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X-KRŽ -05/16

SUD BOSNE I HERCEGOVINE

СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Prevod Dok 329

Number: X-KRŽ 05/16
Sarajevo, 27 October 2006

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in the Panel of the Appellate Division consisting of Judge Azra Miletić as the Presiding Judge and Judges José Ricardo Juan de Prada and Finn Lynghjem as members of the Panel, with the participation of the Legal Officer Lejla Fadilpašić as minutes-taker, in the criminal case against the Accused Dragoje Paunović for the criminal offense of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with a) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), deciding upon the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: Prosecutor's Office of BiH) number KT-RZ-9/05, Defense Attorneys for the Accused, lawyers Ranko Dakić and Jovo Đukanović, and the Accused himself, against the Verdict of the Court of Bosnia and number X-KR-05/16 dated 26 May 2006, at the session held in the presence of the Accused, his Defense Attorneys, lawyers Ranko Dakić and Jovo Đukanović, and Prosecutor of the Prosecutor's Office of BiH, Mirsad Strika, on 27 October 2006, rendered the following:

VERDICT

Refusing as ungrounded the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina, the Accused Dragoje Paunović and his Defense Attorneys, lawyers Ranko Dakić and Jovo Đukanović, and confirming the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/16 dated 25 May 2006.

Reasoning

By the Verdict of the Court of Bosnia and Herzegovina (hereinafter: Court of BiH) number X-KR-05/16 dated 26 May 2006 the Accused Dragoje Paunović was found guilty of the criminal offense of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with a) and k) of the BiH CC having committed the acts described in Item 1 and 2 of the Verdict.

The first-instance panel sentenced him to long-term imprisonment for a term of twenty years for the above mentioned criminal offense. The time the Accused spent in custody, commencing on 18 March 2005 was credited towards the sentence of imprisonment while pursuant to Article 188 (4) of the BiH CPC the Accused was relieved of the duty to reimburse the costs of the criminal proceedings.

The injured parties- witness "A", Ago Kapo, Armin Bežđar, Jasmina Delija, Damir Šetić, Biserа Bečić, Behija Pašić, Alija Kapo, Alija Isaković, Nada Isaković, Nisveta Halilović, Amira Salihović, Marija Kurčubajić, Enisa Ćatić, Mevlida Ćatić, Samir Tanković,

Šehzada Paralović and Mevlida Zimić-Pavica were referred to take civil action with their claims under property law.

The Defense Attorneys for the Accused Dragoje Paunović, the Accused himself and the Prosecutor of the Prosecutor's Office of BiH filed respective appeals.

The Defense Attorneys for the Accused filed the appeal for all the grounds referred to in Article 296 of the BiH CPC moving the Appellate Panel to grant the appeal, revise the contested Verdict in a manner to acquit the Accused of charges or to revoke the Verdict and schedule a new trial.

The Accused Dragoje Paunović, contests the Verdict due to essential violations of the provisions of criminal procedure, violations of the Constitution of BiH and European Convention for the Protection of Human Rights and Fundamental Freedoms as well as the state of the facts being erroneously or incompletely established, proposing to revoke the first-instance Verdict as a whole, whereas the Prosecutor's Office of BiH filed the appeal due to the Decision on the sentence and decision on the costs of the criminal proceedings submitting to the Appellate Panel to revise the above mentioned Verdict in a manner to pronounce a longer sentence of imprisonment against the Accused and obligate him to compensate the costs of the criminal proceedings.

The Defense Attorneys for the Accused are of the opinion that the first-instance Verdict is based on evidence on which the Verdict may not be based and that during the proceedings the Accused's right to defense was violated. In the opinion of the Defense attorneys the said violations reflect in the fact that the first-instance panel decided to accept as proven the facts adjudicated in the judgments of the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) in the cases against Miroslav Deronjić, Simo Zarić, Milomir Stakić, Duško Tadić and Biljana Plavšić. These facts refer to the existence of a widespread and systematic attack. The Defense Attorneys indicate that such actions challenged the fairness of the proceedings given that these facts had been established on the ground of evidence which the defense could not challenge or contest.

The Defense Attorneys for the Accused also find the violation of the Accused's right to a fair trial in the fact that the first-instance panel allowed for the key witnesses not to be heard on the same day thus providing for harmonization of their statements and they believe that granting a status of protected witness to the witness "A" was needless the only aim of which was to prevent his cross- examination to the full extent.

