



Number: X-KR-06/241  
Sarajevo, 29 April 2008

**IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, sitting as the Panel composed of Judge Šaban Makumić as the Presiding Judge, and Judges Marić Tuma and Merja Halme-Korhonen as the Panel members, with the participation of the Legal Advisor Lejla Konjić as a minutes taker, in the criminal case against the Accused Paško Ljubičić, for the criminal offence of War Crimes against Civilians in violation of Article 173 (1) a) and f) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC) in conjunction with Article 29, Article 35 (2), and Article 180 (1) as read with paragraph (3) of the BiH CC, upon the Amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-140/06 dated 24 April 2008, having considered the Plea Agreement and following the public hearing for the pronouncement of the legal sanction in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, David Schwendiman, the Accused Paško Ljubičić and the Defense Counsels for the Accused, attorneys Branka Praljak and Tomislav Jonjić, on 29 April 2008 reached and rendered and publicly announced the following:

**VERDICT**

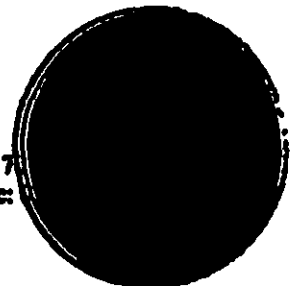
**Accused Paško Ljubičić, also known as Toni Ralić, son of Bono, born on 15 November 1965 in the village of Nezirovići, the Municipality of Busovača, Bosnia and Herzegovina, personal identification number 1511965450104, of Croat nationality, citizen of Bosnia and Herzegovina and the Republic of Croatia, held in custody based initially on the Decision of the Court of BiH number X-KRO-06/241 dated 22 September 2006, and presently on the Decision rendered by the Court of BiH No. X-KRO-06/241 dated 21 December 2006.**

**I**

**IS GUILTY**

**because**

**in January 1993 he became the Commander of the 4th Military Police Battalion functioning in the Central Bosnia HVO Operative Zone (CBOZ) and he remained in that position until 1 July 1993, therefore, he was the highest-ranking member of the HVO Military Police and he exercised both formal and legal command and control over the members of the 4th HVO Military Police Battalion including the *Jokers*, an anti-terrorist sub-group of the 4<sup>th</sup> Military Police Battalion.**



On 15 and 16 April 1993, during an armed conflict in the Republic of Bosnia and Herzegovina, he acted in contravention of international humanitarian law thus violating the provisions of Articles 4(2)(g), 13(2), and 14 of Additional Protocol II to the Geneva Conventions relative to the Protection of Civilian Persons in Time of War of 12 August 1949, by conveying orders that he received from his superior officer, commander of the CBOZ Tihomir Blaškić, to his subordinates who were members of the 4th Military Police Battalion, to attack the village of Ahmići, populated predominantly by Bosnian Muslims, and to kill all Bosnian Muslim men of military-age, expel the Bosnian Muslim civilian population, and destroy the houses of Bosnian Muslims, and he assisted in the planning of such an attack which was carried out, aware that by conveying and issuing such orders to members of his subordinate unit he could cause death of a number of persons, physical and mental suffering of a larger number of persons and destruction of property on a larger scale, to which he consented; therefore, during the attack which was carried out, Bosnian Muslim civilians were expelled, more than 100 Bosnian Muslim civilians were killed, houses were destroyed, numerous others suffered serious mental and physical injuries, and two mosques in the village of Ahmići were blown up;

Thus, Paško Ljubičić by his acts and omissions aided and abetted the planning and execution of the crime described above. He is also responsible by virtue of his position as a superior for the offences perpetrated by his subordinates over whom he had effective control, and the fact that he acted upon the order of his superior commander of the CBOZ Tihomir Blaškić does not relieve him of criminal responsibility.

**Whereby:**

He committed the criminal offence of War Crimes against Civilians under Article 173(1) (a) and (f) of the BiH Criminal Code, in conjunction with Articles 29 and 35 (2) and 180 (1) in conjunction with paragraph (3) of the BiH Criminal Code.

Thus, the Court, applying Article 39, 42 and 48 of the BiH CC, for the committed criminal offense of War Crimes against Civilians in violation of Article 173 (1) a) and f) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 29, Article 35 (2), and Article 180 (1) as read with paragraph (3) of the BiH CC

**SENTENCES THE ACCUSED PAŠKO LJUBIČIĆ TO 10 /ten/ YEARS OF IMPRISONMENT**

**II**

Pursuant to Article 56 of the CC of BiH, in conjunction with Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in BiH, the time the Accused Paško Ljubičić spent in custody, commencing on 9 November 2001 until 29 April 2008, shall be credited towards the sentence of 10 (ten) years of imprisonment.

### III

Pursuant to Article 188 (4) of the BiH CPC, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings.

### IV

Pursuant to Article 198 (2) of the CPC of BiH, the injured parties are hereby referred to take civil action with their claims under property law.

