SUD BOSNE I HERCEGOVINE

СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KRŽ-05/40
Sarajevo, 22 June 2007

The Court of Bosnia and Herzegovina, the Appellate Division of Section I for War Crimes, sitting as a Panel comprising Judge Azra Miletić as the President of the Panel and Judges Jose Ricardo de Prada and Finn Lynghjem as the members of the Panel, with the participation of court officer Melika Bulatlić as the record-taker, in the criminal case against the Accused Nikola Kovačević for the criminal offense of Crimes against Humanity in violation of Article 172, paragraph 1, sub-paragraph (h) in conjunction with sub-paragraphs (a), (e), (f) and (k) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), having deliberated on the appeal filed by the Prosecutor's Office of Bosnia and Herzegovina (Prosecutor's Office of BiH) number KT-RZ-31/05 dated 29 December 2006 as well as on the appeals filed by defense counsel, Attorney Ranko Dakić, and by the Accused himself against the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/40 dated 3 November 2006, at a session held in the presence of the Accused, defense counsel, Attorney Husein Mušić, and Prosecutor of the Prosecutor's Office of BiH, Džemila Begović, on 22 June 2007 delivered the following

VERDICT

The appeals filed by the Prosecutor's Office of Bosnia and Herzegovina, the Accused Nikola Kovačević and his defense counsel, Attorney Ranko Dakić, are hereby refused as unfounded, and the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/40 dated 3 November 2006 is hereby upheld.

REASONS

By the Verdict of the Court of Bosnia and Herzegovina (Court of BiH) number X-KR-05/40 dated 3 November 2006, the Accused Nikola Kovačević was found guilty, in that he, by the acts set out in paragraphs 1 and 2 (specifically, 2a, 2b, 2c and 2d) of the operative part of the Verdict, committed the criminal offense of Crimes against Humanity in violation of Article 172, paragraph 1, sub-paragraph (h) in conjunction with sub-paragraphs (a), (e), (f) and (k) of the CC of BiH, as read in conjunction with Article 180, paragraph 1 of the CC of BiH.

With respect to the above-mentioned criminal offense, the first-instance panel imposed on the Accused a sentence of imprisonment for a term of twelve (12) years, with the time spent in custody pending trial from 10 October 2005 onwards credited towards the sentence of imprisonment in accordance with Article 56 of the CC of BiH. Pursuant to Article 188(4) of the CPC of BiH, the panel relieved the Accused of the duty to reimburse the costs of the criminal proceedings.

Pursuant to Article 198(2) of the CPC of BiH, the injured parties Hasan Osmančević and Sadmir Alibegović, who filed claims under property law, as well as Suad Šabić, Zikrija Bahtić, Adil Draganović, Ismet Kolaković, Redžep Zukić, Rufad Zukić, Nijaz Halilović, Mehmed Mujagić, Redžo Kurbegović, Zikret Zukić, Adem Seferović, Sakib Muhić, Mirzet Karabeg, Nihad Ključanin, Enis Šabanović, Ejub Dedić, Senad Šupuk and Osman Talić, if they decide to file claims under property law, were referred to take civil action.

The Accused Nikola Kovačević, defense counsel Ranko Dakić and the Prosecutor's Office of BiH filed appeals against the aforementioned Verdict.

The defense counsel appealed pursuant to each ground for appeal set forth in Article 296 of the CPC of BiH and moved that the Appellate Panel grant the appeal and reverse the contested Verdict by acquitting the Accused of the charges; alternatively, the defense counsel argued that the Appellate Panel should revoke the contested Verdict and order a retrial.

The Accused Nikola Kovačević indicated in his appeal that he challenged the first-instance Verdict on account of the decision on the sanction, although it follows from the reasons put forward in the appeal that the Accused filed his appeal on other legal grounds as well.

The Prosecutor's Office of BiH contested the first-instance Verdict on the ground set out in Article 296(1)(d) of the CPC of BiH – decision as to the sanction – and moved that the Appellate Panel reverse the first-instance Verdict by imposing on the Accused a sentence of imprisonment for a term between 15 and 25 years.

In support of his appeal, the defense counsel argued that the first-instance Verdict was based upon improper evidence and that the Accused's right to defense was violated in the course of the proceedings.

