

Number: X-KR/05/96-1
Sarajevo, 15 April 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, on the Panel composed of Judge Zoran Božić, as the president of the Panel, and Marjan Pogačnik and Elizabeth Fahey as the Panel members, with the participation of legal officer Lejla Haračić as the minutes-taker, in the criminal case against the accused Mirko Pekez, son of Špiro, Mirko Pekez, son of Mile, and Milorad Savić, son of Ljupko, for the criminal offence of War Crimes against Civilians in violation of Article 173 paragraph 1, subparagraphs c) and f) in conjunction with Article 29 and Article 180(1) of the Criminal Code of Bosnia and Herzegovina (hereinafter the CC BiH), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-116/05 of 22 November 2007, confirmed on 28 November 2007, following the public main trial during which the public was excluded for a certain period of time, in the presence of the accused Mirko Pekez, son of Špiro, and his Defense Counsel Slavica Čvoro, lawyer from Istočno Sarajevo, the accused Mirko Pekez, son of Mile, and his Defense Counsels, lawyer Duško Panić from Doboj and lawyer Predrag Radulović from Banja Luka, and the accused Milorad Savić and his Defense Counsel Nebojša Pantić, lawyer from Banja Luka, and in the presence of the Prosecutor for the Prosecutor's Office, Mirko Letić, on 15 April 2008 delivered and on 22 April 2008 publicly announced the following:

VERDICT

THE ACCUSED:

1. **MIRKO PEKEZ**, a.k.a. Guzan, son of Špiro and Mara, nee Glamočak, born on 28 October 1966 in Čerkazovići, Municipality of Jajce, Serb by ethnicity, citizen of RS, electro-technician by profession, residing in Čerkazovići bb – Municipality of Jezero, married, father of two children, employed with SZR (Private Trade Shop) *Stupna – Šipovo*, served the army in Niš and Lastovo, of medium income, ID: 04FEA0281, citizen's personal identification number: 2810966102097, no previous convictions, no other criminal proceedings pending against him, held in custody upon the Court of BiH's Decision number: X-KRN-05/96 of 1 November 2007.
2. **MIRKO PEKEZ** a.k.a. Peka, son of Mile and Radojka, nee Jerinić, born on 31 May 1965 in Čerkazovići, Municipality of Jajce, being his permanent place of residence, Serb by ethnicity, citizen of BiH, plumber by profession, single, father of two children, served the army in 1986 in Slovenia, of low income, previously convicted, no other criminal proceedings pending against him, ID: 04FEA0258, citizen's personal identification number: 3105965102105, held in custody upon the Court of BiH's Decision number: X-KRN-05/96 of 1 November 2007.

Kraljiće Jelene br. 88, 71 000 Sarajevo, Bosna i Hercegovina, Tel: 033 707 100, Faks: 033 707 225
Крaљицa Јелене бр. 88, 71 000 Сарајево, Босна и Херцеговина, Тел: 033 707 100, Факс: 033 707 225

3. **MILORAD SAVIĆ** a.k.a. *Mića*, son of Ljupko, born on 25 October 1970 in Čerkazovići, Municipality of Jajce, residing in Bosanska Gradiška, bb Socijalističke revolucije Street, Serb by ethnicity, machinist by profession, married, father of a minor, served in the forces in 1988/89 in Pula and Niš, entered in the Military Records of the Municipality of Gradiška, employed with *Standard Gradiška*, of medium income, citizen of BiH, ID: 05EAB8040, citizen's personal identification number: 2510970102081, held in custody upon the Court of BiH's Decision number: X-KRN-05/96 of 1 November 2007.

ARE FOUND GUILTY

Because by acting in concert:

During the state of war in Bosnia and Herzegovina and the armed conflict in the territory of the Jajce municipality between the Army of Republika Srpska (VRS), on one side, and the Army of BiH and HVO (Croat Defense Counsel) on the other, as members of the Army of Republika Srpska and the reserve police force, they acted in violation of the rules of Articles 3 and 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and having acted contrary to the rules of Article 75 (2) of the 1949 Protocol Additional I to the Geneva Convention relative to the Protection of Victims of International Armed Conflicts, prohibiting violence against life, health or physical or mental wellbeing of persons, by doing the following:

- On 10 September 1992, after the burial of a killed soldier of the Army of Republika Srpska, Rade Savić, as an organized group of armed people, which consisted of Jovo Jandrić, Mirko Pekez, son of Špiro, Simo Savić, Mirko Pekez, son of Mile, Milorad Savić, son of Ljupko, Zoran Marić, Slobodan Pekez, Ilja Pekez, Milorad Savić, son of Đuro and Blagoje Jovetić, which was organized by Jovo Jandrić, having mutually agreed on the plan to collect Bosniak civilians located in Ljoljići and Čerkazovići – Municipality of Jajce, whose freedom of movement was limited since they had to respond to the roll call on a daily basis, intending to take them away and kill them at the place called *Tisovac*, so they went to these places armed with automatic and semi-automatic rifles, under the threat of using the arms, unlawfully arrested and forcibly took out the Bosniak civilians from their houses, rounded up women, men and children in the place called *Osoje*, and thereupon took them all together to the place called *Draganovac*, with the rifles in their hands, threatening that they would kill whoever tried to escape, while insulting them, and physically harassing them by calling them different names, by punching and kicking them and by hitting them with rifles, and when they reached the place called *Draganovac*, they stopped them there and ordered them to put at a specifically designated place all valuable items they had on them, such as gold jewellery, watches and money, and when they did so, they appropriated those items, and thereupon took them to the place called *Tisovac*, where they ordered them to line up against the edge of an abyss, and when they did so, they all opened fire from the rifles pointed at them, intending to kill them, thus on that occasion they killed Nedžib Mutić, son of Osman, born in 1936, Šećo Malkoč, son of Ibro, born in 1933, Irbad Bajramović, son of Mustafa, born in 1971, Adnan Zobić, son of

Sabahudin, born in 1979, Fikreta Zobić, daughter of Arif, born in 1956, Fahra Balašić, daughter of Muslo, born in 1928, Faza Balašić, daughter of Avdo, born in 1928, Derviša Mutić, daughter of Hadžo, born in 1933, Latif Bajramović, son of Mujo, born in 1959, Senad Karahodžić, son of Omer, born in 1968, Ibrahim Karahodžić, son of Alija, born in 1933, Mujo Bajramović, son of Ibro, born in 1927, Asmer Zobić, son of Nurija, born in 1977, Zarifa Karahodžić, daughter of Latif, born in 1928, Đula Zobić, daughter of Avdo, born in 1924, Ramiza Mutić, daughter of Šerif, born in 1936, Adis Zobić, son of Nurija, born in 1983, Fikreta Zobić, daughter of Tahir, born in 1957, Fatma Mutić, daughter of Huso, born in 1963, Ekrema Bajramović, daughter of Latif, born in 1939, Mustafa Bajramović, son of Aslija, born in 1946, Mustafa Balašić, son of Ibro, born in 1950 and Sabahudin Bajramović, son of Šemso, born in 1979, while Zejna Bajramović, Nurija Zobić, Omer Karahodžić and Mustafa Bajramović survived the execution but sustained physical injuries, while Fahrija Mutić suffered no injuries.

Therefore, by violating the rules of international law in times of war and armed conflicts, they committed the killings and the intentional infliction of severe physical and mental pain to persons, injuries to bodily integrity and the plunder of property,

Whereby as co-perpetrators they committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) items c) and f), in conjunction with Article 29 and Article 180 (1) of the CC BiH.

Thus the Court, on the grounds of Articles 39, 42 and 48 of CC BiH, for the criminal offence of Crimes against Civilians in violation of Article 173(1)(c) and (f) in conjunction with Article 29 and Article 180(1) of the CC BiH,

S E N T E N C E S

the SECOND-ACCUSED MIRKO PEKEZ (son of Mile) TO 29 (twenty nine) YEARS OF LONG-TERM IMPRISONMENT

On the ground of Articles 39, 42 and 48 of CC BiH, for the criminal offence of Crimes against Civilians in violation of Article 173(1)(c) and (f) in conjunction with Article 29 and Article 180(1) of CC BiH, the Court

S E N T E N C E S

the FIRST-ACCUSED MIRKO PEKEZ (son of Špiro) and the THIRD ACCUSED MILORAD SAVIĆ (son of Ljupko) TO 21 (twenty one) YEARS OF LONG-TERM OF IMPRISONMENT EACH

Pursuant to the legal provision of Article 56 of CC BiH, the time spent in custody from 1 November 2007 onwards, shall be credited towards the pronounced sentence of imprisonment against the accused persons.

Pursuant to Article 198(2) of CPC BiH, the injured parties Nurija Zobić, Zejna Bajramović, Omer Karahodžić, Fahrija Mutić and Subhudin Zobnić may take civil action to pursue their claims under property law.

The injured party Mustafa Bajramović and relatives of the killed civilians: Nedžib Mutić, Šećo Malkoč, Irhad Bajramović, Adnan Zobić, Fikreta Zobić, Fahra Balesić, Derviša Mutić, Latif Bajramović, Senad Karahodžić, Ibrahim Karahodžić, Mujo Bajramović, Asmer Zobić, Zarifa Karahodžić, Đula Zobić, Ramiza Mutić, Adis Zobić, Fikreta Zobić, Fatima Mutić, Ekrema Bajramović, Mustafa Bajramović, Mustafa Balesić, and Sabahudin Bajramović, may take civil action to pursue their possible claims under property law.

Pursuant to Article 188(4) of CPC BiH, the accused persons are hereby relieved of the duty to reimburse the costs of the criminal proceedings.

Reasoning

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number: KT-RZ-116/05 of 22 November 2007, confirmed on 28 November 2007, Mirko (son of Špiro) Pekez, Mirko (son of Mile) Pekez and Milorad (son of Ljupko) Savić, due to the actions factually detailed in the Indictment, are charged with the commission of the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f) in conjunction with Article 29 and Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

At the hearing before the Preliminary Hearing Judge, the accused persons entered a plea of not guilty of the referenced criminal offence.

The main trial in this case commenced on 8 February 2008 and ended by the respective closing arguments of the Prosecutor's Office and the Defense on 14 April 2008.

1. Presented evidence

During the evidentiary proceedings, the Court heard evidence of both the Prosecutor's Office and the Defense.

At the main trial, the Court heard the following witnesses as the witnesses of the Prosecutor's Office: Nurija Zobić, Borka Oparnica, Dragan Nišić, Dragan Ždmja, Fahrja Mutić, Nedeljko Jandrić, Pero Savić, Zejna Bajramović, Omer Karahodžić, Subhudin Zobić, Dr. Rajko Todorčević, Dr. Žujo Hamza, expert-witness in forensic medicine from Sarajevo, and the additional witness Mirosljub Perlaš.

Furthermore, the following documents tendered into evidence by the Prosecutor's Office of BiH were reviewed at the main trial: Record on hearing the witness Zobić Nurija, No. KT-RZ 116/05 of 27 April 2007, made by the Prosecutor's Office of BiH; Discharge form for Nurija Zobić, issued by the RO (Work Organization) of the Clinical-Medical Centre in Banja Luka on 22 October 1992; Record on hearing the witness Borka Oparnica, No. KT-RZ 116/05 made by the Prosecutor's Office on 15 May 2007; Record on hearing the witness Dragan Nišić, No. KT-RZ 116/05 made by the Prosecutor's Office on 6 June 2007; Record on hearing the witness Dragan Ždmja, No. KT-RZ 116/05 made by the Prosecutor's Office on 23 May 2007; Record on hearing the witness Fahrja Mutić, No. KT-RZ 116/05

made by the Prosecutor's Office on 6 June 2007; Record on hearing the witness Nedeljko Jandrić, No. KT-RZ 116/05 made by the Prosecutor's Office on 6 November 2007; Submission of data on military records of Jajce Public Security Station, No. 11-11/01-828/93 of 26 June 1993; Record on hearing the witness Pero Savić, No. KT-RZ 116/05 made by the Prosecutor's Office on 6 November 2007; Record on hearing the witness Zejna Bajramović, No. KT-RZ 116/05 made by the Prosecutor's Office on 13 November 2007; Discharge form for Zejna Bajramović, issued by the RO Clinical-Medical Centre in Banja Luka on 16 September 1992; Video cassette *War Crime against Civilians on 10 September 1992 in Tisovac, Municipality of Jajce*; Record on hearing the witness Omer Karahodžić, No. KT-RZ 116/05 made by the Prosecutor's Office of BiH on 5 November 2007; Psychologist's findings for Omer Karahodžić, issued by the Specialist Department with the Public Institution (PI) Medical Centre in Bugojno on 13 April 1997, findings for Omer Karahodžić, issued by the Specialist Department with the Public Institution (PI) Medical Centre in Bugojno on 17 March 1997, findings of the Cantonal Hospital Travnik of 19 March 1997, findings of the District Hospital Travnik, Outpatient Clinic of the Surgery Department of 17 October 1997; Record on hearing the witness Subhudin Zobić, No. KT-RZ 116/05 made by the Prosecutor's Office on 8 May 2007; Record on hearing the witness Rajko Todorčević, MD, No. KT-RZ 116/05 made by the Prosecutor's Office on 14 November 2007; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Sabahudin (son of Šemso) Bajramović, born in 1979, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Asmer (son of Nurija) Zobić, born in 1977, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Mustafa (son of Ibro) Balešić, born in 1950, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Mustafa (son of Alija) Bajramović, born in 1946, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Ekrema (son of Latif) Bajramović (Šemso's wife), born in 1939, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Fikreta (son of Arif) Zobić, (Nurija's wife), born in 1957, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Fatima (son of Huso) Mutić, born in 1963, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Adis (son of Nurija) Zobić, born in 1984, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Ibrahim (son of Alija) Karahodžić, born in 1930, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Šećo (son of Ibro) Malkoč, born in 1934, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Irhad (son of Mustafa) Bajramović, born in 1971, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Adnan (son of Sabahudin) Zobić, born in 1979, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Fikreta (son of Tahir) Zobić, born in 1957, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Fahro (son of Mujo) Balešić, born in 1927, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Faza (son of Avdo) Balešić, born in 1918, issued

by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Latif (son of Mujo) Bajramović, born in 1959, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Ramiza (son of Šerif) Mutić, born in 1936, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Senad (son of Omer) Karahodžić, born in 1962, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Nedim (son of Osmo) Mutić, born in 1936, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Đula (son of Avdo) Zobić, born in 1924, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Zerifa (son of Latif) Karahodžić, born in 1965, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Mujo (son of Ibro) Bajramović, born in 1927, issued by the Šipovo Health Centre on 12 September 1992; Finding and opinion of Rajko Todorčević, MD, on the cause of death of Derviša (son of Hadžo) Mutić, born in 1933, issued by the Šipovo Health Centre on 12 September 1992; Finding on exhumed and autopsied corpses in the territory of the Municipality of Jajce, issued by the Institute of Forensic Medicine of the Faculty of Medicine in Sarajevo on 14 March 2000, made by Dr. Hamza Žujo, specialist in forensic medicine, Dr. Nermin Sarajlić, resident in forensic medicine and assistant to the autopsist Adnan Mušić, as ordered by the Travnik Cantonal Court number: KT-55/99-RZ; Decision on the Proclamation of the State of War, Official Gazette of RBiH number: 7/92 of 20 June 1992; Regular Operations Report of the 5th Corps Command forwarded to the Command of the 2nd Military District, Op.str.pov. number 84-84, of 23 April 1992; Regular Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR (Serb Republic) BiH, confidential, number 44-1/160 of 3 June 1992; Regular Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/180 of 14 June 1992; Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/195 of 23 June 1992; Regular Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/248 of 20 July 1992; Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/286 of 9 August 1992; Regular Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/332 of 31 August 1992; Combat Report of the Command of the 1st Krajina Corps forwarded to the Main Staff of the Army of SR BiH, str.pov.br. 44-1/440 of 26 October 1992; Order of the Commander of the 1st Krajina Corps, Major General Momir Talić on engagement of the police forces in the armed conflict, op.str.pov.number 535-1 of 19 June 1992; On-site Investigation Report of the Basic Court in Mrkonjić Grad, No. Kri: 57/92 of 12.09.1992, about the event which took place on 10 September 1992 in the night, in Čerkazovići, Municipality of Jajce; Letter concerning military records of the Military Post 7048 of 5 July 1993; Letter of the Ministry of the Interior, Crime Investigation Section of the Republika Srpska Police, No. 02-11347/07 of 18 July 2007; Decision of the Travnik Cantonal Court number: Kri 5/99 of 27 April 1999, ordering exhumation and autopsy of the bodies of Ekrem Bajramović and other civilians from the village of Ljoljići and Čerkazovići; Exhumation Record No. Kri: 5/99 of April 1999, made by the Investigating Judge Slavica Ćurić from the Cantonal Court in the area of Draganovac, Municipality of Jezero, RS; Rules of the Road file:

ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, in regard to Mirko Pekez, son of Mile or Mića, Ref. No. 025285/GB/RR810 of 17 January 2002; Rules of the Road file: ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, in regard to Milan Savić a.k.a. Mića, Ref. No. 025286/GB/RR810 of 17 January 2002; Rules of the Road file: ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, in regard to Mirko Pekez, Ref. No. 025281/GB/RR810 of 17 January 2002; Letter of the Jajce Police Department, No. 04-10/3-2-1-1119/02 of 10 December 2002, forwarded to the Cantonal Court Travnik, Ref. No. Ki-1/02 RZ of 29 November 2002; Decision of the Court of BiH number: X-KRN-05/96 of 17 October 2005 to take over the criminal case against the suspects Jovo Jandrić, Mirko Pekez, Simo Savić, Ilija Pekez, Milorad Savić, Mirko Pekez son of Mile, Milan Savić a.k.a. Mića, Zoran Marić, Slobodan Pekez and Blagoje Jovetić, conducted before the Cantonal Prosecutor's Office under Ref. No. KT-55/99; Attestation of Death for Sabahudin (son of Šemso) Bajramović, born in 1979, from Čerkazovići, issued by JKP Gradska groblja (Public Municipal Company) Visoko, ord.no. 117/99 of 8 May 1999; Attestation of Death for Mustafe (son of Ibro) Balašić, born in 1950, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 116/99 of 8 May 1999; Attestation of Death for Mustafa (son of Alija) Bajramović, born in 1946, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 115/99 of 8 May 1999; Attestation of Death for Ekrema (son of Latif) Bajramović (nee Škopo), born in 1939, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 114/99 of 8 May 1999; Attestation of Death for Fatima (son of Huso) Mutić, born in 1963, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 113/99 of 8 May 1999; Attestation of Death for Fikreta (son of Tahir) Zobić (nee Krak), born in 1957, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 112/99 of 8 May 1999; Attestation of Death for Adis (son of Nurija) Zobić, born in 1985, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 111/99 of 8 May 1999; Attestation of Death for Ramiza (son of Šefik) Mutić (nee Mujak), born in 1936, issued by JKP Gradska groblja Visoko, ord.no.: 110/99 of 8 May 1999; Attestation of Death for Džula (son of Avdo) Zobić (nee Haseljić), born in 1924, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 109/99 of 8 May 1999; Attestation of Death for Zarifa (son of Latif) Karahodžić (nee Škopo), born in 1928, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 108/99 of 8 May 1999; Attestation of Death for Asmer (son of Nurija) Zobić, born in 1977, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 107/99 of 8 May 1999; Attestation of Death for Mujo (son of Ibro) Bajramović, born in 1927, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 106/99 of 8 May 1999; Attestation of Death for Ibrahim (son of Ale) Karahodžić, born in 1933, from Ljoljići, issued by JKP Gradska groblja Visoko, ord.no.: 105/99 of 8 May 1999; Attestation of Death for Senad (son of Omer) Karahodžić, born in 1968, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 104/99 of 8 May 1999; Attestation of Death for Latif (son of Mujo) Bajramović, born in 1959, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 103/99 of 8 May 1999; Attestation of Death for Derviša (son of Hadžo) Mutić (nee Balašić), born in 1933, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 102/99 of 8 May 1999; Attestation of Death for Faza (son of Avdo) Balašić (nee Mujkić), born in 1918, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 101/99 of 8 May 1999; Attestation of Death for Fahra (son of Muslo) Balašić, born in 1928, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 100/99 of 8 May 1999; Attestation of Death for Fikreta (son of Arif) Zobić, born in 1956, from Čerkazovići, issued

by JKP Gradska groblja Visoko, ord. no. 99/99 of 8 May 1999; Attestation of Death for Adnan (son of Subhudin) Zobić, born in 1979, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 98/99 of 8 May 1999; Attestation of Death for Irhad (son of Mustafa) Bajramović, born in 1971, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 97/99 of 8 May 1999; Attestation of Death for Šećo (son of Ibro) Malkoč, born in 1933, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 96/99 of 8 May 1999; Attestation of Death for Nedžib (son of Osman) Mutić, born in 1936, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 95/99 of 8 May 1999; Record on Questioning of the Suspect Mirko (son of Špiro) Pekez a.k.a. Guzan, made by the Prosecutor's Office of BiH, number : KT-RZ-116/05 of 30 October 2007; Record on Examination of Witness Miroljub Perlaš, made by the Prosecutor's Office of BiH, number: KT-RZ-116/05 of 17 March 2008 and geographic maps of the Municipalities of Jajce and Šipovo.

The Court heard the following defense witnesses for the first-accused Mirko (son of Špiro) Pekez: Ljubo Jovičić, Đuro Vukadin, Pero Marić, and the Accused himself in his capacity as a witness, including additional witnesses Goran Jović and Dragan Rodić, then the defense witnesses for the second-accused Mirko (son of Mile) Pekez, Nikola Nikolaš, Nedeljko Jandrić, Jovo Topić, Jovo Prole, Vljako Radić, Bosiljka Rosić, and the Accused himself in his capacity as a witness in the closed session. The third-accused Milorad (son of Ljupko) Savić did not propose the presentation of evidence through the witness examination.

During the main trial, by reading and presenting them, the content of the following documents of the defense for the first-accused Mirka (son of Špiro) Pekez were presented: Findings and Opinion of Dr. Todorčević Rajko, specialist in Industrial Medicine, about the health condition of the first-accused on 17 December 2002, issued by the Health Centre Šipovo; Letter of the Mrkonjić-Grad Public Security Station number: 10-2-16/02-2-434/07 of 26 November 2007, b) letter of the Šipovo Police Station, number: 10-2-17/02-1223/07 of 23 November 2007, c) Official Note of the Police Station Šipovo, number: 10-2-17/02-55/07 of 23 November 2007, d) Letter of the Public Security Centre (PSC), Crime Investigation Police Sector Banja Luka number: 10-02/2-230-2831/07 of 11 December 2007, through which the Official Note number: 10-02/2-838/07 of 11 December 2007 was forwarded, including a photocopy of a page from the Book of the On-site Investigations of PSC Banja Luka from 1992. The defense for the third-accused Milorad Savić tendered into evidence the Official Note of PSC Jajce of 12 September 1992 made by Borko Oparnica; a photograph taken on the date of the burial of Rade Savić, wherein the third-accused Milorad Savić is marked, and the Record on Questioning of the Suspect Milorad Savić, made by the Prosecutor's Office of BiH, number: KT-RZ-116/05 of 30 October 2007.

2. Closing arguments

Having completed the evidentiary proceedings, the Prosecutor stated within his closing argument that it was proved during the proceedings that the accused persons, as co-perpetrators in a group comprising at least 10 persons and being organized by Jovo Jandrić, had committed the offence with which they were charged. He further noted that, in this particular case, all elements of the subject matter of the referenced criminal offence were proved. It was primarily proved through the evidence presented at the main trial that the offence charged took place on 10 September 1992, at about 22:00 hrs. in Čerkazovići near

Jezero, Municipality of Jajce, at the location of Draganovac (so-called Tisovac) which belongs to the village of Čerkazovići, at the plot owned by Pero Savić, son of Milan; furthermore, it is indisputable that, at that time, there was an armed conflict in the territory of the Municipality of Jajce, between the Army of RS on one side and the Army of BiH and HVO on the other, which is corroborated by a number of operational and combat reports. In addition, the referenced event resulted in the violent death of 23 persons, which is also evident in the Records on Exhumation of the Cantonal Court in Travnik, and also in the Findings and Opinion of dr. Rajko Topčagić and dr. Hamza Žujo, forensic medicine specialists. It is indisputably established during the proceedings that, at the time of the commission of the offence, the first-accused and the third-accused were members of the reserve police formation, while the second-accused was a member of the Army of RS. In addition, the persons who were forcibly taken out from their houses in the night time were civilians and in no way whatsoever involved in combat. Therefore, according to the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, they were entitled to protection whereby their fundamental rights should have been respected, which did not happen in this particular case. In his closing argument, the Prosecutor reasoned the witnesses' statements about the circumstances surrounding the event and he ultimately also referred to the participation of the first-accused Mirko (son of Špiro) Pekez, the testimony of the witnesses Miroљjub Perlaš, Goran Jović, Jovo Prole, the statement of the third-accused Milorad Savić, which was given during the investigation, and finally, to the testimony of the first-accused Mirko Pekez, son of Špiro, given at the main trial, comparing it with his averments stated for the record in the Prosecutor's Office of BiH on 30 October 2007. This was aimed at showing incongruity between the statements of this accused himself and their non-harmony with the witnesses' statements, and the final conclusion was therefore rendered that the first-accused's statements were fabricated so as to enable him to avoid criminal responsibility. At the end of his closing argument, the Prosecutor referred to the participation of the second-accused Mirko Pekez, son of Mile, and the third-accused Milorad Savić in the referenced incidents and, based on all evidence presented at the main trial, he moved the Court to find the accused persons guilty and sentence them by law for the committed criminal offence. When meting out the punishment, the Prosecutor noted that the Court should take into account the gravity of the committed criminal offence and the number of civilian victims, that is, thirteen men and ten women, among whom there were one child and three minors, including the infliction of physical injuries to those who survived the execution by firing squad.

The Defense Counsel for the first-accused Mirko (son of Špiro) Pekez, Attorney Slavica Čvoro, primarily noted in her closing arguments that at no point in time whatsoever did the defense deny that the incident as charged had happened. However, she is also of the view that during the proceedings the Prosecutor failed to prove beyond reasonable doubt even the presence and much less the participation of this accused in the referenced event. To wit, the accused was present at the memorial lunch after the burial of the killed soldier Rade Savić, as corroborated by the prosecution witnesses Pero Savić and Miroљjub Perlaš, and also by the defense witness Ljuba Jovetić. The defense notes the fact that, after the lunch, the accused went home in which his uncle was, and then, at about 21:00 hrs., he set off to meet Miroљjub Perlaš with whom he was supposed to leave for Šipovo. The accused stated this intention of his even at the lunch, which was corroborated by the witness Miroљjub Perlaš. The next essential point noted by the defense in the closing argument pertains to the fact .

that Mirko (son of Špiro) Pekez never participated in taking away of civilians from their houses. To wit, none of the prosecution witnesses stated that this accused person had participated in taking them away, and even the witnesses who know him as Špiro's son were contradictory in their statements in the continuation of their testimony when stating that they actually did not know which Mirko Pekez this was all about, considering that there are two men with the same first and family name, as was the case with the testimony of Zejna Bajramović. One more fact to which the defense referred in its closing argument pertained to the weapons of the persons who took away and shot a part of the inhabitants of Ljoljići and Čerkazovići. It is important to note here that no witness mentioned that they saw any of the armed persons carrying a Thomson rifle which was used by this accused. Considering the unusual appearance and the size of this weapon, it is logical to conclude that it would have been noticed, and this is particularly so as some witnesses, such as Fahrja Mutić, stated that they had seen someone using a baton as well. Furthermore, the fact is that, after the incident, this accused continued to work in the police, while this is not the case with the other two accused persons, which was also confirmed by the witnesses Nedjeljko Jandrić and Borko Oparnica. It is further noted that, towards the end of the evidentiary proceedings, the Prosecutor's Office realized that they did not have a single firm evidence against the first-accused and they therefore summoned one more witness, Miroљub Perlaš, who had given his statement to the Prosecutor's Office of BiH no more than four days prior to his testimony at the main trial, which Record on Witness Examination was received by the defense a few minutes before the main trial commenced, not a few days before the main trial, as agreed.

In its continued presentation, the Defense referred to the binding fundamental principles of the CPC and the international documents: the principle of legality, the presumption of innocence and *in dubio pro reo*, as well as the right to a fair trial before an independent and impartial tribunal. It is emphasized at this point that one of the direct consequences of the presumption of innocence is the explicit legal provision foreseeing that a doubt about the existence of the facts which constitute the elements of the criminal offence or on which the application of a provision of criminal legislation depends, shall be resolved by a verdict that is more favorable for the accused. It therefore means that the court must render an acquitting verdict, not only when the accused's innocence is proven, but also when his guilt is not proven.

After his attorney's closing argument, the accused Mirko (son of Špiro) Pekez supported the averments of his Defense Counsel and added that the burial had taken place in Sjolovi and that the old house is 2 km away from the place at which they run out of fuel, and that there are 2 km as well from Osoje to Čerkazovići, and he noted that he could not possibly have returned from the old house to Sjolovi in such a short time to agree with Jovo and the others to gather and kill the people.

In his closing argument, the defense for the second-accused Mirko (son of Mile) Pekez does not contest as well that the incident as charged took place in Draganovac. However, he also notes that the Prosecutor failed to prove the participation of this accused in the organized group. He was actually ordered by Jovo Jandrić to take part in gathering the people for the purpose of search, which did not seem to be peculiar at that time, as it happened daily. In addition, it was not proved at all that the accused knew what Jovo planned or would do, nor the fact that he had not been shooting contested by anything either. The defense also notes that, in this particular case, the concept of co-perpetration cannot be applied, but

that a more lenient form of co-perpetration, such as assistance, might possibly be applied instead. He claims that, in this particular case, that was an incident committed by the perpetrators for which other participants are not responsible. The defense also notes that the formulation of the fire in rapid succession, as stated in the Indictment, is unclear considering that it was established during the proceedings that both automatic and semi-automatic weapons were involved. Considering all the foregoing, the defense further notes that, from the beginning of the trial, this accused was prevented from participating in the proceedings properly due to hearing problems and that he therefore could not exercise all his rights in an adequate manner.

