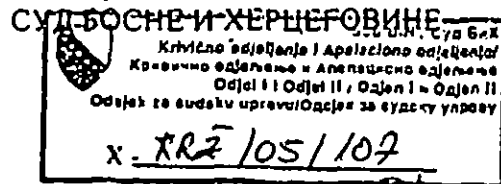


SUD BOSNE I HERCEGOVINE



04-81-2008

Number: X-KRŽ-05/107
Sarajevo, 19 November 2007



PREVOD DOK: 940

IN THE NAME OF BOSNIA AND HERZEGOVINA!

Court of Bosnia and Herzegovina, in the Appellate Division Panel of Section I for War Crimes, composed of Judge Azra Miletić as the President of the Panel and Judges Finn Lynghjem and Elizabeth Fahey as the Panel members, with the participation of the legal advisor Lejla Fadilpašić as the record-keeper, in the criminal case against the accused Goran Damjanović for the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina (the CC BiH) and the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Materials under Article 399 (1) and (2), read in conjunction, of the Criminal Code of Republika Srpska (the CC RS), and against Zoran Damjanović for the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH, deciding upon the appeals filed by the defense counsel for the accused Goran and Zoran Damjanović, Attorneys Senad Kreho and Fahrija Karkin, and the accused themselves, from the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/107, dated 18 June 2007, at the session held in the presence of the Prosecutor of the Prosecutor's Office of BiH David Schwendiman, the defense counsel for the accused, Attorneys Senad Kreho and Fahrija Karkin, and the accused themselves, on 19 November 2007 rendered the following

VERDICT

I The appeals filed by the accused Goran and Zoran Damjanović and the defense counsel for the accused Zoran Damjanović, and partially the appeal filed by the defense counsel for the accused Goran Damjanović are hereby dismissed as unfounded, while the Verdict of the Court of BiH number X-KR-05/107, dated 18 June 2007, by which, under Section 1 of the operative part, the accused Goran and Zoran Damjanović were found guilty of the criminal offense of War Crimes against Civilians under Article 173(1)(c) in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina and sentenced to a punishment of imprisonment, namely the accused Goran Damjanović for a term of 11 (eleven) years and the accused Zoran Damjanović for a term of 10 (ten) years and 6 (six) months, is hereby upheld in that part.

II The appeal filed by the defense counsel for the accused Goran Damjanović is hereby partially upheld and the Verdict of the Court of BiH number X-KR-05/107, dated 18 June 2007, in relation to Section 2 of the operative part, by which the accused Goran Damjanović was found guilty of the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399 (1) and (2), read in conjunction, of the Criminal Code of Republika Srpska, is hereby revoked and a hearing before the Appellate Panel shall be held.



REASONING

By the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/107, dated 18 June 2007, the accused Goran and Zoran Damjanović were found guilty of committing the criminal offence of War Crimes against Civilians under Article 173(1)(c) in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (the CC BiH) in the manner described in Section 1 of the Verdict, while the accused Goran Damjanović was also found guilty of the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Materials under Article 399 (1) and (2), read in conjunction, of the CC of Republika Srpska (the CC RS) under Section 2 of the operative part of the Verdict.

The first instance panel imposed on the accused Goran Damjanović an 11-year prison sentence for the criminal offense under Article 173(1)(c) of the CC BiH and a prison sentence of 1 year and 6 months for the criminal offense under Article 399 (1) in conjunction with subparagraph (2) of the CC RS and Articles 5 and 12 of the Law on the Trade in Explosive Substances and Inflammable Liquids and Gases and Article 43(1)(1) of the Law on Weapons and Ammunition of RS, and, based on the foregoing legal regulations and applying Articles 39, 42, 48 and 53(2)(b) of the CC BiH, sentenced him to a compound punishment of imprisonment for a term of 12 years.

The accused Zoran Damjanović was sentenced to 10 years and 6 months of imprisonment for the criminal offense under Article 173(1)(c) of the CC BiH.

Pursuant to Article 56 of the CC BiH, the time the accused spent in custody, lasting from 26 April 2006 until 18 January 2007 for the accused Goran Damjanović and from 26 April 2006 until 22 June 2006 for the accused Zoran Damjanović, was credited towards the pronounced sentence, while pursuant to Article 188(4) of the CPC BiH, they were relieved of the duty to reimburse the costs of the criminal proceedings.

