



Number: X-KR-05/46
Sarajevo, 30 June 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting on the Panel composed of Judge Mira Smajlović, as the Presiding Judge, and Judge Staniša Gluhajić and Judge Carol Peralta, as members of the Panel, with the participation of Sanja Ljuboje, as the record-taker, in the criminal case against the Accused Rade Veselinović for the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (a), (c), (e), (f), (i) and (k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: CC B-H), all as read with Articles 29, 31 and 180(1) of the CC B-H, upon the Amended Indictment of the Prosecutor's Office of B-H, No. KT-RZ-17/05 dated 29 June 2009, following the deliberation on the Plea Agreement and the hearing for the pronouncement of the criminal sanction, rendered and, in the presence of Dubravko Čampara, Prosecutor for the Prosecutor's Office of B-H, the Accused Rade Veselinović, and his Defense Counsel, Attorney Milorad Rašević and Attorney Refik Arnautović, on 30 June 2009, pronounced the following:

VERDICT

The Accused RADE VESELINOVIĆ, son of Petko and Anica née Milović, born on 1 February 1944 in the place of Đakovići, Čajniče Municipality, Personal Identification Number 0102944171328, an ethnic Serb, citizen of Bosnia and Herzegovina, residing at Magistralni put bb [no number], Podgrab, Pale Municipality, literate, completed elementary education, married with one child of age, completed his military service from 1963 to 1965, indigent, no previous convictions, no other criminal proceedings pending, arrested at 12.00 hrs on 29 November 2007, currently in custody pursuant to the Decision of the Court of B-H, No. X-KR-05/46 dated 29 April 2008,

I

HAS BEEN FOUND GUILTY

Of the following:

During the period from early May 1992 until late 1992, within a widespread and systematic attack of the Army of Republika Srpska (hereinafter: VRS), members of the Military Police and paramilitary formations against non-Serb civilians of the greater area of Hadžići Municipality, as a member of the VRS Military Police from Hadžići, knowing of such an attack, he carried out, instigated and aided and abetted in the persecution of the non-Serb population from the Hadžići Municipality on political, national, ethnic, cultural and religious grounds by way of killing, unlawful imprisonment, torture, enforced disappearance, immense suffering and violation of bodily integrity and by other inhumane

acts perpetrated with the intention of causing great suffering, inflicting serious bodily injuries and damaging their health in the way that:

1. During the period from early May 1992, together with other members of the VRS from Hadžići, he participated in unlawful arrests of the non-Serb population of Hadžići and the villages of Žunovnica, Musići, Binježevo, Kućice and other surrounding places, who were taken to the detention center in the Culture, Sports and Recreational Center Hall in Hadžići, where they were beaten up and physically abused. They also allowed unidentified members of paramilitary formations to mistreat the detainees by beating them up, forcing the men to perform lewd acts among themselves, gave them meager food and took them to the front lines to dig trenches, cut wood and do other hard labor;
2. On 16 May 1992, in the street in front of the Culture Center in Hadžići, he fired from his automatic rifle at an ethnic Croat, Stjepan Musa a.k.a. *Pepo*, for no reason whatsoever and wounded him;
3. In late May or early June 1992, when detained civilians Đelal Ismailovski and a person whose last name was Maslo, were taken out for forced labor from the camp to the hall of the Culture, Sports and Recreational Center in Hadžići, to transport by car a stove from the place called Kućice toward Hadžići, he stopped them on their way to Hadžići and pulled Đelal Ismailovski out of the car, swearing his *Šiptar** mother, started kicking and punching him all over his body, slapped him in the face, then he pulled out his pistol with which he hit Đelal Ismailovski in his head, whereupon Ismailovski started bleeding down his face and he still has scars on his head as a consequence. He then pulled Maslo out of the car and started kicking and punching him all over his body, putting his pistol to Maslo's temple threatening to kill him;
4. On an unspecified date in June 1992, together with a group of unidentified armed members of the VRS, he came to the village of Donji Hadžići, where they found Mujesira Piknjač and one unidentified member of the VRS killed her from his fire arms;
5. On or about 4 July 1992, together with members of the Military Police from Hadžići, he arrived in front of a building located at 8 JNA Street in Hadžići, entered the building, brought out Safet Hrvat, took him away in an unknown direction in a *Pinzgauer* vehicle, whereupon Hrvat disappeared without a trace;
6. On an unspecified date in late 1992, close to the village of Breza, Hadžići Municipality, he mistreated Hasnija Musić. He stopped her in the road, grabbed her breasts, pushed her to a tree, leaned her against the tree and fired a number of pistol bullets above her head, deafening her,

therefore, within a widespread and systematic attack of the Army of Republika Srpska in the greater area of Hadžići Municipality, knowing of such attack, he carried out, instigated, aided and abetted in the persecution of the non-Serb population in Hadžići Municipality on

