

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

COURT OF BOSNIA AND HERZEGOVINA

Case No.: S1 1 K 005596 11 Kro
Date: **Delivered:** 31 May 2011
Written copy sent out on: 22 June 2011

Before: Preliminary Hearing Judge: Judge Davorin Jukić

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

vs.

Miroslav Anić

VERDICT

Counsel for the Prosecutor's Office of Bosnia and Herzegovina:
Slavica Terzić, Prosecutor

Counsel for the defendant:
Attorney Dušan Tomić

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, Preliminary Hearing Judge Davorin Jukić, with the participation of the Legal Officer Emira Hodžić as the Record-Taker, in the criminal case against the accused Miroslav Anić, for the criminal offence of War Crimes against Civilians, in violation of Article 173(1)(c) and (f) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), all in conjunction with Articles 29 and 31 of the CC of BiH and Article 180(1) of the CC of BiH, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No. T 20 0 KT RZ 0000 06, of 18 March 2011, as corrected on 12 April 2011 and confirmed on 13 April 2011, following the consideration and admission of the Plea Agreement concluded between the Prosecutor's Office of BiH and the accused Miroslav Anić on 18 March 2011 and the sentencing hearing held in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Slavica Terzić and the accused Miroslav Anić, on 31 May 2011 rendered and publicly pronounced the following:

VERDICT

THE ACCUSED:

MIROSLAV ANIĆ, a.k.a. "Firga", son of Mijo and Finka nee Vukadin, born on 9 July 1971 in Sarajevo, with residence in ..., JMBG: ..., ethnic ..., citizen of ..., lathe operator by occupation, literate, completed Secondary School of Mechanical Engineering, married, father of a minor child, completed military service in 1990/91 in Varaždin, lance corporal in the JNA, held a rank of lieutenant in the 1992-95 war, ranked after the end of war, no decorations, of average financial standing, according to him convicted in ... and sentenced to ... for the criminal offence of ..., served the sentence in ..., proceedings pending against him before the District Attorney's Office in Split for the criminal offence of War Crimes committed in the territory of BiH, **in custody since 1 November 2010 upon the Decision of the Court of Bosnia and Herzegovina, No. X-KRN-05/68 of 3 November 2010;**

IS GUILTY

Inasmuch as:

During the war in Bosnia and Herzegovina and during the armed conflict in Kiseljak and Vareš between the Croat Defense Council and the Army of the Republic of Bosnia and Herzegovina, in mid-June 1993 in the area of Kiseljak Municipality, in the villages of Grahovci and Han Ploča and the weekend settlement of Luke, as well as on 23 October 1993 in the area of Vareš Municipality, in the village of Stupni Do, as a member of the Special Purpose Unit called *Maturice* subordinated to the *Josip ban Jelačić* Brigade, operating within the 3rd Operations Zone of the Kiseljak Croat Defense Council, commanded by Ivica Rajjić, he acted in violation of the rules of international humanitarian law, specifically Articles 3, 16 and 33 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, which prohibits violence to life, health and physical or mental well-being of persons, in particular murder, inhumane treatment, any form of torture, plundering or destruction of private property, inasmuch as he:

1. In mid-June 1993, during the period from 12 June until 17 June 1993, having received an order from the commander Ivica Rajjić to kill the Bosniak population in the village of **Grahovci and Han Ploča**, knowing of such an order and with the view to executing it, **the accused Miroslav Anić**, together with other members of the *Maturice* Special Purpose Unit, including Marinko Ljoljo, Dominik Ilijašević a.k.a. Como, Ljupko Anić a.k.a. Šmrljo, Marinko Stojanović a.k.a. Marinkača as well as other HVO members, participated in the armed infantry attack on the **village of Grahovci**; he entered the village of Grahovci and in the basement of Raif Abduli's house found a group of Bosniak civilians, including men, women and children who were ordered to get out in front of the house; all civilians had to obey the order, except for the old lady Ramiza Omerović who, due to ill health, could not leave the mentioned house and whose mortal remains were found and exhumed in the mentioned house after the war; once they got out in front of the house men were separated from women and children, and women and children were escorted towards the neighborhood of Draževići, on which occasion Nefisa Omerović failed to keep pace because her state of health prevented her from walking fast and

keeping up with the column and that was the last time she was seen alive and her mortal remains have not been recovered yet, while men, namely: Sakib Duharkić, Nihad Duharkić, Edhem Jusić, Enver Jusić, Ismir Beganović, Raif Abdul, Rasim Osmanović and Avdija Duharkić remained lined up in the close proximity of Raif Abdul's house; **the accused Miroslav Anić** came in front of these men, pointed an automatic rifle at them and with the intention of killing them he shot at the lined-up men who fell on the ground due to injuries they sustained during the shooting; **in such a manner he killed Sakib (son of Ramiz) Duharkić, Nihad (son of Munib) Duharkić, Edhem (son of Ćamil) Jusić, Enver (son of Husnija) Jusić, Ismir (son of Edhem) Beganović, Raif Abdul, Rasim Osmanović and Avdija (son of Smajo) Duharkić** and then **the accused Miroslav Anić**, together with other members of *Maturice*, launched infantry attack on the **village of Han Ploča**, mopped up the village and rounded up the civilians, including women, children and men in the village of Han Ploča, on which occasion the civilians were mistreated and beaten; while rounding up men near Seid Husejnović's house he, together with other HVO members, fired shots from automatic weapons and killed Mumin Kečo a.k.a. Fadil and rounded up most of other civilians on the road at the entrance to the village of Han Ploča where they separated men from women and children; so around 20 men were brought in front of Ahmet Duharkić's house, where members of the *Maturice* Special Purpose Unit opened fire from automatic rifles and shot them in front of the garage and in the garage of Ahmet Duharkić's house; the **accused Miroslav Anić** also took part in the killing **in the manner** that when he saw that several men in the garage were showing signs of life he pointed his automatic rifle at them and with the intention of killing them he shot at those men, and the whole group of men who had been brought there was killed in such a manner, among whom were the following: **Huso (son of Emin) Duharkić, Nedžib (son of Sulejman) Bučan, Halid (son of Salko) Husejnović, Kenan (son of Halid) Husejnović, Miralem (son of Ibrahim) Bajraktarević, Mujo (son of Alija) Šišić, Omer (son of Halil) Drkić, Fazlija Dedić, Omer (son of Lutvo) Neretljak, Ferid (son of Omer) Neretljak, Munib (son of Omer) Uzunović, Ismet (son of Omer) Uzunović, Asim (son of Omer) Uzunović, Amir (son of Ismet) Uzunović, Muris (son of Meho) Uzunović, Našid (son of Suljo) Šišić and several other Bosniak men**, at which point he left the scene while other members of the unit set fire to Ahmet Duharkić's garage with the bodies of the killed men in there, and the mortal remains of the killed men have not been recovered yet;

