



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 Maksumić as the Presiding Judge, and Judges Marie 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 Raić*, son of Bono, born on 15 November 1965 in the village of Nezirovići, Municipality of Busovača, Bosnia and Herzegovina, personal identification number ..., of ... nationality, citizen of ..., 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 4th 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*bis* 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 Jonjić. 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.¹ 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 writing² 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 ethnicity³ 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 Zatagić, Abdulah Ahmić, Bryan Shawn Charles Watters, Robert Wooley, Lee Whithworth, Geoffrey Martin Thomas, Andre Peter Kujawinski,

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

² Defense Submission dated 16 April 2008, moving for a lesser sentence.

³ Statements of Alija Begić, Sead Duraković and Merima Đoja.

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); Video 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 Gelić with

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 date 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 4th 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 4th 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 4th 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 4th Military Police Battalion of the CBOZ of the HVO sent by the HVO, Command of the 4th Military Police Battalion Vitez to the Military Police Administration Mostar, number 02-4/3-07-376/93 dated % February 1993 (P96); Organizational chart of the 4th Military Police Battalion of the CBOZ (P97); HVO report, the 4th 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 4th 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 4th Military Police Battalion Vitez, sent to the commander of the Military Police- HVO Travnik, number 02-4/3-07-337/93 dated 2

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 4th 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 4th 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 4th 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 4th Military Police Battalion (attachments: statements taken from Miloš Juranović, Mirko Broz, Ivica Radman, Slobodan Frljić, Nedeljko Vidović, Ivica Antić, English translation of the criminal report) (P106); Criminal report number 02/4-3-07-02-32/93 dated 1 March 1993, sent by the 4th Military Police Battalion (attachment: English translation of the criminal report) (P107); HVO Report, the 4th 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 4th 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 4th 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 4th 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 2nd and 16th February 1993 (P116); Red Cross certificate, 16 March 1994, for Sulejman Kavazović (P117); Photograph of the rear of the cinema building (P118);

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 Ahmić (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: Safet 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. Večeriska 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 Ćazim 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/Busovača road (P136); Photograph of House of Sakib Ahmić (P137); Photograph of Latifa Ahmić (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 Ćazim Pezer (P143); Photograph of Nezira and Mustafa Pezer (P144); Photograph of Mustafa and Faris. Azra Dedić's family (P145); Photograph of Mujo Ahmić 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.

1. 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 2006⁴, 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 image⁵ or utilizing electronic distortion of both the image and the voice.⁶

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

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

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

⁶ 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 2007⁷, 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

⁷ See Official Note dated 7 May 2007 and Official Note dated 15 June 2007, indicating the proposals of the 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.⁸

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.

⁸ 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 circumstance after World War II and intended for punishment of war crimes, treason and collaboration with enemy and it is not 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 (*Blaškić, Aleksovski, Kupreškić et al. Čerkez and Kordić*).⁹ 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:

⁹ By the Decision number X-KR-06/241 dated 7 January 2008, the Panel accepted as proven the facts already established in the ICTY Judgments in *Blaškić, Aleksovski, Kordić and Čerkez*, and *Kupreškić et al*, as indicated in detail in the written Decision of the Panel dated 7 January 2008, and the attached Annex

Article 4(2)(g): “Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall be remain prohibited at any time and in any place whatsoever:....pillage...”

Article 13(2): “The civilian population and individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

Article 14: “Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”

With regard to the violation of Article 4(2)(g) of Additional Protocol II, based on the confession of the Accused and the presented prosecution evidence, the Panel found that during (and after) the attack on Ahmići at the relevant time, numerous Bosniak houses were looted and other property owned by Bosniaks in Ahmići was seized. This is confirmed, *inter alia*, by witness Abdulah Ahmić and witness E.

Witness Abdulah Ahmić stated: “Around noon, I noticed that the upper part of the village was looted, they were taking Bosniak tractors and vehicles.”¹⁰ Witness E stated that on 16 April 1993 the shooting started in Ahmići, and that he also saw soldiers with *Jokers* insignia. These soldiers took him, his mother, father and brother from the house and searched the house and took away all the money, threatening to kill them if they tried to hide something.

Violations of Article 13 of Additional Protocol II were proven by both the admission of guilt and the testimony of numerous prosecution witnesses who confirmed at the main trial that the victims of the HVO attack in Ahmići included civilians as defined in Article 4(1) of Additional Protocol II. That is, these victims were persons who did “not take a direct part or who ceased to take part in hostilities....” This conclusion follows from the testimonies of witnesses who gave evidence during the main trial¹¹, and it can be clearly seen on the photographs presented to the Panel during the presentation of the prosecution evidence.¹² The presented photographs showed dead bodies dressed in civilian clothes, unarmed. There were women and children in the photographs, as well as the elderly. The members of the UNPROFOR British Battalion (Geoffrey Thomas, Andre Kujawinski, Michael Dooley, Robert Wooley, Bryan Watters, and Lee Withworth) who visited Ahmići after the attack gave consistent and credible statements about what they saw in Ahmići that corroborate these facts.