* Derogatory term for ethnic Albanians; translator's note

political, national, ethnic, cultural and religious grounds by way of killings, unlawful imprisonment, torture, enforced disappearance, causing immense suffering or violation of bodily integrity and by other inhumane acts perpetrated with the intention of causing great suffering, inflicting serious bodily injuries and damage to health,

Whereby he committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (a), (c), (e), (f), (k) and (i) of the CC B-H, all as read with Articles 29, 31 and 180(1) of the CC B-H;

therefore, pursuant to Article 285 of the CPC B-H and in application of Articles 39, 42, 48 and 49 of the CC B-H, the Court of B-H hereby

**SENTENCES THE ACCUSED
TO IMPRISONMENT FOR A TERM OF 7 YEARS AND 6 MONTHS**

II

Pursuant to Article 283(b) of the CPC B-H,

THE FOLLOWING CHARGES ARE HEREBY DISMISSED

Alleging that:

7. On 20 May 1992, together with other members of the VRS from Hadžići, including Dragan Pušara and Nemanja Jovičić, he participated in the attack on the village of Musići, Hadžići Municipality, when civilians Alija (Ahmed) Musić, Derviš (Ahmed) Musić and Fadil (Esad) Musić were killed and a number of Bosniak civilians from the village of Musići were unlawfully deprived of liberty and taken to the detention center in the hall of the Culture, Sports and Recreational Center in Hadžići, including Mujo Musić, Irfan Musić, Adil Musić, Meho Musić, Miralem Musić, Zaim Musić and others,

whereby he would have committed the criminal offense of Crimes against Humanity, in violation of Article 172(1) of the CC B-H.

Pursuant to Article 56(1) of the CC B-H, the time the Accused will have spent in custody pursuant to the Decisions of this Court, from 29 November 2007 until the time he is committed to serve his sentence, shall be credited towards the sentence of imprisonment.

Pursuant to Article 188(4), the Accused is hereby fully relieved of the duty to reimburse the costs of the criminal proceedings, which shall be paid from the budget appropriations of the Court of B-H.

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

Reasoning

By the Order of the Court of B-H, No. X-KRN-05/46 of 4 August 2005, pursuant to Article 449(2) and (3) of the CPC B-H, the case No. Ki-223/01 against suspect Rade Veselinović was taken over from the Cantonal Court in Sarajevo.

On 22 April 2008, the Prosecutor's Office of B-H filed an Indictment against Rade Veselinović charging the Accused with the commission of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h) of the CC B-H, as read with Sub-Paragraphs (a), (c), (d), (e), (f), and (i) and Article 173(1)(a) of the CC B-H, all as read with Articles 29 and 180(1) of the CC B-H. The Indictment was confirmed by the Preliminary Hearing Judge on 29 April 2008.

At the plea hearing held before the Preliminary Hearing Judge on 5 May 2008, the Accused Rade Veselinović pleaded not guilty of any Count of the Indictment.

The main trial in this case commenced on 18 July 2008.

On 19 June 2009, the Court received a Plea Agreement concluded on 19 June 2009 between the Prosecutor's Office of B-H and the Accused Rade Veselinović, represented by his Defense Attorneys. Enclosed with this Agreement was an Amended Indictment, No. KT-RZ-17/05, of the same date. In the Amended Indictment, the Prosecutor's Office withdrew Count 2 of the Indictment and specified the factual description of crimes under Counts 3 and 5. Also, the legal definition of the criminal offenses the Accused is charged with was specified, hence, he was charged with the criminal offenses of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (c), (d), (e), (f) and (i) of the CC B-H, and War Crimes against Civilians, in violation of Article 173(1)(a) of the CC B-H.

Before the Panel decided whether or not to accept the Agreement, the Prosecutor's Office filed with the Court a new, Amended Indictment, No. KT-RZ-17/05, dated 29 June 2009, specified with respect to the legal definition of the offense the Accused is charged with, whereby he is charged with the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (a), (c), (e), (f), (i) and (k) of the CC B-H.

Enclosed with the Amended Indictment, the Court also received the Plea Agreement (hereinafter: the Agreement) concluded on 29 June 2009 between Prosecutor Dubravko Čampara and the Accused Rade Veselinović, represented by his Defense Counsel Milorad Rašević and Refik Arnautović. By the Agreement, the Accused admitted guilt for the criminal offense he is charged with in the Amended Indictment. The Prosecutor and the Accused agreed in the Agreement that the Accused should be sentenced to imprisonment for a term between six and eight years for the offense for which he admitted guilt.

On 30 June 2009, the Court held a hearing to decide on the Agreement where it examined in direct contact with the parties whether the necessary and legally prescribed requirements to

accept the Agreement existed. The Court first examined the will of the Accused to conclude the Agreement, that is, whether it was concluded voluntarily, consciously and with understanding. The Court cautioned the Accused that by admitting guilt he waived the right to trial and that he could not appeal the criminal sanction that would be imposed on him. The Court was also satisfied that the Accused understood potential consequences regarding claims under property law and costs of the criminal proceedings.

