

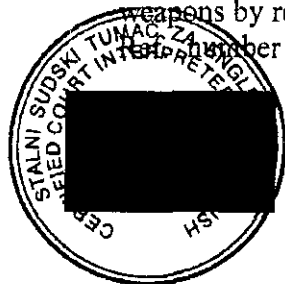
Then the following material evidence was presented:

Records on the examination of the following witnesses: Feriz Dervišević, dated 11 May 2005; Rasema Mujezinović, dated 12 March 2001 and 11 May 2005; Husein Balagić, dated 20 May 2005; Ismet Zukanović, dated 16 July 2005; Munira Avdić, dated 14 July 2005; Husein Čajić, dated 12 March 2001, 15 April 2005 and 11 July 2005; Ziba Hodžić, dated 14 July 2005; Šećira Avdić, dated 13 July 2005; Ferid Avdić, dated 11 July 2005; Mujo Čajić, dated 28 July 2005; Mile Pešević, dated 19 August 2005; Dragan Vukić, dated 11 August 2005; Dušan Samardžija, dated 7 September 2005; Miroslav Samardžija, dated 7 September 2005; Hasiba Mulahmetović, dated 12 March 2001 and 10 May 2005; Šefika Domazet, dated 12 March 2001 and 10 May 2005; Hata Hajdarević, dated 12 May 2005; Zuhra Avdić, dated 12 May 2005; Nesima Avdić, dated 19 May 2005; Ifeta Džaferagić, dated 18 May 2005; Asim Vučkić, dated 15 April 2005; Enisa Čehić, dated 18 May 2005; Asif Medić, dated 16 July 2005; Mustafa Džaferagić, dated 16 July 2005; Mumin Hodžić, dated 15 July 2005; Šemso Džaferagić, dated 15 July 2005; Azemina Mujezinović, dated 14 July 2005; Makhula Mešanović, dated 11 July 2005; Dževad Džaferagić, dated 11 July 2005; Subhija Domazet, dated 12 May 2005; Zlata Pehadžić, dated 12 May 2005; Naja Botonjić, dated 20 May 2005; Šemsudin Omanović, dated 12 March 2001 and 15 April 2005; Zejna Mujezinović, dated 15 July 2005; Ale Mujezinović, dated 14 July 2005; Hatidža Čehić, dated 12 July 2005; Amira Čehić, dated 12 July 2005; Smajil Džaferagić, dated 16 July 2005; Nedim Omanović, dated 13 July 2005; Ema Mujezinović, dated 12 July 2005; Aziz Gromilić, dated 15 July 2005; Ale Mulahmetović, dated 13 July 2005; Džemka Crnolić, dated 15 July 2005, and the record on the examination of the Accused Marko Samardžija in the Prosecutor's Office of BiH on 21 March 2005, which the Prosecutor used during the cross-examination of the Accused, who was heard as a defense witness.

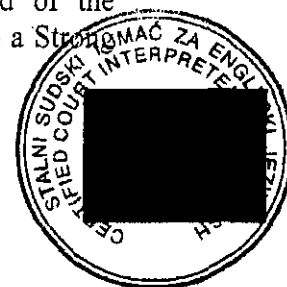
The Prosecutor's Office also presented the following material evidence: letters of Police Administration 3, Crime Police Division, Sanski Most, dated 21 July 2005 and 25 August 2005 respectively, delivering the list of documents, official documents and other materials found in Ključ Public Security Station, in the building of Ključ Municipal Assembly and others, Ref. number 14-18/02-18/9 dated 16 February 1997 made by Ključ Public Security Station, as well as the original documents contained in folders 1 through 3, which documents were found in the offices of the Commander of Ključ Public Security Station, Head of Ključ Public Security Station and in the metal safe of Ključ Public Security Station, the chairman of Ključ Municipal Assembly, commander of the Territorial Defense of Ključ, president of the Municipal Court of Ključ, in offices 16 and 17 in the building of Ključ Public Security Station in the office of Ključ Crisis Staff, in the office of the Wartime Presidency of Ključ Municipal Assembly, in the office of the Defense of Ključ Municipal Assembly, in the office of the Territorial Defense of Ključ and in the office of the Command of the 17th Light Infantry Brigade; Report from the area of Biljani made on 18 August 1994, which was found in Ključ Public Security Station and delivered as an original document in folder no. 2, entered under ordinal number 8. The folder was delivered along with the others on 21 July 2005.



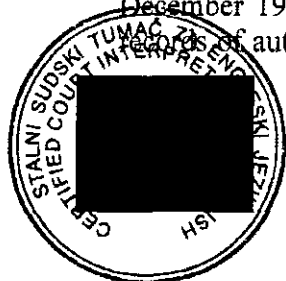
2005 under no. 05-6/03-695/05; Fax – order of the SDS Sarajevo, addressed to the chairman of Ključ Municipal Assembly by the coordinator for the implementation of the decision, Radoslav Brđanin, forwarded to the chairman of the Municipal Assembly on 29 October 1991, found in the office of the chairman of Ključ Municipal Assembly; Decision on accession of Ključ Municipality to the Autonomous Region "Bosanska Krajina", Ref. number 05-023-3/92 dated 16 January 1992; Letter of the chairman of Ključ Municipal Assembly, Omer Filipović, delivered to the Ministry of National Defense of the Republic of BiH, Territorial Defense Staff of BiH, Ref. number 01/1-92 dated 14 April 1992; Excerpt from the Instruction for Operations of Crisis Staffs of the Serb People in Municipalities, dated 26 April 1992; Order of the president of the National Defense Council, Jovo Banjac, Ref. number 05-01-45/92 dated 5 May 1992; Order of the commander of the Territorial Defense Staff, Omer Filipović, Ref. number No. 05-01-45/92 dated 6 May 1992; Press release of the Crisis Staff of Ključ Municipality, dated 8 May 1992; Conclusion of the Wartime Staff of the Autonomous Region of Krajina, Ref. number 03-297/92 dated 8 May 1992 (a list of phone numbers of members of the Wartime Staff of the Autonomous Region of Krajina delivered by the president of the Wartime Staff Banja Luka to the chairman of the Municipal Assembly on 6 May 1992); Conclusion of the Wartime Staff of the Autonomous Region of Krajina, Ref. number 03-298/92 dated 9 May 1992; Minutes of the meeting of the Crisis Staff of Ključ Municipal Assembly held on 13-14 May 1992; Performance report for the Crisis Staff (Wartime Presidency) of Ključ Municipal Assembly in the period between 15 May 1992 and 29 July 1992; Order of the Crisis Staff of Ključ Municipality, strictly confidential 22/92, dated 25 May 1992; Information on committed criminal offenses in the territory of the municipality since the outbreak of the armed rebellion on 27 May 1992, produced by Ključ Public Security Station; Order of the Crisis Staff of Ključ Municipal Assembly, ref. number 05-01-54/92 dated 27 May 1992; Order of the Crisis Staff of Ključ Municipality dated 28 May 1992; Order of the Command of Defense of Ključ Municipality, dated 28 May 1992; Report on performance and activities of the Command of the Brigade with the note Command of the 17th Light Infantry Brigade – military secret, strictly confidential, dated 28 July 1992; Performance report of the Executive Board in the period between 31 May 1992 and the end of July 1992; Press release of the Crisis Staff and Command of Defense of Ključ Municipality, Ref. number 6/92 dated 2 June 1992; Order on establishment of local boards in the territory of Ključ Municipality, Ref. number 13/92 dated 4 June 1992; Conclusion of the Crisis Staff of Ključ Municipality from the meeting held on 17 June 1992, Ref. number 66/92 dated 18 June 1992; Decision declaring the state of war, adopted by the Presidency of the Republic of BiH at the session held on 20 June 1992 (*Official Gazette of RBiH*, No. 7/92); Order for further activities of the Command of the 17th Light Infantry Brigade, strictly confidential, Ref. number 01-93/92 dated 25 June 1992 with the note "military secret – strictly confidential"; Overview of managing working posts occupied by employees of Muslim ethnicity dated 26 June 1992, issued by the Serb Republic of BiH-Ključ Municipal Assembly; List of persons apprehended during the mopping up of the terrain of Ključ Municipal Assembly, Ref. number SL/92 dated 27 June 1997; List of prisoners from the territory of Ključ Municipality at Manjača Concentration Camp – found in the metal safe in office no. 16 in the building of Ključ Public Security Station on 16 February 1997; Official notes made by Ključ Public Security Station on 1 June, 2 June, 3 June, 26 June, 28 June and 7 July 1992 (12 official notes), pertaining to possession of weapons by residents of Biljani (documents delivered by the Federation Ministry of Defense, Ref. number 06-03/6-4.4-498-1/05 dated 12 July 2005, confirming that copies of the



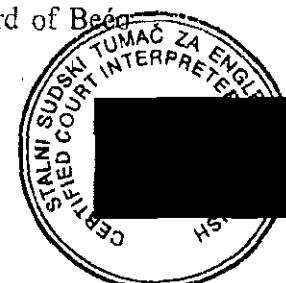
documents were seized from the archives of the Ministry of Defense of FBiH – Security and Intelligence Affairs Sector); Decisions on removal of Judge of the Minor Offenses Municipal Court of Ključ, Nermin Kapetanović; President of the Basic Court of Ključ, Nedžad Botonjić; Judge of the Basic Court of Ključ, Enisa Dućanović, which were adopted by the Crisis Staff of Ključ Municipal Assembly on 1-2 July 1992 and signed by the President of the Crisis Staff Jovo Banjac; Decisions on removal of chairman of Ključ Municipal Assembly, Omer Filipović; president of the Executive Board of Ključ Municipality, Asim Egrlić; secretary of the Executive Board of Ključ Municipality, Fikret Balagić; secretary of the Municipal Secretariat for General Administration, Merima Filipović; director of the Municipal Authority for Geodesic, Property Affairs and Real Estate Cadastre, Hamdija Dućanović, which decisions were made on 21 July 1992; Map of Ključ Municipality made in the 1:100,000 ratio; List of police members in active service and in reserve, who have wartime assignment in Ključ Public Security Station; Order for further activities of the Command, military postcode 2207, strictly confidential, Ref. number 03-135 dated 9 July 1992, issued by the commander, Lt Col Drago Samardžija with the note "military secret - strictly confidential"; Original list of persons imprisoned in Biljani Primary School written in Cyrillic and Latin scripts with the inserted date of 10 July 1992 and note "Biljani school" on the list written in Cyrillic script; Official note of the Commander of Wartime Police Station (WPS) of Sanica dated 10 July 1992; Excerpt from the minutes of the session of the Wartime Presidency of Ključ Municipal Assembly held on 10 July 1992; Information of the work and activities of Ključ Public Security Station at the time of combat operations in the territory of Ključ Municipality, strictly confidential 9/92; Conclusion of the Wartime Presidency dated 13 July 1992 from the session of the Wartime Presidency held on 10 July 1992; Decision establishing the Wartime Presidency of Ključ Municipal Assembly, Ref. number 05.01-98/92 dated 13 July 1992; Decision on criteria for the opportunity to move out from the territory of Ključ Municipality made by the Wartime Presidency, Ref. number 05-01-136/92 dated 30 July 1992; Order of the Wartime Presidency of Ključ Municipal Assembly dated 7 August 1992; Excerpt from the Minutes of the 6th session of the Wartime Presidency of Ključ Municipal Assembly held on 7 August 1992, which was found in the office of the chairman of Ključ Municipal Assembly and delivered as the original document in folder 1, entered under ordinal number 31; Decision on addendum to the Decision on criteria for the opportunity to move out from the territory of Ključ Municipality dated 7 August 1992; Account for the monograph of the 1st Krajiški Corps, confidential, 2 November 1993; Report of the assistant commander for civil affairs, military postcode 7286, confidential, Ref. number 01-326-22/93, dated 16 February 1993; List of persons moved out and in the territory covered by the SNB Sector Banja Luka dated May 1993; Overview of information regarding number as well as ethnic structure of inhabitants by municipalities in the territory of the Center of State Security Sector Banja Luka for 1991 and 1995; Instruction on Organizing and Activities of Bodies of Serb People in BiH in Extraordinary Circumstances dated 19 December 1991; Letter of the General Staff of the Republika Srpska Army, Ref. number No. 02/3-1-291/4 dated 26 August 2005 delivered to the State Investigation and Protection Agency, pertaining to Marko Samardžija – information on the member of the RS Army; Report on plundering committed by armed persons in the territory of Biljani, compiled by the commander of the 3rd Company, Marko Samardžija, strictly confidential, Ref. number 37/92 dated 29 June 1992; Notice to the leaders of platoons 1 through 3, signed by Company Commander Marko Samardžija; Submission of the local board of the Movement for Yugoslavia made by Marko Samardžija; Submission "The Road to a Strong



