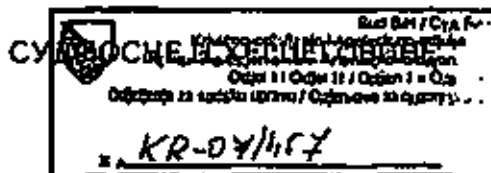


SUD BOSNE I HERCEGOVINE



No: X-KR-07/457  
Sarajevo, 22 February 2008

### IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, Judge Minka Kreho as the Presiding Judge and Judges Roland Dekkers and Marijan Pogačnik as members of the Panel, with the participation of Legal Advisor Amela Skrobo, as a Record-taker, in the criminal case against the accused Idhan Sipić charged with the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c), as read with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina, adjudicated upon the Indictment No: KT-RZ: 240/07 dated 23 November 2007, which was filed by the Prosecutor's Office of Bosnia and Herzegovina. The Indictment was amended on 22 February 2008 and the Parties concluded the Agreement on the Admission of Guilt the same day. The Court held a public session on 22 February 2008 in the presence of the Accused and his Defence Counsel, lawyer Binasa Abaspahić and the Prosecutor of the Prosecutor's Office of BiH - Milorad Barošin, accepted the Agreement and rendered the

### VERDICT

#### The accused:

IDHAN Sipić, a.k.a. "Nuno", son of Salih and Ismeta, maiden name Halilić, born on 9 April 1967 in Banja Luka, Personal Identification Number 0904967100036, place of residence in Bosanski Petrovac, at Safeta Hidića bb /no number/, a Bosniak, citizen of BiH, a worker, literate, completed elementary school, single, did not serve his military service, holds no rank, no decorations, previously convicted, no other criminal proceedings ongoing against him, of poor financial standing, in custody under the Decision of the Court of BiH, No. X-KRN-07/457 dated 26 October 2007.

### HAS BEEN FOUND GUILTY

#### In as much as he:

During the state of war in BiH, in the region of Ključ Municipality, within and during the Operation *Sana* 95, as a member of the Reconnaissance and Sabotage Company within the 5th Corps of the Army of BiH, he acted contrary to the rules of International Humanitarian Law, specifically Article 3 (1) a), Article 4 (1) and Article 32 of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War adopted on 12 August 1949, Articles 72 and 75 (2) a) i) of the First Protocol Additional to the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, by committing the following act:

On an unspecified date in mid-September 1995, in late afternoon, at the location Korjenovo Brdo above Sanica, Ključ Municipality, together with Almir Harbaš, Idhan

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came in front of and entered the house of Anda Banjac whom he immediately attacked with the intention of slitting her throat. She cried out that she had two sons in the Serbian army, however Idhan Sipić, knowing that the person in question was a civilian and intending to deprive this person of her life, pulled a bayonet from his waist belt and stabbed Anda Banjac in the front part of her neck through the larynx thereby perforating her neck and causing her death. Samir Jusić took the dead body of Anda Banjac out of the house, while Almir Harbaš returned back to the house and set a bed inside the house on fire, as a result of which the house of the aforementioned old woman burnt down.

**Therefore,**

**During the state of war in BiH and contrary to the rules of international humanitarian law, he deprived of life one civilian person,**

**Whereby**

**He committed the criminal offence of War Crimes against Civilians in violation of Article 173(1) c) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180(1) of the same Code.**

**Therefore, pursuant to the provisions of Articles 39, 42 and 48 and Articles 49 and 50 of the Criminal Code of Bosnia and Herzegovina, the Court**

## **S E N T E N C E S**

### **THE ACCUSED TO THE TERM OF IMPRISONMENT OF 8 (EIGHT) YEARS**

**Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina, the time the Accused spent in pre-trial custody as of 26 October 2007 shall be credited toward the pronounced sentence of imprisonment.**

#### **II**

**Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is hereby entirely relieved of the duty to reimburse the cost of the criminal proceedings.**

#### **III**

**Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, the family of the injured party Anda Banjac is hereby instructed to take civil action with potential claims under property law.**

## Reasoning

### I. Charges and Agreement

The Prosecutor's Office of Bosnia and Herzegovina, Special Department for War Crimes, issued the Indictment No: KT-RZ 240/07 on 23 November 2007, which was amended on 22 February 2008, whereby the accused Idhan Sipić was charged with the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c), as read with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.