At the hearing to consider the Plea Agreement the Prosecutor stated that the guilt of the Accused stemmed from the evidence that the Prosecutor's Office presented during the proceedings prior to the conclusion of the Agreement, including the evidence concerning the Count of the Indictment that the Prosecutor's Office withdrew, as this evidence partially also concerns Count 1 of the Indictment. At the same hearing, the Defense stated that it accepted all the proposed evidence and that it had no objection as to its legality, authenticity and relevance.

Being satisfied that all the requirements set forth in Article 231(6) of the CPC B-H were met and that in the proceedings conducted hitherto sufficient evidence had been presented to confirm the guilt of the Accused, the Court accepted the Agreement.

Evidence of the guilt of the Accused

It follows from the evidence which the Prosecutor's Office of B-H presented in the proceedings hitherto and which is contained in the case file that the Accused Rade Veselinović committed the criminal offense he is charged with. The Prosecutor's Office presented evidence by examining witnesses and presenting documentary evidence.

At the proposal of the Prosecutor's Office the following witnesses gave evidence: Meho Babić, Mehmed Musić, Atina Panjeta, Hamid Musić, Mirsad Kulenović, Hasan Kečević, Saima Halvadžija, Armin Bećirović, Aiša Džebo, Witness B, Witness C, Nermin Šemšić, Enver Rešidović, Mehmed Muhibić, Nedima Valjevčić, Mehmed Musić, Fadil Vlajičić, Witness A, Indira Musić, Suljo Šehović, Kemal Šabotić, Đemal Ismailovski, Agnesa Hadžajlić-Šaćić, Edib Hrnjić, Hasnija Musić, Adnan Hrvat, Stjepan Musa, Safija Okić, Refadija Hajdarević and Mehmedalija Nizić.

Pursuant to Article 273(2) of the CPC B-H, the statement of witness Zumreta Musić was read out at the main trial (Witness Examination Record, Zumreta Musić, No. KT-RZ-17/05, 1 February 2008, Prosecutor's Office of B-H).

The Prosecutor's Office also presented the following documentary evidence: Witness Examination Record, Mehmed Musić, No. KT-RZ-17/05, 11 December 2007, Prosecutor's Office of B-H (T-1); Witness Examination Record, Mehmed Musić, No. 14-04/2-/05, 22 December 2005; SIPA (State Investigation and Protection Agency) (T-2); Witness Examination Record, Atina Panjeta, No. KT-RZ-17/05, 19 December 2007, Prosecutor's Office of B-H (T-3); Witness Examination Record, Hamid Musić, No. KT-RZ-17/05, 9 January 2008, Prosecutor's Office (T-4); Witness Examination Record, Mirsad Kulenović, No. 14-04/2-27/05, 18 November 2005, SIPA (T-5); Witness Examination Record, Hasan Kečević, No. 14-04/2-27/05, 17 November 2005, SIPA (T-6); Witness Examination Record,