The appeal further indicates that identification of the Accused by the witness Bakdar Armin, both on photographs and in the courtroom, was not done pursuant to the provisions of the BiH CPC, and it especially contests the identification of the crime scene which was carried out during the reconstruction of the events because the crime scene was secured by the police and marked with tapes on which it was written crime scene, whereby the probative force of action undertaken was invalidated. In addition to the above mentioned, the Defense Attorneys deem that the reconstruction should have been carried out with each witness individually pursuant to Article 93(1) of the BiH CPC.

Explaining the violations of the provisions of the criminal code as they find it, the Defense Attorneys indicted that in the concrete case the Court should have applied the Criminal Code and Criminal Procedure Code applicable in 1992, being of the opini

acting contrary to above mentioned, the principle of legality and time constraints regarding applicability of the criminal code were violated.

The defense further holds that the first-instance panel in the contested Verdict incorrectly established the state of the facts, giving complete credence to the witness Armin Bažđar and witness "A" and dismissing Kapo Ago's statement. The Defense Attorneys are of the opinion that the witness Armin Bažđar, considering that he was in contact with crime perpetrators only for a short period of time and in an extremely stressful situation, actually could not memorize the image and identify the Suspect. The appeal further indicates inconsistency in the statements of the witness Ago Kapo, witness "A" and Armin Bažđar in particular in respect of identification of the Accused, Serb soldiers, wounding of Špiro, manner of execution by firing squad and road to Briščigovo, considering the said inconsistencies do not represent small contradictions as claimed in the contested Verdict.

The appeal also contests the conclusion of the Court that the Accused was an active participant of the widespread and systematic attack in the command position adding that given the enemy defense lines and terrain configuration, as well as the fact that he was wounded, he could not have been even close to the crime scene at the relevant time.

In the appeal the Accused, in addition to the complaint referring to essential violations of the provisions of criminal procedure indicated in the appeal by his Defense Attorneys, stated that he had not been an SDS member or member of the bodies which had been passing conclusions, decisions, laws and other enactments at the relevant time. In particular, he indicated the differences in the statements of the witnesses for the Prosecution who were heard at the main trial, being of the opinion, that their statements which were given during investigation and at the main trial, differ to such an extent that the Court should not have given credence to them in a manner as it has been done in the contested Verdict.

Explaining the grounds for the appeal, the Prosecutor's Office indicates that that the purpose of the criminal sanction or purpose of punishment will not be entirely attained by the imposed sanction being of the opinion that the first-instance panel, in view of the number of victims, their capacity and status, circumstances in which they were taken to serve as human shield and thereafter executed, as well as the fact that the Accused made the decision on their execution on his own, should have sentenced the Accused to a longer imprisonment.

Finally, considering that the Accused has not enclosed evidence on his financial situation and that sustenance of his family members does not depend on the Accused, the Prosecutor's Office believes that the Accused has the obligation to reimburse all or part of the costs of the criminal proceedings, because reimbursement of costs of the criminal proceedings would not undermine anyone's sustenance.

Both the Prosecutor's Office of BiH and Defense Attorneys for the Accused filed answers to the appeals with the Court of BiH, finding the allegations of the appeal of the opposite party ungrounded and proposing to the Appellate Panel to refuse them.

At the session of the Appellate Panel held on 24 October 2006, in terms of Article 304 of the BiH CPC, both parties gave a brief presentation of the appeals and answers and stood by the presented allegations and proposals in their entirety.

Following consideration of the contested Verdict insofar as challenged by the appeals, the Appellate Panel rendered the decision as in the operative part for the following reasons:

The allegations of the appeal indicating essential violations of the provisions of criminal procedure in terms of the fact that the contested Verdict is based on evidence on which the Verdict may not be based, therefore, violating the Accused's right to defense are not grounded.