Co-Defense Counsel for this accused supported the earlier presentation and added that the defense insisted throughout the evidentiary proceedings that all those who had participated in the perpetration of the crime should have been brought in, and that therefore, there was no reason for the triage wherein these three accused persons were tried. He notes that this is not a denial of the participation of the second-accused, but it is requested that the Court, when rendering the final decision, should evaluate what has been proven, rather than the assumptions, and that the individual contribution of every accused person should be clarified.

In his closing argument, the accused Mirko (son of Mile) Pekez supported the arguments of his Defense Counsels and added that, in the relevant night, he carried the Heckler 9mm, and the fact is that no victim whatsoever was injured by the ammunition of that caliber.

The Defense Counsel for the third-accused Milorad (son of Ljupko) Savić noted in his closing argument that it was not evident in the Indictment what the individual assignment of every accused persons in the commission of the offence was, wherein the general allegations were submitted instead. More precisely, it is not evident what specifically the accused Milorad Savić is charged with, whereby no witness saw this accused person mistreating anyone, appropriating the objects or shooting. The accused himself admitted to the Prosecutor his participation in the incident; however, he also provided an explanation of the manner in which the incident truly happened. At this point, the Prosecutor's Office found an element of revenge, although this would have rather referred to some other members of the family. Furthermore, on the photograph which was tendered into evidence of the defense, it is quite clear that, on the relevant day, the accused wore civilian clothing and that, during the memorial lunch, he was supposed to serve guests and he therefore did not have the time to sit and talk with them. Article 173(f) of CC BiH does not apply to this accused either, considering that it was proven during the proceedings that the objects taken away from the civilians were appropriated by Jovo Jandrić, and there is no evidence to prove that this accused participated in the robbery. Finally, the defense refers to the principle of the applicability of law in terms of time and, in line with that, to the obligation to apply a more lenient penalty to the perpetrator, which is the CC of SFRY in this particular case.

The accused Milorad (son of Ljupko) Savić fully supported the averments presented in the closing argument of his Defense Counsel.

3. Procedural decisions of the Court

Decision on exclusion of the public

At the trial held on 10 March 2008, the Defense Counsel for the second-accused Mirko (son of Mile) Pekez moved the Court to exclude the public during the testimony of this accused in his capacity as a witness at the main trial. The motion was reasoned by the fact that the information which the accused had and intended to disclose, should it be publicized, could threaten the safety of his family residing in the territory of the Municipality of Jezero. In this regard, the Prosecutor stated that there was no need for that, considering that the information the accused would disclose was not unknown and that the proceedings hitherto were open and therefore, there were no objective reasons to justify such a motion of the Defense. However, the defense noted nevertheless that the accused intended, within his testimony, to reveal the identity of other persons who participated in the perpetration of the criminal offence with which the accused was charged. To wit, by his testimony as a witness, the accused would incriminate an additional number of persons whom he knew in person and who also resided in the territory of the Municipality of Jezero, and it is therefore reasonable to expect that those persons, if they learned about the testimony of the accused, could exert their influence on or threaten the members of the accused's close family, and the defense therefore considered it justifiable to have the public excluded during the testimony of this accused.

Having heard the Prosecutor and the Defense Counsel for the second-accused, pursuant to Article 235 of CPC BiH, the Court decided to exclude the public from the part of the main trial pertaining to the testimony of the second-accused Mirko (son of Mile) Pekez as a witness, as the panel found that, in this particular case, all requirements under the stated Article foreseeing that the public may be excluded for the entire main trial or a part of it if that is to protect the personal and intimate life of the accused or the interest of the accused as a witness, have been fulfilled.

According to the averments of the defense, the accused Mirko (son of Mile) Pekez primarily has knowledge of the event included in the Indictment, and about the persons who participated in it. Furthermore, this accused expressed his willingness at the main trial to state as a witness everything he knew about the referenced incident and to also state the names of all other participants, provided that the public is excluded from the part pertaining to his testimony. The Court took into account that the persons the accused stated in his testimony were personally known to him and that they resided in the territory of the Municipality of Jezero and that they, should they learn about the content of the accused's testimony wherein he directly incriminated them for the participation in the incident as charged in the Indictment, could realistically threaten the safety of the members of the accused's close family who also reside in the territory of the Municipality of Jezero.

On the grounds of the foregoing, the Panel rendered a decision that, in this particular case, pursuant to Article 235 of CPC BiH, it was justifiable to exclude the public from the part of the main trial which referred to the testimony of the accused Mirko (Mile) Pekez as a witness.

Decision on refusal of the motion by the defense to present additional evidence

At the main trial held on 21 March 2008, the defense for the first-accused Mirko (son of Špiro) Pekez, within the framework of the defense's proposal for additional evidence and in response to the Prosecutor's rebuttal, proposed that Dr. Rajko Todorčević should be examined as a witness. The Court did not grant this motion for the reason that, according to the provisions of Article 261 of CPC BiH, after the presentation of the prosecution evidence rebutting the arguments of the defense (rebuttal), the defense has the opportunity to propose the presentation of additional evidence (rejoinder), only if that action pertains to the evidence in rejoinder to the Prosecutor's rebuttal.

In this particular case, the witness was proposed to testify about the credibility of the adduced evidence, that is, the Findings and the Opinion of this doctor about the health condition of the first-accused on 17 December 2002, when the accused was supposed to respond to the summons and appear before the Cantonal Prosecutor's Office in Travnik. However, the Court holds that the presentation of this evidence goes beyond the scope of the rebuttal. Besides, this is a document which was previously introduced as evidence, on which the Court will provide the final evaluation of credibility and, therefore, the Court found that there was no need for the presentation of the proposed evidence.

For the same reason, the Court also refused the motion of the defense wherein the confrontation of the witnesses Ljubo Jovetić and Omer Karahodžić was requested in regard to the conversation which took place in the house of the witness Omer Karahodžić, between him and the accused Mirko (son of Špiro) Pekez, pertaining to this witness's testimony before the Cantonal Court in Travnik, while Ljuba Jovetić and Đuro Vukadin were present during the conversation. In this regard as well, the Court also found that this motion was not a part of rejoinder to the Prosecutor, for which reason this motion was refused pursuant to Article 261 of CPC BiH.

On the same day, the defense for the first-accused filed a motion to obtain an expert opinion of a ballistics expert-witness about the type of ammunition for the weapons used by the accused Mirko (son of Špiro) Pekez during the period of time as charged. However, the Panel did not grant this motion for the reason that, during the proceedings hitherto, within the evidence of the Prosecutor's Office, no report was presented which was made by the authorized officials, nor was any finding produced during the on-site investigations about the exact type of the weapons which were used for shooting the civilians. The only information about that is data stated in the Record of the Investigating Judge, number Kri-57/92 of 12 September 1992, based on which a conclusion may be rendered that automatic and semi-automatic rifles were used, which is quite imprecise to render a more detailed conclusion about the type and the appearance of the weapons used at the time of the incident as charged. Should the finding of this kind have been produced on the basis of the cartridge cases found on the spot, it would have been justified to present the proposed evidence through the expert opinion. However, having deliberated the foregoing, the Court also refused this motion by the defense as irrelevant to this particular case.

Also, the defense for the second-accused Mirko (son of Mile) Pekez on the same day filed the motion to examine the additional witnesses who were present during the relevant incident. However, the Panel refused the stated motion, given that the proposed witnesses

would not testify exclusively about the circumstances mentioned by the additional witness for the Prosecutor's Office, and consequently, these witnesses would in that case be heard beyond the legal framework as foreseen by Article 261 of CPC BiH.

4. Evaluation of evidence

Upon a conscientious and contextual evaluation of every piece of evidence individually and in correlation with other pieces of evidence presented in the main trial, and having analyzed the respective arguments of the prosecution and the defense, the Court found that the state of facts was as stated in the operative part, for the following reasons:

The accused persons are primarily charged with the commission of the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f) of CPC BiH, which stipulates:

"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;

f) Forced labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money,

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

Considering the provisions of the Article above, it is evident that, for the existence of this criminal offence, it is necessary that the following general elements exist:

- The offence must have been committed in violation of the provisions of international law in a manner that the perpetration was directed against civilians, that is, persons taking no active part in the hostilities, or who have laid down their arms and those placed hors de combat, and those protected by the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.
- The violation must take place in time of war, armed conflict or occupation
- The action of the perpetrator must have a nexus with the war, armed conflict or occupation
- It is required that *actus reus* of the perpetrator consists of the perpetration or ordering of any of the actions alternatively listed in subparagraphs of this Article.



• *Violation of the provisions of international law*

It should be noted here that the ground for incrimination of this criminal offence is actually found in international documents and Conventions. To wit, this criminal offence is general in its nature, which means that one of the elements of the subject matter of the criminal offence is exactly the violation of the rules of international law, and it is therefore required to also consult the relevant international conventions, that is, in this particular case, the provisions of the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and the Protocol Additional to the Geneva Convention, 1977. In case of crimes against humanity and the values protected by international law, it is not necessarily required that the violation of the general regulations should include the awareness of the perpetrator (*mens rea*), but it is quite sufficient that his conduct objectively constitutes the violation of the rules of international law, while in case of the specific and individual actions of perpetration, it is the subjective attitude of the perpetrator towards that offence that should be taken into account. As previously stated, the actions of perpetration of this criminal offence are alternatively set forth. In this particular case, the accused persons are charged with taking the actions of perpetration as referred to in subparagraphs c) and f) of Article 173 of CC BiH.

Therefore, within the meaning of this general criminal offence, violation of the rules of international law constitutes an objective requirement for punishability. During the proceedings, the Court found it proven, and it will be further elaborated below, that the accused Mirko (son of Špiro) Pekez, Mirko (son of Mile) Pekez and Milorad (son of Ljupko) Savić, by participating in killings, injuries to bodily integrity and the plunder of property of the population, acted in violation of the provisions of the Geneva Conventions, as stated in the indictment, thus violating the rules of international humanitarian law by acting contrary to the provisions of Article 3 and 147 of the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and contrary to the provisions of Article 75(2) of the Protocol Additional I to the Geneva Convention Relative to the Protection of Victims of International Armed Conflicts, prohibiting violence to the life, health, or physical or mental well-being of persons.

The provisions of Article 3 of the Geneva Conventions of 1949 which, by Annex 6 to the Dayton Peace Agreement, are also applied in Bosnia and Herzegovina, establish that:

"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, 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:

Article 147 of the Geneva Convention defines the cases wherein there are grave breaches of the provisions of the Convention if any of the following acts are committed against persons or property protected by the present Convention:

"willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

The accused persons are also charged with the violation of Article 75(2) of the Protocol Additional I Relative to the Protection of Victims of International Armed Conflicts, which stipulates as follows:

(2) The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) Violence to the life, health, or physical or mental well-being of persons, in particular:

(i) Murder;

(ii) Torture of all kinds, whether physical or mental;

(iii) Corporal punishment; and

(iv) Mutilation;

(b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; ...

In this particular case, the Panel found that, by the actions of which they were found guilty, the accused persons had acted with intent relative to the rules of international law, as their actions were directed against the protected values, which is the human life, and there is no doubt that, at the time of the perpetration of the criminal offence, they were aware of their conduct being unlawful under all legal systems, and it is therefore indisputable that the accused, by their actions, willfully violated the rules of international law. Therefore, violence to the life and bodily integrity, and particularly killings, mutilation, cruelties and tortures of all kinds are particularly prohibited against this category of population. It is therefore evident that the criminal offences by the accused, of which they were found guilty, are entirely in violation of the provisions of international law.

In interpreting the stated provisions so as to establish violation of the rules of international law, it is necessary to define whether the action of perpetration was directed against a special category of population which is protected by the Convention and its Protocol. This refers to the civilian population, which includes all persons taking no active part in the hostilities, even the members of military or police formations who have laid down their arms and those placed hors de combat.

In this particular case, persons against whom the crime was committed were not members of any party to the conflict, nor did they wear military uniforms. To wit, it is evident in the testimony of the victims who survived the crime that they were taken out of their homes in the night time. Thus, witness Nurija Zobić, a victim of the referenced crime, in the evening relevant to the crime, was in his house together with his wife, while his children were already in their beds, and that his wife looked through the window at about 21:15 hrs. and saw the armed soldiers entering the frontyard, and then Jovo Jandrić called them to come out. Also, having been taken out of his house, the witness recognized the second-accused Mirko (son of Mile) Pekez who wore the military camouflage uniform and carried a Kalashnikov which he pointed at the witness and ordered him to go back to his house, get dressed and to follow him, together with his wife and children. Apart from this accused, the witness also recognized five uniformed and armed persons, among whom: Simo Savić, son of Milorad, Milorad Savić, son of Đuro and Milorad Trkulja, who did not come from their village.

The witness Fahrija Mutić, also a victim and an injured party in these proceedings, heard on the relevant night at about 22:00 hrs. someone knock on the door of the house of Omer Karahodžić in which, in addition to the witness, there were Omer Karahodžić, his wife Zarifa Karahodžić and their son Senad Karahodžić, Šećo Malkoč, Ibrahim Karahodžić and Ibrahim Mutić, the witness's father. According to Fahrija Mutić, someone knocked and asked them to open the door; then he saw the second-accused Mirko (son of Mile) Pekez and Jovo Jandrić with automatic rifles. On that occasion, the second-accused ordered the witness to call his father who had fled, threatening to kill him if he does not do so. On that occasion, the second-accused carried a rifle in his hand and the witness noted that the uniformed persons whom he had the opportunity to see around the village always carried weapons, not only on the relevant night. This was also corroborated by the witness Omer Karahodžić who on the night as charged was on the upper floor of that house together with his wife and children, until his brother called him from the floor below, saying that the military police came there for the roll call. He heard his brother saying to the accused Pekez: "Pekez, let him dress himself", and the accused ordered them to get out straight away. Having come down the stairs, the witness saw Jovo Jandrić and Mirko Pekez who were armed, and he also saw that, in the room in which he previously was, there was no Muharem Mutić as he had fled through the window. The witness did not see clearly as to which Mirko Pekez was present there, but the Court, taking into account the testimony of other witnesses which matched, and primarily the testimony of Fahrija Mutić, rendered a conclusion that it was the second-accused Mirko Pekez, son of Mile, since there was no doubt in this witness's mind that he recognized this accused, and he was also present at the relevant time in the same house together with Omer Karahodžić.

The witness Zejna Bajramović, who survived the crime, also testified about the circumstances surrounding the taking of the civilians out of their houses. Her testimony at the main trial was consistent with those video-recorded and in relation to which a video-cassette was tendered into evidence by the Prosecutor's Office, wherein she stated that, at the relevant time, she was in the house of Fahra Balešić, when someone banged on the door demanding to open it. When they opened the door, she saw the armed persons and recognized among them Jovo Jandrić and the accused Mirko Pekez, son of Špiro, who told

the witness and other members of the household not to get dressed and to quickly come out of the house, as they were to take them for interrogation.