Military Team through Discipline, Concord and Unity", authored and signed by the commander of the 3rd Company, Marko Samardžija – Captain First Class, dated 4 July 1992; Submission "Basic Requirements for Operations of Military Units of the 3rd Company" authored and signed by the commander of the 3rd Company, Marko Samardžija – Captain First Class, dated 22 June 1992; List of the 3rd Company of the Sanica Battalion signed by the Commander of the 3rd Company, Marko Samardžija, dated 30 June 1992; Overview of manpower of the armed guards of the 3rd Company; List – for the area of Gornja Prisjeka Platoon of the 3rd Company – of persons who due to the circumstances have the role of village night guards; List of equipment of the soldiers of the 2nd Platoon Gornja Prisjeka of the 3rd Company and a list for cigarettes; Submission "Elaboration on Specific Assignments in the Activities of the 3rd Company 2nd Platoon – Gornja Prisjeka", made on 2 July 1992 in Sanica by the Commander of the 3rd Company – Marko Samardžija; Submission by Commander Marko Samardžija delivered to "Dućo" for the meeting on 12 July 1992 in front of the school in Sanica; Minutes of the meeting of the local board of the SDS Sanica dated 24 December 1993; List of members of the Municipal Board of the SDS Ključ dated 24 January 1994, 22 February 1994 and 18 May 1994; Record of the crime scene investigation of the Basic Court of Ključ, Ref. number KRI 38/96 dated 2 August 1996, made in the place called Lanište; Decision of the Basic Court of Ključ, Ref. number KRI 38/96 dated 3 October 1996, ordering exhumation of mass graves on Mt Grmeč, Lanište location, graves at the location of Babina Dolina; Record of exhumation of Lanište I mass grave made by the Basic Court of Ključ, Ref. number KRI 38/96 dated 4 October 1996; Record of autopsy of corpses from Lanište I mass grave made by the Basic Court of Ključ, Ref. number 38/96 dated 12 October 1996; Continuation of the record of autopsy of corpses from Lanište I mass grave made by the Basic Court of Ključ, Ref. number KRI 38/96 dated 7 November 1996; Record of identification of a corpse made by Ključ Public Security Station on 13 November 1996 under identification no. 57, Hilmo Mujezinović; Decision of the Basic Court of Ključ, Ref. number KRI 52/96 dated 4 November 1996, ordering exhumation of a mass grave on the location of the village of Krasulje called Crvena zemlja II, in the area of Ključ Municipality; Record of crime scene investigation and exhumation of Crvena zemlja II mass grave, made by the Basic Court of Ključ, Ref. number KRI 52/96 dated 5 November 1996; Record of autopsy of corpses from the mass grave Crvena zemlja II, made by the Basic Court of Ključ, No. KRI 52/96 dated 6 November 1996; Records of the Public Security Center-Bihać Police Station, dated 11 November 1995, made during the discovery of corpses on 9 November 1995 (15 records); Decision of the Basic Court of Ključ, Ref. number KRI 48/96 dated 14 October 1996, ordering exhumation and autopsy of corpses from a mass grave and an individual grave at the location of the village of Biljani; Record of the crime scene investigation and exhumation of Biljani mass grave, made by the Basic Court of Ključ, Ref. number KRI 48/96 dated 14 October 1996; Record of autopsy of corpses from the mass and individual graves in the village of Biljani made by the Basic Court of Ključ, Ref. number KRI 48/96 dated 14 October 1996; Record of crime scene investigation and exhumation of individual graves in the village of Biljani, hamlet of Domazeti, made by the Basic Court of Ključ, Ref. number KRI 48/96 dated 6 November 1996; Record of autopsy of individual graves from the territory of the village of Biljani made by the Basic Court of Ključ, Ref. number KRI 48/96 dated 7 November 1996; Letter of the Basic Court of Ključ; Ref. numbers 38, 48, 47, 52, 56, 54, 53, 57, 55, 58/96 dated 13 December 1996, delivered to the Registry Offices in Ključ and Sanica indicating that the records of autopsy are delivered for the purpose of entry of deaths into the Registers; Photo



documents – the first and second part of Lanište I mass grave, Ključ Municipality, that pertains to the exhumation of 188 bodies of killed Bosniak civilians with 10 October 1996 as the date when the photos were taken; 188 autopsy records, 41 of which are records of unidentified persons, while the others are to the names of persons – bodies exhumed from Lanište I mass grave on 10 October 1996; Sketch of the crime scene with the marked natural pit – Lanište I mass grave wherefrom 188 bodies of killed Bosniak civilians were exhumed, which was made on 10 October 1996; Sketch of the crime scene – Lanište I mass grave – lateral cross-section view of the terrain, which was made on 10 October 1996; Photo documents of Crvena zemlja mass grave with the photographs of exhumation of 16 bodies of killed Bosniak civilians, with 5 November 1996 as the date when the photos were taken; Sketch of the crime scene – Crvena zemlja mass grave from which 16 bodies of killed Bosniak civilians were exhumed, bearing the date of 13 December 1996; Autopsy records for 16 exhumed corpses (eight of them being unidentified corpses), recovered from Crvena zemlja mass grave; Photo documents – sketch of the crime scene of the exhumation of five bodies of killed Bosniak civilians recovered from Biljani I mass grave, Ključ Municipality, with the indication of the date 15 October 1996; Autopsy records for five exhumed bodies containing the conclusion that they are unidentified males, either middle-aged or younger persons, the records being made on 6 October 1996; Photo documents – sketch of the location of exhumation of two bodies of killed Bosniak civilians recovered from Biljani II grave, Ključ Municipality, with 28 February 1997 as the date when the photos were taken; Autopsy records for two exhumed bodies from Biljani II grave – Ejub Jašarević and Juso Jašarević, the records being made on 6 October 1996; Photo documents and sketch of the scene of exhumation of the body of Smajil Mujezinović found in the place called Domazeti, Ključ Municipality, marked as Biljani III grave, with 6 November 1996 as the date when the photos were taken; Autopsy record made on 6 November 1996 to the name of Smajil Mujezinović, whose body was recovered from Biljani III grave; Photo documents and sketch of the scene of exhumation of the body of Husein Domazet found in the place called Domazeti, Ključ Municipality, marked as Biljani IV grave, with 6 November 1996 as the date the photos were taken; Autopsy record made on 6 November 1996 to the name of Husein Domazet, whose body was recovered from Biljani IV grave; Photo documents and sketch of the scene of exhumation of the bodies of Hamdija Čehić, Hasib Mujezinović and Fajko Domazet, that were found in the place called Domazeti, Mešani cemetery, marked as Biljani V grave, with 6 November 1996 as the date when the photos were taken; Autopsy records made on 6 November 1996 to the names of Hamdija Čehić, Hasib Mujezinović and Fajko Domazet, whose bodies were recovered from Biljani V grave; Photo documents and sketch of the scene of exhumation of the body of Čazim Botonjić, found in the place called Domazeti, hamlet of Čehići, Ključ Municipality, marked as Biljani VI grave, with 6 November 1996 as the date when the photos were taken; Autopsy record made on 6 November 1996 to the name of Čazim Botonjić, whose body was recovered from Biljani VI grave; Photo documents and sketch of the scene of exhumation of five bodies of killed Bosniak civilians found in the hamlet of Jabukovac, Mezarje, Ključ Municipality, marked as Biljani VII grave, with the indication of the date of photographing – 6 November 1996; Autopsy Records of Sabit Šljivar, Asim Omanović, Tehvid Omanović, Šefkija Omanović and Paša Omanović dated 6 November 1996, whose bodies were recovered from Biljani VII grave; Photo documents and sketch of the exhumation scene of the body of Bećo Čehić, found in the hamlet of Brkići, Ključ Municipality, marked as Biljani VIII grave, with 9 November 1996 as the date when the photographs were taken; Autopsy Record of Bećo



Čehić, dated 10 November 1996, whose body was recovered from Biljani VIII grave; Photo documents and sketch of the exhumation scene of the body of Abid Džaferagić found in the hamlet of Osmanovići, Ključ Municipality, marked as Biljani IX grave, with 9 November 1996 as the date when the photographs were taken; Autopsy Record of Abid Džaferagić, dated 10 November 1996, whose body was recovered from Biljani IX grave; Video recording no. V000-1535 – parts I and II; Video recording no. V000-3102-1-A; Video recording no. V000-3103-1-A; Video recording no. V000-2731; Excerpt from criminal records of Marko Samardžija issued by the Una-Sana Canton Ministry of the Interior, Ref. number 05-6/03-2-1-04-3-426/05 dated 6 July 2005; a photograph of suspect Marko Samardžija; documents of the Republika Srpska Ministry of Defense relating to the changes in the organization and structure of the VRS, Ref. number 8-04-713-20/05 dated 20 September and 17 October 2005 respectively, seal-certified documents referred to in the Indictment under 21, 23, 51, 52, 62 and 64 respectively, and the Butler Report on Command Responsibility compiled in proceedings before the ICTY.

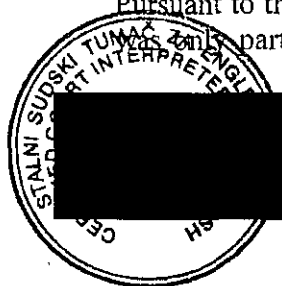
Following the end of the evidentiary procedure and in view of the fact that the presented evidence indicated that the state of facts set out in the Indictment has changed, the Prosecutor amended the Indictment accordingly; however, as this did not involve any substantial changes, the amended Indictment was not confirmed again.

The Defense presented the following evidence in the course of the main trial:

The following witnesses were heard: Nikola Kuridža, Milenko Tešić, Drago Banjac, Lazar Radišić, Petar Despot, Đorđo Rađenović, Slavko Štrbac, Stanko Raca. In addition, the Accused Marko Samardžija was heard in the capacity as a witness. The following material evidence was used and presented at the main trial: written statements of the witnesses Nikola Kuridža, Drago Banjac and Milenko Tešić dated 3 October 2005, Lazar Radišić and Petar Despot dated 9 October 2005, Đorđo Rađenović dated 12 October 2005, Stanko Raca dated 4 June 2006 and Slavko Štrbac dated 23 June 2006 – all of which were given in the Attorney's Office of Attorney Zlatko Knežević. Then followed the reference books: Rules of infantry (mountain) companies-platoons, published in 1977 by the Federal Secretariat for National Defense; Rules of Battalion, published in 1988 by the same Secretariat; Basics of the Law of War, published by the International Committee of the Red Cross, and the Geneva Conventions for the protection of victims of war of 1949 and Additional Protocols thereto of 1977, published by the Assembly of the Red Cross of Yugoslavia.

On 13 March 2006, the Panel visited the site in order to familiarize itself with the terrain of the village of Biljani and the vicinity where the event concerned had happened, in the aim of following the witnesses' testimonies easier, especially the parts of their statements concerning the descriptions of certain locations at the terrain concerned where the events of 10 July 1992 had taken place. The Court tendered into evidence the photo and video documentation made on that occasion, as well as the map of the terrain made by a land surveyor at the order of the Court, as the evidence of the Court, to which the Defense did not have any objection.

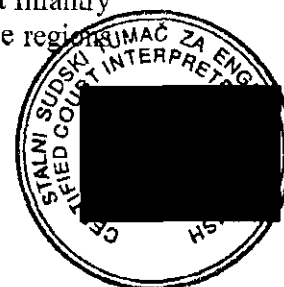
Pursuant to the provisions of Article 235 of Criminal Procedure Code of BiH, the main trial was partially closed for public, specifically, on 7 February 2006, when Husein Čajić



witness for the Prosecution, was being examined, upon the proposal of the Prosecutor's Office. The Defense did not object. The witness had testified before the ICTY. After the testimony before the Tribunal, this witness, who often travels across BiH due to the nature of his job and very frequently travels through Prijedor, had been recognized as a witness by unknown persons who had thrown him out of a shop in Prijedor. Therefore, in the aim of protecting this witness' safety it was necessary to exclude the public during his testimony.