### Reasoning

In the case of the International Criminal Tribunal for the Former Yugoslavia in the Hague (hereinafter: ICTY) number IT-00-41-PT, by the Corrected Amended Indictment dated 8 April 2002, Paško Ljubičić was charged, on the basis of command responsibility, with the criminal offenses of Crimes against Humanity and Violating the Laws and Practices of Warfare. Previously, the Indictment dated 26 September 2000, sealed until October 2001, was applicable to the Accused. The Indictment dated 8 April 2002 alleged that Paško Ljubičić was the commander of the 4th Military Police Battalion of the Croat Defense Council (hereinafter: HVO), from January 1991 until July 1993 and Assistant Chief of the Military Police Administration for the CBOZ, and in that capacity, individually and in concert with members of the HVO Military Police who were under his command and control, and with other members of the HVO, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a crime against humanity by persecuting Bosnian Muslims on political, racial, or religious grounds, in the towns and villages in the municipalities of Vitez and Busovača. On 9 November 2001, the Accused voluntarily surrendered to the authorities of the Republic of Croatia, and on 21 November 2001, he was transferred to the ICTY.

On 12 April 2006, the Referral Bench of the ICTY, pursuant to Rule 11(b) of the ICTY Rules of Procedure and Evidence, issued the Decision to refer the case against Paško Ljubičić to the BiH authorities. The final decision on the referral of the case was issued on 4 July 2006. On 22 September 2006, the Accused was transferred from the United Nations Detention Unit in Scheveningen (the Netherlands) to the BiH Detention Unit.

Acting pursuant to article (2) 1) of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in BiH (hereinafter: the Law on Transfer), on 21 December 2006, the Court accepted the adapted Indictment of the Prosecutor's Office of BiH, number KT-RZ-140/06, dated 15 December 2006, pursuant to which the accused Paško Ljubičić was charged with the commission of the criminal offense of Crimes against Humanity pursuant to Article 172 (1) a), h) and k) of the BiH CC, War Crimes against Civilians pursuant to Article 173 (1) a) and f) of the BiH CC and Violating the Laws and Practices of Warfare pursuant to Article 179 (2) d) of the BiH CC.

On 9 January 2007, a plea hearing was held. Since the accused failed to enter a plea, the Court, pursuant to Article 229(1) of the BiH CPC, *ex officio* stated on the record that the accused entered a plea of not guilty.

**On 11 May 2007, the main trial commenced.**

**On 24 April 2008, the Prosecutor's Office filed the Amended Indictment charging the accused with the following: during an armed conflict in the Republic of Bosnia and Herzegovina (hereinafter: R BiH), the Accused acted in contravention of international humanitarian law and violated the provisions of Articles 4(2)(g), 13(2), and 14 of Protocol Additional to the Geneva Conventions of 12 August 1949, ("Additional Protocol II"), thereby committing the criminal offence of War Crimes against Civilians pursuant to Article 173(1) (a) and (f) of the BiH Criminal Code, in conjunction with Articles 29, 35(2) and 180(1) and (3) of the BiH Criminal Code. In addition to the Amended Indictment, the Court was forwarded the Agreement to Enter the Plea of Guilty (hereinafter: the Agreement), which the Accused Paško Ljubičić concluded with the Prosecutor of the Prosecutor's Office of BiH, David Schwendiman, with the participation of his Defense Counsels, attorneys Branka Praljak and Tomislav Jonjlić. Annex A, indicating all the facts that the Accused accepts by signing the Agreement, was forwarded as an addendum to the Agreement.**

**On 29 April 2008, the Court held the hearing on the entered Agreement. During the hearing, the Panel asked the Accused whether he signed the Agreement, including Annex A thereto, voluntarily and consciously and whether he fully understood the Agreement and the possible consequences arising from it. The Accused confirmed that he read everything stated in the Agreement and the Annex, that he signed the Agreement voluntarily and consciously after he was informed of the possible consequences, including the satisfaction of claims under property law and the reimbursement of the expenses of the criminal proceedings. In addition, the Accused confirmed that he admitted his guilt for all crimes he was charged with in the Amended Indictment, and that he understood that by signing the Agreement, he waived the right to a trial and appeal from the pronounced criminal sanction, if the Panel accepted the Agreement. Finally, the Accused agreed with the arguments of his Defense Counsels and the Prosecutor's Office.**

**Having deliberated, the Panel accepted the Agreement as a whole, finding that all the requirements of Article 231(4) of the BiH CPC had been satisfied. The Panel found that the Accused Paško Ljubičić entered the Agreement voluntarily, consciously and with understanding after he was informed of the possible consequences, including the satisfaction of possible claims under property law and the reimbursement of the expenses of the criminal proceedings. In addition, the Panel found that there was sufficient evidence proving the guilt of the Accused, and that the Accused understood that he waived the right to a trial and appeal from the pronounced criminal sanction. The statement of the Accused was entered into the record, and on the same day, the hearing for the pronouncement of the criminal sanction was held and he was sentenced to 10 (ten) years of imprisonment.**