2. On 24 June 1993 in the weekend settlement of Luke, Kiseljak municipality, located on the Kiseljak-Lepenica road, once he, together with **Zoran Ljevak** and one more HVO soldier, came by an Opel Askona vehicle, which had previously been seized from the father of witness KV-2, in front of the weekend house in that settlement, at which Bosniak civilians from adjacent village had taken refuge, including **witness KV-2**, and got out of the vehicle, they raided the weekend house and searched it, at which point they took witness KV-2 out of the weekend house and **the accused Miroslav Anić** started beating witness KV-2 by hitting him with punches, kicks and rifle butts all over his body, in which process he also knocked out his tooth; then, by cursing his balija's mother, he held a big knife at his throat, grabbing him by his hair and threatening he would slit his throat, asking for money and weapons from witness KV-2; in such a manner he inflicted severe mental and physical pain and suffering upon witness KV-2, whereupon all three took witness KV-2 by car to his house and the **accused Miroslav Anić** beat him in the house again, asking for money and weapons from him and again held a knife at his throat threatening he was going to slit his throat; having received no answers they drove witness KV-2 to a weekend settlement near Kobiljača in order to find one more person of Bosniak ethnicity, and once they failed to do so they returned witness KV-2 to his house again, where Zoran Ljevak remained while the **accused Miroslav Anić**, together with a soldier known to him, drove witness KV-2 to the very entrance to the neighbourhood of Grahovci, stopped the vehicle between two stables which were the only buildings that were not burned down in the village of Grahovci at the time; at that point they took out witness KV-2 from the vehicle and while doing so **the accused Miroslav Anić** had his automatic rifle pointed at witness KV-2 and by holding the rifle pointed at the chest of witness KV-2 he ordered him to stand against the stable wall, but witness KV-2 seized on Firga's momentary lapse in attention and managed to run away, although he was shot at; in this manner they inflicted severe mental pain and suffering upon witness KV-2.

3. On 23 October 1993 in the morning hours, after members of the *Maturice* and *Apostoli* Special Purpose Units from Kiseljak came to the area of Vareš municipality in order to take control over and destroy the village of Stupni Do, and after members of the local *Bobovac* HVO Brigade from Vareš were allocated to be their guides in Vareš for that purpose, **the**

accused Miroslav Anić, together with other members of the *Maturice* and *Apostoli* Special Purpose Units, as well as with the assigned guides, attended the line-up of troops in the place of Ponikve, Vareš municipality, on which occasion Ivica Rajić gave an order to destroy everything in the settlement of Stupni Do and that there should be no live witnesses, whereupon Ivica Rajić, in order to control the execution of the order, was near Stupni Do together with Marinko Ljoljo who, via a *Motorola* hand-held radio set that group leaders had, contacted group leaders and coordinated the execution of the operation, since, in order to execute the order given by Ivica Rajić, **the accused Miroslav Anić** was assigned to lead one group of *Maturice* members, while the other group of *Maturice* was led by Dominik Ilijašević a.k.a. Como, commander of the *Maturice* Special Purpose Unit, and Marinko Kepić led one group of *Apostoli* and Slavo Antić led another group of 17 HVO members; being led by the assigned guide he, together with the group assigned to him, launched an infantry attack on the village of Stupni Do; when entering the village of Stupni Do and after Dominik Ilijašević a.k.a. Como, with the group assigned to him, managed to take control over the Bogoš hill, overlooking the village of Stupni Do, attack and enter the village after that, these groups met in the village; at the time the village was attacked **the accused Miroslav Anić** participated in the killing of local residents of Stupni Do by shooting the locals from automatic rifle together with other members of the *Maturice* and *Apostoli* Special Purpose Units; they killed 38 civilians of the Stupni Do village, namely: **Nevzeta Likić, Merima Likić, Lejla Likić, Hatidža Likić, Rašida Likić, Munira Likić, Raifa Likić, Šerifa Likić, Rasema Likić, Đeva Likić, Zahida Likić, Minheta Likić, Refika Likić, Šerifa Lulić, Mehmed Likić, Rifet Likić, Abdulah Likić, Muamer Likić, Salih Likić, Edin Mahmutović, Zejnil Mahmutović, Salih Likić, son of Bajro, Samir Rahić, Šefkija Likić, Alija Likić, Nazif Likić, Ibrahim Likić, Ramiz Likić, son of Osman, Ramiz Likić, son of Salih, Vernest Likić, Enis Likić, Medina Likić, Mambrura Likić, Sabina Likić, Vahidin Likić, Adis Likić, Indira Žutić** and one unidentified female person, at which point other members of the *Maturice* and *Apostoli* Special Purpose Units threw the bodies of the killed civilians into several houses, which were thereafter plundered, poured with gasoline and set on fire as well as 58 other houses and the village mosque, while a smaller group of civilians was locked up in Edin Mahmutović's house, which was then set on fire; eventually these civilians did manage to leave the house alive.

Therefore, during the war in Bosnia and Herzegovina, during the armed conflict between the HVO and the Army of the Republic of B-H, having violated the rules of international humanitarian law, specifically Article 3(1) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he committed killings and participated in and aided the perpetration and preparation of the criminal offences of killing, torture, inhumane treatment, destruction and plundering of civilian property,

Whereby Miroslav Anić committed the criminal offence of War Crimes against Civilians under Article 173, paragraph 1, subparagraphs c) and f) of the Criminal Code of Bosnia-Herzegovina, as read with Articles 29 and 31 of the Criminal Code of BiH and Article 180(1) of the CC of BiH.

Consequently, for this offence, pursuant to the same provisions of the law, applying Articles 39, 42 and 48 of the CPC of BiH, the Court

SENTENCES

THE ACCUSED TO 15 (fifteen) YEARS OF IMPRISONMENT

Pursuant to Article 56(1) of the CC of BiH, the time the Accused spent in custody starting from 1 November 2010 until his referral to serve the prison sentence shall be credited towards the imprisonment sentence.

Pursuant to Article 188, paragraph 4, of the CPC of BiH, the Accused is hereby relieved of the payment of the costs of criminal proceedings, which shall be covered from within the Court's budgetary appropriations.

Pursuant to Article 198, paragraph 2, of the CPC of BiH, all injured parties are hereby instructed to address their potential property claims in a civil lawsuit.

