



Number: SU-10-431/10
Sarajevo, 20 September 2010

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, the Panel composed of Judge Šaban Maksumić, as the President, and Judges Vesna Jesenković and Staniša Gluhajić as the Panel Members, with the participation of the Legal Associate Stanislava Nuić as the minutes-taker in the criminal case against the accused Branimir Glavaš, deciding upon the petition of the Ministry of Justice of the Republic of Croatia, number: 514-05-05-01-10-4 of 24 August 2010 for taking over the execution of the prison sentence of 8 years passed against the convicted Branimir Glavaš, to which sentence he was convicted by the final Verdict of the District Court in Zagreb, the Republic of Croatia, number: X K-rz-1/07 of 8 May 2009, for the criminal offence of War Crimes against Civilians in violation of Article 120(1) of the Criminal Code of the Republic of Croatia, that is, Article 173(1)(a) and (c) of the Criminal Code of Bosnia and Herzegovina (CC of BiH) in conjunction with Article 180(1) of the CC of BiH, at the Panel session held in the presence of the Prosecutor with the Prosecutor's Office of BiH, Jadranka Lokmić-Misirača, and the Defence Counsel for the convicted Branimir Glavaš – lawyer Nikica Gržić, and in the absence of the convicted person who was properly summoned, within the meaning of Articles 62, 63 and 68 of the Law on Mutual Legal Assistance in Criminal Matters and also pursuant to the Agreement on Legal Assistance in Civil and Criminal Matters (Agreement) signed between the respective Governments of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and the Republic of Croatia, on 20 September 2010 rendered the following:

VERDICT

I – CONVICTED: Branimir Glavaš, son of Ljubomir and Zora, nee Pandžić, born on 23 September 1956 in Osijek, residing in Osijek, 7 Šetalište P. Preradovića, Croat, citizen of the Republic of Croatia and Bosnia and Herzegovina, graduate lawyer, divorced, father of one child, served the army in 1982/83, entered into the Osijek military records, owner of an apartment and a weekend house, currently residing in Drinovci, Bartuluša bb, Municipality of Grude, Bosnia and Herzegovina,

by a final Verdict of the District Court in Zagreb, number: X K-rz-1/07 of 8 May 2009, was

found guilty

of the following:

1. From July to late December 1991, in Osijek, while defending the town of Osijek from the armed attacks of the so-called JNA and the paramilitary formations of the part of the local Serb population who rose against the constitutional and legal system of the Republic of Croatia, the Principal Accused – Branimir Glavaš, while Secretary with the Municipal Secretariat for National Defence, considering that, within the Secretariat, he had previously formed, equipped and armed a military formation which, at that time, had different names, such as, headquarters support company, headquarters support company (in Croatian), protection company, and Branimir's Osijek Battalion, which was officially named the First Battalion of Osijek Defenders at a later point in time, acting as the actual commander of the referenced formation, thus being responsible for the issuance of orders and the implementation of the war and humanitarian

regulations within international law on the safety and protection of civilians and, as of 7 December 1991, as the formal commander of the defence of Osijek, the Second Accused Ivica Krnjak, as the commander of the special sabotage- reconnaissance formation of the Operations Zone of Osijek which was subsequently officially named the Independent *Uskok's* Company, the Third Accused Gordana Getoš-Magdić, the commander of the special secret group within that formation, and the remaining accused persons as members of the referenced group within the sabotage-reconnaissance formation, with the aim of intimidation and retaliation against the Osijek civilian citizens, primarily those of Serb ethnicity, acted in violation of Article 3(1)(a) of the 12 August 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and Article 4(1) and (2)(a), Article 5(3) and Article 13(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), so that:

The Accused Branimir Glavaš – alone

- 1) Although he had the knowledge that his subordinates within the foregoing formation of the National Defence Secretariat (NDS) unlawfully deprived of liberty and ill-treated civilians, failed to take the measures to prevent and fight such unlawful actions, consequently, the members of this formation subordinate to him:
 - a) on 12 July 1991, arrested and brought Nikola Vasić into the basement premises where they punched, kicked and hit him with the parts of weapons and batons, thus inflicting the head and body injuries on him, that is, he sustained a blow into the top left side of his head, his upper lip cut and a blow into the left side of his thorax,
 - b) on 31 August 1991, after members of the same formation brought into the garage situated in the courtyard next to the Secretariat two persons one of whom was Čedomir Vučković, they spent the whole day punching, kicking and hitting Čedomir Vučković with the weapons' parts and, in the evening hours, a member of the referenced formation, Zoran Brekalo, poured out battery acid and forced Čedomir Vučković to drink it and, after Čedomir Vučković, due to extreme pains caused by the acid, knocked down the garage door and stepped into the yard, Krunoslav Fehir fired several shots at him, two of which hit him in the stomach and the arm inflicting the entry-and-exit wounds on his stomach and his right forearm, however, Čedomir Vučković died from sulphuric acid poisoning.

The Principal Accused Branimir Glavaš, the Second Accused Ivica Krnjak, the Third Accused Gordana Getoš-Magdić, the Fifth Accused Dino Kontić, the Sixth Accused Tihomir Valentić and the Seventh Accused Zdravko Dragić – together

- 2) After the Principal Accused Branimir Glavaš assumed the decisive role in the defence of the town during autumn and in November and December 1991, and while forming the special sabotage-reconnaissance formation of the Osijek Operations Zone, he ordered the Second Accused Ivica Krnjak and the Third Accused Gordana Getoš-Magdić to organise a special secret group of reliable and trusted persons within the referenced formation to be under his own supervision and the supervision of the Second Accused Ivica Krnjak and, after they set up the group, in which process the Third Accused Gordana Getoš-Magdić personally selected the Fifth Accused Dino Kontić, the Sixth Accused Tihomir Valentić, and Mirko Sivić and Stjepan Bekavac, while the Fifth Accused Dino Kontić, together with her, brought into the group the Seventh Accused Zdravko Dragić, and the secret group comprised several other persons, unidentified hitherto, then, on several occasions during November and December 1991, the Principal Accused Branimir Glavaš himself ordered to the Second

Accused Ivica Krnjak and the Third Accused Gordana Getoš-Magdić to unlawfully deprive of liberty, detain, ill-treat and kill civilians, which orders the Second Accused Ivica Krnjak and the Third Accused Gordana Getoš-Magdić exercised by communicating the orders to their subordinates, that is, the referenced members of the secret group and they themselves participated in the execution of the received orders, inasmuch as:

- a) On 26 November 1991, Stjepan Bekavac and the Sixth Accused Tihomir Valentić, the Seventh Accused Zdravko Dragić and the Third Accused Gordana Getoš-Magdić, took away Branko Lovrić from his family house at 11 Sisačka Street, deprived him of liberty and detained him in the house at 30 Dubrovačka Street, wherefrom, on an unknown date, unidentified members of the foregoing group took him to the Drava River bank and killed him,
- b) On 3 December 1991, Stjepan Bekavac and the Sixth Accused Tihomir Valentić, the Seventh Accused Zdravko Dragić, upon the received order to deprive of liberty Alija Šabanović, waited for him in front of his residential building No. 119 in the settlement of Sjenjak, arrested him, drove him to and detained him in the basement of the house in 30 in Dubrovačka Street and, on an unknown date, members of the referenced group who are unidentified hitherto, drove him away from the stated house to the Drina River bank, killed him by shooting in his head and threw him into the Drava River afterwards.
- c) On 7 December 1991, having received an order to arrest and kill Radoslav Ratković, Stjepan Bekavac, the Sixth Accused Tihomir Valentić and the Seventh Accused Zdravko Dragić, took away Ratković from his house at 4d Feđe Milića Street, drove him to the house at 30 Dubrovačka Street wherein they tied his hands with self-adhesive tape, beat and interrogated him about his alleged subversive activities, then, upon their departure, two newly arrived unidentified soldiers continued to beat him and then they drove him to the Drava River bank near Tvrđa, at which location, in order to execute Radoslav Ratković, the Fifth Accused Dino Kontić brought over the Seventh Accused Zdravko Dragić and, in the presence of the Second Accused Ivica Krnjak, Stjepan Bekavac gave an automatic rifle MG7 to the Seventh Accused Zdravko Dragić and told him to shoot at Ratković, so he fired one shot and hit Ratković in his cheek due to which he fell into the water and afterwards someone of those present pushed into the hands of the Seventh Accused Zdravko Dragić an automatic rifle *Kalashnikov* and, using that rifle, he fired one more shot towards Radoslav Ratković, nevertheless, Radoslav Ratković managed to survive and swim out of Drava, then, upon an order by the Principal Accused Branimir Glavaš, the Third Accused Gordana Getoš-Magdić ordered a member of the referenced group to go to the General Hospital in Osijek and kill Radoslav Ratković, which he did not do.
- d) On several occasions, members of the secret group, unidentified hitherto, upon being ordered to arrest and kill the civilian:
 - On 7 December 1991, took away dr. Milutin Kutlić from his house in Mržnička Street, tied his hands with self-adhesive tape, took him to the Drava River bank and shot him dead by shooting in his head, and threw him into the Drava River.
 - On an unknown date in the first half of December 1991, they took away Svetislav Vukajlović from his house at 12 Vrtna Street, tied his hands with self-adhesive tape,