¹⁰ Testimony of the witness Abdulah Ahmić (prosecution witness) on 12 July 2007.

¹¹ The witnesses Abdulah Ahmić, Bryan Watters, Robert Wooley, Geoffrey Thomas, Andre Kujawinski, Michael Dooley, Mirsad Ahmić, Ramiza Mrkonja, Z, E, Đula Đidić and Azra Dedić testified about the ordeal of the Bosniak population during the time relevant for the Indictment.

¹² The photographs presented by the Prosecution during testimony of the witnesses Andre Kujawinski and Michael Dooley.

The protection of civilians during an armed conflict is the foundation of modern humanitarian law. Even in the case of attacks on military objectives causing damage to civilians, international law requires that reasonable care must be taken in attacking military objectives so that civilians are not needlessly injured through carelessness. In addition, attacks, even when they are directed against legitimate military targets, are unlawful if conducted using indiscriminate means or methods of warfare, or in such a way as to cause indiscriminate damage to civilians.¹³

Article 14 of Additional Protocol II provides that a violation of the provisions of international law has been committed if objects indispensable to the survival of the civilian population are not protected. Many witnesses testified that numerous houses owned by Bosniaks were destroyed and burned down on the relevant day in Ahmići. Witness Robert Wooley, on the aerial photographs of the village of Ahmići (photographs presented to him during the trial), showed the sites where he saw houses set on fire (civilian objects) on 16 April 1993. Witness Z testified that some soldiers in multicolored uniforms who attacked Ahmići were carrying “plastic bottles with some liquid and were pouring it over everything and then they set it all on fire.”¹⁴

In light of the testimonies of the above mentioned witnesses, the documentary evidence presented, as well as the confession of the Accused, it is indisputable that the attack on Ahmići, on 16 April 1993, involved violations of Articles 4(2)(g), 13 and 15 of Additional Protocol II.

- **violation in time of war, armed conflict or occupation**

This temporal determinant includes prohibitions during the period of hostilities. So, the basic requisite of Article 173 of the BiH CC is that the acts of the Accused must be committed in time of war, armed conflict or occupation. This is consistent with the fact that the principles of international law are applied from the very beginning and during the entire course of hostilities. In the *Tadić* Jurisdiction Decision, the ICTY Appeals Chamber held: “International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities.”¹⁵

An armed conflict “exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”¹⁶ The Panel concludes that it was proved beyond any doubt that there was an armed conflict between the HVO and the Army of RBiH in the territory of the Lašva Valley. In Annex A to the Agreement, the Accused stated that on 16 April 1993, there was an armed conflict between the forces of the HVO and the Army of RBiH, and that the first clashes between these forces began in October 1992. In addition, the Accused admitted that as a soldier and as a commander of the 4th Military Police Battalion of the HVO, he was in a position to know that an armed conflict existed between those forces. The confession of the Accused is corroborated by the documentary evidence

¹³ See *Kupreškić et al.* Trial Judgment, para. 524.

¹⁴ Testimony of the witness Z at the trial held on 19 October 2007.

¹⁵ See *Prosecutor v. Tadić*, IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paras. 67 and 70.

¹⁶ *Id.*

the Prosecution presented during the trial¹⁷, which established that these were organized armed groups/forces who were active in the relevant geographical area and at the relevant time.

The Panel's conclusion as to this contextual element is also based on the testimonies of witnesses, some of whom were direct victims of the relevant crimes. That is, all of them in their statements speak about the armed conflict between the HVO units and the Territorial Defense of BiH (hereinafter: TO BiH) that took place in the territory of the Lašva Valley during the relevant period. Witnesses Abdulah Ahmić, Sulejman Kavazović and Đula Đidić, as well as witnesses E, H and P, are consistent in stating that as early as October 1992 the first clashes between the TO BiH and HVO began.

-an act must be related to war, armed conflict or occupation

For the criminal offense of War Crimes against Civilians, it is necessary to establish a sufficient nexus between the acts of the Accused and the state of war (or armed conflict or occupation).

