



Number: X-KR-08/549-1

Sarajevo, 2 July 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting on the Panel composed of Judge Minka Kreho, as the Presiding Judge, and Judge Marijan Pogačnik and Judge Željka Marenčić, as members of the Panel, with the participation of Legal Officer Emil Pinkas, as the record-taker, in the criminal case against the Accused Damir Ivanković, for the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k) of the Criminal Code of Bosnia and Herzegovina (CC B-H), all in conjunction with Article 180(1) of the CC B-H, having decided on the Indictment by the Prosecutor's Office of B-H, No. KT-RZ: 48/06 of 8 January 2009, whereupon the parties entered a Plea Agreement on 22 June 2009, at a public hearing held on 2 July 2009, attended by the Accused and his Defense Counsel, Attorney Izet Baždarević, and the Prosecutor of the Prosecutor's Office of B-H, Slavica Terzić, the Court of B-H accepted the Agreement and rendered the following:

VERDICT

THE ACCUSED: DAMIR IVANKOVIĆ, a.k.a. "Dado", son of Ivan and Dušanka née Gašić, born on 26 June 1970 in Prijedor, living at 146 Srpskih Velikana Str., Prijedor Municipality, Personal Identification Number 2606970160011, an ethnic Croat, citizen of B-H, electrotechnician -- PTT technician, literate, married with one underage child, completed military service in 1988/1989 in Sremska Mitrovica and Novi Sad, holds the rank of private 1st class, registered in the military records in Prijedor, indigent, no decoration, no prior conviction, no other criminal proceedings pending, currently in custody,

HAS BEEN FOUND GUILTY

Of the following:

In the period between the end of April and the end of September 1992, as part of a widespread and systematic attack of the army and police of the Serb Republic of B-H and subsequently of Republika Srpska against the Bosniak and Croat population of Prijedor Municipality, with knowledge of such an attack, as a reserve police officer, the Accused knowingly participated in a joint criminal enterprise of the civilian and military authorities of Prijedor Municipality with a view to persecuting and committing crimes against Bosniaks and Croats, sharing the same goal with the civilian and military authorities of Prijedor Municipality and with the military and civilian structures of the Serb Republic of B-H and subsequently of Republika Srpska, the goal implying the discriminatory persecution of Bosniaks and Croats on political, national, ethnic and religious grounds from the territory

controlled by the military and police of the Serb Republic of B-H and subsequently of Republika Srpska, he committed, participated and aided in the preparation and commission of the crime of persecution by way of forcible transfer of population, deliberate deprivation of life (murders), inhumane treatment, thus:

On 21 August 1992, as a member of the Prijedor Police Station (SJB) and the police intervention platoon from Prijedor, the Accused carried out, participated and aided in escorting a convoy consisting of at least 16 buses, tractor-trailers, trucks and truck-trailers carrying more than 1,200 predominantly Muslim and some Croat civilians from Prijedor Municipality. En route to Travnik Municipality via the municipalities of Prijedor, Banja Luka, Kneževo/Skender Vakuf and Travnik, where the civilians were to be transported, according to a previous plan of which he knew and, with a view to carrying out the plan, the Accused seized money, gold and other valuables from the Bosniak and Croat civilians on the convoy on several occasions threatening to kill them. Damir Ivanković and other members of the police intervention platoon and police from Prijedor, when the convoy stopped by the Ugar River on Mt. Vlašić, knowing that the men would be separated to be killed, separated more than 200 able-bodied men from other civilians on the convoy and ordered them to get off the buses, tractor-trailers, trucks and truck-trailers and forced the separated men to board two buses and then took them to a location called *Korićanske stijene* on Mt. Vlašić, where they ordered the men from one of the buses to come out onto the road and then marched them to an edge of the road above an abyss, ordered them to kneel on the very edge of the road above the abyss and then opened fire at them from automatic weapons, whereupon the bodies of the killed men fell into the abyss; some of the men who were lined up threw themselves into the abyss to avoid death. Thereafter, they brought men from the other bus in small groups of two or three to the same spot or nearby and opened fire at them at point blank range from pistols and then from automatic rifles. Thereafter, they threw hand grenades from the top of the precipice and opened fire at the dead bodies and at the wounded men who shrieked with pain from the abyss, killing more than 200 men, including: **Enver (Avdo) Arifagić, Rasim (Sulejman) Avdić, Edin (Mehmed) Ališić, Šerif (Ramo) Bajrić, Zafir (Šerif) Bajrić, Rasim (Muharem) Bašić, Nihad (Meho) Bešić, Zilhad (Hamid) Bešić, Suvad (Mustafa) Bešlić, Šerif (Suljo) Blažević, Ahmet (Hamdija) Blažević, Fadil (Ibrahim) Blažević, Mustafa (Edhem) Blažević, Zijad (Ibrahim) Cejvan, Besim (Smail) Čausević, Hilmija (Mehmed) Čustić, Ismet (Mehmed) Čustić, Admir (Džemal) Dergić, Fahrudin (Kasim) Elezović, Jasmin (Hajrudin) Elezović, Edin (Muharem) Elezović, Emir (Muharem) Elezović, Hajrudin (Salih) Elezović, Almir (Refik) Fazlić, Edin (Hilmija) Fazlić, Jasim (Ismet) Fazlić, Mirsad (Ismet) Fazlić, Samir (Sadik) Garibović, Kemal (Hamdija) Garibović, Mirsad (Hasan) Gutić, Vasif (Atif) Garibović, Osman (Hasan) Hasanagić, Ismet (Husein) Hirkić, Rifet (Husein) Hirkić, Šefik (Husein) Hirkić, Midhet (Fehim) Hodžić, Ahmet (Husein) Hodžić, Said (Alija) Horozović, Emsud (Alija) Horozović, Hajro (Huska) Ičić, Ibrahim Jakupović, Armin (Mustafa) Jakupović, Senad (Latif) Jusufagić, Zuhdija (Meho) Kadiric, Mehmed (Sulejman) Kahrmanović, Sejad (Mustafa) Kadirić, Elvin (Mehmed) Kauković, Uzeir (Muharem) Kahrmanović, Elvin (Mehmed) Kauković, Meho (Ahmet) Kljajić, Sakib (Ahmet) Kljajić, Ahmet (Salih) Krkić, Sabahudin (Čazim) Kuburaš, Abaz (Omer) Kulašić, Himzo (Redžo) Marošlić, Ejub (Abaz) Medić, Alija Mehmedagić, Asmir (Mehmed) Memić, Šefik (Hilmija) Medić, Himzo (Omer) Mrkalj, Idriz (Haso) Muretčehajić, Edin (Jusuf) Muretčehajić, Fahrudin (Redžep) Mujkanović, Nihad (Sulejman) Memić, Husein (Hamdija) Mujkanović, Senad (Esad)**