Reasoning

I. INDICTMENT AND AGREEMENT

1. On 18 March 2011, the Prosecutor's Office of Bosnia and Herzegovina issued the Indictment No. T 20 0 KT RZ 0000 635 06 against Miroslav Anić aka "Firga". The Indictment was initially returned to the Prosecutor's Office of BiH for technical corrections and subsequently confirmed on 13 April 2011.
2. The Indictment charged Miroslav Anić with the criminal offence of War Crimes Against Civilians under Article 173(1)(c) and (f) of the CC of BiH in conjunction with Article 29, 31 and 180(1) of the CC of BiH.
3. The Prosecutor's Office enclosed with the Indictment the Plea Agreement of 18 March 2011 signed by the accused Miroslav Anić and the Prosecutor's Office of BiH in the presence of defense counsel for the Accused, attorney Dušan Tomić.
4. Article 231(1) of the Criminal Procedure Code of BiH provides that the suspect or the accused and the defense attorney may negotiate with the Prosecutor about the conditions of admitting guilt for the criminal offence with which the suspect or the accused is charged, until the completion of the main trial or the appellate proceedings. If the conclusion of the agreement occurs prior to the submission of the Indictment to the Court, the Prosecution must enclose the Agreement with the Indictment and submit it to the preliminary hearing judge. The preliminary hearing judge shall in such a case first decide on the Indictment and then start the consideration of the agreement, which has been done in this case as well.

II. CONSIDERATION OF THE PLEA AGREEMENT (ARTICLE 231 OF THE CPC OF BIH)

5. When considering the Plea Agreement, the Court reviewed all the facts prescribed in Article 231(6)(a) through (e) of the CPC of BiH. On 12 May 2011, the Court held a hearing for consideration of the Plea Agreement. The parties to the proceedings and defense counsel for the Accused, attorney Dušan Tomić, attended the hearing.
6. The Court is satisfied that the Agreement was entered into voluntarily, consciously and with understanding; that the accused is aware that by entering into the agreement he admits guilt of an offence charged against him in the Indictment; that he is aware of both the facts alleged in the Indictment and their legal qualification and that by signing the Plea Agreement he waives the right to trial and appeal from the criminal sanction that will be imposed on him.
7. Further, the Court is satisfied that the Accused is aware of all other consequences of the Agreement pertaining to property claims and that upon signing the agreement he may be obligated to pay the costs of criminal proceedings. In addition, the Accused undertook to testify, when needed, in cases pertaining to the war-time events in the Municipalities of Vareš, Kreševo and Kiseljak, which is specified in the Agreement.
8. The Court is under the statutory obligation pursuant to the Criminal Procedure Code to review the facts related to the mental state of the Accused as part of consideration of the circumstances of the Agreement. The Court reviews whether the Accused was under the influence of drugs when he signed the Agreement. The Court is aware that the Accused was subjected to expert examination upon the order of the Prosecutor's Office of BiH with the aim to establish if he was able to control his actions at the time of the commission of the offence and to comprehend the importance of the offence committed. Therefore, the Court summoned medical experts to appear at the hearing for consideration of the Plea Agreement. The experts explained their written report orally and concluded that the

Accused was fully capable to follow the course of the trial and to understand questions asked and answer them.

9. Based on the foregoing circumstances, the Court was satisfied that the Accused was fully aware of all legal effects of the Agreement.
10. The Court was mindful of the interests and rights of victims in this case, and reviewed whether the prosecutor gave the opportunity to the injured parties to make property claims. The Court reviewed the official note on the meeting between the prosecutor and injured parties from Stupni Do, Vareš Municipality, on 22 November 2010 and the record of the meeting between the prosecutor and injured parties from Han Ploča and Grahovci, Kiseljak Municipality of 9 May 2011. The Court was satisfied that the injured parties had been informed of their rights to property claims, and proposed that the Court should refer them to pursue their claims in a civil lawsuit.
11. In terms of the criminal sanction proposed, the Court has the obligation pursuant to Article 231(6)(d) CPC BiH to determine if the criminal sanction agreed is in line with statutory requirements. In this case, the Agreement proposed the sentence of imprisonment of 15 years. The Criminal Code of BiH provides for a 10-year prison sentence as a minimum sentence for the criminal offence of Crimes against Civilians, or long term imprisonment as the maximum sentence for this criminal offence. Accordingly, the proposed sentence of 15 years is in line with the statutory thresholds.
12. Having made the foregoing findings, the Court was satisfied that the Agreement met all statutory requirements and accepted the Agreement.
13. Thereupon, pursuant to Article 231(7) of the CPC of BiH, the accused Miroslav Anić made a statement of contrition and apology to victims and their families on the record.

III. EVIDENCE

14. After the Court was satisfied that the Accused was fully aware of all legal effects of the Agreement, pursuant to Article 231(6)(b) CPC BiH the Court considered if there was ample evidence of the guilt of the Accused. The Court invited the Prosecution to present and elaborate on the evidence corroborating the charges. The Prosecution presented 62 exhibits with the Indictment. The parties stipulated to all exhibits and the Accused did not have any remarks or objections thereto.

15. The Prosecution presented the following exhibits that were tendered into evidence: Witness Examination Record for **Fatima Fejzić**, number: 17-14/2-04-2-654/06 of 8 November 2006 – T1; Witness Examination Record for **Vahida Ćoralić**, number: KT-RZ 130/05 of 30 October 2006 – T2; Record on Examination of Witness **Ševala Uzunović** No. KTZ-171/09 dated 10 November 2009 – T3; Record on Examination of Witness **Ismet Uzunović** No. KT-RZ 130/05 dated 20 December 2006 – T4; Record on Examination of Witness **Kasema Jusić** No. KTZ-171/09 dated 10 November 2009 – T5; Record on Examination of Witness **Elvir Jusić** No. KTZ-171/09 dated 12 November 2009 – T6; Record on Examination of Witness **Hasija Husejnović** No. Ki 260/98 dated 19 November 1998 – T7; Record on Examination of Witness **Šaban Agić** No. KTZ-13/08 dated 24 March 2008 – T8; Record on Examination of Witness **Zdravko Mihaljević** No. T- 20 0 KT-RZ 0000635 10 dated 12 November 2010 – T9; Record on Examination of Witness **Dominik Ilijašević** No. KT-RZ 114/06 dated 29 May 2009 and 1 April 2010 – T10; Record on Examination of Witness **Vilim Miočević** No. KT-RZ 114/06 dated 4 November 2009 – T11; Record on Examination of Witness **Jasminko Tešić** No. KT-RZ 114/06 dated 18 March 2010 – T12; Record on Examination of Witness **Nedžad Likić** No. KT-RZ 130/05 dated 26 December 2006 – T13; Record on Examination of Witness **Audin Likić** No. KT-RZ 130/05 dated 26 December 2006 – T14; Record on Examination of Witness **Halima Kovač** No. KT-RZ 130/05 dated 26 December 2006 – T15; Record on Examination of Witness **KV-1** – T16; Record on Examination of Witness **KV-2** – T17; Record on Examination of Witness **KV-4** – T18; Record on Examination of Witness **KV-5** – T19; Record on Examination of Witness **KV-6** – T20; Record on Examination of

