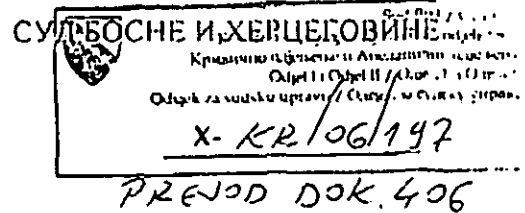


SUD BOSNE I HERCEGOVINE



11-09-2007
BY

Number: X-KR-06/197
Sarajevo, 17 July 2007



IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in the Panel composed of Judge Hilmo Vučinić, as the Presiding Judge, Judge Paul M. Brilman and Judge Shireen Avis Fisher, as members of the Panel, with participation of Legal Adviser Dženana Deljković Blagojević, as the record-taker, in the criminal case against the accused Niset Ramić a.k.a. "Minduša", for the criminal offense of War Crimes against Civilians in violation of Article 173 (1) a) and c) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: CC BiH), upon the Indictment of the Prosecutor's Office of BiH No. KT-RZ 88/06 of 10 October 2006, confirmed on 12 October 2006, after the public main trial, in the presence of Slavica Terzić, Prosecutor of the Prosecutor's Office of BiH, the accused Niset Ramić and his Defense Counsel Izet Baždarević, Attorney-at-Law from Sarajevo, on 17 July 2007, rendered and publicly announced the following:

VERDICT

THE ACCUSED:

***NISET RAMIĆ**, a.k.a. "Minduša", son of Hasan and mother Fata née Sejdić, born on 18 October 1970 in the village of Gornja Seoča, Visoko Municipality, which is also his place of residence, Bosniak, citizen of Bosnia and Herzegovina, secondary school education, unemployed, single, previously convicted by the Verdict of the Military Court in Ljubljana number LK-17/90, dated 28 March 1990, to imprisonment for a term of three months, suspended sentence of one year, for the criminal offense in violation of Article 165 of the Criminal Code of the Socialist Republic of Slovenia; by the Verdict of the High Court in Zenica number K-5/96, dated 24 July 1996, to imprisonment for a term of 20 years for the criminal offense in violation of Article 151 (2), Article 151 (1) and Article 36 (2) of the Criminal Code; by the Verdict of the Municipal Court in Vitez number K-267/98, dated 30 July 2001, to imprisonment for a term of four years for the criminal offense in violation of Article 36 (1), in conjunction with Article 19 of the Criminal Code of the Socialist Federal Republic of Yugoslavia; by the Verdict of the Canton of Zenica in Zenica number K-70/97, dated 16 January 2003, to imprisonment for a term of 10 years for the criminal offense in violation of Article 173 (1) a) and c) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.*

of one year for the criminal offense in violation of Article 151 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina; currently in pre-trial custody pursuant to the Decision of the Court of BiH of 16 October 2006,

HAS BEEN FOUND GUILTY

Of the following:

During the armed conflict between the Territorial Defense (hereinafter: TO) of the Republic of Bosnia and Herzegovina (hereinafter: RBiH) and the Army of the Serb Republic of Bosnia and Herzegovina, as a member of the Sabotage Company within the 2nd Detachment of the Municipal Staff of Territorial Defense in Visoko, he acted contrary to the rules of the international humanitarian law, thus violating the provisions of Article 3 (1) a) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, because, in the early morning hours on 20 June 1992, while conducting an operation of the Municipal Staff of TO Visoko of confiscating weapons in the settlements in the vicinity of Visoko, including the settlement of Hlapčevići, Visoko Municipality, armed with an automatic gun he came to the settlement of Hlapčevići and ordered a group of around eight soldiers whom he led, including Muhamed Uzunalić, a.k.a. "Muha", and Mevludin Topalović, a.k.a. "Top", to surround Serb inhabitants' houses, namely, the houses of Slavko Damjanović, Sretko Masal and Nedo Ristić. Together with the soldiers he then took Slavko, Danica and Zoran Damjanović, Dušanka Ristić, Željko Ristić, a.k.a. "Žika", and Sretko Masal out of the houses and ordered the soldiers to tie these persons' hands with a cord and search the aforementioned houses, while he ordered the captured civilians to line in single file and move in that manner toward the Youth Center¹ in the settlement of Hlapčevići and then to stop and line up against a wall of the house owned by Suad Kapo, which the captured civilians did. He then called Željko Ristić to step out and tell where the hidden weapons and minefields were, and after Ristić did not answer, the Accused fired a burst at him, after which Željko Ristić fell on the ground due to the sustained injuries. The Accused then turned to the other captured civilians and fired a burst at them, and fired another burst at the civilians who were lying on the ground, after which, together with the present soldiers, he moved away toward the settlement of Kalotići. Željko Ristić, Dušanka Ristić and Danica Damjanović died instantly due to the inflicted perforating wounds, whereas Zoran Damjanović and Slavko Damjanović suffered grave bodily injuries to which

¹ "Omladinski dom" in the vernacular: translator's note

Slavko Damjanović succumbed on the way to hospital and Sretko Masal suffered bodily injuries.

Therefore, during the armed conflict in Bosnia and Herzegovina between the TO RBiH and the Army of the Serb Republic of BiH, violating the provisions of Article 3 (1) a) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the Accused committed murder of civilian population, that is, violation of bodily integrity, whereby he committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) c) in conjunction with Article 180 (1) of CC BiH.

Therefore, pursuant to the aforementioned provision and Article 39, 42 and 48 of CC BiH, the Panel of the Court of BiH hereby imposes on the Accused, Niset Ramić:

for the criminal offense of War Crimes against Civilians in violation of Article 173 (1) c) in conjunction with Article 180 (1) of CC BiH,

the sentence of long-term imprisonment for a term of 30 years,

and, taking as the already fixed punishment the sentence of imprisonment for a term of 19 years pronounced by the Decision of the President of the Federation of Bosnia and Herzegovina No. 01-602/97 of 3 September 1997 replacing the compound sentence of imprisonment for a term of 20 years pronounced by the Verdict of the Cantonal Court in Zenica No. Kv-52/05 of 20 July 2005, pursuant to Article 55 (1) of CC BiH,

and pursuant to the aforementioned provisions and Article 53 (2) a) of CC BiH,

SENTENCES

THE ACCUSED TO THE COMPOUND SENTENCE OF LONG-TERM IMPRISONMENT FOR A TERM OF 30 YEARS

Pursuant to Article 55 (1) of CC BiH, the time the Accused spent serving the sentence pursuant to the previous Verdict in the periods from 26 November 1992 to 19 January 1999, from 8 August 2000 to 19 August 2005 and from 22 September 2005 to 15 October 2006, shall be credited toward the pronounced sentence of imprisonment.

The additional reduction of the sentence pursuant to the Decision of the President of the Federation of BiH No. 01-011-765/98 of 24 November 1998 whereby the sentence of imprisonment for a term of 19 years was reduced for four months, shall also be credited toward the pronounced sentence of imprisonment.

Pursuant to Article 56 of CC BiH, the time the Accused will have spent in pre-trial custody pursuant to the Decision of this Court from 16 October 2006 to the committal for sentence shall also be credited toward the pronounced sentence of imprisonment.

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC BiH), the Accused is hereby relieved of the duty to reimburse the costs of criminal proceedings which shall be paid by the Court of BiH.

Pursuant to Article 198 (2) of CPC BiH, injured party Sretko Masal is hereby instructed to take civil action with claims under property law.

Reasoning

The Indictment of the Prosecutor's Office of BiH No. KT-RZ 88/06 of 10 October 2006, which was confirmed on 12 October 2006, charged the Accused with the criminal offense of War Crimes against Civilians in violation of Article 173 (1) a) and c) in conjunction with Article 180 (1) of CC BiH.

The Accused pleaded not guilty of the said criminal offense at the hearing before the Preliminary Hearing Judge.

On 13 February 2007, pursuant to the Decision of the Court of BiH number X-KR/06/197, the Accused was removed from the courtroom for improper behavior, after which it was decided that the main hearing should continue that day without the presence of the Accused, since during the main hearing the Accused, Niset Ramić, abused the opportunity he was given to state his opinion regarding the issue of his stay in the Sarajevo Penal and Correctional Facility, when he continued to speak about a possibility of his transfer even though this issue had been decided upon earlier in the course of the proceedings. Given that the accused Ramić, after having been warned by the Presiding Judge, continued to speak even though the Presiding Judge assessed that it did not serve to clarify the matter, it unnecessarily delayed the

continuation of the hearing and disturbed the order in the courtroom, the decision on his removal was rendered pursuant to Article 242 (2) of CPC BiH. All other hearings were held in the presence of the Accused.

The Prosecutor's Office of BiH presented evidence through witness examination and the presentation of material evidence. During the main trial, the following witnesses for the Prosecutor's Office were heard: Zoran Damjanović, Sreto Masal, Suad Kapo, Smajo Kapo, Abid Kapo, Kemal Karahodžić and Muharem Karahodžić. At the main trial held on 4 April 2007, the Court also heard Dr Hamza Žujo in his capacity as an expert witness – specialist in forensic medicine – about the injuries inflicted on Zoran Damjanović, and Dr Abdulah Kućukalić, in his capacity as an expert witness – specialist in neuropsychiatry – about the state of the Accused's mental competence at the time of the perpetration of the criminal offense.