On 30 November 2007, the Prosecutor's Office of Bosnia and Herzegovina filed the Agreement on the Admission of Guilt No: KT-RZ: 240/07 dated 23 November 2007, whereby the accused Idhan Sipić admitted to be guilty of the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c), as read with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina. The Prosecutor's Office agreed that a sanction to be pronounced for this criminal offence be below the statutory minimum sanction – to range from 6 to 10 years of imprisonment.

It follows from the Account of Facts contained in the Agreement under which the Accused pleaded guilty for the criminal offence, that the Prosecutor's Office of BiH issued the Indictment on the same day – 30 November 2007 – charging Idhan Sipić with having committed the murder of one civilian on an unspecified date in mid September 1995 in the course of *Sana 95* Operation in the area of Ključ Municipality. The Accused killed the injured party Anda Banjac by stabbing her in the neck and then used the bayonet to cut her body into pieces, which he then threw into the well located a few meters away from the house, whereby he committed the criminal offence of War Crimes against Civilians under Article 173(1)a), as read with Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

The Preliminary Hearing Judge confirmed the Indictment on 10 December 2007 and referred the Agreement on the Admission of Guilt to the Trial Panel for consideration.

In consideration of the concluded Agreement, the Trial Panel held a public hearing on 17 December 2007 and established that the Accused was not aware of the Account of Facts of the criminal offence to which he pleaded guilty and he rejected the Agreement.

The Accused did not agree with the allegations of the Indictment and the charges thereof, that he cut to pieces the body of the killed woman and stated that he had killed the woman as it was described, but not that he had cut her body into pieces and thrown it into the well.

In view of this disagreement, more precisely, the position taken by the Accused with regard to the offence, considered as rather important by the Court, the Agreement was rejected. a status conference was held and the main trial was scheduled for 8 February 2008.

On 8 February 2008, immediately before the main trial commenced, the Prosecutor of the Prosecutor's Office of BiH had offered an agreement to the Accused again, but having consulted his Defence Counsel, the Accused rejected the Agreement.

The Prosecutor submitted that they were willing to withdraw the disputable part of the Account of Facts of the Indictment so that an agreement could be concluded, while the Defence Counsel stated that a new plea agreement might possibly be concluded during the evidentiary proceedings, given the questionable identity of the victim.

The main trial commenced and witnesses Midhat Ćoralić, Zijad Hodžić, Radomir Radaković and Samir Jusić were heard, whereas the remaining pieces of evidence – two witnesses and documentary evidence – were planned to be presented the following day of the main trial – 22 February 2008.

However, when the main trial commenced on 22 February 2008, primarily aiming at the efficiency and effectiveness of the proceedings, the Court first asked the Accused and then his Defence Counsel to explain why they had rejected the Agreement offered to them on 8 February 2008. It was found out that the Accused was completely oblivious of the contents of the proposal made by the Prosecution, specifically that the Prosecution had withdrawn the disputable part of the Account of Facts.

The Prosecutor offered the Agreement to the Accused again, amending verbally and publicly the Indictment dated 23 November 2007 and submitted once again that the disputed part of the Account of Facts had been withdrawn, specifically the allegation which read as follows: *"Idhan Stipić, a.k.a. Nuno then used the same bayonet to cut her body into pieces, which he then threw into the well located a few meters away from the house."*

The main trial was then adjourned to allow the Parties to discuss the new state of affairs.

When the main trial resumed, the Prosecutor of the Prosecutor's Office of BiH filed with the Court the Agreement on the Admission of Guilt No: KT-RZ: 240/07 concluded the same day - 22 February 2008 - and the main trial developed into a hearing to deliberate on the agreement on the admission of guilt.

Having established that the Agreement was entered into voluntarily, consciously and with understanding, that there was sufficient evidence on the guilt of the Accused and that the Accused understood the possible consequences, the Court accepted the Agreement and that same day held a hearing for pronouncement of the sentence, which was proposed in the Agreement – the term of imprisonment ranging from 6 to 10 years.

