



Number: X-K/07/474-7
Sarajevo, 13 July 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Judge Branko Perić, with participation of the legal officer Elma Karović in the criminal case against the Accused Azmir Karajić for the criminal offence of Associating for the Purpose of Perpetrating Criminal Offences under Article 249, paragraph (2) as read with paragraph (1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH) and the criminal offence of Smuggling of Persons under Article 189, paragraph (2) of the CC of BiH, regarding the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-160/08 of 9 September 2008 and the Guilty Plea Agreement dated 30 June 2009, after the Guilty Plea Agreement and sentencing hearings held in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Božo Mihajlović, the Accused Azmir Karajić and his Defense Counsel, Nedžla Šehić, on 13 July 2009 reached and announced

VERDICT

That the Accused

AZMIR KARAJIĆ a.k.a. *Biba*, son of Hasan and Sefija, nee Omerović, born on 6 February 1981 in Velika Kladuša, an ethnic Bosniak, a BiH citizen, who completed two grades of elementary school, a farmer, single, no children, permanently residing in Velika Kladuša, 19, Zagrad, **convicted by the Verdict of the Bihać Cantonal Court for the criminal offence of Endangering the Safety of Public Traffic**

IS GUILTY

Because

The migrants –Albanian nationals: Arton Gjokaj, Aleksander Gyelay, Gyrsel Zaganjori, Besnik Cubi, Agron Hoti, Hamit Manaj had made an agreement with persons whom they knew in Albania to organize their transfer from the territory of Albania to Italy for the price of between EUR 2,500 to 3,500. After those persons or other persons-organizers had organized their transfer and did transfer them to Montenegro the Accused Azmir Karajić together with four persons and other persons they knew- by associating and making arrangements with persons who organized and paid the transfer of migrants, contacting and making arrangements with persons who organized and did the transfer of migrants for money, connecting and making arrangements with other persons whom they knew for the purpose of transfer of migrants, by mutual arrangements and association into groups of several persons for the purpose of smuggling of migrants, as members of an organized criminal group for the purpose of acquiring financial gain in the amounts between EUR 50 and 1.000 per each migrant, which they agreed among themselves and with other organizers- arranged the transfer of migrants from the Republic of Montenegro across the



territory of Bosnia and Herzegovina to the Republic of Croatia, in the following manner:, two persons, jointly and in agreement with the persons they knew, agreed and organized the transfer of migrants from the Republic of Montenegro to Bosnia and Herzegovina, to Mostar. The Accused Azmir Karajić, together with four persons and with other persons they knew, arranged and organized the transfer of migrants from Mostar to Velika Kladuša, and their further transfer from Velika Kladuša to the Republic of Croatia, and onward to Italy. Then, as it was organized by two already mentioned persons, the migrants were transferred to Mostar in the undetermined manner and then one of them arranged with the person he knew named Zijo, for him to transfer the migrants from Mostar to Velika Kladuša with a view of their further transferring, following prior arrangements, to the Republic of Croatia and Italy. Subsequently Zijo, according to the prior arrangement with the same person and his instructions, contacted the migrants and organized their transfer to Velika Kladuša. On 20 February 2008, with the person nicknamed Cole he transferred the migrants to Velika Kladuša, and in doing so Cole transferred migrants while Zijo provided for the escort and contacts with a person with whom he had arranged it and the persons who the named person had engaged to receive the migrants. Having arrived to Velika Kladuša, Zijo contacted the aforementioned person and another person and then they jointly connected Cole and the Accused Azmir Karajić to receive migrants and jointly monitored the movement of the police and kept Cole and Azmir informed about it. Then the Accused Azmir Karajić, having contacted Cole, entered a vehicle by which Cole drove the migrants and gave instructions to Cole to drive toward the handover point where the migrants would be taken across the state border, thus the Accused Azmir Karajić, while conducting these operations, noticed the police patrol and jumped out of the moving vehicle and escaped while the authorized official persons caught only Cole and his escort in the act with migrants and deprived them of liberty.

More specifically,

in agreement with a member of an organized group of people pursuant to Article 1(19) of the Criminal Code of Bosnia and Herzegovina, organized for the purpose of transfer of migrants from the Republic of Montenegro across the territory of Bosnia and Herzegovina to the Republic of Croatia and other countries of the Western Europe, without meeting the requirements for the lawful entry and stay of the migrants in other states and aiming at ensuring their stay in those countries, with a view of their immediate transferring across the territory of Bosnia and Herzegovina and their further transferring to other Western European countries and providing for their stay in those countries, he joined a structured group pursuant to Article 1 (18) of the Criminal Code of Bosnia and Herzegovina for the purpose of the transfer of migrants from Bosnia and Herzegovina into the Republic of Croatia, in order to acquire the financial gain of up to EUR 50 per person, and as a member of that group he transferred across the territory of Bosnia and Herzegovina an undetermined number of migrants and certainly attempted the transfer the above migrants.