Mujkanović, Mehmed (Derviš) Muretčehajić, Faik (Osman) Rizvančević, Bajazid (Hamza) Saldumović, Kasim (Sefik) Sivac, Merzuk (Ibrahim) Sivac, Edin (Munib) Sivac, Nedžad (Munib) Sivac, Safet (Džemal) Sivac, Omer (Halil) Sljivar, Zijad (Ibrahim) Tadžić, Sakib (Bejdo) Trnjanin, Seid (Miralem) Vehabović, Ziko (Husein) Zahirović, Nedžad (Latif) Zulić, Mesud (Uzeir) Zulić, Sakib (Idriz) Žerić. A certain number of the able-bodied men who were shot at managed to survive, at least 12 of them. Only four bodies have been recovered and identified so far: **Seid (Miralem) Vehabović, Edin (Hilmija) Fazlić, Elvin (Mehmed) Kauković and Ahmet (Salih) Krkić;** while a number of body parts of the killed men have been identified as belonging to the following persons: **Rasim (Sulejman) Avdić, Ahmet (Hamdija) Blazević, Mustafa (Edhem) Blazević, Zijad (Ibrahim) Cejvan, Hajrudin (Salih) Elezović, Jasmin (Hajrudin) Elezović, Mirsad (Hasan) Gutic, Sefik (Husein) Hirkic, Zuhdija (Meho) Kadiric, Abaz (Omer) Kulasic, Himzo (Redzo) Marošlić, Alija (Beco) Mehmedagić, Himzo (Omer) Mrkalj, Idriz (Haso) Muretecehajic, Merzuk (Ibrahim) Sivac, Kasim (Sefik) Sivac, Omer (Halil) Sljivar, Sakib (Bejdo) Trnjanin and Nedžad (Latif) Zulić.** The remaining bodies have not been recovered to date.

Therefore, as part of a widespread and systematic attack of the military and police of Republika Srpska, with knowledge of such an attack and that his acts form part of that attack, the Accused Damir Ivanković, together with other persons, committed, participated and aided in the preparation and commission of the crime of persecution by way of forcible transfer of population, deliberate deprivation of life (murders) and inhumane treatment, while knowingly participating in the joint criminal enterprise of the civil and military authorities of Prijedor Municipality, including Milomir Stakić, Simo Drljača, Slobodan Kuruzović and other members of the civil and military authorities in Prijedor and Republika Srpska whose goal was to expel Bosniaks and Croats from the territory controlled by the Serb authorities, committing crimes of murder, forcible transfer, inhumane treatment,

Whereby the Accused **Damir Ivanković** committed the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k), all in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

Therefore, for the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k), all in conjunction with Article 180(1) of the CC B-H, and in application of the referenced provisions and provisions of Articles 39, 42, and 48 of the CC B-H, **the Court,** hereby

**SENTENCES HIM
TO IMPRISONMENT FOR A TERM OF
14 (fourteen) YEARS**

Pursuant to Article 56 of the CC B-H, the time the Accused spent in custody from 14 January 2009 until 25 June 2009, that is, until his release with application of prohibiting measures, as defined in the Decision of the Court of B-H, No. X-KR-08/549-1 of 2 July 2009, shall be credited towards the pronounced sentence of imprisonment.

Pursuant to Article 188(4), the Accused Damir Ivanković shall be relieved of the duty to reimburse the costs of the criminal proceedings, which shall be paid from the budget appropriations of the Court.

Pursuant to Article 198(2) of the CPC B-H, the wounded and the families of the killed victims shall be referred to take civil action with their claims under property law.

Reasoning

1. Indictment and Agreement

By the Indictment of the Prosecutor's Office of B-H, Special Department for War Crimes (Department I), No. KT-RZ: 48/06 of 8 January 2009, confirmed on 12 January 2009, Damir Ivanković and seven other persons were charged with the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k) of the CC B-H.

During the main trial, on 22 June 2009, the Prosecutor's Office of B-H filed a Plea Agreement, No. KT-RZ: 48/06, entered on the same day and proposed separation of proceedings against the Accused Dragan Ivanković. For the reason of purposefulness, that is, in order to deliberate on the Agreement, the Trial Panel separated the proceedings against the Accused Damir Ivanković on 29 June 2009.