**During the hearing for the pronouncement of the criminal sanction, the parties to the proceedings and the Defense Counsel for the Accused presented both aggravating and mitigating circumstances and proposed the punishment of nine years of imprisonment (Prosecutor's Office) and eight years (Defense). With respect to the proposed sentence, the Prosecutor stated that while concluding the guilty plea agreement with the Accused, he took into consideration the gravity of the criminal offenses that the Accused was charged with.**

the circumstances under which they were committed, as well as the desire of the Accused to take responsibility for everything he was charged with. As a special mitigating circumstance for the Accused, the Prosecutor's Office noted that it took into consideration the confession of the Accused and the expressed remorse for the committed offenses. During the hearing, the Prosecutor referred to the written submission filed with the Panel on 18 April 2008 and stated that the purpose of punishment could be achieved by 9 (nine) years of imprisonment. In the opinion of the Prosecutor, an accused's public and open admission of guilt is frequently more satisfactory to the victims and community than having a trial. In addition, as a mitigating circumstance, the Prosecutor noted that the Accused acted upon orders, and that he personally did not undertake any of the actions that resulted in the death of any of the victims in Ahmići, although killings did follow as a result of the order that he conveyed.<sup>1</sup> As an aggravating circumstance, the Prosecutor noted the Accused's position of responsibility and his attendant duty to act pursuant to valid regulations on armed conflict, which were known to the Accused because he was a professional soldier.

Defense Counsel for the Accused, both in writing<sup>2</sup> and at the hearing, presented mitigating circumstances relevant to the Accused's sentence. In the opinion of the Defense, the fact that the Accused confessed to the crime and expressed remorse for the crime committed was a particularly mitigating circumstance. In addition, Defense Counsel pointed out that none of the Prosecution witnesses who were heard incriminated the Accused with respect to the crimes that took place in Ahmići in April 1993. Further, Defense Counsel noted that the Accused was not incriminated by any other HVO members convicted of those crimes by final judgments, not even those who admitted their responsibility for the crimes, including Miroslav Bralo, a.k.a. Cicko. Defense Counsel also highlighted as a mitigating circumstance the fact that even the local political leadership, composed of the most influential individuals in the Municipality of Vitez, could not change or postpone the enforcement of the order issued by the commander of the CBOZ, Tihomir Blaškić. Attached to the Submission on sentencing, the Defense submitted three statements by persons of Bosniak ethnicity<sup>3</sup> discussing their relationship with the Accused and his behavior during the time period relevant to the Indictment. All three persons indicated that Paško Ljubičić was fair to Bosniaks, honest, and did not discriminate against people on the basis of ethnicity.

As an additional mitigating circumstance, the Defense noted that the Accused has no previous convictions, is a family man, and has two underage children.

In analyzing the Agreement, the Panel evaluated the presented prosecution evidence concerning the criminal acts that were the subject of the Agreement, and found that the evidence proves that the Accused committed the criminal offense of War Crimes against Civilians pursuant to Article 173 (1) a) and f) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC) in conjunction with Article 29, Article 35 (2), and Article 180 (1) and (3) of the BiH CC.

The Panel evaluated the prosecution evidence presented during trial, namely: the testimonies of witnesses Zahid Zatagića, Abdulah Ahmić, Bryan Shawn Charles Watters, Robert Wooley, Lee Whithworth, Geoffrey Martin Thomas, Andre Peter Kujawinski,

<sup>1</sup> Submission on Sentencing of the Prosecutor's Office of BiH, No. KT-RZ-140/06, dated 16 April 2008.

<sup>2</sup> Defense Submission dated 16 April 2008, moving for a lesser sentence.

<sup>3</sup> Statements of Alija Begić, Sead Duraković and Merima Doja.