Witness **KV-7** – T21; Team Forensic Psychiatric Findings and Opinion dated 18 November 2010, chief physician Omer Ćemalović – expert witness specialized in neuropsychiatry and doctor Mirjana Musić – specialist in medical psychology – T22; Presidency of the Republic of Bosnia and Herzegovina Decision on declaring the state of war (Official Gazette of the Republic of B-H, No. 7/92 dated 20 June 1992) – T23; Presidency of the Republic of Bosnia and Herzegovina Decision on terminating the state of war (Official Gazette of the Republic of B-H, No. 50/95) – T24; Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of B-H, No. 1/94 dated 21 July 1994) – T25; Receipt by the HVO Ban J. Jelačić Unit dated 5 February 1996 issued to the name of Miroslav Anić – T26; Receipt by the HVO Ban J. Jelačić Unit dated 30 August 1996 issued to the name of Miroslav Anić – T27; Certificate by the Kiseljak Defense Section, ref. no. V22-49/1-15-05-419/03 dated 9 September 2003 to the name of Miroslav Anić – T28; List of the members of the Intervention Unit dated 4 May 1993 – T29; Unit File to the name of Miroslav Anić – T30; Approval by Ivica Rajjić No. 10-4248-02/93 dated 23 October 1993 at 06:40 a.m – T31; Information by Ivica Rajjić about combat activities in Vareš dated 23 October 1993 – T32; Intelligence Report of the HVO Bobovac Brigade Vareš, intelligence number 01-068/93 dated 23 October 1993 at 09:10 a.m. – T33; Information about the situation in Vareš dated 24 October 1993 – T34; Daily report of the Bobovac Brigade Medical Service dated 27 October 1993 at 13:30 p.m. for 26 October 1993 – T35; Information by Ivica Rajjić about the events in Vareš No. 10-3242-1/93 dated 31 October 1993 – T36; Report on the events in Stupni Do No. 10-3362-1/93 dated 8 November 1993 – T37; Information of the Administration of the HVO Security Information Service about the events in Stupni Do, No. 02-4/2-1-5699/93 dated 30 November 1993 – T38; Death Certificate No. 202-186/06 dated 31 August 2006 for **Nevzeta Likić**, Vareš Municipality, Stupni Do – T39; Death Certificate No. 202-184/06 dated 31 August 2006 for **Merima Likić**, Vareš Municipality, Stupni Do – T40; Death Certificate No. 202-185/06 dated 31 August 2006 for **Lejla Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-188/06 dated 31 August 2006 for **Hatidža Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-189/06 dated 31 August 2006 for **Rašida Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-167/06 dated 31 August 2006 for **Munira Likić**, Vareš Municipality, Stupni Do; Death Certificate No.

202-168/06 dated 31 August 2006 for **Raifa Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-169/06 dated 31 August 2006 for **Šerifa Likić**, daughter of Meho Velić, born in 1938, Vareš Municipality, Stupni Do; Death Certificate No. 202-171/06 dated 31 August 2006 for **Rasema Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-173/06 dated 31 August 2006 for **Đeva Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-179/06 dated 31 August 2006 for **Minheta Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-177/06 dated 31 August 2006 for **Zahida Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-164/06 dated 31 August 2006 for **Refika Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-196/06 dated 31 August 2006 for **Šerifa Lulić**, daughter of Bego Muhić, born in 1929, Vareš Municipality, Stupni Do; Death Certificate No. 202-190/06 dated 31 August 2006 for **Mehmed Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-191/06 dated 31 August 2006 for **Rifet Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-192/06 dated 31 August 2006 for **Abdulah Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-193/06 dated 31 August 2006 for **Muamer Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-194/06 dated 31 August 2006 for **Salih Likić, son of Osman**, born in 1941, Vareš Municipality, Stupni Do; Death Certificate No. 202-197/06 dated 31 August 2006 for **Edin Mahmutović**, Vareš Municipality, Stupni Do; Death Certificate No. 202-198/06 dated 31 August 2006 for **Zejnir Mahmutović**, Vareš Municipality, Stupni Do; Death Certificate No. 202-195/06 dated 31 August 2006 for **Salih Likić, son of Bajro**, born in 1919, Vareš Municipality, Stupni Do; Death Certificate No. 202-200/06 dated 31 August 2006 for **Samir Rahić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-166/06 dated 31 August 2006 for **Šefkija Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-170/06 dated 31 August 2006 for **Alija Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-172/06 dated 31 August 2006 for **Nazif Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-174/06 dated 31 August 2006 for **Ibrahim Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-175/06 dated 31 August 2006 for **Ramiz Likić**, son of Osman, born in 1939, Vareš Municipality, Stupni Do; Death Certificate No. 202-181/06 dated 31 August 2006 for **Ramiz Likić**, son of Salih, born in 1936, Vareš Municipality, Stupni Do; Death Certificate No. 202-180/06 dated 31 August 2006 for **Vernest Likić**,

Vareš Municipality, Stupni Do; Death Certificate No. 202-176/06 dated 31 August 2006 for **Enis Likić**, Vareš Municipality, Stupni Do – T71; Death Certificate No. 202-187/06 dated 31 August 2006 for **Medina Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-183/06 dated 31 August 2006 for **Mebrura Likić**, Vareš Municipality, Stupni Do – T73; Death Certificate No. 202-178/06 dated 31 August 2006 for **Sabina Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-182/06 dated 31 August 2006 for **Vahidin Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-165/06 dated 31 August 2006 for **Adis Likić**, Vareš Municipality, Stupni Do; Death Certificate No. 202-199/06 dated 31 August 2006 for **Indira Žutić**, Vareš Municipality, Stupni Do; Photo-documentation No. 19-3/03-7-151/3/94 about “Civilian Victims of Genocide in Stupni Do – Vareš Municipal Assembly”, at City Cemeteries Visoko, Public Utility Company /Gradska groblja Visoko Public Utility Company/, identification, photographs taken on 31 October 1993; Autopsy Report No. 228-SP/93 for Nevzeta Likić; Autopsy Report No. SP-93 for Merima Likić; Autopsy Report No. 229-SP/93 for Hatidža Likić; Autopsy Report No. SP-93 for Rašida Likić; Autopsy Report No. SP-93 for Mehmed Likić; Autopsy Report No. SP-93 for Rifet Likić; Autopsy Report No. 230-SP/93 for Abdulah Likić; Autopsy Report No. 277; SP/93 for Muamer Likić; Autopsy Report No. 233-SP/93 for Edin Mahmutović; Autopsy Report No. 232-SP/93 for Zejnil Mahmutović; Autopsy Report No. SP-93 for Salih (son of Bajro) Likić; Autopsy Report No. 234-SP/93 for Samir Rahić; Autopsy Report No. 279; SP/93 for Šefkija Likić; Autopsy Report No. 278; SP/93 for Ramiz Likić; Autopsy Report No. 231-SP/93 for Medina Likić; Autopsy Report No. SP-93 for Mebrura Likić; Autopsy Report No. SP-93 for Indira Žutić; Autopsy Report No. 276-SP/93 for Salko Likić; Autopsy Report No. SP-93 for Nahid (son of Esad) Likić – T41; Photo-documentation No. 19-3/03-7-151/1/94 about “Civilian Victims of Genocide in Stupni Do – Vareš Municipal Assembly” in the place of Dabravine, Vareš Municipal Assembly, photographs taken on 6 November 1993 – T42; Official Note by the Public Security Station – Crime Police Department Visoko No. 19-3/03-7-151/93 dated 11 November 1993 – T43; Findings by the Commission of the Stupni Do Local Community No. 22/XII/93 dated 20 December 1993 – T44; List of those killed in the Stupni Do Local Community dated 23. 101. 1993. – Stupni Do Local Community No. 08-753/94 dated 22 September 1994 – T45; List of households and outbuildings destroyed and set on fire in

