

SUD BOSNE I HERCEGOVINE



No. X-KR-06/234

Sarajevo, 19 June 2007

PREVOJ 351

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

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the panel of judges presided over by Judge Minka Kreho and Panel members Tore Lindseth and Roland Dekkers, with the participation of Legal Officer Amela Skrobo as record-keeper in the criminal case against Accused Zoran Janković, for the criminal offence of Crimes against Humanity in violation of Article 172, paragraph 1, subparagraph h) as read with subparagraphs a) and d) of the Criminal Code of Bosnia and Herzegovina, upon the Indictment of the Prosecutor's Office of BiH number KT-RZ-142/06 dated 30 October 2006, amended on 11 June 2007, following the main and public trial attended by the Accused Zoran Janković and Defense Attorney for the Accused – attorney-at-law Dragoslav Perić, and the Prosecutor of the Prosecutor's Office of BiH - Mirsad Sirika, on 19 June 2007 rendered and publicly announced the following

**VERDICT**

**THE ACCUSED: ZORAN JANKOVIĆ** a.k.a. „Zoka“, son of Marjan and Zagorka, née Nikolić, born on 20 March 1960 in Dubnica, Kalesija Municipality, permanently residing in Bijeljina, 4 Vladike Gavrića St., Serb, citizen of BiH, PIN /JMB/ 2003960182223, commercial technician by occupation, married, father of one child, served the army in 1980/1981 in Leskovac, entered in the military records for Bijeljina, of average financial status, previously convicted by the Judgment of the Basic Court in Tuzla number K-1128/86 of 20 January 1987 for the criminal offence referred to in Article 165 paragraph 2 of the CC RBiH and fined with 30,000 dinars, currently at liberty with prohibiting measures pronounced by the Decision of this Court No. X-KR-06/234 dated 29 November 2006,

Pursuant to Article 284 subparagraph c) of the Criminal Procedure Code of Bosnia and Herzegovina

**IS ACQUITTED OF CHARGES**

that:

In the period from April to late June 1992, during the armed conflict in Bosnia and Herzegovina, as a member of the Serb army, he participated in a widespread and systematic attack of the members of the army and police of the so-called Serb Republic of Bosnia and Herzegovina and members of the Serb paramilitary formations directed against the Bosniak civilian population in the territory of the Municipalities of Zvornik and Kalesija, this attack being pursuant to the policy of the army, police, paramilitary formations and the Serb Democratic Party (hereinafter: the SDS), with a view to removing all inhabitants of Bosniak ethnicity from the region of east and northeast Bosnia, whereby hundreds of civilians were killed, tortured, battered, unlawfully deprived of liberty, detained and kept in inhumane conditions, and forcibly removed from the territory of the Municipalities of Zvornik and Kalesija, while Bosniak women were raped and property of Bosniaks unlawfully seized, destroyed and burnt down, and all this due to their political, national, ethnic, cultural and

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religious background, of which attack the accused had knowledge and in which he participated in the manner that:

1. On 29 April 1992, in the territory of the village of Snagovo, Zvornik Municipality, together with Matić Radenko, Commander of the Artillery Unit in Osmaci, and members of Serb paramilitary formations, he captured a group of Bosniak civilians who were hiding in the woods for the fear of members of the army of the so called Serb Republic of BiH and Serb paramilitary formations; the aforementioned group of civilians was then ordered to go to the place called "Rašidov Han" in Snagovo escorted by them, where in front of the house of Ibrahimović Ibrahim, by firing individual shots and firing in bursts from automatic rifles at the rounded-up civilians, they killed the following persons: Krupinac Himzo (born in 1935), Krupinac Fatija (born in 1933), Krupinac Senudin (born in 1963), Krupinac Azra (born in 1964), Krupinac Mirza (born in 1987), Krupinac Idriz (born in 1966), Krupinac Sadija (born in 1968), Krupinac Alen (born in 1989), Dogić Šećo (born in 1949), Dogić Mehdim (born in 1968), Dogić Zada (born in 1977), Dogić Fatima (born in 1971), Dogić Meliha (born in 1991), Dahalić Hasnija (born in 1945), Dahalić Sejad (born in 1965), Dahalić Džemka (born in 1965), Dahalić Semir (born in 1989), Dahalić Mujesira (born in 1939), Dahalić Hamdija (born in 1965), Dahalić Razija (born in 1966), Dahalić Esad (born in 1989), Ibrahimović Fehira (born in 1974), Ibrahimović Mešan (born in 1979), Ibrahimović Mehmed (born in 1936), Ibrahimović Husejn (born in 1945), Salihović Ramiz (born in 1956), Salihović Hatija (born in 1953), Krupinac Aiša (born in 1938), Krupinac Hajrudin (born in 1960), Krupinac Reif (born in 1960), Krupinac Senija (born in 1959), Krupinac Mirsad (born in 1977), Krupinac Mimes (born in 1985), Mujanović Dervo (born in 1932), Mujanović Ismeta (born in 1953), Mujanović Edina (born in 1977), and wounded Mujanović Muharem, Mujanović Zlatija and Mujanović Abdulah, and thereafter on that day, with the view to concealing the evidence of the crime, they set on fire the bodies of the killed persons;

2. On 27 May 1992 around 18:00 hours, in the territory of the villages Šeher and Lika, Kalesija Municipality, after members of Serb paramilitary formations and members of the Šekovići Guard had carried out an armed attack on these villages, forcing the Bosniak civilians to leave their houses at gunpoint, hitting them with batons and rifle butts, kicking and punching them, in which Sokolović Maksim, Lozanović Nedeljko a.k.a. Tolja, Stojanović Čedo, Pelemiš Predrag, Pelemiš Drago, Stojanović Risto, Smiljanić Rado, Kalajdžić Cvijetin, Rikić Svetozar participated most actively, while Čakor Mehmedalija, Alibašić Adem, Burek Esad a.k.a. Beli and his son Burek Ibrahim (who was only 16 at the time), and Mujo Pezić were beaten most severely, after which they forced all the civilians from the said villages to round up in front of the house of Ibro Alibašić, together with more than 100 inhabitants from other villages, where Janković Zoran came and kicked in the back Ramić Rukija, and then ordered that all gathered civilians be forced onto trucks and transported to Serbia, upon which men were separated from women and children, and women and children forcibly transferred from the

region where they lawfully resided in the direction of Memići, Kalesija Municipality, while the men were detained during the night in the reading-room in Kula in Osmaci where they were physically abused, and a certain number of men killed, while those who survived were transported to other camps in the territory of the municipalities of Kalesija, Vlasenica and Bijeljina.

Thus,

by the aforementioned acts, which constituted a part of the widespread and systematic attack directed against the civilian Bosniak population, and knowing of such an attack, he persecuted civilian Bosniak population on political, national, ethnic, cultural and religious grounds, namely by murders and forcible transfer of population,

Whereby he would have committed the criminal offence of persecution as a Crime against Humanity in violation of Article 172 paragraph 1 subparagraph h) of the Criminal Code of BiH as read with subparagraphs a) and d) of the same Code.

I

Pursuant to Article 189 paragraph 1 of the Criminal Procedure Code of Bosnia and Herzegovina the costs of criminal proceedings referred to in Article 185, paragraph 2, subparagraphs a) through f) of this Code and the necessary expenditures and remuneration of defense attorney shall be paid from budget appropriations.

II

Pursuant to Article 198 paragraph 3 of the Criminal Procedure Code of Bosnia and Herzegovina the injured parties are hereby instructed that they may pursue their claim under property law in a civil action.