Sajma Halvadžija, No. 14-04/2-20/05, 17 November 2005, SIPA (T-7); Witness Examination Record, Armin Bećirović, No. 14-04/2-18/05, 16 November 2005, SIPA (T-8); Witness Examination Record, Nermin Šemšić, No. 14-04/2-10/05, 17 November 2005, SIPA (T-9); Witness Examination Record, Mehmed Muhibić, No. KT-RZ-17/05, 5 February 2008, Prosecutor's Office of B-H (T-10); Witness Examination Record, Mehmed Musić, No. KT-RZ-17/05, 4 February 2008, Prosecutor's Office of B-H (T-11); Witness Examination Record, Fadil Vlajčić, No. KT-RZ-17/05, 30 January 2008, Prosecutor's Office of B-H (T-12); Witness Examination Record, Witness A, No. KT-RZ-17/05, 11 February 2008, Prosecutor's Office of B-H (T-13); Witness Examination Record, Indira Musić, No. 14-04/2-47/05, 16 December 2005, SIPA (T-14); Witness Examination Record, Kemal Šabotić, No. KT-RZ-17/05, 11 February 2008, Prosecutor's Office of B-H (T-15); Witness Examination Record, Đelal Ismailovski, No. KT-RZ-17/05, 5 February 2008, Prosecutor's Office of B-H (T-16); Witness Examination Record, Agnesa Hadžajlić-Šaćić, No. KT-RZ-17/05, 18 January 2008, Prosecutor's Office of B-H (T-17); Witness Examination Record, Edib Hrnjić, No. KT-RZ-17/05, 18 December 2008, Prosecutor's Office of B-H (T-18); Witness Examination Record, Hasnija Musić, No. KT-RZ-17/05, 20 March 2008, Prosecutor's Office of B-H (T-19); Witness Examination Record, Adnan Hrvat, No. KT-RZ-17/05, 25 February 2008, Prosecutor's Office of B-H (T-20); Witness Examination Record, Stjepan Musa, No. 14-04/2-04-2-284/06, 15 May 2006, SIPA (T-21); Witness Examination Record, Safija Okić, No. 14-04/2-03/05, 14 November 2005, SIPA (T-22); Witness Examination Record, Refadija Hajdarević, No. KT-RZ-17/05, Prosecutor's Office of B-H (T-23); Witness Examination Record, Mehmedalija Nizić, No. 14-04/2-7/05, 14 November 2005, SIPA (T-24); Record of examination of expert witness, Dr. Hamza Žujo, No. Kri-89/96, 1 July 1996, and Record of exhumation and autopsy of mortal remains of Ismet Musić, Alija Musić, Derviš Musić and Fadil Musić of the High Court in Sarajevo, No. Kri-89/96, 1 July 1996 (T-25); Death certificate for Zumreta Musić (T-26); Witness Examination Record, Zumreta Musić, No. KT-RZ-17/05, 1 February 2008, Prosecutor's Office of B-H (T-27); Suspect Questioning Records, Rade Veselinović, No. KT-RZ-17/05, dated 29 November 2007, 12 February 2008, 31 March 2008, 8 April 2008 and 15 April 2008, po1 of B-H (T-28); Crime scene forensic report, Sarajevo Security Service Center, No. 1040/96, 1 July 1996 – certified photocopy (T-29); Crime scene forensic report, Sarajevo Security Service Center, No. 1041/96, 1 July 1996 – certified photocopy (T-30); Crime scene forensic report, Sarajevo Security Service Center, No. 1042/96, 1 July 1996 – certified photocopy (T-31); Crime scene forensic report, Sarajevo Security Service Center, No. 1043/96, dated 1 July 1996 – certified photocopy (T-32); Death certificate for Fadil Musić, No. 03/3-13-3173/2008, 4 April 2008 (T-33); Death certificate for Derviš Musić, No. 03/3-13-3174/2008, 4 April 2008 (T-34); Decision of the Basic Court in Konjic, No. R-235/95 of 10 March 1995 establishing that Derviš Musić was killed on 20 May 1992 (T-35); Death certificate for Alija Musić, No. 03/3-13-3177/2008, 4 April 2008, and Doctor's certificate of death for Alija Musić issued by Doctor Hamza Žujo, specialist in forensic medicine, on 25 September 1996 (T-36); Death certificate for Ismet Musić, No. 03/3-13-3176/2008, 4 April 2008 (T-37); Death certificate for Mujesira Piknjač, No. 03/3-13-3459/2008, 11 April 2008, and Doctor's certificate of death for Mujesira Piknjač issued by doctor Ilijas Dobrača, specialist in forensic medicine, on 8 February 2002 (T-38); Record of exhumation and autopsy of mortal remains of Ramiz Čičak and Mujesira Piknjač of the High Court in Sarajevo, No. Kri-55/96, 3 May 1996 (T-39); Letter by the Federation Commission on Missing Persons, No. 01-41-324/2008, dated 17 April 2008 (T-40); Certificate issued by the Federation Commission on Missing Persons for Sifet Hrvat, No.

06/5-106-E/2008, 17 April 2008 (T-41); Letter by the Federation Commission on Missing Persons, No. 01-41-323/2008, dated 17 April 2008 (T-42); Certificate issued by the Federation Commission on Missing Persons for Ismet (Esad) Musić, No. 01-41-328/2008, 17 April 2008; Certificate issued by the Federation Commission on Missing Persons for Alija (Mehmed) Musić, No. 01-41-327/2008, 17 April 2008; Certificate issued by the Federation Commission on Missing Persons for Derviš (Mehmed) Musić, No. 01-41-326/2008, 17 April 2008; Certificate issued by the Federation Commission on Missing Persons for Fadil (Esad) Musić, No. 01-41-325/2008, 17 April 2008 (T-43); Certificate issued by the International Committee of the Red Cross for Dželal (Ismail) Ismailovski, No. BAZ243611, 17 February 1995 (T-44); Hospital discharge letter for Dželal Ismailovski issued by the Clinic Center of the University of Sarajevo, No. 986/03, 21 November 2003; Hospital discharge letter for Dželal Ismailovski issued by the Clinic Center of the University of Sarajevo, No. 986/03, 21 November 2003; Psychological report and opinion for Dželal Ismailovski, dated 8 January 2005, provided by psychologist Mirela Hadžić; Outpatient medical examination of Dželal Ismailovski, issued by the Clinic Center of the University of Sarajevo, No. 5588/07, 7 May 2007; Outpatient medical examination of Dželal Ismailovski, issued by the Clinic Center of the University of Sarajevo, No. 5061/06, 25 April 2006 (T-45); Official letter of the RS Ministry for Combatants and Disabled Veterans – Department for the Protection of Combatants, Disabled Veterans and Civilian War Victims – Military Records of the Participants of the Defense-Homeland War, No: 16-03/5-02-56-2789/08, dated 18 April 2008 (T-46); Certificate taken from the VOB-8 Military Form, Military Postcode 7066, Blažuj, for Rade Veselinović (T-47); Certificate concerning Rade Veselinović's criminal record, No. 13-1-9/02-235-28-44/08, 9 April 2008 (T-48); Record on arrest of suspect Rade Veselinović, SIPA, No: 17-04/2-04-2-19/07, 29 November 2007 (T-49); Record on handing over the person deprived of liberty to the Prosecutor in charge, SIPA, No. 17-04/2-04-2-19/07, 29 November 2007 (T-50); Official Letter by the Administration Service of Pale Municipality dated 21 April 2008 (T-51).