It is evident in the stated testimonies that these persons, being the victims of the crime themselves, at the time of being taken away from the houses to the execution site together with other members of their family and their neighbours, may be considered civilians. These were all persons taken out of their houses in the night time, at about 22:00 hrs., when some of them were already asleep, while some were not even allowed to dress decently before they were taken out. Therefore, in no way whatsoever were these persons involved in the combat activities, nor were they armed. None of the witnesses who testified about the taking away of people and their assembling in the place of Osoje stated that any of the persons who were taken out had weapons or any part of their clothing that indicated their belonging to the military or police formations. These persons were absolutely not in a position to offer any resistance to the armed persons, nor did they have any means of defense. In addition, all civilians were Muslims and, at the time of this incident, they were in the territory controlled by the Bosnian Serbs, and therefore, this should be viewed as relative to the nature of the criminal offence with which the accused persons are charged, which is an offence that consists exactly of taking the actions by which the fundamental human rights and freedoms were violated, wherein these inhumane actions are directed against civilians, that is, those who, at the time of the armed conflict, were not in a situation to fight, nor were they capable of fighting, wherein they found themselves in the war theater or in the occupied territory.

Considering the foregoing, it is evident that the action of the criminal offence as charged, which has been found to be committed by the accused persons, was exactly directed towards breaching the rules of international law as foreseen by the Geneva Conventions, wherein the actions were taken against the protected category of the civilian population in relation to whom the injuries to life and bodily integrity are particularly prohibited.

- *Existence of an armed conflict*

Also, a special legal element of the criminal offence pertains to the time of perpetration, that is, the offence must be committed at the time of war or armed conflict.

When evaluating the existence of the criminal offence and the criminal responsibility of the accused, the Court took into account all elements constituting the subject matter of the criminal offence with which the accused persons are charged. Therefore, in regard to this requirement, that is, the existence of the armed conflict, the Court found, having reviewed the evidence of the Prosecutor's Office - Decision of the Presidency of the Republic of Bosnia and Herzegovina (R BiH) on the declaration of state of war of 20 June 1992, that there existed the armed conflict in the territory of R BiH, about which fact there was no doubt at all in this case.

Therefore, it is indisputable that, in the territory of Bosnia and Herzegovina, there existed the armed conflict in the area of the Municipality of Jajce, more precisely, in the villages of *Štarići* and *Čerkazovići*, which are covered by the Indictment, between the members of the *Vojska Republike Srpske* on one side and the Army of BiH and HVO on the other. The Prosecutor's Office presented about this fact a certain number of documentary evidence

corroborating these arguments which, inter alia, stems from the Regular Operational Report of the Command of the 5th Corps of VRS of 23 April 1992 and the Regular Combat Reports of the Command of the 1st Krajina Corps of VRS produced between 3 June 1992 and 26 October 1992.

Although this fact was not contested during the proceedings, it should be noted nevertheless that both the witnesses for the prosecution: Nurija Zobić, Fahrija Mutić, Zejna Bajramović, Omer Karahodžić, Subhudin Zobić, Borko Oparnica, Dragan Nišić and Pero Savić, and the witnesses for the defense, Đuro Vukadin and Pero Marić, testified about the existence of the armed conflict.

It is evident in the testimony of the referenced witnesses that the first mobilization in the territory encompassed by the Indictment commenced in late 1991, when members of the territorial defense were invited to sign for uniforms and weapons because of the war in Croatia, which the Muslims refused to do and which was one of the reasons for splitting the guards and for the first shooting at the houses in which the Muslim families lived. According to the testimony of the witness Nurija Zobić who, during the war, lived in the village of Čerkazovići in which he was born, the first attack on the village of Ljoljići commenced on 22 March 1992 at about 11:00 hrs., while the other attack was directed against the village of Čerkazovići in which he lived, some 1.5 km away. The witness Zejna Bajramović also corroborated that the commotions in these villages began in March, during the Muslim holiday Ramadan, when the shooting also began and, as stated by the witness Fahrija Mutić as well, the shooting basically took place around the houses, initially from the infantry weapons and then from the mortars. All witnesses mainly agree that, after the mobilization failed, the inhabitants began to leave these villages and, eventually, about thirty one Muslims stayed in that area, who had to report daily to one reserve and one active police officer to be roll-called.

It was found during the main trial that in the night time, trucks were usually transporting sand bags to be used for check-points. At that time, according to the witness Omer Karahodžić, the check-points were located near the house of the accused Mirko (son of Mile) Pekez, and the Serbs used them to control the Mrkonjić Grad road, while the witness Subhudin Zobić also referred to the setting of the check-points next to the so-called Relja's house which was situated opposite to Ljoljići and Čerkazovići, while those check-points were later relocated near Perućica and, a few days afterwards, further down to Jezero.

The prosecution witness Borko Oparnica, who was an active police officer at the time relevant to the Indictment, also stated that, in March 1992, those from the village of Ljoljići opened fire at the Red Berets' check-point in Stupna and after that he, together with his commander, patrolled around those places so as to check the security situation. After the need for that ceased due to the maintained order and the security of the remaining inhabitants of the villages, approximately thirty two of them, they established roll-calls to take place at 10:00 hrs. at certain sites in the villages, which was done by two police officers each.

As already stated, the defense witnesses, that is, the witness Đuro Vukadin, also testified about the existence of the armed conflict, stating that he remembered the beginning of the war conflicts in the territory of Ljoljići and Čerkazovići, and that the weapons were received

from everywhere. During that period of time, the Muslims, who were positioned further down to the village of Ljoljići, opened fire at Šipovo, at the Serb houses mainly, which forced a certain number of Serbs to take refuge in neighbouring Serbia. Also, the defense witness Pero Marić stated that, even though he did not remember how the war began, he knew that a large number of Serbs fled as the Muslims from Ljoljići opened fire at their houses.

The foregoing is important for the reason that, pursuant to Article 173 of CC BiH, this criminal offence, apart from the requirement that it must be connected with the breach of the rules of international law, must also be committed at the time of an armed conflict. It is noteworthy that a requirement for this offence to exist does not depend on the nature of the armed conflict in terms of making a distinction as to whether the conflict is internal or international, considering that Article 3 of the Geneva Conventions stipulates that the provisions set forth in the Conventions shall also apply in the case of an armed conflict that is not of an international character.

- *Correlation between the perpetrator and the armed conflict*

Deliberation on the status of the accused persons at the time relevant to the indictment is important from the aspect of one more requirement which is needed for the existence of this criminal offence, that is, the action of the perpetrator must be connected with the war, armed conflict or occupation.

It is important to note here that *"the existence of an armed conflict must 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"*.¹ Therefore, during the main trial, the Prosecutor's Office proved the averment that, at the time of commission of the criminal offence, the accused Mirko (son of Špiro) Pekez and Milorad (son of Ljupko) Savić were members of the reserve police formation, while Mirko (son of Mile) Pekez was a member of the Army of RS.

This fact primarily stems from the documentary evidence of the Prosecutor's Office, that is, a Letter of the Public Security Station Jajce, number: 11-11/01-828/93 of 26 June 1993 and a Letter of the Ministry of the Interior of Republika Srpska, number: 02-11347/07 of 18 October 2007, wherein it is stated that the accused Mirko (son of Špiro) Pekez and the accused Milorad Mirko (son of Špiro) Pekez were members of the reserve police formation in the period from 1992 to 1995 and until the end of September 1992 respectively. The accused Mirko (son of Mile) Pekez was a member of the Mrkonjić Brigade of the Army of RS from 10 July 1992, which is evident in the Letter on the Military Records of the Military Post number: 7048 of 5 July 1993.

During the main trial, having reviewed the stated material documents and the statements of some witnesses, the Court found that, in the relevant period of time, the first-accused and the third-accused were members of the reserve police formation, while the second-accused Mirko (son of Mile) Pekez was a member of the Army of RS. The prosecution witnesses

¹ Prosecutor versus Kunarac et al, case number: IT-96-23 & IT-96-23/1-A, Judgement of 12 June 2002, para.

Borko Oparnica, Dragan Nišić, Dragan Ždrnja, Nedeljko Jandrić, Vlajko Radić and Miroљjub Perlaš provided their testimony about these circumstances.

The prosecution witness Borko Oparnica who was, at the relevant time, an active police officer in the area of the local community of Jezero, which covered the villages of Ljoljići and Čerkazovići, stated in his testimony at the main trial that he knew the accused Mirko (son of Špiro) Pekez and Milorad Savić in person and that, at the relevant time, they were members of the reserve police formation and that, as such, they signed for weapons which they always had with them. Also, the witness Dragan Nišić who was a member of the reserve police formation during 1992, and the witness Dragan Ždrnja who was a Chief of Intelligence of the 30th Division, stated that the active police forces were seated in Jezero and that the members of the reserve police formation were also involved in the daily police activities in that area, had the same competence as the active police and therefore signed for uniforms and weapons.

A more detailed description of the police organization in this period of time was provided by the witness Nedeljko Jandrić, Chief of Police Station in Bravnice at the relevant time, who stated that the Station was organized in a manner that it had its Commander, Chief and Assistant, and the Communications Section and the Crime Investigation Section. At the check-point in Bravnice, the witness had two groups deployed, one commanded by Jovo Prole in the barracks in Kamenice, and the other was the Station Unit Bravnice run by Dragan Nišić. The accused Mirko (son of Špiro) Pekez was first assigned the police duties and then the communications duties, which was corroborated by the accused Mirko (son of Špiro) Pekez himself at the main trial on 29 February 2008, when he made his testimony as a witness and noted that, in late May 1992, he left the military to join the reserve police formation of PSS Jajce, where he stayed until 1995; however, in late 1992, he was assigned the duties of the communications officer. At that time, he wore a military uniform and had weapons, the Thompson rifle, for which he signed in the army.

This fact was also corroborated by an additional witness for the defense, Goran Jović, who stated that, like Mirko (son of Špiro) Pekez whom he recognized in the courtroom, he was a member of the reserve police formation in Bravnice during the war. He also confirmed that the weapons of the reserve formation varied, ranging from semi-automatic rifles to *papovka* (trans. note: semi-automatic rifle, again) and, to his knowledge, the accused Pekez carried the weapon which the witness had not seen in the former JNA, and he had that weapon with him all the time. The witness Dragan Rodić also stated that he knew Mirko (son of Špiro) Pekez in person and that the latter was in the reserve police formation, while the witness was the driver of the Commander of the 1st Light Šipovo Brigade at the time. He also testified that the weapon this accused signed for throughout the war was manufactured abroad and it was noticeable since that was not a weapon he used to see during his service in the former JNA forces. The testimony about the police organization in this period of time was also provided by Vlajko Radić who performed the duties of the Police Station Deputy Commander in Bravnice in 1992, and one more prosecution witness Miroљjub Perlaš who was a member of the civilian police in 1992 and who, as such, signed for an automatic rifle, which is a weapon that was basically carried by other reserve police officers as well. This witness knows best Mirko (son of Špiro) Pekez with whom he stayed in the reserve police formation until the end of the war, but he also knows that Milorad Savić was a member of that formation as well.

Based on the foregoing, the Court rendered its decision that, at the time of commission of the crime, two accused persons were members of the reserve police formation, while the accused Mirko (son of Mile) Pekez was a member of the Army of RS. Furthermore, it follows from the testimony of the witnesses who were at the leading positions in the police structures, like the witness Nedeljko Jandrić, that all members of the police were armed and uniformed, not identically though, so some wore blue uniforms of the reserve formation, some military officers' uniforms, while some simply put on a camouflage uniform with a hood. In any case, even if only one piece of clothing was involved, it was used in a manner so as to indicate the membership of the army or, in this particular case, the police. Considering this, it is indisputable that two accused in this case were engaged as members of the reserve police formation during the armed conflicts, while the second-accused was a member of the Army of RS. The fact is that their activities mainly pertained to being on duty at the established check-points or to roll call the inhabitants in the villages; however, the fact is that they were also engaged in military operations on an as needed basis, like the accused Milorad Savić, who was, at a certain point in time, transferred to the Kamenica barracks under the command of Jovo Prole, at the time of planning operations for the liberation of Jajce. Also, an order of the Major-General Momir Talić of 19 June 1992 speaks enough about the police assignments during the armed conflict, wherein it is stated that the police units may be exceptionally used in holding and reinforcing the frontline pending the arrival of the military units, and a conclusion may be therefore rendered based on the presented evidence of the Prosecutor's Office that they were technically capable of doing that, that is, armed and uniformed so as to be able to perform tasks of this kind.

In regard to this circumstance, the Court also evaluated the testimony of the victims of the crime who survived, that is, Nurija Zobić, Fahrja Mutić, Omer Karahodžić, from which it stems that at the time of the incident as charged, those who committed the crime wore the camouflage olive-drab uniforms and were basically armed with weapons of the former JNA. The defense for the first-accused contested the statements of some witnesses submitting that none of them, on the relevant night, noticed among them a person armed with a Thompson rifle, American make, which is very characteristic and easy to recognize compared with the weapons of the former JNA, which other members of the active and reserve police formation carried. However, the Court gave credence to the witnesses for the reason that those were wee hours, when visibility was diminished and the civilians were in panic and frightened at the time, and it is therefore reasonable to conclude that their power of observation of such details was diminished. However, the witness Fahrja Mutić explicitly stated in his testimony that, on the relevant night, he could clearly see that the accused Mirko (son of Špiro) Pekez was armed with a rifle which could not be assigned to a category of the weapons of the former JNA, which weapons were recognizable to the witness and which was therefore noticeable. Also, it should be kept in mind that the testimony of these witnesses are matching in regard to the fact that the persons who took them to the execution site were uniformed and armed and, in this particular case, the civilians could not and were not obliged to precisely identify the type of the weapons carried by every individual armed person, nor were they, at that particular time, capable of determining that, considering the manner and the time of the event.

Therefore, these persons had certain assignments and weapons which they regularly carried with them owing to their status during the armed conflict, and the population recognized

them as the members of the reserve police or military police formations to which they reported to be roll called at the specified time.

Anyway, it is essential for the existence of the criminal offence that these persons, due to the existence of an armed conflict, were engaged in the police and military structures of the newly established Srpska Republika BiH and, owing to their thus acquired status, they were capable of striking the civilians with fear or, more precisely, they could, by misusing their positions in the police structures, force those persons to, without resistance, follow their orders, which they did in this particular case, wherein they took the remaining civilians to the execution site Draganovac (so-called Tisovac) on the relevant night, using excuses that they "were going to be exchanged in Bravnice" or to "the conversation", which was a forcible abduction the said persons could not offer any resistance at all.

- *The following element which must be satisfied for the existence of the referenced criminal offence requires that the perpetrator took the action of perpetration or ordering, which consists of the perpetration of the criminal offence*

In this particular case, on the basis of the evidence presented during the proceedings, the Court found that the accused persons, as co-perpetrators, participated in the joint criminal enterprise of killing and plundering the Muslim civilians from the villages of Ljoljići and Čerkazovići, as previously stated. Within the joint criminal plan, all co-perpetrators were aware of its ultimate intent or aim; it could not have been unknown to them. Having taken into account the manner in which the incident took place, the Court rendered a conclusion that, even if the accused had not initially known the actual purpose of rounding up the civilians, they must have, at a later point in time and based on all circumstances surrounding the event, foreseen the actual aim, which was the killing of the remaining Muslim population from Ljoljići and Čerkazovići. However, it is indisputably established during the proceedings that the accused nevertheless tacitly agreed to the final outcome and the consequence and they, through their individual actions, contributed to have the same criminal aim achieved.