And in doing so he committed

the criminal offence of Associating for the Purpose of Perpetrating Criminal Offences under Article 249(2) as read with (1) of the Criminal Code of Bosnia and Herzegovina and the criminal offence of Smuggling of Persons under Article 189(2) of the Criminal Code of Bosnia and Herzegovina



therefore the Court

for the criminal offence of Association for the Purpose of Perpetrating of Criminal Offences under Article 249(2) as read with (1) of the CC of BiH, applying the mentioned law provisions and pursuant to Article 48, 58 and 59 of the CC of BiH metes out the imprisonment sentence for the term of 1 (one) year.

For the criminal offence of Smuggling of Persons under Article 189(2) and applying Article 48, 58 and 59 of the CC of BiH, the Court metes out the imprisonment sentence for the term of 6 months,

Therefore, applying Article 53 of the CC of BiH the Court imposes on him

THE SUSPENDED SENTENCE

Meting out to the Accused a compound imprisonment sentence for the term of 1 (one) year and three (3) months and at the same time it orders that this punishment shall not be executed unless the Accused commits another criminal offence within the probation period of 3 (three) years of the date the Verdict becomes final.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused shall be exempt from the payment of costs of the criminal proceedings which will be covered from the Court's budget.

R e a s o n i n g

The Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-160/08 of 9 September 2008 charged Azmir Karajić with having committed the criminal offence of Associating for the Purpose of Perpetration Criminal Offences under Article 249(2) as read with (1) and the criminal offence of Smuggling of Persons under Article 189(2) in conjunction with paragraph 2 of the CC of BiH, as described in the Operative Part of this Verdict.

The Preliminary Hearing Judge on this Court confirmed the Indictment on 11 September 2008.

On 30 June 2009 the Accused Azmir Karajić and his Defense Counsel, Nedžla Šehić, entered a Guilty Plea Agreement with the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Božo Mihajlović. Based on this Agreement the Accused pleaded guilty of having committed the criminal offences charged by the Indictment of the Prosecutor's Office of BiH and accepted that a compound imprisonment sentence for the term of 2 (two) years be meted out and a suspended sentence be imposed on him which stays the execution of the meted out punishment unless the Accused committed a new criminal offence within time frame of 1(one) to 5 (five) years. He pledged to testify before the Court of BiH as to how he committed the criminal offence and about the persons who together with him were involved in the commission of the criminal offences to which he admitted.



The Court considered the Agreement pursuant to Article 231 of the CPC of BiH and accepted it at the hearing held on 13 July 2009, having established that the Agreement had been entered voluntarily, consciously and with understanding and that the Accused was informed about the potential consequences of the guilty plea agreement, including the consequences related to the property claim and costs of the criminal proceedings, and having established that there was sufficient evidence about the guilt of the Accused.

The Accused clearly and unequivocally pleaded guilty before the Court of the offence charged by the Indictment confirmed, and that no pressure was exerted on him when the Agreement was entered to enter the Agreement, and that he did so in the presence of his Defense Counsel.

The existence of the sufficient evidence that the Accused is truly guilty of the acts and offence he admitted to the Court established on the basis of evidence submitted with the Indictment the Prosecutor presented in this case and tendered into evidence and which the Court considered while rendering decision on acceptance of the Agreement.

Having accepted the Guilty Plea Agreement, the Court heard the Prosecutor, the Accused and his Defense Counsel at the sentencing hearing regarding the facts and circumstances relevant for the sentencing and then, having evaluated the relevant evidence and the degree of guilt of the Accused, the Court found him guilty of the commission of criminal offence of the Associating for the Purpose of Commission of Criminal Offences under Article 249(2) as read with (1) of the CC of BiH and the criminal offence of Smuggling of Persons under Article 189(2) of the CC of BiH and all in conjunction with Article 53 of the CC of BiH, finding that the Accused committed the criminal offence with an intent (that he was aware of the criminal offence and that he wanted its commission) and that he was mentally accountable.

Deciding on the proposed criminal sanction, the Court took as mitigating factors his admission to having committed the criminal offence he was charged with and his readiness to testify as a witness in the criminal proceedings against other accused, that he acted with decorum before the Court and expressed his sincere regret and that he has not been convicted before for this type of criminal offences. Having in mind these facts and circumstances, and especially considering the readiness of the accused to testify in the criminal proceedings against other accused, his contribution to the successful completion of the investigation and his difficult financial standing, the Court meted out to him a compound imprisonment sentence for the term of 1 (one) year and 3 (three) months and ordered that the sentence shall not be executed unless the Accused commits another or similar criminal offence within 3 (three) years.

The Court concluded that the imposed sanction is commensurate to the gravity of the criminal offence committed and the degree of criminal liability of the Accused and that it will satisfy the purpose of the criminal sanctions as set forth under Article 6 and 58 of the CC of BiH, and that the threat of the execution of the sanction itself will have a rehabilitating effect on the Accused.



Pursuant to Article 188 (4) of the CPC of BiH, the Court has exempted the Accused from the payment of costs of criminal proceedings, finding that due to his general financial standing (unemployed, owns no property, living alone) if he paid the costs he would jeopardize his support and support of the persons he is obliged to provide for.

Minutes-taker
Elma Karović

JUDGE
Branko Perić

LEGAL REMEDY: The criminal sanction pronounced may not be appealed. The Verdict, however, may be appealed on other grounds, within 15 days after service of the Verdict.

*I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.
Sarajevo, 14 October 2009
Dinka Bevrnja
Certified Court Interpreter for English*