- took him to the Drava River bank and shot him dead by shooting in his head, and threw him into the Drava River,
- On an unknown date in December 1991, they arrested an unknown woman, tied her hands with self-adhesive tape, took her to the Drava River bank and shot her dead by shooting in her head, and threw her into the Drava River,
 - On 28 December 1991, they took away Bogdan Počuč from his house at 19 Wilson's Street, tied his hands with self-adhesive tape, took him to the Drava River bank and shot him dead by shooting in his head, and threw him into the Drava River,

Therefore, in violation of the rules of international law during an armed conflict, the Principal Accused Branimir Glavaš, although it was his duty, failed to prevent that the civilians be tortured, treated in an inhumane manner, inflicted severe injuries to the bodily integrity, and unlawfully detained and, in violation of the rules of international law during armed conflict, he ordered that civilians be killed, treated in an inhumane manner and unlawfully detained,

by doing so he committed the criminal offence against humanity and international law – War Crimes against Civilians – as foreseen and punishable under Article 120(1) of the Basic Criminal Code of the Republic of Croatia,

II - under the criminal legislation of BiH, the referenced criminal actions are legally defined to be the criminal offence of War Crimes against Civilians in violation of Article 173(1)(a) and (c) in conjunction with Article 180(1) of the Criminal Code of BiH,

Thus, pursuant to the foregoing Article and with the application of Article 39, 42, 48, 49 and 50 of the Criminal Code of BiH, Branimir Glavaš is

SENTENCED

TO THE PRISON SENTENCE OF EIGHT (8) YEARS

Pursuant to Article 57 of the CC of BiH, the time spent in custody shall be credited towards the time spent in custody from 18 April 2007 to 11 January 2008.

Pursuant to Article 185(3) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused shall be obliged to compensate for the costs of the proceedings in the scheduled amount of KM 150.00 (one hundred and fifty KM) within one month as of the date of the final Verdict.

Reasoning

The Ministry of Justice of Bosnia and Herzegovina filed with this Court the document number: 07-14-6-94444/10 of 31 August 2010 along with the attached petition by the Ministry of Justice of the Republic of Croatia number: 514-05-05-01-10-4 of 24 August 2010 and the supporting documents, for taking over the execution of the prison sentence of eight years passed against Branimir Glavaš.

By the Verdict of the District Court in Zagreb, number X K-rz-1/07 of 8 May 2009, a compound sentence of imprisonment for a term of ten (10) years was imposed on Branimir Glavaš, for the criminal offence of War Crimes against Civilians in violation of Article 120(1) in conjunction with Article 43(1) of the Basic Criminal Code of the Republic of Croatia.

The referenced Verdict was revised by the Verdict of the Supreme Court of the Republic of Croatia, number: I Kž 84/10-8 of 2 June 2010 with regard to the sentence and legal qualification of the offence, thus sentencing Branimir Glavaš to the prison sentence of 8 (eight) years for the committed criminal offence of War Crimes against Civilians in violation of Article 120(1) of the Basic Criminal Code of the Republic of Croatia, whereby the time spent in custody from 18 April 2007 to 11 January 2008 shall be credited towards the imposed sentence.