## 2. Presented evidence

The Prosecutor's Office of BiH substantiated their allegations of guilt by the following evidence: Decision of the RBiH Presidency on the Proclamation of the State of War dated 20 June 1992, Official Gazette of RBiH, No: 7/92; Order for the attack under the code name *Sana* issued by the 5<sup>th</sup> Corps of the Army of BiH, No: op. 01-1/352-327 dated 17 August 1995; Report on the committed criminal offence, No: 05-1/04-5-133/07 dated 24 October 2007 issued by the Ministry of Internal Affairs of the Una-Sana Canton; photo documentation and sketch of the crime scene, No. 88/07 attached to the Document of the Una-Sana Canton No: 05-1/04-5-04-3-907/07 dated 25 October 2007; CD with photo documentation and sketch of exhumation site of one body from Korjenovo, No: BL-6/2007-LM; Photo documentation of the autopsy of the dead body, No: BL-22/2007-OT dated 21

June 2007 and Record of the forensic and criminal-technical examination of the dead body, No: BI-22/2007-OT dated 21 June 2007; Note drafted by the investigator of the Prosecutor's Office of BiH dated 22 November 2007; Document of the Cantonal Ministry for Issues of Veterans and Disabled Veterans, Bosanski Petrovac Section, No: 12/4-41-251-1/07 dated 29 October 2007; Suspect Examination Record, No: KT-RZ-240/07 dated 24 October 2007 and 25 October 2007; Document of the State Investigation and Protection Agency (SIPA), No: 17-12/03-04-2-109-2/07 dated 9 November 2007; Document of the Tax Administration Bosanski Petrovac, No: 10-1/5.1-49-2979-1/07 dated 13 November 2007; Document of the Federation Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War, Records Section on the Military Obligation in the Una-Sana Canton, Bosanski Petrovac, No: 07/76-03-32-1/07 dated 23 November 2007; Excerpts from the CIPS database for Idhan Sipić; Neuropsychiatric evaluation of Idhan Sipić conducted by dr. Hidajet Jabandžić, a neuropsychiatrist and certified court expert, dated 19 November 2007; Record of the examination of witness Senad Dervišević, No: KT-RZ-240/07 dated 13 November 2007; Record of the examination of witness Milan Ivančević, No: KT-RZ-240/07 dated 14 November 2007. The Court admitted into the case file the following records proposed by the Prosecutor's Office on 8 February 2008 taken when the witnesses were examined on the Prosecutor's Office of BiH premises: Record of the examination of witness Midhad Čoralić, No: KT-RZ-240/07 dated 12 November 2007; Record of the examination of witness Zijad Hodžić, No: KT-RZ-240/07 dated 12 November 2007; Record of the examination of witness Samir Jusić, No: KT-RZ-240/07 dated 13 November 2007; Record of the examination of witness Radomir Radaković, No: KT-RZ-240/07 dated 13 November 2007.

The Defence Counsel for the Accused Idhan Sipić proposed no evidence.

### 3. Closing arguments presented with reference to the sanction range

During this hearing, the Prosecutor submitted that the Accused behaved in a proper manner, that he admitted the guilt and stressed his appropriate conduct throughout the proceedings, which was all seen as mitigating circumstances. The Defence Counsel agreed with this and added that, when deciding on the sentence proposed in the Agreement, the Court should give special weight to the fact that Accused had repented to the competent authorities of his own will, his sincere remorse and his reduced mental capacity at the time of perpetration of the criminal offence. The Accused supported the allegations made by the Prosecutor and his Defence Counsel and stated once again that he regretted what he had done. The Court then sentenced the Accused to the term of imprisonment of 8 years and the reasoning thereof will be provided in the sections to come.

### 4. Applicable law

The Accused Idhan Sipić signed the Agreement No: KT-RZ-240/07 on 22 February 2008, whereby he admitted to be guilty of having committed the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c) of the Criminal Code of Bosnia and Herzegovina. This criminal offence is codified under the Criminal Code of Bosnia and Herzegovina.

Since the Parties agreed within the context of Article 4a of the Criminal Code of BiH and Article 7 of the European Convention on Human Rights and Fundamental Freedoms, the application of the Criminal Code of Bosnia and Herzegovina was seen to be the only option, particularly bearing in mind "general principles of International Law" within the meaning of Articles 3 and 4 of the CC of BiH and the fact that War Crime against Civilians was defined as a criminal offence also in the relevant time period.