Michael Dooley, Mirsad Ahmić, Sulejman Kavazović, Ramiza Mrkonja, Edib Zlotrg, Sulejman Kavazović, Azra Dedić, Đula Đidić as well as the witnesses under pseudonyms I, E, K, H, R, P, O, Z, L, V, AA, BB. The Panel has also evaluated the prosecution documentary evidence admitted into the case file: List of Muslims held at Kaonik prison, signed by Zlatko Aleksovski, 15 May 1993 (P2); List of Proposals for Commendations and Awards of the Command of the 4th Military Police Battalion Vitez number 02-4/3-07-811/93 dated 29 March 1993, signed by Paško Ljubičić (P3); Criminal Report against Miroslav Bralo filed with the District Military Prosecutor's Office Travnik, number 02-4/3-07-02-20/93 dated 3 February 1993, signed by Paško Ljubičić (P4); letter of the District Prison in Busovača number 01-60/93 dated 31 January 1993 confirming that Miroslav Bralo was in the District Prison in Busovača in the period 3 February 1993-15 April 1993 (P5); Order of the Municipal HQ Busovača number 62/92 dated 10 May 1992 (P6); Photograph of an UNPROFOR soldier administering first aid to the injured (P12); Photograph of an UNPROFOR soldier administering first aid to the injured (P13); Photograph of a women talking to the UN soldiers and local inhabitants with weapons (P14); Photograph of a house on which two UN vehicles can be seen (P15); Photograph of an injured women in the house (P16); Photograph of an injured women in the house (P17); Photograph of an injured women in the house (P18); Photograph of an injured women in the house (P19); Photograph of an injured women in the house (P20); Photograph of the exterior of a house dated 16 April 1993 (P21); Photograph of an exterior of a house dated 25 April 1993 (P22); Photograph of UN armored vehicle parked in front of a house (P23); Photograph of people standing in front of the basement of a house (P24); Photograph of people in the basement of a house (P25); Photograph of people standing in front of the basement of a house (P26); Photograph of people standing in front of the basement of a house (P27A); Photograph of a house with dead body on stairways (P27B); Photograph of a house on fire (P28); Photograph of a house on fire (P29); Photograph of UN armored in Ahmići vehicle showing an upright minaret (P30); Photograph reflecting UN soldiers with a body (P31); Photograph of bodies in an ambulance (P32); Photograph of bodies in an ambulance (P33); Photograph of an UN armored vehicle showing the direction in which incendiary bullets were fired (P34); Aerial photograph of Ahmići showing marks used in hearing of the witness Wooley (P35); Photograph showing clouds of smoke raising from Muslim houses, taken by the witness Watters (P36); Photograph showing the bodies placed side by side along the road to Dubravica (P37); Aerial photograph of Ahmići showing taken by the witness Watters (Muslim houses from which people evicted nearby Bungalow in Nadioci are marked with green color) (P38); Photograph of Chalet (P39); Sketch of the emblem of the Jokers unit (P40); Vidco clip – Sky News-showing Robert Stewart (P41); Photograph of the destroyed minaret of the mosque in Ahmići (P42); Photograph showing burned bodies of one child and adult person on the door-step (P43); Photograph showing closer the body also shown on the previous photograph (P44); Photograph showing approximately 100 burned bodies from the previous photograph (P45); Photograph showing one body in the basement of a house (P46); Photograph showing burned bodies in the basement of a house and traces of blood and bullets on walls (P47); Photograph showing burned bodies in the basement of a house (P48); Photograph showing a skeleton found in a burned house (49); Photograph showing a soldier of the British Battalion carrying bodies (P50); Photograph of the mass grave site (P53); Photograph of the mass grave site (P54); Photograph of the Vitez Hotel entrance (P55); Sketch of the Hotel in Vitez and its surroundings (P56); Photograph of Vladimir Šantić (P57); Photograph showing Paško Ljubičić next to the truck (P58); Photograph showing Paško Ljubičić and Drako

two civil police officers (P59); Photograph showing only the back of two soldiers, one in camouflage uniform and the other in black uniform (P60); Photograph showing a member of the Vitezovi unit holding in his left arm 12.7 mm sniper rifle (P61); Order by Tihomir Blaškić dated 16 June 1993 referring to the commanders of all the brigades and independent units (in English) (P62); Aerial photograph of Vitez (P63); Illustration of the HVO emblem (P64); Illustration of the emblem of the Army of BiH units (P65); Photograph showing a dead body in front of the house in Vitez (P66); Photograph similar to the one numbered P66 (P67); Photograph of the destroyed minaret of the mosque in Ahmići (P68); Photograph showing an armored vehicle nearby the site of explosion in Vitez (P69); Photograph showing the road in Vitez, site of explosion with remains of a truck and a small crater (P70); Close-up of the explosion site (P71); Photograph showing the remains of the truck (P72); Video-clip of the explosion site taken from a turret of the Warrior vehicle (P73); Aerial photograph of the surroundings of Vitez previously marked by the witness (P74); Aerial photograph of Vitez previously marked (P75); map of the area of Ahmići which was marked (P76); Photograph showing burned houses and dead bodies (P77); Part of the photograph number P77 showing two dead bodies (P77A); Photograph taken in Ahmići while civilians were getting on a vehicle (P78); Photograph taken in Ahmići while civilians were getting on a vehicle the same as Blaškić 136/2 with different signs (P79); Aerial photograph of Ahmići, unmarked (P80); Two video-clips taken by the witness Wooley (P81); Video tape on the attack on Ahmići (P82); Photograph showing a dead body in the field in Ahmići (P83); Photograph showing a dead body next to the vehicle in Vitez (P84); Photograph showing three houses (house of the witness B, Šefik Pezer and Nedžad Džidić) (P85); Illustration of the HVO units emblem (P86); Aerial photograph of Šantići showing the area of Žuna (the house of the witness and its neighborhood) (P87); Photograph of Fatima Ahmić and her husband in front of the house (P88); Wedding photograph of Fahrudin Ahmić and his wife (P89); Information by Valentin Čorić re: Paško Ljubičić's appointment as a new commander of the 4th MP Battalion, number 02-4-07-104/93 dated 15 January 1992 (the dated is corrected, the original states 1992) sent to the Military Police Administration (P90); HVO Combat Order, the Command of the CBOZ, Forward Command Post Vitez to secure a part of the road Kaonik- Dubrave and to repel the attack dated 16 April 1993, no number (P91); Extraordinary report of the HVO, Command of the 4<sup>th</sup> Military Police Battalion Vitez sent to the Military Police Administration Mostar number 02-4/3-04/1-108/93 dated 27 January 1993 (P92); HVO work report, Command of the 4<sup>th</sup> Military Police Battalion Vitez sent to the Military Police Administration Mostar for 25 February 1993, number 02-4/07-3/5/93 dated 26 February 1993 (P93); HVO report, Command of the 4<sup>th</sup> Military Police Battalion Vitez sent to the CBOZ dated 16 April 1993, no number (P94); Letter of the HVO, Military Police Administration, sent to Valentin Čorić, number 02-4/3-1-53/93 dated 2 August 1993 (P95); Notes and explanations of the proposal of organization of the 4<sup>th</sup> Military Police Battalion of the CBOZ of the HVO sent by the HVO, Command of the 4<sup>th</sup> Military Police Battalion Vitez to the Military Police Administration Mostar, number 02-4/3-07-376/93 dated 6 February 1993 (P96); Organizational chart of the 4<sup>th</sup> Military Police Battalion of the CBOZ (P97); HVO report, the 4<sup>th</sup> Military Police Battalion Vitez, sent to the Military Police Administration Mostar about activities on 18 February 1993, number 02-4/3-07-02-264/93 dated 19 February 1993 (P98); HVO report, the 4<sup>th</sup> Military Police Battalion Vitez, sent to the Military Police Administration Mostar, about activities on 15 February 1993, number 02-4/3-07-02-205/93 dated 16 February 1993 (P99); Command of the 4<sup>th</sup> Military Police Battalion Vitez, sent to the commander of the Military Police- HVO Travnik, number 02-4/3-07-337/93