In acting pursuant to Article 68(1) and (2) of the Law on International Mutual Legal Assistance in Criminal Matters (*Official Gazette of BiH*, No. 53/09) and the provisions No. 1, 2 and 14 of the Agreement between the respective governments of Bosnia and Herzegovina, Federation of BiH and the Republic of Croatia on mutual execution of the court decisions on criminal matters (*Official Gazette of RBiH* – 1/96 special edition, hereinafter: the Agreement), the Court Panel held a session in the presence of the Prosecutor with the Prosecutor's Office of BiH and the Defence Counsel for the Accused – Nikica Gržić, in the absence of the properly summoned Branimir Glavaš.

The Prosecutor's Office argued that the petition by the Ministry of Justice of the Republic of Croatia satisfied all of the requirements as stipulated by Article 23 of the Agreement between Bosnia and Herzegovina and the Republic of Croatia, and that it was in compliance with the 17 June 2010 amendments stipulating that the recognition of a foreign country verdict does not necessarily require a consent of the accused person. Also, the Prosecutor's Office stated that, according to Article 2 of the referenced Agreement, there is no hindrance whatsoever for this verdict of the Supreme Court of the Republic of Croatia to also be recognised. The Prosecutor's Office further noticed that the Court of BiH conducted the extradition proceedings against the Accused Branimir Glavaš, during which it was established that he held the citizenship of the Republic of Croatia and Bosnia and Herzegovina. It is also stated that, according to the Verdict of the District Court of the Republic of Croatia, convicted Branimir Glavaš was sentenced for the criminal offence under Article 120(1) of the Basic Criminal Code of the Republic of Croatia while, according to our legislation, this offence is defined as the criminal offence under Article 173(1)(c) in conjunction with Article 180(1) and (2) of the CC of BiH.

With regard to the sentence, the Prosecutor's Office noted that Branimir Glavaš had been sentenced by a final verdict to the term of imprisonment of 8 years towards which the time he spent in custody was credited, and the Prosecutor's Office is of the view that the Court should have meted out the sentence identical to the one imposed in the Republic of Croatia.

Concerning the mitigating circumstances, the Prosecutor's Office argued that the Verdict of the Supreme Court of the Republic of Croatia, number I-KŽ-84/10-8 of 2 June 2010, pages 28 and 29, listed the mitigating circumstances which had been evaluated at that time, and the Prosecutor's Office of BiH had nothing else to add therein. Also, the Prosecutor's Office states that the Verdict of the District Court in Zagreb, number: X K-rz-1/07 of 8 May 2009, page 156, listed the aggravating circumstances and they have nothing special to add with regard to these circumstances as well, except that the referenced Court did not evaluate the numerousness of the criminal actions.

Finally, the Prosecutor's Office moved the court to recognise the Verdict of the Supreme Court of the Republic of Croatia in its entirety, and that the Accused should be sentenced to eight years of imprisonment.

At the public session, the Defence Counsel for the Accused stated that the mutual legal assistance procedure in this case commenced on 19 August 2010 by filing a petition of the

District Court in Zagreb, which petition referred to the point when the verdict had become final, and information on the time which the Accused Branimir Glavaš spent in custody during the criminal proceedings in which he received the sentencing judgements the recognition of which is sought. The Defence Counsel further states that, according to Article 4(1) of the Execution of Prison Sentence Act of the Republic of Croatia, the execution of a prison sentence shall commence after the sentence becomes final and enforceable. It is further stated that the criminal verdict in this case, the execution of which is sought, became final on 2 June 2010 and enforceable on 16 August 2010 when the convicted Branimir Glavaš received the second-instance verdict in person. With regard to the foregoing, the Defence Counsel notes that, on 19 August 2010, the District Court in Zagreb did not dispose of the information on the verdict enforceability, as it did not possess a delivery note indicating that the convicted person had been served the verdict of the Supreme Court of the Republic of Croatia.