The Prosecutor's Office of BiH presented the following material evidence:

Record on Examination of Witness Zoran Damjanović No. KT-RZ-88/06 of 11 May 2006; Record on Examination of Witness Sretko Masal No. KT-RZ-88/06 of 25 May 2006; Record on Examination of Witness Abid Kapo No. KT-RZ-88/06 of 23 May 2006; Record on Examination of Witness Smajo Kapo No. KT-RZ-88/06 of 11 May 2006; Record on Examination of Witness Suad Kapo No. KT-RZ-88/06 of 19 January 2006; Record on Examination of Witness Kemal Karahodžić No. KT-RZ-88/06 of 12 June 2006; Record on Examination of Witness Muharem Karahodžić No. KT-RZ-88/06 of 12 June 2006; Finding of expert witness Dr Hamza Žujo of 3 July 2006; Finding of expert witness Dr Abdulah Kućukalić of 5 October 2006; Record on wounding of Zoran Damjanović, issued by the "Health Center and Polyclinic" Public Institution Visoko on 21 April 2006; Case history with supporting medical documents of Zoran Damjanović No. 801; Finding-Report of Dr M. Zotović, Banja Luka; Finding, evaluation and opinion of the First-Instance Military Medical Board of 29 November 1993 related to Zoran Damjanović; Decision on the Combatants and Victims of War of the Municipality of Banja Luka of 1 November 1994; Decision of the Presidency of the Republic of Bosnia and Herzegovina on declaration of the imminent threat of war (Official Gazette of R BiH No. 1/92 of 9 April 1992); Decree of the Presidency of the Republic of Bosnia and Herzegovina on abolition of the existing Staff of the Territorial Defense of the Republic of Bosnia and Herzegovina (Official Gazette of R BiH No. 1/92 of 9 April 1992); Decision of the Assembly of the Serb People in Bosnia and Herzegovina on the establishment of the Army of the Serb People of Bosnia and Herzegovina (Official Gazette of the Serb People in

6/92 of 12-17 May 1992); Decision of the Presidency of the Republic of Bosnia and Herzegovina on declaration of the state of war (Official Gazette of RBiH No. 7/92 of 20 June 1992); Order of the Municipal Staff of TO Visoko, strictly confidential, No. 01/57-1 of 6 April 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 05/67-1 of 10 April 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 02/1-3 of 22 April 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 02/1-3 of 28 April 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 8/92 of 11 May 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 01/16-1 of 24 May 1992; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 05/57-8 of 26 May 1992; Preparatory Order of the Municipal Staff of TO Visoko, strictly confidential, of 28 May 1992; Report on the operation executed in the region of Vlajčići, Vlajčića kosa, Livade, of the Command of the 2nd Detachment of the Visoko Command, dated 12 June 1992 at 10.00 hrs; Order of the Municipal Staff of TO Visoko, strictly confidential, No. 01/26-2 of 13 June 1992; Order for securing facilities, control of the territory, protection of the population and defense of the Ilijaš TO Staff, strictly confidential, No. 1/16-1 of 22 April 1992; Combat Report Op. No. 3 of the Ilijaš TO Staff, No. 01/62 of 10 June 1992; Combat Report Op. No. 9 of the Ilijaš TO Staff, No. 01/73-4 of 19 June 1992; Combat Report Op. No. 8 of the Ilijaš TO Staff, No. 01/73-3 of 17 June 1992; Combat Report Op. No. 7 of the Ilijaš TO Staff, No. 01/73-2 of 15/16 June 1992; Combat Report Op. No. 6 of the Ilijaš TO Staff, No. 73-1 of 19 June 1992; Combat Report Op. No. 5 of the Ilijaš TO Staff, No. 01/62-3 of 12/13 June 1992; Combat Report Op. No. 4 of the Ilijaš TO Staff, No. 01/62-2 of 10/11 June 1992; Operations Report of the SRC Command, strictly confidential, No. 01/74-20 of 27 May 1992; Report of the SRC Command, strictly confidential, No. 10/74-40 of 6 June 1992; Report of the Command of the 1st Serb Ilijaš Brigade, strictly confidential, No. 02/3-2 dated 3 June 1992; Instructions for further operations issued by the SRC Command of 7 June 1992; Report of the SRC Command, strictly confidential, No. 10/74-55 of 12 June 1992; Report of the SRC Command, strictly confidential, No. 10/74-63 of 13 June 1992; Report of the SRC Command, strictly confidential, No. 10/74-66 of 14 June 1992; Report of the SRC Command, strictly confidential, No. 10/74-70 of 15 June 1992; Report of the SRC Command, strictly confidential, No. 10/74-92 of 20 June 1992; Report on organization of defense of the 1st Ilijaš Brigade Command, confidential, No. 02/5-2 of 25 June 1992; Material for the SRC monograph, Military Postcode 7491 Ilijaš, strictly confidential, 04/960-2 of 8 May 1994; Official Letter of the Security Organ with the Municipal Defense Staff Visoko No. 03/851-1 of 7 December 1992; Official Letter of the Municipal Defense Secretariat Visoko No. 2/2-841-186 of 7 December 1992;

Record on exhumation issued by the Srpsko Sarajevo District Court, No. KRI 15/99 of 3 June 1999; Admission Sheet, No. 42 of 20 June 1992, for Dušanka Ristić, Gradska Groblja Visoko; Autopsy Record – outward examination of Dušanka Ristić, No. 40-SP/92, Gradska Groblja Visoko; Admission Sheet, No. 40 of 20 June 1992, for Željko Ristić, Gradska Groblja Visoko; Autopsy Record – outward examination of Željko Ristić, No. 38-SP/92, Gradska Groblja Visoko; Admission Sheet, No. 43 of 20 June 1992, for Danica Damjanović, Gradska Groblja Visoko; Autopsy Record – outward examination of Danica Damjanović, No. 41-SP/92, Gradska Groblja Visoko; Record on receiving the objects from the corpse of Slavko Damjanović, Gradska Groblja Visoko – Mortuary; Certificate of Death related to Danica Damjanović of 18 June 1999; Admission Sheet, No. 564 of 27 June 1992, for Slavko Damjanović, Gradska Groblja Visoko; Permit to bury deceased Slavko Damjanović, dated 20 June 1992; Certificate of transportation of body No. 20/28 for Slavko Damjanović, RMC "Džemal Bijedić" Zenica, Regional Hospital, Patient Admission Service; Certificate of death for Slavko Damjanović dated 18 June 1999; Report from criminal records referring to Niset Ramić, issued by the Police Station in Visoko, No. 08-03/5-3-04-7-3158/2006 dated 21 April 2006; Decision of the Zenica Cantonal Court No. K-5/96 of 15 July 1999.

The Defense presented evidence by examining the following witnesses: Mevludin Topalović, Nezir Mušinbegović, Zahid Kečić, Hasan Hadžiosmanović, Zdenko Filipović, Midhat Zubača, Mustafa Hasečić, Kadir Jusić, Hamdija Kulović and Reuf Jamaković.

The Panel also reviewed ex officio the Verdict of the Cantonal Court in Zenica No. Kv-52/05 of 20 July 2005, the Verdict of the Cantonal Court in Zenica No. K-70/97 of 16 January 2003, and the Verdict of the High Court in Zenica No. K-5/96 of 24 July 1996 as evidence.

The Prosecutor has stated in her closing argument that it follows beyond doubt from the evidence presented by the Prosecutor's Office that the criminal offense the Accused was charged with by the Indictment of the Prosecutor's Office of BiH was committed during the armed conflict in Bosnia and Herzegovina on the date when the state of war was declared in Bosnia and Herzegovina. Furthermore, the Prosecutor's Office points out that the captured persons were unarmed, that the captured persons, Željko Ristić, Dušanka Ristić, Slavko Damjanović, Danica Damjanović, Zoran Damjanović and Sretko Masal, were not members of any military formation nor were they actively involved in the hostilities at the relevant time, which is also supported by the respective testimonies of Zoran Damjanović and Sretko

Therefore, the captured persons had the status of civilians and enjoyed protection under the rules of international humanitarian law. The Prosecutor's Office argues that it has been established with certainty that the Accused, at the time of the perpetration of the offense, was a member of the Sabotage Company of the 2nd Detachment of the Municipal TO Staff in Visoko, which has been corroborated by the material evidence of the Prosecutor's Office. The Prosecutor's Office notes that the testimonies of the Prosecution witnesses during the main trial, which included those of survivor Zoran Damjanović and survivor Sretko Masal, witnesses Suad Kapo, Abid Kapo, Smajo Kapo, Kemal Karahodžić and Muharem Karahodžić, and the objective evidence of the Prosecutor's Office, entirely confirmed and proved the Indictment as stated in its operative part. In their testimonies at the main trial injured parties Zoran Damjanović and Sretko Masal describe the events of 20 June 1992 and state that they were captured by the TO Visoko, that the Accused ordered the civilians to move toward the Youth Center in Hlapčevići and then to turn toward the "Kapo houses" where they were lined up against a wall of Suad Kapo's house, that the Accused then singled out Željko Ristić from the group and fired a burst at him after having asked him about the hidden weapons and minefields, and that he then directed his fire toward the others. After the first burst, the Accused fired another burst at the civilians who were lying on the ground. Witnesses Kemal Karahodžić and Muharem Karahodžić describe the wound on Sretko Masal's arm and his mental state, while witnesses Abid and Suad Kapo confirm the presence of Sretko Masal and the sequence of events. With regard to the arguments of the Defense, the Prosecutor's Office considers that all arguments of the Defense for the accused Niset Ramić are unfounded and calculated to avoid or reduce his criminal responsibility and that the Court should dismiss them entirely as such.

The Defense Counsel for the Accused has stated in his closing argument that, first, it has been erroneously stated that the Accused wounded Sretko Masal, given that it stems from the presented evidence that Masal was hiding in the family house. Furthermore, the Defense has raised the issue of mental competence of the Accused given that, prior to the commission of the offense he is charged with, he was involved in combat in Croatia where he was captured and traumatized. The foregoing is also supported by the finding and the opinion of expert witness Abdulah Kučukalić, wherein he stated that the mental competence of the Accused was diminished and that the Accused acts on impulse. The Defense believes that it is particularly important that the Accused was showing remorse all the time for what had been done and that he therefore admitted the perpetration of this offense to the Prosecution authorities. The Defense thinks that the Prosecution has not proved that the

Accused acted with premeditation, nor has it proved that the captured persons were tied or that the Accused fired two ammunition clips. The Defense argues that weapons and uniforms were found during the search of the houses of the injured parties, which suggests that the Damjanovićs and the Ristićs were members of the SDS and involved in military activities. The Accused obeyed his orders and had no intention of killing these persons. According to the Defense, the Accused first fired at Ristić since he tried to escape while Ramić was speaking on a Motorola, and the others tried the same as well, so he opened fire with the aim of preventing them from doing so.

After the presentation of the evidence, the Panel evaluated the evidence individually and in combination and rendered the decision as quoted in the operative part for the following reasons and on the basis of the following evidence:

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

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

- a) attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;*
- c) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*

shall be punished by imprisonment for a term not less than 10 years or long-term imprisonment."