## Reasoning

### 1. Charges

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, Special Department for War Crimes number KT-RZ-142/06 dated 30 October 2006, Zoran Janković is charged with the criminal offense of War Crimes against Humanity referred to in Article 172, paragraph 1, subparagraph h) as read with subparagraphs a) and d) of the Criminal Code of Bosnia and Herzegovina.

On 24 November 2006, in reference to the Indictment, confirmed on 6 November 2006, the Accused pleaded not guilty on all counts of the Indictment after which the case file was forwarded to the trial panel.

### 2. Evidentiary Procedure

- a) During the evidentiary procedure the following evidence for the prosecution was presented:

The following witness were heard directly: Mujanović Muharem, Mujanović Mersija, Mujanović Zlatija, Mujanović Abdulah, Krupinać Marhiza, Herbatović Hamdija, Karić Hazim, Ibrahimović Avduh, Ibrahimović Himzo, Refija Čivić, Jasmina Sušić, Ibrahim Dahalić, Rukija Ramić, Lurvića Alibašić and pursuant to the provision of Article 276 of the Criminal Procedure Code of BiH the following additional witnesses were also heard: Hasan Alibašić and Zekija Ibrahimović. Also, at the main trial the Court heard Mr. Bruno Franjić, mechanical engineer, in the capacity as expert for ballistics and mechanical traces, and Prof. Dr Zdenko Cihlarž, forensic medicine expert.

The following material evidence were presented: Findings and Opinion of the Ballistic Expert number 14/1-3-04-5-4873 of 3 October 2006; Witness Examination Record of Osman Krupinać, Cantonal Prosecutor's Office of Tuzla Canton, number: Kt. 8/06 of 22 February 2006; Death Certificate for Osman Krupinać; Official Note of the Cantonal Prosecutor's Office of Tuzla Canton, number: Ktn.3/05 of 27 October 2005; Official Note of the Cantonal Prosecutor's Office of Tuzla, number 08/02/3-1-04.3-370/05 of 22 December 2005; Request to the Registry Office of the Municipality Zvornik of 12 January 2006; Response of the Registry Office of the Municipality Zvornik - Death Certificates for the following persons: Husejin Ibrahimović, Matija Salihović and Mujesira Dahalić; Order for identification of persons, Cantonal Court in Tuzla, of 15 May 2006; Records on identification of person by witnesses Zlatija Mujanović, Marhiza Krupinać, Muharem Mujanović and Abdulah Mujanović, of 16 May 2006; Report of the Mol Tuzla of 17 May 2006; Photo-documentation on Identification, Mol Tuzla, of 17 May 2006; Photo-documentation on the crime scene, Mol Tuzla, of 11 May 2006; Report on the Health Condition of the Accused in the Penal Correctional Institution Tuzla of 26 June 2006; Bill of charges for payment of the criminal proceedings costs, Cantonal Prosecutor's Office of Tuzla Canton, of 27 June 2006; Letter to the BiH Prosecutor's Office sent by the BiH Ministry of Defense of 17 July 2006; Letter of the OSA BiH to the BiH Prosecutor's Office of 5 September 2006; Copied photographs (27 photographs); one DVD on the events in Kalesija in 1992; Excerpt from the criminal records for the Accused Zoran Janković, Ministry of Internal Affairs of Tuzla Canton, of 28 September 2006; List of commanders of units who received the order, number 61/95 (Zoran Janković is listed under 6); Vacation Schedule of the Company Commanders of the 1. Infantry Battalion for December 1994 and January 1995, of 16 December 1994; Order for tactical live-fire of 2 September 1994; Payroll list of military police officers for the month of July 1992; Proposal for Promotion dated 7 May 1994; List of members of the 1<sup>st</sup> Infantry Battalion Osmaci, dated 14 February 1993, who have taken over flour rations; Request to the Housing Committee dated 6 September 1993; List of the members of the Dubnica Company; Information on the frontline situation dated 15 October 1995; Receipt for issuance with the weapons and ammunition to the name of Janković Zoran, dated 12 February 1992; Official Note, Mol Kalesija, of 8 September 1992; List of members of the Dubnica Platoon; Official Note, State Security Service Kalesija, dated 18 September 1992; Photography of the monument in the place of Rašidov Han, Snagovo; one DVD with the BBC program „The Death of Yugoslavia“ - 4<sup>th</sup> part; one DVD with the „SRNA“ Television program concerning the events on Vis in 1995; DVD Snagovo - Zvornik made during the re-enactment at the crime scene and as stated by witness Zlatija Mujanović; Instructions for the Organization Activity of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances.

SDS BiH - Main Board, of 19 December 1991; Decision of the Presidency of the Republic of Bosnia and Herzegovina Declaring Imminent Danger of War ("Official Gazette of RBiH", number: 1/92); Decision of the Presidency of the Republic of Bosnia and Herzegovina Declaring the State of War ("Official Gazette of RBiH", number: 7/92); Constitution of Republika Srpska ("Official Gazette of Republika Srpska" number: 21/92); Decision of the Constitutional Court of Bosnia and Herzegovina of 18 and 19 February 2000; Decision of the Constitutional Court of Bosnia and Herzegovina of 18 and 19 August 2000; Decision of the Constitutional Court of Bosnia and Herzegovina of 30 June and 1 July 2000; Decision of the Constitutional Court of Bosnia and Herzegovina of 28, 29 and 30 January 2000; Decisions of the Constitutional Court of BiH in the case of 27 February 2004 and 22 September 2004; Decision on the return of displaced persons to the territory of the Serb Republic of Bosnia and Herzegovina ("Official Gazette of the Republika Srpska", number 8/92); Declaration on the Governmental and Political Organization of the State ("Official Gazette of Republika Srpska" number 14/92); Law on Serb Citizenship ("Official Gazette of Republika Srpska" number 19/92); Law on Refugees ("Official Gazette of Republika Srpska" number 5/93); Decision on Strategic Goals of the Serb People in Bosnia and Herzegovina ("Official Gazette of Republika Srpska" number 22/93); Resolution on Providing for and Planned Relocation of Serb Refugees ("Official Gazette of Republika Srpska" number 5/94); one CD with the Report on the Devastation on Historical-Cultural and Natural Heritage in Bosnia and Herzegovina (1992 - 1995), Sarajevo 1997; 1991 Ethnic Breakdown of Population in Municipalities and Settlements (data for Zvornik Municipality); 1991 Ethnic Breakdown of Population in Municipalities and Settlements (data for Kalesija Municipality); Motion for the Acceptance of Established Facts No. KT-RZ-142/06 dated 14 May 2007 with the CD of the ICTY judgments; Finding and Opinion of the Court Expert, Prof. Zdenko Cihlarž; Request for Issuance of Order for Exhumation of 23 February 2006; Order for Exhumation of 24 February 2006; Record on Exhumation, Cantonal Prosecutor's Office of Tuzla Canton of 16 and 17 March 2006; Order for Expert Evaluation issued by the Cantonal Prosecutor's Office of Tuzla Canton (from No. 3 to 30) - Indictment from No. 15 to 38; Crime Scene Sketch of 12 April 2006 and Photo-documentation of 21 April 2006; Death Certificate for Fehim Alibašić; Discharge list to the name of Abdulah Mujanović; Report on Forensic Expert Evaluation for Razija Dahalić, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Šeća Dogić, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Mehdi Dogić, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Ismeta Mujanović, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Edina Mujanović, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Himzo Krupinac, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Hajrudin Krupinac, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for the brothers Idriz Krupinac and Senudin Krupinac, made by forensic expert Cihlarž; Report on Forensic Expert Evaluation for Fatija Krupinac, made by forensic expert Cihlarž; Photo-documentation, Mol Tuzla, of 1 June 2007; List of members of the Military Post Office 711/10, 711/50, 711/90 of 18 December 1994; List of reserve officers - Command of the 1<sup>st</sup> Birčanska Brigade of 12 October 1994 (Birač area), Certificate on Employment for Zoran Janković issued by the Pension and Disability Insurance Fund of the FBiH of 23 April 2007.