In other words, the allegations of the Defense Attorneys for the Accused referring to the status of the witness "A" are not grounded. This witness was granted certain protective measures during the trial "given that from the decision of the first-instance panel rendered on 18 December 2005 it arises that the said witness was given the pseudonym "A", his/her personal data were protected, and was allowed to testify utilizing electronic device for distortion of voice and image. Applying the above mentioned measures witness "A" was not granted the status of the "protected witness" in terms of the provisions referred to in Article 14 to 22 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, as incorrectly stated in the appeal, in which case the records on his hearing, pursuant to Article 21 of the above mentioned Law, would only be read out at the main trial. Contrary to the above mentioned, witness "A" personally attended the main trial, gave statement directly, in front of the trial panel and given that pursuant to Article 262 of the BiH CPC he was cross-examined by the defense of the Accused, in the same manner as other witnesses, the allegations of the appeal that granting the above mentioned measures prevented cross-examination of the witness to the full extent, is not grounded and therefore it has been refused. The allegation of the defense that they had known the identity of the witness "A" even before he/she was granted protective measures, in the opinion of this panel, has no influence on the validity of the decision of the Court to grant the measures nevertheless. This is caused by the fact that the purpose of protection of identity of a witness is not only to protect the witness from possible influence of the Accused until the moment of his/her testimony at the main trial when at the latest, pursuant to Article 12 (8) of the Law concerned, his identity has to be disclosed to the defense, but also not to disclose it to public thus protecting the privacy of the threatened person and preventing possible consequences for the witness if his/her identity would be disclosed to third parties who are not party to the proceedings.

Furthermore, the allegations of the appeal by which the Defense Attorneys dispute the decision of the Court not to hear "the key witness for the prosecution" on the same day, thus, as deemed by the Defense Attorneys, providing for the witnesses to adjust their statements to the needs of the Prosecutor's Office are also ungrounded. The schedule of presentation of evidence for the prosecution did not influence in any way the content of the said evidence given that during investigation the above mentioned witnesses gave their statements for the first time to the Prosecutor's Office of BiH and that the records on their hearing were forwarded to the defense as a part of evidence on which the Prosecutor's Office based the allegations in the Indictment. Then the witnesses gave their testimonies before the trial panel in a manner which allowed the parties to carry out direct examination, cross-examination and redirect examination pursuant to Article 262 of the BiH CPC. Fairness of trial within the content of hearing of witnesses, in no circumstances, implies that they have to be heard the same day in order to avoid possible change of testimonies, but it requires for their hearing to be carried out pursuant to the provisions of the BiH CPC that will allow the defense to indicate to the Court possible differences in statements in cross-examination thus diminishing strength of the said evidence. Given that presentation of evidence in the concrete case was carried out entirely pursuant to the provisions of Article 261 and 262 of the BiH CPC, the complaint of the Defense Attorney is ungrounded in its entirety, therefore, it had to be refused.

Furthermore, the defense is of the opinion that the right to defense of the Accused was violated by the decision of the Court to accept as proven the facts adjudicated in the ICTY judgments which facts refer to the existence of a widespread and systematic attack against non-Serb civilians as an essential element of the criminal offense of Crimes against Humanity thus challenging fairness of the entire proceedings given that the Accused could not rebut the evidence concerned. Reviewing the case file the panel established that the first-instance court accepted, as proven, the facts adjudicated in the ICTY judgments rendered against Mitar Vasiljević, Miroslav Deronjić, Simo Zarić, Mlomir Stakić, Duško Tadić and Biljana Plavšić. These facts refer to the existence of a widespread and systematic attack against non-Serb civilians in the territory of Rogatica Municipality. Accepting the above mentioned facts, the first-instance court, as deemed by the Appellate Panel, acted in full compliance with the provisions of Article 4 of the Law on the Transfer of the Cases from the ICTY to the Prosecutor's Office of BiH and the Use of the Evidence Collected by the ICTY in Proceedings before the Courts in BiH which, being *lex specialis*, provides for such action of the court. Contrary to the allegation of the appeal, the fact that the court accepted as proven the existence of systematic and widespread attack does not mean that it could not have been contested or challenged at the trial, but only that the burden of proof, when contesting, is transferred to the party which contests it. In this matter it is necessary to stress that the above mentioned did not infringe general principle of criminal law, stipulating that the burden of proof of existence of a criminal offense and responsibility of the accused is on the prosecutor, given that these are general facts placing the concrete action of perpetration in a wider context of the war events. The existence of systematic and widespread attack on non-Serb civilians in the said territory represents precisely such general fact which is clear, concrete and as such does not confirm criminal liability of the Accused. During the main trial, the defense indicated that the accepted facts were not relevant for this case and that the said ICTY judgments did not explicitly mention the Accused Dragoje Paunović. The first-instance panel refused these complaints as arbitrary and too general. This conclusion is also shared by this Panel and therefore the defense was not prevented from challenging the accepted facts but it failed to do so with sufficient grounds. In addition to the above mentioned, besides the ICTY judgments, the first-instance panel corroborated adequately the conclusion on the existence of the disputed fact with other evidence as well, that is, statements of the witness Ago Kapo, Armin Bažđar, Jasmina Delija, Damir Šetić, Elvedin Kazić, Bisera Bečić, Zaim Ćatić, Behija Pašić, Alija Kapo, Šefik Hurko, Alija Isaković, Nada Isaković, Nisveta Halilović, Amir Salihović, Marija Kurčubajić, Enisa Ćatić, Mevlida Ćatić, Sanin Tanković, Šehzada Parsiović, Mevlida Zimić-Pavica and witness "A", who in their testimonies, describing how and where to they were expelled from their homes, additionally confirmed its truthfulness due to which the Appellate Panel fully shares the conclusion of the first-instance panel on the existence of this essential element of the criminal offense.