According to the defense counsel, this violation arose from the fact that the first-instance panel decided to accept as proven the facts established in the judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered in the cases against Biljana Plavšić, Duško Sikirica, Dragan Kulundžija, Damir Došen, Miroslav Kvočka, Mlado Radić, Milojica Kos, Zoran Žigić, Dragoljub Prcać, Duško Tadić, Miroslav Deronjić, Simo Zarić and Miomir Stakić. The Accused could not contest those facts which, in the opinion of the defense counsel, amounted to a violation of Article 6(3)(d) of the European Convention on Human Rights (ECHR).

It was further argued that the Court compromised the Accused's right to a fair trial by allowing the use of certain documents as material evidence that, in the opinion of the defense counsel, had no probative value, as the documents were made on a typewriter and were not signed. The example given was the list of members of the SOS, and it was argued that the authenticity and origin of that document is impossible to determine. The defense counsel believes that the manner in which the Accused was identified in the courtroom has no probative value and points out that any passer-by could identify an accused in the courtroom. The defense counsel referred in particular to the identification made by witness Ejub Dedić.

The witness could not identify the Accused from the photos that were presented to him at the Prosecutor's Office, but he did recognize the Accused with absolute certainty at the main trial.

With respect to the application of substantive law, the defense counsel argued that the first-instance panel in the contested Verdict violated the principle of legality (Article 3 of the CC of BiH) and time constraints regarding applicability (Article 4 of the CC of BiH) and noted that, as the criminal code was amended on several occasions since the commission of the offense, both the CC of SFRY and CC of FBiH were more lenient to the perpetrator than the CC of BiH; as a result, the application of the CC of BiH amounted to a violation of Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights.

It was further alleged in the appeal that the established state of facts concerning the decisive facts was not correct and that the Court, when evaluating the evidence, failed to apply the *in dubio pro reo* principle and that with this type of criminal offense, a higher level of probative value is required than with so-called ordinary-lesser criminal offenses. The defense counsel submitted that the witnesses for the prosecution were in fact self-persuaded witnesses whose testimonies were not supported by any other evidence; for that reason, the defense counsel was of the opinion that the Verdict could not have been based on such testimonies. He further noted that the Court should have assessed the act of voluntary surrender of the Accused as proof of his innocence, whereas the letter that the Accused sent to Vlado Vrkeš was the act of a desperate man in custody who did not receive a fair trial and who implored and made threats with a view to receiving a fair treatment. Moreover, the defense counsel stated that the Accused was a member of the SOS only as a matter of form, and that the testimony of witness Duško Babić indicated that the Accused was not an active participant of the operations carried out by the SOS.

The defense counsel also objected to the validity of the conclusion drawn by the first-instance panel regarding the existence of a systematic attack in the Sanski Most municipality, noting that Bosniak citizens were also armed and that they avoided the JNA draft.

Furthermore, the defense counsel referred to alleged discrepancies in the testimonies of the witnesses who testified about the circumstances under paragraph 1 of the operative part wherefrom it followed, according to the appellant, that the witnesses saw the Accused in the hall on rare occasions and that he did not maltreat them, while the mere fact that he was present there wearing a uniform and carrying a weapon did not constitute a criminal offense. With regard to the witnesses who charged the Accused with the beatings at the *Betonirka*, the defense counsel contended that the witnesses were indecisive and that their testimonies were inconsistent; for that reason, the defense counsel believed that it was not proved during the proceedings that the Accused participated in the unlawful detention and torture of civilians at the *Betonirka*. Regarding Adil Draganović's apprehension, the defense counsel noted that this apprehension was carried out on the order of superiors and that the only conclusion that the Accused could have drawn was that the apprehension was carried out in accordance with the law. As the Accused is nowhere else mentioned as participating in apprehensions and detentions, the defense counsel is of the opinion that the reasons adduced in the Verdict contradict the operative part, which reads that the Accused "... is guilty of detaining persons

in detention facilities, on his own or in concert with Milan Martić and other members of the military and police ..."

With respect to the part of the Verdict stating that the Accused participated in the transportation of individuals to Manjača, and that on those occasions he participated in the beatings and singling out of certain individuals following which those individuals disappeared without a trace, the defense counsel argued that no witness confirmed with certainty seeing the Accused maltreating or executing any of the persons who subsequently went missing. With regard to finding the Accused guilty of disappearance and execution of persons listed in the Indictment, the defense counsel noted that statements of examined witnesses were inconsistent and that witnesses did not mention the Accused in their prior statements regarding the aforementioned incidents.