The injured parties Zaim Rizvanović and the witnesses C and D were referred to take civil action with their claims under property law, as well as Elvir Jahić, if he wished to do so, while pursuant to Article 74(1) of the CC BiH, the following items were forfeited from the first accused Goran Damjanović: two knives for use with an automatic rifle M-70, serial numbers 698775 and 738633, a bayonet, serial number 1214, one ammunition drum, serial number 14364, seven boxes of ammunition, each containing 15 caliber 7.62 bullets, one RAP SMB with three clips and 138 bullets of caliber 7.62, one RAP SMB with one clip and 28 bullets of caliber 7.62, three 0.5 kg pieces of plastic explosive, two trotyl bullets 500, serial numbers CPB 652 and CPB 653, seven detonators, and 7.5 meters of slow-burning fuse.

The appeals from the mentioned Verdict were filed within the statutory time-frame by the defense counsel for the accused, Attorney Senad Kreho (the defense counsel for the accused Goran Damjanović) because of the essential violation of the criminal procedure provisions under Article 297(1)(i) and (k), the erroneously and incompletely established state of facts and the decision on the sanction, and Attorney Fahrija Karkin (the defense

counsel for the accused Zoran Damjanović) because of the erroneously established state of facts and the violation of the criminal code, as well as by both accused personally, from whose appeals it follows that they also filed the appeal because of the erroneously and incompletely established state of facts.

It was proposed by the appeals that the Appellate Panel uphold them, revoke the first instance Verdict and hold a new hearing after which it would dismiss the charges against the accused.

The Prosecutor's Office of BiH did not file an appeal from the first instance Verdict, but it submitted a response to each of the appeals filed by the defense, assessing them as unfounded and proposing that the Court dismiss them as such.

At the Appellate Panel session, held on 19 November 2007, in terms of Article 304 of the CPC BiH, the parties briefly presented their appeals and responses to them, and entirely maintained the arguments and the motions stated in writing.

Having examined the first instance Verdict within the limits of the arguments stated in the appeals, the Appellate Panel rendered the decision as stated in the operative part for the following reasons:

First of all, the Appellate Panel examined the existence of the essential violations of the criminal procedure provisions under Article 297(1)(i) and (k) of the CPC BiH which were referred to by the defense counsel for the accused Goran Damjanović in his appeal, and in that sense found that the arguments stated in the appeal were partially founded.

First of all, it is necessary to point out that, in relation to the existence of essential violations of the criminal procedure provisions, the defense counsel for the accused Goran Damjanović stated in the introductory part of the appeal that he contested the Verdict for the reasons stipulated under Article 297(1)(i) and (k) of the CPC BiH, which means that it is based on evidence that may not be used as the basis of a verdict under the provisions of the CPC BiH, and that the wording of the verdict is incomprehensible, internally contradictory or contradicts the grounds of the verdict or that the verdict has no grounds at all or it does not cite reasons concerning the decisive facts. The appeal did not further give any specific and concrete reasoning as to the particular evidence on which the first instance Verdict was based, but on which it could not have been based pursuant to the provisions of the CPC BiH, while, in relation to the legal grounds under Article 297(1)(k) of the CPC BiH, it follows from its reasoning that the defense counsel holds that the Court, in the reasoning of the Verdict, failed to give reasons concerning the decisive facts which it found to be proven after the completion of the proceedings.

In relation to the grounds for appeal referred to in Article 297(1)(i) of the CPC BiH, the Appellate Panel does not find that the first instance Verdict is based in any part on any evidence on which it could not be based pursuant to the CPC BiH. If the objection pertains to what the appellant calls identification in terms of Article 85(3) of the CPC BiH, as it is extensively analyzed in the appeal, it is necessary to point out that it is not disputable that the Prosecutor's Office of BiH, during the examination of the witness Zaim Rizvanović in the course of the investigation, showed him the photographs of the