After the completed evidentiary procedure, the parties presented their respective closing arguments in which they analyzed in detail the presented evidence, evaluated them, evaluating their quality from the respective viewpoints of the Prosecution and the Defense. Thus, the Prosecutor stressed in her closing argument that it was proven beyond doubt with the presented evidence of the Prosecution, and even some evidence of the Defense, that the Accused Marko Samardžija had committed the criminal offense concerned at the time and in the manner described in the amended Indictment. She based her closing argument on the following:

The Prosecutor's Office proves the existence of a widespread or systematic attack in the territory of Ključ Municipality, as an important general element of the criminal offense concerned, with the Judgment of the ICTY number IT-99-36-T of 1 September 2004 in the Radoslav Brđanin case, in which it was established that in the period from 1 April 1992 to 31 December 1992 in Bosnian Krajina, which included the Ključ Municipality of the 13 municipalities, there had existed a widespread and systematic attack against Bosnian Muslims and Bosnian Croats. Although this Judgment is not final and binding, the Prosecutor's Office stresses that neither the announcement of Appeal of 1 October 2004 nor the Appeal of 25 July 2005 contests the conclusions on the existence of the widespread and systematic attack, that is, that the Judgment is not contested with respect to that issue. The examined witnesses for the Prosecution – inhabitants of the village of Biljani speak in favor of the existence of such an attack, alleged by the Prosecutor's Office. They state that even much before the relevant event of 10 July 1992, that is, as early as in May 1992, Muslim civilians were first called to surrender their weapons, which they did, that at the beginning of June an army came to Biljani and set up its checkpoints, the population was intimidated with shooting and killings of Muslim civilians also started, as did the taking of people to the camp in Manjača, not just from the village of Biljani and the neighboring hamlets, but also from the neighboring villages of Ramići, Velagići and Pudín Han, where Muslim population lived. Such a widespread and systematic attack, as the Indictment states, was a result of the policies of the governing structures in the so-called Serb Republic, that is, the issued "Instruction on Organizing and Activities of Bodies of Serb People in BiH in Extraordinary Circumstances", enacted by the SDS Main Board on 19 December 1991 and on the basis of which maps were drafted for takeover of power by Bosnian Serbs. This Instruction obligated not just the SDS members, but the entire Serb people in Bosnia and Herzegovina as well. As the Prosecutor's Office further stresses, these policies are also clearly confirmed by the fact that the Autonomous Region of Krajina had been formed as early as in September 1991 and the Municipality of Ključ acceded to it on 16 January 1992. The so-called Crisis Staffs were also formed and the Army of the so-called Serb Republic of Bosnia and Herzegovina was formed on 12 May 1992. A part of everything stated above is also the "Order for Further Activities" of 25 June 1992, signed by Lt Col Drago Samardžija, Commander of the 17th Light Infantry Brigade, ordering a complete blockade, search and mopping up of the terrain in the region

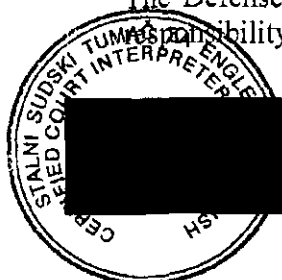


of Ramići, Krasulje, Hripavci and Ošiljak, as well as the Order of the Crisis Staff of Ključ Municipality of 27 and 28 May 1992, ordering the Muslim citizens to surrender the illegally obtained weapons. The Accused Marko Samardžija was an active participant in all this, according to the allegations of the Prosecutor's Office. In the capacity as the Commander of the 3rd Company of the Sanički Battalion, the Accused was a member of the Serb Army from 12 May 1992.

In the opinion of the Prosecutor's Office, also important is the fact that the Accused does not deny the said activities, either, which had taken place before 10 July 1992, including the fact that members of the 6th Sanička Brigade in the region of Sanica looked for weapons and ammunition and apprehended inhabitants--Muslim civilians, including the inhabitants of Jabukovac and Biljani. He does not deny the knowledge of the said written Order of 25 June 1992 on the basis of which a number of Muslim civilians was taken to Ključ while others were taken to the camp in Manjača. According to the allegations of the Prosecutor's Office, the fact that the Accused was aware of the attack and his active participation in it in the Biljani region also follow from his written instructions entitled "Notice to the Commanders of Platoons from 1 through 3", "Basic Requirements for Operations of Military Units of the 3rd Company" -- from which it especially emphasizes the following part "... If you do contact the Muslims, stress to them their criminal plan of liquidation of Serbs in Sanica and Ključ...", and "The Road to a Strong Military Team through Discipline, Concord and Unity", in which the Accused says that the angered and excited gang that has remained in the region of Ključ-Biljani might join the Ustasha gang in the Bihać-Cazin theater.

According to the allegations of the Prosecutor's Office, it follows from all the presented evidence for the Defense, both the statements of the examined witnesses and the material evidence, that the Accused Marko Samardžija, after Lt Col Drago Samardžija on 9 July 1992 had issued the Order for further activities on the execution of blockade, search and mopping up of the terrain in the village of Donji Biljani and its hamlets, on 10 July 1992, with armed soldiers of his company, actively participated in the events concerned by taking the Muslim inhabitants of the hamlets of Brkići and Balagića Brdo with their hands at their backs first to the meadow of Jezerine and then to the schoolyard, where they were awaited by the armed members of the other military and police formations, who first took them into the school at the same time subjecting them to various kinds of mistreatment, and then shortly afterward took out of the school some of them in groups and killed them not far away from the school, while the Accused and "his" soldiers, following the previously made plan, were in the schoolyard at that time and in front of the schoolyard (the Accused even entered the school several times). As the Prosecutor's Office stressed in the closing argument, it is because of this evidence that the explanation of the Accused that he did not know anything about it, that he brought the civilians to the purpose of distributing movement permits and that he learned subsequently of the events in front of and in the vicinity of the school, especially of the murders of Muslim civilians, proves to be absolutely unconvincing and unacceptable. Due to everything stated above, the Prosecutor's Office proposed that the Accused be pronounced guilty of the offense concerned and that the Court sentence him to a long-term imprisonment given the circumstances of the commission of the offense, its gravity and consequences.

The Defense stated in its closing argument that the Prosecutor's Office did not prove the responsibility of the Accused, that is, the existence of psychological attitude of the Accused



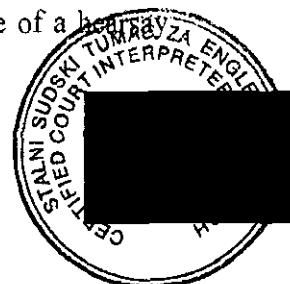
toward the act, that is, the intent of the Accused concerning any criminal acts he is charged with. The only thing that is indisputable, according to the Defense, is that the Accused Marko Samardžija, as the Company Commander, upon the verbal order of his superior, brought the men to the school with a part of his company to the purpose of distributing movement permits, after which he withdrew with "his" soldiers. He subsequently learned of the murders of civilians that had happened that day. The Defense also stresses that the political views of the Accused do not fit at all in the plan of systematic attack against the civilian population and that his conduct during the execution of the order (to bring the local inhabitants to the purpose of issuance of permits) was a result of the simple fact that the Accused Samardžija was a member of an army organized under the JNA rules, in which failure to execute an order in the state of war could be even punished by death. However, if he had known what the consequences of the order would be, he would not have executed it. The key issue that, according to the Defense, tells about the psychological attitude of the Accused toward the crime that had happened in Biljani on 10 July 1992, is the public condemnation of the crime that the Accused expressed at a gathering held in 1993, which represented an exceptional personal courage in that period indeed. Since, according to the Defense, the Prosecution did not prove the guilt of the Accused, the Defense moved the Court to acquit the Accused. The Accused Marko Samardžija reiterated the closing argument of his Defense Counsel.

The Court has assessed the evidence in this case in accordance with the applicable procedural Code, i.e. the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC BiH). The Court has applied to the Accused the presumption of innocence stated in Article 3 of CPC BiH, which embodies a general principle of law, so that the Prosecution bears the onus of establishing the guilt of the Accused and the Prosecution must do so beyond reasonable doubt.

In evaluating the evidence of the witnesses that testified before the Court, the Court has considered their demeanor, conduct and character as far as this was possible. With regard to all the witnesses it has also considered the probability, consistency and other evidence and the circumstances of the case. Furthermore, the Court has been conscious throughout that the credibility of witnesses depends upon their knowledge of the facts upon which they gave evidence, their integrity, their veracity and the fact that they are bound to speak the truth in terms of the solemn declaration taken by them.

It is insufficient that the evidence given by a witness has been given honestly. The true issue in relation to identification evidence is not whether it has been honestly given, but also whether it is reliable. The Trial Panel has been conscious, throughout, that evidence about facts that occurred some time (many years) prior to giving evidence, involves inherent uncertainties due to vagaries of human perception and recollection of traumatic events.

As regards hearsay evidence, the Court underlines that it is well settled in the practice and jurisprudence of the Court that hearsay evidence is admissible. Furthermore, pursuant to Article 15 of CPC BiH, the Court is free in its evaluation of evidence. The approach taken by the Trial Panel has been that it ought to be satisfied that such evidence is reliable in the sense of being voluntary, truthful and trustworthy. Furthermore, the probative value of a hearsay



statement will depend upon the context and character of the evidence in question and/or if the evidence has been corroborated by other pieces of evidence.

The Trial Panel considered circumstantial evidence as being such evidence of circumstances surrounding an event or offense from which a fact at issue may be reasonably inferred. Since the crime seems to be committed when many witnesses were not present at the crime scene itself, and since the possibility of establishing the matter charged by the direct and positive testimony of eyewitnesses or by conclusive documents is problematic or unavailable, circumstantial evidence may become a critical ingredient not only for the Prosecution but also for the accused. The individual items of such evidence may by themselves be insufficient to establish a fact, but, taken together, their collective and cumulative effect may be very revealing and sometimes decisive.

In the present case, the documentary evidence has been voluminous and is of particular importance. In the course of the trial, several documents were tendered in evidence which were contested by the Defense. The Court has examined each and every document objected to by the Defense with a view to deciding on their reliability and probative value.

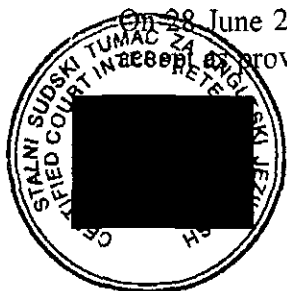
The Defense submitted that some of the documents "for which there is no evidence of authorship or authenticity" is unreliable and can carry no weight. In particular, the Defense contests the admissibility of all those documents tendered by the Prosecution which do not bear a signature and/or stamp and/or date or are in any other manner devoid of an element required for their authenticity.

The fact that a document is unsigned, undated or unstamped does not necessarily render that document non-authentic. The Court did not consider unsigned, undated or unstamped documents, a priori, to be void of authenticity. Keeping in mind that at all the times the principle that the burden of proving authenticity remains with the Prosecution, Court reviewed all these documents, one by one, and is satisfied that the Prosecution has proved their authenticity beyond reasonable doubt. In order to assess the authenticity of documents, the Court considered them in light of evidence as to their sources and custody and other documentary evidence and witness testimonies. In addition, even when the Court was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be accurate portrayal of the facts. Indeed, the Court evaluated these statements in light of the entire evidence before it.

After having evaluated all the presented evidence, individually and in their mutual correlation, the Court decided as quoted in the enacting clause of the Verdict for the following reasons:

It is beyond dispute that the event concerned, when in the village of Biljani and the neighboring hamlets at least 144 Bosniak civilians were killed, took place on 10 July 1992, at the time when the Serb army in the region of Ključ Municipality, to which this village belongs, carried out a widespread or systematic attack aimed against the non-Serb civilians.

On 28 June 2006, the Prosecutor submitted a motion number KT-RZ-04/05 to the Court to accept as proven facts established in the ICTY Trial Judgment of the *Prosecutor v. Radoslav*



Brđanin case, Case No. IT-99-36-T, Judgment, 1 September 2004. In his response of 10 July 2006, the Defense Counsel stated he disagreed with the motion of the Prosecutor. Both parties have been heard.

In its motion the Prosecutor moves the Court, among others, to accept as established by the ICTY the existence of a "widespread or systematic attack directed against the civilian population" and "that there was a widespread and systematic attack of the Bosnian Serb Army in the territory of Ključ Municipality during the mentioned period and that the primary target of this attack was the Muslim civilian population in the territory of Ključ Municipality."

The Court finds that it is beyond dispute that there was a widespread or systematic attack against the civilian population taking place in Biljani, Municipality of Ključ, and the rest of Bosanska Krajina Municipalities at the time when the incriminating events took place.