International humanitarian law does not apply to all unlawful acts committed during an armed conflict. It applies only to those unlawful acts that are sufficiently linked to the hostilities. In order to be punishable as a war crime, the acts of the Accused have to "be closely related to the armed conflict."¹⁸ Therefore, what ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed.¹⁹

The requirement that the acts of the accused be closely related to the armed conflict does not require that the offence be committed while fighting is actually taking place, or at the scene of combat. The armed conflict need not have caused the commission of the crime, but the existence of an armed conflict must have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.²⁰

The Panel is of the opinion that it is sufficient to establish that the criminal offense committed by the perpetrator is closely related to the state of war if it is proven that the perpetrator acted under the guise of the state of war, as in the present case. The Panel concluded that the incriminating acts were committed at the time and under the guise of the armed conflict between the HVO and the Army of BiH in the territory of the Lašva Valley, and that the Accused himself, in his capacity as the Commander of the 4th Military Police Battalion of the HVO, was a member of one side in the conflict. Such conclusion arises both from the confession of the Accused and the statements of witness Lee Withworth and witness P. Further, the documentary evidence and testimonies lead to the conclusion that the criminal offenses that the Accused is charged with are directly related to the armed

¹⁷ The Prosecutor's Office tendered into evidence a large number of orders and reports concerning the activities of the HVO armed groups against the Army of RBiH.

¹⁸ See Kunarac case, Judgment dated 12 June 2002

¹⁹ Ibid, Appeals Chamber Judgment, Para 58

²⁰ See Vasiljević case, Trial Chamber Judgment, Para 25

operations of the HVO (although such a strong relation is not even necessary to meet this requirement).

- a perpetrator must order or commit the act (Article 180 and 29 of the BiH CC)

The Accused in this case is charged specifically with perpetration of the criminal acts referred to in Article 173 (1)(a) and (f) of the BiH CC in conjunction with Article 29, as read with Article 180 (1) and (3) of the BiH CC.

Subparagraph (a) of Article 173 requires, in addition to the previously analyzed general elements, an "...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." In regard to subparagraph (f) of the same Article, the specific acts criminalized include "...pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs."

Article 180(1) of the BiH CC reads:

A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.

Paragraph 3 of the same article reads: "The fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires."

In the Agreement, the Accused pled guilty to the criminal offense that he is charged with in the Amended Indictment and expressed his remorse for the committed act. However, the Panel is bound to evaluate the validity of that confession as well as establish whether there is sufficient evidence proving his criminal responsibility.

In establishing the criminal responsibility of the Accused for the criminal offense of War Crimes against Civilians, the Panel took into account that it is alleged that the Accused, by his acts and omissions, aided and abetted the planning and execution of the crime alleged, and that he is also responsible as a superior for the offences perpetrated by his subordinates. The Panel relied on documentary evidence of the Prosecution that show that the Accused had an important role in the chain of command. Based on his acts and rank it is clear that he had broad powers and served as the Commander of the 4th Military Police Battalion, which included a large number of companies, including the Jokers antiterrorist platoon (within the First Service Company of the 4th Military Police Battalion). The Organizational Chart of

the 4th Military Police Battalion²¹ for the Central Bosnia Operations Zone leads to a clear conclusion that the rank of the commander was the highest rank in that battalion and that the Accused was superior to all the other lower-ranking commanders (company and platoon commanders). The Prosecutor's Office tendered into the evidence several reports and orders signed by the Accused and/or those in which the Accused is mentioned.²² In addition, the order issued by the Accused and which refers to military equipment²³ was tendered into the evidence as well as the criminal report²⁴ and numerous reports on committed criminal offenses sent to the District Military Prosecutor's Office in Busovača for processing. Therefore, it is clear that the Accused had *de jure* control over the members of the 4th Military Police Battalion.

Based on the fact that the Accused occupied the position of the commander of the 4th Military Police Battalion and considering the aforementioned documentary evidence, it is clear that he conveyed orders from his superiors to his subordinates.

Article 180 (1) of the BiH CC refers to persons directly responsible for planning, instigating, ordering, perpetrating or for aiding and abetting in the planning, preparation or execution of a criminal offence. Thus, this Article applies to both the person who acts unlawfully and the superior of that person who does not physically participate in the act, but who, for example, ordered or instigated its perpetration. The criminal responsibility of a superior for such positive acts, except where the superior orders the crime in which case he may be more appropriately referred to as primarily responsible for its commission, may be regarded as "follow(ing) from general principles of accomplice liability".²⁵

The concept of direct individual criminal responsibility and personal culpability for assisting, aiding and abetting, or participating in, in contrast to direct commission of, a criminal endeavor or act also has a basis in customary international law.²⁶ In the ICTY jurisprudence this form of responsibility is defined as: "aiding and abetting" means rendering a substantial contribution to the commission of a crime".²⁷