The Accused is charged with this criminal offense in relation to the listed sub-categories of the criminal offense referred to in the aforementioned Article. The following general elements of the criminal offense of War Crimes against Civilians follow from the legal definition thereof:

- *The act of the perpetrator must be committed in violation of international law;*
- *The violation must take place in time of war, armed conflict or occupation;*
- *The act of the perpetrator must be related to war, armed conflict or occupation;*
- *The perpetrator must order or perpetrate the act.*

A. The act of the perpetrator must be committed in violation of international law

The Indictment charges the accused Ramić with War Crimes against Civilians in violation of Article 173 (1) of CC BiH, namely, that on the day concerned he acted contrary to Article 3 (1) a) and Article 31 of the Geneva Convention Relative to the Protection of Civilian Persons from 1949 (hereinafter: the Geneva Convention).

Article 3 (1) a) of the Geneva Convention reads:

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

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

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

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

¹ Asterisk after the word "wounds" as rendered in the original text; translator's note

Article 31 of the Geneva Convention reads:

"No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

Article 2 (b) of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts provides:

" 'Rules of international law applicable in armed conflict' means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law;"

Therefore, it is necessary to first establish the application of international rules in the period concerned. In the ICTY Prosecutor v. Tadić case, No. IT-94-1 (Appeals Chamber), it is being said: "International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities..."

When interpreting this provision, it is clear that it is not necessary that the perpetrator be aware of or intend to violate international norms, but rather it is sufficient that the commission itself is contrary to the rules of international law. In order to establish violation of the rules of international law, it is necessary to establish against whom the commission was directed, that is, whether the act was directed against the special category of population protected by Article 3 (1) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which is applied in Bosnia and Herzegovina on the basis of Annex 6 to the Dayton Peace Agreement for BiH and which, according to the ICTY jurisprudence, is regarded as part of customary international law (Kunarac, Kovač and Vuković – Appeals Chamber, Judgment of 12 June 2006, para. 68).

According to the definition of the term protected categories contained in Article 3 (1) of the Geneva Convention, civilians are persons not taking part in hostilities, including members of armed forces who have laid down their arms and/or those placed hors de combat (ICTY, Blagojević and Jokić – Trial Chamber, 17 January 2005, para. 544).

Witness Zoran Damjanović, a victim and an injured party in the proceedings, states in his testimony at the main trial that on that morning, 20 June 1992,

was getting ready for work and that his mother Danica and father Slavko were with him in the house. The witness states that some time around 06.00 hrs someone started banging the house door. He stood up and opened the door and saw a group of soldiers in camouflage uniforms with arms in their hands. The soldiers requested that everyone come out and asked them for weapons. The witness states that they answered that they did not have any. Then the soldiers took them out of the house and tied their hands with a weapon cleaning rope.

Witness Sretko Masal, also a victim and an injured party in the proceedings, states that in the period concerned he was not an active member of an armed force, but that in one period he was in the Territorial Defense as part of the neighborhood watch in the village. Only the Muslim inhabitants of the village of Hlapčevići were with him in the unit. As he states, he was with them for two or three shifts and then an order came that Serbs could no longer be a part of that unit. The witness states that in the early morning of that day, 20 June 1992, he was in his house sleeping. The door bell woke him up. He was alone in the house at that time. He opened the door and saw soldiers in camouflage uniforms in front of the house. There were some 10 soldiers in front of his house and they immediately ordered him to lie face down on the ground. They asked for money and gold. He told them where that was, but he does not know who took it. The soldiers entered the house, some tied him up and some passed by into the house. He did not know them. They tied his hands to his back with rope. After that he was expelled from the house.

The other witnesses for the Prosecution, Suad Kapo, Abid Kapo, Smajo Kapo and Kemal Karahodžić, also state that a group of soldiers led by the accused Ramić, took Slavko, Zoran and Danica Damjanović, Dušanka and Željko Ristić, and Sretko Masal out of their houses. All of them were the witnesses' long-time neighbors. Not a single witness who testified about these circumstances stated that these persons were in uniform and/or armed when they were taken out of the houses on the relevant day.

Therefore, considering the definition of the term "civilian", explicitly stating that civilians are all persons not taking part in hostilities (the persons captured and executed in this specific case did not take part in the hostilities that day), it is clear that these persons were civilians. It is obvious that these six persons were taken out of their houses in early morning hours when some of them were asleep. Therefore, the option of participation in a combat situation is ruled out. None of the aforementioned persons had weapons on that occasion. They were not in a position to fight and the act that the Accused

is charged with was directed against civilians of an ethnicity different from the ethnicity of the military force that controlled the territory where the civilians lived. This category of civilians is especially protected by international law. Injuries to life and bodily integrity, particularly all types of murders, mutilation, cruelty and torture, inflicted upon this category are especially forbidden. Therefore, it is obvious that the criminal action referred to in the Indictment, which the Accused has been found to have committed, was contrary to the rules of international law, namely, Article 3 (1) a) of the Geneva Convention.

B. The violation must take place in time of war, armed conflict or occupation.

First, it is clear from the material evidence presented by the Prosecution that there was an armed conflict between the TO RBiH and the Army of the Serb Republic of BiH in the period concerned, and the conflict inevitably took part in Visoko Municipality as well.

At a session held on 8 April 1992, the Presidency of RBiH rendered the Decision on the declaration of the imminent threat of war. The Decision came into effect at the moment of rendering -- "immediately" and was published in the Official Gazette of RBiH, No. 1/92, dated 9 April 1992.

On the basis of Count III of the Decision on the declaration of the imminent threat of war, at its session held on 8 April 1992, the Presidency of RBiH passed the Decree on abolition of the existing Republic Staff of the Territorial Defense and the establishment of the Staff of the Territorial Defense of the Republic of Bosnia and Herzegovina, which came into effect at the moment of rendering and was published in the Official Gazette of RBiH, No. 1/92, dated 9 April 1992.

Also, pursuant to Article 70 (2) of the Constitution of the Serb Republic of BiH and Amendment II to the Constitution of the Serb Republic of BiH, at a session held on 12 May 1992 the Assembly of the Serb People in BiH passed the Decision on the establishment of the Army of the Serb Republic of BiH, which came into effect on the day of rendering and was published in the Official Gazette of the Serb People in BiH, No. 6/92, dated 12-17 May 1992.

On 20 June 1992, the Presidency of RBiH passed the Decision on the declaration of the state of war, which was published in the Official Gazette of RBiH, No. 7/92, dated 20 June 1992, and which came into effect on the publishing.

Therefore, it follows beyond any doubt from this material evidence of the Prosecutor's Office of BiH that in the period following the declaration of the imminent threat of war and on the relevant day, that is, 20 June 1992, in the territory of Visoko Municipality and the neighboring municipalities there was an armed conflict between units of the Territorial Defense of R BiH and the Army of the Serb Republic.

The Order of the TO Staff of Visoko Municipality number 02/1-3 dated 22 April 1992, dispatched to all the Regional Staffs of TO Visoko, gives a more clear picture of the conflict, as it states, inter alia, the following:

"In the territory of Visoko Municipality the enemy has been building up troops and materiel in the region of: the village of Ljubinići – the village of Čekrčići, the village of Grad in the region of the village of Krčevine, the village of Dolipolje, Čelin (trig. point 556) and in the region of the village of D. Zimča, the village of Pučište. The enemy's immediate objective is to take control of the territory of Visoko Municipality on the right banks of the Fojnica River and the Bosna River in cooperation with a part of the local population, while the next task is to occupy the complete territory and take control of the town of Visoko. The enemy has a considerable manpower for achieving the set objective and counts on surprise factor, the poor preparedness and armament as well as the insufficient level of organization of the defense forces."

The report of the Command of the 1st Serb Ilijaš Brigade, strictly confidential, No. 02/3-2, dated 3 June 1992, entitled "Information about deployment of enemy and own forces" states, inter alia: "In the defense zone of the 1st Serb Brigade of Ilijaš we expect an attack of a 9,000-strong enemy force, that is: 3,500 troops from Visoko, 1,000 from Breza, 500 from Župča, 200 from Misoča, 100 from Luka, 1,000 from Kakanj, 1,000 troops that arrived from Zenica to the region of Breza, 1,000 from Kiseljak."

The existence of an armed conflict also follows from the following evidence:

The Order of the Municipal Staff of TO Visoko, strictly confidential, No. 01/57-1-10, dated 6 April 1992, which contains a clear order of Commander Halim Avdagić to carry out mobilization and form a counter-sabotage platoon Visoko while MUP SJB Visoko shall provide arms.

In their testimonies the witnesses state the following in that respect:

Defense Witness Kadir Jusić was the commander of the Municipal Staff of TO Visoko at the time concerned. He states that on 3 and 4 May 1992 Visoko was shelled and the town was blocked. The Municipal Staff of TO Visoko passed a decision on disarming the inhabitants who possessed "illegal weapons". The objective was to unblock the town, and units of TO Visoko and a battalion from Zenica took part in that operation.

One of the Defense witnesses, Zahid Kečić, also states that TO Visoko Commander Kadir Jusić ordered that leaflets be distributed to TO members containing obligations under Geneva Conventions during armed conflicts.

Defense witness Midhat Zubača, who was employed at CJB Sarajevo, Visoko Detachment, in 1992 as inspector in the Crime Investigation Sector, states that at that time the army was not yet formed, but that there were the police force and the Territorial Defense of Visoko Municipality. Communication between Visoko and the neighboring municipalities was severed at that time. Certain parts of Visoko Municipality were also blocked by some paramilitary units at that time. Barricades were set up in some areas of Moštre, Kaletići and others. The police could not move around the whole territory of Visoko Municipality. There were some Serb watches with barricades, and the police could not go through the barricades. The barricades were manned by persons in uniforms and civilian clothes alike.

Also, all the witnesses for the Prosecution state that the security situation was not satisfactory at the beginning of spring in Visoko and the neighboring areas. The inhabitants organized themselves in village neighborhood watches at nighttime. Everything stated above indicates that, as argued in the Indictment, at the relevant time there was an armed conflict between the respective forces of the Territorial Defense of the Republic of BiH and the Army of the Serb Republic in the territory of Visoko Municipality, and thus another element of the criminal offense, relevant to the existence of an armed conflict, has been established.