The Defence Counsel further states that the documents which the Ministry of Justice of BiH received from the judicial authorities of the Republic of Croatia clearly indicate that the provided verdicts whose recognition and enforceability is sought lack the confirmation of enforceability, which is a must under the explicit provisions of Article 4(1) of the Execution of Prison Sentence Act of the Republic of Croatia. Pursuant to the foregoing, the defence for the convicted person submits that the information and documents forwarded to the Court of BiH are not sufficient for meting out a verdict under Article 68 of the Law on Mutual Legal Assistance in Criminal Matters and Article 24 of the cited Agreement, and it therefore moves the Court of BiH to ask the judicial authorities of the Republic of Croatia, through the Ministry of Justice of BiH, to supplement the petition in due time, so as to be able to render a legally-based decision.

The defence for the convicted person also submits that it is evident in the documents attached to the petition of the Republic of Croatia and forwarded to BiH by the District Court in Zagreb that, according to the accurate data on the convicted Branimir Glavaš, he was in custody during the investigation phase from 26 October 2006 to 2 December 2006 and from 18 April 2007 to 11 January 2008, which time should be credited towards the imposed sentence of imprisonment.

On the other hand, the Defence Counsel for the convicted person stated that, in the procedure of the execution of the sentence imposed on Branimir Glavaš, the Republic of Croatia breached the bilateral agreement signed with another country, because the sentence execution procedure had been instigated before the Court in the Republic of Croatia disposed of the clause of enforceability of the sentence whose enforceability is sought here, as foreseen by Article 23 of the quoted Agreement, whereby the issue of the accurate calculation of the time spent in custody and its being credited towards the imposed sentence had not been previously resolved.

Also, it is further stated that, pursuant to Article 62(3)(a) – the execution of a foreign court verdict in criminal matters which implies the prison sentence, shall be possible upon a petition by a foreign country, if the convicted person is not within the reach of another country and if that person is a citizen of BiH and resides in BiH. The defence for the convicted person is of the view that it is not evident in the documents supporting the petition of the Republic of Croatia that this requirement has been satisfied, that is, that the convicted Branimir Glavaš is not within the reach of the Republic of Croatia, because the Republic of Croatia did not even attempt to instigate the sentence execution procedure, while it is evident in the delivery notes which are to be delivered along with the defence's written comments, that the convicted person provided the District Court in Zagreb with his address in BiH, therefore, the Court had had the knowledge of that before instigating the mutual legal assistance procedure, therefore, the defence for the convicted person believes that the petition for the verdict of the Supreme Court of the Republic of Croatia to be executed is premature.

Finally, the Defence Counsel noted that, should the Court still decide to recognise the verdict of the Supreme Court of the Republic of Croatia, it should evaluate the circumstances under Article 62(1) and Article 68(4) and (5) of the Law on Mutual Legal Assistance and Article 14(2) and (3) of the Agreement. The Defence Counsel also stated that the reasoning of the verdict of the Supreme Court of the Republic of Croatia number: I KŽ 84/10-8 of 2 June 2010 only included the mitigating circumstances which were not sufficiently weighed when deciding on the imposed sentence, therefore, pursuant to the BiH legislation and the criminal policy of the BiH courts, the defence for the convicted person submits that the Court of BiH should impose a more lenient sentence than the one imposed in the Republic of Croatia.

Finally, the Defence Counsel moves the Court to apply the law which was applicable in 1991, when the criminal offence was committed, that is, he objected to the application of the Criminal Code of BiH noting that the Criminal Code of SFRY should be applied as it was applicable at the time of the relevant events.

This Court considered the petition for the execution of the court verdict issued by the Ministry of Justice of the Republic of Croatia, number 514 – 05 – 05 – 10 -08 – 4 of 24 August 2010, and was satisfied that the requirements for conducting the procedure of rendering a formal decision by the national court have been fulfilled.

Article 63 of the Law on Mutual Legal Assistance in Criminal Matters clearly foresees the requirements for the execution of a foreign court verdict in the criminal matters.

Specifically, according to the final verdict of the District Court in Zagreb, number X K-rz-1/07 of 8 May 2009, Branimir Glavaš had been sentenced to the prison sentence of 8 years for the criminal offence of War Crimes against Civilians in violation of Article 120(1) of the Basic Criminal Code of the Republic of Croatia, while, under the BiH criminal legislation, the referenced criminal actions are defined as the criminal offence of War Crimes against Civilians in violation of Article 173(1)(a) and (c) of the CC of BiH, in conjunction with Article 180(1) of the CC of BiH.