During the evidentiary procedure, the Prosecutor, pursuant to the provisions of Article 275 of the Criminal Procedure Code of Bosnia and Herzegovina, on 11 June 2007, filed the amended indictment with the Court.

b) At the main trial the defense presented the following evidence:

Directly heard witnesses: Ibro Smajlović, Ramo Imšić, Mehmed Cakor, Ibrahim Burek, Ibro Alibašić, Đorđo Pajić, Dragan Ostojić, Slavko Lakić as well as the Accused Zoran Janković himself, and pursuant to Article 276 of the Criminal Procedure Code of BiH as additional witness Gavro Ikić, Milan Tanasković, Lazar Stojanović, Rado Kulić and Savo Kulić.

The Court also reviewed the following material evidence: Map of Kalesija- Zvornik- Tuzla; List of Beli Orlovi members dated 16 June 1992, the member who gave the statement before the ICTY as the witness for the prosecution in the case against Vojislav Šešelj (referring to Snagovo, Zvornik and take-over of Kalesija) was recorded under the ordinal number 38; Part of the book titled Crime and Victims, State Commission for Collection of Facts on War Crimes Committed in BiH, page 211 with IDS; parts of the book titled Kalesija- Preparations and Defense from Aggression, issued in 1997, written by Sead Omerbegović and Halid Tulić, pages: 3, 93, 112, 117, 122, 123, 145, 146, 148, 178, 222 and 223; Statement of witness Ibro Smajlović dated 29 May 2006; Statement of witness Ramo Imšić dated 6 June 2006; Statement of witness Ibrahim Burek dated 24 July 2006; Statement of witness Mehmed Cakor dated 4 July 2006; Statement of witness Mehmed Cakor dated 14 June 2006 given at the Mol Tuzla; Statement of the witness Ibro Alibašić dated 15 June 2006; Statement of witness Đorđo Pajić dated 27 May 2006; Statement of witness Dragan Ostojić dated 4 January 2007; Statement of witness Slavko Lakić dated 27 May 2006; daily newspapers Avaz (page 3) dated 12 May 2006 with an article with the headline - Zoran Janković, Serb from Kalesija, Arrested - with a photograph of the Accused; medical insurance card of the daughter of the Accused, Zorica Janković, with the seal of the Meraklija catering facility; photographs from the wedding of the brother of the Accused, flag of the former SFRY; Marriage Certificate, brother's wedding dated 10 August 1991 (related to the photograph O16); 5 photographs of the monument of Zoran Obrenović presented at the main trial (related to the evidence O4); one CD made during a visit to the battlefield made by Zlatko Dulić, journalist of the paper Front Slobode which corresponds to the book and statement of the Accused; Statement of witness Milan Tanacković; Statement of witness Lazar Stojanović; Statement of witness Rado Kulić; Statement of witness Savo Kulić; military service identification card to the name of Zoran Janković No. 040-988 dated 5 April 1993; photograph of Zoran Obrenović from 1992; the book titled Criminals and Victims, published by the State Commission for the Collection of Facts on War Crimes, pages 189, 203 and 204; final verdict against Maksim Sokolović dated 21 February 2001, pages 62 and 63, rendered by the High Country Court in Dusseldorf.

### 3. Procedural Decisions

a) Accepting as proven the facts established by the judgments of the International Criminal Tribunal for the Former Yugoslavia

At the very beginning of the main trial, with the aim of planning the direction and scope of evidentiary procedure, the Court required an opinion of the Defense Attorney for the Accused on the Motion included in the Indictment - to accept as proven the facts established in the following ICTY judgments: Prosecutor v. Duško Tadić (IT-94-1-T), Prosecutor v. Dragan Nikolić (IT-94-2-A), Prosecutor v. Goran Jelisić (IT-95-10-T), Prosecutor v. Mitar Vasiljević (IT-98-32-A), Prosecutor v. Biljana Plavšić IT-00-39&40/1-S and Prosecutor v. Milomir Stakić (IT-97-24).

The Defense Attorney for the Accused, but also the Accused himself, did not oppose the acceptance of these facts as proven, stating that the existence of the widespread or systematic attack in the relevant area and time period is an indisputable fact, while the disputable facts referring to the participation of the Accused Zoran Janković in the incriminating events will be proven during the proceedings.

The Court, after hearing the parties and having evaluated primarily the general elements of acceptability of these facts pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of B-H and the Use of Evidence Collected by ICTY in Proceedings Before the Courts in B-H, on 26 March 2007 rendered the Decision accepting the Motion of the Prosecutor's Office and accepted the proposed facts as proven.

The Court considered taking judicial notice of facts established by the ICTY as achieving judicial economy. Such purpose is in accordance with the defendant's right to be tried without delay as guaranteed by Article 13 of the CPC of BiH and by Article 6 (1) ECHR. This purpose must nonetheless be reconciled with the principle of presumption of innocence and the defendant's right to a fair trial under Article 6 ECHR, but since the defendant did not dispute the existence of a systematic or widespread attack in the relevant area and time period his right to a fair trial contained in Article 6 is guaranteed.

The essence of the accepted facts by the Court as proven facts established by the ICTY can be summarized as follows:

In the period from April to the end of June 1992, in the territory of the Municipalities of Zvornik and Kalesija, members of the Army and Police of the so called Serb Republic of Bosnia and Herzegovina and members of paramilitary formations carried out a widespread or systematic attack directed against the Bosniak civilian population, which was in compliance with the policy of the Army, police, paramilitary formations and the Serb Democratic Party (hereinafter: "the SDS"), with a view to removing all inhabitants of Bosniak ethnicity from the region of east and northeast Bosnia, whereby hundreds of civilians were killed, tortured, battered, unlawfully deprived of liberty, detained and kept in inhumane conditions, and forcibly removed from the territory of Municipalities Zvornik and Kalesija, while women were raped and property of Bosniaks unlawfully seized, destroyed and burnt down, and all this due to their political, national, ethnic, cultural and religious origin, which was supported by testimonies of not only the witnesses for the prosecution but also of the witnesses for the defense, which clearly result in the circumstances indicating the beginning of the extraordinary situation in the relevant area and time, and which subsequently developed into a widespread or systematic attack directed against the Bosniak civilian population.

b) Rejection of certain evidence of the defense

On 21 May 2007, during the presentation of material evidence, the defense moved to present, precisely to read, among others, the following evidence: part of the statement of witness Radovan Novačić - member of Beli Orlovi, who gave the statement to the ICTY investigators on 10 August 2006, in particular paragraph 54, and statement of witness Franjo Žadanj given before the ICTY on 22 June 1997- line 14a, stating that this is the evidence of a cumulative character, so it should be read together with the other two presented pieces of evidence.