The Court accepted as established facts the following:

There was a widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the Bosanska Krajina. The attack took many forms. By the end of 1992, nearly all Bosnian Muslims and Bosnian Croats had been dismissed from their jobs in, amongst others, the media, the army, the police, the judiciary and public companies. Numerous crimes were committed against Bosnian Muslims and Bosnian Croats, including murder, torture, beatings, rape, plunder and the destruction of property. Villages were shelled, houses were torched and looted. In the spring of 1992, a number of detention camps where Bosnian Muslim and Bosnian Croat civilians were arrested and detained en masse were established throughout the Autonomous Region Krajina ("ARK"). In several instances, mass killings of civilians took place. Moreover, a policy of "ethnically cleansing" the ARK of its non-Serb population was systematically implemented by the Bosnian Serbs. Indeed, tens of thousands of Bosnian Muslims and Bosnian Croats were forcibly expelled from the ARK by the Bosnian Serbs and taken in convoys of buses and trains to Bosnian Muslim held territory in BiH or to Croatia. On the basis of the pattern of conduct by which these crimes were committed throughout the Bosnian Krajina, the Trial Chamber is satisfied that they were mostly perpetrated with a view to implement the Strategic Plan.

The Court notes furthermore that on 16 January 1992 the President of Municipal Assembly of Ključ, Jovo Banjac, signed a "Decision on Accession of Ključ Municipality to the Autonomous Region of Bosanska Krajina" (Exhibit No. 4).

The Court understands the Strategic Plan as a plan to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed.

The Court furthermore accepted as established facts that:

When Ključ was taken over by Bosnian Serbs, the Territorial Defense of Ključ retreated to Pudin Han. On 28 May 1992, the Ključ Crisis Staff issued an ultimatum demanding that all citizens in the municipality owning illegally acquired weapons hand them over. During



meeting at the youth centre, the vast majority of inhabitants of Pudín Han were in favor of surrendering their weapons. Those who disagreed left for Bihać. Even before the ultimatum expired, the shelling of Pudín Han from locations controlled by Bosnian Serbs started, when at a minimum, three civilians from Pudín Han died as a consequence of the shelling.

During the evening of 1 June 1992, Bosnian Serb police from the checkpoint at Velagići sent a man to the predominantly Bosnian Muslim hamlets of Vojići, Nežići, Hasići, Častovići and Hadžići. He informed the local population that they were obliged to come to Velagići to obtain a permit in order to be allowed to move around freely. In the old primary school in Velagići, located in the immediate vicinity of the Bosnian Serb checkpoint, around a hundred residents from these hamlets were confined. Both Bosnian Serb policemen and soldiers were present. Zoran Divac, a man in an olive-grey uniform, took down the names of all present. Shortly before midnight, people were taken out of the school and ordered to line up in front of the building. Then, two Bosnian Serbs armed with automatic rifles opened fire on them. The soldiers continued firing until every person had fallen down. Thereafter, they shot at those who still appeared to be alive. A witness described that one person survived the massacre. The Trial Chamber of the ICTY considered established that at least 77 civilians were killed in this incident.

The Court accepted as proven the above described established facts by admitting the Prosecutor's Motion based on Article 4 of the Law on Transfer of Cases from 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 (hereinafter: the Law on Transfer).

The rest of the of the facts/paragraphs submitted by the Prosecutor in her Motion have been rejected on the basis that they were either contested on appeal, not relevant for this case, not sufficiently factual, concrete and identifiable, or, related to the individual criminal responsibility of the Accused. Furthermore, for some of the submitted facts, the Prosecutor has submitted sufficient evidence during the trial and for the Court to make its own evaluation and thus did not find it relevant to consider taking over these facts/paragraphs.

Although it is not excluded that Article 4 of the Law on Transfer has a wider scope of application than Rule 94(B) of the ICTY ROPE, the jurisprudence developed by the ICTY under corresponding rule provides guidance, though not binding, in the interpretation and application of Article 4 of the Law on Transfer.

In *Prosecutor v. Momcilo Krajišnik*¹, the ICTY Trial Chamber distilled the relevant criteria set out in previous Rule 94(B) decisions. It found that "for a fact to be capable of admission under Rule 94(B), it should be truly adjudicated in previous judgments in the sense that:

- (i) it is distinct, concrete and identifiable;
- (ii) it is restricted to factual findings and does not include legal characterizations;
- (iii) it was contested at the trial and forms part of a judgment which has either not been appealed or has been finally settled on appeal;

¹ *Prosecutor v. Momcilo Krajišnik*, IT-00-39-T, Decision on third and fourth Prosecution motion's for judicial notice of the indicated facts, 24 March, p.8, footnote 45.



- (iv) it was contested at the trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal;
 - (v) it does not attest to criminal responsibility of the Accused;
 - (vi) it is not the subject of (reasonable) dispute between the Parties in the present case;
 - (vii) it is not based on plea agreements in previous cases; and
- It does not impact on the right of the Accused to a fair trial. (insert decision of Chamber II)

The Court considered the above described facts of the Brđanin Trial Judgment as in compliance with these criteria. The Court also considered fulfilled the requirement that the fact "has been finalized, meaning that the fact has not been contested on appeal, or, if it has, the fact has been settled on appeal." The verdict on appeal in the Brđanin case has not yet been rendered but the Defense's Appeal dated 25 July 2005 does not contest the abovementioned findings of the Brđanin Trial Judgment.²

The Defense Counsel for the Accused objected to the acceptance of the existence of a widespread or systematic attack because these facts "are part of the factual aspects of the criminal offense, allegedly committed by the Accused". Acceptance of these facts before the judgment would cause an essential violation of the provisions of criminal procedure and the right to a fair trial.

The Court did not accept this objection of the Defense Counsel since acceptance of established facts not directly related to the responsibility, and such is the case, does not amount to a breach of the right to a fair trial as safeguarded among others in Article 6 of the ECHR. The acceptance of facts established by the ICTY is in accordance with the Law on Transfer. The acceptance of these facts in proceedings before the Court of BiH will moreover only breach Article 6 ECHR when the fairness of the proceedings as a whole is damaged. Adjudicated facts admitted into evidence under the notion of judicial notice do not amount to presumption *juris et de jure* or irrefutable presumptions, since they are always open to challenge, refutation, or qualification, in line with the principle of free evaluation of evidence contained in Article 15 of CPC BiH.

Furthermore, the institute of judicial notice is achieving judicial economy, which is consistent with the defendant's right to be tried within a reasonable time, as foreseen by Article 6 (1) of the ECHR.

The Court thus accepts as proven the existence of widespread or systematic attack against the non-Serb civilian population at the time relevant to the Indictment, which implies it is established that the elements of the term "attack" within the meaning of Article 172 (1) of the Criminal Code of BiH (meaning a course of conduct involving multiple perpetrations, directed against a civilian population that is pursuant to or in furtherance of a State or Organizational policy to commit such an attack) are present.

² See Defense Appeal Brief of XXX. Paragraphs 159 and 427 are not contested.



The existence of this widespread or systematic attack in the Municipality of Ključ, especially in relation to area of Biljani and surrounding areas, is confirmed by material evidence and the witness-victim testimonies of those who resided in Biljani in the relevant period. The fact that there was a policy behind the events in Ključ Municipality can be amongst others be inferred from the "Report on the Work of the Crisis Staff of the Ključ Municipal Assembly for the Period 15 May 1992 until now", signed on 27 July 1992 (Exhibit no. 13).

That the Bosniaks in Ključ Municipality first started to lose their jobs, that is, that their economic existence was jeopardized first also follows from the written evidence submitted by the Prosecutor's Office, namely, the Decisions on Removal of the Judge of the Minor Offense Municipal Court of Ključ, Nermin Kapetanović; the President of the Basic Court of Ključ, Nedžad Botonjić; Judge of the Basic Court in Ključ, Enisa Dućanović, which were rendered by the Crisis Staff of the Municipal Assembly of Ključ on 1 and 2 July 1992 and signed by Jovo Banjac, President of the Crisis Staff, and the Decisions on removal of the president of the Municipal Assembly of Ključ, Omer Filipović; president of the Executive Board of Ključ Municipality, Asim Egrić; secretary of the Executive Board of Ključ Municipality, Fikret Balagić; secretary of the Municipal Secretariat for General Administration, Merima Filipović; director of the Municipal Administration for Geodesic, Property Affairs and Real Estate Cadastre, Hamdija Dućanović, which decisions were made on 21 July 1992.³ Biljani resident Mujo Čajić testified how he could only stay in the Reserve Police of Sanica if he would sign a document declaring his loyalty to the so-called Serb Republic of Bosnia and Herzegovina. Then their movement was restricted and check-points were set up, about which Munira Avdić, Mujo Čajić, Husein Balagić and Mustafa Džaferagić testified in detail. On 28 May 1992, the Crisis Staff of Ključ Municipality issued an order to the residents to surrender "illegally purchased weapons", "otherwise strong measures will be undertaken aimed at disarmament which might result in catastrophic consequences for the security of person and property."⁴

Prosecution witnesses testified how the inhabitants of Biljani in the period preceding 10 July 1992 lived in fear. On at least two occasions an army came to the village of Biljani, terrorizing the Muslim inhabitants and killings also occurred. The first time was around 1 June 1992 and the second time around 26 June 1992.

During the first raid, men were taken to Manjača camp. Witness Šemsudin Omanović described during the main trial how he and several other men were in the hamlet of Jabukovac and were eventually taken to the school in Sanica where they were lined up. They were taken inside the hall and particular persons were taken for interrogation. They stayed there for some hours and then were put on a bus and beaten with rifle butts. In his testimony given to the prosecutor in Bihać on 15 April 2005 he described how they were subsequently taken to Ključ, also to the primary school. There they were all questioned and some beaten. The following morning, some of the people there were released home, while the rest of the people remained in the primary school and young men were taken to Manjača. Witness Nesima Avdić also testified that her husband Sabit had been taken to Manjača "when the



first army came"⁵ Witness Asim Vučkić in testimony before the court and his examination record of 25 April 2005 stated that two of his sons were taken away with a number of young men when the Serb army came to Biljani. His son Hamzo ended up in Manjača.⁶

Prior to the events of 10 July 1992 the inhabitants of Biljani had to fear for their lives. During both raids Muslim civilians were murdered. Prosecution witnesses Nedim Omanović, Asim Vučkić, Zuhra Avdić, Nesima Avdić and Šefika Domazet testified that civilians were killed before 10 July 1992, amongst others Hamdo Čehić, Asim Omanović, Tehvid Omanović, Pašo Omanović, Abid Džaferagić and Sabit Šljivar (reference to exhumation reports).

As furthermore appears amongst others from testimonies of witnesses such as Aziz Gromlić and Asim Vučkić in the period preceding 10 July 1992, villages in the area of Ključ--Biljani, such as Velagići and Pudin Han, were attacked.

The above described confirms the existence of a widespread or systematic attack during the time and in the area relevant to the Indictment.

With regard to the Accused's knowledge of the attack, the Court finds the following. It is beyond dispute that the Accused is from the area of Biljani, has lived there whole his life, knows the area and the people very well and was there in 1992. In his own words, he was "a prominent educator, a legend in Sanica and Ključ." The attack against non-Serb civilians was perpetrated in full view, meaning that it was not possible not to be seen by someone who, like the Accused, was present in the area for a long period of time.

Moreover, the Accused has admitted being aware of the events that were part of the widespread or systematic attack against the Bosniak civilian population. In his testimony during the main trial the Accused stated that he was aware of the events preceding 10 July 1992, such as searches and bringing in of people in the area, according to the Accused, by the 6th Sanička Brigade. The Accused admitted being aware of raids in Biljani, according to the Accused, on 16 and 25 or 26 June 1992. The Accused furthermore stated he knew that people were taken to Manjača camp and of the murder of two civilians of which one was an elderly person. Consequently, the Accused had knowledge of the widespread or systematic attack.

Given the nature and consequences of the acts committed by the Accused, which will be elaborated upon later on in this Verdict, the Court concludes that they clearly fall within the scope of a widespread or systematic attack and are a part of it.

The Court is thus satisfied that the general requirements common to Article 172 of the Criminal Code of BiH (hereinafter: CC BiH) are fulfilled.

⁵ Exhibit 28, list of captives from the Municipality of Ključ in Manjača, number 592

⁶ Exhibit 28, list of captives from the Municipality of Ključ in Manjača, number 527

The Prosecution charges the Accused with initiating, instigating and aiding and abetting in deprivation of other person of life (murder) whereby he committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) a) of CC BiH in conjunction with Article 180 (1) of CC BiH.