the Stupni Do Local Community on 23 October 1993 – Stupni Do Local Community No. 08-758/94 dated 23 September 1994 – T46; Map of the place where some mortal remains were found in the village of Stupni Do – Visoko Police Station – T47; Findings and Opinion about exhumed and autopsied corpses in the area of the Kiseljak municipality, by doctor Hamza Žujo, expert witness in forensics No. Kri. 7/99 – T48; Record of Exhumation, Travnik Cantonal Court No. Kri. 7/99 dated 31 May 1999 – T49; Travnik Police Station – sketch of the site where bodies were exhumed in the area of Kiseljak Municipality dated 22 May 1999 – T50; Travnik Police Department photo-documentation about “Autopsy of bodies exhumed in the area of Kiseljak”, at City Cemeteries Visoko, Public Utility Company, photographs taken on 28 May 1999 - T51; Photo-documentation No. 10-01/2-4-04-117/2000 about exhumations at Visoko city cemetery, photographs taken on 21 September 2000 – T52; Photo-documentation No. 10-01/2-4-04-117/2000 about exhumations at Visoko city cemetery, photographs taken on 22 September 2000 – photographs 1 through 8 – T53; Photo-documentation No. 10-01/2-4-04-117/2000 about exhumation at Visoko city cemetery, photographs taken on 22 September 2000 – photographs 1 through 47 – T54; Sketch of the site No. 10-01/2-4-04-117/2000 referring to exhumations at Visoko city cemetery, photographs taken on 22 September 2000 – T55; Death Certificate No. 02-13-863/11 dated 11 March 2011 for **Mumin Kečo**, Kiseljak Municipality; Death Certificate No. 1857/2006 dated 8 September 2006 for **Sakib Duharkić**, Kiseljak Municipality; Death Certificate No. 1863/2006 dated 11 September 2006 for **Nihad Duharkić**, Kiseljak Municipality; Death Certificate No. 1861/2006 dated 6 September 2006 for **Edhem Jusić**, Kiseljak Municipality; Death Certificate No. 1862/2006 dated 8 September 2006 for **Enver Jusić**, Kiseljak Municipality; Death Certificate No. 02-13-62/11 dated 4 January 2011 for **Ismir Beganović**, Kiseljak Municipality; Death Certificate No. 1832/2006 dated 6 September 2006 for **Huso Duharkić**, Kiseljak Municipality; Death Certificate No. 1848/2006 dated 7 September 2006 for **Nedžib Bučan**, Kiseljak Municipality; Death Certificate No. 1860/2006 dated 7 September 2006 for **Halid Husejnović**, Kiseljak Municipality; Death Certificate No. 1849/20 dated 7 September 2006 for **Kenan Husejnović**, Kiseljak Municipality; Death Certificate No. 1853/2006 dated 7 September 2006 for **Miralem Bajraktarević**, Kiseljak Municipality; Death Certificate No. 1850/2006 dated 7 September 2006 for **Omer Drkić**,

Kiseljak Municipality; Death Certificate No. 1851/2006 dated 7 September 2006 for **Omer Neretljak**, Kiseljak Municipality; Death Certificate No. 1859/2006 dated 7 September 2006 for **Munib Uzunović**, Kiseljak Municipality; Death Certificate No. 02-13-67/11 dated 14 January 2011 for **Ismet Uzunović**, Kiseljak Municipality; Death Certificate No. 02-13-66/11 dated 14 January 2011 for **Asim Uzunović**, Kiseljak Municipality; Death Certificate No. 1860/2006 dated 7 September 2006 for **Amir Uzunović**, Kiseljak Municipality; Death Certificate No. 1855/2006 dated 7 September 2006 for **Muris Uzunović**, Kiseljak Municipality – T56; Split Cantonal Court Decision to Conduct Investigation No. II KIO-50/01 dated 30 March 2001 along with the Decision Ordering Suspect **Miroslav Anić** Into Custody – T57; Split Cantonal Court Decision Terminating Custody No. II KIO 50/1 dated 30 September 2001 – T58; Order to release a person from custody of the Split District Prison No. MK-100/01 under which the Suspect Miroslav Anić was released from custody on 30 September 2001 at 14:01 p.m. – T59; Record of Suspect Examination for **Miroslav Anić** dated 1 November 2010 and 18 March 2011 – T60; Record of Witness Examination for Šafida Kečo, No. Ki 260/94 of 22 August 1995; Death Certificate for Šafida Kečo, No. 08/13-05-59610/11 of 11 March 2010 – T62; Record of meeting with injured parties from Han Ploča and Grahovci of 9 May 2011 – T62A.

16. Following the presentation of evidence, the Court was satisfied that there was ample evidence of guilt of the accused Miroslav Anić. His actions constitute all key elements of the criminal offence of War Crimes against Civilians. The Court is satisfied that the Accused committed the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f) of the CC of BiH as read with Article 29, 31 and 180(1) of the CC of BiH, as described in the operative provision hereof. The Court accepted the Plea Agreement on this charge and accordingly found the Accused guilty.

IV. CLOSING ARGUMENTS OF THE PROSECUTION AND THE DEFENSE REGARDING THE SENTENCE PROPOSED

17. At the sentencing hearing the Prosecution maintained the proposed sentence of imprisonment, and emphasized that the Accused expressed honest contrition; that he turned himself in to the law enforcement agencies; he contributed with his statement to other investigations conducted by the Prosecutor's Office of BiH. In addition, the Prosecution submitted that the Accused agreed to a higher sentence than the one imposed on Ivica Raić, who was the order-issuing authority for the same events and was sentenced to a 12-year prison term in regular court proceedings. A coperpetrator in the same events, Dominik Ilijašević, was sentenced to 14 years in prison. The Prosecution also submitted that the Agreement would certainly contribute to sustainable coexistence, especially in the area of Vareš and Kiseljak.
18. Defense counsel for the Accused also moved the Court to accept the sanction proposed, and stated his agreement to all submissions of the Prosecution. Defense counsel also emphasized the fact that the Accused was aware of the maximum sentence prescribed for the criminal offence of War Crimes against Civilians, which is higher than the maximum sentence prescribed for the same offence in the Republic of Croatia.