By the Agreement, the Accused Damir Ivanković pleaded guilty of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k) of the CC B-H, all in conjunction with Article 180(1) of the CC B-H, described in the manner and under the circumstances referred to in the operative part of the Indictment by the Prosecutor's Office, and pledged to testify as a witness in the proceedings that continued against the seven other Accused. The Prosecutor's Office of B-H agreed that he should be sentenced for this criminal offense to imprisonment for a term to be determined by the Court ranging from 8 (eight) to 15 (fifteen) years.

That is to say, the Indictment charges the Accused Damir Ivanković that on 21 August 1992, as part of a widespread and systematic attack of the army and police of the Serb Republic of B-H, subsequently of Republika Srpska, against the Bosniak and Croat population of Prijedor Municipality, with knowledge of such an attack, as a reserve police officer of the Prijedor Police Station and the police intervention platoon from Prijedor, he knowingly and willingly participated in a joint criminal enterprise of the civilian and military authorities of Prijedor Municipality, that is, carried out, participated and aided in escorting a convoy carrying more than 1,200 predominantly Muslim and some Croat civilians from Prijedor Municipality, and that he and other members of the police intervention platoon and police from Prijedor, when the convoy stopped by the Ugar River on Mt. Vlašić, separated more than 200 able-bodied men from other civilians on the convoy and took them to a location called *Korićanske stijene* on Mt. Vlašić, where they marched them to an edge of the road above an abyss, ordered them to kneel on the very edge of the

road above the abyss and then opened fire at them from pistols and automatic weapons, whereupon the bodies of the killed men fell into the abyss; some of the men who were lined up threw themselves into the abyss to avoid death. Thereafter, they threw hand grenades from the top of the precipice and opened fire at the dead bodies and at the wounded men who shrieked with pain from the abyss, thus killing more than 200 men.

On 29 July 2009, a hearing to deliberate on the Plea Agreement was held, and on 30 June 2009, as a witness for the Prosecutor's Office of B-H, the Accused testified about the events that the other Accused in the case are charged with, that having been one of the terms in the signed Plea Agreement. The Panel deliberated on the Agreement following the testimony, and was satisfied that the Agreement was entered voluntarily, consciously and with understanding, that the Accused understood the legal consequences of the Agreement, especially that he waived his right to trial and the right to appeal the criminal sanction imposed, and that he understood the consequences ensuing from claims under property law and the costs of the proceedings. The Panel was also satisfied that there was sufficient evidence of the guilt of the Accused, whereupon the Agreement was accepted and the Court continued with the hearing for the pronouncement of the sentence foreseen by the Agreement, that is, sentence of imprisonment for a term ranging from 8 to 15 years.

2. Presented Evidence

The Panel was satisfied that there was sufficient evidence of the guilt of the Accused stemming primarily from the evidence given at the main trial by the witnesses as follows: Milan Komljenović, Boško Peulić, Čedo Vuković, Živorad Pelengić, Slobodan Udovičić, Radovan Đukarić, Drago Slavnić, Nenad Krejić, Zoran Babić, Milivoje Pavičić, Nebojša Pantić, Dragomir Marković, Jevto Janković, Vlado Beben, Melisa Bajrić, Jusuf Žerić, Hakija Elezović, Munib Sivac, Bekir Mujagić, Berislav Herceg, Nedžad Bašić, Witness *A* and Witness *B*, Sadik Suhonjić, Husein Jakupović, Witness *KS-1*, Witness *KS-2*, Witness *K-1* and Witness *KO-12*, as well as from the documentary evidence presented by the Prosecutor's Office, as follows: Record on the examination of the suspect Damir Ivanković, No. KT-RZ 48/06 dated 27 May 2008, 11 December 2008 and 23 December 2008; Record on the examination of the witness Elzin Ramić, No. KT-RZ-48/06 dated 8 August 2008; Record on the examination of the witness Almir Ramić, No. KT-RZ-48/06 dated 5 August 2008; Record on the examination of the witness Luka Gnjatović, No. 17-04/2-143/06 dated 21 March 2006; Record on the examination of the witness Vitomir Lakić, No. 17-04/2-146/06 dated 22 March 2006; Record on the examination of the witness **KO-4**, No. KT-RZ 48/06; Record on the examination of the witness **KO-16**, No. KT-RZ 48/06; Death certificate for **Enver Arifagić (son of Avdo)**, No. 04-202-1-425/2008 dated 12 August 2008; Death certificate for **Rasim Avdić (son of Sulejman)**, No. 04-202-1-4583/2008 dated 11 August 2008; Death certificate for **Šerif Bajrić (son of Ramo)**, No. 04-202-1-4585/2008 dated 11 August 2008; Death certificate for **Zafir Bajrić (son of Šerif)**, No. 04-202-1-4586/2008 dated 11 August 2008; Death certificate for **Rasim Bašić (son of Muharem)**, No. 04-202-1-426/2008 dated 12 August 2008; Death certificate for **Nihad Bešić (son of Meho)**, No. 04-202-1-427/2008 dated 12 August 2008; Death certificate for **Suvad Bešliagić (son of Mustafa)**, No. 04-202-1-429/2008 dated 12 August 2008; Death certificate for **Besim Čaušević (son of Smail)**, No. 04-202-1-430/2008 dated 12 August 2008; Death certificate for **Hilmija Ćustić (son of Mehmed)**, No. 04-202-1-432/2008 dated 12 August