For the reasons set out above, it was maintained in the appeal that the first-instance panel should have rendered a Verdict acquitting the Accused of all the charges in accordance with the *in dubio pro reo* principle and Article 284(1)(c) of the CPC of BiH.

In his appeal, the Accused objected to the fairness of the first-instance proceedings and to the manner of identification in the courtroom. He believed that the Prosecutor's witnesses were politically and emotionally motivated to give evidence. He further noted that the Court should have given credence to witness Dragan Majkić and heard non-Serb witnesses that the Accused identified. With respect to the application of substantive law, he argued that the first-instance Verdict violated the principles laid down in Articles 3 and 4 of the CC of BiH and that the CC of SFRY, as the law in force during the time relevant to the Indictment, should have been applied in the present case. Ultimately, it was proposed in the appeal that the Appellate Panel revoke the challenged Verdict, hold a retrial, and render an acquittal.

The Prosecutor's Office of BiH contested the first-instance Verdict on account of the decision as to the sanction, submitting that the first-instance panel overvalued the extenuating circumstances on the part of the Accused and arguing that certain facts under consideration were not extenuating circumstances at all but rather aggravating circumstances. To that effect, it was particularly noted in the appeal that the Accused was found guilty of committing a number of different acts over an extensive period of time, that he participated in all activities of a widespread and systematic attack directed against the civilian population and that he attempted to bring about fear among that population and make the impression that he was a powerful person. Based on the foregoing, it was argued in the appeal that the imposed sentence, nearly the lowest statutory sentence for the criminal offense with which the Accused is charged, was not the sentence that could achieve either individual or general purpose of punishment.

The Prosecutor's Office of BiH and the defense counsel filed their responses to the appeals of the opposing party, submitting that the averments referenced above were unfounded. Both parties moved that the Appellate Panel refuse the appeal of the opposing party.

At the session of the Appellate Panel held on 22 June 2007, as required by Article 304 of the CPC of BiH, both parties briefly presented their respective appeals and responses thereto, standing by their respective averments and proposals in their entirety.

Having reviewed the contested Verdict within the bounds of the respective appeals, the Appellate Panel rendered its decision as stated in the operative part on the following grounds:

The defense counsel and the Accused made unfounded averments in their respective appeals by arguing that the first-instance panel violated the Accused's right to defense and compromised the fairness of the proceedings by accepting the Prosecutor's motion to accept as proven the facts established in the judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered in the cases against Biljana Plavšić, Duško Sikirica, Dragan Kulundžija, Damir Došen, Miroslav Kvočka, Mlado Radić, Milojica Kos, Zoran Žigić, Dragoljub Prcać, Duško Tadić, Miroslav Deronjić, Simo Zarić and Miomir Stakić – the facts relating to the existence of a widespread and systematic attack directed against the civilian population in the area and at the time covered by the indictment. Specifically, Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in BiH (LOTC) provides that, at the request of a party or *proprio motu*, the court may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings before the ICTY or to accept documentary evidence from proceedings before the ICTY relating to matters at issue in the current proceedings.

Bearing in mind that the accepted facts are important for establishing the existence of essential elements of the criminal offense with which the Accused is charged, that the same legally binding decisions were adopted with regard to those facts, that those facts do not include evaluations of legal nature and that they do not attest to the criminal responsibility of the Accused but rather place a specific act of perpetration within a broader context of the war, the Appellate Panel finds that the acceptance of the facts did not in any way violate the fairness of the proceedings.

In regards to this finding, it should be noted in particular that the first-instance panel based its conclusion concerning the existence of a widespread and systematic attack directed against the civilian population in the geographical area and time relevant to the Indictment not only on the aforementioned accepted facts, but also on the corroborating testimonies of witnesses for the prosecution who were heard at the main trial: Faruk Botonjić, Sadmir Alibegović, Suad Šabić, Zikrija Bahtić, Ejub Dedić, Adil Draganović and others. These witnesses gave evidence about the arrests of Muslims and Croats in Sanski Most, the shelling of civilian buildings, the expulsion of non-Serb civilians from their houses and taking them to various buildings in Sanski Most – providing additional support for the first-instance panel's conclusion regarding the existence of general elements of crimes against humanity, which this panel accepts in its entirety. During the main trial, the defense cross-examined the aforementioned witnesses. Moreover, the defense was given an opportunity to produce its own evidence to refute the veracity of the presented and established facts. Therefore, it follows that the defense was not precluded from contesting the accepted facts presented at the

main trial; rather, the defense failed to provide sufficient countervailing evidence during the proceedings.

