



Court of Bosnia and Herzegovina

No: X-K/07/391-1
Sarajevo, 17 September 2007

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, through Judge Zoran Božić, with the participation of legal officer Sedin Idrizović as a record-taker, in the criminal case against the accused Edin Zulović and Džemajil Šabanović, for the continued criminal offense of Smuggling of Persons in violation of Article 189(1), as read with Article 54, all in conjunction with Article 29 of the Criminal Code of Bosnia and Herzegovina (hereinafter CC BiH), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No.KT-244/07 dated 16 July 2007, having held the sentencing hearing following the plea agreement, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina – Jasmina Gafić, the accused Edin Zulović and Džemajil Šabanović, and their Defence Counsel – Attorney Muhidin Kapo from Sarajevo, on 17 September 2007, rendered and publicly pronounced the following:

VERDICT

1. **THE ACCUSED: EDIN ZULOVIĆ a.k.a. Zula**, son of Avdija and Azemina, nee Bašić, born on 21 April 1966, in Sarajevo, permanently residing at 70 Stupska Street, Municipality of Ilidža, PIN: 2104966171518, married, no children, air-traffic dispatcher by occupation, employed at the International Airport Sarajevo, Bosniak, citizen of BiH, no prior convictions;
2. **THE ACCUSED: DŽEMAJIL ŠABANOVIĆ**, son of Dželadin and Kana, nee Vlahovljak, born on 12 July 1959 in Pljevlje, residing at 59 Olivera Ibrahimovića Street, Municipality of Ilidža, PIN: 1207959171529, married, father of two children one of which is underage, engineering technician by occupation, currently employed as a caterer, Bosniak, citizen of BiH,

ARE FOUND GUILTY

Of the following:

In the period between early March and 28 May 2007, after Ereren Savas, a citizen of Turkey, with permanent residence in Sarajevo, as the chief organizer of the structured group for smuggling of persons in the area of BiH, as a part of the organized group of criminals from Turkey, the Republic of Serbia, Republic of Croatia, Republic of Slovenia, Italy and France, identified and then engaged several unknown persons to illegally transfer immigrants, in the capacity of co-organizers, drivers, guides, field cleaners, and to play other roles in this illegal business, with whom he connected and agreed that, for the purpose of acquiring financial gain through actions and prearranged, linked actions, they would engage in organized and unlawful transfer/smuggling of other persons, mostly citizens of Turkey, through the International Airport in Sarajevo, and then, through the Republic of Croatia, Republic of Slovenia, to countries of West Europe, mostly Italy and France, wherefore he recruited and then engaged Džemajil Šabanović, who let him use his catering facility for meetings to make arrangements with other accessories and perpetrators of these criminal offenses, as well as for other jobs, such as hiring taxi drivers, coordination during transport of passengers, etc, and then he engaged Zulović Edin, who was employed as air-traffic dispatcher at the International Airport Sarajevo, in order to allow free passage for illegal immigrants – Turkish citizens, which they did for a certain amount of money; so Edin Zulović, during the period between 18 April 2007 and 5 May 2007, ensured passage for 14 Turkish citizens through the passport control point, which persons did not meet requirements for entering the BiH and were seeking to go to the countries of West Europe, so that, a person called Zeynel Yaman was let through on 19 April 2007, Hysein Erik, Munever Erik and Habib Gunaydin were let through on 23 April 2007,, Akan Zeynel, Bulut Bekir, Ecer Omer were let through on 26 April 2007, Emrullah Yildiz, Mehmet Avgoren, Avdulla Demir, Yuksel Kaya and Cefer Cipran were let through on 27 April 2007, Turanoglluari Akim and Koseli Akan were let through and on 29 April 2007; these persons were willfully allowed through at the MAS Sarajevo border crossing by the inspector Elvir Okanović, and in their later movements, together with the organizer Savas Ereren, these persons were under surveillance following the Order of the BiH Court (as set forth under Article 116, of the CPC BiH (surveillance and technical recording of individuals and use of undercover investigator), No. KPP-45/07, dated 17 April 2007, when it was established that all the abovementioned illegal immigrants, Turkish citizens, were first taken over at the catering facility *Gusar* by Ereren Savas or by an unknown persons that he had engaged for this purpose, and then, by the passenger vehicle VW Golf A3 Cabrio, Switzerland licence plates No. ZH 147747, maroon colour, operated by Ereren Savas, they were transported to the Sarajevo settlement Pofalići, Ruđera Boškovića Street No. 25, where they were quartered for several days, when Savas Ereren, after gathering a group of 14 Turkish citizens on 3 May 2007, organized their further transport, specifically the transport of 8 persons, in the direction of the border crossing Bosanski Brod – Slavonski Brod, between BiH and Croatia; the technical part of the operation was carried out by Džemajil Šabanović, who hired Adis Tinjak and Muhamed Kozić, taxi drivers from Sarajevo, who took over the immigrants, citizens of Turkey, and drove them in the direction of Zenica and further towards Derventa, to the settlement of Šešlije, which is 14 kilometers far from the border crossing, when Džemajil Šabanović, who was on the phone following the course of