Applicable Law

At the very beginning the Panel considered the issue of substantive law applicable in the case at hand. It stems from the Indictment of the Prosecutor's Office of B-H that the acts as charged were committed in the period from early May 1992 to late 1992. In the period concerned, the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY) was in effect in the territory of B-H. Although the CC SFRY contains a chapter entitled *Crimes against Humanity and International Law*, it does not contain provisions that directly concern crimes against humanity.

By analogy, legal definition of the criminal acts in the Indictment and in the accepted Agreement was provided in accordance with the 2003 CC B-H, that is, the Criminal Code that came in effect after the period concerned.

Article 4 of the CC B-H sets forth time constraints regarding applicability stipulating 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, except where the law has been amended on one or more occasions after the criminal offense was perpetrated, in which case the law that is more lenient to the perpetrator shall be applied.

Article 3 of the CC B-H sets forth the principle of legality, that is, that 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 (*nullum crimen sine lege, nulla poena sine lege*).

However, Articles 3 and 4 of this Code shall not prejudice trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC B-H).

The principle of legality has also been set forth in a similar way in the provisions of the European Convention on Human Rights (hereinafter: the Convention). Article 7 of the Convention reads:

"1. 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.

2. 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 the general principles of law recognized by civilized nations."

The Convention constitutes a component part of the Constitution of B-H. Under the explicit provision of Article II (2) of the Constitution of B-H, the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina and shall have priority over all other law.

In the period concerned crimes against humanity were criminal according to *"the general principles of law recognized by civilized nations"*, that is, according to *"the general principles of international law"*. Therefore, although crimes against humanity were not explicitly set forth as criminal offense in the Criminal Code that was in effect at the time of the commission of the offenses charged in the Indictment, the obligation of trying them exists.

The Panel also had in mind the Decision of the Constitutional Court, No. AP-1785-06 (A. Maktouf), which clearly determined that war crimes are "crimes according to international law" in terms of universal jurisdiction to prosecute, thus the convictions for such offenses, under the law which subsequently defined and determined certain acts as criminal and prescribed specific criminal sanctions, but which did not constitute criminal offenses under the law that was applicable at the time the criminal offense was committed, are not in contravention of Article 7(1) of the European Convention, and by analogy, of the Constitution of B-H, either.

Also, with respect to the punishment, the CC SFRY did not envisage a long-term or a life-long imprisonment, but set forth death penalty for the most severe criminal offenses and maximum imprisonment for the term not exceeding 15 years for more lenient offenses. With the abolition of death penalty, the whole sentencing system envisaged in the CC SFRY became inapplicable, since, as the Decision of the Constitutional Court of B-H stresses "*a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law*".

Based on the foregoing, the Panel concludes that it is necessary and justified to apply the CC B-H in the case at hand. The Panel is especially mindful of the fact that the Accused admitted the criminal offenses as legally defined in this Criminal Code.

Crimes against Humanity

The Panel considers that there is sufficient evidence indicating that the Accused Rade Veselinović committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (a), (c), (e), (f), (i) and (k) of the CC B-H.

The Accused has admitted that, as part of a widespread or systematic attack directed against any civilian population, with the knowledge of such an attack, he perpetrated the acts of aiding in depriving another person of his life (murder), unlawful imprisonment, torture, enforced disappearance, causing great suffering and serious injury to body and other inhumane acts intentionally causing great suffering, serious injury to body or to physical health. Before assessing whether the individual acts that the Accused is charged with have been proven or not, the Court must establish the existence of general elements of the criminal offense charged.

According to Article 172(1) of the CC B-H, the general elements of the criminal offense of Crimes against Humanity are as follows:

1. The existence of a widespread or systematic attack directed against civilian population.
3. The nexus between the acts of the Accused and the attack – the acts of the Accused constitute a part of the attack.
4. The knowledge of the Accused of the attack.