## 5. Court findings

### a) General characteristics of the criminal offence of War Crimes against Civilians

The Accused is charged in the Indictment issued by the Prosecutor's Office with having committed the criminal offence of War Crimes against Civilians under Article 173 (1) 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:*

- 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 ten years or long-term imprisonment."*

The Accused is charged with this criminal offence involving the mentioned sub-categories of the above quoted Article. The Prosecution has to prove all of the following general elements of the criminal offence of War Crimes against Civilians that arise from its legal definition:

- i. The offence shall be committed in the manner that contravenes the provisions of International Law;
- ii. The violation shall be perpetrated at the time of war, armed conflict or occupation;
- iii. The offence shall be associated with war, armed conflict or occupation;
- iv. The perpetrator shall order or commit the criminal offence.

i. **The offence shall be committed in the manner that contravenes the provisions of International Law.**

The Indictment charges the Accused Idhan Sipić with having committed Crimes against Civilians in violation of Article 173 (1) c) of the CC of BiH, that in the relevant time period he acted contrary to the rules of International Humanitarian Law specified in Article 3 (1) a), Articles 4 (1) and 32 of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, as well as Article 72 and Article 75

(2) a) i) of the First Protocol Additional to the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949:

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, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, 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;*

*(b) Taking of hostages;*

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

*(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."*

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

*"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 which are applicable to armed conflict;"*

Article 3 Common to the Geneva Conventions of 1949 is generally seen as a customary law provision, therefore binding upon all parties to the conflict, whether domestic or international and this provision was valid also at the time and place of the incident the Accused is charged with.

The provision clearly implies that the perpetrator does not necessarily have to be aware of relevant international norms or that he intends to violate them, given that a mere perpetration is seen to be in contravention of the rules of International Law.

In order to be able to establish whether rules of International Law have been violated, it has to be determined whether the criminal offence was targeted against the specific category of population protected under Article 3 (1) of the Geneva Convention.

According to the definition provided in Article 3 (1) of the Geneva Convention, civilians are 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'.<sup>1</sup>

In addition, Protocol I Additional to the Geneva Conventions defines a civilian as 'any person who does not belong to armed forces'.<sup>2</sup>

Article 43 (1) of Protocol I provides that:<sup>3</sup>

"The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict."

Therefore, with the exception of members of armed forces, any person present in the territory is considered to be a civilian.<sup>4</sup> Article 50 of Protocol I further provides that the civilian population comprises all persons who are civilians. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character and that in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

There is no doubt that the injured party Anđa Banjac was a civilian.

ii. *The offence shall be committed in time of war, armed conflict or occupation*

Article 173 of the CC of BiH provides that the offence has to involve the violation of the rules of international law, inter alia, in time of war.

The element that makes a clear distinction between a war crime and an ordinary criminal offence (that is to be tried under national legislation) is that war crimes are characterised by the context in which they were committed – state of war – or depend on it. A war crime does not essentially have to be a planned action or a product of certain politics. A causal connection does not have to be established between a state of war and perpetration of

<sup>1</sup> *Prosecutor vs. Blagojević and Jakić*, Case No: IT-02-60-T, Judgement, 17.01.2005, para 544.

<sup>2</sup> J. Pictet *et al*, Commentary, Protocol I Additional to the Geneva Conventions of 12 August 1949 Relative to the Protection of Victims of International Armed Conflicts (Protocol I), 08.06.1977, page 610.

<sup>3</sup> In addition to reference made to Article 43 of the Additional Protocol I, Article 50 ("Definition of civilians and civilian population") of the same Protocol makes the explicit reference to Article 4 (A) of the Third Geneva Convention with respect to those persons included in the definition of armed forces. The Commentary of Article 50 of the Additional Protocol I, however, points to the fact that Article 43 of the Additional Protocol I contains a new definition which encompasses the provisions of Article 4 (A) of the Third Geneva Convention, see *supra* note 4, page 611.

<sup>4</sup> See *supra* note 4, page 611.



relevant crime, however it is required that the state of war significantly influenced the perpetrator's ability to commit the crime, his decision to commit the crime, the manner of perpetration or the purpose of perpetration. Therefore, if it be established, as is the case here, that the perpetrator acted in the service of war and under the cover of war. The conclusion reached by the Court in that respect is beyond any dispute.

In the efforts to determine whether certain criminal offence may be connected to the state of war to the sufficient extent, the Court has taken into account, *inter alia*, the following factors: the fact that the perpetrator was a combatant, that the victims were not combatants, that the victims belong to the opposing party, that it could be considered that the offence was aimed at achieving the ultimate goal of the military campaign and that the commission of the crime arises from official duties of the perpetrator or falls within their scope.

There is no doubt that the law of war may often be applied to the offences which were not actually committed at the location where operations were conducted, but they are essentially connected with the conflict. The law of war may be applied to two types of criminal offences. The law of war does not necessarily substitute the laws that are in force at the time of peace - it can add to them those essential elements of protection that has to be provided to victims in the time of war.