First, the accused Mirko (son of Mile) Pekez actively participated in the act of perpetration, plunder and killing of civilians, which undoubtedly stems from the testimony of the surviving victims, while the other two accused persons, through their participation in rounding up the people and providing for them to be taken to the execution site, decisively contributed to the realization of the criminal plan. In this particular case, the accused did not have to physically take part in the killings and plundering to be held responsible thereof. It is sufficient that they willingly participated in aspects of the common plan, were in a position to render aid and assistance to achieve the goal, and they intended to achieve such a result.

To wit, during the proceedings, the defense did not contest the fact that the referenced incident took place on 10 September 1992 at the location of Draganovac, as alleged in the Indictment. In addition, a detailed description of the site was provided in the Record of the Investigating Judge with the Municipal Court in Mrkonjić Grad, Bogdan Gajić, number: Kri-57/92 of 12 September 1992, wherein it is stated that the incident covered by the Indictment took place exactly on the stated date in the place of Čerkazovići near Jezero – Municipality of Jajce, at the location of Draganovac, which is also called Tisovac, at the

land plot owned by Pero Savić, son of Milan, who corroborated these averments when making his statement as a witness. The referenced Record provides a detailed description of the site and the civilian victims, and it is noted inter alia that the actual place of the killings was a water-worn ravine at the said plot, which is twisting and irregular in shape, some sides of which are larger and steeper, covered with grass and low plants. Corpses were found in the cutting-water worn ravine, one next to the other and one over the other. Apart from describing the condition of the bodies found, it is also stated that, next to the bank of the water-worn ravine, on the grass and ground, there were pools of coagulated blood in the range of 7-8 meters. The following is seen at that site: two pieces of dentures, parts of brain, part of bones and, in front of these clues, a larger quantity of cartridge cases were on the ground. It was subsequently established that there were 66 pieces of cartridge cases, 7,62 mm caliber, for automatic and semi-automatic rifles. Three empty cartridge clips for semi-automatic rifle were also found on the grass, while at the place where the persons were deprived of life the grass was stamped down and trodden. Dr. Rajko Todorčević, general practitioner specialist from Šipovo, carried out the external examination of all killed persons.

In regard to this circumstance, testimony was also provided by the prosecution witness Borko Oparnica who was an active police officer at the time and who did the roll calls around the villages. He heard about the incident from his colleagues who claimed that none of the Muslims in the villages of Čerkazovići and Ljoljići responded to the roll call, except for a few women. The witness was afterwards assigned the task to secure the site pending the arrival of the on-site investigation team, and he stated that he had seen blood on the grass and 21-22 corpses at the referenced site. He saw them in a small water-drifted gully. The witness also stated that he knew the killed persons as he often saw them at the roll calls, and besides, he worked before the war as a police officer of the PS Jajce covering the area of the local community of Jezero which includes the villages of Ljoljići and Čerkazovići, and he was therefore well informed of the terrain and the inhabitants as he performed the police duties in that region for about 13-14 years.

Also, the prosecution witness Dragan Nišić, who was admitted into the PSS Jajce at the time of the incident in 1992, stated that the Chief of Police in Bravnice, Nedeljko Jandrić, asked him to put aside all his duties and to help him. According to the witness, Nedeljko Jandrić was upset, lost and in panic during the conversation, and he said that some civilians had been killed. Considering that the witness did not know people from Jajce, the active police officers Borko Oparnica and Đuro Rađen also informed him that a larger number of Muslim civilians had been killed and that they were supposed to come to the scene and determine who had done that. The witness describes that, after reaching the spot, he saw a horrible scene as the civilians were lying one over the other, and there were many cartridge cases around. The witness Dragan Ždmja, who worked in the 30th Infantry Division during the war, described the scene identically. This witness does not know the exact date but he knows that someone reported to the operational centre of this Division that the civilians had been executed by firing squad, and then, after being ordered by the Command, he also went to the crime scene to check if there were survivors. Having reached the location of Draganovac, the witness found about 20 persons, dead civilians. Considering that the defense did not contest the fact that the incident happened, the Panel only briefly describes the scene after the perpetration of the criminal offence.

Taking away of civilians from the village of Čerkazovići

All witnesses who survived the execution consistently state that the taking out of the houses and forcible taking away commenced after the memorial lunch, in the period between 21:00 and 21:30 hrs. On that night, witness Nurija Zobić was at home with his wife and children at about 21:15 hrs. His wife looked through the window and saw the armed persons entering the frontyard. Then Jovo Jandrić asked the witness to come out and say his family name, so the witness came out barefooted. Then, in front of the house, he saw Mirko Pekez, son of Mićo, by which name he knew his father, and he saw a weapon pointed at him, and he thinks that it was a *Kalashnikov*. When examined as a witness, the witness recognized this accused in the courtroom. After he went out barefooted, the accused told him to go back to the house, get dressed and take his wife and children with him. On that occasion he also saw Jovo Jandrić beating other persons, his neighbours, who were also taken out of their houses. After coming out of his house for the second time, he saw Milorad Savić, son of Đuro, Simo Savić, son of Mile, Milorad Trkulja, and some other persons whom he did not recognize immediately. Later on, in the moonlight, he could also see Mirko Pekez, son of Špiro. At the time of being taken out, he could also see his neighbours Mujo Bajramović, Latif Bajramović, Zejna Bajramović, Mustafa Bajramović and his son Irljad, Fahra Balesić, Derviša Mutić and her daughter Tinka, Đula Zobić and her grandson Adnan, Ekrema Bajramović and her sons Sabahudin and Mustafa, and Fata Balošić. Of members of the witness's family, there were his sons Asmer and Adis, his wife Fikreta and his sister Fikreta. Those who took them out wore camouflage uniforms and had weapons which the witness recognized to be sniper-rifles and *Kalashnikovs*. After being taken out, the persons were rounded up by the armed soldiers in a way that the civilians were lined up in a column by twos, while the armed persons were in front of them, on the side and at the rear of the column. Then the column headed towards Osoje where the cross-road was leading to the villages of Ljoljići and Čerkazovići. While moving towards that location, the armed persons were hitting certain individuals, Ekrema specifically, while the accused Mirko (son of Mile) Pekez kept his rifle barrel pointed at the witness's head all the time.

Having reached the place of Osoje, they were ordered to sit down, while a group of 6-7 armed persons headed towards the village of Ljoljići and, half an hour later, they came back bringing Omer Karahodžić, his wife Zarifa and their son Senad, and Šećo Malkoč, but he does not remember if Fahrja Mutić was also taken with them on that occasion, although he used to see him at the roll calls. In Osoje, he also saw the accused Milorad Savić, son of Ljupko, who was waiting for them together with other neighbours and who wore camouflage uniform like others who were taking them out. The witness explained that there were two groups rounding up the inhabitants. One group included Jovo Jandrić and Mirko (son of Mile) Pekez, and that was the group which came to the witness's door; however, his house is located next to the water-well and is the last house in the village, so that the other group comprising Milorad Savić likely took out people from other houses, but he is quite certain that both groups met at the Osoje cross-roads where he saw the third-accused for the first time.

The witness Zejna Bajramović also testified about the circumstance surrounding the taking away of the civilians from the village of Čerkazovići, and she also corroborated in her testimony provided at the main trial that the taking away commenced in the night, on the day of burial of the killed soldier Rade Savić. On the relevant night, she was in the house of

Fahra Balošić when someone knocked on the door saying: "Get out, open up the door!", and the witness opened the door and saw her husband, her son, Nedžib Mutić, his wife, Mustafa Bajramović and his son. On that occasion, she also recognized Jovo Jandrić and a person who she thinks was Mirko (son of Špiro) Pekez, whom she could not recognize in the courtroom but she categorically states that she knows that there exist two persons by the name of Mirko Pekez, and she recognized Špiro's son on the referenced night, as he was at her son's wedding and stayed overnight in her house. In her statement made in 1994, which was listened to at the main trial, the witness stated that, that night, "all Pekezs were present – both of Mićo's and the one from above". In this statement she also stated that they were told on that occasion not to get dressed and to swiftly move on as they were to be taken for interrogation. On that occasion, her son was ordered to carry Fahra with whom the witness stayed and who fainted from fear at the relevant time. The column began to move towards the house of Nurko Zobić in the vicinity of which is the Osoje cross-roads, while the armed persons were hitting them and Jovo Jandrić hit her by his rifle butt. The witness saw that the civilians rounded up from the village of Čerkazovići were sitting at the cross-roads and that they were guarded by armed persons. Then she noticed that Jovo ordered some persons to go to the village of Ljoljići to take the inhabitants and, later on, groups of inhabitants of these two villages were gathered at the Osoje cross-roads where they stayed for about an hour. The witness recognized her neighbours from Ljoljići, among whom were Zarifa, Omer, Šećo and Fahrja, and she also saw that they were beaten while approaching the place of Osoje. There she heard Pekez and Jovo saying: "Do you know that we shall kill you all!" and then someone said "Do it!" and then they said: "No, we shall not, we shall take you up there to the Command in Bravnice"; however, they were taken to the place of Tisovac where the execution took place. The defense contested the testimony of this witness, arguing that she, at the time of her statement in 1994, stated that she was seriously ill and the defense noted that fact, submitting that her testimony cannot lead to the conclusion that the accused Mirko (son of Špiro) Pekez was also present at the scene. However, bearing in mind that her statements do not differ considerably and that the offence was committed more than 15 years ago, it is reasonable to conclude that her memory was better in 1994, that is, two years after the incident, when she categorically claimed that "all Pekezs - both of Mićo's and the one from above" were present at the time of the incident. The witness could not precisely describe the accused persons, nor could she recognize them in the courtroom, but that is reasonable to expect, given the time span from the event about which she testified, and that the accused persons considerably changed since 1992 to date, for which reason the Court nevertheless gave credence to this witness.

Taking Civilians Away from the Village of Ljoljići

The fact that civilians were taken away from the villages of Čerkazovići and Ljoljići, and that all were rounded up at the place of Osoje was confirmed by the accused Mirko (son of Mile) Pekez. In giving his statement in a witness capacity, he said that after the arrival in the place of Osoje, Jovo Jandrić ordered him, Milorad Savić - son of Ljupko, and another three armed persons to go and bring all Muslims from the village of Ljoljići to the place of Osoje, where the armed persons stood with the civilians brought from the village of Čerkazovići.

The Court gave its credence to the testimony of the Accused in the part in which he explicitly listed the persons who had participated in the commission of the crime, in which the accused Mirko (son of Mile) Pekez directly incriminated the accused Milorad (son of

Ljupko) Savić, placing him at the place and the time of the commission of the crime, precisely presenting the details of his participation in the event concerned. This Accused was also determined in his assertions that the accused Mirko (son of Špiro) Pekez did not participate in the commission of the crime. However, in relation to this part, the Panel did not give its credence to the testimony of this Accused, considering that all other evidence adduced at the main trial undoubtedly suggested that the accused Mirko (son of Špiro) Pekez had also participated in rounding up and taking away the civilians to the execution site for the purpose of execution.

Fahrija Mutić, who also survived the execution, testified with regard to this circumstance of taking the civilians away from the village of Ljoljići. This witness primarily personally knows the Accused and the other persons who that night participated in taking away the civilians, and he mentions them by their names. On that critical night, together with his father Muharem Mutić, Šećo Malkoč and Ibrahim Karahodžić, he was in the house of Omer Karahodžić which was located in Ljoljići. In addition to Omer, his wife Zerifa and his son Senad were also in the house. Around 22:00 hrs in the evening, someone knocked on the door, requesting that the door be opened. When the witness opened the door, he saw Mirko (son of Mile) Pekez and Jovo Jandrić with automatic rifles. At that moment, his father and Omer Karahodžić jumped out through the window; thereupon the shooting was heard, and after a while the house was surrounded. Jovo and Pekez, son of Mile, took them out of the house, and they stood there near Omer's house for some time. At that place, the accused Mirko (son of Mile) Pekez fired several shots in the air from the rifle he carried, but injured nobody. Jovo Jandrić told them there that they would take them to Bravice to exchange them; thus the witness and the other gathered civilians thought that it would be like that indeed. Further down the road, they were met by two sons of Ljupko Savić, namely the person whom he knew under his nickname Mićo, and the other one whom they referred to as Pajo. The witness also confirmed these assertions when cross-examined by the Defense for Milorad Savić, when he categorically asserted that he had recognized this Accused when he was brought out from the house of Omer Karahodžić.

Thereafter, they called out Omer to come back, threatening him that they would kill his wife and son if he did not do so, thus he returned with his bare feet. Not far from the spot where they stood, the witness also recognized Blagoje Jovetić and Zoran Marić. After the line started moving, the accused Pekez, son of Mile, personally ordered the witness to call out his father who had escaped, threatening that he would kill him. However, the witness's father did not show up. He also notes that on that occasion, the Accused was armed like all the others who were taking the civilians out of their houses. The line continued moving, and passed by the house of Blagoje Jovetić, heading toward the place called Osoje. On that occasion, armed persons were beating Omer and Šećo along the way, and as far as the witness could see, they were beaten by the accused Pekez, son of Mile, and Jovo Jandrić. Blagoja Jovetić threatened the witness by holding the rifle barrel against the back of his head, while the armed persons who were at the back of the line were taking turns beating the civilians at the end of the line by their rifles, kicking and punching them, hitting them with batons. The witness emphasizes here that he noticed that the accused Pekez, son of Mile, had a baton. Before their arrival in the place of Osoje, they also passed by the house of the accused Mirko Pekez, son of Špiro, whom the witness had seen at the Osoje crossroads, but he did not see him thereafter among the persons who took the civilians to Draganovac.

Witness Omer Karahodžić, who was in the same house with this witness, confirms his assertions entirely, stating that on that critical night he was in a room on the floor with his wife and soon, and that his brother called him claiming that the military police had come requesting a roll call. He also heard his brother saying "Pekez, let him get dressed", to which Pekez only responded "Get out". After he had come down the stairs, he saw armed Jovo Jandrić and Mirko Pekez, and he also saw that a window was open in the room in which Fahrija Mutić had previously been. He jumped out through it and Jovo ran after him. The witness remained hidden for a while, and he heard Jovo asking "Simo, is there any sign of him?", probably referring to Simo Savić, who responded to him that he had not seen the witness. After the witness returned, Jovo addressed him by saying "Where are you running?", cursed him "his Ustasha's mother", and thereupon hit the witness with a wire cable after which the witness started bleeding. On that occasion, the witness saw there his brother, wife and child, Šećo Malkoč and Fahrija Mutić, whom Pekez was telling "Fahrija, call your father, he will replace all your heads". However, his father did not show up and they continued walking toward the place of Osoje, where they were ordered to stop. The witness noticed a number of civilians who had also been brought to that place. This witness was not positive in his testimony regarding the fact as to whom among the accused Pekez persons he saw that night at the door. However, the Court took into account the testimony of Fahrija Mutić, which was entirely consistent with this witness' testimony. This is very important because these two witnesses were in the same house at the time when they were taken out. Thus, bearing in mind that witness Fahrija Mutić undoubtedly recognized the accused Mirko (son of Mile) Pekez in the courtroom as the person who had come armed to the house on that critical night, the Court gave credence to these witnesses regarding the circumstance of their abduction from the village of Ljoljići and the gathering in the place of Osoje, as well as regarding the fact as to which of the Accused persons were present on that occasion. It should be pointed out here that in the presentation of his defense during the investigation, the accused Savić did not contest his presence at the critical event, but he only questioned his active participation in it.