March 1993 (P100); Instruction for the work of MP units of HVO of the Croat Community of Herzeg -Bosna (HZ H-B) (P101); Directions on MP procedures under the circumstances of application of the Decree on the Application of the CPC in case of the state of war or immediate threat to the HZ H-B (P102); Criminal report number KU-02/4-3-07-02-17/93 dated 2 March 1993, sent by the 4<sup>th</sup> Military Police Battalion to the District Military Prosecutor's Office Travnik (attachments: Official Note on Interview with Vinko Bašić, recorded interviews with Jozo Perić, Željko Jurčević, Dominik Greber and Marjan Muslin and Decision Ordering Custody ) (P103); Criminal report number 02/4-3-07-02-60/93 dated 2 July 1993, sent by the 4<sup>th</sup> Military Police Battalion to the District Military Prosecutor's Office Busovača (attachments: statements taken from Radenko Škava, Marijan Kozina, Miroslav Plehel, Mijo Đotlo, record on identification, Medical finding and opinion, Decision Ordering Mijo Đotlo into Custody, Order for Escorting to Military Prison, two Reports on Measures and Acts referring to the revealing of the perpetrator of the murder of Kasim Mujić's family, Report on the revealing of the perpetrator of the murder of Kasim Mujić's family, Report on Reception of Miroslav Plehel and two certificates on temporarily seized objects) (P104); Criminal report number 02/4-3-07-49/93 dated 2 April 1993, sent by the 4<sup>th</sup> Military Police Battalion to the District Military Prosecutor's Office Travnik (attachments: statements taken from Dragan Bilić and Goran Međugorac, decisions ordering Dragan Bilić and Goran Međugorac into custody and arrest warrant and wanted notice for Dragan Bilić and Goran Međugorac) (P105); Criminal report number 02/4-3-07-02-25/93 dated 11 February 1993, sent by the 4<sup>th</sup> Military Police Battalion (attachments: statements taken from Miloš Juranović, Mirko Broz, Ivica Radman, Slobodan Frlijić, Nedeljko Vidović, Ivica Antonić, English translation of the criminal report) (P106); Criminal report number 02/4-3-07-02-32/93 dated 1 March 1993, sent by the 4<sup>th</sup> Military Police Battalion (attachment: English translation of the criminal report) (P107); HVO Report, the 4<sup>th</sup> Military Police Battalion Vitez number 02-4/3-07-355/93 dated 4 March 1993, referring to work of the Crime Department for the month of February 1993 (attachment: English translation of the report) (P108); HVO Information, the 4<sup>th</sup> Military Police Battalion Vitez, number 02-4/3-07-386/93 dated 8 March 1993 on the engagement of military policemen in the territory of Busovača Municipality during the conflict with Muslim armed forces (MOS) (attachment: English translation of the report) (P109); Order to take Action of the HVO- HZ H-B, Command of the CBOZ, Forward Command Post Vitez, number 01-4-227/93 dated 15 April 1993 (attachment: draft English translation of the order) (P110); Order for Withdrawal of the Military Police Company from Travnik to Vitez, HVO- HZ H-B, Command of the CBOZ, Forward Command Post Vitez, number 01-4-28/93 dated 16 April 1993 (attachment: draft English translation of the order) (P111); Information on Scheduling a Meeting of the HVO, the 4<sup>th</sup> Military Police Battalion Vitez number 02-4/3-07-425 dated 14 March 1993 (attachment: English translation of the Information) (P112); Letter of the HVO- HZ H-B, Command of the CBOZ, Forward Command Post Vitez, number 01-4-259/93 dated 16 April 1993 (attachment: English translation of the letter) (P113); Operations Report of the HVO- HZ H-B Viteška Brigade, number 01-125-21/93 dated 17 April 1993 (attachment: English translation of the Report) (P114); Order of the HVO- HZ H-B, Command of the CBOZ, Forward Command Post Vitez, number 01-4-319/93 dated 17 April 1993 (attachment: English translation of the Order) (P115); HVO Report, the 4<sup>th</sup> Military Police Battalion Vitez, sent to the CBOZ Command, Forward Command Post Travnik, referring to activities of members of the HVO into the Kaonik-Busovača military prison on 2<sup>nd</sup> and 16<sup>th</sup> February 1993 (P116); Red Cross certificate, 16 March 1993, Sulejman Kavazović (P117); Photograph of the rear of the cinema building