#### ii. Offence has to be connected with war, armed conflict or occupation

The third requirement allows that a distinction be made so that not all crimes committed at the time of war routinely be classified as war crimes. International case law has firmly established that an offence may be classified as a war crime only if there is a strong enough nexus with the state of war: more precisely that the offences committed by the accused have to be "closely linked to the state of war".<sup>5</sup>

The close nexus does not essentially mean that the battles have to be waged in the territory where the offences are being committed. The ICTY Appellate Panel in the Tadić case held that: "international humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."<sup>6</sup>

It is further submitted that "the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed".<sup>7</sup>

<sup>5</sup> See, *inter alia*, *Prosecutor vs. Kunarac*, case No: IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para 55; *Prosecutor vs. Vasiljević*, case No: IT-98-32-T, Judgment, 29 November 2002, para 24; Decision on Jurisdiction in Tadić case, para 70.

<sup>6</sup> Decision on Jurisdiction in Tadić case, para 70.

<sup>7</sup> *Prosecutor vs. Kunarac et al.* case No: IT-96-23 & IT-96-23/1-A, Judgment of 12 June 2002, para 55.

The accepted Agreement and the evidence thereof confirm that the state of war was proclaimed in the relevant time period and that the Accused was a member of the RBiH Army.

**iv. Perpetrator has to order or commit the offence**

The Panel holds that the perpetrator committed the criminal offence of War Crimes against Civilians with direct intent, aware of his deed but still desired its perpetration.

The offence directly perpetrated by the Accused was aimed at severe deprivation of fundamental rights – the right to life – which is in contravention of international law and, in keeping with the above quoted provision of Article 3 (1) of the Fourth Geneva Convention, it is considered as unacceptable treatment of unarmed persons or those who are not members of armed force, therefore, in so doing, the Accused indisputably violated the rules of international law. The offences were committed during the conflict that the Accused was aware of and in which he undeniably participated.

The Panel therefore concludes beyond reasonable doubt that the action of the Accused is such so as to satisfy all the requirements of the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c) of the CC of BiH and holds him individually responsible for the commission of the offence pursuant to Article 180 (1) of the CC of BiH.

**h) Charges**

The amended Indictment No: KT-RZ:240/07 of 22 February 2008 filed by the Prosecutor's Office of BiH, charges the accused Idhan Sipić with acting contrary to the rules of international humanitarian law during the state of war in BiH, in the region of Ključ Municipality, within and during the Operation *Sana 95*, as a member of the Reconnaissance and Sabotage Company within the 5th Corps of the Army of BiH. More specifically, the Accused violated Article 3 (1) a), Article 4 (1) and Article 32 of IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 72 and Article 75 (2) a) i) of the First Protocol Additional to the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. The Indictment alleges that Idhan Sipić, together with Almir Harbaš, came to the house of Anda Banjac, at Korjenovo Brdo above Sanica, Ključ Municipality, on an unspecified date in mid-September 1995, in late afternoon, that he entered the house and immediately attacked the woman with the intention of slitting her throat, at which time she cried out that she had two sons in the Serb army. After that, having the knowledge that the person in question was a civilian and with the intention of depriving this person of her life, Idhan Sipić pulled a bayonet from his waist belt and stabbed Anda Banjac in the front part of the neck through the larynx thereby perforating her neck and causing her death. Samir Jusić took the dead body of Anda Banjac out of the house, while Almir Harbaš returned back to the house and set a bed inside the house on fire, as a result of which the house of the aforementioned old woman burnt down.

The Accused concluded the Agreement on the Admission of Guilt, whereby he admitted to be guilty of the described murder.

Nevertheless, other evidence also had to be examined in order to evaluate the validity of this confession and/or the consequences thereof. The evidence entirely corroborated the account of facts of the criminal offence, as it will be outlined in more detail.

It follows from the statement given by the Accused, who reported to the Ministry of Internal Affairs of the Una-Sana Canton in Bihac on 23 October 2007 on his own initiative to give a statement about the murder of an elderly woman of Serbian ethnicity that he had committed. The Accused was a member of the Reconnaissance and Sabotage Company within the 5th Corps of the Army of BiH, which was deployed in the place called Korjenovo Brdo, above the village of Sanica in the area of Kluč Municipality during the Operation *Sana 95* in September 1995. In his Statement, the Accused explained that he had been intoxicated by marijuana and alcohol and that he had killed the old woman in the manner described in the enacting clause of the Verdict.