Based on the certificate of citizenship of Bosnia and Herzegovina number: 05-3-13-4-3100/10 of 8 September 2010 issued for the convicted Branimir Glavaš by the West-Herzegovina District, Municipality of Ljubuški, it was found that convicted Branimir Glavaš, son of Ljubo, born on 23 September 1956 in Osijek, Republic of Croatia, personal identification number (JMBG): 2309956153024, is a citizen of Bosnia and Herzegovina.

Proceeding from the referenced facts, this Court found that the requirements under Article 2 of the Agreement and Article 63 of the Law on Mutual Legal Assistance in Criminal Matters have been satisfied, therefore, pursuant to Article 68 of the same law and Articles 39, 42, 48, 49 and 50 of the Criminal Code of BiH, it rendered a verdict by which it pronounced a criminal sanction against the convicted Branimir Glavaš pursuant to the criminal legislation of Bosnia and Herzegovina.

The Court finds the arguments of the Defence Counsel for the convicted person ungrounded when claiming that it is evident from the documents which the Ministry of Justice of BiH received from the judicial authorities of the Republic of Croatia that the provided verdicts whose recognition and enforceability is sought lack the confirmation of enforceability, which is a must under the explicit provisions of Article 4(1) of the Execution of Prison Sentence Act of the Republic of Croatia, and that, pursuant to the foregoing, the defence for the convicted

person submits that the information and documents forwarded to the Court of BiH are not sufficient for meting out a verdict under Article 68 of the Law on Mutual Legal Assistance in Criminal Matters and Article 24 of the cited Agreement. Specifically, under Article 23(1)1) of the Agreement, if a sentencing country files a petition, it should be accompanied by a copy or a certified transcript of the court decision with the certified finality and, if required, enforceability. Also, under Article 63(1)(a) of the Law on Mutual Legal Assistance in Criminal Matters, unless otherwise regulated by an international treaty, a foreign court's verdict in criminal matters shall only be executed if the verdict is final and if it was delivered by a competent judicial authority of the sentencing country, which generally points to the foregoing inference by the Court.

Also, the Court did not grant the arguments of the Defence Counsel stating that, based on the documents provided along with the petition of the Republic of Croatia, the requirement under Article 62(3)(a) of the Law on Mutual Legal Assistance in Criminal Matters has not been satisfied, that is, that the competent RC authorities failed to establish in the course of the procedure that the convicted person was unavailable and that, accordingly, the Ministry of Justice of RC did not provide the Court of BiH with any evidence whatsoever concerning the unavailability of the convicted person to serve the prison sentence. The Panel is satisfied that the convicted Branimir Glavaš undoubtedly indicated by his conduct that he had no intention to return to the Republic of Croatia to serve the prison sentence upon the final verdict of the District Court in Zagreb, which follows from the fact that the convicted person left the Republic of Croatia before the verdict became final, which is evident in the verdict of the RC Supreme Court, number: I KŽ 84/10-8 of 2 June 2010, which stated that the Panel session had been held in the absence of the convicted person who had been properly notified of the session, although being on the run, and it also follows from the letter of the District Court in Zagreb, number X-K-rz-1/07 of 19 August 2010 forwarded to the relevant BiH authority for the purpose of the execution of the prison sentence, which stated that the convicted Branimir Glavaš had left the Republic of Croatia before the verdict became final and took residence in BiH. With regard to the foregoing, due attention should also be paid to the letter of the convicted Branimir Glavaš, which was forwarded to this Court on 19 September 2010 which stated that he, being a citizen of BiH, "wished to serve the politically delivered verdict of RC" in the territory of BiH.

Insofar as to the applicable substantive law, the Defence Counsel for the convicted person objected to the application of the Criminal Code of BiH, noting that the Criminal Code of SFRY which was applicable at the time of the referenced events should be applied.

Article 3 of the CC of BiH regulates the principle of legality, that is, that the criminal offences and the criminal sanctions shall only be prescribed only by law and 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 offence by law or international law, and for which a punishment has not been prescribed by law. Furthermore, Article 4 of the Criminal Code of BiH stipulates that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence; if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Article 7(1) of the European Convention also foresees the principle of legality. Pursuant to Article 2.2. of the Constitution of BiH, the European Convention for the Protection of Human Rights has precedence over all BiH laws. In addition, this provision of the European Convention sets forth a general principle banning the imposition of a heavier penalty than the

one that was applicable at the time the criminal offence was committed, however, it does not foresee the application of the most lenient law.