Photograph of the entrance to the cinema building (P119); Photograph of the front entrance of what was the HVO brigade HQ (P120); Photograph of Mujo Ahmic (P121); Photograph of Muib Heleg (P122); Plan of the Vitez Hotel (P123); Order issued by Vladimir Šantić referring to imprisonment of Mirsad Bilić for seven days, number 02-4/5-04/1-260/93 dated 25 March 1993 (P124); Photograph of family and friends of Haris Hrnjić (P125); Information of the 3rd Corps based on the statements of the following persons: Saftet Kulić, Nihad Osmančević, Rasim Kerma, Mehmed Bešlić and Ramiz Hodžić (P126); The Republic of Bosnia and Herzegovina, 3rd Corps of the 325th Mountain Brigade, Crime Prevention Department, List of people killed by Ustashas in the village of Ahmići, Vitez, D. Veteriska and Stari Vitez dated 16 April 1993, number 02/2-230-145/94 dated 18 March 1994 (attachment: English translation of the list) (P127); List of 13 leading Muslims arrested in Vitez (P128); Photograph of Šefik Pezer and son Ahmed (P129); Photograph of Mustafa and Čazim Pezer (P130); Photograph of Mustafa's son Adil (P131); Photograph of Esad Ahmić's family (P132); Photograph of Fata Pezer (P133); Photograph of Hajra Ahmić (P134); Photograph of Muris Ahmić (P135); Photograph of House of Sakib Ahmić seen from the Vitez/Busovaca road (P136); Photograph of House of Sakib Ahmic (P137); Photograph of Latifa Ahmic (P138); Photograph of Semir and Alma (P139); Photograph of Islam and Ismail Ahmić (P140); Photograph of Hašim Ahmić and his granddaughter and a Photograph of Fahrudin and his wife (P141); Photograph of Mustafa Dedić and son Fariz (P142); Photograph of Osman and Čazim Pezer (P143); Photograph of Nezira and Mustafa Pezer (P144); Photograph of Mustafa and Faris. Azra Dedić's family (P145); Photograph of Mujo Ahmic and brother of Azra Dedić, Adem Siljak (P146); Photograph of Faris and Mujo (P147); Photograph of Faris and Elvedin (P148); Photograph of Ahmed Pezer (P149); Combat order to Vitez Brigade from Tihomir Blaškić dated 16 April 1993 (P150).

During the trial, the Defense for the Accused presented the following documentary evidence: Photograph of the persons named Abdullah and Džafer and photograph of another four persons claiming that these are members of Mujahedin forces (D-18, D-18a, D-18b); Statement of Senad Kolić (D-19); Map of the Lašva Valley area (D-16); Aerial photograph of Vitez with some marked objects (D-18); Letter of the General Staff of the Army of Serbia and Montenegro dated 19 September 2003 (D-15); Map of the Lašva Valley area with marked place of Kratine (D-16); Aerial photograph of the part of the town of Vitez with the Legend (D-12); Telegram of the Duty Officer dated 28 August at 23:05 hrs (D-11); Telegram of the HQ of Vitez defense dated 12 September at 10:00 hrs (D-10); LUNA Telegram dated 14 September at 20:00 hrs (D-9).

The Panel is of the opinion that all the prosecution evidence presented during the main trial (listed witnesses as well as documentary evidence) and the partially accepted Motion of the Prosecutor's Office of the ICTY adjudicated facts confirm the allegations in the Amended Indictment of the Prosecutor's Office of BiH, dated 24 April 2008.

### **I. Procedural Decisions**

This case, as indicated above, was transferred to the Court of BiH pursuant to the Law on Transfer. Some of the procedural decisions made by this Panel are a direct consequence of this transfer, and they are directly linked to orders of the ICTY.