Following the objections of the Prosecutor's Office against tendering the evidence in the sense that there are no grounds to read out the statements concerned because it is not proven that these witnesses cannot appear before the Court and be examined, nor that they died, the same day, the Court, after considering the above mentioned Motion of the defense and the objections of the Prosecutor's Office, rendered the procedural decision refusing the Motion of the defense to read out the two said statements due to failure to meet the requirements referred to in Article 273 of the BiH CPC. The said provision stipulates exceptions from the direct presentation of evidence, that is, that records on testimonies given during the investigative phase, if the Panel of judges so decides, may be read out or used as evidence at the main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons, which in this case the court could not have established. In other words, in the Motion for presentation of the evidence, the defense stated that it does not know the witnesses whose statements would be read out, and that there is no need to hear them before this Court because they testified in other cases, while the reliability of their testimonies arises from the mere fact that they testified before the ICTY.

The fact that no final judgments have been rendered before the ICTY in the cases in which the offered statements were given also corroborates such a decision of the Court.

#### c) Exception from imminent presentation of evidence

On 7 May 2007, the Prosecutor proposed to accept as evidence the statement given by witness Osman Krupinac during investigation. The Prosecutor based his Motion on the existence of the reasons referred to in Article 273 paragraph 2 of the CPC of BiH, that is, on the fact that the witness has passed away.

The Defense, when presenting its position on the Motion, repeated the position already presented at the opening of the main trial, that is, that it would not object a review of the evidence proposed in the Indictment, including the statement concerned.

Being of the opinion that the Motion of the Prosecutor's Office is also corroborated by the Death Certificate number 07-200-545/07 of 20 April 2007, kept for the Municipality of Zvornik, the Court accepted reading out the statement of witness Osman Krupinac of 22 June 2006, given before the Cantonal Prosecutor's Office in Tuzla in the case number KT-8/06.

The Court did not consider this statement as a decisive evidence.

#### 4. Closing Arguments

##### a) Prosecutor's Office



Following the completion of the evidentiary procedure, the Prosecutor, in the first part of his closing argument, stressed the existence of all four significant elements of the criminal offense of Crimes against Humanity referred to in Article 172 of the CC of BiH, as follows: the existence of a widespread or systematic attack, that the attack is directed against the civilians, and the perpetrator's knowledge of such an attack and that the actions of the perpetrator are part of such an attack, that is, that they are related to the attack.

In other words, at the time when the Accused committed the actions he is charged with, there was an ongoing widespread and systematic attack of the Army and police of the RS assisted by the JNA forces and paramilitary units from Serbia and Montenegro, which was directed against Bosniak and Croat civilians in the territory of Zvornik Municipality and the entire region of Eastern Bosnia. The Prosecutor's Office draws such a conclusion both from the evidence presented before this Court and final ICTY judgments, particularly underscoring the judgments in the cases against Duško Tadić, Mitar Vasiljević, Dragan Nikolić, Goran Jelisić, Biljana Plavšić, Miroslav Deronjić et al., by which it was found that one of the most notorious campaigns of persecution of Bosniaks in BiH was ongoing at the time of commission of the crimes that Zoran Janković is charged with. As an additional reason to accept these facts as established, the Prosecutor's Office also indicates the circumstance that the parties agreed to accept them, as well as the fact that in the territory of the Municipality of Zvornik and in the relevant period non-Serb population was persecuted, mass killings of civilians committed, unprotected homes of Bosniaks destroyed, camps established, Bosniak women raped, historical and cultural facilities destroyed, including the destruction of all the mosques in this territory, as well as other gross violations of international humanitarian law.

According to the arguments of the Prosecutor's Office, such direction of the attack is also attested by numerous mass graves in which the bodies of Bosniaks were discovered and the fact that some persons, went missing in May, June, July 1992, are still looked for by their families.

The Prosecutor's Office is of the opinion that the Accused Zoran Janković had knowledge of a broader context of the attack within which he took the criminal actions he is indicted for, and had knowledge that his actions represented a part of the attack. That is, at the time of the commission of the criminal offense the Accused was a member of the Serb Army and "was well aware of what was going on". Also, he worked in the rubber plant of his cousin Petar Janković who was the leader of the SDS for that area, therefore he was informed about all the events and SDS plans in that area.

Further, the Prosecutor's Office indicates that the indisputable evidence that the Accused participated in the persecution of the Bosniak population from the territory of the Municipality of Zvornik is also seen in the consistent statements of eyewitnesses who, spontaneously and without special preparations, talked about their experiences in the Golgotha of the war and some of them openly stated that they were afraid.

At the end of this part of the closing arguments, the Prosecutor's Office concludes that undoubtedly the Accused had knowledge about the attack against Bosniak civilians at that period and in that area and not only that he was aware of this attack and agreed for his actions to become a part of it but he actually wanted his actions to be just that. Part of the evidence corroborating these arguments is the video from the summer 1995 on which one can see the Accused Zoran Janković reporting to General Krstić saying "Vis has been and will remain Serb". Therefore, all the significant elements of the Crimes against Humanity have been met.

In the second part of the closing arguments the Prosecutor's Office analyzes individual incriminations through the Counts of the Indictment, referring to the statements of the witnesses proving both Counts of the Indictment. The commission of the criminal offense described under Count 1 of the Indictment is confirmed by the statements of the survived witnesses Muharem Mujanović, Zlatija Mujanović, Mersija Mujanović, Marhiza Krupinac and Abdulah Mujanović, while the statements of the other witnesses: Hazim Karić, Hamdija Hrbatović, Jusmina Sušić, Abdulah Ibrahimović, Himzo Ibrahimović, Ibrahim Dahalić, Refija Čivić i Zekija Ibrahimović also speak about this crime, but with fewer details.

Based on the findings and opinion of the ballistic expert Bruno Franjić it is evident that the cartridge casings and the rounds which killed the victims originate from the bullets fired from an automatic rifle. Forensic expert Zdenko Cihlarž found that the cause of death of the majority of persons exhumed from the mass grave in the place of Rašidov Han were shotgun wounds, while for some persons it was impossible to determine the cause of death due to soft tissue decomposition and a lack of bone damage. Both experts presented their findings and opinions in detail.

The Prosecutor's Office is of the opinion that the Accused Zoran Janković committed the incriminating actions described under Count 2 of the Indictment, which arises from the statements of witnesses Lutvija Alibašić, Rukija Ramić and Hasan Alibašić, eyewitness to the entire event and persons who knew the Accused or his family from before, while the witnesses for the defense Ibrahim Burek, Mehmed Cakor and Ibro Alibašić could not see the Accused because they did not know him from before.

Analyzing the arguments of the defense the Prosecutor's Office states that the defense of Zoran Janković is based on the argument that allegedly this was a case of mistaken identity because one Zoran O. is referred to as the person who committed the horrific crime in Snagovo who got killed less than a month thereafter. Therefore, it concludes that these arguments as well as evidence for the defense are directed only to raise doubts that Zoran Janković was one of the persons who committed the crime.

Finally, following the reference to the application of substantive law, that is, the application of Article 4a) which provides the possibility to depart from Article 4 of the CC of BiH as well as to depart from the mandatory application of a more lenient law in the proceedings regarding the crimes according to international law, as is the case with the proceedings against the Accused, which is also justified with the fact that the stipulated sentence, in any case, is more lenient than the death penalty which was in force at the time of the commission of the criminal offense, thus meeting the requirement to apply the principle of time constraints regarding applicability, that is, the "law more lenient to the perpetrator", the Prosecutor's Office moved the Panel to render the decision finding the Accused guilty on all Counts of the Indictment pursuant to the Criminal Procedure Code of Bosnia and Herzegovina, and therefore pronounce the sentence of a long term imprisonment.