Also, Article 172(2)(a) gives a more precise definition of an attack directed against any civilian population to mean a course of conduct involving the multiple perpetrations of acts referred to in Paragraph 1 of the same Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

It follows beyond doubt from the testimonies of the examined witnesses and the presented evidence that in the relevant period there was a widespread and systematic attack against the non-Serb population in the greater area of Hadžići Municipality by the military, paramilitary and police formations.

When evaluating the nature of the attack this Panel was guided by the case law of this Court and the ICTY in accordance with which the term "widespread" refers to the wide scope of an attack and the number of persons who are the target thereof, while the term "systematic" refers to the organized character of violent acts and the small probability that they were random. The patterns of crimes, that is, regular repetition of similar criminal conduct, which is not accidental, are a customary expression of such systematic events. Only the attack must be widespread or systematic, not the individual acts of the Accused. There are two criteria to assess the scope of an attack: the number of victims, that is, persons against whom the attack was directed, as well as the geographical scope of the attack.

Almost all Bosniak witnesses who appeared before the Court were in one period detained in some of the detention centers. Therefore, it can be established with certainty that the target of this attack was the complete non-Serb population of Hadžići Municipality. This conclusion is additionally confirmed by the witness statements on calls to express loyalty to the Serb Municipality of Hadžići. Therefore, the attack was directed against a particular clearly defined group and the call itself indicates that this group was singled out at the very beginning of the attack, that is, that it was clear from the very beginning that the attack was directed against this very group. The majority of the settlements where Bosniaks were in the majority were attacked (Kovačevići, Musići, Žunovnica and Kućice), that is, the complete greater area of Hadžići. The fact that the captives were sent farther to other parts of the city of Sarajevo, the prisons in Lukavica and Kula, shows the geographical scope of the attack. Therefore, the attack did not focus on the territory of Hadžići Municipality only, but the events in the territory of this Municipality made up a part of a widespread attack. There was a continuous link between the locations at which the detained Bosniaks were held, both in the territory of Hadžići Municipality (garage, the hall of the Culture, Sports and Recreational Center and the Territorial Defense warehouse), and in the greater Sarajevo area under the Serb forces' control (Lukavica, Kula). The transfer of the detainees from one center into another clearly demonstrates the existence of mutual coordination between these centers.

The Panel concludes that the scope and pattern of the events exceed the framework of individual instances and that it is obvious that a clear plan of execution of the described acts existed.

The Panel reached the conclusion on the systematic nature of the attack from the facts as follows: clearly visible is the pattern of repetition of certain events, such as the attacks on the villages with predominantly Bosniak population. The pattern consisted in the Serb soldiers' entering a village and entering the houses from which men would be taken away. The men of the village would be taken to a certain location and farther to a detention center, most often on foot with hands at their backs. Also obvious is the existence of a pattern related to apartment searches. That is to say, several witnesses whose apartments were searched gave almost identical statements – a group of military policemen would enter an apartment and search the premises looking for weapons and radio sets. The witnesses also mention the existence of special lists pursuant to which the abductions and searches were conducted. In other words, with respect to the taking of certain persons, it could clearly be concluded from the behavior of the individuals who were taking them that they had come with the intention of arresting a particular person. The locations to which the unlawfully

arrested civilians were taken were determined and prepared in advance, that is, secured by adequate guards. The persons who were taken were not selected at random, either. It can be assumed from the witness testimonies that the taking was pre-planned, that lists pursuant to which people were taken away probably existed, and that in some cases policemen used to come to take away persons selected beforehand. All this indicates that the events in Hadžići Municipality in the period from May 1992 to late 1992 were not random, that is, that the attack carried out in the relevant period was also systematic.

The facts in the case at hand indicate that the leadership of Hadžići Municipality knew of the existence of the attack and that it consciously participated in it. In the opinion of the Panel, especially indicative in this respect is the fact, which was proven beyond doubt, that one of the places where the detained civilians were held was a garage near the Hadžići Municipality building, as well as the event described by a number of witnesses, when after severe abuse the detainees suffered in the hands of a paramilitary unit in the hall of the Culture, Sports and Recreational Center, they were visited by representatives of the local government to assure them that such acts would no longer happen.

Also, as a member of the reserve component of the police force, that is, the Military Police, the Accused was undoubtedly aware of the existence of the described attack. A huge number of witnesses mentions the noticeable appearance of the Accused in the relevant period and describes the Accused as a person that was often talked about and that everybody feared. The Accused was aware that his acts constituted a part of the attack, which can be concluded from the ethnicity of the aggrieved parties who appeared before this Court (all are non-Serbs), as well as from the general context of each of the charged acts.