For the commission of the criminal offense by aiding and abetting it is necessary to establish the *actus reus* of aiding and abetting which requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.²⁸

The *actus reus* of aiding and abetting may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and it was coupled with

²¹ Organizational Scheme of the 4th Military Police Battalion, R BiH, Croat Community of Herceg- Bosna, Defense Department, Military Police Administration Mostar (Evidence P97)

²² The Accused's signature can be found on several documents, as follows: Activity Report of the 4th Military Police Battalion for 15 February, made on 16 February 1993 (Evidence P99); Report On Incursion of members of the HVO into the Kaonik-Busovača military prison on 2nd and 16th February 1993 (Evidence P116)

²³ Order dated 2 March 1993 (Evidence P100)

²⁴ Criminal report filed by the Accused against Stipe Maroš and Vitomir Drmić (Evidence P107)

²⁵ See *Kordić and Tadić* case, ICTY Trial Chamber Judgment, Para 367

²⁶ See *Tadić* case, ICTY Trial Chamber Judgment, Para 666

²⁷ See *Krstić* case, ICTY Trial Chamber Judgment, Para 601

²⁸ See *Furundžija* case, ICTY Trial Chamber Judgment, Para 235, 249

the requisite *mens rea*.²⁹ Besides, the act of assistance (as a co-perpetrator) need not have caused the act of the principal offender, but it must have had a substantial effect on the commission of the crime by the principal offender.³⁰

As regards the presence at the crime scene, the position of the ICTY is that mere presence at the scene of the crime is not conclusive of aiding and abetting unless it is demonstrated to have a significant encouraging effect on the principal offender.³¹

Aiding and abetting may occur before, during or after the act is committed³² and the co-perpetrator “will also be responsible for all that naturally results from commission of the act in question”.³³

As to the *mens rea* requirement for aiding and abetting as a form of responsibility, aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be possible and foreseeable consequence of this conduct.³⁴ It is not necessary to show that the aider and abettor shared the *mens rea* of the principal, but it must be shown that the aider and abettor was aware of the relevant *mens rea* on the part of the principal. To establish the *mens rea* of aiding and abetting, it must be demonstrated that the aider and abettor knew that his own acts assisted in the commission of the specific crime in question by the principal offender.³⁵ In order to prove *mens rea* in aiding and abetting it is necessary to show that the aider and abettor knew that his actions contributed to the specific crime in question by the principal offender.³⁶

The Accused is charged as a co-perpetrator / accomplice in the commission of the criminal acts concerned (pursuant to Article 29 CC BiH). It is indisputable that the Accused acted with direct intent because he was aware of the offense and wanted its perpetration. In the commission of the crime charged against him the Accused did not act as one and only perpetrator but as a co-perpetrator within the meaning of Article 29 CC BiH, since he gave decisive contribution to the perpetration of the offense, acting jointly with the other perpetrators.

In Annex A (attached to the Agreement), the Accused stated that he was appointed the Commander of the 4th Military Police Battalion in January 1993, and that he was the most senior officer in all of the units of the HVO military police in the operations zone of Central Bosnia. He stated that he was responsible for both implementing and executing the decisions and orders handed down by his senior commanders. In addition, he stated that he had the authority to pass orders and instructions from his superiors to the members of his battalion, including the Jokers, an anti-terrorist platoon within the First Active-Service Company of the 4th Military Police Battalion.

²⁹ See *Blaškić* case, ICTY Trial Chamber Judgment, Para 284

³⁰ See *Vasiljević* case, ICTY Trial Chamber Judgment, Para 70

³¹ *Ibid* Para 70

³² See *Blaškić* case, ICTY Trial Chamber Judgment, Para 285

³³ See *Tadić* case, ICTY Trial Chamber Judgment, Para 692

³⁴ See *Blaškić* case, ICTY Trial Chamber Judgment, Para 286

³⁵ See *Aleksovski* case, ICTY Appeals Chamber Judgment, Para 162

³⁶ See *Vasiljević* case, ICTY Trial Chamber Judgment, Para 71

In the continuation of Annex A, the Accused described in detail the events that happened prior to the issuance of the order to attack the village of Ahmići. Specifically, on 15 April 1993, Tihomir Blaškić, Commander of the Central Bosnia Operations Zone, held a meeting with Croat political leaders in Vitez, and informed them of the plan to attack ARBiH units and Muslim settlements in the Municipality of Vitez. After the meeting with Croat political leaders in Vitez, on that same day, Colonel Blaškić had a meeting with commanders of military units at the Hotel Vitez. During the meeting, the attack on some parts of the town of Vitez controlled by the ARBiH, as well as on Ahmići and other villages of the Lašva Valley was ordered. The Accused stated that during that meeting, his superior (Tihomir Blaškić) ordered the attack on Ahmići and the surrounding villages and ordered him to convey the order to his subordinates. It was ordered that the attack would commence on 16 April 1993 at 0530. The Accused stated that the order was to attack and take control of certain villages including Ahmići, to burn the houses and property belonging to the Muslim inhabitants of the villages, to kill Muslim men able to carry a weapon, but not to touch women and children. Anyone who was left alive was to be expelled.