accused, and it is also not disputable that the mentioned action was not carried out pursuant to Article 85(3) of the CPC BiH, as it is correctly stated in the appeal. However, the Prosecutor's Office did not at all tender into evidence the record on the mentioned action aimed at obtaining evidence during the main trial, nor did the first instance Verdict refer to it, and therefore the detailed explanation given by the defense counsel in that respect, as well as the objection stated in the appeal, are completely immaterial. In addition to the foregoing, it is clearly evident from the first instance Verdict that the Court based its conviction about the identity of the accused as the persons who committed the incriminating acts on the testimonies of the witnesses Zaim Rizvanović, Elvir Jahić and the witnesses C and D, who knew the accused well from before, either from school or because of the fact that they intensively socialized with them, as is, for example, the case with the witness D. Accordingly, the testimony of the witness Alfredo Strippoli, who was heard with regard to the proper performance of the act of identification, is also irrelevant to the establishment of decisive facts and as such it did not have to be analyzed separately and in detail in the first instance Verdict, as stated in the defense counsel's appeal.

The Appellate Panel finds partially founded the objection pertaining to the alleged absence of reasons concerning the decisive facts and the lack of the assessment of the value of contradictory evidence. In order to be systematic, the Appellate Panel will give a separate reasoning in relation to the part of the Verdict pertaining to the criminal offense of War Crimes against Civilians and a separate one pertaining to the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Materials, given that the mentioned essential violation of the criminal procedure provisions was established only in relation to Section 2 of the operative part and is of such a nature that it can be separated from the rest of the Verdict.

With regard to the assessment of evidence on which the decision about the responsibility of the accused for the criminal offense of War Crimes against Civilians is based, the first instance Verdict, according to the assessment of this panel, gave completely valid and detailed reasons as to why it took certain evidence as proven or not proven, and satisfactorily explained and reasoned the manner in which it assessed certain differences in the statements given by the witnesses before or during the main trial. The fact that the first instance panel did not assess evidence in the manner in which the defense wanted it to be assessed, and that it did not separately analyze every sentence of the statements given by the witnesses either during the numerous examinations conducted by different persons in the investigative phase or at the main trial does not make the first instance Verdict deficient and incomplete, but clear and concentrated on the essential elements of the criminal offense tried. The assessment of evidence, as an important element of the content of a verdict, should contain the explanation as to why and on what basis the Court established (or did not establish) the existence of essential elements of the criminal offense and in which manner it assessed the contradictory evidence presented in that context, but that does not mean that the Court is obliged to clarify separately each and every, even the smallest inconsistency in the statements of the witnesses.

Contrary to the arguments of the appellant, the first instance panel, in the reasoning of the Verdict, particularly assessed the fact that there were certain inconsistencies in the statements of some of the witnesses who were examined. However, it assessed the

mentioned inconsistencies as fairly minor discrepancies which constitute normal and expected differences in the observations of different persons. This panel completely supports this conclusion.

The testimony given by the witnesses before the Court is their subjective perception of the event they testify about and they, quite naturally, due to different concentration and ability to notice and memorize the situation in which they were, paid attention to different details. What is important and what will be discussed in detail when explaining the correctness and completeness of the established state of facts is that their testimonies correspond in all essential elements related to the event concerned, which the first instance panel correctly concluded as well, while certain differences only corroborate the conclusion that they testified about the event they had experienced and not about the event they learned about subsequently.

Given that the contested Verdict contains a valid analysis of all the decisive facts in this part, the Appellate Panel finds that there is no room for the objection that the presented evidence was not assessed in the manner stipulated by the Criminal Procedure Code of BiH, as it is unfoundedly pointed out in the appeal.

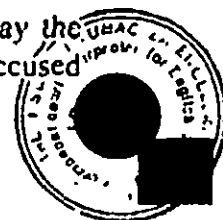
On the contrary, assessing the objection of the defense counsel for the accused Goran Damjanović, by which it was pointed out that the first instance Verdict, in relation to Section 2 of the operative part of the Verdict by which the accused Goran Damjanović was found guilty of the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Materials under Article 399 (1) and (2), read in conjunction, of the CC of Republika Srpska (the CC RS), does not contain any explanation as to on what basis it was established that it was exactly the accused who kept a large quantity of firearms, ammunition and explosives, the Appellate Panel found that it was well-founded and therefore revoked the first instance Verdict in the mentioned part and decided that a new hearing shall be held.

For the mentioned criminal offense to exist, it was necessary to establish that the perpetrator possessed or acquired without authorization firearms, ammunition or explosive substances or any other means of combat, the acquisition or possession of which is not at all allowed to citizens, and that the items in the present case were in a large quantity or of a high value, that is, that the items concerned were arms or other means of combat of a high destructive force and extremely dangerous.