In relation to individual criminal responsibility, the indictment refers to Article 180 (1) of CC BiH. The Court has found guidance in interpreting the alleged forms of individual criminal responsibility among others in the jurisprudence of the ICTY and ICTR.

"To initiate" is understood by the Court as actions taken by the accused, either physical or psychological, that make others commit a specific crime. As such, "to initiate", in the Court's opinion, falls within the scope of instigation. The Accused is also charged with "instigating" in the deprivation of other person of life (murder).

"Instigation" is any conduct by the accused prompting another person to act in a particular way. This element is satisfied if it is shown that the conduct of the accused was a clear contributing factor to the conduct of the other person(s).

As will be established later, the Accused participated in the blockade of the area and the bringing of Bosniak civilians to the school in Biljani on 10 July 1992 and thus the Accused made a significant contribution to the perpetration of the principal crime: the murder, a crime against humanity, of 144 Bosniak men.

There is, however, no evidence that the Accused's actions clearly prompted the conduct of the perpetrators of the principal crime: those in and around the school, who beat, killed and put the Bosniak men in buses and took them away in the direction of Lanište from where they disappeared. For this to be established beyond reasonable doubt there must be clear evidence that the principal perpetrators were prompted by the presence and activities of the Accused. The Court has not found such evidence.

The accused will incur individual criminal responsibility for aiding and abetting a crime under Article 180 of CC BiH, where it is demonstrated that the accused carried out an act which consisted of practical assistance, encouragement or moral support to the principal offender of the crime⁷.

As opposed to the "commission" of a crime, aiding and abetting is a special form of accessory liability. The contribution of an aider and abettor may take a form of practical assistance, encouragement or moral support which has a substantial effect on the perpetration of the crime⁸. Furthermore, aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present.⁹

The act of assistance need not have caused the act of the principal¹⁰. It may consist of an act or an omission and take place before, during or after the commission of the crime¹¹.

⁷ *Prosecutor v. Mitar Vasiljevic*, Case No. IT-98-32-T, Judgement, 29 November 2002 (*Vasiljevic* Trial Judgement), para. 70.

⁸ *Kunarac* Trial Judgement, para. 391 and *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, Judgement 1998 (*Furundzija* Trial Judgement), paras 235 and 249.
⁹ *Dusko Tadic*, Case No. IT-94-1-T, Judgment, 7 May 1997 (*Tadic* Trial Judgement) para. 689.
¹⁰ *Kunarac* Trial Judgement, paras. 233, 234 and 249.

The *mens rea* of aiding and abetting consists of the knowledge that the acts performed by the aider and abettor assist in the commission of a specific crime by the principal¹². The aider and abettor need not share the *mens rea* of the principal but he must know of the essential elements of the crime. The aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct.

It is beyond dispute that in the course of this attack, the Accused Marko Samardžija was the Commander of the 3rd Company of the Sanički Battalion of the 17th Light Infantry Brigade and that he was appointed the Commander on 18 June 1992. The company consisted of three platoons.

This follows beyond doubt from the statement of the Accused, the material evidence in the case file, namely the military documentation about this Brigade, as well as the statements of all the witnesses examined during the main trial, especially the statements of the soldiers subordinated to him.

It is beyond dispute that on 10 July 1992 the able-bodied Muslim civilian men of Biljani were brought in front of the school, and that not only members of the 3rd Company participated in the implementation of the Order for further actions of the Command, military postcode 2207 Ključ, number 03-135 of 9 July 1992, marked as "Military Secret, Strictly Confidential", issued by the Commander of the 17th Light Infantry Brigade, Lt Col Drago Samardžija, but also the other soldiers of the 17th Light Infantry Brigade, as well as the policemen in active service and in reserve with the Police Department of Sanica, headed by Commander Milan Tomić, as well as members of the Military Police Department. Everything stated above follows from the material evidence, the quoted Order, as well as the statements of the witnesses who were militarily active on the day concerned, such as, Dragan Vukić and Miroslav Samardžija, as members of the reserve Police Force, Mile Pešević, as member of the Medical Corps, and witnesses Dušan Samardžija, Nikola Kuridža, Milenko Tešić and others, who were members of the 3rd Company of the Sanički Battalion. The presence of soldiers of various formations is also confirmed by the witnesses for the Prosecution who, although without the knowledge of military structure, testified in accord about many soldiers in different outfits, from the olive-grey uniforms of the former JNA, the camouflage uniforms, the blue police uniforms, to the ones with white belts and the like, which indicates that present there were indeed members of many units of the Civil and Military Police forces, as the Order explains, and members of the 17th Light Infantry Brigade. The Accused does not deny the presence of the said military and police formations either.

The Defense, however, claimed that the Accused had not been aware of this written Order and emphasized that the goal of the operation of 10 July 1992, that is, assembling of people, was distribution of movement permits.

¹¹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1, Judgement, 25 June 1999 (*Aleksovski* Trial Judgement) para. 62 and *Blaskic*, 3-3-2000, § 285.

¹² *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 25 March 2000, (*Aleksovski* Judgment), para. 162-165; *Tadic* Appeal Judgment, para. 229.

The Court considers as established beyond reasonable doubt as follows:

On the night of 9 July 1992, thus the night before the events concerned, when at least 144 Bosniak civilians from Biljani and its hamlets were murdered, a meeting had been held at the Lovac restaurant in Sanica, which was attended by Lt Col Drago Samardžija, Commander of the 17th Light Infantry Brigade, as well as the commanders at all the levels of the Brigade, Commander of Sanica Police Department Milan Tomić, representative of the Medical Corps, respective Commanders of the 1st, the 2nd and the 3rd Company. The 3rd Company was commanded by the Accused, Marko Samardžija, who had the rank of reserve captain. The Accused admitted being present at this meeting.

The fact that the meeting was attended by the highest-level Serb military and police commanders unambiguously tells about the real meaning of the operation undertaken on the following day to implement the Order and its ultimate goal, "the cleansing of the terrain" of the able-bodied Bosniak men and potential weapons with all means. With the so-established facts related to the said meeting, which was actually meant for detailed planning of the activities of the army and the police, that is, assignment of tasks in the operation of "cleansing the terrain", the claim of the Defense that the Accused received a verbal order to inform the population about distribution of movement permits that was to take place in the school in Biljani proves to be completely illogical and unacceptable. Most likely, this false explanation about distribution of movement permits was used deliberately in order to conceal the true goal of the operation, which can be concluded on the basis of the statements of the examined witnesses for the Prosecution who state that this false explanation was used in the similar Serb military and police operations in June 1992 when in the village of Velagići at least 77 people were killed.

Another indication that this was a military operation, not a passive informing of the inhabitants that movement permits would be issued, is the presence of a big number of military and police "armed to the teeth", as the witnesses say, signalers, even the buses secured in advance, and the Medical Corps, whose member was witness Mile Pešević. At the main trial, Pešević said that although he had been invited, he did not attend the meeting at Lovac, but that he was informed of the "cleansing" plan, which for him meant "apprehension of the able-bodied men to the Center and the school and some of them to the camp in Manjača" and that Muslims had been taken away before and injured as well. This witness also states that he heard that police members were deployed around the village so that the inhabitants could not escape. Therefore, if the soldier who belonged to the Medical Corps was aware of this "cleansing of the terrain", it is absolutely unacceptable that the 3rd Company Commander, the Accused Marko Samardžija, was not.

Furthermore, it is indisputable that the Accused, in his capacity as the Commander of the 3rd Company, ordered his soldiers to bring the Muslim civilian men from the hamlets of Brkići and Balagića Brdo, after the men had been taken out of their homes, to the meadow of Jezerine and the Accused himself does not contest it, either.

However, the manner in which his soldiers did it is contestable, as is the manner in which the his soldiers treated those people upon their arrival at and setting off from according to the allegations of the Defense, the soldiers of Marko's company first

called their Muslim neighbors – grown-up men to get out of their houses in the greatest tranquility and silence, in order not to awake the other tenants, after which they strolled toward the Jezerine meadow where they stood together, in groups, talking in a completely normal fashion, where Marko explained to them that they gathered in order to go all together to take over the permits that would enable them free movement, including going to the fields to mow. After this gathering, all the neighbors set off together, without any order, escort and threats, and slowly toward the school. Only within the reach of the schoolyard did the change in their movement occur, as then, as the Accused states, an ordinary soldier approached them and said: "Hands up, gang". This affected the Accused very hard, considering the fact that he was a person of authority unaccustomed to such a manner of address.

However, the witnesses for the Prosecution who testified about this gathering at Jezerine describe the event differently. They state identically that rifles of Marko company's soldiers were pointed at them, that all the weapons were at the ready and that they set off toward the school with their hands at their backs. Thus witness Feriz Dervišević, who escaped the fate of his fellow villagers due to his old age, stresses that it was exactly the Accused Marko Samardžija who addressed them saying: "You put your hands at your backs and we will be going toward the school." Mujo Čajić was also at Jezerine on the day concerned and clearly remembers his Serb neighbors with rifles at the ready and pointed at him and his fellow villagers, as well as that the Accused ordered them to empty their pockets. The Court gave full credence to these witnesses' descriptions of the event, as it gained conviction that these witnesses described the entire event honestly.

Witness Sejda Balagić also confirms that the inhabitants of Brkići and Balagića Brdo, of whom the company of the Accused was in charge, were taken to the school in a column with their hands at their backs. She saw the Accused going behind them with a rifle. Witness Husein Čajih also confirms that they were taken to the school in a column two-by-two with their hands at their backs and that the Accused walked with them all the time. The witnesses, mostly women, who were in front of a shop in the immediate vicinity of the school at that moment and who could see absolutely clearly the troops bringing in a column of men with their hands at their backs, also testified about this manner of taking the people in front of the school. That the goal of this operation was apprehension of the able-bodied men in order to kill some and take the others to the camp in Manjača follows clearly from the fact that some men younger than 18, that is, older than 60 were also brought to the Jezerine meadow, which men, as witness Feriz Dervišević states, as does witness Sejda Balagić speaking about her minor son, were returned to their homes.

Having in mind the circumstances under which the inhabitants of Brkići and Balagića Brdo were taken from their homes and the fact that the Accused Samardžija and his soldiers were armed, the harmonious statements of these witnesses led the Court to the indisputable conclusion that the armed Marko Samardžija and his armed soldiers awaited and met the men of Brkići and Balagića Brdo at the Jezerine meadow, to which meadow they came after several soldiers of Marko's company had ordered them so, and then took them in a column with their hands at their backs to the yard of the primary school in Biljani.

However, it is disputable whether the Accused stayed together with his soldiers at the site, in the vicinity of the school, at the time the mistreatment and killing of these civilians started, or they withdrew, as the Defense claims.

The witnesses for the Defense and the Accused himself referred to the taking of the men of Brkići and Balagića Brdo as a one-time act, that is, that their task of that day was fulfilled by the very taking of these people in front of the school. The Accused claims that after that he withdrew with his soldiers following the radio contact with his superior Jovan Kevac, who had allowed him to withdraw. However, his company soldiers who were examined as witnesses could not state precisely when, how and at whose order they left the site. They claimed that they had dispersed in different directions, which is highly unlikely as they were members of the 3rd Company, commanded by the Accused, and they had to obey his orders. Therefore, such claims are absolutely unacceptable considering the indisputable fact, which the Defense also stresses, that the command rules of the former JNA were in effect, which implied strict executing of superiors' orders and punishing of subordinates' disobedience.

It follows from the statements of the examined witnesses, which the Court accepted as credible and which described the behavior of the Accused and his soldiers in detail and convincingly, that the Accused with his soldiers was at the site of the event (school in Biljani) and at the time the physical mistreatment and killing of the civilians started.