2008; Death certificate for **Ismet Ćustić (son of Mehmed)**, No. 04-202-1-433/2008 dated 12 August 2008; Death certificate for **Admir Dergić (son of Džemal)**, No. 04-202-1-401/2008 dated 8 August 2008; Death certificate for **Edin Elezović (son of Muharem)**, No. 04-202-1-4506/2008 dated 7 August 2008; Death certificate for **Emir Elezović (son of Muharem)**, No. 04-202-1-4507/2008 dated 7 August 2008; Death certificate for **Hajrudin Elezović (son of Salih)**, No. 04-202-1-398/2008 dated 8 August 2008; Death certificate for **Jasim Fazlić (son of Ismet)**, No. 04-202-1-434/2008 dated 12 August 2008; Death certificate for **Mirsad Fazlić (son of Ismet)**, No. 04-202-1-435/2008 dated 12 August 2008; Death certificate for **Kemal Garibović (son of Hamdija)**; No. 04-202-1-436/2008 dated 12 August 2008; Death certificate for **Osman Hasanagić (son of Hasan)**, No. 04-202-1-437/2008 dated 12 August 2008; Death certificate for **Ismet Hirkić (son of Husein)**, No. 04-202-1-438/2008 dated 12 August 2008; Death certificate for **Rifet Hirkić (son of Husein)**, No. 04-202-1-399/2008 dated 8 August 2008; Death certificate for **Midhet Hodžić (son of Fehim)**, No. 04-202-1-4590/2008 dated 11 August 2008; Death certificate for **Ahmet Hodžić (son of Husein)**, No. 04-202-1-4591/2008 dated 11 August 2008; Death certificate for **Hajro Ičić (son of Huska)**, No. 04-202-1-441/2008 dated 12 August 2008; Death certificate for **Armin Jakupović (son of Mustafa)**, No. 04-202-1-442/2008 dated 12 August 2008; Death certificate for **Sakib Kljajić (son of Ahmet)**, No. 04-202-1-4513/2008 dated 7 August 2008; Death certificate for **Himzo Marošlić (son of Redžo)**, No. 04-202-1-405/2008 dated 8 August 2008; Death certificate for **Ejub Medić (son of Abaz)**, No. 04-202-1-482/2008 dated 12 August 2008; Death certificate for **Asmir Memić (son of Mehmed)**, No. 04-202-1-413/2008 dated 8 August 2008; Death certificate for **Idriz Muretčehajić (son of Haso)**, No. 04-202-1-404/2008 dated 8 August 2008; Death certificate for **Nihad Memić (son of Sulejman)**, No. 04-202-1-445/2008 dated 12 August 2008; Death certificate for **Husein Mujkanović (son of Hamdija)**, No. 04-202-1-446/2008 dated 12 August 2008; Death certificate for **Senad Mujkanović (son of Esad)**, No. 04-202-1-447/2008 dated 12 August 2008; Death certificate for **Mehmed Muretčehajić (son of Derviš)**, No. 04-202-1-449/2008 dated 12 August 2008; Death certificate for **Bajazid Saldumović (son of Hamza)**, No. 04-202-1-450/2008 dated 12 August 2008; Death certificate for **Nedžad Zulić (son of Latif)**, No. 04-202-1-453/2008 dated 12 August 2008; Death certificate for **Šerif Blažević (son of Suljo)**; No. 04-202-1-458/2008 dated 12 August 2008; Death certificate for **Almir Fazlić (son of Refik)**, No. 04-202-1-4498/2008 dated 7 August 2008; Death certificate for **Seid Vahabović (son of Miralem)**, No. 04-202-1-650/2008 dated 8 December 2008; Death certificate for **Edin Fazlić (son of Hilmija)**, No. 04-202-1-463/2008 dated 12 August 2008; Death certificate for **Elvin Kauković (son of Mehmed)**, No. 04-202-1-651/2008 dated 8 December 2008; Death certificate for **Ahmet Krkić (son of Salih)**, No. 04-202-1-649/2008 dated 8 December 2008; Death certificate for **Fadil Blažević (son of Ibrahim)**, No. 04-202-1-459/2008 dated 12 August 2008; Decision of the Prijedor Basic Court, No. R:784/02 dated 20 August 2002; Record of the Prijedor Basic Court, No. R:784/02 made on 20 August 2002; Decision of the Prijedor Basic Court, No. R:290/02 dated 26 November 2002; Record of the Prijedor Basic Court, No. R:290/02 made on 6 August 2002; Decision of the Prijedor Basic Court, No. R:157/2000 dated 26 March 2000; Record of the Prijedor Basic Court, No. R:157/2000 made on 26 March 2000; Record on forensic medicine examination of bodies in the location of Korićanske stijene, village of Korićani, Kneževo Municipality, dated 31 August 1992; Record on exhumation by the Cantonal Court Travnik, No. Kri-8/03 dated 12 June 2003, with the sketch of the site and photo documentation; Photo documentation – examination of the remains of bones exhumed in the location of Korićanske stijene, KRI: 8/93 dated 11 June 2003; Forensic