Robbing the Civilians

All witnesses are consistent in their statements that, after the mentioned gathering in the place of Osoje, they were together taken toward the place of Draganovac or "Tisovac" as some people call it referring to the same location. Thus, they all assert that they were walking in a line, while the armed persons walked at the front, along the sides and at the back of the line. Witness Fahrija Mutić gave a more detailed description of the civilians' movement. He said that they were walking in the line two-by-two and were not allowed to look either to the left or right side. Just before the arrival in the location of Draganovac, the line stopped at the meadow owned by Pero Savić, which was located in the immediate vicinity of the execution site. Jovo Jandrić ordered there that all valuable items the civilians had on them be put in a jacket taken off by Mirko (son of Mile) Pekez prior to that, while other armed persons stood around with their rifles pointed at them. According to the assertions of witness Nurija Zobić, Jovo Jandrić and Mirko Pekez, son of Mile, collected the surrendered items, including a watch and golden jewellery, and put them in a bag. The witness confirmed these assertions during the cross-examination. Omer Karahodžić and Bajramović also testified with regard to this circumstance, and to this end, their testimonies are consistent with the testimonies of the foregoing witnesses.

It was indisputably established that all the armed persons, who had participated in the abduction of civilians, were also present on this occasion. The witnesses primarily recognized the accused Mirko (son of Mile) Pekez, who had at one moment even asked "who has cigarettes", and cursed at the same time "balijs mother", to which someone from the group of those persons responded with "Mirko, why do you need cigarettes?". The Court drew its conclusion concerning the presence and participation of the other two armed Accused also based on their participation in taking out the civilians from their homes, and the fact that they were present at the Osoje crossroads, when they continued together with the group of armed persons moving toward Draganovac. The Court also took into account the fact that the civilians were moving in the line two-by-two, that they were not allowed to turn their heads round and look at the armed persons, and the view was additionally reduced by the fact that a certain number of armed persons walked at the back of the line, thus it was almost impossible for the civilians to see all of the participants. In addition to this, these were late night hours when the visibility itself is significantly reduced. The accused Mirko Pekez, son of Mile, confirmed himself his presence at this event. He said during the testimony that following the order of Jovo Jandrić, he took off his jacket, and put it on the grass so that the civilians could put their valuable items in it, denying at the same time that any valuable things were indeed surrendered on that occasion, because he only saw keys and a pocket watch. However, the watch was also mentioned by witness Fahrija Mutić, who also stated that in addition to that, that there was also golden jewellery, which was taken by the accused Pekez, son of Mile, and Jovo Jandrić. In this respect, the Court more heavily relied on the testimony of witness Fahrija Mutić, considering that the testimony of the Accused was evaluated in the context of his defense, and his attempt to avoid criminal responsibility for this action. The fact is that none of the witnesses explicitly and indisputably indicated that, after the Osoje crossroads, they saw that the accused Mirko (son of Špiro) Pekez and Milorad Savić had been present during the seizure of valuable items from the civilians, but they all confirm that the same group of people who had taken them away from their homes stood aside on that occasion with their weapons pointed at the civilians while they were putting their belongings on the jacket. Also, none of the witnesses said that any of the armed persons whom he had seen at the Osoje crossroads left the group and went in another direction, while the villagers went toward Draganovac. Therefore, it is reasonable to conclude that all the persons who had participated in the gathering and taking the civilians to Osoje, subsequently continued moving toward the execution site and that they were present during the seizure of belongings from the civilians, all the while knowing and intending that the Muslims be murdered.

With their presence during the robbing of the civilians, all the Accused satisfied the requirement set forth in Article 173 (1) item f) of the CC BiH, bearing in mind that the accused Mirko (son of Mile) Pekez directly executed the action, while the others, by securing the actions and threatening with pointed arms, forced the civilians in the described manner to act pursuant to the order given by Jovo Jandrić and surrender valuable belongings they had on them at that particular moment.

Execution of Civilians

All the witnesses are also consistent in saying that after this event they continued moving in the line toward the place of Tisovac where the execution was carried out.

Witness Nurija Zobić asserts in his testimony that some 100 m away from the place where the civilians were to be killed, the armed persons started hitting the civilians, including Đula and Adnan, and that 100 m away from the water ravine or the ditch located on that spot, the depth of which was around 3.5-4 m, Jovo Jandrić ordered the civilians to line along the edge of that ditch with their backs turned toward the armed persons, while he ordered the others the following: "Commander of the Serb Republic orders, cock the rifles". The shooting started after this command. Thereupon, the witness fell in the ditch and when he regained his consciousness a half an hour later, he felt "something mildly warm on his right leg". Then he realized that he had been wounded. Also on that occasion, he heard Mujo Bajramović yowled only once, and thereafter everything became silent. Mustafa Bajramović was wounded in his ear. He came to the witness, lifted him up and they started off through the woods. The next morning, the witness came to the house of Jovo Marić and the Dević family house, where he received help and where he saw Fatima Karahodžić, the wife of Omer Karahodžić. Subsequently, Zejna Bajramović was also brought after being found in a bush in a pond. She was wounded in her belly. After some time came two policemen, namely Pero and Đuro Rađen, who had usually given the population roll calls. The witness heard them saying that Jovo Jandrić had told them that they had nobody to give roll calls to, because all had been killed. After being asked by the witness to go to the execution site and check for any survivors, they went there and returned with Omer Karahodžić asserting that none except him had survived. Omer was wounded in his leg. All the survivors were subsequently transported to the Health Center in Šipovo, and thereafter to a hospital in Banja Luka.

Witness Fahrija Muftić also describes identically the lining up of the civilians along the ditch at the Tisovac place upon the order given by Jovo Jandrić, followed by the shooting. It seemed to the witness that it was a burst fire from automatic rifles, during which the witness was not injured because his cousin, who had been hit, fell on him and they fell in the ditch together. At that moment, the witness noticed that Mustafa Bajramović was not dead, after which the accused Mirko (son of Mile) Pekez came to the edge of the ditch, cocked his weapon and fired another bullet at him. On that occasion, he heard the armed persons discussing whether there was any need to fire additional bullets at each civilian in the ditch, to which some of them responded that there was none since they probably all were dead. When they moved some 50-100 m away from that spot, they shot another burst of fire and thereafter everything became silent. This witness also heard Mujo Bajramović who had been wounded, who mentioned Jovo and asked if there was anyone to kill him to end his suffering. He listened to this for a while, and thereafter started off toward the village. Considering that he thought he should not return to the village immediately, he waited above the house for dawn. He spent around five days in the woods, and then Pavle Marić and his daughter Dušanka helped him and accommodated him in the house. He gave a statement there to a person who held a rank of a major, but he did not know his name. On that occasion, he heard that Omer Karahodžić, Zejna Bajramović, Nurija Zobić and Mustafa Bajramović had been wounded and survived, and thereafter transported to the local clinic in Šipovo, and subsequently to Banja Luka. When testifying at the main trial with regard to the recognition of the persons who had been present at the execution, the witness said that he recognized the accused Mirko (son of Mile) Pekez, asserting that he was the person-in-charge; he knows that the accused Mirko (son of Spiro) Pekez stood with them once, and he

also recognized the accused Milorad Savić, but he points out that he poorly remembers those persons due to the time elapsed since that critical event.

Witness Zejna Bajramović also identically described this event both in her testimony given at the main trial and her statement given in 1994. At the time, she stated that at the moment when they had been lined up along the edge of the abyss, she could clearly see Jovo Jandrić, and that he was the first who started shooting. He fired at her son and her husband. After the shooting, they all fell down into the ditch, except for the witness who had thrown herself intentionally to kill herself, but she remained uninjured. She lay down below Zarifa's son who was yowling and she heard Jovo saying "Let us now slit their throats!" Thereupon, they fired once again at the civilians in the ditch, on which occasion she was also wounded, but she cannot say precisely who fired. Her husband was saying "Jovo, come back and slit my throat and end my sufferings". The witness subsequently saw the survivors, Omer Karahodžić, Nurija Zobić and Ekrema's son, running away; however, due to the injuries she sustained, she was not able to start off immediately. She stayed there for some time, and after her husband died, she went out from the ditch, sat on its edge for about two hours and then set off along the road by which they had been taken there. She came to a field where she fell asleep. Subsequently, she washed herself at the house of the Savić family as she was all covered with blood and had some water there. On that occasion, she saw two policemen who recognized her by saying "There, she is, Mujo's wife, she is alive", and they helped her. She was subsequently, together with others, transferred to the Health Center in Šipovo.

Witness Omer Karahodžić also describes the event concerned in the same manner. After the shooting, for which he uses the term "the whole salvo", this witness fell in the ditch and pretended to be dead. Then he heard someone say "Mirko, open an intense burst of fire", which he actually did, as the witness believes. The sounds of fire were heard and thereupon two bullets hit the witness in his leg, and one in the ribs. The witness also asserts that Mirko, son of Mile Pekez, was hitting his head with his rifle but checking whether he was alive. On that occasion he heard one of the armed persons say they needed to shoot more, while the others opposed him by saying that there was no need for that since the ammunition had to be preserved. After the armed persons had gone, the witness stayed lying in the ditch for some time. Then he heard Zejna calling her husband and son, due to which the witness warned her to keep silent as they could come back and kill all the survivors. He also heard one of the injured persons saying "Jovo, you wounded me!" At dawn, the witness went out from the ditch, feeling severe pains in his leg. Before dusk, he saw a vehicle, but he did not dare contact it until he saw policeman Boro Oparica coming who then helped him. When asked about those who had killed them, he responded that he was sure about Mirko (son of Mile) Pekez and Jovo Jandrić, while he was not sure about the others. He was taken to the Health Center in Šipovo where he received medical help, after which he was transferred to a hospital in Banja Luka.

Joint Criminal Enterprise

In order to apply this concept to this specific case, and in order to hold the Accused responsible for the direct or indirect participation in a joint criminal enterprise, it is required that they committed the acts which have significantly helped in, or contributed to the achievement of the enterprise goals and that each participant had to be aware that his actions or omissions to act enabled the crimes committed within that enterprise. Also, in order to

establish their criminal responsibility, an awareness, knowledge, of the crime is required, as well as a conscious participation in that crime in a manner which significantly supports or facilitates the commission of the crime concerned. Bearing in mind the foregoing, the Panel concluded that with their participation, and their presence at the commission of the criminal offense in question, the Accused contributed to the commission of the criminal offense. All the foregoing also ensues from the testimonies of the examined witnesses who survived the execution, and also from the other witnesses' testimonies and the documentary evidence presented at the main trial.

The doctrine of common criminal purpose is explicitly recognized in Article 29² of the Criminal Code of BiH. The wording of Article 29 establishes joint criminality: if two or more persons act together in committing a crime, each is individually responsible for the crime. Although joint commission or co-perpetration entails both an objective element, which is participation or contribution to the commission of the crime, and a subjective element, an agreement between the co-perpetrators, i.e. a common plan or purpose, what is crucial, however, for co-perpetration is cooperation within the framework of a common plan³. Every co-perpetrator is responsible for the whole crime committed within the framework of the common plan.

The Court of BiH has already taken a unified approach to interpreting the objective and subjective elements of co-perpetration⁴. According to the jurisprudence of this Court, while an undertaking of an act that has a "decisive contribution" to the perpetration of the criminal offence without which the offence could not have been perpetrated in the manner in which it was perpetrated is required, it is not necessary for an agreement with respect to the act of perpetration to have been previously arranged. The common plan can be reached tacitly or may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal plan⁵.

In addition to the CC of BiH and the cited cases, the concept of liability for participation in a common criminal plan has been substantially developed in jurisprudence of the international tribunals where it is known as the doctrine of joint criminal enterprise⁶. Whoever contributes to the commission of crime by a group of persons, in execution of a common criminal purpose, is criminally liable⁷. Despite the absence of proof that he had personally shot the victims, the ICTY Appeals Chamber, in its leading case on this issue,

² Article 29 states that "If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence".

³ *Prosecutor v. Papic*, Appellate Panel Verdict dtd 06/12/2007, Case No. X-KZ-06/270, p. 12; *Prosecutor v. Bekirasevic*, Trial Panel Verdict dtd 10.01.2007, Case No. X-K-06/190, p. 60 (confirmed on Appeal); *Prosecutor v. Gojko Janković*, Trial Panel Verdict dtd 16/02/2007, p. 40 (confirmed on Appeal)

⁴ *Id.*

⁵ *Id.*

⁶ The relevant article under BiH national law is article 180(1) CC BiH which states that "A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence...shall be personally responsible for the criminal offence". Article 7(1) of the ICTY Statute states that "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be personally responsible for the crime".

⁷ *Prosecutor v. Tadić*, Appeals Chamber, para. 183, Case No. IT-94-1-A dtd July 15, 1999.

found Tadic guilty of the killings based on the concept of common criminal liability. The Appeals Chamber issued this conviction even though it was not known who personally did the shooting because Tadic was an armed member of the armed group which intended to and participated in the killings.

The ICTY jurisprudence established various categories of JCE, each of which could form the basis for criminal liability under the ICTY Statute⁸. The major distinction among those categories is whether the crime charged falls within or outside the object of the joint criminal plan. Thus, if the crime charged falls *within* the object of the joint criminal enterprise, the perpetrators must act pursuant to a common design and share the same criminal intention⁹. Even if the crime charged goes *beyond* the object of the joint criminal enterprise, the participant becomes liable for the natural and foreseeable criminal acts of other participants¹⁰; the accused is guilty so long as he could reasonably foresee that other participants in the common plan might engage in these criminal activities¹¹.

None of the witnesses examined at the main trial contested the fact that the event referred to in the Indictment occurred on the funeral day of soldier Rade Savić, the uncle of the accused Milorad Savić and who, according to the witnesses' statements, had been killed somewhere on the mountain called *Gola planina*, where the separation line of the parties to the conflict was located. The Muslims who had stayed in the territory of the Jezero municipality during the armed conflict, more precisely in the villages of Ljoljići and Čerkazovići, did not attend the funeral concerned.

According to Pero Savić's statement, he came around 12:00 hrs to the memorial lunch organized after the funeral, which was attended by almost all inhabitants of the Serb villages. Specifically, the lunch was attended by Jovo Jandrić, Mirko Pekez (son of Špiro), Simo Savić son of Simo, Milorad Savić son of Ljupko, Milorad Savić son of Đuro, while he was not sure about Mirko (son of Mile) Pekez, but he thinks that he was also there. However, in his testimony at the main trial from which the public was excluded, this Accused confirmed his presence at the memorial lunch.