Witness Rasema Mujezinović, who was in front of the school, saw Marko Samardžija exiting the school armed and taking out two inhabitants of Biljani whom she knew – Smail Mujezinović and Husein Domazet. Witness Munira Avdić also clearly remembers that on 10 July, after she had been ordered to leave her house and go in front of the shop in the immediate vicinity of the school, she saw the Accused Marko Samardžija several times, in front of the school, entering the school, and exiting the school carrying a folder. He then sat together with some soldiers in the courtyard of her house that was right across the school and held a piece of paper in his hands. Ferid Avdić, the witness who was 16 at the time, also clearly remembers that upon arriving in front of the school he saw the Accused, surrounded by plenty of people and armed, standing between the school and the Center. He states that he [the Accused] then appeared to him as a person who commanded authority, as a central figure. Witness Zuhra Avdić also saw the Accused in the courtyard of Munira Avdić's house in the immediate vicinity of the school. Ifeta Džaferagić, a witness who was also in the immediate vicinity of the school, that is, in front of the shop, saw the Accused Marko Samardžija together with the other armed soldiers taking the men into the school and passing by them, the women standing in front of the shop, several times. Men from the hamlet of Polje were also brought in that morning, including Šemsudin Omanović, who says that when he arrived in front of the school he saw the Accused, who had the rank of captain, talking to the soldiers surrounding him. The Accused was also seen in front of the shop that was across the school, of which witness Zejna Mujezinović testifies. Witness Hatidža Čehić saw the Accused together with the other soldiers bringing in the inhabitants of Brkići and then addressing the soldiers gathered around him. Amira Džaferagić also testifies about the participation of the Accused in the bringing of the inhabitants of Brkići in front of the school, as she clearly saw Marko Samardžija coming behind the column. This is also testified by witness Sadika Botonjić, who is from Brkići and who watched her son being taken from the school together with the other men of Brkići and Balagića Brdo under

escort of the Accused and his soldiers. Nesma Avdić saw the Accused taking to the school her son, among the other men from Brkići. Witness Enisa Čehić also saw the Accused in the schoolyard. Witness Zemina Mujezinović, who was herself taken to the school, says that, upon exiting the school, she saw Marko Samardžija "across the buses" that were parked in front of the school.

The Court attached special importance to the statement of Husein Čajić. The Court accepted his testimony completely as convincing and logical. He stated as follows:

He testified how on 10 July 1992 around 0600 hrs he heard shots from different directions above Brkići. Ten minutes later two people came and told that the army had said that all men aged between 18 and 60 had to go to the meadow of Jezerine. Heading to Jezerine he noticed five to ten soldiers. They were looking at the inhabitants of Brkići while they were heading for Jezerine and some pointed their guns at them.

Upon arrival he saw several soldiers lying down behind a hedge with their guns pointed at them. Marko Samardžija was standing in front. They were told to line up. When they first arrived at Jezerine there were around 20 soldiers there and later, the witness thought, at least 30-40 soldiers. Marko Samardžija addressed the villagers and said that they would be taken to the primary school in Biljani and that they would be questioned and that the people who were not on his list would be returned home. They spent about half an hour at the meadow.

Husein Čajić testified that for the entire time Nikola, the signal man, talked to someone through a radio set. The witness stated he was standing close to him so all communications could be heard. He could clearly hear "everything is ready here in Brkići, can we proceed and go to the school?" Subsequently, Marko Samardžija said that they had to proceed and go to the school in pairs of two, hands behind the back. Soldiers, around 10, that were present at the meadow were moving on the side. When the column went through Brkići, he realized there were many more soldiers in addition to the others. The witness stated that he thought that they had probably surrounded the village during the night.

Upon the arrival at the school the witness noticed two vans from Ključ. There were around 20 soldiers standing next to them. There were also 20 military policemen with white belts and some also red berets. They were standing in front of the school.

Marko Samardžija went with the column all the way to the school. Upon arrival, the witness states, Marko Samardžija was in front and went to the linden tree that is about five meters in front of the school. Another five to six men were standing there. Among these men the witness recognized Milan Tomić. Marko Samardžija went to them, greeted them and the witness heard that he said that he had brought the group and had done his share. Subsequently they were ordered to enter the school in pairs. When they entered the school the army that brought them was standing around the schoolyard, some were standing on the road, some in front of the house and some entered the schoolyard. When they entered the school they were met by five or six soldiers. They were then searched and sent into classrooms. The other classroom was already full of men.

The classroom in which witness Husein Čajić was put was full of men; there were 60-80 men in the classroom. A list was made of the men in the classroom. This took about half an hour, maybe more. Later, the soldiers started calling out names. The witness remembers that Omer Dervišević was called out first. Then Smail Avdić was called out. Soon after they took each man out, we would hear shooting and bursts.

The first 10 men were called out individually. Ten minutes later, they asked groups of five to come and form a line at the door. When they started those groups of five the witness could hear from the corridor noise and beatings and afterward cries. Witness Husein Čajić testified that around 50 were called out before he was called out. In the corridor of the school were policemen that let people out one by one. That is when the witness saw the bus; there were two lines of men toward the bus. While standing on the stairs, the witness saw near the linden tree and everyone who was standing there in front, Marko Samardžija included.

Dževad Džaferagić also testifies that the men who were taken out were killed in the immediate vicinity of the school, behind houses and stables. That morning, having seen the troops taking a column of local inhabitants, he managed to flee. From the place where he hid he could not see the school and the events in front of it, but he saw well the soldiers bringing the inhabitants behind the house of Šemso Džaferagić and killing them there. He also saw when in the evening of the same day those bodies were loaded in the scoop of an excavator and thrown onto a truck. On their way back home from the school witnesses Amira Čehić and Zlata Pehadžić also saw the bodies of these murdered residents.

People were also killed in the vicinity of the house of witness Zuhra Avdić, who saw two soldiers taking Omer Dervišević after which she heard a shot. The body of Omer Dervišević was exhumed in 1996 from the Lanište I mass grave and it is obvious from the autopsy record that his death was caused by the impact of firearms projectiles. Therefore, the aforementioned autopsy record corroborates the conclusion of the Court that credence can be given to this witness. She also saw Samir Mulahmetović being taken and, although she did not hear a shot, she assumes that he was killed. The body of Samir Mulahmetović was also exhumed from the Lanište I grave and the autopsy performed shows that he was killed by firearms projectiles. She also saw 15 to 20 elderly men being taken toward Čehići, a meadow above the school, where they were afterward found dead. Plenty of murdered people were also found around the houses of Zejna Mujezinović and Derviš Avdić.

It follows from witness Husein Čajić's testimony, which the Court accepted completely as convincing and logical, that the same fate befell the men who were taken by buses. This witness remembers well that at the moment the men were being taken out of the school and taken into the bus he again saw the Accused standing under the linden tree in the schoolyard together with the same people (as when entering the school). He also remembers a gauntlet formed by his neighbors through whose beating he had to pass. He also remembers well that a group of people were called to get off the bus at one moment. He was in that group. They got off. The next thing he remembers is shooting due to which he found himself under the hit and killed people. He pretended that he, too, was dead, and moved away from that place after a while.

Zemina Mujezinović, a witness who was in the school, was present when Smajil Mujezinović and Husein Domazet were called out. Witness Dragan Vukić also confirms that they were beaten after having been taken out of the school and subsequently killed. The body of Smajil Mujezinović, pierced by knife, was found by his mother Zemina Mujezinović after which she buried him. His body as well as the body of Husein Domazet was exhumed in 1996 from the individual graves Biljani III and IV, and the autopsy performed confirms that their death was the impact of firearms projectiles, so it can be concluded that they were shot at from firearms. She remembers well that she had to unearth her son on the

following day at the order of Branko Šikaman and she also saw then that the body of Husein Domazet was being unearthed by his family. Witness Hatidža Čehić remembers well that the whole time she was in front of the shop in the immediate vicinity of the school she heard shooting and that on her way back home she saw plenty of killed people in the garden of Sulejman Čehić.

What was also disputable was the participation of the Accused Marko Samardžija in the collection of the dead bodies of the murdered residents of Biljani, the ones who were killed at the very site of the events, in the village of Biljani, and their transportation to the graves in which the residents who had been taken by buses to Lanište and killed there were also buried. Thus the Court, evaluating the testimonies of the witnesses who saw the Accused in the commission of this act to be credible and truthful, finds that this fact has been proven as well.

Witness Ismet Zukanović, who watched the collection of the dead bodies from his house window, also testifies about the participation of the Accused in the collection of the dead bodies. He states resolutely that the dead bodies were first loaded into the scoop of an excavator and then unloaded onto a truck standing in front of his house and on whose foot-board he saw the Accused Marko Samardžija. He clearly remembers that the truck was turned toward Ključ and moved down the street behind the school while Marko was standing on the left foot-board of the truck. The Court fully accepted the statement of this witness as credible, as it was clear during his testimony that the described scene stamped itself on his memory and that he was just giving an account of what had happened and what he had seen personally. Besides, this witness had a realistic possibility to see the movement of the truck, as well as the Accused who was on the left foot-board of the truck, from the window of the house that is on the left hand side of the road behind the school viewed in the direction of Ključ. Witness Šaćira Avdić confirms these allegations, too. She was watching from her balcony when the Accused passed by "on that one that was going to collect", afterward stating that she also saw two trucks and that everything was taking place above the school. Although it could seem unclear, which the Defense objected to as well, the Court has given full credence to the testimony of this witness, as it is logical that the Accused could come either on a truck or an excavator and it cannot be expected from this witness to know the technical names of the vehicles. For her that is just another big machine. In addition to this, the position of her house, which is on the hill in the hamlet of Čehići, makes it possible for her to see everything taking place below the hill, that is, in the direction of Ključ. Witness Nesma Avdić, whose house is also in the hamlet of Čehići, also saw the Accused collecting corpses, but she cannot remember with certainty whether he was on an excavator or a truck. However, she is positive that it was exactly the Accused Marko Samardžija, whose voice she heard when he was shouting that the terrain should be cleansed. Witness Ziba Hodžić also testifies about the participation of the Accused in the collection of bodies, as she clearly remembers that on 10 July 1992, some time before the night, she saw the Accused, whom she knew well in his capacity as a teacher, standing on an excavator and shouting: "Go on, the terrain is clear up there, there is nobody any more up there." Witness Šefika Domazet also states that she saw the Accused sitting on an excavator or a carrier. However, she clarifies that she knows that "it had something in the front part" (most probably the excavator... scoop). Sadika Botonjić and Enisa Čehić testify that they heard, but did not see, the running of the machines, excavator and truck, that evening. Witness Sadika Botonjić

following day that the bodies of the murdered people had been collected with those machines.

Therefore, the Court has completely accepted as credible these witnesses' testimonies concerning the collection of the dead bodies taking place in the evening hours of 10 July 1992 and that the Accused Marko Samardžija participated in it, since, in the opinion of the Court, the witnesses were honest when describing in detail everything they had seen that late afternoon. The Court explains the fact that some of them could not say explicitly whether he was on a truck or an excavator with a logical possibility that during that act the Accused could ride on both the excavator and the truck, that is, that he took turns on both vehicles, which indeed resulted in the fact that some witnesses saw the Accused on the excavator and the others on the truck. Nor does even the fact that witness Ziba Hodžić can state explicitly which kind of cargo vehicle she saw Marko Samardžija on prevent the Court from trusting this witness, especially having in mind the passage of time as well as the technical knowledge of these kinds of heavy machinery that the witness does not have to possess, especially given her age, both the current one and the age in the period concerned.

Thus the objection of the Defense concerning the unclear matters when establishing the vehicle on which Marko Samardžija was shows itself to be unfounded, and the Accused's denial of his own participation in the collection of the dead bodies under the pretext that he was a respectable, if not even the most respectable resident of Biljani, and certainly not a person who should do such menial jobs and that he gets sick when he sees a dead body, has not been the reason convincing enough for the Court not to accept the said congruent statements of the witnesses who testified about the scenes they had personally watched, not, as the Defense claims, "heard of afterward". Due to everything said above, the Court finds that the participation of the Accused in the collection of the bodies of the killed residents in the late afternoon of 10 July 1992 in Biljani has been proven, too.

The accused will incur individual criminal responsibility for aiding and abetting a crime under Article 180 of CC BiH, where it is demonstrated that the accused carried out an act which consisted of practical assistance, encouragement or moral support to the principal offender of the crime*. By participating in the blockade of the area and the bringing of Bosniak civilians the Accused made a significant contribution to the perpetration of the principal crime: the murder, a crime against humanity, of at least 144 Bosniak men.

The *mens rea* of aiding and abetting consists of the knowledge that the acts performed by the aider and abettor assist in the commission of a specific crime by the principal¹³. The aider and abettor need not share the *mens rea* of the principal perpetrator, but he must know of the essential elements of the crime. The aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct.

*Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-T, Judgement, 29 November 2002 (*Vasiljevic* Trial Chamber I), para. 70.

Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 25 March 2000, (*Aleksovski* Appeal Chamber I), para. 162-165; *Tadić* Appeal Judgement, para. 229.