medicine analysis of mortal skeletal remains from the location of Korićanske stijene - Vlašić, Skender Vakuf Municipality, June 2003, certified court expert, Dr. Sabiha Silajdžić Brkić; Cover document of the Banja Luka Public Security Center (CJB), Crime Police Sector, No. PP/164/99 dated 4 February 2004, with the attached Record on exhumation, No. 10-02/4.1-6/2/03 dated 21 May 2003, and photo documentation; Cover document of the Banja Luka CJB, Crime Police Sector, No. PP/164/99 dated 12 February 2004, with the attached Record on exhumation, No. 10-02/4.1-/286 dated 3 October 2003, with the sketch of the site, photo documentation and Report on crime scene investigation; Photo documentation of the Bihać Canton Ministry of the Interior, No. 72/03 – exhumation of 4 unidentified bodies, Korićani - I, Skender Vakuf Municipality, 3 October 2003, with the sketch of the site; Final report on autopsy of Seid Vehabović (son of Miralem) by Primarius Dr Miroslav Rakočević; Final report on autopsy of Edin Fazlić (son of Hilmija) by Primarius Dr Miroslav Rakočević; Report on re-autopsy of Elvin Kauković (son of Mehmed) by Primarius Dr Miroslav Rakočević; Final report on autopsy of Ahmet Krkić (son of Salih) by Primarius Dr Miroslav Rakočević; Photo documentation of the site where the remains of human bones were found in the location of Korićanske stijene – site of execution of 210 persons, Bosniak Muslims, dated 12 July 1996; Photo documentation of the site where the crime was committed and of the remains of human bodies and clothes (attachments: 4) – description of the photo documentation; DNA report for **Rasim Avdić (son of Sulejman)**, No. KRI-8/03 No. 149, dated 24 November 2003; DNA report for **Ahmet Blazević (son of Hamdija)**, No. KRI-8/03 No. 147, dated 24 November 2003; DNA report for **Mustafa Blazević (son of Edhem)**, No. KRI-8/03 No. 76, dated 2 March 2004; DNA reports for **Zijad Cejvan (son of Ibrahim)**, No. KRI-8/03 No. 33, dated 14 November 2003, No. 98, dated 13 November 2003 and No. 146, dated 8 December 2003; DNA report for **Hajrudin Elezović (son of Salih)**, No. KRI-8/03 No. 92, dated 10 November 2003; DNA report for **Jasmin Elezović (son of Hajrudin)**, No. KRI-8/03 No. 39, dated 3 June 2005; DNA report for **Mirsad Gutić (son of Hasan)**, No. KRI-8/03 No. 95, dated 8 November 2003; DNA report for **Šefik Hirkić (son of Husein)**, No. KRI-8/03 No. 124, dated 26 November 2003; DNA report for **Zuhdija Kadirić (son of Meho)**, No. KRI-8/03 No. 42, dated 14 September 2004; DNA reports for **Abaz Kulasić (son of Omer)**, No. KRI-8/03 No. 12, dated 24 November 2003, No. 21, dated 8 November 2003, No. 29, dated 8 November 2003, No. 37, dated 8 November 2003 and No. 111, dated 8 March 2004; DNA reports for **Himzo Maroslić (son of Redžo)**, No. KRI-8/03 No. 26, dated 6 May 2004, No. 119, dated 5 December 2003, No. 127, dated 8 March 2004, and No. 127, dated 8 December 2003; DNA reports for **Alija Mehmedagić (son of Beco)**, No. KRI-8/03 No. 43, dated 8 December 2003, and No. 121, dated 8 December 2003; DNA reports for **Himzo Mrkalj (son of Omer)**, No. KRI-8/03 No. 142, dated 13 February 2004, and No. 155, dated 16 April 2004; DNA report for **Idriz Muretčehajić (son of Hase)**, No. KRI-8/03 No. 113, dated 6 May 2004; DNA reports for **Merzuk Sivac (son of Ibrahim)**, No. KRI-8/03 No. 109, dated 21 January 2004, No. 131, dated 21 January 2004, and No. 150, dated 17 March 2004; DNA reports for **Kasim Sivac (son of Šefik)**, No. KRI-8/03 No. 96, dated 11 December 2005, and No. 129, dated 11 February 2005; DNA report for **Omer Sljivar (son of Halil)**, No. KRI-8/03 No. 7, dated 8 November 2003; DNA report for **Sakib Trnjanin (son of Bejdo)**, No. KRI-8/03 No. 40, dated 11 February 2005; DNA report for **Nedžad Zulić (son of Latif)**, No. KRI-8/03 No. 115, dated 11 December 2003, and No. 156, dated 2 December 2003; DNA reports for **Edin Elezović (son of Muharem) - Emir Elezović (son of Muharem)**, No. KRI-8/03 No. 46, dated 8 November 2003, and No. 136, dated 31 March 2004; DNA reports for **Edin Sivac (son of Munib) - Nedžad Sivac (son of Munib)**,