With respect to the abovementioned essential elements of this criminal offense and bearing in mind the provisions of the Law on Weapons and Ammunition of RS and the Law on the Trade in Explosive Substances, Inflammable Liquids and Gases of RS, it is indisputable that the items in question are the ones whose possession is forbidden, or in other words the ones whose possession is subject to the issuance of an authorization, which the accused was not issued with.

Furthermore, in relation to the assessment of the quantity or value, and/or the destructive force of the mentioned items, the first instance Verdict entirely relied on the Finding and Opinion of the expert witness Mayes and in this way established the existence of this essential element of the criminal offense.

However, it is not at all evident from the reasoning of the Verdict in which way the Court concluded that the items which were found belonged exactly to the accused



Goran Damjanović and that he knowingly and willingly acquired and/or possessed them. As the defense counsel for the accused correctly pointed out in his appeal, it is not possible to establish from the contested Verdict on what basis the Court concluded that the arms, ammunition and explosive substances which were found in the house, for which the Court itself stated that was Damjanovićs' family house and for which it was indisputably established during the proceedings that it was used by Goran Damjanović as well as Zoran Damjanović, Vedran Damjanović and their parents, were in the possession of the accused, and that he knew about them and was aware of the prohibition to possess them. The Appellate Panel could not accept the argument of the Prosecutor's Office of BiH, which in this respect referred to the statement which the accused Goran Damjanović gave during the investigation as a suspect and in which he admitted that the items which were found belonged to him, for the reason that the first instance Verdict, except in the part where it listed all evidence of the Prosecution, did not mention this statement, that is, it did not state its position with regard to its admissibility nor did it assess its content at all. As the authority of the Appellate Panel is, among other things, to examine within the limits of the arguments stated in the appeal whether the first instance panel correctly assessed the presented evidence, it does not have the opportunity to present its position and give a different assessment or support the presented assessment of some evidence, if that evidence was not at all assessed by the first instance panel.

It follows from the foregoing that the first instance panel failed to give reasons as to why it took as proven a decisive fact which constitutes an essential element of the criminal offense, whereby an essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH was made, and the defense counsel referred to this violation in his appeal. Therefore, the first instance Verdict was revoked in relation to this Section because this part of the Verdict can be separated from the rest of it without detriment to a fair adjudication, and the hearing before the Appellate Division Panel shall be held with respect to this part.

During the retrial, the essential violations of the criminal procedure provisions that were made shall be eliminated, the evidence pertaining to this section of the operative part of the Verdict which were already presented shall be presented again and, if needed, other evidence shall be presented as well.

Furthermore, both defense counsel and the accused Goran and Zoran Damjanović contested the first instance Verdict because of the erroneously and incompletely established state of facts. However, the Appellate Panel finds these objections entirely unfounded.

In short, the arguments stated in the appeal refer to an interpretation of the content of the witnesses' testimonies different from the one made by the first instance panel, and to their alleged mutual contradictions. However, if the abovementioned testimonies are analyzed in their entirety and connection with the rest of the testimonies, rather than in fragments and out of context as it was done in the appeals, it is clear that all witnesses unanimously confirmed the facts stated in this Count of the Indictment, which the first instance panel correctly concluded.

It indisputably follows from the testimonies of the witnesses Zaim Rizvanović, Elvir Jahić and the witnesses under the pseudonyms of C and D that they were in the group of Bosniaks captured by Serb military forces during the attack on the Ahatovići settlement and that they were placed *hors the combat*, while some of them were wounded.

These witnesses unanimously confirmed that they were taken in front of the supermarket in Bojnik after they had been captured, noting however that they set off on foot to the mentioned location, but arrived there in different ways and under different conditions. It clearly follows from their testimonies that not all of them had their hands tied with wire, as the witness D pointed out in his testimony (for example, the witness Zaim Rizvanović clearly stated in his testimony that his hands had not been tied, while the witness C clearly confirmed that his hands had been tied with "burnt" wire, and the witness B claimed that he had been tied with barbed wire). Furthermore, all of them unanimously stated that half way towards the supermarket in Bojnik a motor vehicle had arrived and transported a few of them who were seriously wounded. The witness D was in the group which was transported by this vehicle to the supermarket and therefore he arrived in front of the supermarket before the rest of the mentioned witnesses. All witnesses agreed in their estimate that the total number of the captives ranged between 20 and 30 persons, while the number of the persons who were present significantly increased upon their arrival in front of the supermarket in Bojnik because of the number of Serb soldiers who guarded them at that moment.