Likewise, Article 173 of CC BiH provides that the criminal offense has to be in connection with violations of the rules of international law during, inter alia, an armed conflict. Since the Panel has found that the actions of the Accused satisfy the elements of a violation of the rules of international law, to wit, Article 3 (1) a) of the Geneva Convention, which provides that the Article is applicable to an armed conflict not of an international character, in that regard the Panel notes that many courts have concluded that this applies not only to internal conflicts, but to conflicts of an international character.

character as well'. However, the Panel did not deal with establishing the character of the armed conflict which has been found in this case to have taken place in BiH at the time relevant to the Indictment, because the provision of Article 173 of CC BiH does not require that the character of the armed conflict, internal or international, be determined.

C. The act of the perpetrator must be related to war, armed conflict or occupation

It follows from the statements of Defense witnesses Hamdija Kulenović, Kadir Jusić and Mevludin Topalović that the TO Staff Visoko ordered the TO units to confiscate "illegal weapons" from the population in the settlements of Zimča, Topuzovo polje, Radobolja, Moštre and other neighboring places with the objective of unblocking the Visoko-Zenica road, as the road toward Zenica was blocked and the illegal weapons had to be confiscated from the inhabitants of the villages in the vicinity of Visoko. Witness Mevludin Topalović states that it was forbidden to kill the Serb inhabitants who would be encountered, but that they were to be taken to the Youth Center in Hlapčevići. Three groups took part in the operation, one of which was commanded by Ramić, according to witness Topalović.

The accused Ramić was a member of the Sabotage Company within the 2nd Detachment of the Municipal Staff of Territorial Defense in Visoko. This fact indeed follows from the Official Letter of the Security Organ with the Municipal Defense Staff Visoko No. 03/851-1 of 7 December 1992 to the High Court in Zenica reading that, in the period from 16 June 1992 to 29 June 1992, Niset Ramić was a member of the 2nd Detachment of the Territorial Defense in Visoko as a volunteer.

Therefore, at the relevant time the Accused was a member of the military machinery of the then TO and was aware of the order of the TO Staff that he implemented on the ground. His actions started during an armed conflict and the actions he is charged with were preceded by the execution of the order, which follows from the statements of all the witnesses for the Prosecution, who stated that the accused Ramić came to the village of Hlapčevići with his group with one objective only -- to confiscate weapons, which he explicitly requested from witnesses Zoran Damjanović and Sretko Masal, as they described in their respective statements.

¹ ICTY – *Delalić et al.*, IT-96-21-A (Appeals Chamber), 20 February 2001; ICTY – *Hadzihasanović et al.*, IT-01-47-AR72, Decision of 16 July 2003.

The aforementioned Mevludin Topalović also testified at the main trial in this case as a witness for the Defense. He confirmed that at the relevant time he had been a member of the Territorial Defense and that on the relevant date he had been on assignment with Ramić on the order of the TO Staff. It stems from the statement of witness Topalović that, on the relevant day, the Accused commanded a group of about 10 soldiers – company members, including witness Topalović. The witness states that they all had military uniforms with the "TO" insignia. Prosecution witness Abid Kapo also states that the accused Ramić was armed with an automatic gun when he was at the relevant location.

Also, witnesses Zoran Damjanović and Abid Kapo state that the operation conducted on the relevant day was commanded by the person nicknamed "Minđuša", and witness Suad Kapo states that the accused Ramić was indeed nicknamed "Minđuša".

Therefore, it follows from the aforementioned evidence that in the relevant period in the territory of Visoko Municipality an armed conflict was in progress and that the state of war was declared. The Accused was beyond doubt a member of the military force of the then Republic of BiH, that is, the 2nd Detachment of TO Visoko, given that he was involved in carrying out the assignment and that he commanded a group of soldiers tasked with collection of illegal weapons from the population.

D. The perpetrator must order or perpetrate the act

The witnesses for the Prosecution described the act the Accused is charged with and the whole event in the following way:

Prosecution witness Zoran Damjanović states during his testimony given at the main trial that he has known the Accused from 1992 and that he did not know him prior to it. Until 1992, the witness lived in the village of Hlapčevići, Visoko Municipality. That morning, on 20 June 1992, his mother Danica and father Slavko were with him in the house. The witness states that some time around 06.00 hrs someone started banging the house door and that, when he opened the door, he saw a group of armed soldiers in camouflage uniforms. The soldiers ordered them to get out and asked them for weapons. They took him, his mother and his father out of the house and tied their hands with a weapon cleaning rope. After that they took them to the neighboring house belonging to their neighbors Sretko Masal and Neđo Ristić. The witness was taken together with his mother and father to the house of Neđo Ristić where Željko Ristić and his mother Dušanka were taken out and o

house of Sretko Masal only he was taken.^{*} After that they directed them toward the center of the village, that is, toward the Youth Center in the village. They walked in single file while soldiers walked on the side, some 15 in total. After that they took a turn toward the houses of the Kapo family. That order was issued by Ramić. They were ordered to stand against the wall of Suad Kapo's house. The witness was the last one in the line. Next to him was his mother, then Sretko and Dušanka, his father and Željko. The witness saw Željko Ristić being taken out by the person that the other soldiers called by the nickname Minđuša. He told Željko to step out and tell him where weapons were and where minefields in the direction of the neighboring villages were. Željko moved toward him, answering that he did not know anything about it. At that moment Minđuša shot a burst at him and killed him instantly. Željko fell down and Minđuša continued firing at the others. The witness states that he was hit on that occasion and that he fell forward and his mother fell next to him and quite soon she stopped showing any sign of life. His father asked for help: he heard his father's cries. He tried to move, he had injuries to his legs and neck. The witness states that after the first burst he heard some of the soldiers present saying that he had only wounded them, after which he heard a clip being replaced and another round was fired at those lying on the ground. The witness was hit in the right upper leg by the first burst and in his neck by the second burst. The witness confirms that the same person who fired the first burst at Željko shot at the others too. After that he heard the soldiers moving away in the direction of the village of Kalotići. The witness crawled behind the wall and from his previous position he could see the bodies of his mother and father and he also saw Dušanka. Željko's body was in front of them. He saw Sretko Masal when he stood up after the soldiers had gone and set off toward the field some 100 meters ahead. Osman Kapo, his son Abid and Suad Kapo showed up there immediately. They brought blankets and water, and some vehicle arrived and transported the witness and his father to the Health Center in Visoko. When the witness and his father arrived at the Health Center in Visoko their wounds were dressed and they were transported to a hospital in Zenica. The witness states that he stayed in the hospital in Zenica for six days, whereas his father had succumbed to his injuries on the way to the hospital. The witness was subsequently transferred to the Penal and Correctional Facility in Zenica, where he stayed until 31 October 1992. Witness Damjanović identified the accused Ramić in the courtroom as the person who had shot at them.

Expert witness Dr Hamza Žujo, specialist in forensic medicine, made a finding and opinion about the kind, gravity and manner of inflicting a wound to Zoran

^{*} The two consecutive sentences in the original text unclear; translator's note

Damjanović, which he clarified at the main trial. The expert witness stated that, according to the record of Zenica hospital, Zoran Damjanović was indeed treated from 20 June to 26 June 1992, while the case history reads that he was hit in his neck and hip. The case history records an entry and exit wound to the neck, immobilization of the left leg and minor injuries in the upper leg and the lower leg. The history reads that these are, respectively, the perforating wound to the neck, penetrating but not perforating wound to the leg and multiple bruises. Taking into consideration the medical findings and the case history the expert witness states that the injuries were inflicted by firearm projectiles and that they fall in the category of grave bodily injuries.

The Panel also heard Prosecution witness Sretko Masal, who stated in his testimony at the main trial that in spring 1992 he had lived in Hlapčevići. The witness states that in the morning of that day, 20 June 1992, he was in his house sleeping and that soldiers who came to his door woke him up. There were some 10 soldiers in front of his house. They entered the house and tied his hands to his back with rope, after which he was expelled from the house. While getting out he saw Slavko Damjanović. They brought him in front of his house. There they also brought Slavko's wife Danica and son Zoran; the three of them had been in the house and they all had their hands tied at their backs. He also saw Dušanka Ristić and Željko Ristić, also with their hands tied behind their backs. They ordered them to start moving with them. While they walked, they pushed them with guns and hit them in the back. Moving toward the center they reached the hamlet of Grlica, the houses of the Kapo neighbors. There they found neighbor Suad Kapo, who was standing in front of his house, they halted them there and ordered them to stand against the wall. Then his cousin Željko Ristić was singled out and the person that singled him out was the person that subsequently fired at them. The person wore a military camouflage uniform and was armed with an automatic gun. He asked Željko about a minefield. Željko said that he did not know anything about any minefield and then the aforementioned person simply shot him in his chest. The witness adds that after he had shot at Željko, he turned around and continued shooting at those who were standing against the wall. After the burst the person cursed "their Chetnik mothers." The witness states that he fell on his back. Some of the soldiers then said: "There, that one there is turning around!" Then the person fired another shot at them, after which they went away. The witness states that he stood up and ran away toward the forest. However, he heard his neighbor Nezir Mušibegović calling him out. Then Muharem Karahodža and Kemo Karahodža also came, dressed his wound and untied him. The witness states that at the time he was wounded he did not know the identity of the person shooting at them. A month later he lea

interview that Zoran Damjanović gave to a Belgrade newspaper that it had been the accused Ramić. The witness states that the Accused also spoke to newspapers saying that for a couple of "thousands" he killed a couple of Serbs. During his testimony, the witness identified Ramić in the courtroom as the person who had shot at them on the relevant day.