The Accused stated that he knew that the order was an illegal order, but that he felt he had no alternative but to pass it on to his subordinates. He also stated that although the commanders of the subordinate units who attended the meeting insisted on receiving the order in writing, Blaškić never did so. As explained by the Accused, by his order, Blaškić put all the units subordinate to him at the disposal of the Viteška Brigade.³⁷ Accordingly, parts of the 4th Military Police Battalion were also engaged in the attack in the area of the village of Ahmići, on 16 April 1993.

After he received the order from Blaškić, the Accused passed it to Vladimir Šantić, the Commander of the First Active-Service Company of the 4th Military Police Battalion, as well as to other members of the Military Police who attended the meeting in the building called "The Bungalow" (in Nadioci) on the evening of the 15th. The Accused stated that on that occasion, he repeated the order received from Tihomir Blaškić (as indicated above) and noted that, among others, Nikica Šafradin, Ilija Šantić, Miroslav Bralo a.k.a. Cicko and Anto Furundžija were present and received the order.

Pursuant to the order issued by Tihomir Blaškić, Miroslav Bralo a.k.a. Cicko was also released from the Kaonik prison,³⁸ and he participated in the attack on Ahmići on 16 April.

In the Annex, the Accused further stated that on 16 April 1993, before dawn, he met with Vladimir Šantić, who presented the operative plan, which he had prepared a few hours earlier and the execution of which the Accused approved. In addition, the Accused stated that he repeated the order he had been given by Tihomir Blaškić and reiterated that civilians not covered by the order would be expelled from their homes and should not be killed. The Accused stated that in this way he assisted in and made a decisive contribution, that is,

³⁷ See Annex A to the Agreement entered between the Accused and Prosecutor's Office on 24 April 2008, page 6 (listing all the units subordinated to the commander Tihomir Blaškić, as follows: the *Vitezovi* Special Purpose Unit, the *Tvrko* Special Purpose Unit, the Fourth Military Police Battalion, the *Žuti* Special Purpose Unit

³⁸ The District Military Prison Kaonik was under the direct authority of Tihomir Blaškić. On 15 April 1993, Blaškić issued an order to release all persons of Croat nationality detained in the Kaonik Prison for disciplinary violations or criminal offences and to have all those persons join the HVO in the attack on Ahmići.

aided and abetted the planning and execution of the attack that followed. Besides, the Accused stated that he knew that the order he had been given by Tihomir Blaškić, the order he passed on, was an illegal order and that he gave his approval to the plan that was developed to carry it out and that he expected it to be carried out. He also stated that he knew at that time that non-combatants would likely be killed, that non-combatants were likely to suffer grievous bodily injury, and that protected property would be destroyed. He also stated that he took no measures to prevent the plan from being carried out.

The Panel based its finding that the facts to which the Accused confessed in the Annex to the Agreement are reliable on the documentary evidence presented by the Prosecutor's Office during the trial, including: Combat order by Tihomir Blaškić dated 16 April 1993 and issued at 1:30 A.M.³⁹; Order to Act issued by Tihomir Blaškić on 15 April 1993⁴⁰; Combat Report from Tihomir Blaškić dated 16 April 1993, and sent to Paško Ljubičić⁴¹; Report by Paško Ljubičić dated 16 April 1993⁴²; and Order by Tihomir Blaškić to the Viteška Brigade dated 16 April 1993.⁴³

In addition to this documentary evidence, witness Lee Withworth stated in his testimony that it seemed to him that Paško Ljubičić (who was introduced to him as the commander of the 4th Military Police Battalion of the CBOZ) was under the direct control of Colonel Blaškić. This witness testified that he met the Accused as the commander of the 4th Military Police Battalion during the check of the humanitarian convoy in Vitez. He spoke about the structure and command of the HVO forces and stated that Blaškić was the Commander-in-Chief and that brigade commanders were "under" him. The Accused was introduced to him as the commander of the 4th Military Police Battalion. The witness recognized the Accused in the photographs presented to him by the Prosecutor during his testimony.⁴⁴ He stated that when passing by the Bungalow, he saw young men wearing black uniforms who were armed and very proud of their membership in the elite unit of the Military Police-Jokers. They told the witness that they were involved in all the successful operations, and when asked about Ahmići by the witness, they repeated the same (that they were involved in the operation). In addition, the witness stated that these soldiers told him that Paško was their commander. Witness E claims that on the day of the attack on Ahmići, on the uniforms (to be precise, on the left sleeve) he saw the Jokers insignia.