The defense counsel for the accused challenged the credibility of the testimonies of these witnesses several times in their appeals, as they were not able to state precisely in their testimonies whether and who in the group of the captives had been tied, who exactly had been transported by car or who had been wounded and how seriously. However, setting the mentioned testimonies in the context of the fact that the mentioned witnesses went through an extremely traumatic experience, that they were captured and wounded, and that their destiny was very uncertain on the relevant occasion, the Appellate Panel finds it completely acceptable that they were not able to memorize every detail related to each captive in the group, particularly bearing in mind that the number of the captured civilians was rather large.

Furthermore, the appeals interpreted certain parts of the testimony completely erroneously, as was the case with the argument given in the appeal that the witness C stated that he had not seen the accused Goran and Zoran Damjanović at all on the relevant occasion in front of the supermarket, since the witness clearly stated that he was completely sure that on the relevant occasion he had seen the accused Zoran Damjanović (page 13 of the transcript), while he was not sure about the accused Goran. However, unlike this witness, the witness Elvir Jahić and the witness D confirmed very convincingly that they had seen both of the accused in front of the supermarket. The witness D gave in his testimony a very precise description of the manner in which the accused Goran Damjanović thrust an automatic rifle barrel in his mouth and broke his teeth, and then the accused Zoran Damjanović kicked him with the heel in his chest, as a result of which the witness hit the supermarket glass window and broke it. The witness Jahić also confirmed the presence of both of the accused and he even pointed out that the accused Goran Damjanović was the most dominant in the maltreatment of all the persons who were present there.



This panel also finds that the testimonies of these witnesses are very convincing and that they completely correspond in all essential elements and form a clear picture of the incriminating event and the participation of the accused in it. It follows from these testimonies that, given the nature of the experience they went through and the extremely large number of persons present on that occasion at a relatively small space (there were between 20 and 30 captives alone, while together with the persons who maltreated the captives, the total number of those who were present was significantly larger), it is not possible to expect that the witnesses were able to see each person who was present there clearly and memorize who did what at any moment.

The witness Jahić very illustratively described the situation in which the witnesses found themselves. He stated in his testimony that upon his arrival to Bojnik he had seen a large number of drunk and half-drunk armed persons who brutally tortured the wounded who had been brought there earlier by car. Then the civilians who arrived subsequently were tortured as well, in the manner that the soldiers jumped on their heads, beat them with automatic rifles and batons, broke bottles against their heads and similar. Bearing in mind the foregoing, the Appellate Panel finds it completely logical that the witness C could not state with certainty whether the accused Goran Damjanović was one of the persons who sadistically abused the civilians who were captured, as opposed to the witness Zaim Rizvanović who described how the accused Goran Damjanović himself beat him up in front of the supermarket, hitting him repeatedly with a baton in the back of his head and then all over his body, while he did not personally see the accused Zoran. However, these facts, which were pointed out by both defense counsel in their appeals, do not challenge the credibility of their testimonies or the testimonies of the rest of the abovementioned witnesses, who in the extremely chaotic situation memorized either of the accused, first of all because they were personally maltreated and beaten by them.

Furthermore, in relation to the beating of the injured party Amir Jahić, the argument stated by the defense counsel for the accused Goran Damjanović that the witness D and the witness C identically claimed that Amir Jahić had been beaten by a group in which Goran Damjanović was not present and that he had not been present at all in the gauntlet formed of soldiers prior to their entry into the bus, is incorrect, given that the witness D stated that he himself had to pass through the gauntlet while entering the bus and that the accused Goran Damjanović too was in that gauntlet through which all of them had to pass, and that he personally told him "Slow down, do not run". Elvir Jahić, brother of the injured party Amir Jahić, who passed through the gauntlet just before his brother and saw from the bus steps when the accused Goran Damjanović grabbed him by his hair, also testified about this.