### **1.a) Decisions on the Protective Measures for the Witnesses**

Pursuant to Article 75 of the Rules of Procedure and Evidence of the ICTY, protective measures ordered by the ICTY "shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") or any other court unless they are rescinded, varied or augmented in accordance with the procedure set out in this Rule." In the case against Paško Ljubičić, protection measures for the majority of witnesses had previously been ordered by the ICTY. The Preliminary Hearing Judge of this Court, by the Decision dated 12 December 2006<sup>4</sup>, ordered protection measures for witnesses under the pseudonyms B, C, D, E, F, G, H, I, J, K, L, N, O, R, T. In addition, during the main trial, upon the motion of the Prosecutor, the Panel also declared confidential the personal details of the witnesses assigned the pseudonyms AA and BB.

Pursuant to the decisions mentioned above, the witnesses' names, as well as other personal details, were proclaimed confidential for a period not longer than 30 years following the date when the decision became final, and the witnesses who were granted these measures were permitted to testify utilizing electronic distortion of the image<sup>5</sup> or utilizing electronic distortion of both the image and the voice.<sup>6</sup>

However, not all witnesses protected by the decisions of the Court and afforded the possibility of testifying with these measures did so. Some of the protected witnesses testified in the courtroom without electronic distortion of their image and voice (so that those present in the courtroom could see and hear them) but with the public excluded. That is, notwithstanding the decision of the Court rendered in the preliminary proceedings protecting the identity of the witnesses, as stated above, a number of witnesses testified at the main trial at the session closed for public. During the main trial, the Panel, pursuant to Article 235 of the BiH CPC, rendered the decision to exclude the public on several occasions. The Panel used these measures taking into consideration the principle of direct presentation of evidence and being of the opinion that such measures are adequate when witnesses are not requesting protection from the Accused himself, but only protection of their identity, personal and intimate life from the public.

Considering that the identity of these witnesses was protected (even 30 years following the date the decision becomes final) during the entire proceedings, the Panel was mindful not to disclose data which might lead to disclosure of their identities. In the Verdict the witnesses will be referred to by the pseudonyms assigned to them previously.

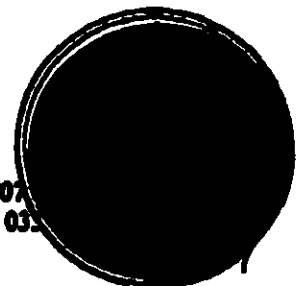
### **1.b) Decision on the Admission of Established Facts**

On 7 January 2008, the Panel partially granted the Motion of the Prosecutor's Office of BiH, number KT-RZ-140/06, dated 30 May 2007, concerning the acceptance of facts established by the ICTY. The Panel rendered this Decision in writing and presented in detail the reasons for acceptance and attached an Annex listing the accepted facts. The Panel took into account that the accepted facts were of a general character, and it refused to accept the

<sup>4</sup> Decision of the Court of BiH number X-KRN-06/241 dated 12 December 2006.

<sup>5</sup> For the witnesses under pseudonyms B, C, H, I, J, K, L, N, O, R, T.

<sup>6</sup> For the witnesses under pseudonyms D, E, F, G.



proposed facts referring to the relation of the Accused to the criminal offense he was charged with and his possible criminal responsibility. The Panel established the criminal responsibility of the Accused through evidence presented during the main trial, which confirms the validity of the Accused's confession.

### **1.c) Other Procedural Decisions**

As stated above, on 11 May 2007, the main trial in the case commenced. On 13 June 2007, the Panel heard the first prosecution witnesses. During the first two hearings the Panel was composed of Judge Šaban Maksumić as the Presiding Judge and Judge Marie Tuma and Pietro Spera as the Panel members. In addition, in the capacity of a reserve Judge, Panel member Judge Merja Halme- Korhonen attended the main trial from the beginning. In other words, pursuant to the Decision of the President of the Court rendered upon the proposal of the Presiding Judge in this case on 17 April 2007<sup>7</sup>, Judge Merja Halme- Korhonen was appointed a reserve judge, and on 25 June 2007, she fully replaced Judge Pietro Spera as member of the Panel. This decision was made for objective reasons, that is due to the expiring mandate of Judge Spera and his commitments in another case. The parties to the proceedings as well as the Defense for the Accused did not object to this procedural decision.

Article 238(2) of the BiH CPC provides for the possibility that the President of the Court, upon the request of the Presiding Judge, appoints one (1) or two (2) judges to be present at the main trial so that they can replace members of the Panel in case of their absence. Namely, in complex cases where it seems likely that the main trial will continue for a lengthy period of time, it may happen that one of the Panel members is prevented from attending the main trial until its completion. The purpose of the aforementioned provision is to avoid the situation in which the trial would have to be repeated due to the unavailability or change of a member of the Panel.

In the case concerned, Judge Korhonen attended the main trial from the very beginning in the capacity as a reserve judge, therefore she completely replaced Judge Spera following the testimonies of only two prosecution witnesses. Taking into consideration all the aforementioned and the relevant BiH CPC provisions, as well as the mutual agreement of the parties to the proceedings and the Defense for the Accused, the Panel found that such procedural decision was in the interest of the Accused himself in terms of unhindered continuation and faster completion of the main trial.