Witness P stated that he personally knows the Accused and that he knew at the time that Paško Ljubičić was "within the top military leadership of the HVO".⁴⁵

³⁹ Combat Order from Tihomir Blaškić dated 16 April 1993, issued at 1:30 A.M., sent to the commander of the Brigade of the HVO Vitez, Mr. M Čerkez and *Tvrtko* Special Purpose Unit (P150).

⁴⁰ Order to Act , number 01-4-227/93 dated 15 April 1993, at 15:45 P.M., issued by Tihomir Blaškić, sent to the commanders of the following brigades: *Travnička*- Travnik, *Frankopan* –Guča Gora, *Sijepan Tomašević* – Novi Travnik, *Viteška*- Vitez, *Nikola Šubić Zrinjski*- Busovača, *Jure Francetić*-Zenica, *the 4th Military Police Battalion* –Vitez, *Ban Jelačić*- Kiseljak (P110)

⁴¹ Combat Order from Tihomir Blaškić, number /93 dated 16 April 1993, issued at 1:30 A.M., sent to the commander of the 4th Military Police Battalion, Mr. Paško Ljubičić (P91)

⁴² The Report of the Accused dated 16 April 1993 on actions taken pursuant to the Order number 01-4-243/93 at 10:35 hrs (P94)

⁴³ Taking of further combat operations, issued by Tihomir Blaškić, on 16 April 1993 at 10:35 hrs, number 01-4-259/93, sent to the commander of the Viteška Brigade (P113)

⁴⁴ The witness explained that one of the photographs shows the UNHCR convoy and Paško Ljubičić (Evidence 58) and on the other there is Paško Ljubičić with Darko Gelić and two civilian police officers (Evidence 59)

⁴⁵ The testimony of the witness E on the trial held on 5 July 2007

Witness Andre Kujawinski stated that on 16 April he was in Ahmići, where he saw the consequences of the crime committed that day. When they passed Ahmići, they came to the Bungalow, where a group of men were standing. As the witness stated, there were around 100 of them and they wore uniforms that he had never seen before. The uniforms were dark (or even black) with an insignia on the arm. The witness concluded that they did what he had previously seen in Ahmići.

The Panel is satisfied that it was proven beyond doubt that the Accused was responsible for passing the order to attack the village of Ahmići to his subordinates in the manner described above, as well that he did so fully aware of the consequences that would undoubtedly ensue as a result of the order.

The units of the 4th Military Police Battalion (including the Jokers antiterrorist platoon), together with the other units of the HVO Viteška Brigade, in the early morning of 16 April 1993 carried out the attack on Ahmići and killed more than 100 Bosniak civilians. In addition, a great number of their houses were destroyed and two mosques in Ahmići were blown up. Witnesses Abdulah Ahmić, Mirsad Ahmić, Azra Dedić, Đula Đidić, witness E, witness Z, witness K, as well as members of the British Battalion Bryan Watters, Lee Withworth, Andre Peter Kujawinski, Michael Dooley, Geoffrey Thomas and Robert Wooley testified about the mass killings of Bosniak civilians and the destruction and burning down of their houses.

In the Annex to the Agreement (Item 26) the Accused stated: “At the time the attack began on 16 April 1993, the majority of the Muslim inhabitants of the village of Ahmići were civilians or poorly armed members of the ARBiH.” Further, in Paragraph 27 of the Annex he stated: “During the attack on 16 April 1993, HVO soldiers, including the members of the Fourth Military Police Battalion under my command, used, among other things, grenades, explosives and incendiary ammunition to assault targets in Ahmići. The targets included military targets as well as houses, religious buildings, livestock and people.”

The Accused then stated that at least 103 persons were killed during the attack on Ahmići and its environs, and that the dead were primarily Muslim men of military age, but who were not members of any military unit or engaged in combat prior to the attack, or if they had been, were no longer engaged in active combat when the attack occurred. He added that a number of women and children were also killed in the attack. He further added that some civilians were trapped inside burning houses and died as a result.