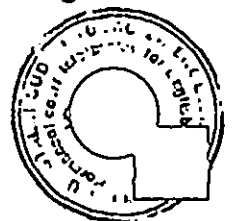
The testimony of the witness Zaim Rizvanović pertaining to the beating of Kasim Šehić was also completely erroneously interpreted in the appeal filed by the defense counsel for the accused Goran Damjanović. The defense counsel challenged the ability of the witness to see what was happening around him (including the beating of Kasim Šehić) given that, according to the arguments stated in the appeal, the witness stated in the statement given to the investigating judge of the Cantonal Court in Sarajevo number 293/98, dated 1 December 1998, that he had been abused while blindfolded. However, it clearly follows from the mentioned statement that the witness said that he had been blindfolded in the camp in Rajlovac and not during the incident in front of the

supermarket in Bojnik, which is the subject of this proceeding, and therefore, bearing in mind the foregoing, this argument stated in the appeal is also entirely unfounded.

Furthermore, the Appellate Panel finds that the remaining inconsistencies in the witnesses' statements to which all four appeals referred are not of such a nature as to challenge the credibility and reliability of the witnesses' statements, and shares the conclusion of the first instance panel that they are sufficiently precise with regard to all crucial moments and essential elements of the criminal offense concerned, while minor discrepancies only reinforce the position of the Court that the witnesses are honest and that they recounted before the Court the facts and details which they could objectively memorize. The panel also took into consideration the differences between the statements which the witnesses gave prior to the main trial and the testimonies which they gave directly before the first instance panel. However, the panel holds that these are actually minor discrepancies, many of which were clarified during the direct examination and cross-examination, while some of them are simply a result of questioning by different persons who did not exclusively aim at obtaining information about this incident only.

Bearing in mind that the Court gave credibility to the Prosecution witnesses, who agree about the serious bodily injuries inflicted on them on the relevant occasion, and that they, in addition to their own injuries, just as convincingly described the injuries inflicted on the other persons present in their group, the Appellate Panel does not challenge the fact that these injuries were indeed inflicted, while it finds completely unfounded the argument stated in the appeal that the Prosecutor did not offer a single evidence in the form of medical documentation from which it would be evident that these physical injured were indeed inflicted on these persons.

The objections in the appeal which aim at challenging the decision of the first instance panel not to give credibility to the Defense witnesses who tried to provide alibis for the accused are also unfounded. All the arguments stated by the defense counsel in their appeals had already been stated during the first instance proceedings, and the first instance Verdict was correct and complete in relation to them. This panel completely accepts the reasoning given in that context. There is but a small probability that two men fit for military service, members of the Army of RS, were free to go and pay a visit to the hospital in Koran during the extensive military operation and attack on Ahatovići. This thesis of low probability, which was in the largest part refuted by the convincing evidence of the Prosecution witnesses who recognized the accused in front of the supermarket in Bojnik, was additionally undermined by inconsistent testimonies of the Defense witnesses, which are mutually contradictory. Thus, the witness Ljubinka Cvijanović stated that Goran Damjanović and Zdravko Jović had gone to the hospital knowing that Goran's father needed blood, while the witness Zdravko Jović stated that Goran had not given blood at all for the reasons unknown to him (which is quite unlikely, given that his father was in question there) and then he claimed that he had only donated blood, hence not necessarily for Luka Damjanović. This thesis of the Defense was also not corroborated by the medical documentation presented during the proceedings and examined by Dr. Mirko Šošić, which showed not only that the late Luka Damjanović was not seriously injured but also made no mention of him receiving any transfusion, which should have been mentioned.



There are also many inconsistencies in the alibi for the accused Zoran Damjanović because of which this panel also finds it unreliable. In comparison with the Prosecution witnesses, the Defense witnesses who were heard in relation to these circumstances seemed quite unconvincing and they evidently adjusted their testimonies to the needs of the alibi for the accused. There were many discrepancies in their testimonies, both with regard to the alleged encirclement of Potkraj and with regard to the stay of the accused Zoran Damjanović in that place at the time relevant to the Indictment. The Defense thesis was that the accused had been in the encirclement in Potkraj and that because of that he could not visit his wounded father, let alone be in front of the supermarket in Bojnik on the relevant occasion. However, the witnesses whom the Court heard in relation to these circumstances, including the accused Zoran Damjanović himself, seriously challenged the sustainability of such a thesis. This refers in the first place to the fact that the accused himself, when asked how the inhabitants of Potkraj obtained food while they were in the alleged encirclement, admitted that they could go to Rakovica freely. Furthermore, the statement of the father-in-law of the accused that he lived with him in the house at the time of the incriminating event is a general and, given their family ties, expected statement which, in comparison with the precise statements of the Prosecution witnesses, is by no means sufficiently reliable to be unconditionally given credibility by the Court. Moreover, the Defense witness Salem Koldžo, who stayed in the house of the father-in-law of the accused exactly at the time relevant to the Indictment, said in his statement that he had not seen the accused in the house. All the foregoing points to the conclusion that the evidence on which the Defense based the alibis for the accused is not reliable, so that the objections in the appeals suggesting the opposite are unfounded and, therefore, refused as such.