Article 4a. of the CC of BiH stipulates that Article 3 and Article 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, “was criminal according to the general principles of international law”. Article 7(2) of the European Convention stipulates the same exemption whereby paragraph 1) of the same Article reads: “.....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.” (See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains the similar provisions. Bosnia and Herzegovina, as a successor state of the former Yugoslavia, ratified this Covenant).

This provides for the possibility to depart from the principle under Article 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention) and from the application of the criminal code that was applicable at the time of the commission of the criminal offence and the application of a more lenient law to the actions that are criminal under international law.

The Court hereby notes that the criminal offences for which the convicted person was found guilty are criminal under customary international law, therefore, they fall within the “*general principles of international law*” as stipulated by Article 4a. of the Law on Amendments to the CC of BiH, and the “*general principles of law recognized by civilized nations*”, as stipulated by Article 7(2) of the European Convention, therefore, the CC of BiH may be applied to this case pursuant to the foregoing provisions.

Furthermore, the fact that the criminal actions listed under Article 173 of the CC of BiH may also be found in the law that was in force at the relevant time – the time of the commission of the offences, specifically, in Article 142 of the CC of SFRY, implies that those criminal offences were also punishable under the then applicable criminal law, which supports the Court’s inference on the principle of legality.

The foregoing is consistent with the position taken by Section I of the Appellate Division of the Court of BiH in its Verdict against Abduladhim Maktouf number KPŽ 32/05 of 4 April 2006 and in the verdict against Dragoje Paunović, number: KPŽ 05/16 of 27 October 2006. The Constitutional Court of Bosnia and Herzegovina analysed this issue in the appeal filed by A. Maktouf (AP 1785/06) and, in its decision of 30 March 2007, it states: “68. In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of *Krstic*, *Galic*, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law.” “69. In this context, the Constitutional Court holds that it is simply not possible to “eliminate” the more severe sanction under both earlier and later laws, and apply only other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned.”

The Panel is of the view that the principle of mandatory application of a more lenient law is eliminated when trying the criminal offences in relation to which it was absolutely predictable and generally known at the time of their commission that they were in contravention of the rules

of international law. In this specific case, it is deemed to be found that the convicted person must have known that during the state of war the application of international rules has priority and that the violation of internationally protected values entails serious consequences. The analysis of Article 173 of the CC of BiH clearly indicates that the essential elements of this criminal offence include, *inter alia*, the elements of violation of international law. This makes these criminal offences special, because it is not sufficient to only commit such criminal offences through a physical act, but it is necessary to have the knowledge that the commission thereof will result in breaching the international rules and the assumption that the convicted person must be aware that the time of war or conflicts or hostilities is a particularly sensitive time which is specially protected by the universally recognised international rules and, as such, the criminal offence becomes even more important and its commission entails even more consequences that in the case of a criminal offence committed at some other time.

Thus, the criminal offences of war crimes against civilians should, by all means, be subsumed under the “general principles of international law” as referred to in Articles 3 and 4a. of the CC of BiH. Therefore, whether considered from the aspect of customary international law, international treaty law or “principles of international law”, it is indisputable that the war crimes against civilians constituted the criminal offence at the critical time, that is, the principle of legality was also satisfied in terms of both *nullum crimen sine lege* and *nulla poena sine lege*.

Considering the sentencing and its type, the Court acted under Articles 48, 49 and 50 of the CC of BiH and meted out the punishment against the convicted person which is below the prescribed minimum for the criminal offence of War Crimes against Civilians as referred to in Article 173 of the CC of BiH, which the convicted person committed. Under the Criminal Code of BiH, the referenced criminal offence entails the punishment of imprisonment for a term of ten years or a more severe punishment. Also, the Court took under advisement Article 68(5) of the Law on Mutual Legal Assistance in Criminal Matters which stipulates that the Court cannot impose a sentence which is more severe than the one imposed by a foreign court, that is, in this particular case, the criminal sanction cannot be more stringent than eight years of imprisonment. The same rule is also foreseen by the national legislation, that is, the principle of the banned *reformatio in peius* which implies that the imposed sanction cannot be less favourable for the perpetrator, that is, the convicted person.