#### b) Defense

At the beginning of the closing arguments, the defense for the Accused Zoran Janković objected to the legal qualification of the criminal offense the Accused is charged with. Referring to the Indictment, the Defense Attorney states that the criminal offense of persecution as such does not exist in Chapter 17 of the CC of BiH, while the Depriving another person of life and Extermination are modalities in which the criminal offense of Crimes against Humanity can be committed. The defense also refers to the verb "what he would have committed" used by the Prosecutor's Office in the Indictment.

stating that the verb is an imperfective verb, and that it leads to the question whether the Prosecutor's Office is sure at all of the matters it is proving, and that it is not in the phase to able to use the same verb in the form "whereby he committed" the criminal offense.

Further given is an analysis of the very beginning of prosecution. According to the arguments of the defense, it was initiated by the identification of the Accused which was carried out contrary to Article 85 paragraph 3 of the CPC of BiH. In reference to the above mentioned, the identification by two witnesses, Zlatija Mujanović and Abdulah Mujanović, is important too. They were shown the most recent photograph of Zoran Janković from the CIPS project, and all the investigation activities started with the first witness mentioned who, on that occasion, identified the person under the synonym Krmak and was 90% sure of Zoran. The defense also stresses the differences in the description of the Accused during the identification line-up and the one given before the trial panel established by these two witnesses.

The general objection of the defense is directed to the evident evolution of subsequent information about the real facts related to the Accused Zoran Janković, which could be concluded from the chronological analysis of statements of certain witnesses. These facts particularly refer to the color of the eyes, place where the Accused had worked all the way up to his surname.

At the end of the analysis of statements of the witnesses about the circumstances referring to Count 1 of the Indictment, and based on them, the Defense Attorney asked the following question: "In fact, who is that Zoran? We have Zoran the Chetnik, Zoran from Belgrade and Zoran from the Vukovar front. We have three Zorans."

In reference to Count 2 of the Indictment, the defense points out two testimonies as significant. These are the testimonies of the witnesses for the prosecution, Lutvija Alibašić and Rukija Ramić, whose credibility, in the opinion of the Defense Attorney, was questionable. In other words, the first witness "quite reliably" gives details, but her credibility is undermined by the statement of Ibrahim Burek, witness for the defense, who stated that Haso Alibašić, brother-in-law of the witness, has visited the witness insisting to reach an agreement in the proceedings against Zoran. Ibrahim Burek is a person whose parents were killed on the relevant day. Further, the defense draws a parallel between these proceedings and the proceedings in which Maksim Sokolović was convicted by a final verdict delivered by the Court in Dusseldorf, stating that all the participants are the same except for Zoran Janković, who was not even mentioned at the time, while the proceedings were conducted regarding the event he is also charged with.

In the opinion of the defense, witness Rukija Ramić got into a tangle over the fact that she allegedly knew Zoran Janković indicating that she played with him when they were children, disregarding the circumstance that she is 9 years older than the Accused and that after she married she never saw him until the relevant day.

The defense also refers to the military engagement of the Accused in the relevant period and thereafter, trying to resolve the issue which poses itself based on the factual description from the Indictment and caused a lack of clarity. The question is: "Was Zoran Janković a member of regular military formations or paramilitary units?" presenting material evidence such as: a military ID of the Accused and a list of members of the Beli Orlovi paramilitary formation. It is evident that as of 2 May 1992 the military engagement of Zoran Janković was registered, and that he started as a quartermaster and cook and that he was not on the list of the above mentioned paramilitary formation.

The Defense Attorney for the Accused states that material evidence of the Prosecutor's Office referring to this circumstance date from the period 1994 and 1995 when Zoran was a soldier in the real sense of the word. His alleged military engagement as of 6 April 1992 was only formal because it was the day of establishment of the Army of RS, while the real beginning of engagement and role of the Accused are indicated in the said military ID as the basic identification document of military-age-men.

As a person who possibly committed the crime in Snagovo the defense indicates a certain Zoran Obrenović, the then commander of Beli Orlovi, and a person coming from Srpsko Snagovo, who lived in the place of Dobanovci nearby Belgrade. In other words, in the opinion of the defense, this person has all the characteristics fitting into the statements of the witnesses-eyewitnesses that this Zoran said that he was from Belgrade, that he had a bird on his sleeve and that he had been at the Vukovar front.

At the end of the closing arguments the defense particularly refers to the statements of these two witnesses of Bosniak ethnicity, Ibro Smajlović and Ramo Imsić, who even at the time when the Accused was in custody, at the beginning of the proceedings, testified about his presence in the village and keeping neighborhood watches until the beginning of May. Based on everything and with a hope that the trial panel will recognize the truth, that very truth requires an acquittal.

The Accused agreed with the arguments of his Defense Attorney, stressing in particular that all this time, that is, from the very moment when the Cantonal Prosecutor's Office in Tuzla launched the proceedings against him, being aware of his innocence, he continued to be true to himself in terms of his integrity, and all the time cooperated with judicial authorities in a sense that he voluntarily appeared at the questioning as well as into custody. At the end, he indicates that he believes in God and justice and hopes that he will be acquitted of all the charges and sufferings inflicted on him.

### 5. Applicable Law

As regards the applicable substantive law, it is necessary to point out why the provisions of the CC of SFRY, applicable at the time of the events concerned, are not applied here.

Article 3 of the CC of 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, was not defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. Furthermore, Article 4 of the CC of 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 one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Also, the principle of legality is laid down in Article 7 paragraph 1 of the ECHR. The ECHR supersedes all national legislation of BiH pursuant to Article 2 paragraph 2 of the BiH Constitution. This provision of the ECHR contains the general principle prohibiting imposing a heavier penalty than the one that was applicable at the time when the criminal offense was committed, but does not prescribe the imposition of the most lenient law.

However, Article 4 subparagraph a) of the CC of BiH states that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed, "was criminal according to the general principles of international law."

Also, Article 7 paragraph 2 of the ECHR gives the same exemption, providing that paragraph 1 of the 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". (see also, Article 15 paragraph 1 and 2 of the International Covenant on Civil and Political Rights which contains similar provisions. The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.)

This provides the possibility to depart, under the described circumstances, from the principles laid down in Articles 3 and 4 of the CC of BiH (and Article 7 paragraph 1) of the ECHR) and thus to depart from the application of the criminal code applicable at the time of commission and of a more lenient law in proceedings constituting criminal offenses under international law.

Therefore, it has to be noted that in the CC of the SFRY, which was applicable in the period relevant to this case, no provision explicitly dealt with Crimes against Humanity as provided for in Article 172 CC of BiH.

The Court points out that the crimes the Accused is charged with constitute crimes under international customary 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 "the general principles of law recognized by the community of nations" as stipulated in Article 7 paragraph 2 of the ECHR, therefore, on the basis of these provisions the CC of BiH can be applied in this case.

The status of Crimes against Humanity in customary international law and the attribution of individual criminal responsibility in the period relevant to the Indictment were among others contained in the Report of the Secretary General of the United Nations pursuant to paragraph 2 of the Security Council Resolution 808, dated 3 May 1993, International Law Commission, Commentaries on the Draft Code of Crimes against the Peace and Security of Mankind (1996) and jurisprudence of the ICTY and ICTR. These institutions found that the punishability of Crimes against Humanity or *jus cogens* represents an imperative standard of international law (International Law Commission, Commentary on Draft Articles on State Responsibility for Internationally Wrongful Acts (2001), Article 26). Therefore, it appears indisputable that Crimes against Humanity in 1992 were part of international customary law.

Furthermore, the fact that the criminal acts set forth in Article 172 of the CC of BiH can also be found in the law which was in effect at the relevant time period – at the time of the perpetration of the offense - specifically under Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY, or, in other words, that the criminal acts were punishable under the criminal code then in effect, additionally supports the conclusion of the Court regarding the principle of legality.