The accused does not need to share the intent of the principal, meaning that Marko Samardžija did not necessarily have to act with the aim of committing murder of the civilians of Biljani as a crime against humanity. He does have to be aware of the essential elements of the crime, including the principal's state of mind. The aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct. Furthermore, it is not necessary that the aider and abettor knows the precise crime that is intended, which eventually was committed. If he is aware that one or a number of crimes will probably be committed, and one of those crimes is in fact committed and his acts substantially contributed to the commission, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.¹⁴

The Accused was present at a meeting held on 9 July 1992 in the Battalion headquarters in Sanica in Lovac restaurant. As the Accused stated during his testimony before this Court the following parties were present: the Battalion commander, Brigade commander, Company commanders, head of police Milan Tomić and a representative of the military police. All parties were given assigned tasks. Given the following, the Court considers it highly unlikely that the true nature of the operation did not become clear to the Accused already at that moment.

According to the assignment of 9 July 1992, the operation planned for the following day, was to "cleansing" the village of Biljani and its surrounding hamlets. "Cleansing" does not mean issuing of permits to move around freely. It was not the first time that a cleansing operation was executed. Although the Accused claims to the contrary, this operation was clearly not planned to only issue some permits.

The issuance of permits to move around freely, which the Accused asserts was the reason for the operation as far as he was informed, has no credibility. On 1 June 1992, in Velagići nearby Biljani, Muslim civilians were informed to come to the primary school to obtain permits to move around freely. Both the police and the military were present. People were confined in the school, a list was made, and then the people were taken out, lined up and killed. The similarity with the events in Biljani is undeniable. The Accused was a well informed man, widely known, highly esteemed and holding a senior military position. The Accused obviously knew what was going on in the area and of the aim to overcome Muslims in any possible way, including through criminal means.

The Accused claims that the term "cleansing" was not mentioned and that he never saw the military order. The Court considers it to be completely incredible. Nevertheless, even if it did not become clear that an extensive murder operation was being prepared, the Accused knew that serious crimes were going to be committed in Biljani. The Accused claims to be a well educated and well informed man. Due to the following circumstances, the Court does not consider it probable that the Accused expected he would just bring people in for issuance of the mentioned permits. A widespread or systematic attack was underway against the Muslim and Croat population in the Bosnian Krajina and the municipality of Ključ as

¹⁴ *Blaskic*, (Appeals Chamber), 29 July 2004, para. 50.

already set out before. The very institutions with which the Accused intended to carry out his operation, the Military Police, the reserve force of the Police and the Army of Republika Srpska, were very often the institutions responsible for attacks, murders and illegal detention. Furthermore, the Accused claims he was a well respected person with friendly ties with the inhabitants of Biljani. If a simple issuance of permits had had been the aim of the operation, there would have been no need for the Accused and his soldiers to be fully armed and only bring in men of military age. Moreover, starting a similar operation around 0600 hrs cannot have another aim than to take people by surprise. The whole set up of the operation, of which the Accused was well aware, cannot be rimmed with the simple issuance of permits. It is impossible that the Accused did not realize that serious crime was going to be committed in the course of the operation or that by fulfilling his role in the operation he did not at least accept that assistance in the commission of crimes would be a foreseeable consequence.

The Accused knew that his acts, getting people out of their houses, assembling men between 18 and 60 and escorting them under threat of arms, would assist in the perpetration of crimes which could well amount to the commission of crimes. The Accused did not have to be a supporter of the plan to kill Muslim civilians in Biljani. He knew or at least knowingly took the substantial risk that crimes would be committed in the course of the operation as ordered on 9 July 1992. By rounding up men in Balagići and Brkići and escorting them to the school he knew he was making a substantial contribution to the commission of the crimes perpetrated against the civilians in Biljani.

The Accused claims he would not have participated in the operation of 10 July 1992 if he had known what would happen, because he could not do something like that to the people from his village as he saw everyone as equals. His writings contradict his own statement and that of several witnesses that the Accused considered everyone equal. It furthermore reveals a clear awareness of the delicate situation in the region. He wrote to his soldiers to be combat ready because a war was upon the Serbs. He wrote: "The time in which we create and shape our unit is extremely complex. Thanks to the assistance of our brethren from our neighboring areas we have managed to some extent to reduce the danger from our neighboring enemies – Muslim population in our villages, but the danger has not been removed completely. The wasp nest, so to say, has only been disturbed but not yet destroyed."

The Accused was a man who was highly esteemed throughout the area. His letters written in the period of time cannot immediately be seen as inflammatory. The Accused was the highest-ranking military person in the area, was highly esteemed in the area and thus evidently his words had a deeper impact on others. Suggestion to crush and annihilate in letters to the soldiers under his command just days before the fatal events of 10 July 1992* contradicts the assertions that the Accused cared about everyone as "equals".

Furthermore, by participating in the collection of bodies scattered around the village of Biljani, the Accused participated in concealing the crimes committed that fatal day. The concealment furthermore casts doubt upon the Accused's alleged "commitment to his people

his version of the events. He participated in the collecting of the corpses,

the original text; translator's note

which were later on thrown into a mass grave. Only after the war were the mass graves discovered and relatives of the victims learned what happened to their loved ones. The relatives had to live in uncertainty about the faith of their children, husbands and fathers for years. Some of them still have to live in this uncertainty since a substantial number of corpses has, more than 14 years after the events, still not been identified. By collecting the bodies that were going to be thrown in a mass grave later on, the Accused clearly showed that his mind did not go out to his "villagers".

The Court is satisfied that the Accused had the required *mens rea* for aiding and abetting in the commission of murder, a crime against humanity.

Due to everything said above, the Court finds that it has been proven that at least 144 Bosniak civilian men were killed in the afore-described manner in Biljani on 10 July 1992, although the Prosecutor's Office stated in the Indictment the number of 239, and in the amended Indictment 230. This conclusion of the Court is particularly confirmed by the written statements, written evidence, Records of exhumations of mass graves of Lanište I, Crvena zemlja II and Biljani IV and VI in 1996, and of the grave of Biljani III concerning the murdered Smajil Mujezinović, and autopsy records made by Dr Hamza Žujo and Dr Semira Mešić, specialists in forensic medicine, who confirmed and additionally clarified their findings in the course of the main trial. The Court fully accepted the statements of these witnesses and the drafted material documentation, records of exhumations and autopsy records, as evidence given in a professional and impartial manner, as there was not the slightest indication that the said expert witnesses were biased. As it has been said already, what is disputable is the number of the people killed that day. It is partially a result of the fact that many witnesses for the Prosecution gave the concrete names of the residents who had been killed before 10 July 1992, that is, on 1 and 29 June 1992. Therefore, the Court has come up with the list of at least 144 killed civilians for which the Accused is found guilty of aiding and abetting in the murder. The Court is satisfied beyond reasonable doubt that the Bosniak men found in Lanište I, for whom it could be established on the basis of autopsy reports (experts Dr Hamza Žujo and Dr Semira Mešić) that the cause of death was by fire arms, were killed during the attack on the Bosniak inhabitants of Biljani on 10 July 1992. Of the identified corpses found in Lanište I, the large majority was in the school, as can be derived from the lists of the prisoners in the school (these lists are part of the evidence submitted by the Prosecutor) or was mentioned by witnesses as being in Biljani on 10 July 1992. Moreover, there is no evidence that indicates otherwise. In addition, 37 exhumed bodies from Lanište I were killed by firearm, but could not be identified.

The Court has not included the women and children found in Lanište I, because it does not find that the Accused had the required *mens rea* for aiding and abetting the murder of women and children.

Since the Prosecutor failed to submit autopsy reports of the bodies found in mass grave Crvena zemlja I, the Court finds it not established beyond reasonable doubt that the cause of death was by firearm.

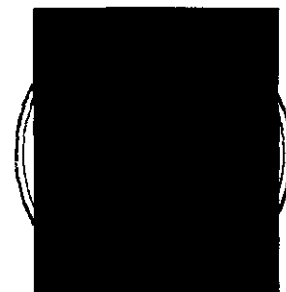
Furthermore, the Court is satisfied beyond reasonable doubt that the identified B found in Crvena zemlja II, Biljani IV and Biljani VI, for whom it could be establi

basis of autopsy reports that the cause of death was by fire arms and are listed on the lists made in the school, were killed during the attack on the Bosniak inhabitants of Biljani on 10 July 1992. The fact that Smajil Mujezinović, found in Biljani III, was killed during the attack is established on the basis of the witness testimony of Ema Mujezinović.

In doing so, the Court was guided by the *In Dubio Pro Reo* principle. Due to everything said above, the Court established beyond doubt that on 10 July 1992 and in the described manner, at least 144 civilians were killed, as follows:

1. Najil (Redžo) Botonjić, born on 24 March 1927
2. Husein (Huso) Dervišević, born on 13 August 1959
3. Džemal (Mehmed) Omeradžić, born on 22 July 1934
4. Almir (Sabit) Jašarević, born on 15 January 1974
5. Rifet (Pašo) Botonjić, born on 27 August 1936
6. Osman (Ibro) Hodžić, born on 19 February 1934
7. Smail (Ale) Mulahmetović, born on 19 November 1928
8. Hazim (Smajil) Zukanović, born on 17 September 1951
9. Nijaz (Osmo) Avdić, born on 4 June 1966
10. Zijad (Atif) Domazet, born on 23 June 1952
11. Elvir (Samed) Čehić, born on 9 May 1971
12. Adnan (Hamdija) Čehić, born on 17 February 1972
13. Ćamil (Sulejman) Botonjić, born on 18 September 1930
14. Feriz (Omer) Botonjić, born in 1937
15. Jasmin (Bećir) Kapidžić, born on 21 March 1969
16. Ramiz (Omer) Botonjić, born on 15 May 1925
17. Vehbija (Daut) Džaferagić, born on 4 December 1962
18. Nedžad (Hakija) Čehić, born on 17 August 1960
19. Zuhdija (Mehmed) Botonjić, born on 17 November 1933
20. Muharem (Sulejman) Mujezinović, born on 19 July 1931
21. Hilmo (Redžo) Botonjić, born on 1 May 1933
22. Bećir (Bećo) Kapidžić, born on 1 August 1945
23. Kemal (Bego) Jašarević, born on 16 May 1941
24. Nail (Huso) Mujezinović, born on 18 January 1927
25. Mehmed (Sulejman) Domazet, born on 6 February 1971
26. Enes (Rasim) Jašarević, born in 1963
27. Avdo (Luftija) Balagić, born on 20 February 1964
28. Besim (Bego) Jašarević, born on 13 March 1939
29. Samir Pehadžić, born in 1972
30. Fadil (Ahmo) Domazet, born on 4 May 1946
31. Muhamed (Huso) Botonjić, born on 29 June 1964
32. Fuad (Abid) Avdić, born on 10 June 1961
33. Asmir (Hamdija) Domazet, born in 1969
34. Asmir (Meho) Mujezinović, born in 1919
35. Vehbija (Mustafa) Balagić, born on 13 May 1937
36. [REDACTED] n (Zejnil) Botonjić, born on 25 March 1942
37. [REDACTED] (Hilmo) Omanović, born on 31 December 1964