No. KRI-8/03 No. 91, dated 6 May 2004, and No. 112, dated 8 November 2003; Two black and white photographs of the team for the terrain clear-up; List of intervention platoons; Public Security Station (SJB), Prijedor Police Station, List of police employees for the calculation of salaries in the period from 16 March to 15 April 1992; Prijedor SJB, Prijedor RSM (Reserve Police Station) - Center, List of the members of the Reserve Police (for the payment of salaries) engaged in May 1992; Report on overtime work hours, Prijedor Police Station, No. 11-11/1-1__/90; RSM Prijedor - Center, List of the members of the Reserve Police for July 1992 /employed/; RSM Prijedor - Center, List of the members of the Reserve Police for July 1992 /unemployed/; Objection to the calculation of salary for Miroslav Paraš dated 31 July 1992; List of authorized employees of the Prijedor Police Station No. 11-12/01-1-strictly confidential number 41/92 dated 13 August 1992; Prijedor RSM - Center, List of the members of the Reserve Police for August 1992 /unemployed/; List of the Prijedor Public Security Station employees in August 1992; RSM Prijedor - Center, List of the members of the Reserve Police for September 1992 /unemployed/; Cover document of the Prijedor SJB with the list of the Reserve Police members – men liable for military service, No. 11-12-154 dated 7 September 1992; Corrections to the list of the RSM for October; Interim operational report No. 21/08 of the 22nd Light Infantry Brigade Command No. 43/4 dated 21 August 1992; Combat report of the 1st Krajina Corps Command, strictly confidential No. 44-1/314 dated 22 August 1992; Regular Combat report of the 1st Krajina Corps Command, strictly confidential No. 44-1/315; Mićo Stanišić's Order dated 31 August 1992; Dispatch note by the Security Service Center (CSB), Banja Luka Public Security Service Sector (SSJB), No. 11-1/02-2/345 dated 11 September 1992; Dispatch note by the Prijedor SJB, No. 11-12-2267 dated 14 September 1992; Dispatch note by the CSB, Banja Luka SSJB, No. 11-1/02-2/370 dated 7 October 1992; Dispatch note by the Prijedor SJB, No. 11-12-2344 dated 13 October 1992; Criminal report of the Banja Luka CSB, No. 11-1/02-230-dated 8 September 1992; Motion for undertaking certain investigative actions by the Banja Luka Basic Public Prosecutor's Office, No. KTN 2293/92 dated 14 September 1992; Document of the Basic Court in Banja Luka dated 24 September 1992; Request for the collection of necessary information by the Banja Luka Basic Public Prosecutor's Office, No. KTN 2293/92 dated 30 September 1992; Document of the 1st Krajina Corps Command (IKM), No. 604-1/92 dated 16 October 1992, with the attached list; Dispatch note by the Prijedor SJB, No. 11-12-97 dated 10 February 1993; Instruction on organization and operations of the authorities of the Serb people in Bosnia and Herzegovina in extraordinary circumstances, dated 19 December 1991 - variant A and variant B; Decision on strategic goals of the Serb people in B-H, dated 12 May 1992, published in the *Official Gazette of Republika Srpska* No. 22, dated 26 November 1993; Order of the Prijedor SJB Chief, No. 11-12-20 dated 31 May 1992; Information on the execution of conclusions, decisions and orders of the Banja Luka CSB – Prijedor SJB, No. 11-12-13 dated 3 September 1992; the January 2003 Report on the work of the Prijedor SJB for the last nine months of 1992; Excerpt from the criminal records of the Prijedor SJB, No. 08-1-10/02-2-236-235/49-36/08 dated 4 August 2008; Death certificate for Miroslav Paraš (son of Stevo), No. 04-202-1-6470/2008 dated 21 October 2008; Death certificate for Željko Bulić (son of Nikola), No. 04-202-1-6471/2008 dated 21 October 2008; Military ID for Damir Ivanković, No. 173941 with the issuance date of 31 March 1987; Certificate of injury by the Prijedor Public Security Station, No. 11-12-74 dated 27 October 1992; Certificate by the Personnel Service of the Military Post Office 3670 Prijedor, Int. No. 716-20/395 dated 30 October 1992; Master File and Unit Record for Damir Ivanković, son of Ivan.

The Defense for the Accused Damir Ivanković did not present any evidence.

3. Closing arguments during the reasoning of the scope of sentence

At the hearing, the Prosecutor noted as extenuating circumstances the Accused's cooperation with the Hague investigators as early as in 2002 and 2003, when the Accused contacted the investigators and testified, not concealing his own involvement, and his contacting the Prosecutor's Office of B-H in 2006 to be prosecuted. She also stressed his sincere remorse and testifying, the fact that he had no prior conviction and his readiness to apologize to the injured parties.

The Defense Counsel for the Accused stressed the same extenuating circumstances, adding that the Accused gave an enormous contribution to the clarification of this case although aware that by testifying he would expose himself and his family to danger, and that he had become a member of the intervention platoon in order to protect himself and his parents, given the fact that he had been the only Croat there, that he was unemployed, indigent, and married with an underage child. Finally, the Defense Counsel moved the Court to mete out an appropriate but not too strict punishment and that the costs of the proceedings be paid from the budget of the Court.

4. Applicable Law

By signing the Agreement No. KT-RZ-48/06 on 22 June 2009, the Accused Damir Ivanković admitted guilt for the commission of the criminal offense of Crimes against Humanity, that is, for the criminal offense that was not explicitly defined as such in the Criminal Code of the Socialist Federal Republic of Yugoslavia that was in effect at the time of the commission, but is defined in the Criminal Code of B-H now in effect.

The issue of applicability of the CC B-H is regarded in the context of its Article 4a and Article 7 of the European Convention on Human Rights and Fundamental Freedoms, with particular emphasis on the "general principles of international law", in terms of Article 3 and 4 of the CC B-H. Since Crimes against Humanity constituted a criminal offense in the relevant period as well, application of the Criminal Code of B-H is the only option. This view has been confirmed in the jurisprudence of the Court of B-H¹ and the Decision of the Constitutional Court of B-H in the case of Abduladhim Maktouf².

5. Findings of the Court

a) *Chapeau* Elements of Crimes against Humanity

¹ Inter alia, the first instance verdict and the second instance verdict in the *Dragoje Paunović* case, No. X-KR-05/16 of 26 May 2006.

² Decision on Admissibility and Merits of the Constitutional Court in the case of Abduladhim Maktouf, No. AP1785/06 of 30 March 2007.