The defense counsel for the accused Zoran Damjanović contested the Verdict, out of precaution, also because of the erroneous application of substantive law. However, he only arbitrarily stated in the appeal that the first instance panel completely erroneously interpreted Articles 3 and 4 of the CC BiH and that it erroneously applied substantive law because of the existence of one verdict of the Constitutional Court of BiH delivered in another case. However, the Appellate Panel holds that in the contested Verdict the first instance panel gave detailed and valid reasons why it applied the CC BiH to the specific acts of the accused, and correctly, among other decisions, referred to the Decision of the Constitutional Court of BiH number AP 1785/06, which only additionally corroborated the conclusions arrived at by the first instance panel. This panel also completely accepts the argumentation with regard to the divergence from the principle of time constraints regarding applicability and with regard to the conclusion that the punishment prescribed by the Criminal Code of BiH is in any case more lenient than the death penalty which was in effect in accordance with the CC SFRY, which was applicable at the time of the commission of the criminal offense.

Given the foregoing, this panel finds that the argument stated in the appeal by the defense counsel for the accused Zoran Damjanović is completely arbitrary and thereby insufficient to properly challenge the argumentation of the first instance panel.

Examining further the decision of the first instance panel about the criminal sanction, the Appellate Panel finds that the prison sentences which were imposed are completely adequate for the degree of criminal liability, the motives for which the offense or offenses were committed, the degree of injury to the protected object, and the personal

situation of the accused, as well as that both the purpose of the criminal sanctions and the purpose of punishment will be achieved by them.

The Appellate Panel finds completely unfounded the objection of the defense counsel for the accused Goran Damjanović that, with regard to the length of the sentence imposed, the first instance decision is a precedent in the context of the extenuating circumstances, which the Court stated in the Verdict, but which the defense counsel found to be of such quality that they may be considered highly extenuating for the purpose of Article 49(1)(b) of the CC BiH.

The fact that the accused have no prior convictions, their cooperation in the course of the proceedings, proper behavior before the Court, and the fact that they are family men and have underage children constitute the circumstances which the first instance panel correctly assessed as extenuating when meting out the punishment. However, contrary to the position stated in the appeal, they can by no means be considered highly extenuating, as they would then result in meting out a punishment which is below the minimum prescribed by the law. In order for a circumstance on the part of the accused to be assessed as highly extenuating, it must be of such a nature that it significantly reduces the danger of the offense and the guilt of the perpetrator. In the present case, the Appellate Panel completely supports the conclusion of the first instance panel that there are no such circumstances on the part of the accused and points out that the sentence of 11 years imposed on Goran Damjanović and the sentence of 10 years and 6 months imposed on Zoran Damjanović for the criminal offense of War Crimes against Civilians, bearing in mind its gravity and seriousness and the fact that the prison sentence of not less than 10 years and not more than 45 years is prescribed for it, are actually almost minimal.

In accordance with the foregoing, the Appellate Panel concludes that the sentences imposed were correctly meted out, while the objections in the appeal suggesting the opposite are unfounded and, therefore, were refused as such.

For the foregoing reasons and pursuant to Articles 310 and 315(2) of the CPC BiH, it was decided as stated in the operative part of this Verdict.

Record-keeper

Lejla Fadilpašić
/Signature affixed/

President of the Panel
Judge

Azra Miletić
/Signature and seal affixed/

LEGAL REMEDY: An appeal from this Verdict is not allowed.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.

Sarajevo, 13.12.2007

Certified Court Interpreter for English



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