Witness Suad Kapo, who also testified at the main trial as a witness for the Prosecution, said that he was born in Visoko and that he lived in the village of Hlapčevići at the beginning of the war. The operation of "mopping-up" the terrain started on the relevant morning. At around 06.00 or 06.30 hrs that morning his wife woke him up saying that the Serb population was being taken away. He saw Ramić in front of the house bringing a group of Serb civilians in front of his house. He was bringing two women and four men and the witness knew them all because they were his neighbors. Those were Danica Damjanović and Dušanka Ristić, Slavko Damjanović, Sretko Masal, Željko Ristić and Zoran Damjanović. They went in a single file and Ramić walked next to them, he was in a camouflage uniform and had a helmet on his head. Another two TO members were with him. He knows the accused Ramić now, but in that period he did not know him by name. He knew him by his nickname Minduša. After Ramić brought the group into the courtyard, he lined the people up against the witness' house. Danica Damjanović, Dušanka Ristić, Slavko Damjanović, Sreto Masal, Željko Ristić and Zoran Damjanović stood from left to right. Their hands were tied with rope. Ramić then asked Željko Ristić: "Where are the weapons, where are the mortars?" Željko stepped out and said: "Folks, I have nothing, kill me!" The witness states that he saw from the distance of 5-6 meters that at that moment Ramić opened fire at him and he fell down. After that Ramić turned around and started shooting at the others and he was the only one shooting. Then the two soldiers approached, took some trunk and left. He saw that Slavko Damjanović, Zoran Damjanović and Sretko Masal were alive. An ambulance came in half an hour and the witness states that he helped dress Zoran's wound. They then bundled them into the ambulance, while a truck belonging to Gradska Groblja Company came to collect the remaining bodies.

Witness Abid Kapo testified about the same event as a witness for the Prosecution. He lived in the village of Hlapčevići when the armed conflict started in Bosnia and Herzegovina. He says that the conflict started on 3 May 1992. The witness states that one morning in spring 1992, at around 06.00-06.30 hrs, he went back home after having taken his wife to the market. Returning he saw his neighbors Danica Damjanović, Dušanka Ristić, Slavko Damjanović, Zoran Damjanović and Sreto Masal being taken by armed

soldiers. Their hands were tied behind their backs. There were four soldiers and the only soldier he knew was Muhamed Uzunalić. He was watching from the distance of 7-8 meters in a straight line while standing on top of the stable close to his house. He saw the soldiers lining up the persons they had taken against the house wall. Ramić issued orders. He first told Ristić to step out and to return weapons, otherwise he would kill him. Ristić laughed at this and said: "I do not have weapons, I have never had one; if you wish to kill me, go ahead." Ramić then fired a burst at Ristić from a 3-meter distance. Ristić's mother screamed, after which Ramić "just directed a burst at the other civilians", according to the witness. The others also fell to the ground next to the wall of the house where they had been standing. When the soldiers started moving, Danica showed signs of life. Witness states that Topalović fired a bullet at her. The witness states that he returned to his house and when he got out of the house shortly afterward, Ramić told his father: "Old man, bury this shit deep so that it doesn't stink!" When he got out of the house again he saw that two bodies were missing from the execution site, those of Zoran Damjanović and Sretko Masal. He noticed that Zoran was hiding behind one house. An ambulance came to take Zoran and his father and a TO truck came after that. The witness states that he helped load the bodies onto the truck and he remembers that those were the bodies of Danica Damjanović, Dušanka Ristić and Željko Ristić.

Prosecution witness Smajo Kapo states that one morning his cousin Džemo Kapo came to his house, woke him up and told him that Žika – Željko Ristić – had been killed as well as the other Serb neighbors. The witness then got up and went to the site. There he found the bodies of the dead. He states that Žika's body was riddled with bullet holes; he had wounds all over his body. His father and brothers told him who had shot them. He did not know the accused Ramić until the relevant day and he got to know him after the incident, he appeared to have been under the influence of drugs and alcohol.

Prosecution witness Kemal Karahodžić states that on the morning of 20 June 1992 he was watching from his courtyard a procession of his six Orthodox Christian neighbors, Sretko Masal, Zoran Damjanović, Dana Damjanović, Slavko Damjanović, Dušanka Ristić and Željko Ristić, led by armed persons. The witness states that he was shocked and he moved behind the garage. After a short while he heard a burst of fire and individual shots after that. He assumed that the persons had been killed. In the afternoon, Sretko Masal came to him and told him what had happened. He had a perforating wound above his right elbow. He dressed his wound and Sreto stayed at his place for five days.

Prosecution witness Muharem Karahodžić also states that in the morning of 20 June 1992 he set off to the guard post in Hlapčevići. While walking, he saw neighbors Sretko Masal, Željko Ristić, Dušanka Ristić, Slavko and Danica Damjanović and Zoran Damjanović. They were tied up and led by soldiers in camouflage uniforms. He then saw them being lined up against a wall and then he saw a burst of shots being fired at them. After that he saw a guy returning and firing another burst at them. He did not know any of the soldiers. Shortly afterward, Sretko Masal came in front of his house asking for help. The witness states that he then took him inside the house and gave him new clothes. He saw that he had a perforating wound in the right arm muscle which he and his father dressed. The witness states that Sretko stayed at their place for four or five days.

With respect to the mental capacity of the Accused, the Panel heard Dr Abdulah Kućukalić at the main trial as an expert witness – neuropsychiatrist. The expert witness explains, based on the findings and opinions of the team of experts he led, that symptoms of post-traumatic stress disorder (PTSD) are strongly manifested by the Accused and his personality disorder is also noted. Based on the interview conducted with the Accused prior to the composition of the finding, the expert witness states that the Accused said that he had consumed alcohol and some medicines during the war in Croatia and Bosnia and Herzegovina. He took them in order to reduce anxiety while preparing for war activities, and it is stated in the finding and opinion of the team of expert witnesses that the Accused himself said that he had consumed alcohol, taken several Akineton pills and smoked a "joint" immediately before going into action. However, in the opinion of the heard expert witness, there are indications that the Accused's mental capacity was diminished at the time of the commission of the criminal offense, but not considerably.

From the testimonies of the aforementioned witnesses and analysis of the material evidence, individually and in combination, there follows the conclusion that in early spring 1992 the relations between the Bosniak and Serb population became strained, specifically, in the territory of Visoko Municipality and the neighboring municipalities. All the witnesses state that the security situation was not satisfactory and some witnesses state that at certain places on the exit road from Visoko toward Sarajevo barricades were erected at the crossing separating respective territories controlled by different military formations. The witnesses also state that all able bodied men in the territory of the Municipality were included in some self-organized units which subsequently became the units of the Army of BiH and whose primary task was

night guards in their respective neighborhoods. Also, it is clear that the threat of war and the state of war were declared in that period and that an armed conflict between the Army of BiH and the Army of Republika Srpska was taking place in the period concerned.

On 20 June 1992, as a member of the military formations of the so-called Territorial Defense (the formation that preceded the Army of BiH), the accused Ramić, in uniform and armed with an automatic weapon, came to the village of Hlapčevići in front of the house of Zoran Damjanović with other members of the same military formation and at around 06.30 hrs took out of their houses Zoran Damjanović, his mother Danica and father Slavko, and tied their hands behind their backs with rope. He then went to the house of Srećko Masal and also took him out somewhat later. He finally went to the house of Željko Ristić from where he took out Željko and his mother Dušanka and also tied their hands with rope. He then took that group of six persons, all of whom were Serbs, toward the neighboring houses and lined them up against the wall of a house. He then ordered Željko Ristić to step out and give him information about weapons and minefields. Since he did not get the answer he wanted, he fired a burst at him and then at all the others, too. After that, he repeated a burst at the bodies that had fallen on the ground and moved away from the site. This resulted in the deaths of Danica Damjanović, Slavko Damjanović, Dušanka Ristić and Željko Ristić. Zoran Damjanović and Srećko Masal have survived.

Witnesses Zoran Damjanović and Srećko Masal describe in accord and in detail the events of that morning, 20 June 1992. The respective testimonies of these witnesses corroborate and supplement each other in the key parts concerning both the events that preceded the commission of the criminal offense and the very commission of the offense by the Accused. Both witnesses state that they did not know the Accused at that time, but witness Damjanović states that the other soldiers addressed the Accused by the nickname "Minduša" and that he gave the orders. Both witnesses identified the Accused in the courtroom as the person who had fired at them.

Other Prosecution witnesses, including Suad Kapo, Abid Kapo and Muharem Karahodžić, also confirmed the statements of witnesses Damjanović and Masal in their critical parts. These witnesses watched from close vicinity everything that was happening. The statements of witnesses Suad and Abid Kapo are also consistent in the part suggesting that they saw the Accused taking and then lining up against the wall of a house the captured civilians Slavko Damjanović, Srećko Masal, Zoran Damjanović, Željko Ristić,

Ristić and Danica Damjanović – and then firing a burst at Željko Ristić first and then at the others who were lined up.

Witness Smajo Kapo confirms that he saw the bodies of the dead in front of the house of Suad Kapo after he had heard the shooting. The statements of witnesses Kemal Karahodžić and Muharem Karahodžić are also entirely in accord in the part stating that they saw four armed soldiers in camouflage uniforms taking the Serb inhabitants with their hands tied behind their backs, namely, Slavko Damjanović, his wife Dana and son Zoran Damjanović, Sreto Masal, Željko Ristić and his mother Dušanka Ristić. Both witnesses consistently state that Sreto Masal, who was wounded in his right arm, came in front of their houses after some time, which is also confirmed by witness Nezir Mušibegović.

The Prosecution tendered material evidence – certificates of death, autopsy reports – to prove the deaths of Željko Ristić, Dušanka Ristić and Danica Damjanović. It follows from this evidence that these persons died a violent death (because it was caused by the use of firearm, that is, internal bleeding or bleeding). The Prosecution tendered the Corpse Admission Sheet issued by JKP "Gradska Groblja", in order to prove the death of Slavko Damjanović.

Witness Zoran Damjanović testified in person about his injuries. His evidence was corroborated with the findings and opinion of expert in forensic medicine, Dr Hamza Žujo.

Witness Sretko Masal testified in person about his being wounded, and his evidence was corroborated by the testimonies of Kemal and Muharem Karahodžić, who stated that on that day, in the afternoon hours, Masal had come to their house with an entry-and-exit wound in the muscle of his right arm above the elbow.

Furthermore, pursuant to Article 173 (1) c) of CC BiH, in addition to the obligatory existence of the general elements elaborated on above, this criminal offense is specifically committed by "killings (...) and infliction (...) and violation of bodily integrity (...)".

The relevant act of commission by the Accused resulted in the death of four persons, that is, Slavko Damjanović, Željko Ristić, Dušanka Ristić and Danica Damjanović, and in violation of bodily integrity of Sretko Masal and Zoran Damjanović.

Therefore, on the basis of the aforementioned witnesses' statements, which corroborate and supplement one another, the Panel has no doubt that the event took place almost exactly as described in the Indictment.