Following the main trial held on 12 July 2007, the trial continued on 24 August 2007, and thus the legally prescribed time limit of 30 days for adjournment of the main trial was exceeded. In other words, Article 251(3) of the BiH CPC reads: "If the adjournment lasted longer than 30 days or if the main trial is being held before another judge or presiding judge, the main trial must commence from the beginning and all evidence must be again presented." However, in the case concerned, the parties to the proceedings stated that they did not object to the expiration of this deadline and they agreed to continue the main trial. Given that the rights of the parties to the proceedings were not violated by this technical

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<sup>7</sup> See Official Note dated 7 May 2007 and Official Note dated 15 June 2007, indicating the proposals of Commission for Appointment of Panel and referring to appointment of the reserve judge (Merja Halme- Korhonen) in the case.

failure to meet the deadline (which, *inter alia*, is confirmed by the fact that did not object to such delay) and considering the complexity of the case and obligation of the Court to reduce the entire duration of proceedings to the shortest possible period (as well as long duration of custody, including the custody before the transfer of the Accused to BiH), the Panel deems that formally exceeding the deadline under these circumstances did not lead to significant violation of the relevant legal provisions.

## **2. Applicable Law**

First, the Panel considered which law is applicable in the case at hand. While doing so, the Panel took into consideration Articles 3, 4 and 4a) of the BiH CPC and Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

The Accused is charged with criminal offenses set forth in the Criminal Code of BiH adopted in 2003, therefore, after the period relevant to the Indictment. At any rate, taking into consideration general principles contained in Article 3 and 4 of the BiH CC, the Panel concludes that they are also stipulated in Article 7(2) of the ECHR (as well as in Article 4a) of the BiH CC). That is, the principle of legality and time constrains regarding applicability referred to in Article 3 and 4 of the BiH CC surely do not prevent trial or punishment of any person for any act or omission which, at the time when it was committed, was criminal according to general principles of international law. The incriminating acts of the Accused, at the moment of commission, constituted criminal offense pursuant to both general principles of international law and the Criminal Code of the Socialist Federal Republic of Yugoslavia (in force during the relevant period).

Therefore, application of the 2003 Law with respect to prescribed criminal offenses directed to protection of general principles of international law (which surely include the criminal offenses that the Accused is charged with) and to the offenses committed prior to the entry into force of the Law concerned, is in accordance with the ECHR and thus with the Constitution of BiH.

Accordingly, the Panel finds that the provisions of the BiH CC are to be applied to the present case. The Panel particularly considered the Decision of the Constitutional Court of Bosnia and Herzegovina in the case Abduladhim Maktouf (number AP-1785-06), from which it can be concluded that the application of the Criminal Code of BiH in cases referring to the criminal offenses of crime against humanity and values protected by international law (which offenses were committed prior to entry into force of this law) is in accordance with the ECHR and Constitution of BiH.<sup>8</sup>

The Panel also took into account that the Accused, signing the Agreement, pleaded guilty of the criminal offenses set forth in the 2003 BiH CC.

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<sup>8</sup> In *Maktouf*, the Constitutional Court held that the essence of Article 7(2) of the ECHR is calculated to make it clear that Article 7 does not have any effect on the laws which were adopted in certain circumstances during World War II and intended for punishment of war crimes, treason and collaboration with enemies, aimed at either moral or legal disapproval of such laws."

**3. War Crimes against Civilians under Article 173(1) (a) and (f) of the BiH Criminal Code, in conjunction with Articles 29 and 180 (1) in conjunction with paragraph (3) of the BiH Criminal Code**

The Accused, as stated above, was charged with the criminal offense of War Crimes against Civilians pursuant to Article 173(1)(a) and (f) of the BiH Criminal Code, in conjunction with Articles 29 and 35(2), as well as 180(1) and (3) of the BiH Criminal Code, and in violation of Articles 4(2), 13(2) and 14 of Additional Protocol II.

The relevant part of Article 173 of the BiH CC provides:

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

- a) Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;
- f) [P]illaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs....

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

Pursuant to the cited provisions and taking into account the jurisprudence of the ICTY concerning war crimes, the Panel first established the *chapeau* elements of this criminal offense:

- the act must be perpetrated in violation of the rules of international law;
- the violation must be committed in time of war, armed conflict or occupation;
- the act must be related to war, armed conflict or occupation; and
- the perpetrator must order or commit the act.

In concluding that these general elements were established, the Panel took into account the facts already established in prior ICTY cases (*Blaskić, Aleksovski, Kupreskić et al. Čerkez and Koridić*).<sup>9</sup> In addition, numerous prosecution witnesses testified during the trial with respect to these facts (as will be indicated in the text of the Verdict below).

**-act committed in violation of the rules of international law**

In this case, the relevant rules of international law can be found in the provisions of Additional Protocol II:

<sup>9</sup> By the Decision number X-KR-06/241 dated 7 January 2008, the Panel accepted as proven the facts established in the ICTY Judgments in *Blaskić, Aleksovski, Koridić and Čerkez*, and *Kupreskić et al.*, as indicated in detail in the written Decision of the Panel dated 7 January 2008, and the attached Annexes.

