Regarding the destruction of property, the Accused stated that the HVO soldiers, including the members of the 4th Military Police Battalion under the Accused’s command, moved through the village of Ahmići and actively participated in burning houses known to be owned by Muslims. The Accused stated that, pursuant to the Order, the HVO did not attack houses owned by Croat families and that the soldiers under his command also participated in setting fire to the stables and killed livestock owned by Muslim families in Ahmići . In addition, he stated that the participants in the attack also blew up the mosque in Donji Ahmići and the mesjid (praying facility) and the religious school in Gornji Ahmići, property which belonged to the Muslim community in Ahmići.

It is also stated in the Annex that Muslim-owned houses and business facilities were also set on fire in the days after 16 April 1993.

Describing the events of 16 April, witness Z testified that the detonation could be heard in the mosque and then suddenly soldiers appeared in Ahmići. She stated that soldiers in multicolored uniforms raided the place and started destroying the fence around their house. Some members of the witness's family were killed, and she saw that the house of her son was set on fire. After that, she heard some of the present soldiers saying: "The operation succeeded, pigs are lying in front of every house."

The witness Geoffrey Thomas, when talking about his visit to Ahmići on 16 April 1993, stated: "The dead that we saw were civilians, without weapons and military equipment." In addition, he stated that he personally went to Ahmići on 17 April 1993 and there he saw "clear evidence of attack... the houses were burned down and that minaret of the mosque was destroyed," which can be seen on the photographs presented by the Prosecution during the trial. Regarding the destruction of religious facilities in Ahmići, the Panel took into account its Decision on admission of established facts from the above mentioned ICTY judgments (*Blaškić, Kordić and Čerkez, Kupreškić et al., Aleksovski*). These judgments established that the mosque in Donji Ahmići was destroyed with explosive planted around the foot of the minaret, and it is also indisputably established that the masjid in Gornji Ahmići was destroyed.

The witness Robert Wooley stated that on 22 April 1993 he visited Ahmići where he saw people shot dead in their basements. He indicates that the military tactic of "encircle and destroy" was applied there and that everything living was destroyed in Ahmići. Also, he stated that one part in Ahmići with modern houses remained untouched while all the houses around the mosque were destroyed.

The witness Michael Dooley stated that he arrived in Ahmići around noon on 16 April and that he saw many smoking houses and in the courtyards next to the houses there were many dead civilians. Additionally, he stated that all the dead bodies were civilians, that there were children among them and that those killed were mostly women and elderly men.

Witnesses E, Z and Ramiza Mrkonja also confirmed that civilians were among those killed that day (including members of their families).

During the testimony of witness Bryan Watters, the prosecutor presented to the Panel the photographs of the destroyed minaret of the mosque in Ahmići, then the photographs of the basement of the house where a carbonized body of a child was found on the stairs and a carbonized body of an adult with a raised arm. Witness Watters stated that what they saw in Ahmići did not indicate that there was any fight, the houses caved in, but there were no trenches around or any signs that the village had been defended.

The witness Andre Kujawinski stated that on 16 April, around 14:00 hrs, he got the task to go to Ahmići with his colleagues, where they saw clouds of smoke and heard fire from small arms (while they were approaching the village). They noticed mass destruction of objects, many house were on fire and entire families could be seen scattered on the ground,

women and children. They saw a man, approximately 40 years old and a boy, both shot in the head.

The witness Michael Dooley stated that on the relevant day, around noon, he went to Ahmići where he saw a great number of murdered civilians. He took photos of the dead bodies and recorded what he saw. The Panel was shown the video of Ahmići dated 16 April 1993, which clearly showed dead bodies and also the minaret standing upright. However, on the other video that the Panel saw during the trial, it can be seen that the minaret was destroyed.

Witness B stated that on 16 April, shooting woke her up, a bullet fired from the direction outside of her house hit the settee in the living room and a fire started. At the moment when she wanted to leave the house with her mother they saw that the house was surrounded by soldiers. The soldiers rounded them all up and marched them towards Vitez. On their way they came across the house of a Muslim neighbor so they called at her place (since her house was not on fire). Through the window they saw movement of soldiers in black and camouflage uniforms.

Evaluating the confession of the Accused and all the presented evidence and Prosecution witnesses heard, the Panel concludes that the Accused, together with the other persons (his subordinates, members of the 4th Military Police Battalion) participated in the commission of the acts which, without any doubt, constitute violation of the aforementioned provisions of Additional Protocol II. The criminal acts of the Accused specifically consist of conveying the order of his superior, Tihomir Blaškić, to attack Ahmići, to kill all Bosniak men of military age and destroy their houses, and in assisting and planning the attack. All these acts were committed by the Accused voluntarily and knowingly, in the capacity as the commander of the 4th Military Police Battalion.