V. APPLICABLE LAW

19. By signing a Plea Agreement, the accused Miroslav Anić admitted his guilt regarding the commission of the criminal offence of War Crimes against Civilians in violation of Article 173 of the Criminal Code of Bosnia and Herzegovina.
20. The Court accepted the law referred to in the Agreement, observing the principle of legality pursuant to Article 3 of the CC of BiH that prescribes that criminal offences and criminal sanctions shall be prescribed only by law, and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for

which a punishment has not been prescribed by law. The offence, or acts, for which the accused Miroslav Anić was found guilty, was defined as a criminal offence at the time of its commission and therefore punishable according to the law that was applicable at the time. Criminal acts defined in Article 173 of the CC of BiH can be found in the law that was applicable at the time of the crime, namely in Article 142(1) of the CC of SFRY.

21. Since both Codes define this criminal offence, the Court compared the sentences applicable pursuant to respective Codes in light of Article 4 of the CC of BiH. Albeit it provides that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence, this Article also prescribes that if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall apply.
22. The principle of legality is also guaranteed in Article 7(1) of the European Convention on Human Rights (ECHR). Pursuant to Article 2(2) of the BiH Constitution, the European Convention has primacy over all other laws in BiH. This provision of the European Convention provides for a general principle that prohibits a more stringent sentence than the one applicable at the time when the criminal offence was committed. It does not, however, provide for the application of the more lenient law.
23. Therefore, the Court accepts the application of the CC of BiH, since the sentence prescribed in the Criminal Code of BiH is by all means more lenient than the death penalty that applied at the time of the commission of the crime. Accordingly, the principle of time constraints regarding applicability is also observed, since the more lenient law is applied to the perpetrator.¹
24. One should also bear in mind Article 4a) of the CC of BiH, which prescribes that Articles 3 and 4 of the CC of BiH do not preclude the trial and punishment of any individual for

¹ This opinion of the Court is in line with the opinion in the Verdict of Section I of the Appellate Division of the Court of BiH in the case v. Abduladhim Maktouf, No. KPZ 32/05 of 4 April 2006 and the Verdict against Dragoje Paunović, No. KPZ 05/16 of 27 October 2006. The opinion was upheld by the Decision of the Constitutional Court of Bosnia and Herzegovina No. AP-178 5/06 of 30 March 2007.

any act or omission that was a “criminal offence in accordance with the general principles of international law” at the time of its commission.

25. Similarly, Article 7(2) of the European Convention allows for the same exception, provided that paragraph 1 thereof “shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.”²
26. The foregoing provisions allow for deviations, under certain statutory conditions, from the principles established in Article 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention). In other words, it is allowed to depart from the application of the criminal code applicable at the time of the commission of the offence and application of a more lenient law in proceedings for offences that are recognized as criminal offences in international law.
27. The criminal offence of War Crimes against Civilians with which the Accused is charged is a criminal offence in customary international law and therefore encompassed by “general principles of international law”³ pursuant to Article 4a) of the Law on Amendments to the CC of BiH and “general principles of law recognized by civilized nations” pursuant to Article 7(2) of the European Convention. Accordingly, the CC of BiH may be applied in this case.

² See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar language. The state of Bosnia and Herzegovina, as one of successors of Yugoslavia, ratified this Covenant.

³ The customary status of criminal liability for crimes against humanity and war crimes against civilians and individual responsibility for war crimes committed in 1992 was confirmed by the UN Secretary General, International Law Commission and jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). These institutions established that the criminal liability for crimes against humanity and war crimes against civilians is an imperative standard of international law, or *ius cogens*. It therefore appears indisputable that crimes against humanity and war crimes against civilians in 1992 were part of customary international law. This conclusion was confirmed in the Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck.

VI. FINDINGS OF THE COURT

i. Chapeau elements of the criminal offence of War Crimes against Civilians

28. The Indictment of the Prosecutor's Office of BiH charges the accused Miroslav Anić with the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) (murder, torture, inhumane treatment) and (f) (destruction and pillaging of property). The cited provision reads as follows:

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

c) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment (...)

f) (...) pillaging, (...) destruction and stealing on large scale (...)

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

29. The foregoing provision identifies the chapeau elements of the criminal offence of War Crimes against Civilians. These elements have to be fulfilled in order to find the Accused guilty of committing this criminal offence. The elements are as follows:

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

(i) the offence must be in violation of rules of international law

30. The accused Miroslav Anić was found guilty of acting in violation of rules of international humanitarian law, namely provisions under Articles 3, 16 and 33 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

31. Article 3(1) of the Geneva Convention reads as follows:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment.”

32. Article 3 of the 1949 Geneva Convention is considered a provision of customary law and it is binding for all warring parties in an internal or international conflict. Therefore, this provision was applicable at the time and place of the events with which the Accused is charged. The foregoing article is common for all Geneva Conventions. In other words, it is a part of all four Geneva Conventions of 12 August 1949. It applies to all types of conflicts (international and non-international) and guarantees certain rights to all persons who do not directly participate in hostilities. This article guarantees humane treatment and sanctions certain acts listed in subparagraphs a) through d) in Article 3.

33. The interpretation of this provision clearly shows that it is not necessary for the perpetrator to know or intend to violate international rules. Rather, it is sufficient that the commission is in violation of rules of international law. In order to make a finding of the violation of rules of international law, one must establish the target of the commission, or whether the

commission was targeted against a special category of persons protected by Article 3(1) of the Geneva Convention. In this case, the accused Miroslav Anić perpetrated criminal acts against civilians who are considered not to be participants in the hostilities and therefore are a protected group pursuant to this article.

34. Violence to life and outrages upon physical integrity and especially all types of killings, cruelty, torture and everything that leads to the outrage upon personal dignity and humiliating procedures against this category are especially forbidden. Accordingly, the Accused undoubtedly violated the provisions of international law.

35. Article 16 of the cited Convention reads as follows:

*“1. The wounded and sick, as well as **the infirm**, and expectant mothers, shall be the object of particular protection and respect.*

2. As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.”

36. Article 16 of the Fourth Geneva Convention is a provision applied to international armed conflicts. However, individual state practices establish this rule as a norm of customary law, which is applicable in both international and non-international conflicts.⁴ In the context of non-international armed conflicts this rule is based on the common Article 3 of the Geneva Conventions, which provides that “the wounded and sick shall be collected and cared for,”⁵ which is further elaborated in Protocol II Additional to the Convention.⁶ This rule applies to all those wounded, sick, shipwrecked, regardless of the side to which they belong and whether they participated in hostilities directly or not.⁷ The application of this rule to civilians was encompassed by Article 16 of the Fourth Geneva Convention.

⁴ Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 404.

⁵ Geneva Conventions, common Article 3.

⁶ Protocol II additional to the Conventions

⁷ Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 407.

This article pertains to the entire population of the warring countries. This is also repeated in Article 10 of the Protocol I Additional to the Convention.⁸ With reference to non-international armed conflicts, common Article 3 of the Geneva Convention is applied to all persons who do not actively participate in hostilities, civilians included.⁹

37. Considering that the criminal acts of the Accused targeted the infirm, or civilians who were of poor health, and thus could not abide by the order to join the column of civilians who were forced to come out of the house, international humanitarian law was breached in relation to the infirm, who are protected by Article 16 of the Fourth Geneva Convention. In that regard, the criterion regarding the violation of rules of international law was met.