Relatedly, the Appellate Panel fully accepts and endorses the position taken by the first-instance panel that a widespread and systematic attack need not necessarily be linked to an armed conflict, as argued by the defense counsel in his appeal. When determining whether essential elements of crimes against humanity have been met, it is absolutely irrelevant whether the other party also committed the same or a cognate criminal offense against a group enjoying protection.

The Appellate Panel finds that the statement made in the appeal that the first-instance panel compromised the fairness of the trial by allowing the use as material evidence of certain documents that, according to the defense, have no probative value is a general statement, as the defense counsel failed to explain the actual violation that he invoked. Nor did he specify the evidence in question; instead, "just to give you an example," he singled out a list of members of the SOS claiming that it was impossible to determine the authenticity of the list. A trial panel evaluates the probative value and relevance of evidence individually and in relation to one another, and only after this analysis does the panel draw a conclusion regarding facts relevant for adjudication in a legal matter in question. This was done correctly in the contested Verdict, making the objection by the defense counsel that the fairness of the trial was compromised unfounded in its entirety.

As for the statements in the appeal relating to the manner of identification of the Accused in the courtroom, the Appellate Panel first of all observes that asking a witness whether he/she recognizes in the courtroom the person that the witness mentioned in his/her testimony does not constitute a separate action pursuant to Article 85 of the CPC of BiH aimed at obtaining evidence by way of identification, but is an integral part of the testimony of that witness, and the Court will evaluate the reliability and credibility of the testimony as a whole and in accordance with the law. Therefore, the referenced questions aimed at checking whether the witness really knows the person he/she is talking about are standard and allowed questions put to a witness as part of his/her examination at the main trial. Those questions are not subject to formal requirements, as is the case with formal identification pursuant to the procedure laid down, and invoked by the defense counsel, in Article 85(3) of the CPC of BiH.

The appeal contains an unfounded objection that the first-instance panel attached the greatest probative value to the aforementioned identification of the Accused in the courtroom and based the established facts and the decision regarding guilt thereon. That this objection is unfounded follows from the reasons adduced in the contested Verdict, which contained a thorough and comprehensive analysis of all portions of the witnesses' testimonies that are important to establish relevant facts and did not rely only upon those portions referred to by the defense counsel. Based upon such a comprehensive analysis, the first-instance panel drew a valid conclusion about the criminal responsibility of the Accused, and this Panel accepts that conclusion in its entirety.

The appeal also contains an unfounded objection contesting the choice of substantive law. It was argued that the first-instance court, instead of applying the CC of SFRY or the CC

of FBiH, which according to the appellants are more lenient to the perpetrator in regards to the existence of the aforementioned criminal offense and the prescribed criminal sanction, incorrectly applied the CC of BiH, whereby it violated the principles of legality and time constraints regarding applicability laid down in Articles 3 and 4 of the Criminal Code of Bosnia and Herzegovina respectively.

Specifically, it is beyond dispute that at the time the acts with which the Accused is charged were perpetrated, which acts met all the essential elements of the criminal offense of crimes against humanity, the mentioned criminal offense was not prescribed as such in the Criminal Code of SFRY, which was the law in force at the time the criminal offense was committed.

Moreover, it is beyond dispute that according to the principle of legality, no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, had not been defined as a criminal offense by law or international law, and for which a punishment had not been prescribed by law (Article 3 of the CC of BiH), whereas the principle of time constraints regarding applicability provides that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense; if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied (Article 4 of the CC of BiH). The principle of legality is also laid down in Article 7(2) of the ECHR and Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR).

However, Article 4a of the CC of BiH, correctly invoked by the first-instance Verdict, provides that Articles 3 and 4 of this Code 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 to the general principles of international law. This provision in effect adopted the provisions of Article 7(2) of the ECHR and Article 15(2) of the ICCPR allowing the derogation of the principle laid down in Article 4 of the CC of BiH as well as the derogation of the mandatory application of a more lenient law in proceedings for criminal offenses according to international law. This is the case in the current proceedings against the Accused because he is charged with a violation of the rules of international law. Specifically, as correctly reasoned in the contested Verdict, crimes against humanity, at the time relevant to the indictment, undoubtedly constituted a criminal offense with respect to both international customary law and "principles of international law". Exhaustive arguments supporting this conclusion put forward by the first-instance court are valid and correct in their entirety, and this Panel accepts them as such.