When deciding on the sentence, it is worth noting that the Panel primarily took into account the gravity of the criminal offence of which Branimir Glavaš was convicted and the level of his criminal responsibility, and also considered the purpose of punishment in the context of overall circumstances, and it therefore weighed both mitigating and aggravating circumstances of the convicted person which were found in the verdict of the District Court in Zagreb, number: X K-rz-1/07 of 8 May 2009 and in the verdict of the Supreme Court of the Republic of Croatia number: I Kž 84/10-8 of 2 April 2010 (the mitigating circumstances included no previous convictions, his personal and family circumstances and, beyond the context of the relevant events, his participation in the homeland war and his contribution to the defence of the Republic of Croatia, while the aggravating circumstances included the gravity of the committed criminal offences, primarily from the aspect of social unacceptability of his conduct towards an unprotected category of civilians during the war, that is, at the time of the war conflict, and the fact that innocent persons were executed, the manner in which the acts were committed and persistence in committing the executions, and finally, the number of victims). The Court particularly evaluated the mitigating circumstances (*supra*) on the part of the convicted person, and it weighed and granted the referenced circumstances as particularly mitigating, thus pronouncing a sentence below the legally foreseen minimum for the referenced criminal offence.

Due to the foregoing, the Court finds that the pronounced sentence is adequate to the gravity of the criminal offence, personality of the convicted person and the circumstances under which the offence was committed, and that the sentence will achieve the purpose of punishment, that is, it will have a positive impact on the convicted person so that he will not commit criminal offences in the future, and that it will also have a deterring effect on other potential perpetrators of criminal offences. This punishment will certainly have an impact on the citizens' awareness of the detrimental and pernicious consequences of the perpetration of the criminal offences and of justness in punishing the perpetrators, thus uniquely expressing social condemnation of the perpetrated criminal offence committed and satisfying the purpose of punishment as stipulated by Article 39 of the Criminal Code of BiH.

The Court rendered a decision to credit the time the convicted person spent in custody from 18 April 2007 to 11 January 2008, as stated in the respective verdicts of the District Court in Zagreb, number: X K-rz-1/07 of 8 May 2009 and the Supreme Court of the Republic of Croatia number: I Kž 84/10-8 of 2 April 2010, towards the imposed sentence of imprisonment, pursuant to Article 57 of the CC of BiH, which time shall be credited towards the imposed sentence of imprisonment.

Considering the foregoing and taking into account the operative parts of the referenced verdicts which clearly state the time which the convicted person spent in custody, the arguments of the defence for the convicted person are ungrounded when it moved the Court to credit the time the convicted person allegedly spent in custody from 26 October 2006 to 2 December 2006 towards the imposed sentence. The fact is that it is stated in the letter of the District Court of the Republic of Croatia, number X-K-rz-1/07 of 19 August 2010, which was forwarded to the relevant authority of BiH, that Branimir Glavaš was in custody from 26 October 2006 to 2 December 2006, however, the Court could not enter this circumstance into the operative part of the verdict because the referenced time was not stated in the operative parts of the foregoing verdicts.

Pursuant to Article 185(3) of the Criminal Procedure Code of Bosnia and Herzegovina, the convicted person shall be obligated to bear the costs of the criminal proceedings in the scheduled amount of KM 150.00 (one hundred and fifty KM) within a month as of the date of the final decision, considering the duration and complexity of the proceedings and the financial condition of the convicted Branimir Glavaš, which implies that the referenced payment will not jeopardise his self-support or support of other persons he is legally obliged to support.

RECORD-TAKER

/signature affixed/

Stanislava Nuić

PRESIDENT OF THE PANEL

/signature affixed/

Šaban Maksumić

NOTE ON LEGAL REMEDY: An appeal from this Decision may be filed with the Appellate Panel of the Court within 30 (thirty) days as of its receipt.

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

Sarajevo, 7 October 2010

Snežana Vukadinović

Certified Court Interpreter for English Language

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