The allegation of the appeal according to which the Court primarily had to establish individual responsibility and role of the Accused in the alleged systematic attack at the time and place relevant to the indictment in order to establish the existence of this fact, in the opinion of this panel is also ungrounded. It follows from the legal definition of the criminal offense of Crimes against Humanity that actions described in Article 172(1) a) through k) represent acts of perpetration of the said criminal offense only if committed as a part of systematic and widespread attack against any civilian population and with knowledge of such an attack. As a result of that, the first-instance panel acted correctly establishing in the first place the existence of such an attack, as a general requirement, in order to be able subsequently to establish whether the Accused had knowledge of the attack and whether his acts represented a part of this attack.

Then, the defense objected the manner of identification of the Accused by Armin Bašdar, being of the opinion that it was done contrary to provisions of the Law, that the witness did not previously describe the Suspect, but that he was given three photographs, two of which were the photographs of the suspect, one of them from the photocopy of the ID card. Reviewing the case file, the panel found that during the investigation the witness Armin Bašdar identified the Accused on two occasions, the first time on 28 October 1998, which can be seen from the Official Note of the Agency for Investigation and Documentation, ABD Sector, while the other identification occurred on 19 May 2005 in the premises of the Cantonal Prosecutor's Office Sarajevo. Contrary to the allegations of the Defense Attorneys the first time the witness was not given 2 photographs of the Accused but 3 photographs one of which was the photograph of the Accused, while based on the review of the Record on Identification of Persons from the photographs number KT-12/99-RZ dated 19 May 2005 the panel found that on the said day in the premises of the Cantonal Prosecutor's Office Sarajevo the witness Armin Bašdar identified the Accused in a manner that he had been required first to describe the person who had executed civilians on 15 August 1992 and after he reiterated the description given in his statement on 13 April 2005, he was given 5 photographs of different persons, listed by names in the records, and the witness identified the Accused Dragoje Paunović on the photograph number 4. The course of identification was photographed by the crime technicians of the Ministry of Interior of Sarajevo Canton. So, based on the attached photo documentation it can be seen that the witness was given the photographs without any marks or names. Pursuant to the above mentioned, it follows clearly that the identification of the Accused by the witness was carried out according to the provisions of Article 85 of the BiH CPC, and therefore, the complaint of the Defense Attorney claiming the opposite has been refused as ungrounded. As regards to the complaint referring to the manner of identification of the Accused by the witness during the main trial it is also ungrounded given that when the witness was giving evidence he was not required to identify the Accused in terms of Article 85 of the BiH CPC but the witness, when describing the event dated 15 August 1992, pointed at the Accused on his own initiative and spontaneously as it was recorded in the minutes by the presiding judge.