Furthermore, international customary law and interstate treaties signed by the Socialist Federal Republic of Yugoslavia automatically became binding for Bosnia and Herzegovina both at the time Bosnia and Herzegovina was part of the Socialist Federal Republic of Yugoslavia and after it became a successor state of the Socialist Federal Republic of Yugoslavia. Article 34 of the Vienna Convention on Succession of States in respect of Treaties of 1978, which was ratified by the Socialist Federal Republic of Yugoslavia on 18 April 1980, provides that any treaty in force at the date of the succession of States in respect

of the entire territory of the predecessor State continues in force in respect of each successor State so formed, unless the States concerned agree otherwise. In addition, Bosnia and Herzegovina declared on 10 June 1994 that, as a successor state, it accepted all the international treaties that bound the Former Yugoslavia. What is more, Article 210 of the Constitution of the Socialist Federal Republic of Yugoslavia provides that international treaties are automatically implemented and applied directly as of the date of entering into force without the adoption of implementing legislation.

The foregoing clearly indicates that the first instance panel is correct in asserting that Bosnia and Herzegovina, as the successor of the former Yugoslavia, ratified the ECHR and ICCPR, hence is bound by those international documents, and since they prescribe the obligation to try and punish persons for any acts or omissions, which, at the time of commission, constituted a criminal offense according to the general principles of international law, which the crime against humanity, in line with the foregoing, undoubtedly is, the allegations suggesting that the trial and punishment for this criminal offense constitute a violation of *nullum crimen sine lege* principle, are, in the opinion of the Panel, entirely unfounded.

The Appellate Panel also considers unfounded the objection that the first-instance panel, bearing in mind the obligation to apply the law that is more lenient to the perpetrator with respect to the criminal sanction provided, should have applied the 1998 CC of FBiH, because it provided, in Article 393, that a final death penalty sentence (the sanction that, according to the CC of SFRY in force at the time of commission of the crime, could be pronounced for the acts with which the Accused is charged) pending on date the 1998 Code entered into force, shall become a long term prison sentence of 40 years, which is more lenient than 45 years, which is the legal maximum according to the CC of BiH, because it is clear from the very wording of the quoted provision that it pertains only to the cases that are finalized by a legally binding Verdict prior to the date of the entry into force of the 1998 CC of FBiH, which does not apply in the present case as the indictment was confirmed on 5 January 2006.

In addition, in its ruling on the appeal of Abdulsalhim Maktouf, the Constitutional Court of BiH concluded on 30 March 2007 that the application of the CC of BiH in cases before the Court of BiH such as the present case does not constitute a violation of Article 7(1) of the European Convention.

With regard to the objection that the facts have been established incorrectly and incompletely, this Panel finds it unfounded, contrary to the appeal submission. In the first place, the appeal submission that, with regard to the most serious of criminal offenses the first-instance panel had to require a higher level of probative value than that required for 'ordinary' criminal offenses, has no foundation either in the procedural or substantive criminal law, especially taking into account the *in dubio pro reo* principle that requires the court to interpret a doubt with respect to any legally relevant fact in favor of the Accused, which means that the court is obligated to establish with certainty, beyond any reasonable doubt, every fact detrimental to the Accused. This standard is applied regardless of the type of the criminal offense charged and regardless of the sentence that may be pronounced. For that reason, the Panel finds the objection of the defense counsel calling for a level of certainty that

is higher than the absolute certainty that all relevant facts have been proven wholly without merit.

The appeal submits that in the course of the proceedings the Prosecutor's Office of BiH failed to prove that the Accused was in fact a member of a local SOS unit. The Appellate Panel finds this entirely irrelevant considering that the Accused himself in his testimony at the main trial stated that he was a member of the mentioned unit, as was confirmed by almost all Prosecution witnesses, and this fact was not a matter of contention in the course of the proceedings. With regard to the appeal related to the role and character of the SOS, which the defense counsel in the appeal described as "an unorganized group tasked to protect the Serb people in case of need", this Panel finds it irrelevant with regard to the essential elements of the criminal offense of Crimes against Humanity of which the Accused was found guilty.