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the trip, in the moment when he suspected that the police was following the taxi vehicles, ordered to the taxi drivers to return immediately and to find accommodation for them in a cheap motel; they did so and placed those 8 persons in the *Almi* motel near Zenica, where they stayed overnight, and on the following day Ereren Savas again organized transport for these 8 persons - Turkish immigrants by 2 taxi vehicles, from the *Almi* motel back to Sarajevo, to the settlement of Stup, and placed them in the *Don Caffè* catering facility, which was located inside the market place at Stup; after a short stay, they moved to a house at No. 36 Ešrefa Kovačevića Street, and stayed at that place, except for 4 persons that he transferred on the same day to a board and lodging place called *Suljević*, which was close to the previous location, and then all the Turkish citizens left the house and the *Suljević* board and lodging place, probably through an unknown alternative exit, and were transported to an unknown direction, when they disappeared without a trace, and concerning the other 6 Turkish citizens, on 30 April 2007, at 19:40 hrs, Savas Eren hired a passenger motor vehicle Mercedes, license plates 141-T-386, driven by Fahrudin Kulić, and a passenger motor vehicle Seat, license plates 110-T-013, driven by Mirnes Hodžić, also a taxi driver from Sarajevo, who tried to transport these Turkish citizens in a regular manner by their vehicles over the border crossing in Bosanski Brod, between BiH and Croatia, but were returned to BiH by the Border Police of the Republic of Croatia, while Ereren Savas, Edin Zulović and Džemajil Šabanović met again in the *Keno* catering facility, owned by Džemajil Šabanović, on 28 May 2007, in order to arrange further transport of Turkish citizens, when they were arrested by the Sarajevo SIPA Special Protection Unit.

Therefore, motivated by greed, on several occasions, they enabled other persons to cross the border illegally,

Whereby, they committed the continued criminal offense of Smuggling of Persons, in violation of Article 189(1), in conjunction with Article 54, and all in conjunction with Article 29, of the CC BiH.

Wherefore, the Court imposes on

the first accused Edin Zulović, pursuant to the cited legal regulation, and pursuant to Articles 48, 58, and 59 of the Criminal Code of Bosnia and Herzegovina

SUSPENDED SENTENCE

imprisonment for a term of 2(two) years, and concurrently rules that the sentence shall not be carried out if the accused Edin Zulović does not perpetrate another criminal offense over the period of 5(five) years following the date when the Verdict becomes final.

Pursuant to Article 56 of the CC BiH, in the event of revocation of the suspended sentence, the time that the accused spent in custody shall be credited towards the stated term of imprisonment, starting on 25 May 2007.

the second accused Džemajil Šabanović, pursuant to the cited legal regulation and pursuant to Articles 48, 58, and 59 of the CC BiH,

SUSPENDED SENTENCE

of imprisonment for a term of 1(two) year and 8(eight) months, and concurrently rules that the sentence shall not be carried out if the accused Džemajil Šabanović does not perpetrate another criminal offense over the period of 5(five) years following the date when the Verdict becomes final.

Pursuant to Article 56 of the CC BiH, in the event of revocation of the suspended sentence, the time that the accused spent in custody, that is, the period from 30 May 2007 to 21 June 2007, shall be credited towards the stated term of imprisonment.

Pursuant to Article 110 of the CC BiH, the amount of Euro 400 and KM 120, which is the amount of ill-gotten gain, shall be forfeited from the accused Edin Zulović.

Pursuant to Article 188(1) of the CPC BiH, the accused are obliged to reimburse the costs of the criminal proceedings in the scheduled of KM 100 each, within 30 days following the date when the Verdict becomes final.

Reasoning

Under the Indictment No. KT-244/07 dated 16 July 2007, which was confirmed on 25 July 2007, the Prosecutor's Office of BiH charged Edin Zulović and Džemajil Šabanović with the continued criminal offense of Smuggling of Persons under Article 189(1), as read with Article 54, all in conjunction with Article 29 of the CC BiH.

On 12 September 2007, the accused Edin Zulović and Džemajil Šabanović, represented by the Defence Counsel Muhidin Kapo – attorney from Sarajevo, entered plea agreements with the Prosecutor's Office of BiH. Under these agreements, the accused persons pleaded guilty of the continued criminal offense of Smuggling of Persons under Article 189(1), as read with Article 54, all in conjunction with Article 29 of the CC BiH, admitting that it was perpetrated as rendered in the statement of facts of the Indictment No. KT-244/07 dated 16 July 2007.