During the lunch, the witness could hear a quarrel among the persons present there. Jovo Jandrić spoke about the existence of a plan, that Muslims should be chased away from the village, and that the death of soldier Rade Savić must be revenged. Both at the main trial and in the statement given during the investigation, the witness described this event in an identical manner, asserting that Jovo Jandrić said that Muslims had to be liquidated while addressing all the persons present at the lunch, so that the witness, as well as the others, could hear him clearly. After he had opposed this together with some other, older neighbors, they had a quarrel and not long after that, the witness went home.

Neither the accused Mirko Pekez (son of Mile) nor Mirko Pekez (son of Špiro), who were examined in the capacity of witnesses at the main trial, contested their presence at the memorial lunch. The accused Milorad Savić also does not contest his presence at the funeral concerned, because his Defense itself refers to the fact that he was in a civilian suit on that

⁸ Id. at para 195

⁹ Id. at para 196

¹⁰ Id. at para 204

¹¹ *Prosecutor v. Krstić*, Case No. IT-98-33-T, Trial Chamber Judgment, dtd August 2, 2001, para. 613.

day, and that as a nephew of the killed soldier, he had certain duties during that memorial lunch. Also, the Accused do not contest their presence at the lunch all through its end. Considering that on that occasion Jovo Jandrić very loudly presented his criminal plan, it is justified to conclude that by no means could he and his plan to round up and kill Muslims have stayed unknown to the Accused.

Based on the foregoing, the Panel concluded that Jovo Jandrić was the initiator of the criminal plan, which concerned the liquidation of the remaining Muslim population from the villages of Ljoljići and Čerkazovići, with a view to seeking revenge for the dead Serb soldier, as he personally pointed out on that occasion. In support of this assertion is the fact that the witness Pero Savić stated that, in his opinion, the revenge was the reason and considering the location where the execution of civilians took place, it was not accidentally chosen. This is because his late father told him that just at that spot of Draganovac, in World War II, Serbs were executed by Ustashas, on which occasion 21 person had been killed, and only few had survived.

Based on the testimonies of all the witnesses examined at the main trial, the Panel indisputably concluded that the critical event occurred in the manner as described in the operative part of this Verdict, and that, within the joint criminal enterprise, together with the group of armed persons organized by Jovo Jandrić, the accused Mirko Pekez son of Špiro, Mirko Pekez son of Mile and Milorad Savić son of Ljupko participated as co-perpetrators in the commission of the crime, in such manner that by taking individual actions, they contributed in a decisive manner to the commission of the crime. It was indisputably established for the accused Mirko Pekez son of Mile that he had directly taken the action of robbing and killing the civilians, together with Jovo Jandrić, while the other two Accused contributed in a decisive manner to the commission of the crime by their participation in rounding up the civilians and at least escorting them to the execution site, if not actively participating in the execution.

In this specific case, after adducing the evidence, the Court established that the event occurred to a decisive extent in the manner as referred to in the Indictment, bearing in mind that in the operative part of the Indictment the Court used the formulation that after reaching the water ravine in Draganovac, the civilians were ordered to line up, without stating specifically the person who had given the order, considering that during the proceedings this could not be established with certainty, although the witness Nurija Zobić suggests that he heard Jovo Jandrić issuing the order. Also, it was indisputably established during the proceedings that after the civilians had been ordered to line up along the edge of the abyss, the fire followed from automatic and semiautomatic weapons, and therefore the Court omitted the formulation "bursts of fire" in the operative part. This was done because this expression is being related to the shooting from automatic weapons, and according to the on-site investigation record, as previously stated, three empty frames for semiautomatic rifle were found at the execution site, from which shots are fired individually. For these reasons, the formulation referred to in the Indictment, namely that it was exclusively "a burst of fire" could not be accepted. The fact is that during the description of the event, most of the examined witnesses used this expression, but it was justified considering that during the shooting from a number of automatic rifles, it is very difficult to differentiate when single shots were fired from semiautomatic weapons. Finally, the Court is of the opinion that the

objective identities of both the Indictment and the Verdict have not been violated by changing these facts.

It was undoubtedly established during the proceedings that the Accused participated as co-perpetrators in the joint criminal enterprise of killing and robbing Muslim civilians from the villages of Ljoljići and Čerkazovići, as stated above. The group was organized by Jovo Jandrić, who had invited all the persons present at the memorial lunch after the funeral of the killed soldier, Rade Savić, to go to "liquidate Muslims" with a view to seeking revenge for this soldier's death. All the co-perpetrators in the joint criminal enterprise were aware of his final intention or goal; it could not have stayed unknown to them. In addition to his statements at the memorial lunch, the real intentions of Jovo Jandrić, as a leader of the group of armed persons, could be also seen from his behavior toward the abducted civilians, where he was the initiator of physical and mental mistreatment and abuse of the civilians during their round up, on which occasion one of the armed persons, whom the witness Nurija Zobić recognized as Milorad Trkulja, when asked by this witness' son "Father, when will we sleep?", responded "we will put you at sleep when the others come", meaning that they would kill them. According to the assertions of this witness, the accused Milorad Savić could also hear that because he was present there.

Even if the Accused had not initially known the real intention of the civilians gathering, they subsequently anticipated the real goal based on all the circumstances, namely the killing of the remaining Muslims from Ljoljići and Čerkazovići, as proposed by Jovo. There is no doubt that in spite of that, and in tacit agreement, the Accused consented to the final result and consequence, each by their actions contributed to the commission of that criminal goal.

The participation of the Accused also ensues from the statements of authorized official persons who were at the critical time aware of the investigation conducted against them in relation to the execution of persons in the place of Tisovac. This primarily concerns witness Nedeljko Jandrić, who was the Chief of the Police Station in Bravnice at the critical time. He asserts that he could see from the notes, which he had read and which concerned the persons who had participated in the civilians' execution, that Mirko Pekez (son of Mile), Jovo Jandrić and Milorad Savić were mentioned, that he personally knew them, and he recognized two Accused in the courtroom. At the time, he had no information as to the participation of Mirko Pekez son of Špiro. The same response was given by the witness for the Defense, Jovo Prole, who was at the time the Police Commander in Bravnice. He had no specific duties regarding the clear-up of the event and the participation of the Accused in it, but Jandrić Nedeljko had informed him about all details. The witness made an interview with the participants Jovo Jandrić, Mirko Pekez son of Mile, Mirko Pekez son of Špiro and Milorad Savić in the Police Station in Bravnice, on which occasion Jovo Jandrić had told him "Don't ask me anything, this kid did not participate in anything" while pointing his hand at Mirko Pekez (son of Špiro). He also knows that after the event concerned, Mirko Pekez and Milorad Savić did not remain within the Police, while Mirko Pekez son of Špiro continued working there. This witness pointed out in the cross-examination that, as far as he knew, the criminal report which had been filed as a result of the investigation into the event concerned, did not include the accused Mirko Pekez son of Špiro. Deputy Police Commander in Bravnice, witness Vljako Radić, also learned about the event concerned from the Chief Nedeljko Jandrić. At the time, they did not have their crime department, thus

the witness was instructed to inform a member of the reserve police, Mićo Savić, whom he recognized in the courtroom, to report to the Ministry of Defense.

The participation of the accused Mirko Pekez son of Mile in the event concerned was undoubtedly established during the proceedings, as well as the participation of the accused Milorad Savić, whom the witnesses had also recognized when taken away from their homes and brought to the place of Draganovac. Also, it undoubtedly ensues from the Record on Questioning of the suspect Milorad Savić of 30 October 2007, filed by the Defense as evidence, that on that critical night, after the memorial lunch, Milorad Savić son of Đuro came to the first-accused and invited him to go with him, which the Accused did. They started off toward the village of Čerkazovići, where he saw the rest of the known faces, including Mirko Pekez son of Mile and Jovo Jandrić. He is not sure about the number of persons who had gathered there, but he thinks that there were 8-10 of them, which is precisely the number estimated by the victims who had survived the execution. Also, the accused Mirko Pekez son of Mile clearly said in his testimony that the accused Milorad Savić was a member of the group which had participated in the event concerned since the very beginning, and that together with him and upon the order by Jovo Jandrić, he participated in taking the civilians away from the village of Ljoljići, which the accused Milorad Savić does not contest in his statement of 30 October 2007. This Accused also confirmed in his statement that the execution of civilians was carried out in the place called Draganovac and that he was present there. During the main trial, the Defense for the Accused argued that during the critical event the accused Milorad Savić had a 7.62 mm caliber pistol called "Tetejac", whereby they tried to prove that this Accused did not shoot at the civilians, considering that cartridge cases for automatic and semiautomatic weapons were found at the crime scene. They also did not dispute the fact that the Accused was a member of the Public Security Station Jajce and that he was issued with automatic weapons. This is important because it was undoubtedly established during the proceedings that policemen had been mostly issued with automatic and semiautomatic weapons, which they always carried around. However, in this particular case, the criminal responsibility of this Accused does not depend on the type of weapons he had on that critical occasion. It is based on his participation in the critical event, and is not related to the mere fact of firing at the lined-up civilians either. Therefore, the Panel concluded that the type of weapons the Accused had on him was not of decisive importance when it is an indisputable fact that he was armed and present at the civilians' execution. In any case, this is a circumstance which the Court took into account in meting out the sentence, after it had established beyond any doubt that this Accused was criminally responsible for the commission of the crime as charged. According to the statement of the accused Milorad Savić, after the event in Draganovac, the group returned to the village. The Accused asserts that at the time he saw the accused Mirko Pekez son of Špiro in the village, whose defense during the proceedings was based on the fact that during that period he had already been in Šipovo.

The Court drew its conclusion concerning the participation of the first-accused in the event concerned based on the evidence presented during the proceedings, including the difference between his statement given during the investigation and his testimony at the main trial, their inconsistency with the statements of the other witnesses, who were supposed to testify with regard to the circumstances of his presence in Šipovo on that critical night.

From the very beginning, the Defense for this Accused followed the concept of the events as presented in its Closing Arguments, the essence of which was to create an alibi for the Accused, namely that on that critical night around 22:00 hrs he was in Šipovo with the witness Goran Jović, with whom he was in an inn at the entrance to Šipovo, which is, according to the assertions of this witness, known more as the "Kuća Prole", and on which occasion the Accused told this witness that he had booked a room to spend overnight.

However, during his defense presentation, the Accused was not precise in the assertion as to how and whether indeed he had been in Šipovo on that critical night, which can be seen from the following. In the statement made for the record in the Prosecutor's Office, this Accused stated that he had gone to Šipovo in the evening, around 20:00 hrs, where he was with his friend Miroљub Perlaš and where he stayed until the following day. This witness, who was initially supposed to confirm this alibi for the Accused, was not called by the Defense so as to confirm the stated circumstance, but he was summoned as a witness for the Prosecution. At the main trial, he clearly stated that after the funeral and the memorial lunch, he set off with his brother and the accused Mirko Pekez son of Špiro toward Šipovo around 21:00 hrs. However, some 3-4 km away, they ran out of fuel, thus the Accused offered himself to bring it from his home. After he had gone, the Accused did not return that night, and his brother brought the fuel around 05:00 hrs in the morning and said that Mirko would not return any more. Thus the witness Miroљub Perlaš denies that he was with Mirko in Šipovo on that critical night as the Accused had originally asserted.

After the witness Miroљub Perlaš' examination, in the testimony given at the main trial on 29 February 2008 in the witness capacity, the accused Mirko Pekez (son of Špiro) gave a review of the event different from his statement given in the Prosecutor's Office, and also from the statement given by the witness Perlaš. To wit, the Accused did not contest his presence at the memorial lunch after the funeral of Rade Savić, asserting that he had come there with witness Miroљub Perlaš. However, as he asserts, he did not set off with the witness after the funeral, but he went alone toward his house, before dusk, where he took a nap and around 21:00 he headed toward Šipovo to visit his girlfriend. At the place of Osoje, which is around 150 m away from his house, he noticed a group of people and also Jovo Jandrić, who told him that he was taking this group of gathered men to exchange them. The Accused responded to him by saying "Jovo, leave these people alone, what did they do to you?", and also added that they had been duly responding to roll calls every day. Thereafter, he took the road toward Šipovo until he reached the Ljoljićki bridge where he met the witness Ljuba Jovetić who asserts that she saw him during the period between 21:00 and 21:30 hrs, and spoke with him. The Court also took this fact into account; however at the main trial this witness presented certain facts which had been referred to her by the Defense for the Accused concerning the testimony of another witness in this case. In addition to this, she differently responded to the questions asked by the Prosecutor and the Defense regarding the conversation she had with the Accused on that night. Therefore, the Court could not give credence to her testimony, because it was obviously fabricated by the Defense for the first-accused in the manner that it was aimed at his alibi creation. Furthermore, the Accused asserts in his testimony that Miroљub Perlaš was supposed to wait for him on the Ljoljićki bridge, but that he had certain problems with his car, thus the Accused went to Šipovo in a military vehicle.

There is a considerable difference between these two statements, considering that neither the encounter of the Accused with a group of gathered people and Jovo Jandrić, nor their conversation were mentioned at all in his statement of 30 October 2007. Such statement was

given only after the examination of the witnesses who categorically asserted that they had seen him at the Osoje crossroads.

It is a fact that during the questioning in a suspect capacity, one is not obliged to tell the truth. However, the statements of the Accused are not consistent with anything, not even with regard to the detail as to with whom he had come to the funeral, considering that the witness Miroljub Perlaš asserts that he came with his mother and brother, without mentioning the name of the Accused. His statements are fully contradictory with regard to the most important detail concerning the answer to the question as to where the first-Accused was at the time of the critical event in the place of Draganovac. The fact should be emphasized here that the witnesses who survived the execution also saw him when the population was gathered from their houses, and at the Osoje crossroads, from where, according to the assertions of the accused Mirko Pekez son of Mile, he went in his house direction after the conversation with Jovo Jandrić. Although the accused Mirko son of Mile directly incriminates himself and the accused Milorad Savić with his testimony, he categorically asserts that the accused Mirko son of Špiro was not present during the commission of the crime against the civilians. However, his assertion is indicative that after the conversation with Jovo Jandrić, Mirko son of Špiro headed toward his house which was located at the top of the village, as he himself said, to where the road toward Draganovac leads, and not toward Šipovo as he asserted in his statement. The accused Milorad Savić also explicitly said for the record when questioned in a suspect capacity that, after the return to the village following the event in Draganovac, he saw Mirko Pekez son of Špiro; therefore it is justified to conclude that he was not in Šipovo at the critical time, as the Defense persistently tried to emphasize.