It undoubtedly follows from the Order for the Attack under the Code Name *Sana* issued by the 5<sup>th</sup> Corps of the Army of BiH, No: op. 01-1/352-327 dated 17 August 1995 that the Army of BiH conducted the *Sana* operation at the relevant time, but also from the statements given by witnesses Midhat Čoralić, Zijad Hodžić and Samir Jusić, who confirmed that the Accused had been a member of the Reconnaissance and Sabotage Company within the 5th Corps of the Army of BiH.

The Decision of the RBiH Presidency on the Proclamation of the State of War dated 20 June 1992, Official Gazette of RBiH, no. 7/92 proves beyond doubt that the state of war was declared.

According to the statement given by witness Samir Jusić examined during the main trial held on 8 February 2008, the Accused was indeed heavily intoxicated by alcohol at the relevant time, when he actually slaughtered the old woman, whose house was subsequently set ablaze by Almir Harbaš. This witness was also a member of the Reconnaissance and Sabotage Company within the 5th Corps of the Army of BiH, which was at that time deployed in the place called Korjenovo Brdo.

Witness Radomir Radaković, a Senior Investigator of the Una-Sana Canton Ministry of Internal Affairs, who testified during the main trial hearing on 8 February 2008, confirmed that the Accused had reported on his own initiative the commission of the criminal offence. The Record of the Examination of witness Senad Dervišević (Head of War Crimes Department of the Una-Sana Canton Ministry of Internal Affairs), No: KT-RZ-240/07 dated 13 November 2007 also contains the information on the manner of examination and the murder the Accused talked about.

It follows from the statement given by this witness that the Accused left no doubt that he had killed one old woman of Serbian ethnicity in the village of Korjenovo Brdo and that he subsequently took the witness and with the crime scene investigation team to the crime scene. Following the visit, the Report No: 05-1/04-5-133/07 was drafted dated 24 October 2007 on the Committed Criminal Offence by the Ministry of Interior of the Una-Sana Canton, along with the photo-documentation and sketch of the crime scene, No: 05-1/04-3-907/07 taken on 25 October 2007 taken during the visit to Korjenovo Brdo.

The victim was exhumed on 16 May 2007 and her body was identified. Relevant photo documentation was made of the autopsy of the dead body, together with the Record of the forensic and criminal-technical examination of the dead body dated 21 June 2007.

The Office on Tracing Missing and Captured Persons of the Republika Srpska informed the State Investigation and Protection Agency (SIPA) – Banja Luka Regional Office that a body was found on 16 May 2007 in the yard surrounding the house of the Banjac family in Korjenovo Brdo, more precisely that a skull was found in the well and a skeleton in a ditch close by and that the victim was identified as Anda Banjac, as stated in the Document of the State Investigation and Protection Agency (SIPA), No: 17-12/03-04-2-109-2/07 dated 9 November 2007.

The autopsy and identification findings were corroborated by the statement given by the Accused and, in particular, by the photo documentation No: 05-1/04-S-04-3-907/07 of the crime scene taken by the Ministry of Interior of the Una-Sana Canton on 25 October 2007, which clearly shows the Accused person pointing to the same house and the same well owned by the Banjac family.

These pieces of evidence entirely substantiate the confession made by the Accused that he had killed an elderly woman of Serbian ethnicity on an unspecified date in mid-September 1995, in the place of Korjenovo Brdo. The fact that the Accused took the investigation team of the Una-Sana Canton Ministry of Internal Affairs precisely to the house where Anda Banjac had lived and that the skeleton of the killed woman was found in the yard, more precisely in the well and in a ditch close by, undeniably prove that the dead body belonged to Anda Banjac.

#### **7. Meting-out the sentence**

When deciding on the sanction proposed in the Agreement (6-10 years of imprisonment), the Court gave particular weight to the fact that the criminal proceedings was initiated after the accused Ildan Sipić incriminated himself, which was found to be exceptionally extenuating circumstance. The Court was, however, aware that the pronouncement of a sentence lower than 10 years of imprisonment would be seen as the mitigation of the lowest prescribed punishment for the criminal offence of War Crimes against Civilians, which would be highly uncommon.