Both the Prosecutor and the accused Edin Zulović and Džemajil Šabanović agreed under the stated agreements that the Prosecutor of the BiH Prosecutor's Office should move the Court of BiH to impose a suspended sentence on the accused Edin Zulović for the criminal offense committed and to impose the prison sentence for a term not less than 22 (twenty two) months and not longer than 24 (twenty four) months, and to concurrently rule that this sentence shall not be carried out if the accused Edin Zulović does not perpetrate another criminal offense over the period of not less than 4 (four) years and 6(six) months and not more than 5(five) years, and to impose a suspended sentence on Džemajil Šabanović for the criminal offense committed and to determine the prison sentence for a term of not less than 16 (sixteen) months and not more than 20 (twenty) months, and to concurrently rule that this sentence shall not be carried out if the accused Džemajil Šabanović does not perpetrate another criminal offense over the period of not less than 4 (four) years and not longer than 5 (five) years.

At the hearing for deliberation on the aforementioned plea agreements held on 17 September 2007, the Court found that the accused persons understood the agreements, voluntarily and willfully entered them, and that they understood that based on the agreements they waived their right to trial and the right to appeal the criminal sanction that would be imposed. The Court instructed the accused of the possible consequences, including those pertaining to the payment of the criminal proceedings costs.

The Court then accepted these agreements in their entirety, finding that the Prosecutor adduced sufficient evidence on the guilt of the accused Edin Zulović and Džemajil Šabanović.

At the sentencing hearing dated 17 September 2007, the Prosecutor moved the Court to take into consideration, as mitigating circumstances, that the accused had no prior convictions, that the Prosecutor's Office obtained certain evidence by their contribution, that they were willing to cooperate with the Prosecutor's Office, that they expressed a high degree of remorse for the criminal offense committed, and that the sanction proposed for the accused is proportional to the gravity of the criminal offense committed.

The Defence Counsel for the accused entirely supported the Prosecutor's arguments, noting that the proposed sanction for the accused is proportional to the gravity of the committed criminal offense and that it would achieve the purpose of the suspended sentence. The accused agreed with the statements of their Defence Counsel.

With respect to the criminal sanction proposed in the agreement, as the mitigating circumstances for the accused Edin Zulović, the Court took into consideration that he had no prior convictions, that he was married, that he pleaded guilty, which resulted in his entering the plea agreements with the Prosecutor. The aforementioned fact contributed to a great extent to a sooner and more efficient completion of the proceedings and the reduction of costs. Court has not found any aggravating circumstances in relation to the accused. According to the Court, the stated mitigating circumstances on the part of the accused Edin Zulović are of such significance that they justify the application of the regulation on imposing the proposed suspended sentence, and they also imply that in the case concerned it was not necessary to impose a punishment. Therefore, taking into account the aforementioned mitigating circumstances, as well as the absence of aggravating circumstances, this Court finds that the sentence of 2 (two) years imprisonment, with 5(five) years of probation, is proportional to the gravity of the criminal offense committed, and that the purpose of suspended sentence, pursuant to Article 68 of the CC BiH, will be achieved by the sentence of imprisonment as rendered.

As regards the mitigating circumstances for the accused Džemajil Šabanović, the Court took into consideration that he had no prior convictions, his family status, that is, the fact that he is married and father of two children, that he pleaded guilty which resulted in his entering the plea agreement with the Prosecutor and a more efficient completion of the proceedings, as well as the reduction of costs of the proceedings, whereas the Court has not found any aggravating circumstances in relation to the accused. Bearing in mind the stated mitigating circumstances and the lack of aggravating circumstances on the part of the accused, the Court imposed the suspended sentence on the accused Džemajil Šabanović and determined the prison sentence for a term of 1 year and 8 months, with 5 years of probation. The Court finds it unnecessary to impose unsuspended sentence, and

holds that the purpose of the criminal sanction under Article 58 of the CC BiH will be achieved with the suspended sentence as rendered.

Pursuant to Article 110 of the CC BiH, the Court has decided forfeiture of Euro 400 and KM 120 from Edin Zulović, since this amount constitute ill-gotten gains.

Pursuant to Article 188(1) of the CPC BiH, the Court imposed on the accused the obligation to pay the costs of the criminal proceedings in the scheduled amount of KM 100 each within 30 days following the day when the Verdict becomes final.

Record-taker
Sedin Idrizović
/hand signature affixed/

JUDGE
Zoran Božić
/signed and stamped/

LEGAL REMEDY: The criminal sanction imposed by this verdict may not be appealed, whereas an appeal may be filed on other appellate grounds within 15 days following the day of the receipt thereof.