Taking into consideration the aforementioned, the Panel finds that the acts of the Accused meet the elements of the criminal offense of War Crimes against Civilians referred to in Article 173 (1) a) and f) in conjunction with Article 29, Article 35 (2), and Article 180 (1) and (3) of the BiH CC. The Accused (based on Article 180 (1) of the BiH CC) bears individual responsibility for the commission of the criminal offense. The Panel concludes that the Accused committed the criminal offense concerned with direct intent, aware of the offense he was committing and with the will to commit it.

The conclusion concerning general circumstances under which the attack on Ahmići was planned and carried out (but not the responsibility of the Accused which was proved independently in the case), the Panel also grounds on the admitted facts established in the ICTY judgments (*Blaškić, Kordić and Čerkez, Kupreškić et al., Aleksovski*). These facts are fully consistent with the evidence related to planning and execution of the attack presented to this Panel.

4. Meting out the Punishment

Evaluating all the circumstances pertaining to the Accused (both aggravating and mitigating) as well as the proposed duration of punishment referred to in the Agreement on the Admission of Guilt, for the criminal offense of War Crimes against Civilians referred to

in Article 173 (1) a) and f) in conjunction with Article 29, Article 35 (2) and Article 180 (1) and (3) of the BiH CC, the Panel sentences the Accused to 10 (ten) years imprisonment.

When meting out the punishment, following the hearing for pronouncement of criminal sanction, the Panel took into consideration the gravity of the criminal offense that the Accused admitted, but also the mitigating circumstances on the part of the Accused. The Accused's admission of guilt and sincere remorse are mitigating circumstances. In the first place, the Panel believes that the admission of guilt is of great significance in terms of humanity and the consequences of these crimes for the victims. Particularly, when the accused pleads guilty in a manner and under circumstances showing unconditional acceptance of personal responsibility, this can surely be considered a sign of sincere remorse. The Panel believes that the Accused's admission of guilt, together with his conduct after the event referred to in the Amended Indictment, demonstrate his sincere remorse. The Panel deems that such admission and remorse could have a positive effect on the recovery of the victims of the committed crimes and of the broader community, as well as on general acknowledgement of the facts of these brutal crimes.

Also, the Panel took into consideration that the Accused promised that, at times and in places to be determined by the Prosecutor, he will make full, truthful and complete disclosure of his knowledge of any other matters of interest to the Prosecutor's Office or the ICTY. In addition, the Panel also considered that the Accused is a father of minor children. The Panel is of the opinion that the pronounced sentence will achieve the purpose of punishment referred to in Article 39 of the BIH CC and will deter the Accused from perpetrating criminal offences in the future, as well as deter others from perpetrating criminal offences. The Panel is of the opinion that this punishment is adequate and proportionate to the gravity of the criminal offense and the degree of criminal responsibility of the Accused as a perpetrator of the relevant crime.

5.a) Crediting the time spent in custody towards the pronounced sentence of imprisonment

Pursuant to Article 56 of the BiH CC in conjunction with Article 4 of the Law on Transfer, the time that the Accused spent in custody from 9 November 2001 to 29 April 2008, shall be credited towards the pronounced sentence of 10 (ten) years of imprisonment.

6. Costs of the Proceedings and Property Claims

Pursuant to Article 188(4) of the BiH CPC, the Accused shall be relieved of the duty to reimburse the costs of the criminal proceedings, therefore, these costs shall be paid from the Budget of the Court. The Panel recognizes that the Accused has spent six years and six months in custody (6.5) and that he was not employed nor could he earn any income on a regular basis. Therefore, if the Panel obligates him to pay the costs of the proceedings, the sustenance of the Accused and the persons that he has a duty to sustain would probably be threatened.

The decision on property claims was rendered pursuant to Article 198(2) of the BiH CPC, and the injured parties Abdulah Ahmić, Ramiza Mrkonja, Zahid Zatagić, Edib Zlotrg, Azra

Dedić, Đula Đidić, Senaid Kolić and witnesses under the pseudonyms P, O, Z, E, L, AA, B, H and V were referred to take civil action with their claims under property law. The Panel concluded that the data of the criminal proceedings do not provide sufficient basis to adjudicate the property claims.

RECORD TAKER

Lejla Konjić

[signature affixed]

**PRESIDING JUDGE
JUDGE**

Šaban Maksumić

[signature affixed]

REMEDY: This Verdict may be appealed with the Appellate Division of this Court within fifteen days (15) after the day of its receipt. Given that the Verdict was rendered based on the Agreement to enter a Plea of Guilty, the appeal from the criminal sanction shall not be allowed.