The confession made by the Accused that he had killed the helpless old woman in the described brutal manner, aware of his power over her and of the situation he and his victim found themselves in, merely because she had been of different ethnicity, was evaluated by the Court from the perspective of the impact this confession could have on the future discovery of war crimes and prosecution of the perpetrators thereof.

The Court holds that it is the fact that this crime, although discovered by the Office on Tracing Missing and Captured Persons of the Republika Srpska, could have remained undiscovered if the Accused had not reported to the competent police authorities. The Court also had in mind the entire evidentiary material, which through the statement given only by one witness pointed to the Accused as to the perpetrator of the offence.

The admission of guilt for the criminal offence committed against the values protected also by international law, that was committed not as an individual act of violence, but during the state of war and perpetrated by a legitimate member of a legitimate military formation, is not seen only as a confession of the person's own responsibility and agreement to be punished, but it also sends a clear message to all perpetrators of war crimes that not only that their case would be unavoidably prosecuted, but that certain mitigating circumstances could still be anticipated. This is precisely why a significantly milder sanction was rendered than the lowest foreseen, given that the lowest sanction prescribed for the criminal offence in reference amounts to 10 years of imprisonment or to a long term imprisonment ranging from 20 to 45 years.

On the other hand, the Court holds that this confession will have a strong impact among victims of all crimes committed in Bosnia and Herzegovina from 1992 to 1995 and that it will pave the road to a new and more efficient processing of crimes. The Court has found the confession to be important since the crimes are being denied and very difficult to prove as many pieces of evidence are being lost due to the passage of time, which all significantly impedes discovery of war crimes and criminal prosecution of their perpetrators.

Mindful of the impact the confession will have on the society, the Court decided to accept the proposed range of years of imprisonment also because of the conduct of the Accused during the proceedings, his expressed sincere remorse and his words repeated both during the main trial and the hearing held to deliberate on the Agreement on the Admission of Guilt: *"that he travelled throughout Europe, but wherever he slept and wherever he woke up, he always saw the same scene – the killing of the old helpless woman!"*

It also has to be noted that there are certain elements in the case of accused Ildan Sipić that have to be taken to his advantage when meting out the sentence to be pronounced. First of all, it is his relatively young age – he was 28 years old at the time of the perpetration of the criminal offence, then it is his imprisonment in the Banja Luka prison from 1992-1994, his detention in the *Mali Logor* in the Banja Luka Military Barracks where he stayed for 3-4 months and fled to Croatia first, and then came back as a volunteer to the Bihać theatre of war. He also consumed alcohol for years, together with narcotic drugs, which resulted in his impulsiveness, irritability and eventually in his reduced mental capacity, although not significantly reduced at the time of the perpetration of the criminal offence, as found by the neuropsychiatrist expert witness, whose evaluation helped the panel to mete out the sentence. The Court also took into account the vicious circumstances surrounding the entire conflict.

The fact that the Accused was previously convicted, last time on 24 February 2002, when a suspended sentence was imposed on him, was evaluated by the Court as an aggravating circumstance. However, having in mind a number of mitigating circumstances, the Court has held that the purpose of punishment will be completely satisfied by pronouncing a sentence of 8 years of imprisonment. Therefore, acting pursuant to Articles 39, 42, 48, 49 and 50 of the Criminal Code of Bosnia and Herzegovina, the Court has ruled as in the enacting clause of the Verdict and decided that the time the Accused spent in custody as of 26 October 2007 shall be credited toward the pronounced sentence of imprisonment in accordance with Article 56 of the CC of BiH.

**8. Reimbursement of the costs of the proceedings and property claim**

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is hereby entirely relieved of the duty to reimburse the cost of the criminal proceedings. When rendering this decision, the Court was guided by the financial status of the Accused and by the fact that he has no permanent employment, consequently no regular monthly income and that the reimbursement of the entire cost of the criminal proceedings would be detrimental to his subsistence.

The family of the injured party – the family members were not identified during the proceedings – was referred to take a civil action with potential claims under property law, due to the fact that the proceedings would be protracted by a lengthy procedure of determining the amount under such a property claim. The Court therefore rendered the decision in keeping with Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina.

**RECORD-TAKER/LEGAL ADVISOR**  
**AMELA SKROBO**

**PRESIDING JUDGE**  
**MINKA KREHO**

**INSTRUCTION ON LEGAL REMEDY:** An appeal may be filed to contest this Verdict within 15 days from the date the Verdict is received, however the decision on the criminal sanction may not be appealed.

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

*Certified Court Interpreter for the English Language*