Finally, the application of the CC of BiH is additionally justified by the fact that the imposed sentence envisaged in the CC of BiH is in any event more lenient than the death sentence 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. the application of a law that is more lenient to the perpetrator.

Such a position of the Court is in line with the position of the Appellate Division of Section I of the Court of BiH in its Verdict against Abduladhim Maktouf, no. KPŽ 32/05, dated 4 April 2006 and the Verdict against Dragoje Paunović, no KPŽ 05/16, dated 27 October 2006, which was upheld by the Decision of the Constitutional Court of Bosnia and Herzegovina number AP-1785/06 dated 30 March 2007.

## **6. Findings of the Court**

### **u. General considerations regarding the evaluation of evidence**

The Court has evaluated the evidence in this case in accordance with the applicable procedural code, i.e. the Criminal Procedure Code of Bosnia and Herzegovina. The Court has applied to the Accused the presumption of innocence referred to in Article 3 of the CPC of BiH, which embodies a general principle of law, according to which the prosecution bears the onus of establishing the guilt of the accused and the prosecution must do so beyond reasonable doubt.

In evaluation of 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 circumstances of the case. Furthermore, the Court has been aware throughout that the credibility of witnesses depends upon their knowledge of the facts they testified about, their integrity, their veracity and the fact that they are bound to speak the truth in terms of the solemn oath taken by them.

It is insufficient that the evidence given by a witness has been given honestly. The true issue in relation to the identification of 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 sometimes (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 the CPC of BiH the Court is free in its evaluation of evidence. The approach taken by the Court 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 Court considered circumstantial evidence as being such evidence of circumstances surrounding an event or offence 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 eye-witnesses 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 revealing and sometimes decisive.

Naturally, during the evaluation of evidence the Court took into consideration a number of material evidence presented by the Prosecutor's Office as well as evidence presented to the Court by defense, and it also considered the evaluation of the evidence in reference to defense objections in order to decide on their probative value.

#### **b. General elements of Crimes against Humanity**

The Accused has been charged with the criminal offense of Crimes against Humanity under Article 172 paragraph 1 subparagraph h) in conjunction with subparagraph a) and d) of the CC of BiH.

For a criminal act to qualify as a Crime against Humanity, the law requires, besides the specific elements of the individual act, for the prosecution to prove all the general elements of Crimes against Humanity, namely:

1. That there was a widespread or systematic attack directed against any civilian population;
2. That the accused knew of the existence of such an attack;
3. That the acts of the accused were part of the attack and that he knew that his acts were part of the attack.

As follows from the previously stated in the reasoning of the Decision on the Acceptance of Established Facts dated 26 March 2007, the Court found indisputably and it considers established the fact that at the time relevant to the Indictment, in the territory of Zvornik Municipality there was a widespread or systematic attack of the Army and police of so-called the Serb Republic of Bosnia and Herzegovina and Serb paramilitary formations directed against the Bosniak civilian population, with such an attack, in the context of Crimes against Humanity, pursuant to international customary law, not being limited exclusively to the existence of the "armed conflict".

As to the other necessary key elements of Crimes against Humanity, by evaluation of all the presented evidence individually and in their correlation, the Court established beyond any reasonable doubt that in the relevant period the Accused was staying in the area of the Municipality of Kalesija, that he was a member of the Army of the Serb Republic of Bosnia and Herzegovina. However, although all the presented evidence indicate that the Accused knew of existence of the widespread or systematic attack directed against the Bosniak civilian population of the municipality of Kalesija and the greater area of Kalesija, and that the actions described under Counts 1 and 2 of the Indictment represented a part of the widespread and systematic attack, the Prosecutor's Office did not succeed to prove, beyond reasonable doubt, that the actions were taken by the Accused Zoran Janković. The mere fact of his membership in the Army which committed the crime and his presence in the

area where the crime took place cannot, a priori, represent the grounds for responsibility of the Accused Zoran Janković, particularly given the fact that he joined the Serb Army following the fall of the village of Dubnica, which indisputably arises both from the statements of the heard defense witnesses and presented material evidence of the prosecution and defense.

### c. Responsibility of the Accused Zoran Janković

Therefore, the matter of dispute is the fact whether the Accused, although a member of the Army of Serb Republic of Bosnia and Herzegovina, in the manner as described under Count 1 and 2 of the Indictment, participated in the killings and forceful transfer of Bosniak civilians whereby he committed persecution as Crimes against Humanity.

Starting with Count 1 of the Indictment, charging the Accused with participation in the capture and then killing of 36 Bosniak civilians, including some children, the Court found indisputably that the said crime did take place, that is, that on 29 April 1992, in Rašidov Han - Snagovo, Zvornik Municipality, 36 Bosniak civilians were killed. This arises from the testimonies of the witness-eyewitness to this execution by firing squad but also from the testimonies of those who were collecting and burying bodies of the killed persons the following day. The fact that the death was caused by firearms, that is, by shooting from an automatic rifle as stated by the witnesses, indisputably ensues from the testimony of ballistic expert Bruno Franjić who confirms that both casings and rounds which killed the victims originate from the bullets fired from an automatic rifle, whereas the forensic expert Zdenko Ciblarž confirms that an entry-and-exit wound is the cause of death of majority persons exhumed from the mass grave in the place called Rašidov Han, stating that for some of them it is not possible to determine the cause of death due to soft tissue decomposition and a lack of bone damage.

In reference to the circumstances described under this Count of the Indictment, the Prosecutor's Office proposed the hearing of a larger number of witnesses, including Muharem Mujanović, Zlatija Mujanović, Abdulah Mujanović and Marhiza Krupinac as persons who were at the crime scene and who would confirm that the Accused is the person who participated in the capturing and killing of 36 civilians.

However, the statements of these, according to the Prosecutor's Office key witnesses, indisputably raised suspicion in their identification of the person they saw the ominous day participating in the capturing and then killing of their loved ones.

Witness Muharem Mujanović speaks about the Accused as one of the three soldiers who addressed each other as Major Zoran, Major Dragan and Krle. The Majors, as stressed by the witnesses, were wearing camouflage uniforms and had insignia depicting a bird on their sleeves, while Krle had an olive drab uniform and the JNA cap.

The witness remembers the person that he claims to be Zoran, by having big eyes and receding hairlines and a specific beard, but he indicates that on the day concerned he did not hear that Janković was the surname of the person they addressed as Zoran.

In his statement, the witness points out that he did not know Zoran Janković from before.

Witness Zlatija Mujanović also did not know the Accused from before. The person with the name Zoran was mentioned to her only later on after she met the surviving



while she learned the surname Janković as late as 2005 when she was giving her first statement.

Witness Abdulah Mujanović, who survived the execution, also speaks about Major Zoran. Major Zoran, remembers the witness, came with two soldiers, one of whom was also wearing a camouflage uniform and the other wearing the uniform of the former JNA and introduced himself as a war veteran from Croatia. He remembers Major Zoran as the person at the age of 26 - 27, with a "Buzz cut" and receding hairlines, as well as that all three of them said that they were veterans from the Croatian front.

He remembers that Major Zoran was the person who first opened fire at the gathered civilians.

The witness points out that before trial he did not know of the surname Janković and in the courtroom he points to Zoran Janković as the person he was talking about in his testimony.

Witness Marhiza Krupinac was also in the group of the captured persons and she met Zoran as a soldier who asked her to show the place at which her husband hid the weapons. On a way to the spot, the soldier introduced himself as Zoran from Belgrade and showed the witness the knife with which, as he said, he was slitting throats in Vukovar.