The identity of the Accused has been established beyond doubt. The Accused verbally apologized for his actions to one of the injured parties, Zoran Danjanović, during the trial. The Accused's culpability is confirmed by the fact that the witnesses-eyewitnesses and victims of this criminal offense saw him for the first time while he was committing this offense, but in their testimonies at the main trial they indicated that they knew him and they recognized him as the perpetrator. That fact is also confirmed by the testimony of witness Smajo Kapo, who states that on the relevant morning the complete operation was commanded by the person nicknamed "Minduša". The account of Zoran Danjanović is identical, as he states that the person nicknamed "Minduša" shot at them and that the soldiers most often mentioned that particular nickname. That the Accused indeed has this nickname is also confirmed by the testimony of witness Suad Kapo, who states that he had known the Accused from before by this nickname and that he learned his last name only afterward. If the testimony of Abid Kapo is also taken into account in addition to everything said above, as he states that the other soldiers addressed the Accused as "Ramić", there is no doubt that the Accused is the perpetrator of the offense.

The Accused committed the aforementioned acts of killing Danica and Slavko Danjanović, Željko and Dušanka Ristić, and violating the bodily integrity of Zoran Danjanović and Sretko Masal with direct intent, being aware of the act he was committing and willing to commit it. The Panel notes that the Accused, while taking the civilians toward the Youth Center, directed the procession toward the privately owned houses. He ordered the captured civilians to line up against the wall of a house. As of that instant, the nature of the act (lining up against the wall) could indicate further developments. The Accused called one civilian to step out, which he did. Then, without any legally justified reason, after he had not received the requested answer, the Accused fired in the civilian's chest from a short distance. Therefore, it is beyond doubt that by this act the Accused wanted to kill the person. Furthermore, the Accused turned to the others who were lined up and continued shooting in their direction. After they all fell down to the ground from the sustained injuries, the Accused fired another burst in the bodies lying on the ground after a soldier told him that some victims were moving and that he had only wounded them. In that way the Accused undoubtedly expressed his final attitude with respect to terminating their lives by repeating a burst of fire in their direction.

particular proof of his intent is the fact that the Accused addressed the father of witness Abid Kapo using abusive language about the deceased and ordering him to bury them, thus undoubtedly expressing the ease with which he accepted their death.

With respect to the mental capacity of the Accused, it can be concluded beyond doubt, based on the finding and the opinion of the expert neuropsychiatrist witness that due to the existence of the mental state caused by the PTSD and personality disorder, enhanced by possible consumption of substances affecting the state of mind, the Accused's mental capacity was diminished at the time of the commission of the criminal offense. However, the mental capacity was not diminished considerably, so as to prevent the Accused from understanding the significance of his act and governing his actions.

Therefore, the Panel concludes that the Accused committed the criminal offense with direct intent, being aware of the act he was committing and willing to commit it.

The acts that the Accused committed in person were aimed at severe deprivation of fundamental rights, such as the right to life, freedom and security, which is contrary to international law and which, under the above-quoted provision of Article 3 (1) of the Fourth Geneva Convention, is impermissible against unarmed persons or those who are not part of an armed force, by which he violated the rules of international law beyond doubt. The acts were committed during the armed conflict of which the Accused was aware and in which he undoubtedly took part.

Based on the foregoing and considering all the aforementioned statements of the Prosecution witnesses who testified about this event, the Panel finds the statements to be reliable, convincing and mutually corroborative. Also, it is important to note that the witnesses are also eyewitnesses and their information comes from their direct observation. This is particularly true of the two survivor witnesses, victims of the offense committed that day. Therefore, the Panel concludes beyond any reasonable doubt that the acts of the Accused satisfy all elements of the criminal offense of War Crimes against Civilians under Article 173 (1) c) of CC BiH and that he is individually responsible for the perpetration of the offense as referred to in Article 180 (1) of CC BiH.

The Defense for the Accused did not attempt to prove the Accused's innocence through the evidentiary procedure. However, the Defense contests the facts

and the manner in which the Accused has been charged with the commission of this offense by the Indictment.

The Defense initially endeavored to contest the wounding of Srećko Masal by stating that he was in his house during the commission of the offense. Then, the Defense challenges the Accused's mental capacity at the time of the commission of the offense given that, prior to the conflicts in BiH, the Accused had been a member of the military in Croatia where he had been captured and mentally and physically mistreated, which resulted in his being traumatized. The Defense also states that weapons and uniforms were found during the search of the houses of the Damjanovići and the Ristići. Furthermore, the Defense denies that the aforementioned persons were tied. Finally, the Defense believes that the Prosecutor's Office has failed to prove that the Accused committed the offense intentionally, given that the persons taken by him attempted to flee when he asked them about weapons, the evidence of which is the fact that Ristić's body was found 8-9 meters away.

The Panel took into consideration all objections of the Defense. First, with regard to the contested fact as to whether Srećko Masal was present in the group of those taken away, the objection of the Defense does not apply, as all Prosecution witnesses, including Srećko Masal himself, confirmed that on the relevant morning he had indeed been taken out of his house. The Panel could not give credence to witness Mevludin Topalović, according to whom there were five persons, given that witness Topalović himself stated that he had been 150 meters away from the site, which may raise doubt about the possibility of surveying the terrain easily.

Furthermore, with regard to the argument of the Defense suggesting that the Accused committed the offense when his mental capacity was considerably diminished, based on the finding and the opinion of expert witness Abdulah Kućukalić, who testified to both at the main trial, the Panel concludes that the Accused's mental capacity was indeed diminished, but not considerably.

With regard to the objection of the Defense suggesting that weapons and uniforms were found during the search of the houses of the Damjanovići and the Ristići, the Panel cannot base its finding on the statement of one Defense witness who states this, contrary to the fact that no Prosecution witness mentions that any weapons or uniforms were found. It is logical that, if that had been the case, the eyewitnesses would have also confirmed it.

As for the objection of the Defense contesting that these persons were tied, witnesses Suad and Abid Kapo, witness Muharem Karahodžić and other witnesses uniformly state that all the persons were tied with a rope, with their hands behind their backs.

Finally, the Defense argues that the Prosecutor's Office has failed to prove that the Accused committed the offense intentionally, given that the persons taken by him attempted to flee when he asked them about weapons, which is proved by the fact that Ristić's body was found at a distance of 8-9 meters. The Defense bases this argument on the statement of witness Topalović, according to whom the accused Ramić was speaking on a Motorola while these persons were lined up against the wall, which Željko Ristić used to attempt to flee. Then the others also tried the same and he had to shoot at them to prevent them from doing so. Contradicting this theory is the fact that after a burst was fired at Željko Ristić and others, and after a soldier said that he had only wounded them, the accused Ramić fired at them again. By doing so, he undoubtedly intended to cause death of the stated persons, and four persons indeed died as a consequence, and two other persons were injured, one of them seriously. Therefore, the Panel dismisses the argument of the Defense that the Accused opened fire in order to prevent these persons from escaping.

There is one fact stated in the Indictment which has not been proved, in the opinion of the Panel, and that is that the Accused, after firing one burst, replaced a clip of the automatic gun and repeated the burst. Only witness Zoran Damjanović states this. However, this could not be established with certainty based on the statements of the other eyewitnesses, and it could only be concluded that two bursts had been fired and in this respect the argument in the Indictment was adapted to the conclusion of the Panel.

The Panel finds it necessary to also mention that one witness, Abid Kapo, states that Mevludin Topalović fired one bullet more at Danica Damjanović, who showed signs of life. However, the Panel is satisfied that only the accused Ramić was involved in the commission of this criminal offense, based on the statements of all the other Prosecution witnesses, who state that the accused Ramić was the only one shooting.

With regard to the legal qualification of the offense as proposed in the Indictment, the accused Ramić is also charged with commission of this criminal offense by violating Article 31 of the Geneva Convention, which prohibits coercion in order to obtain information. However, in order to establish the commission of that criminal offense under Article 173 of CC BiH,

it is necessary to establish one violation of the rules of international law, which has already been established here, given that the Panel has found that the accused Ramić violated Article 3 of the Geneva Convention, and hence the Panel has not attempted to establish the violation of other provisions of the Geneva Convention. It quite clearly follows from the facts of the case that Article 3 of the Geneva Convention was violated, which is sufficient to the Panel to establish the existence of this element of the criminal offense as referred to in Article 173 of CC BiH.

Also, pursuant to Article 280 (2) of CPC BiH, the Panel is not bound by the Prosecution's proposed legal qualification of the offense and it does not find that the acts of the Accused satisfy the elements of the sub-category of the criminal offense under Article 173 (1) a) of CC BiH, as specified in the Indictment. The Panel recognizes that the basic element under Sub-paragraph a) of this Article is the existence of an "attack which results in the death or injuries". However, interpretation of the wording in this Sub-paragraph clearly indicates that the simultaneous consequences of the attack is also an element required for this offense, and that element is not present in this particular case. The accused Ramić came to the village of Hlapčevići with his unit to seek weapons. Therefore, the Accused is not charged with an attack against civilians or certain civilians during his stay in the village, that is, the prohibited consequence did not occur there and then. The prohibited consequence occurred after a certain time interval, and the mere taking of the civilians toward the Youth Center did not mean in itself that they would necessarily be endangered.

On the basis of all the analyzed evidence, the Panel has rendered the decision as quoted in the operative part. With respect to the other presented evidence, the Panel has evaluated it, but finds that it has not had a decisive effect on the ruling.

With respect to the substantive law that should be applied to this criminal offense, in the context of the time of the commission of the criminal offense, the position of the Defense is that provision of Article 142 of the Criminal Code of SFRY (hereinafter: the adopted CC), applicable at the time of the commission of the criminal offense, should be applied, as should the sanction provided for by this provision. The argument of the Defense for such a position is that it is a more lenient law, since, with the abolition of death penalty (which was initially the strictest penalty provided in CC SFRY and prescribed for this criminal offense), the sanction provided in Article 142 of CC SFRY turns out to be lenient for the Accused in comparison with the criminal sanction p

Article 173 (1) of CC BiH, and that at issue here is the legal principle that requires the mandatory application of a more lenient Criminal Code.

Article 3 (2) of CC BiH, "Principle of Legality", provides: "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."