The Indictment by the Prosecutor's Office of B-H charges the Accused with the commission of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e) and (k) of the CC B-H, which read:

"Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

- a) Depriving another person of his life (murder);*
- d) Deportation or forcible transfer of population;*
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offense listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina;*
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,*

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

The following *chapeau*, or general, elements stem from the legal definition of the criminal offense of Crimes against Humanity:

- i. The existence of a widespread or systematic attack;
- ii. The act was committed as part of the attack;
- iii. The attack was directed against any civilian population;
- iv. The Accused had knowledge of the attack.

i. The existence of a widespread or systematic attack

The existence of the attack in terms of commission of violent acts is required to meet this general element of the referenced criminal offense, which acts do not have to include the use of armed force and can imply any mistreatment of civilian population³, but it must be a widespread or systematic attack, that is, a widespread or systematic practice of committing crimes, not an isolated or random event. Such an attack must be large-scale in nature and directed against a huge number of persons (*widespread*)⁴, or must refer to the organized nature of the acts of violence (*systematic*)⁵, both types being listed alternatively, which means that it suffices to satisfy only one. Consequently, murder, deportation, imprisonment, and persecution on national, religious or ethnic ground shall be defined as crimes against humanity only if they constitute a part of such practice. On the other hand, widespreadness and systematicity do not pertain to the very act of the Accused, that is, a single or a limited number of acts on the part of the Accused would qualify as a crime against humanity.⁶

³ Appeals Chamber Judgment in the *Kunarac et al.* case (June 2002), paras. 86 and 89.

⁴ Trial Chamber Judgment in the *Tadić* case (May 1997), para. 648.

⁵ Appeals Chamber Judgment in the *Kunarac et al.* case (June 2002), para. 94.

⁶ Appeals Chamber Judgment in the *Kunarac et al.* case (June 2002), para. 96.

With respect to the existence of this element in the case at hand, the Court was guided by the facts established in the respective ICTY Judgments in the cases against Duško Tadić, Miroslav Kvočka et al., Milomir Stakić, and Radoslav Brđanin. The Court partially admitted these facts following the Motion by the Prosecutor's Office.⁷

Also, the majority of the examined witnesses, as well as the Accused, testified on the circumstances and situation in Prijedor from the spring to the end of 1992, thus providing the Trial Panel with a clear picture of the existence of a widespread and systematic attack in Prijedor Municipality in the relevant period.

ii. The act was committed as part of the attack

The following element required for the existence of Crimes against Humanity is that the acts of the Accused form part of a widespread and systematic attack. Therefore, there must exist a nexus between the acts of the Accused and the attack. In this respect, the ICTY Appeals Chamber in the *Kunarac et al.* case concluded that this element is not met if the act, having considered the context and circumstances in which it was committed, is so far removed from that attack that it cannot reasonably be said to have been part of the attack.⁸

That is to say, Damir Ivanković knew that his acts were part of the attack, which follows clearly from the fact that he had previously also participated in escorting several convoys with Croats and Muslims from Prijedor, which was almost a regular occurrence in the relevant period.

iii. The attack was directed against any civilian population

The attack, therefore, must be directed against civilian population, which implies an analysis of several concepts, that is, explanation of each concept constituting this element. Although there was no uniform opinion in the beginning of the Hague jurisprudence as to who was to be considered a civilian, the Appeals Chamber in the *Blaškić* case considered that "a civilian" is any person who is not a member of the armed forces, militias or volunteer corps that constitute a part of the armed forces, or the organized resistance movements under certain conditions⁹, adding that presence of soldiers among civilians does not alter the civilian nature of that population.¹⁰

Here the "population" is understood to mean a certain sufficient number of individuals, not necessarily the entire population of a geographical entity, that is, it is necessary to establish that the attack was not directed against a limited and randomly selected number of individuals.¹¹

⁷ Decision on Established Facts, No. X-KR-08/549 of 29 June 2009.

⁸ Appeals Chamber Judgment in the *Kunarac et al.* case (June 2002), para. 100.

⁹ Appeals Chamber Judgment in the *Blaškić* case (July 2004), para. 113.

¹⁰ *Ibid.*, para. 115.

¹¹ Appeals Chamber Judgment in the *Kunarac et al.* case (June 2002), para. 90.

Finally, civilian population must be the primary rather than an incidental target of the attack.¹²

All presented evidence clearly leads to the conclusion that the target of the attack was the Bosniak and Croat civilian population of Prijedor Municipality, that is, that the persons executed at the location of Korićanske stijene were civilians, which all examined witnesses confirmed beyond any doubt, both the witnesses who were on the convoy and the ones who were escorting the convoy. Anyway, this was also confirmed by the witnesses who were at the execution site in the following days, including the Accused.

v. The Accused had knowledge of the attack

To meet this general element of Crimes against Humanity it is necessary that the perpetrator knew that his acts formed part of a widespread and systematic attack directed against civilian population, that is, that the perpetrator had the knowledge of such an attack and that his acts formed part of that attack.

It follows clearly from the Accused Ivanković's testimony and all the other presented evidence that he had the knowledge of the attack. Also, the very fact that Damir Ivanković was a member of the intervention platoon in the relevant period indicates that by participating in the platoon's operations he had to be aware of the events in the Prijedor region.

b) *Actus reus* and other elements

The Accused is charged that in the relevant period, he knowingly participated in the joint criminal enterprise of the civilian and military authorities of Prijedor Municipality with a view to persecuting Bosniak and Croat civilians and committing crimes against them, as follows: a) depriving another person of his life (murder); d) deportation or forcible transfer of population; e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health.

The necessary element for the existence of persecution is that the Accused committed the referred acts with discriminatory intent, that is, the intent to persecute the victims on political, racial, religious or some other illegitimate ground. Therefore, in addition to the general intent required for Crimes against Humanity, also required is the existence of discriminatory intent.

a) Murder as a crime against humanity means that death occurred as a result of the act or omission on the part of the Accused, that is, that the act of the Accused was a significant cause of the victim's death, provided, naturally, that it also meets the general elements of Crimes against Humanity, that is, that the murder was committed as part of a widespread and systematic attack against civilian population that the Accused was aware of.