Although not an eyewitness to the relevant event, witness Hamdija Hrbatović also remembers a certain Zoran that he had met in early April at one checkpoint. That Zoran introduced himself as a Major who came from Vukovar. He gave a 12-hour deadline to the rounded-up Bosniaks to surrender weapons, threatening that he would kill all those who fail to do that.

Witness Ramo Imšić, who had a chance to see a balding major Zoran from Serbia, also testifies about Zoran, but not Janković.

The testimonies of those "key witnesses" were evaluated by the Court bearing in mind particularly the identification line-up which these witnesses attended based on the Order of the Cantonal Court in Tuzla number 003-0-Kpp.-06-000049 dated 15 May 2006 and the objection of the Defense Attorney present at the line-up that the photograph of the Accused Zoran Janković was published in the Avaz daily three days before that. During the main trial, that is, during the presentation of the defense's evidence, this objection was corroborated by the article from the Avaz daily of 12 May 2006, describing the actions indicated in the Indictment, while the photograph of the Accused Zoran Janković charged with these actions is very clear with conspicuous specific beard and receding hairlines.

In other words, based on the records on identification, which was organized in two rounds and with changed ordinal numbers of persons offered for identification, it arises indisputably that none of these key witnesses could identify the accused Zoran Janković as the person who committed the criminal actions in question. Witness Muharem Mujanović did not even once point to the Accused but to a person who was taller and older than the Accused. Witness Marhiza Krupinac pointed to the same person. Witness Abdulah Mujanović "recognized" the person who was much younger than the Accused, while witness Zlatija Mujanović hesitated between the Accused Zoran Janković and his brother. During the trial she explained that "mistake" with the fact that she was afraid to look at the Accused Zoran Janković so she deliberately pointed at the other person.

Considering such results of identification, as well as the explanation offered by the witnesses, which the Court finds unacceptable, that after the elapse of a longer period of time, on the premises of the Ministry of Interior, they were afraid to point to the person who participated in the execution of the actions specified in the operative part of the Verdict, naturally, if the person concerned had really been at the crime scene, which indeed was not the case here, the Court also evaluated the description of the Accused as given during the trial by witnesses Muharem Mujanović and Zlatija Mujanović. It is indicative, as deemed by the Court, that the photograph of the Accused Zoran Janković, published in the Avaz daily, could serve as a basis for the description of the person who was allegedly seen by the witnesses at the crime scene.

Further, taking into account the fact that none of the eyewitnesses knew the Accused Zoran Janković prior to the event concerned, that is, that the only occasion when they allegedly saw the Accused Zoran Janković was exactly on the relevant day, the Court particularly considered a long period of time between the day when the witnesses saw a certain Zoran and who, if it had really been the Accused Zoran Janković, should have been 32 at that time, and the day when, for identification, among others, a 46-year-old Zoran Janković was shown to them. While doing so, the Court also considered the statements of defense witnesses as well as the statement of the Accused himself, given that all of them were positive that exactly in that period the Accused was a member of joint village guards with his neighbors in and around the village of Dubnica.

The vagueness arising from such identification of the Accused Zoran Janković, that is, the description of the Accused as being only "Zoran" or "the one who owned a rubber plant", and even the claim that Zoran was from Belgrade, justify a reasonable doubt as to the subjective identity of the Indictment.

The subjective identity of the Indictment, which was in the focus of the defense, is also undermined by the statements of the defense that the criminal actions were really committed by Zoran, a Major from Serbia, whose photograph really indicate the description of Zoran as given by all eyewitnesses to the event concerned.

In particular, doubt was raised by the statement of the witnesses that "Zoran" that they saw had an insignia of some bird on his sleeve. During the proceedings the Court found that it was the insignia of the Beli Orlovi paramilitary formation, which operated in the relevant area and time period concerned, which was also established in the ICTY judgments. Witnesses Rado and Savo Kulić also testify about their activities in the relevant period of time and on the relevant day. They remember well the arrival of unknown soldiers who introduced themselves as "Beli orlovi", volunteers from Serbia, and the two of them even said that they came from Serbia led by Zoran Obrenović aka Aždaja, a person whose description matches the description of Zoran seen by the "key witnesses" for the prosecution on the relevant day.

However, disregarding the suspicion in the identification of the person who did commit the described crime, the belief of the Court that the action described under Section I of the Verdict was not committed by the Accused Zoran Janković was also supported by the witnesses for the defense, particularly Ibro Smajlović, who is convincing when saying that exactly at the relevant time, together with his neighbor, the Accused Zoran Janković

part of joint neighborhood watches which were characteristic for the beginning of the extraordinary situation in BiH, and that there was no possibility that the Accused was at the Vukovar front because he was seeing him every day. The possibility that on the relevant day the Accused still could go to Snagovo - Zvornik municipality, where the crime took place, which is only 15 to 20 km away from Dubnica, the witness considers very unlikely because in that direction, as he states, in those days there were checkpoints of all 15 villages of different ethnic composition taking turns one after another, explaining his position with the following words: "Whoever dared to go through forests in those days, bravo!" The statement of witness Smajlović is completely consistent with the statements of witness Gavro Ikić and Đorđo Pejić who participated in joint village guards together with the Accused Zoran Janković, witness Ibro Smajlović and other neighbors.

Also, witness Milan Tanacković, a priest, who was working in Dubnica at the time, testifies about the joint village guards in which the Accused Zoran Janković participated and whom he was seeing in his café every day.

Therefore, due to the fact that it was not possible to clearly identify the Accused Zoran Janković, and in particular the fact that previously the witnesses did not know the Accused and the objective inability for him to be present at the relevant place at the relevant time, there is an obvious conclusion of the Court that the Prosecutor's Office did not manage to prove beyond any reasonable doubt that the Accused Zoran Janković was the Zoran seen by the witness on 29 April 1992 in Rašidov Han-Snagovo participating in the capture and then killing of 36 Bosniak civilians.

Count 2 of the Indictment charges the Accused Zoran Janković that on 27 May 1992 he participated in the forceful transfer of Bosniak civilians from the villages of Šeher and Lika, having ordered the rounded-up civilians to "load" on the trucks, after which men were separated from women and children, and women and children transported in the direction of Memići, Kalesija Municipality, while men were detained during night in the reading-room in Kula where they were abused, and some of them killed, while those who survived were transported to other camps in the territory of the Municipalities Kalesija, Vlasenica and Bijeljina. The Prosecutor's Office tried to prove these allegations by the testimonies of witnesses Luvija Alibašić, Rukija Ramić and Hasan Alibašić who were eyewitnesses to the event concerned.

However, the Prosecutor's Office failed to prove to the Court, through the presented evidence, the cause-and-effect relation of all the events described in Count 2 of the Indictment. In other words, failing to prove the method which resulted in the forceful transfer of the population who lawfully resided in the territory of the villages of Šeher and Lika, or the order-issuing authority of the Accused Zoran Janković, the Prosecutor's Office directed its evidence to the unqualified one-time act of hitting Rukija Ramić, that is, the order to load all the present civilians on trucks and transport them to Serbia. However it failed to indicate the relation between this order and further events referring to the detention of men, their abuse and even the killing of some of the men as the end result, as well as the transportation of the survivors to the camps in the territory of the Municipalities of Kalesija, Vlasenica and Bijeljina.