When these provisions are considered in combination with Article 7 (1) of the European Convention on Human Rights (hereinafter: ECHR), which has precedence over all other laws in Bosnia and Herzegovina (Article 2.2 of the Constitution of BiH), it can be concluded that this principle of legality referred to in Article 3 of the Criminal Code is contained in the first sentence of Article 7 (1) of ECHR, while the second sentence of Paragraph (1) of Article 7 of ECHR prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offense was committed. Therefore, this provision sets forth a prohibition against imposing a heavier penalty, but it does not set forth a mandatory application of a more lenient law for the perpetrator in comparison with the penalty that was applicable at the time the criminal offense was committed.

Paragraph (2) of Article 7 of ECHR contains one exception and allows for the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations. This exception was incorporated with the specific objective of enabling application of national and international war crime related laws that came into effect during and after World War II.

Article 4a) of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina (Official Gazette of BiH No. 61/04) provides 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. With this Article the provision of Article 7 (2) of ECHR has been incorporated in its entirety in the criminal law system of Bosnia and Herzegovina, and it allows for an exception to the principle referred to in Article 4 of CC BiH, as well as an exception to the mandatory application of a more lenient law in proceedings for offenses that constitute criminal offenses under international law. The criminal offense that the Accused is established to have committed is an offense that includes a violation of the rules of international law. Actually, Article 4a) of the Law on

Amendments to the Criminal Code of Bosnia and Herzegovina is applied to all criminal offenses related to war crimes, as these criminal offenses are provided for in Chapter XVII of CC BiH, entitled Crimes against Humanity and Values Protected by International Law.

This exception to the mandatory application of a more lenient law is fully justified taking into consideration the general purpose of criminal sanctions referred to in Article 6 of CC BiH, as it is obvious that it would not be possible to achieve the general purpose of criminal sanctions with the maximum sentence of imprisonment for a term of 20 years envisaged by CC SFRY (after the abolition of death sentence) given the gravity of these criminal offenses and the ensuing consequences.

Moreover, even a strict application of Article 7 (1) of ECHR in these war crimes cases, which prohibits imposing a penalty heavier than the one that was applicable at the time the criminal offense was committed, confirms the validity of applying Article 4a) of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina, as it is obvious that there is no penalty heavier than death penalty, which was applicable in June 1992 at the time of the commission of the criminal offense.

For example, the jurisprudence of the European Court of Human Rights (Naletilić v. Croatia, case No. 51891/99) emphasizes the applicability of the provision of Paragraph (2) rather than Paragraph (1) of Article 7 of ECHR, which also justifies the application of Article 4a) of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina in these cases.

Also, the Constitutional Court of Bosnia and Herzegovina deliberated on this issue in the A. Maktoif Appeal (AP 1785/06) and stated in its Decision dated 30 March 2007: "68. In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long term imprisonment, as often done by the International Criminal Tribunal for the Former Yugoslavia (the cases of Krstić, Galić, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law." "69. In this context, the Constitutional Court holds that it is simply not possible to 'eliminate' the severe sanction under both earlier and later laws, and apply only of

lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned."

In the opinion of the Panel, the principle of mandatory application of a more lenient law is ruled out in trial of the criminal offenses for which at the time of commission it was absolutely predictable and commonly known that they were contrary to the general rules of international law. In the specific case, it is taken as established that the Accused had to know that in the state of war application of international rules has priority and that a violation of internationally protected values carries heavy consequences. When analyzing the provision of Article 173 (1) of CC BiH, it is obvious that it has been clearly stated that the subject matter of this criminal offense consists, inter alia, of elements violating international norm. This makes this group of offenses special, because it is not sufficient to commit such criminal offenses through certain physical activity, but what is necessary is the awareness that the international rules are being violated by the commission and that it is assumed that the perpetrator must know that the period of war or conflict or hostilities is especially sensitive and especially protected by the commonly accepted principles of international law and, as such, that offense gains an even greater significance and its commission carries more difficult consequences than an offense committed in another period.

Meting out the punishment is related to it, since Article 7 of ECHR also includes the regime of criminal sanctions. Article 173 (1) and the aforementioned Sub-paragraphs of CC BiH set forth the punishment of imprisonment for a term not less than 10 years or long term imprisonment.

Sentencing

The purposes of sentencing are set out in both the general and special sections of the Criminal Code of BiH. Article 2 establishes as a general principle that the sentence must be "necessary" and "proportionate" to the "nature" and "degree" of danger to the protected objects within the "types" and "range" allowable by the law. In the case of war crimes, the nature of the danger will always be severe; however, the degree of that danger will depend on the individual circumstances of each case. The type of sentence the Court can legally impose in the case of a war crimes conviction is limited to jail, and the range has been established as 10 to 20 years, or long term imprisonment of between 20 and 45 years. The distinction between the 10 to 20 year sentence and the long term sentence has consequences for the convicted person which include not only a greater period of incarceration, but also more severe

restrictions on the personal liberties of the convicted person within the prison system (Article 152 of LoE²), less privacy as to correspondence and telephone calls (Article 155 of LoE), and a longer percentage of the sentence to be served before consideration will be given to parole (Article 44 of CC BiH). On the other hand, long term sentencing also provides for more intensive and individualized treatment for rehabilitation (Article 152 (3) of LoE).

In addition to the general principle pronounced in Article 2, the Criminal Code prescribes further purposes and considerations which the Panel must address when determining and pronouncing sentence. These are of two types: those that relate to the objective criminal act and its impact on the community, including the victims; and those that relate specifically to the convicted person.

1. Sentencing that is necessary and proportionate to the gravity of the crime

In regard to the criminal act itself, the Panel considered the punishment that was necessary and proportionate to the following statutory purposes, and the relevant statutory considerations.

(A) The sentence must be necessary and proportionate to the danger and threat to the protected persons and values (Article 2 of CC BiH). In connection with this, the Panel will also keep in mind the statutory consideration which specifically affects this purpose, that is, the suffering of the direct and indirect victims (Article 48 of CC BiH). The direct victims of this offense were six unarmed and bound civilians, two women, four men. Both women and one man were killed immediately, three men survived to suffer the physical pain from their wounds, from which one shortly thereafter died, and the mental turmoil of witnessing the deaths of their family members. The impact on those who lost their lives was total, and the suffering of those who survived is long-lasting. In addition, the loss of members of two families in a small community created suffering for indirect victims: family friends and neighbors.

The sentence must be proportionate to this degree of suffering, and in addition, it must be sufficient to (B) deter others from committing similar crimes (Articles 6 and 39 of CC BiH). The purpose of the Geneva Conventions was to outlaw conduct of this type in time of armed conflict. That purpose will not be met if those who commit such acts are not punished sufficiently to put other

² *The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and C*

combatants in future conflicts on notice that there is a serious price to pay for using the cover of war, or the emotions generated in war, to violate the law.

In addition, this sentence must reflect (C) community condemnation, that is, the outrage at the loss of human life and the manner in which that human life was sacrificed (Article 39 of CC BiH). The community in this case is the people of Bosnia and Herzegovina, and the people of the world who have, by domestic and international law, made killing of unarmed civilians a crime. This community has made it clear that war crimes, regardless of the side which committed them or the place in which they were committed, are equally reprehensible and cannot be condoned with impunity. This particular crime was in addition carried out in a cold blooded fashion by a commander of a small military unit, and was committed contrary to orders that civilians not be harmed. The sentence must reflect the nation's and the world's condemnation of this activity.

The sentence must also be necessary and proportionate to (D) the educational purpose set out in the statute, which is to educate to the danger of crime (Article 39 of CC BiH). Trial and sentencing for this activity must demonstrate not only that crimes perpetrated in time of war will not be tolerated, but that the legal solution is the appropriate way to recognize the crime and break the cycle of private retribution. Reconciliation cannot be ordered by a court, nor can a sentence mandate it. However, a sentence that fully reflects the seriousness of the act can contribute to reconciliation by providing a legal, rather than violent, response; and promote the goal of replacing the desire for private or communal vengeance with the recognition that justice is achieved.

All of these considerations relevant to the act itself led the Panel to consider that a necessary and proportionate sentence reflecting the gravity of the crime itself should be long term imprisonment.

II. Sentencing that is necessary and proportionate to the individual offender

However, sentencing considerations must also take into account the statutory requirement of fairness (Article 39 of CC BiH) and the individual circumstances not only of the criminal act but also the criminal actor. There are two statutory purposes relevant to the individual convicted of crime: (1) specific deterrence to keep the convicted person from offending again (Articles 6 and 39 of CC BiH); and (2) rehabilitation (Article 6 of CC BiH). Rehabilitation is not only a purpose that the Criminal Code imposes on the Panel, but it is the only purpose related to sentencing recognized and

expressly required under international law to which the Panel is bound by the Constitution and the ICCPR Article 10.3: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

There are a number of statutory considerations relevant to these purposes as they affect the sentencing of the individual convicted person (Article 48 of CC BiH). These include: degree of liability; the conduct of the perpetrator: prior to the offense, at or around the time of the offense, and since the offense; motive; and the personality of the perpetrator. These considerations can be used in aggravation or mitigation of the sentence, as the facts warrant. The point of these considerations is to assist the Panel in determining the sentence that is not only necessary and proportionate for the purposes and considerations already calculated in connection with the act itself and the effect on the community, but to tailor that sentence to the deterrent and rehabilitative requirements of the particular offender.

(A) The degree of liability in this case is high and therefore an aggravating factor. The accused Ramić was in charge of a unit of eight men. He was under specific orders not to harm civilians in carrying out the mission to retrieve private arms from the inhabitants of various communities in Visoko. As a leader, with combat experience, he knew the importance of following orders. It was his decision alone and his actions alone that led to the death and wounding of the civilians. He could have and should have obeyed orders, and assured that the mission was carried out without injury to civilians. He used his position to accomplish just the opposite.

(1) The conduct of the Accused prior to the offense

The accused Ramić served in the JNA, during which time he was prosecuted for the criminal offense under Article 165 (1) of the CC of Slovenia before the Military Court in Ljubljana. He was convicted and sentenced to a suspended sentence of three months. Thereafter, and prior to the commission of this offense, he had no criminal record. He volunteered to join the army of Croatia to fight on the northern border for the year preceding the offense. He was present on the battlefield and witnessed horrors associated with war conditions. He was then taken captive as a prisoner of war and subjected to mental and physical abuse for a period of almost four months before escaping. Upon his escape he joined the fighting in BiH and was given a military unit to command.