38. Article 33 of the cited Convention reads as follows:

“1. No protected person may be punished for an offence he or she has not personally committed.

2. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

3. Pillage is prohibited.

4. Reprisals against protected persons and their property are prohibited.”

39. Similarly to Article 16 of the Fourth Geneva Convention, Article 33 is a provision that generally applies to international armed conflicts. However, the practice of individual states determined that the prohibition from pillaging is a norm of international customary law that applies to international and non-international armed conflicts.¹⁰ In addition to the Fourth Geneva Convention prohibiting pillaging in this Article, the Statute of the International Criminal Court prescribes that “pillaging a town or place, even when taken

⁸ Fourth Geneva Convention, Article 16; Protocol I additional to the Geneva Convention, Article 10.

⁹ Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 408.

¹⁰ Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 187.

by assault” is a war crime in international armed conflicts.¹¹ With reference to non-international armed conflicts, pillaging is forbidden by Article 4(2)(g) of the Protocol II additional to the Conventions.

40. Bearing in mind that one of the criminal acts referred to in the Indictment or Verdict (Count 3), is pillaging and destruction of property of a rather large number of civilians, or acts prohibited by the Geneva Conventions, international law was certainly violated.

(ii) violation must be committed in time of war, armed conflict or occupation

41. When considering the Agreement, the Court reviewed all subject matter elements of the criminal offence of War Crimes against Civilians. In order to make a finding of the existence of war and armed conflict, the Court was satisfied that parties stipulated to these facts in the Agreement. The fact that the state of war existed at the time of the commission of the criminal offence is corroborated by the Decision declaring the state of war made by the Presidency of Bosnia and Herzegovina on 20 June 1992. It was published in the Official Gazette of RBiH no. 7/92 (Exhibit T23). The state of war was terminated by the decision of the Presidency of 22 December 1996 (Exhibit T24).

42. It is also beyond dispute that in the territory of Bosnia and Herzegovina, or in the area of Municipalities of Vareš and Kiseljak at the time of the indictment there was an armed conflict between members of the Army of BiH on the one side and HVO on the other. This fact was confirmed by all witnesses who gave statements, as well as the Accused himself.

(iii) the offence must be related to war, armed conflict or occupation

43. The analysis of the status of the Accused at the relevant time is significant in terms of the elements of this offence. The offence of the perpetrator must be related to war, armed conflict or occupation.

¹¹ ICC Statute, Article 8(2)(b)(xvi).

44. It should be mentioned that “the existence of an armed conflict considerably affected the ability of the perpetrator to commit the crime, his decision to commit it, the manner of commission and the purpose for which it was committed.”¹²
45. At the relevant time, the Accused was a member of the special purpose unit *Maturice*, which was a part of the *Ban Josip Jelačić* brigade. This fact is confirmed by the Accused’s testimony and the following exhibits: Receipt by the HVO Ban J. Jelačić Unit dated 5 February 1996 issued to the name of Miroslav Anić – T26; Receipt by the HVO Ban J. Jelačić Unit dated 30 August 1996 issued to the name of Miroslav Anić – T27; Certificate by the Kiseljak Defense Section, ref. no. V22-49/1-15-05-419/03 dated 9 September 2003 to the name of Miroslav Anić – T28; List of the members of the Intervention Unit dated 4 May 1993 – T29; Unit File to the name of Miroslav Anić – T30. The Accused committed all his acts as a member of the foregoing unit at the time and place specified in the operative provision hereof. Accused’s acts are related to the war and armed conflict, and his function at the time enabled him to commit the criminal offence. Therefore, his acts are directly related to war and armed conflict.

(iv) the perpetrator must order or commit the offence

46. The Accused was found guilty of murders and of participating and assisting in the commission and preparation of the criminal offences of killing, torture, inhumane treatment, destruction and pillaging of property.
47. This constitutes the last chapeau element of the criminal offence of War Crimes against Civilians, since the Accused committed these criminal offences as a co-perpetrator or aider and abettor.

¹² *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, case number: IT-96-23 and IT-96-23/1-A, Appeals Judgment, 12 June 2002, paragraph 58.

VII. COMMISSION AND MODE OF CRIMINAL LIABILITY

(a) Applicable Law

48. The accused Miroslav Anić is charged with the criminal offence in violation of Article 173(1)(c) (murder, torture, inhuman treatment) and (f) (pillaging and destruction of property), in conjunction with Article 29 (co-perpetration), 31 (accessory), Article 180(1) (individual criminal liability).

a. Murder

49. “**Murder** has consistently been defined by the ICTY and the ICTR as the death of the victim resulting from an act or omission of the accused committed with the intention to kill or to cause serious bodily harm which he/she should reasonably have known might lead to death.”¹³

50. “The elements of the definition of ‘murder’ under customary international law are as follows: the victim is dead; the death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility; that act was done, or that omission was made, by the accused, or a person or persons for whose acts or omissions he bears criminal responsibility, with an intention: to kill, or to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission was likely to cause death.”¹⁴

b. Torture

51. Torture as a grave breach of the Geneva Conventions has the same elements as torture pursuant to the common Article 3. The definition of torture is not affected by the nature of the charges, be they grave breaches of the Geneva Conventions, War Crimes or Crimes against Humanity.

52. The elements of torture are as follows:

¹³ *Prosecutor v. Radislav Krstić*, case No. IT-98-33 (Trial Chamber), 2 August 2001, para. 485.

¹⁴ *Prosecutor v. Mitar Vasiljević*, case No. IT 98-32, Trial Judgment, 29 November 2002, para. 205.

- (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.
- (ii) The act or omission must be intentional.
- (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person by enslavement provided that the perpetrator coerced the victim to forbidden labor.¹⁵

53. For the criminal offence of torture as the violation of the common Article 3, it should be proven that the victim did not take part in the combat (*hors de combat*), or that victims were civilians, medical or religious officers who did not take active part in the hostilities.¹⁶

c. Inhuman treatment

54. Inhuman treatment is defined as a) an intentional act or omission, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity, b) committed against a protected person.¹⁷ The offence must be directed against the “protected person”. The category “inhuman treatment” includes not only acts such as torture and intentionally causing great suffering or inflicting serious injury to body, mind or health but also extended to other acts contravening the fundamental principle of humane treatment, in particular those which constitute an attack on human dignity.¹⁸

(b) Pillaging and destruction of property

55. The criminal act of pillaging under Article 3 of the Statute (war crimes: violation of laws and customs of warfare) is defined as follows: “all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as “pillage”.¹⁹ Furthermore,

¹⁵ Prosecutor v. *Dragoljub Kunarac*, Appeals Judgment No. IT-96-23 & IT-96-23/1-A, paragraphs 142-148

¹⁶ See Elements of Crime, ICTY Statute, Article 8(2)(c)(i)-4(2).