Also, it is important to state here the subsequent introduction of an additional witness for the Defense, Goran Jović, who was not previously mentioned in the context of the defense of this Accused, and who was supposed to confirm during the additional evidence presentation that on that critical night he had been with the Accused in Šipovo in an inn known as "Kuća Prole", which was located at the entrance to Šipovo. However, it is symptomatic that this witness appeared immediately after the additional witness for the Prosecution, Miroljub Perlaš, did not confirm that he had been with the Accused on that critical night, which was the original concept of the defense for this Accused. Also, it is indicative that the witness Goran Jović and the Accused did not know each other from before the war and that, according to the assertions of this witness, they only had one drink in the mentioned inn, namely just at the critical time when the civilians were executed, whereas they had never before or after the critical event been in each other's company in this manner. In addition to this, had they even been together on that critical night, the fact is that during the conversation, the Accused mentioned to the witness by no word that he had been at the funeral of Rade Savić which lasted for almost the whole day, nor did he mention the manner in which he came to Šipovo, which he would probably do in case that one of his assertions were true. Thus it is not likely in either case that the Accused would not mention any of these circumstances even sporadically during their encounter, particularly if their superficial acquaintance is taken into account; therefore the fact is that the scope of their common topics they could have discussed on that critical night is very narrow.

All the foregoing should be also viewed through the fact that the following day, around 10 hrs, the witness Miroljub Perlaš, who was his alibi at the beginning, saw the Accused in Šipovo. However, this witness saw him in a group with the main organizer of the crime,

Jovo Jandrić, and the accused Milorad Savić, and upon their request, he drove them all in the Bravnice direction. Due to all the foregoing reasons, the Court gave credence neither to the testimonies of the first-accused Mirko Pekez son of Špiro nor the witness Goran Jović.

Bearing in mind the foregoing, as well as the testimonies of the witnesses who on that critical night recognized the accused Mirko Pekez son of Špiro in the group of armed people, and also the fact that since the accused Milorad Savić saw him in the village, he could not be in Šipovo immediately after the event, and based on the evidence adduced at the main trial and its evaluation, both individually and in relation to the other evidence, the Court drew the conclusion that the Accused, as the co-perpetrators in the group which amounted to around 10 men, committed the criminal offense in violation of Article 173 (1) items c) and f), in conjunction with Article 29 and Article 180 (1) of the CC BiH.

In establishing the criminal responsibility of the Accused Mirko Pekez son of Špiro, the Court also took into account the principle *in dubio pro reo*, suggested by the Defense in its Closing Arguments. The Court, however, found that during the proceedings the facts and arguments were presented which undoubtedly confirmed the participation of this Accused in the event concerned; therefore the facts established during the proceedings are not subject to even the smallest degree of suspicion as to his participation in the commission of the crime, due to which this principle could not be applied in this specific case.

Finally, the fact should be emphasized that Article 173 (1) item c) of the CC BiH requires that the act of commission of this criminal offense consists of: "*killings, intentional infliction of severe physical or mental pain or suffering upon a person (...)*", and the Court established, based on the evidence adduced, that the actions of the Accused resulted in the death of 23 persons, as referred to in the Indictment, and the injury of 4 mentioned persons who survived the execution.

To wit, during the proceedings and as the evidence of death of 23 persons, the Prosecutor's Office submitted material documentation in the form of autopsy findings made at the City Cemetery Visoko, from which it can be seen that these persons' death was caused by force, which was supported by the examination of the forensic expert witness, Dr. Hamza Žujo, who stated in his testimony the details from the written findings for each corpse individually. With regard to the cause of death of all the persons concerned, he stressed that he did not exclude injuries of head and thorax as a result of the use of firearms. With regard to the corpse No. 13, which was identified as Asmer Zobić, the expert witness said that no skeletal injuries had been found on him, but that it was possible that he was killed by firearms in such manner that a bullet passed through the victim's heart or belly cave, without touching the ribs or other skeletal part of the body, due to which skeletal injuries could not be observed during the autopsy.

Also, with regard to the circumstance of establishing the violent death of the persons concerned, the BiH Prosecutor's Office also heard witness Dr. Rajko Todorčević, who had been the Director of the Health Center in Šipovo at the time of the critical event. In addition to giving medical treatment to the injured survivors of the execution, and upon a request by an investigative judge of the Basic Court in Mrkonjić Grad, together with crime technicians of the Public Security Station Banja Luka, he went to the place where the civilians had been executed and attended the on-site investigation in the capacity of coroner. According to his

estimates, there were around thirty persons lying. After his arrival there, the corpses' identification started based on the information collected from the villagers, after which the witness recorded the injuries, and before carrying out external examination, he marked each corpse with a number. At the request of the investigative judge, the witness made a written document for each corpse individually, which was signed and certified by the health institution in Šipovo, after which the materials were further referred to the Basic Court, and attached to the case file as evidence for the Prosecution.

Finally, the survivors of the crime testified about their sustained injuries, namely Nurija Zobić, Zejna Bajramović and Omer Karahodžić. They still today suffer from the consequences of the sustained injuries, whose gravity is sufficiently supported by the medical findings and discharge letters attached to the case file as evidence for the Prosecution.

The Court also assessed the objections of the Defense for the second-accused presented in the Closing Arguments with regard to the fact that during the proceedings the accused Mirko Pekez son of Mile was disabled to exercise his right to a defense due to his hearing problems. However, the Court considers these assertions unfounded because, from the beginning, the Accused had an adequate defense and the attorney of his own choice, while the Court provided him with a hearing device so that he could follow the trial independently. In addition to this, since he gave his statement in the Prosecutor's Office, the Accused had an opportunity to read all that he signed and file possible objections, and during the Closing Arguments presentation on 14 April 2008, the Court even postponed the hearing until the Accused was provided with a battery for the hearing device so that he could duly follow both the Prosecutor's and his defense counsels' Closing Arguments. The audio/video recordings establish that the accused was provided with a hearing device though on some occasions he himself did not use it and had to be so instructed by the Presiding Judge. Therefore, the Panel finds that no right to a defense of this Accused was violated during the proceedings.

In evaluating the evidence the Court also considered the other evidence adduced at the main trial. However it did not analyze it in detail, nor did it find it relevant for the issuance of the final decision on the criminal responsibility of the Accused for the commission of the crime concerned. The Court made such a decision because the evidence in question would not ultimately affect the finally established state of facts and the conclusions which the Court drew based on the evidence whose evaluation was provided in the Verdict.

Substantive Law Application

With regard to the issue of substantial law to be applied, considering the time of the commission of the crime, the Court accepted the legal qualification of the Prosecution, and convicted the Accused of the criminal offense of War Crimes against Civilians in violation of Article 173 (1) items c) and f) of the CC BiH.

The Court took into account the Closing Arguments of the Defense for the third-accused regarding the mandatory application of the law more lenient to the perpetrator, which would in this specific case mean that the Accused should be found guilty in accordance with the

provisions of the CC SFRY, which was applicable at the time of the commission of the criminal offense and which is, according to the Defense, more lenient to these Accused.

Considering the time of the commission of the crime and the provisions of substantive law applicable at the time, the Court considers relevant two legal principles: the principle of legality and the principle of time constraints regarding applicability of the criminal code:

Article 3 of the CC BiH prescribes the principle of legality pursuant to which 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, while Article 4 of the CC BiH (Time Constraints Regarding Applicability) prescribes that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, and if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Bearing in mind this mandatory application of the law more lenient to the perpetrator, namely Article 142 of the CC SFRY that was applicable at the time of the commission of the criminal offense, the Court analyzed the argument provided by the Defense which had reasoned this obligation with the fact that it concerned a more lenient law, because by the abolition of death penalty (which was prescribed by the CC SFRY as the most severe punishment), the sanction referred to in Article 142 showed itself more lenient in relation to the criminal sanction prescribed for the criminal offense in violation of Article 173 (1) of the CC BiH for the offense of which the Accused were found guilty.

The Court also considered Articles 3 and 4 of the CC BiH in relation to Article 7 (1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR) which has primacy over the other laws in BiH (pursuant to Article 2.2 of the Constitution of BiH). Article 7 prescribes that *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."* However, by paragraph 2 of this Article an exception was introduced with a view to enabling in each specific case the application of both national and international legislation which came into force during and after World War II. This paragraph provides that *"This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations."*

The principle of punishability of war crimes, as well as prescribing individual responsibility for their commission during 1992 was confirmed by the UN General Secretary¹², the International Law Commission and the ICTY jurisprudence. All the institutions concerned considered that the punishability of this kind of crime constituted a mandatory norm of international law; therefore it is beyond any doubt in this specific case that such acts on the part of the Accused at the time of the commission of the crime concerned was absolutely

¹² The UN GS Report concerning Paragraph 2 of the Resolution No. 808 of the Security Council, 3 May 1993, Paragraphs 34-35 and 47-48.

contrary to the provisions of international law. It is also an indisputable fact that the highest protected values of any legal order were violated by the committed crime.

The foregoing should be also considered in the context of Article 4a) of the Law on Amendments to the Criminal Code of BiH (Official Gazette of BiH, No. 61/04) which prescribes that Articles 3 and 4 of the CC BiH do not prevent any trial and punishment of any person for any act or omission to act which at the time of commission of the crime constituted a criminal offense pursuant to the general principles of international law, whereby the BiH criminal-legal system adopted the quoted provision of Article 7 (2) of the ECHR, in which manner the exceptional departure from the principle referred to in Article 4 of the CC BiH, and also a departure from the mandatory application of a more lenient law in the proceedings representing criminal offenses pursuant to international law were enabled. In fact, this Article should be applied in the prosecution of all criminal offenses concerning war crimes, which are prescribed under Chapter XVII of the Criminal Code of BiH under the title "Criminal Offenses against Humanity and Values Protected under International Law".

Bearing in mind all the foregoing, in the opinion of this Panel, the mandatory principle of application of a law more lenient to the perpetrator cannot be absolutely applicable to the prosecution of such criminal offenses in which at the moment of their commission itself it was obvious that they are offenses contrary to the basic principles of both international and national laws. In this specific case, it is indisputable that the Accused were fully aware that their actions were directed against general values protected in all legal systems, and that, by taking the actions referred to in the factual description of the Indictment, they directly violated both national regulations and principles of international law, and also that by attacking the universal value – human life, they were aware of the prohibited death consequence as a result.

Decision on Punishment

Meting out the sentence for the Accused is also related to the foregoing, considering that Article 7 of the ECHR itself includes the procedure of imposing criminal-legal sanctions.

An exemption from the mandatory application of a more lenient law is justified if it is also considered in relation to Article 6 of the CC BiH because it is obvious that the general purpose of punishment could not be achieved with the maximum sentence of imprisonment for a term of 20 years, as prescribed by the CC SFRY (after the death sentence abolition), if the gravity of the committed crime and its consequences for the health and lives of people in this specific case are taken into account.

The crime of which the Accused were found guilty is punishable with the sentence of imprisonment of minimum 10 years or a long term imprisonment.

Considering the above mentioned state of facts established during the evidentiary proceedings, the Court imposed on the second-accused Mirko Pekez son of Mile the sentence of long term imprisonment for a period of 29 (twenty nine) years, bearing in mind that it was indisputably established that in the commission of this criminal offense with which he was charged, this Accused acted with a direct intent in the manner that he was

0 . . . 0

aware of the gravity of all individual actions he had taken, that he desired their commission and the resulting prohibited consequences. During all this time, the witnesses recognized him as the main co-organizer with Jovo Jandrić in the realization of this criminal plan, in which this Accused took the most active part. In meting out the type and duration of the sentence to this Accused, the Court considered as mitigating circumstances that the Accused is father of two children, and his proper behavior before the Court, while among the aggravating circumstances it considered the number of executed civilians, namely 23 persons, of whom 13 were men, 10 women including a child, and three minor persons. An aggravating circumstance is also the fact that this Accused showed a particular cruelty and ruthlessness toward civilians, and that, after the execution, he returned and fired another burst of fire into the group of civilians. One witness said that he personally checked for the survivors after the shooting had been ended. The participation of the Accused in the event concerned clearly shows his effort in effecting the death as the final result in relation to each civilian taken away.

With regard to the first-accused and the second-accused, in meting out the sentence the Court was mindful of the fact that these Accused acted with intent, namely that they had anticipated the final outcome of the deaths of the civilians taken away to the execution site and the resulting prohibited consequence, but nevertheless they had agreed to it. With their participation in gathering and taking civilians away, and enabling the organizer to carry out his criminal plan, they contributed in a decisive manner to the commission of the criminal offense as charged. In meting out the sentence, the Court took into account the extent of their participation, and thus imposed on them the sentence of imprisonment for a term of 21 (twenty one) years, being of the opinion that it is appropriate to their participation in the commission of the crime. Among the aggravating circumstances, the number of killed civilians was taken into account, while as the mitigating circumstances regarding these Accused, the Court took into account the fact that the first-accused is married and father of two children, that the third-accused is married and father of a minor child, their proper behavior before the Court and that they had no prior convictions.

Bearing in mind the foregoing, and also the extent of participation of each Accused and their contribution to the commission of the criminal offense of which they were found guilty, the Court is of the opinion that the imposed sentence was meted out in accordance with the provisions of Article 48 (1) of the CC BiH, and also that the purpose of punishment set forth under Article 39 of the CC BiH will be achieved by the imposed sentences.

Based on the application of the statutory regulation referred to in Article 56 of the CC BiH, the time the Accused spent in custody starting from 1 November 2007 further on will be credited towards the imposed punishment of imprisonment.

Decision on Expenses

With regard to the decision releasing the Accused from the obligation to compensate for the expenses of the criminal proceedings, the Court is of the opinion that the financial situation of the Accused is such that they would not be able to bear the expenses of the criminal proceedings and therefore, pursuant to Article 188 (4) of the CPC BiH, the Court released them from the duty to compensate for the expenses of the criminal proceedings.

Decision on the Claim under Property Law

In acting pursuant to Article 198 (2) of the CPC BiH, the Court instructed the injured parties – the survivors Nuriya Zobić, Zejna Bajramović, Omer Karahodžić, Fahriza Mutić and Subhudin Zobić to file a civil suit considering that during these proceedings they were not able to comment on the amount of their claim, while the data collected during these proceedings did not provide the Panel with a ground to decide fully or in part on their claims under property law.

Considering that the injured party Mustafa Bajramović was not examined in witness capacity at the main trial, the Court instructed him, as well as the relatives of the killed civilians, namely Nedžib Mutić, Šećo Malkoč, Irhad Bajramović, Adnan Zobić, Fikreta Zobić, Fahro Balesić, Derviša Mutić, Latif Bajramović, Senad Karahodžić, Ibrahim Karahodžić, Mujo Bajramović, Asmer Zobić, Zariša Karahodžić, Đula Zobić, Ramiza Mutić, Adis Zobić, Fikreta Zobić, Fatima Mutić, Ekrema Bajramović, Mustafa Bajramović, Mustafa Balesić and Subhudin Bajramović to file civil suits with their possible claims under property law due to the above mentioned reasons.

**President of the Panel
Judge**

Zoran Božić

Note on legal remedy: An appeal from this Verdict may be filed with the Appellate Division of Section I of the Court of Bosnia and Herzegovina within 15 (fifteen) days after the receipt of a written copy hereof.

The appeal will be delivered to this Court in a sufficient number of copies.

*I hereby confirm that this document is a true translation of the original in Bosnian/Serb/Croat.
Sarajevo, 23 September 2008*
Certified Court Interpreter for English