(2) Circumstances surrounding the offense

When the accused Ramić joined the TO in Visoko he was already an experienced soldier. He received a brochure explaining the obligations of combatants under the Geneva Conventions. At the relevant time, he received orders that civilians not be harmed. He violated both the Conventions and the orders in the offense he committed. Within the next two months after the commission of this crime, and while he was still in the military, he continued to commit serious criminal activity. He was tried and convicted of criminal acts that were not carried out as a war crime, but for which he used the chaos created by war as an opportunity to commit violent acts for personal gain. He was 22 years old at this time.

(3) Circumstances since that time

The accused Ramić has been incarcerated since 1992, serving the sentence of 20 years and has received a partial pardon. He was on escape status twice: the first time from 20 January 1999 until 7 August 2000, and the second time from 20 August until 21 September 2005. In both cases, he surrendered and was again incarcerated. There is no record that he engaged in any criminal activities while on escape status, or at any other time when he was released in the community. The records attached to the expert's report reflect that to date Ramić has received no appropriate treatment for PTSD while incarcerated since 1992. Although he has complained to prison medical staff of the symptoms of PTSD, particularly anxiety, neither treatment for that nor his asocial personality disorder has been provided to him. Instead, the record shows that four times the medical staff of the prisons where Ramić has been serving his sentence prescribed medication for his anxiety. All four times he was prescribed benzodiazepines, which is not the drug class which the expert cited as the one found effective for PTSD. He has four siblings and parents who are still living, but for obvious reasons he does not contribute to their support.

(4) Conduct regarding this case

For the past several years the accused Ramić has admitted to this crime and has expressed his regret at having committed the offense. Throughout his trial he has never denied the offense, although he has challenged some of the aspects of the recollection of the witnesses to the offense. He has repeatedly expressed regret for having committed the offense both to witnesses who were his victims and to the Panel, both personally and through his attorney. His

behavior in court has been inconsistent: at times when he was frustrated with the proceedings, a witness or his lawyer, his behavior was verbally aggressive, and sometimes rude. At other times he was apologetic for his outbursts and, when assigned his fourth attorney (having asked that the previous three be dismissed), he behaved with appropriate restraint and decorum. He was clearly attentive to the proceedings and even when his behavior was aggressive, he demonstrated that he completely understood the proceedings and had been following them closely. He fully participated in his trial in a manner that made it clear that he had an intelligent understanding both of the content and the legal consequences of the trial.

(B) Personality of the accused Ramić

The expert in Neuropsychiatry called by the Prosecution submitted a report based on his interviews with the Accused and the interviews and testing conducted by the psychologist with whom the expert regularly works. The expert testified that the accused Ramić cooperated fully with the expert and his team and it was the expert's belief that the Accused responded honestly and engaged completely with the interview and testing process. Based on that process the expert concluded that at the time of the offense and now, the accused Ramić, was and is suffering from two mental disorders: a personality disorder referred to as asocial personality disorder; and post traumatic stress disorder (PTSD) brought on by experiences encountered by the accused Ramić on the battlefield and as a POW during the year that preceded the offense.

The expert's opinion, which the Panel has adopted, was that notwithstanding the dual diagnosis, the accused Ramić was able to understand his legal responsibility at the time of the offense and was capable of conforming his actions to the requirements of the law. The expert further expressed the opinion, also adopted by the Panel, that the accused Ramić at the time of the trial was capable of understanding the proceedings and participating in them. This opinion was further supported by the Panel's own observations of his participation in the trial itself, as recorded above.

Although the extents of his mental disorders are insufficient to relieve him of criminal responsibility, they are nonetheless highly relevant to the purposes of sentencing because they continue to plague him and, without treatment, it was the opinion of the expert that as a consequence of these disorders, he could present a danger to himself and others. In order to minimize this danger, which is directly relevant to the sentencing purpose of deterrence from crime, it is necessary that the Panel address treatment as a rehabilitative

and, to the extent available to the Panel, construct a sentence that may best facilitate the rehabilitative purpose that is obvious in this case.

(1) Impact on Motive

At the time of the commission of the offense the accused Ramić was suffering from PTSD and was self-medicating to relieve some of these symptoms, particularly with alcohol and marijuana. When this was combined with his own impulsivity, and low frustration threshold, he reacted in a violent and criminal manner when his authority was questioned by the prisoner whom he was attempting to interrogate. The Panel finds that although the Accused may have had no plan to kill the civilians when he first took them into custody, he reacted violently, with the intent to kill, when his efforts to get information from them regarding the location of weapons and mines failed and he was not treated with the respect he believed he was due. At the time of commission of criminal offense he had reduced capacity to control his actions, but the Panel agrees with the expert that the reduction of his capacity to control his actions was not diminished to a significant extent.

(2) Treatment

The expert testified that the treatment for both diagnoses was the same: psychotherapy combined with cognitive and behavioral therapy, and medication prescribed from a class of antidepressant drugs known as selective serotonin reuptake inhibitors. He testified that this treatment had been successful, particularly in addressing PTSD, and he was of the opinion that it could also be successful for the accused Ramić.

Therefore, in evaluating the relevant "circumstances bearing on the magnitude of punishment" set out in Article 48 (1) of CC BiH, for the reasons explained above, the Panel concludes that both extenuating and aggravating circumstances exist on the part of the Accused. The aggravating circumstances having to do with the accused Ramić in the opinion of the Panel, are that he deprived several persons of life and inflicted injuries to bodily integrity to two persons. The Panel took into consideration the command responsibility of the Accused at the time of the perpetration of the criminal offense and the fact that he has a criminal record. Extenuating circumstances considered by the Panel include the fact that the Accused is a young person who was 22 at the time of the offense, his statements of remorse for the offense he committed, the degree of diminished capacity at the time of the offense, and the fact that he has been serving his sentence since late 1992.

Deterrence and Rehabilitation

The length of a sentence and the time spent in jail as punishment for the crime are legitimate deterrents in most cases. They provide the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes, to make amends for his criminal actions, and consider the ways to improve his life when released so as not to have to ever return to jail in the future. In this case, however, these considerations have very little relevance as a deterrent because any effect they might have had would have already occurred by virtue of the sentence that Ramić has been serving since August 1992 — literally all of his adult life.

However, there are other serious factors relevant to deterrence that the Panel cannot ignore, and they have to do with the personality disorders that have been identified in these proceedings that, if untreated, could, in the view of the expert and the Panel, lead to further criminal and asocial activity of a violent and criminal nature.

Ideally, the Court of BiH would have a prison to which to sentence those convicted of crimes within the jurisdiction of this Court. With such a facility, there could be greater coordination between the Court and the prison when it comes to rehabilitation programs designed to meet the needs particularly for the people convicted in this Court. Without such a prison, this Court must send prisoners to prisons in the Entities. Nonetheless, those prisons have the statutory responsibility to design an appropriate rehabilitative treatment program for the prisoners entrusted to their care. Rehabilitation within the prison is required by the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures³.

Given the severity of treatment needs in this case, the risk for further offending if they are not met, and the requirement that those needs be appropriately met, a long term sentence is necessary and proportionate to the sentencing purposes directed at the offender, as well as the offense. By a long term sentence, the prison to which Ramić will be sent to serve that sentence will be under a greater obligation to customize his treatment plan.

However, the sentence must not be so long that it undermines any motivation to engage in treatment. It must also reflect that Ramić committed this crime.

³ Official Gazette No. 13/05

well as other serious crimes, at the age of 22 within relatively short period of time, and that he has already served a significant jail sentence for those other crimes.

Applying these criteria, the Panel decided to pronounce a long term imprisonment sentence of 30 years for this criminal offense that was prosecuted before this Court. At the same time, the Panel had in mind that the Accused had committed certain criminal offenses prior to this trial and was convicted and sentenced to imprisonment for those criminal offenses. Pursuant to Article 55 (1) of CC BiH, the Panel took the previously pronounced sentences (compound prison sentence of 20 years under the Verdict of the Cantonal Court in Zenica number Kv-52/05 of 20 July 2005) as already determined and pursuant to Article 53 (2) a) of CC BiH imposed the compound sentence of long term imprisonment for a term of 30 years to the Accused. The Court found that this sentence will entirely fulfill the purpose of sentencing.

The Panel credited the time the Accused spent serving the sentence pursuant to the previous Verdict in the period from 26 November 1992 (with the exception of the period from 20 January 1999 to 7 August 2000 and the period from 20 August to 21 September 2005 when he did not serve the sentence), taking into account that under the Decision of the President of the FBiH from 1997 and 1998, the prison sentence of 20 years was first replaced by the prison sentence of 19 years and subsequently further reduced for 4 additional months.

Pursuant to Article 56 of CC BiH, the time the Accused will have spent in pre-trial custody pursuant to the Decision of this Court from 16 October 2006 to the committal for sentence shall also be credited toward the pronounced sentence.

Pursuant to Article 188 (4) of CPC BiH, the Accused is hereby relieved of the duty to reimburse the costs of criminal proceedings which shall be paid by the Court of BiH, which the Panel decided taking into account the fact that the Accused has no income and that, with short interruptions, he has been serving the sentence since 1992, and that he is not capable of bearing the costs of the proceedings.

Injured party Sretko Masal verbally stated at the main hearing on 9 January 2007 his claims under property law, so, given the fact that ruling on the claim under property law would considerably prolong these proceedings, pursuant to Article 198 (2) of CPC BiH, the Panel instructed him to take civil action before the competent court.

Based on the foregoing, the Panel reached the verdict as quoted in the operative part pursuant to Article 285 (1) of CPC BiH.

PRESIDING JUDGE
Judge Hilmo Vučinić
[signature affixed]

RECORD-TAKER
Dženana Deljković Blagojević
[signature affixed]

LEGAL REMEDY: *An appeal against this Verdict shall be permissible with the Appellate Panel of the Court of BiH within 15 (fifteen) days from the day of the receipt of a written copy of the Verdict.*

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

Sarajevo, 10 September 2007

[REDACTED]
Certified Court Interpreter for the English Language

[REDACTED]