38. Almedin (Meho) Šušnjar, born on 14 February 1973
39. Aiz (Ibro) Botonjić, born on 1 June 1932
40. Derviš (Ibrahim) Domazet, born on 25 October 1932
41. Ahmet (Hakija) Džaferagić, born on 1 July 1955
42. Ismet (Osman) Mujezinović, born on 26 May 1971
43. Raif (Rasim) Jašarević, born in 1961
44. Emsud (Jusuf) Avdić, born on 7 February 1953
45. Suad (Latif) Mešanović, born in 1957
46. Hilmo Mujezinović, born on 20 February 1932
47. Omer (Feto) Dervišević, born on 9 November 1964
48. Saudin (Aiz) Omanović, born on 19 July 1970
49. Ifet (Safet) Domazet, born on 1 July 1968
50. Safet (Ibrahim) Domazet, born on 17 January 1936
51. Saim (Aiz) Botonjić, born on 25 March 1967
52. Hamid (Ćerim) Domazet, born on 3 September 1931
53. Muharem (Huso) Kuburaš, born on 23 February 1933
54. Feriz (Aziz) Avdić, born on 13 July 1926
55. Abid (Meho) Balagić, born on 12 May 1921
56. Ale (Muharem) Čajić, born on 9 April 1955
57. Smail (Crnko) Avdić, born on 19 August 1949
58. Zifad (Adem) Mujezinović, born on 24 March 1962
59. Fikret (Arif) Balagić, born on 17 April 1940
60. Sadik (Dedo) Botonjić, born on 23 November 1961
61. Hakija (Hamdo) Avdić, born on 18 May 1937
62. Šefko (Rašid) Avdić, born on 6 May 1937
63. Hikmet (Huso) Botonjić, born on 23 May 1966
64. Efrajim (Abid) Čehić, born on 1 May 1946
65. Sulejman (Haso) Čehić, born on 7 May 1924
66. Šerif (Ćerim) Pehadžić, born on 13 May 1962
67. Muhamed (Ekrem) Mešanović, born on 16 March 1966
68. Sulejman (Ćamil) Botonjić, born on 28 August 1965
69. Osman (Haso) Mujezinović, born on 26 June 1934
70. Ahmo (Hašim) Čehić, born on 19 August 1925
71. Husein (Husein) Zukanović, born on 6 April 1925
72. Adil (Aziz) Hodžić, born on 15 May 1923
73. Muharem (Hamid) Avdić, born on 12 March 1950
74. Hamid (Ćamil) Botonjić, born on 22 June 1962
75. Hamdija (Hamed) Domazet, born on 15 April 1946
76. Rasim (Ahmet) Čehić, born on 17 May 1932
77. Derviš (Nurija) Hodžić, born on 13 August 1931
78. Hamed (Hakija) Botonjić, born on 1 March 1960
79. Adil (Abid) Omanović, born in 1937
80. Suad (Ahmo) Čehić, born on 16 March 1963
81. Suad (Hilmo) Botonjić, born on 14 September 1965
82. Hilmo (Hamid) Omanović, born on 27 February 1934
83. Zijad (Muho) Botonjić, born on 14 April 1953
84. Asim (Latif) Čehić, born on 21 February 1951



85. Sabahudin (Ramiz) Botonjić, born on 9 October 1967
86. Nihad (Ramiz) Kuburaš, born on 11 May 1970
87. Sabrija (Sabit) Botonjić, born on 12 April 1966
88. Hamed (Avdo) Domazet, born on 1 September 1922
89. Miralem Čehić, born on 23 August 1932
90. Habir (Feriz) Avdić, born on 5 February 1955
91. Meho (Ibro) Domazet, born in 1932
92. Islam (Fcho) Domazet, born on 31 March 1923
93. Nail (Adem) Avdić, born on 21 May 1928
94. Asim (Dedo) Avdić, born in 1928
95. Omer (Mustafa) Omanović, born on 19 July 1910
96. Mujo (Muharem) Botonjić, born on 20 May 1930
97. Fadil (Adil) Subašić, born on 10 July 1931
98. Nail (Adil) Domazet, born on 19 October 1931
99. Ejub (Musa) Botonjić, born on 27 February 1932
100. Smajil (Šerif) Avdić, born on 7 November 1946
101. Nijaz (Mujo) Botonjić, born on 7 October 1965
102. Vehbija (Latif) Botonjić, born on 21 May 1945
103. Izedin (Nazif) Subašić, born on 5 September 1964
104. Hamdija (Musa) Džaferagić, born on 15 July 1932
105. Enes (Ramiz) Avdić, born on 13 September 1953
106. Besim (Rasim) Avdić, born on 24 April 1957
107. Abid (Muharem) Hodžić, born on 2 April 1930
108. Teufik (Ćazim) Čehić
109. Omer (Hamid) Botonjić, born on 10 January 1931
110. Fahrudin (Safet) Domazet, born on 2 January 1970
111. Nail (Smajo) Čehić, born on 21 May 1931
112. Ibrahim (Ibro) Bajrić, born on 12 May 1931
113. Fuad (Ferid) Domazet, born on 3 February 1962
114. Emir (Rasim) Mujezinović, born on 30 June 1964
115. Elkaz (Osno) Omanović, born in 1936
116. Mustafa (Mujo) Omanović, born in 1928
117. Džafer (Rifet) Botonjić, born on 3 January 1974
118. Latif (Meho) Čehić, born in 1922
119. Zuhdija (Husein) Omanović, born on 10 June 1925
120. Abid (Ibrahim) Omanović, born in 1907
121. Samir (Ale) Mulahmetović, born on 1 October 1974
122. Bego (Ibrahim) Jašarević, born in 1951
123. Abid (Crnko) Avdić, born in 1933
124. Salko (Osman) Omeradjić, born on 10 March 1944
125. Omer (Nazif) Omanović, born in 1937
126. Mehmed (Muho) Džaferagić, born on 11 August 1914
127. Smail (Mehmed) Zukanović, born on 1 July 1926
128. Hajrudin (Fehim) Domazet, born on 16 May 1971
- [REDACTED] Latif) Šušnjar, born in 1941
- [REDACTED] agib) Botonjić, born on 27 January 1968
- [REDACTED] Fejzo) Crnalić, born in 1953

132. Rufad Hodžić, born on 17 October 1956
133. Abid (Muho) Avdić, born on 16 October 1933
134. Refik (Hamid) Avdić, born on 20 August 1964
135. Ermin (Osmo) Avdić, born in 1968
136. Asmir (Vehbija) Mešanović, born on 21 April 1972
137. Hamdija (Iso) Botonjić, born on 15 March 1939
138. Ibrahim (Hamed) Avdić, born on 10 February 1958
139. Nail (Abid) Botonjić, born on 10 August 1932
140. Mujaga (Adil) Zukanović, born on 30 September 1954
141. Asim (Hamed) Domazet, born on 12 April 1948
142. Smajil (Hasib) Mujezinović, born on 20 September 1954
143. Husein (Dervo) Domazet, born on 2 May 1965
144. Ćazim (Ale) Botonjić, born in 1938

As it was established, the actions of the Accused Marko Samardžija constitute all important elements of the criminal offense of Crimes against Humanity in violation of Article 172 (1) a) of CC BiH and in conjunction with individual criminal responsibility, accessory, in violation of Article 180 (1) of CC BiH. The Court has found him guilty of the committed criminal offense and sentenced him to long-term imprisonment of 26 (twenty-six) years.

As regards the applicable substantive law, the Accused and the Defense objected to the application of CC BiH pointing out that the Criminal Code of the SFRY, which was applicable at the time of the events concerned, should be applied. The Panel finds that this objection is unfounded and considers that the qualification of these criminal acts on the basis of Article 172 (1) a) of CC BiH in conjunction with Article 180 of CC BiH does not violate the principle of legality. Two rules have to be considered in this respect.

As regards the applicable substantive law, the Accused objected to the application of CC BiH (in force as of 1 March 2003), pointing out that the Criminal Code of the SFRY, which was applicable at the time of the events concerned, should be applied. The Accused submitted a letter stating he considered the application of the CC BiH to be a violation of article 7 ECHR, since, among others, the Criminal Code of the SFRY was more lenient.

In Article 7 (1) of the ECHR the principle of legality is laid down. This provision of the ECHR furthermore contains the general principle prohibiting imposing a heavier penalty than the one that was applicable at the time when the criminal offense was committed. Under Article II (2) of the Constitution of Bosnia and Herzegovina the ECHR has priority over all other laws in BiH. These principles have also been laid down in the CC BiH.

First, Article 3 of CC BiH stipulates the principle of legality; that is, that criminal offenses and criminal sanctions shall be prescribed only by law and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law. Furthermore, Article 4 of CC BiH 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 or

occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

While considering the objection raised by the Accused, it has to be noted that in the Criminal Code of the SFRY, which was applicable in the period relevant to this case, no provision explicitly dealt with crime against humanity as provided for in the Criminal Code of BiH. However, taking into consideration other provisions of the valid substantive law, as well as the general principles of international law, this objection of the Defense could not be accepted as well-founded.

Article 4a of CC BiH reads that Articles 3 and 4 of CC 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." Also Article 7 (2) of the ECHR gives the same exemption, providing that "the same Article shall not prejudice the trial and punishment of any person of 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".

This provides the possibility to depart, under the described circumstances, from the principles laid down in Articles 3 and 4 of CC of BiH (and Article 7(1) ECHR) and thus to depart from a mandatory application of the criminal code applicable at the time of commission and of a more lenient law in proceedings for offenses constituting criminal offenses under international law. This applies to the proceedings against the Accused, for it concerns an incrimination that involves violation of the rules of the international law.

The Court points out that the crimes for which the Accused has been found guilty constituted crimes under international criminal law and thus fall under "the general principles of international law" as stipulated in Article 4a of the Law on Amendments to the CC of BiH and thus CC BiH can be applied in this case on the basis of this provision.

The status that Crimes against Humanity and the attribution of individual criminal responsibility in the period relevant to the Indictment have in the international customary law is, among others, in the Report of the Secretary General of the United Nations pursuant to Paragraph 2 of the Security Council Resolution 108, dated 3 May 1993, International Law Commission, Comments on the Draft Code of Crimes against the Peace and Security of Mankind (1996) and jurisprudence of the ICTY and the ICTR.

Finally, the application of CC BiH 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 above is consistent with the position taken by the Section I of the Appellate Division of the Court of BiH in its Verdict against Abduladhim Maktouf No. KPŽ 32/05 of 4 April 2006 and its Verdict against Dragoje Paunović No. KPŽ 05/16 of 27 October 2006.

In meting out the penalty the Court considered all the circumstances referred to in Article 48 of CC BiH influencing type and length of penalty. So, the Court considered, as mitigating circumstances, the age of the Accused, he is 70, the fact that he is a family man, the fact that he has not violated the law so far, and the fact that his individual criminal responsibility in the perpetration of the said criminal offense consisted of accessory. Among the aggravating circumstances the Court in particular considered the following: the number of the committed murders, at least 144 persons in one day only and within several hours, the fact that those murders were cruel, the fact that murders of such a big number of people in a small community like Biljani left indelible imprint on further life of Biljani and coexistence of the former neighbors, and the fact that the consequences of this crime will also extend to future generations. In particular, the Court also considered, as aggravating circumstance, the fact that all this time, although on several occasions his former neighbors appealed to him to tell them exactly what had happened to their loved ones or at least the location of their bodies in order to bury them in a dignified manner, the Accused never did anything to disclose the location of mass graves of those killed that day, which clearly indicates his relation toward the crime. Generalized statements at the main trial that he felt sorry for "his people from Biljani", the Court did not accept as sincere. In particular, due to the fact that during his testimony it could be seen clearly that he was hiding the names of all more important participants of the event. One of the motions for termination of custody which he wrote personally was also cynical stating that, if released by the Court, he would use that time to trace positively, that is, locate the direct perpetrators of the crime concerned. In doing so, he forgets that he was detained as late as 13 years after the crime concerned and that he had sufficient time, as he says, to "find out the truth".

The Court is of the opinion that the pronounced sentence is commensurate with the gravity and consequences of the criminal offense, degree of criminal responsibility of the Accused as well as the circumstances under which the criminal offense was committed and that it will achieve the purpose of punishment referred to in the provisions of Article 39 of CC BiH. That is, that this punishment will commensurately express the community's condemnation of the perpetrated criminal offense and increase the consciousness of citizens of the danger of criminal offenses and of fair punishing of perpetrators.

Given that the Accused is currently in custody, based on the application of Article 56 of CC BiH, the time the Accused spent in custody, commencing on 21 March 2005, shall be credited towards the sentence of long term imprisonment.

The Decision on costs was rendered pursuant to Article 188 (4) of CPC BiH. Therefore, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings, because, in the opinion of this Court, as a pensioner with minimum pension and supporting his wife as well, he cannot reimburse these costs.

Rendering the Decision to refer the injured parties to take civil action with their claims under property law, the Court was directed by the fact that there is a great number of the injured parties in these proceedings and that establishing the level of property claim would require

more time, which would result in delay of the proceedings, therefore, the decision was made pursuant to Article 198 (2) of CPC BiH.

RECORD TAKER
Legal Officer
AMELA SKROBO

[signature affixed]

PRESIDING JUDGE
JUDGE
ZORICA GOGALA

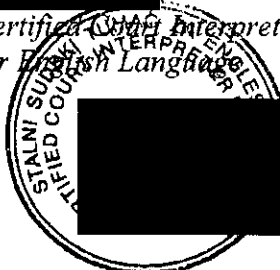
[signature affixed]

REMEDY: This Verdict can be appealed against to the Appellate Panel of this Court within fifteen days (15) after the day of the receipt.

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

Sarajevo, 1 February 2007

[redacted]
Certified Court Interpreter
for English Language



[redacted]
Certified Court Interpreter
for