The appeal submissions that an analysis of the testimonies of witnesses who testified with respect to the circumstances recited in paragraph *1 of the operative part of the Verdict* does not indicate that the Accused took part in the unlawful detaining and mistreatment of the civilians in the *Betonirka*, and that it follows from those testimonies that they were not beaten by the Accused but by other persons, are entirely incorrect and diametrically opposed to what the referenced witnesses stated in their testimonies.

The testimonies of witnesses Faruk Botonjić, Mirzet Karabeg, Nihad Ključanin, Hasan Osmančević, Sadmir Alibegović, Zikrija Bahtić, Rufad Zukić, Nijaz Halilović and Osman Talić, who were detained in the *Betonirka* garages, indisputably show that the Accused committed the acts under this count, for which he was found guilty, at the time and in the manner as described in the operative part. Witness Faruk Botonjić convincingly and categorically stated that even during his first night in the garage he was brutally beaten by the Accused, whilst witnesses Hasan Osmančević, Mirzet Karabeg, Nihad Ključanin, Ejub Dedić, Osman Talić, and Zikrija Bahtić also categorically stated that they were mistreated by, among others, the Accused, whom they knew by the name of Daniluško Kajtez.

The testimonies of the referenced witnesses are almost entirely consistent with each other and clearly confirm that they were beaten by the Accused. Specifically, witness Ejub Dedić stated that he was mostly beaten by the Accused, and recalled an event during which the Accused singled him out from the gauntlet and beat him while he was boarding the truck that transported them to Manjača. Similarly, the testimonies of witnesses Mirzet Karabeg and Nihad Ključanin are especially noteworthy in this regard. They too were beaten by the Accused in an incident that is precisely described by other witnesses as well since, unlike the incidents that took place in the offices adjacent to the garages, this incident occurred in front of them. The testimonies of the above-mentioned witnesses are unanimous in terms of the manner in which this incident took place, leaving no room for any doubt on the part of this Panel regarding their veracity. The Panel finds entirely unfounded the appeal objection alleging contradictions with regard to the testimony of witness Ključanin, who could not remember if the Accused beat Mirzet Karabeg because the witness clearly remembered that Mirzet Karabeg was ordered to get on his knees so that the Accused could beat him, but, as the witness himself had already been severely beaten, and because of fear that caused "a general amnesia, there is no thinking about it...", the witness could not remember precisely if

the Accused truly did beat Mirzet, which is normal bearing in mind the exceptionally traumatic nature of the said incident, which in no way calls into question the veracity of the testimony as a whole. This Panel could not accept the conclusion of the defense counsel that the mistreatment of Mirzet Karabeg by the Accused was an "isolated incident," considering that the referenced testimonies clearly show that the Accused was a person who, together with Milan Martić and "Džo Banana", was notorious for his brutality, that he personally mistreated other witnesses referenced above, and that all detained civilians tried, whenever it was possible, to avoid any meeting with him, as stated by witness Rufad Zukić and confirmed by other witnesses.

The appeal submission that the witnesses' testimonies were unclear in terms of their position in the *Betonirka*, and that they contain contradictions in terms of the conditions, is entirely unfounded considering that all above-mentioned witnesses identically described how they were brought there and the exceptionally difficult conditions in which they were held. In addition to the fact that they were forcefully brought and held in detention in the garages under the pretext that they were going to be interviewed, the witnesses also categorically, convincingly and unanimously claimed that they were held in unbearable living conditions, more specifically, between 30 and 40 people were held in the garages, which can only fit one car each, where they were severely physically mistreated on a daily basis. All witnesses clearly remember that they needed more air as it was summer, that they received food of poor quality once or twice a day, in small quantities and stale from exposure to the sun, and that they were allowed to relieve themselves perhaps once a day in the same area where they were detained.