The Accused admitted that he was guilty of participating, in the period from early May 1992, together with other VRS members from Hadžići, in unlawful arrest of the non-Serb population from Hadžići, as well as the villages of Žunovnica, Musići, Binježevo, Kućice and other neighboring places, their taking to the detention center in the hall of the Culture, Sports and Recreational Center in Hadžići, where they were physically beaten and abused, and enabling unidentified members of paramilitary formations to mistreat the detainees by beating them up, requesting the men to perform lewd acts among themselves, giving them meager food and taking them to the front lines to dig trenches, cut wood and do other hard labor. By the described acts the Accused committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Sub-Paragraphs (c), (e) and (f) of the CC B-H, as read with Article 29 of the CC B-H.

The following witnesses testified about the circumstances surrounding the events described in this Count of the Indictment: Meho Babić, Mirsad Kulenović, Hasan Kečević, Sajma Halvadžija, Armin Bećirović, Aiša Džebo, Witness B, Witness C, Nermin Šemšić, Enver Rešidović, Nedima Valjevčić, Mehmed Muhibić, Fadil Vlajičić, Witness A, Mehmed Musić, Hamid Musić, Hasnija Musić, Safija Okić, Refadija Hajdarević and Mehmedalija Nizić. It follows beyond doubt from the testimonies of these witnesses that in the relevant period there existed a practice of taking and detaining non-Serbs, in which the Accused actively participated. Some of the detained persons were taken to detention by the Accused himself (Mirsad Kulenović), while other witnesses testified that the Accused, together with others, participated in or was present when civilians were being taken away (Meho Babić, Armin Bećirović, Witness B, Nermin Šemšić, and others). Also, the witnesses used to see

the Accused in the hall of the Culture, Sports and Recreational Center, and they also testified that the Accused was in a position to release some of them and let them go home, which he actually did on several occasions (for example, witness Hasan Kečević). The testimonies of a large number of witnesses are consistent in important aspects when describing the incident in which a group of members of a paramilitary formation entered the hall and physically, verbally and sexually abused the detained civilians. The witnesses are also consistent in stating that the guards who were in the hall did not even try to protect them from the described assaults. The witnesses also confirm that there was a practice of taking the detainees to labor (Mirsad Kulenović, Enver Rešidović, Mehmed Musić and others). The general assessment of the conditions in the hall given by the witnesses is that the conditions were poor, that the quantity of food that they were distributed once a day was insufficient and that the detained civilians were not provided with medical care. The Panel concluded from the foregoing that there is sufficient evidence that the Accused participated in the commission of this criminal offense in the manner described.

The Accused admitted that on 16 May 1992, in the street in front of the Culture Center in Hadžići, he fired from an automatic rifle at an ethnic Croat, Stjepan Musa *Pepo*, for no reason whatsoever and wounded him. In this way, the Accused admitted guilt for the commission of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(k) of the CC B-H.

Stjepan Musa, the injured party, testified about the incident concerned, as did the eyewitnesses Kemal Šabotić and Suljo Šehović. The witnesses gave clear statements that are consistent in important aspects, from which the Court concludes that there is sufficient evidence that the Accused acted as charged by the Indictment, that is, that there is sufficient evidence on the guilt of the Accused.

The Accused also admitted that in late May or early June 1992, after the detained civilians Đelal Ismailovski and a person whose last name is Maslo were taken out for forced labor from the camp to the hall of the Culture, Sports and Recreational Center in Hadžići, to transport by car a stove from the place called Kućice toward Hadžići, he stopped them on their way to Hadžići and pulled Đelal Ismailovski out of the car, swearing his *Šiptar* mother, started kicking and punching him all over his body, slapped him in the face, then he pulled out his pistol with which he hit Đelal Ismailovski in his head, whereupon Ismailovski started bleeding down his face and he still has scars on his head as a consequence. He then pulled Maslo out of the car and started kicking and punching him all over his body, putting his pistol to Maslo's temple threatening to kill him. In this way, the Accused admitted guilt for the commission of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(k).

The Court considered the testimony of the injured party Đelal Ismailovski to be sufficient evidence that confirms the responsibility of the Accused for the incident described. Also, the consequences of the incident on the injured party are visible from the tendered documentation, that is, the medical documentation for Đelal Ismailovski.

The Accused admitted that on an unspecified date in June 1992, together with a group of unidentified armed members of the VRS, he came to the village of Donji Hadžići, where they found Mujesira Piknjač whom one unidentified member of the VRS killed from his fire

arms. In this way the Accused aided in the commission of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(a), as read with Article 31 of the CC B-H.

Agnesa Hadžajlić-Šačić and Edib Hrnjić testified about this incident. The witnesses confirmed that the Accused was in a group of unidentified armed VRS members, but their testimonies did not indicate that it was the Accused who personally killed Mujesira Pijnjač.