¹⁷ Prosecutor v. *Naletilić and Martinović*, case No. IT-98-34 (Trial Chamber), 31 March 2003, para 246.

¹⁸ Prosecutor v. *Blaškić*, case No. IT-95-14 (Trial Chamber), 3 March 2000, para 154-155.

¹⁹ Prosecutor v. *Kordić and Čerkez*, case No. IT-95-14/2 (Trial Chamber), 26 February 2001, para 352.

with reference to destruction of property, the Trial Chamber in Blaškić defined it as follows: “An occupying Power is prohibited from destroying movable and non-movable property except where such destruction is made absolutely necessary by military operations. To constitute a grave breach, the destruction unjustified by military necessity must be extensive, unlawful and wanton. The notion of “extensive” is evaluated according to the facts of the case.”²⁰ In this case all houses in the village of Stupni Do were set on fire together with the village mosque. Accordingly, the Court concludes that this element has been met.

(c) Mode of criminal liability

56. The Accused admitted guilt as charged in the Agreement. The Court nevertheless has the obligation to consider the validity of that admission and whether there is ample evidence corroborating the criminal liability of the Accused.

i. Accomplices (Article 29 of the CC of BiH)

57. Article 29 of the CC of BiH reads as follows: “*If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.*”

ii. Accessories (Article 31 of the CC of BiH)

58. Article 31(2) of the CC of BiH reads: “*The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal*

²⁰ Prosecutor v. Blaškić, IT-95-14 (Trial Chamber), 3 March 2000, para 157.

offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.”

iii. Individual criminal liability (Article 180(1) of the CC of BiH)

59. Article 180(1) of the CC of BiH provides as follows: *“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 173 (War Crimes against Civilians), (...) of this Code, shall be personally responsible for the criminal offence.”*

(d) Conclusion

60. Pursuant to the Agreement, the Accused admitted the guilt of the offence as charged, attributing the mode of liability stated in the Indictment. The Court nevertheless has the obligation to consider the validity of the admission and whether there is sufficient evidence corroborating his criminal liability.

61. Accordingly, the Court is satisfied that there is ample evidence establishing the guilt of the Accused regarding the acts the accused Miroslav Anić committed as a copерpetrator, since he participated in the commission of the offence together with other individuals. The Accused made a decisive contribution to the commission of the criminal offence by his actions. Having considered the evidence tendered, the Court has found that the accused Miroslav Anić participated in the armed infantry attack on the village of Grahovci together with the members of the Special Purpose Unit “Maturice”. On that occasion a certain number of civilians were killed. The Accused took part in the killings. Together with other members of the Special Purpose Unit “Maturice” the Accused took part in the attack on the village of Han Ploča. On that occasion civilians were tortured, as described in Paragraphs 1 and 2 of the operative provision hereof. The Accused treated them inhumanely, and then together with others participated in the killings of the villagers of Han Ploča. He also participated with others in the killings of the villagers of Stupni Do. He perpetrated all these acts knowingly and willingly. Further, the Accused is individually

criminally liable (Article 180(1) of the CC of BiH) because by acting as he did he directly *perpetrated* the criminal offences in violation of Article 173(1)(c) of the CC of BiH.

62. In addition, based on the evidence tendered, the Court is satisfied that there is ample evidence of the accused Miroslav Anić's guilt for the pillaging and destruction of property in which he took part as an accessory. The Accused is individually criminally liable for these criminal acts (Article 180(1) of the CC of BiH), because by his actions he *aided and abetted* in the commission of the criminal offence in violation of Article 173(1)(f) of the CC of BiH. Based on the evidence tendered, the Court found that the Accused contributed to the pillaging and destruction of property of the villagers of the village of Stupni Do by taking part in the killings of the residents of the village.
63. Accordingly, the Court is satisfied that there is ample evidence of the guilt of the accused Miroslav Anić. Actions of the Accused constitute all essential elements of the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f). Being satisfied with other elements pursuant to Article 231 of the CPC of BiH, the Court accepted the Plea Agreement.

VIII. SENTENCING

64. Deciding on the type and duration of the criminal sanction and in view of the provisions on criminal sanction proposed in the Plea Agreement between the parties, the Court was satisfied with the proposed sentence and imposed it accordingly.
65. The Court reviewed all circumstances of the case, and the purpose of punishment, in particular the interests of justice, which should primarily be served for the benefit of the injured parties and satisfy the victims. In addition, the imposed sentence should be proportionate to the degree of endangering of the protected object on the one hand, and the personality of the perpetrator on the other, in order to meet the purpose of general and specific deterrence.
66. The Court considered the fact that the Accused turned himself in to the law enforcement agencies of Bosnia and Herzegovina, even though he had been in hiding in the Republic of Croatia, the citizenship of which he holds. In addition, the Accused entered into a Plea Agreement with the Prosecution and admitted guilt for the offences charged in the Indictment. This leads to the conclusion that the Accused accepted responsibility for what he had done and also contributed to the finding of truth.
67. The Agreement concluded prior to the opening of the main trial allowed for the victims to be spared from coming to the Court and testifying about the events they already testified about before another court in another proceeding. This prevents their revisiting all the painful memories, which the injured parties confirmed at their meeting with the prosecutor of the Prosecutor's Office of BiH. The Court also had in mind that the Accused is a young person, a father of a minor and willing to cooperate with the Prosecution and testify about all events known to him and relevant to the war.

68. Finally, the Court is satisfied that the imposed sentence is adequate and proportionate to the gravity of the offence and degree of criminal liability of the Accused who committed the offence, but admitted his guilt and expressed contrition.

69. Pursuant to the provision under Article 56(1) of the CC of BiH, the time the Accused spent in custody starting from 1 November 2010 until his referral to serve the prison sentence shall be credited towards the imprisonment sentence.

VIII. DECISION ON THE COSTS OF PROCEEDINGS AND PROPERTY CLAIMS

70. Pursuant to Article 188, paragraph 4, of the CPC of BiH, the Accused is relieved of the payment of the costs of criminal proceedings, which shall be covered from within the Court's budgetary appropriations, because the payment of the costs would bring into question his livelihood and that of his family.

71. Referring the injured parties to civil lawsuit to pursue their property claims, the Court concluded that the determination of the amount of each property claim would require a significant amount of time, which would delay the proceedings. Official Notes from the meeting between the prosecutor and the injured parties show that the injured parties also asked to pursue their property claims in a civil lawsuit. The Court applied Article 198(2) of the CPC of BiH and decided accordingly.

MINUTES KEEPER

Emira Hodžić

/signature affixed/

PRELIMINARY HEARING JUDGE

Davorin Jukić

/stamp and signature affixed/

LEGAL REMEDY NOTE: This Verdict may be appealed within 15 days as of the day of receipt thereof. No appeal lies from the decision on criminal sanction.