The Prosecutor's Office also failed to prove the relation between the Accused Zoran Janković as the order-issuing authority regarding the forceful transfer and members of Serb paramilitary formations who, as stated at the beginning of the factual description of Count 2 of the Indictment, together with the members of Šekovići Brigade, carried out the armed attack on the villages of Šeher and Lika, after which they brought the population from these villages in front of the house of Ibro Alibašić where, as stated in the Indictment, also rounded up were some 100 inhabitants from other villages.

Although, as found by the Court, the fact that there was an attack and the forceful transfer of the population of the villages of Šeher and Lika is indisputable, however the participation of the Accused Zoran Janković in this forceful transfer, which, as stated by the Indictment, reflected in the order to load the population on trucks and transport them to Serbia, the Court found disputable. The Court also finds completely unacceptable the allegations that it was the Accused Zoran Janković who hit Rukija Ramić.

Witness Lutvija Alibašić, herself a victim of the attack and expulsion from the village of Šeher, although speaking clearly about the attack and arrival of the army, including her neighbors from Šeher - Savo Pelemiš, Brano Lukić, Sveto Stevanović, Čedo Stojanović, Tanasije Klisarić, Rajko Pelemiš, Drago Pelemiš and especially Maksim Sokolović who battered Adem Alibašić - did not convince the Court that the person she saw giving the order to transport the rounded-up civilians was Zoran Janković. The witness describes the arrival of a person in a multicolored uniform and a visor cap who then told the present soldiers to transport the gathered civilians to Serbia. As she states, she identified this person as the Accused Zoran Janković, whom she knew since his childhood given that she was born and lived in Pmjavar until 1973, in a village not far away from the village of the Accused, Dubnice. However, the witness pointed out that she was seeing Zoran Janković only in that period, that she did not know where he worked and what his job was, and that she saw him for the first time on the day concerned, that is, on 27 May 1992.

Witness Rukija Ramić, who was together with witness Lutvija Alibašić, also speaks about the arrival and such a role of the Accused Zoran Janković. The witness indicates that she knows Zoran Janković well because they played together when they were children in Pmjavar, the village in which the witness's aunt used to live. The witness remembers that she was 9 to 10 years old at the time while Zoran Janković was smaller, younger and shorter.

However, the witness could not confirm the arguments of the Indictment that it was the Accused Zoran Janković who hit her, explaining that it happened while entering the truck and that she had to look straight ahead and did not dare to turn around so she could not see who hit her.

On the other hand, considering all illogicalities arising from the statements of both witnesses, particularly referring to the time periods during which they allegedly saw Zoran Janković, the Court could not accept the identification of the person who did order the forceful transfer of population as Zoran Janković to be authentic and convincing.

In other words, it arises from the statement of witness Lutvija Alibašić that she was seeing a person whose name she believes was Zoran Janković, in the period until 1973 and after that, as she states, only on 27 May 1992, after 19 years, and, as she points out, never again.

person the witness was seeing, assuming that it was really the Accused Zoran Janković, was a 13-year-old boy that the witness, when describing Zoran Janković on 27 May 1992, could not describe in no other way but as a soldier in a multicolored uniform and cap. Such a description, as noted by the Court, could refer to any of the present soldiers.

The suspicion in the identification of the person who really ordered the transfer of population was raised particularly by the statement of witness Rukija Ramić, who obviously overlooked the fact that she is 9 years older than Zoran Janković whom she is incriminating with her statement, and that at the age of 9 or 10 she could not, in any case, play with a boy who was a baby, one year-old boy.

The justified suspicion of the Court is corroborated by the statements of witnesses Ibro Alibašić, Mehmed Čakor and Ibrahim Đurek, who were also in the group of the attacked inhabitants of Šeher and Luke, and who even in later recounts of the events did not hear who gave the order to load the population on trucks and transport them to Serbia.

It is especially important, the Court finds, that witness Ibro Alibašić, among many known soldiers, his neighbors, did not see the Accused Zoran Janković whom he also knew, as well as the fact that many eyewitnesses to the event who also gave their statements in the case against the Accused Maksim Sokolović (who was sentenced by the High State Court in Dusseldorf, Germany, for the actions described in Count 2 of the Indictment against Zoran Janković) were describing in detail the persecution of Bosniak population of the villages Šeher and Luke, as well as the blows to the head, neck, shoulders and back which Adem Alibašić suffered. They gave correct names of the persons who carried out those attacks on the Bosniak population and not even once mentioned the Accused Zoran Janković as the person who participated in the persecution.

However, even if all the illogicalities in the identification were disregarded, the suspicion referring to the participation of the Accused Zoran Janković in the described events in the opinion of the Court still arises from the indisputable fact that exactly on the day before the relevant event, that is, on 26 May 1992, the village of Dubnica was attacked, where the Accused lived with his family, which is when the entire population took refuge, including the accused.

The Court finds convincing the statements of witnesses Gavro Ikić, Dragan Ostojić and Slavko Lakić, who, together with the Accused, took refuge and moved in the direction of the relay station Stolice. Naturally, while doing so, the Court took into consideration a number of material evidence, to be precise, certificates indicating the membership of the Accused in the Serb Army, which were presented to the Court by both the prosecution and defense. It indisputably follows from the evidence in question that the Accused was on the payroll sheet of his unit in 1995, while no other evidence indicates the fact that the Accused was really involved in the armed forces of the Serb Army at the critical period. Also, the Court considered the statement of witness Ibro Smajlović who speaks about the attack on Dubnica and the refuge of Serb population.

In the evaluation of the evidence, the Court also took into account the other evidence presented at that main trial, but did not pay any special attention to that evidence, nor did it find necessary to analyze them in detail, because that evidence did not significantly affect the finally established facts and conclusions that the Court reached based on the evaluation of which is given in the Verdict.

The Court finds it obvious that the above mentioned evidence could not indicate beyond reasonable doubt even the presence of the Accused at the crime scene, and thus also his order-issuing authority, which within the context of the statement of Rukija Ramić excludes the possibility that the Accused Zoran Janković hit this witness.

Therefore, in such situation, based on the results of the evidentiary proceedings, the decisive fact referring to the participation of the Accused Zoran Janković in a widespread and systematic attack directed against the Bosniak civilian population and the persecution of the Bosniak civilian population, specified in Section 1 and 2 of the operative part of this Decision, has not been proved with certainty. Therefore, the Court, applying the principle *in dubio pro reo* finds that it does not exist at all, and, given the lack of evidence, pursuant to the provision of Article 284 subparagraph c) in conjunction with Article 3 of the CPC of BiH, acquitted the Accused Zoran Janković of charges for the criminal offense concerned.

#### **7. Decision on the Costs of the Criminal Proceedings and Property Claims of the Injured Parties**

Given that the Accused Zoran Janković was acquitted of the charges, the Court, pursuant to Article 189 paragraph 1 of the Criminal Procedure Code of Bosnia and Herzegovina, rendered the decision that the costs of the criminal proceedings under Article 185, paragraph 2 subparagraphs a) through f) of this Law, as well as the defense attorney's fee, shall be covered from within the budget.

For the same reason and pursuant to Article 198, paragraph 3 of the Criminal Procedure Code of Bosnia and Herzegovina, the Court decided that the injured be referred to take civil action with their claims under property law.

**RECORD TAKER**

**PRESIDING JUDGE**

Court Advisor

**JUDGE**

Amela Skrobo

Minka Kreho

**REMEDY:** This Verdict can be appealed with the Appellate Division of this Court within fifteen days (15) after the day of receipt.

*I hereby confirm that this is a true and correct translation of the original written in Bosnian/Croatian/Serbian.  
Sarajevo, 21 August 2003  
Certified English Language*