The appeals further dispute the manner of reconstruction of events in the village of Duljevac. The substance of the allegation in the appeal refers to the fact that on the occasion of arrival to the location concerned, the crime scene was secured by the police and marked with tapes on which it was written "crime scene", whereby, in the opinion of the Defense Attorneys and Accused, the probative force of the identification of the crime scene micro location was invalidated. In the first place, the panel finds that the place where the criminal offense was committed was not disputable, that is, that the purpose of going to the crime scene was not primarily to establish the location of the criminal offense but to check the presented evidence and establish the facts of importance for the case. After review of the video made during the reconstruction the panel established that a part of the terrain was really secured by the police and marked with yellow tapes on which it was written "crime scene". However, on the request of the presiding judge, it was explained on the scene that the marked part of the terrain represented de-mined area and as such safe for movement of the participants in the reconstruction of the events. In any case it did not enclose the entire location on which the said crime was committed on 15 August 1992. It also follows clearly from the statement of the witness Armin Bašdar who, during the reconstruction, clearly and without any hesitation, showed the spot to which a van drove civilians, the spot at which he was squatting with some people, the spot at which he was restrained, all of which are located outside of the location marked with the yellow tape. The fact that the witness had no doubt in respect to orientation in space and that he even pointed at certain differences in the

compared to the time of the perpetration of the criminal offense and as deemed by this panel it clearly indicates that he knows the crime scene very well. This results in the fact that, contrary to the allegations of the appeal, marking of a part of the terrain which was de-mined did not in any way challenge validity of the statements of the witnesses nor did it diminish the strength of the presented evidence.

In reference to the allegations of the appeal contesting regularity and integrity of the established state of facts, the Appellate Panel finds that it is ungrounded. In other words, in the opinion of this Panel, the first-instance court, based on correct evaluation of the key evidence- statements of the eyewitness which are also supported by the evidence of the Prosecutor's Office, established in a correct and reliable manner that the Accused has committed the actions specified in the operative a part of the Verdict which is also fully accepted by this Panel. The statements of the above mentioned witnesses are not identical but they are consistent in respect to the actions of the Accused and his participation in the perpetration of the criminal offense concerned, therefore, this Panel also considers that they are authentic and reliable. Compatibility of the statements of the eyewitnesses- that the Accused had a yellow band around his head, that he had a Motorola (two-way) hand-held radio which clearly differed him from the other soldiers present that day, that he stated „I decide on this" and „kill them"., "Špiro is firing" and that he personally gave the order to one of the present soldiers to take the detained civilians to a nearby meadow after which he ordered and participated in their execution, clearly lead to the conclusion that the Accused had committed the criminal offense concerned exactly in the manner as established in the contested Verdict. In addition to the above mentioned, the witness "A" and witness Armin Bažđar as direct eyewitnesses of the incriminated event without any hesitation identified the Accused as the person who had committed the actions they testified about in the court while the manner in which the witness Armin Bažđar during the reconstruction explained to the Panel the allegations of his statement, finding his way around the crime scene and orientation in space, for this Panel as well removes any doubt that his statement is truthful and authentic. During the first-instance proceedings the defense also indicated the differences in the statements of the witnesses, primarily in respect to appearances of other soldiers when getting out of the minibus, Špiro's injuries, number of persons who participated in the execution and the road to Briščgovo itself, however, this Panel, the same as the first-instance panel, is of the opinion that the said differences are irrelevant, that is, the variations in their statements represent entirely expected and normal differences in observations of persons of different age and ability to observe, in particular given the fact that they survived a very stressful and traumatic event during which they could not observe precisely all the above mentioned details on which the defense insists, nor could such a precision be reasonably expected from them. Pursuant to the above mentioned, from the statements of the said witnesses supported by other evidence in the case file it follows clearly that the state of facts, resulting in the fact that the Accused Dragoje Paunović aka Špiro, in the capacity as order-issuing authority and direct perpetrator, committed the criminal offenses he is charged with in the indictment, was established completely and correctly, therefore, the complaints of the Accused and his Defense Attorneys indicating the opposite are ungrounded in their entirety and as such they had to be refused.

In respect to the allegation of the appeal indicating incorrect application of substantive law the Appellate Panel deems that the appeals incorrectly interpret the reasoning of the contested Verdict so based on such interpretation the wrong conclusion is made that given the fact that the criminal offense was committed in 1992, the application of 2003 BiH CC violates the provisions of Articles 3 and 4 of the Criminal Code of Bosnia and Herzegovina which

prescribe principles of legality and time constraints regarding applicability (BIH CC).

The principle of legality is an imperative enacted by Article 7 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) which has priority over other laws in Bosnia and Herzegovina (Article 2.2 of the Constitution of Bosnia and Herzegovina). From the mentioned article of the ECHR the general principle prohibiting imposing a heavier penalty than the one that was applicable at the time when the criminal offense was committed.