¹² *Ibid.*, para. 92.

d) Illegal deportation or forcible transfer means forced displacement of a population from the area in which it is lawfully present to another country or within the same country, without grounds permitted under international law. In addition to the existence of the general elements of Crimes against Humanity, also required is the intent of the Accused to transfer persons on a non-provisional basis.¹³

e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law means, in addition to other general elements, unlawful deprivation of an individual or more persons of his or their liberty. Of the subjective elements, there must exist the intent to deprive an individual of his liberty or the reasonable knowledge that the act or omission is likely to cause arbitrary deprivation of physical liberty.¹⁴

k) Other inhumane acts of a similar character include every act by which great suffering or serious injury to body or to physical or mental health is caused, which the perpetrator committed with the intent to cause such injury to the victim and where such act was committed as part of a widespread and systematic attack against civilian population that the Accused had the knowledge of.

Joint criminal enterprise, as a mode of individual responsibility, includes cases in which all participants possess the same intent to effect the common purpose and undertake certain acts to that objective.¹⁵

It follows from the statements of all the witnesses examined hitherto, as well as all presented documentary evidence, that Ivanković, together with other persons, knowingly participated in escorting the convoy on 21 August 1992 and that he was present on the relevant occasion at the location known as Korićanske stijene. When this is considered in combination with the statement of the Accused Damir Ivanković, it leads to the conclusion that there is sufficient evidence of his guilt for the persecution of the Bosniak and Croat population and the commission of crimes against them, including the execution of civilians by fire in the manner described in the Indictment.

Therefore, the Panel concludes beyond reasonable doubt that the act of the Accused meets the elements of the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), in conjunction with Subparagraphs (a), (d), (e), and (k) of the CC B-H, and that he is individually responsible for the commission of the act, as referred to in Article 180(1) of the CC B-H.

7. Sentencing

When deliberating on the criminal sanction for the Accused, the Panel took as the starting point the gravity of the offense that the Accused Damir Ivanković is charged with and the degree of his criminal liability, after which it considered the purpose of punishment and all

¹³ Appeals Chamber Judgment in the *Stakić* case (March 2006), para. 319.

¹⁴ Trial Chamber Judgment in the *Krnojelac* case (March 2002), para 115.

¹⁵ Appeals Chamber Judgment in the *Kvočka et al.* case (February 2005), para. 82.

aggravating and extenuating circumstances, whereupon it pronounced the sentence of imprisonment for the term of 14 years.

The Court had in mind the fact that by admitting guilt, the Accused faced the consequences of his actions, which constitutes the key aspect of the admission of guilt even if it has been done by way of plea agreement, as is the case here. This admission of guilt does not only help establish the truth, given the fact that the Accused has significantly contributed to it with his testimony, but also helps reconciliation in this region, which the Panel believes in and which had a significant effect on determining the importance that should be attached to the admission of guilt to the purpose of reducing the punishment.

It is absolutely certain that some may consider this sentence to be too lenient, the others too strict. However, the Panel deliberated on the range between 8 and 15 years (as envisaged in the Agreement) and concluded that the sentence of imprisonment for the term of 14 years is appropriate, given the admission of the Accused Damir Ivanković and his cooperation with the prosecution authorities in finding the truth, not just about the event concerned, but about all the other events in this region as well, and that it will suffice to achieve the purpose of sentencing in this case.

The Court accepts his sincere remorse, given the fact that from 2002 the Accused testified as a witness in the cases before the Hague Tribunal not only about this event, but also about many other events in Bosnia and Herzegovina during the war. Therefore, that important cooperation with the Hague Tribunal's Office of the Prosecutor and the Hague investigators, as well as with the Prosecutor's Office of B-H, is an extenuating circumstance for the Accused that the Court had in mind when meting out the punishment.

Naturally, the Court also considered all the other circumstances determining the scope of the sentence, including the fact that the Accused is a family man, father of an underage child and that he had no prior convictions, which constitute extenuating factors that in their totality justify the imposed sentence, especially since the Court did not find any aggravating circumstance.

Taking the foregoing in consideration, the Court found that the purpose of sentencing shall be fully achieved with the Accused by the sentence of imprisonment for the term of 14 years, hence, pursuant to Article 39, 42 and 48 of the CC B-H, it decided as quoted in the operative part of the Verdict. Pursuant to Article 56 of the CC B-H, the time the Accused spent in custody from 14 January 2009 to 2 July 2009 shall be credited towards the sentence of imprisonment.

8. Decision on the costs of the proceedings and claims under property law

Pursuant to Article 188(4) of the CPC B-H, the Accused is relieved of the duty to reimburse the costs of the proceedings, since the evidence on the Accused's financial standing and the fact that he is unemployed, that is, without regular monthly income, indicate that duty to reimburse the complete costs of the proceedings might jeopardize his and his family's subsistence.

When deciding to refer the wounded and the families of the killed victims to take civil action with possible claims under property law, the Court was guided by the fact that establishing the amount of the claims would take a long time, which would mean a delay in the proceedings, hence, the decision pursuant to Article 198(2) of the CPC B-H was rendered.

RECORD TAKER-LEGAL ADVISOR
EMIL PINKAS
[signature affixed]

PRESIDING JUDGE OF THE PANEL
MINKA KREHO
[signature affixed]
[seal of the Court of B-H affixed]

LEGAL REMEDY: An appeal from this Verdict may be filed within 15 days from the day of the receipt thereof, but the decision on the sentence cannot be appealed.

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

Sarajevo, 22 July 2009
Edina Neretljak
Certified Court Interpreter for the English Language