The Accused admitted that on or about 4 July 1992, together with members of the Military Police from Hadžići, he arrived in front of a building located at 8 JNA Street in Hadžići, entered the building, brought out Safet Hrvat, took him away in an unknown direction in a *Pinzgauer* vehicle, whereupon Hrvat disappeared without a trace, whereby the Accused committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(i), as read with Article 29 of the CC B-H.

The testimony of Safet's son Adnan Hrvat, an eyewitness to the incident, provides sufficient evidence that the Accused committed the act that he admitted guilt for.

Finally, on an unspecified date in late 1992, close to the village of Breza, Hadžići Municipality, the Accused mistreated Hasnija Musić when he stopped her in the road, grabbed her breasts, pushed her to a tree, leaned her against the tree and fired a number of pistol bullets above her head, deafening her, whereby he committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(f) of the CC B-H.

The testimony of the injured party of Hasnija Musić constitutes the key proof of the commission of this offense. The Court also considers that the statements of Hamid Musić (the injured party's husband), Mehmed Musić and Zumreta Musić corroborate this.

In accordance with the information learned during the main trial, the Prosecutor's Office amended the Indictment by withdrawing the charges contained in Count 2 of the Indictment which concerned the attack against the village of Musići, which resulted in the killing of three Bosniaks. Pursuant to Article 283(1)(b), the Panel pronounced a verdict dismissing the charges in the referenced Count of the Indictment.

Sentencing

Under the CC B-H, the criminal offense that the Accused Rade Veselinović is charged with carries a sentence of imprisonment for a term of not less than 10 years or a long term imprisonment. As stated earlier, in the Plea Agreement the Prosecutor's Office and the Accused agreed that the Accused should be imposed a sentence of imprisonment for a term ranging between six and eight years. Therefore, the range proposed in the Agreement represents a sentence alleviated to go below the statutory minimum.

The Panel deliberated on whether the proposed sentence would help achieve the purpose of punishing and whether it was meted out in accordance with the law.

The Panel found that there were sufficient extenuating circumstances for the Accused that justify the alleviating of the sentence to go below the statutory minimum. First of all, the

Panel considers the concluding of the Agreement to be an extenuating factor. In this way the Accused has demonstrated readiness to accept his criminal responsibility and face the consequences of the acts he committed. The Panel considers that this indicates the Accused's remorse for his deeds. Also, the Accused is an elderly person with significantly deteriorated health. Another extenuating factor for the Accused, in the opinion of the Panel, is the fact that the Accused has no prior convictions.

The Court found that the aggravating factor is the fact that the number of acts that the Accused is charged with is rather large.

Having evaluated all circumstances, the extenuating and the aggravating alike, the Panel imposed on the Accused the sentence of imprisonment for the term of seven years and six months. Based on the foregoing, the Court concludes that the pronounced sentence will help achieve the purpose of punishing. Also, the Panel considers that the pronounced sentence is adequate to the degree of criminal responsibility of the Accused.

Pursuant to Article 56(1) of the CC B-H, the time the Accused will have spent in custody pursuant to the Decisions of this Court from 29 November 2007 until he is committed to serve his sentence shall be credited towards the sentence of imprisonment.

Costs of the Proceedings

Pursuant to Article 188(4) of the CPC B-H, the Accused shall be fully relieved of the duty to reimburse the costs of the criminal proceedings. The proceedings lasted for a relatively long period, hence the costs of the proceedings are high. The Panel is mindful of the fact that the Accused is retired, that he has been in custody for rather a long time, that is, that he is about to serve a long imprisonment sentence, and that, therefore, he is not and will not be able to earn potential additional income. If the Accused were obliged to cover the costs of the proceedings, his subsistence would undoubtedly be called into question, therefore the Court rendered a decision as stated.

Claims under Property Law

When deciding on whether to accept the Agreement, the Panel was especially mindful of the fact that the aggrieved parties in the proceedings were given an opportunity to state their position on claims under property law. That is to say, the aggrieved parties who were examined before the Panel had an opportunity to directly state their position regarding such claims. However, the facts established in the proceedings do not give sufficient grounds to render a decision on the claims under property law, hence, pursuant to Article 198(2) of the CPC B-H, the aggrieved parties shall be referred to take civil action with their claims under property law.

RECORD-TAKER
Sanja Ljuboje
[signature affixed]

PRESIDING JUDGE
Mira Smajlović
[signature affixed]
[seal of the Court of B-H affixed]

LEGAL REMEDY: An appeal from this Verdict shall be permissible with the Panel of the Appellate Division of the Court of B-H within 15 (fifteen) days from the day of reception thereof. As the Verdict was rendered pursuant to the Plea Agreement, an appeal from the section concerning the criminal sanction shall not be permissible.

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

Sarajevo, xx October 2009

Edina Neretljak

Certified Court Interpreter for the English Language