Furthermore, the appeal wrongfully submits that only witness Adil Draganović stated that the Accused took part in his arrest, because the same was confirmed by witness Mirzet Karabeg, who categorically stated that the Accused took part in arresting him as well on 25 May 1992. It is also submitted in the appeal that the Accused believed he was lawfully bringing individuals in for questioning. Taking into account how the Accused treated these people, the criteria and reasons for bringing them in, which were evidently discriminatory and unfounded, as well as their imprisonment and detention in the garages under the above-described conditions without regard to any legally prescribed procedures or pursuant to relevant written decisions, in no way can the requirements of a lawful deprivation of liberty be said to have been met, nor does it indicate that the Accused, or any other person involved, could consider such imprisonment lawful. In the appealed Verdict, the nature and manner in which the mentioned persons were deprived of their liberty is examined in detail, and an accurate conclusion is reached that it was detention in violation of the basic rules of international law, which conclusion this Panel accepts in its entirety.

The defense counsel, in an across-the-board manner, challenges the accuracy of the established facts in relation to paragraphs 2(a) through 2(d) of the operative part, submitting that the testimonies of witnesses who gave evidence in relation to those four paragraphs were contradictory, and adds that none of the witnesses was able to confirm with certainty that they saw the Accused mistreating or executing any of the persons who subsequently went missing. Such a conclusion contradicts the testimonies of witnesses Nedim Bilićević, Zikret Zukić, Senad Šupuk and others whose evidence, quoted in the appealed Verdict in all relevant parts,

unequivocally and unanimously fully confirms the factual findings in the referenced paragraphs of the operative part of the Verdict. It is correctly stated in the appeal that some witnesses, despite the fact that it was difficult to notice any particular details while being transported in the convoys, nevertheless managed to see and recognize the Accused. However, contrary to the conclusion of the appellant, who submits that this makes their testimonies contradictory, this Panel finds it logical and convincing that that some of them, mostly because they knew the Accused from before, were in a position to clearly see and recognize him. Also, taking into account that at the main trial these witnesses gave evidence which this Panel finds entirely convincing, logical and unanimous, the first-instance panel was justified in giving credit to these witness.

Furthermore, in his appeal the defense counsel quoted only a part of the statement of witness Dragan Majkić who, with regard to the transportation and taking of people to Manjača on 7 July 1992, stated that only the police had the responsibility for providing security for the convoy, on which basis the defense counsel wrongly concludes that 'no one from the outside' could have participated in those events, as the same witness also stated that he could not state whether there was anyone else in the escort other than the police because he personally was not present when those persons were transported. Therefore, in establishing this fact, the first-instance Verdict correctly relied on the testimonies of witnesses who were transported to Manjača on that occasion and who explicitly stated that the Accused was involved.

Taking into account the foregoing, the Appellate Panel finds that the appealed Verdict contains a comprehensive and accurate analysis of all relevant evidence and of the facts based on that evidence, and that based on that analysis a correct conclusion was reached both in terms of the commission of the criminal offense alleged and in terms of the criminal responsibility of the Accused.

Both parties objected to the pronounced sentence. The defense maintained that the Accused did not commit the crime of which he was found guilty in the first-instance verdict and, therefore, found the pronounced sentence incorrect. The Prosecution, on the other hand, submitted that the sanction of a 12-year imprisonment cannot achieve the purpose of criminal sanctions or punishment.

Contrary to the appeals' submissions, the Appellate Panel finds that the first-instance panel correctly determined the sentence, taking into account all subjective and objective circumstances related to the criminal offense and the perpetrator, which renders the pronounced sentence an adequate one considering the level of criminal responsibility of the accused, his motives for committing the offense, the extent of damage to the protected values and the personal circumstances of the Accused. Therefore, the Appellate Panel finds that the pronounced sentence of 12 (twelve) years imprisonment was correct and that the imposed sentence will achieve the purpose of punishment set out in Article 39 of the CC BiH, which stipulates that it is necessary to express the community's condemnation of a perpetrated criminal offense, to deter the perpetrator from perpetrating criminal offenses in the future, to deter others from perpetrating criminal offenses, and to increase the consciousness of citizens of the danger of criminal offenses and of the fairness of punishing perpetrators.

In accordance with the foregoing, pursuant to Article 310(1), as read with Article 313 of the CPC of BiH, it has been decided as in the operative part of this Verdict.

Melika Bulatlić
Record-taker

Judge Azra Miletić
President of the Panel

INSTRUCTION ON LEGAL REMEDY: No appeal is allowed against this Verdict.

We hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian language.
Sarajevo, date

[redacted]
Certified Court Interpreter for the English Language

[redacted]
Certified Court Interpreter for the English Language