However, paragraph 2 of the said Article of the ECHR gives an important exemption providing that paragraph 1 of the same Article"....shall not prejudice the trial and punishment of any person of any act or omission which, at the time when it was committed, *was criminal according to the general principles of law recognized by civilized nations*".

Article 15 paragraph 1 and paragraph 2 of the United Nations International Covenant on Civil and Political Rights provides similar international provisions to be considered as *Lex Superioris* in relation to ".....to the general principles of law recognized by the community of nations".

Customary status of liability and punishment of Crimes against Humanity and that of individual criminal responsibility for its commission in 1992 were confirmed by the United Nations Secretary General 3 May 1993 in a report to the Security Council Resolution 808, International Law Commission (1996) and by jurisprudence by of ICTY and International Criminal Tribunal for Rwanda.

Crimes Against Humanity thus constitutes an imperative principle of international law or rather *Ius cogens*, and it is beyond dispute that in 1992 crimes against humanity were an integral part of international customary law.

In other words, application of the 2003 BIH CC on the concrete criminal offense is based on the provisions of Article 4 a) of the BiH CC, which again refers to "general principles of international law, as correctly stated in the contested Verdict, in which it is stipulated that Articles 3 and 4 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 offense according to general principles of international law. By this, an exception from general principles set out in Articles 3 and 4 of the BiH CC was practically made, in terms of the fact that these articles do not challenge trial and punishment of some person for every act or omission to act which includes the criminal offense of Crimes against Humanity and which, as such, was not stipulated by the criminal code applicable at the time of commission of the criminal offense. Given that the reasoning of the contested Verdict gave valid reasons which in no uncertain terms confirm that Crimes against Humanity represents the criminal offense according to general principles of international law, which conclusion is shared by this Panel as well, it follows that the first-instance court correctly applied the provisions of the BiH CC on correctly and fully established state of facts, therefore, this allegation of the appeal has been refused as ungrounded.

Practice of the European Court on Human Rights (hereinafter: ECHR) underl[illegible] the application of the provision of Article 7 paragraph 2 in relation to Article 7 para[illegible] 1 in similar cases. See ECHR decision on case *Naletilić v. Croatia (51891/99.*

Further, the Appellate Panel took a similar stand in the Verdict against Abdulselhim Maktouf, No. KPŽ 32/05 of 4 April 2006.

Both parties also appealed the length of the pronounced sentence given that the defense presented the position that the Accused did not commit the criminal offense for which he was found guilty in the first-instance Verdict, therefore, they deemed the pronounced sentence incorrect and the Prosecutor's Office indicated that 20 year imprisonment will not attain purpose of criminal sanction or punishment.

Contrary to the allegations of the appeal, the Appellate Panel is of the opinion that the first-instance panel meted out the penalty correctly considering all subjective and objective circumstances referring to the criminal offense and its perpetrator which make the pronounced sentence adequate given the degree of criminal liability, the motives for perpetrating the offence, the degree of injury to the protected value and personal situation of the Accused. Considering that the Accused was pronounced guilty of one the gravest criminal offenses the consequence of which was death of 27 civilians including some under-age person at that time and considering that he ordered and personally participated in their killing, the Appellate Panel deems that the pronounced sentence of long term imprisonment was correctly meted out and adequate to attain both purpose of criminal sanctions as well as purpose of punishment.

The Panel also refused as ungrounded the complaint of the Prosecutor's Office of BiH referring to the fact that the Accused was relieved of the duty to reimburse the costs of criminal proceedings being of the opinion that the first-instance panel correctly concluded that the Accused is unemployed and the fact that he has been in custody since 18 march 2005 refer to the conclusion that he is of low income and has no funds to reimburse the costs.

Pursuant to above mentioned and according to Article 310(1) in conjunction with Article 313 of the BiH CPC it has been decided as in the operative part of the Verdict.

Minutes-taker
Lejla Fadilpašić
[signature affixed]

Presiding Judge
Azra Miletić
[signature affixed]

REMEDY: An appeal against this Verdict shall not be allowed.

I hereby confirm that this [illegible] of the original written in Bosnian/Croatian/Serbian language.

Sarajevo, 28 Nov[illegible]