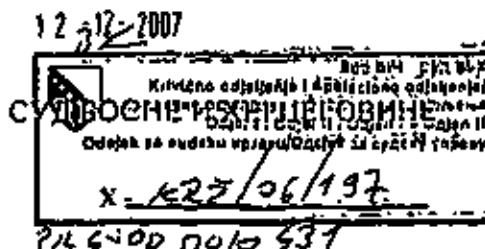


SUD BOSNE I HERCEGOVINE



Number: X-KRŽ-06/197
Sarajevo, 21 November 2007

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting on the Panel of the Appellate Division of Section I for War Crimes, composed of Judge Azra Mitetić, as the Presiding Judge, and Judge Almiro Rodrigues and Judge Finn Lynghjem, as members of the Panel, with the participation of Legal Adviser Lejla Fadilpašić, as the record-taker, in the criminal case against the accused Niset Ramić, for the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c), in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina (CC B-H), having decided upon the Appeal by the Prosecutor's Office of B-H No. KT-RZ 88/07 of 11 September 2007 and the Appeal by the Defense Counsel for the Accused, Attorney-at-Law Izet Baždarević, of 18 September 2007, from the Verdict of the Court of B-H No. X-KR-06/197 of 17 July 2007, at a session held in the presence of the Accused, his Defense Counsel, Attorney-at-Law Izet Baždarević, and Slavica Terzić, Prosecutor for the Prosecutor's Office of B-H, on 21 November 2007, rendered the following:

VERDICT

The Appeal by the Prosecutor's Office of B-H No. KT-RZ 88/07 of 11 September 2007 and the Appeal by the Defense Counsel for the accused Niset Ramić, Attorney-at-Law Izet Baždarević, are hereby refused as unfounded and the Verdict of the Court of B-H No. X-KR-06/197 of 17 July 2007 is hereby upheld.

REASONING

By the Verdict of the Court of B-H No. X-KR-06/197 of 17 July 2007 the accused Niset Ramić was found guilty of having committed, at the time and in the manner described in the operative part of the Verdict, the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c), in conjunction with Article 180 (1) of the CC B-H.

For the criminal offense in question the first instance Panel imposed on the accused a sentence of long term imprisonment for a term of 30 years and, taking as a fixed punishment the sentence of imprisonment for a term of 19 years pr

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the Decision of the President of the Federation of Bosnia and Herzegovina No. 01-602/97 of 3 September 1997 replacing the compound sentence of imprisonment for a term of 20 years pronounced by the Verdict of the Cantonal Court in Zenica No. Kv-52/05 of 20 July 2005, sentenced him to the compound sentence of long term imprisonment for a term of 30 years.

Pursuant to Article 55 (1) and 56 of the CC B-H, the Panel credited the time the Accused spent in custody from 16 October 2006 to the committal to serve the sentence toward the pronounced sentence of imprisonment, as well as the time the Accused had spent serving part of the sentence pursuant to the previous Verdict in the periods from 26 November 1992 to 19 January 1999, from 8 August 2000 to 19 August 2005 and from 22 September 2005 to 15 October 2006, and the reduction of the sentence for additional four months pronounced by the Decision of the President of the Federation of B-H No. 01-011-765/98 of 24 November 1998.

Pursuant to Article 188 (4) of the CPC B-H, the Accused is relieved of the duty to reimburse the costs of criminal proceedings, while the injured party Sretko Masal is instructed to take civil action with claims under property law, pursuant to Article 198 (2) of the CPC B-H.

The Prosecutor for the Prosecutor's Office of B-H appealed the aforementioned Verdict within the statutory deadline because of the decision as to the sentence, pursuant to Article 296 (1) (d) and Article 300 (1) of the CPC B-H, and moved the Court to uphold the Appeal and revise the contested Verdict by imposing on the Accused a sentence of long term imprisonment for a term longer than pronounced by the Verdict.

The Defense Counsel for the Accused also filed an Appeal in a timely manner on all the grounds for appeal set forth in Article 296 of the CPC B-H and moved the Appellate Panel to uphold the Appeal, revoke the first instance Verdict, schedule a new trial and thereupon impose a more lenient sentence on the Accused.

The parties to the proceedings did not submit responses to each other's Appeals.

At a session of the Appellate Panel held on 21 November 2007, pursuant to Article 304 of the CPC B-H, the Prosecutor and the Defense Counsel gave brief accounts of their respective Appeals and maintained entirely the submissions and proposals from the Appeals. In their responses, they assessed the Appeals of each other as unfounded and moved the Panel to refuse them.

The Accused, joining the submissions of his Defense Counsel, pointed out that on the occasion concerned he acted in the heat of the moment and expressed his deep remorse for having deprived four persons of their lives.

Having reviewed the first instance Verdict insofar as it was contested by the Appeals, the Appellate Panel rendered the decision as quoted in the operative part for the reasons that follow.

The objections in the Defense Counsel's Appeal that the operative part of the contested Verdict is incomprehensible, that it contradicts the grounds of the Verdict and lacks the reasons concerning the decisive facts, whereby essential violations of the criminal procedure provisions referred to in Article 297 (1) (k) of the CPC B-H were made, are unfounded.

In fact, the Defense considers that, in the reasoning of the Verdict, the Court only paraphrased the testimonies of the examined witnesses and experts and listed the material evidence, but failed to analyze all that evidence in detail, whereby free evaluation of evidence, taken individually and in combination, was missing. On the contrary, the first instance Verdict presented the parts of the witness testimonies relevant to establish the essential elements of the criminal offense concerned, after which it gave a detailed and comprehensive analysis of the aforementioned testimonies. Subsequently, having evaluated the other presented evidence as well, it concluded that the Accused committed the acts as charged in the Indictment in the manner, at the time and at the location as indicated in the operative part of the Verdict.

Furthermore, there is nothing incomprehensible in the operative part of the Verdict, either concerning the description of facts of the criminal offense or its legal qualification, while the reasons concerning the facts relevant for the existence of the offense and the criminal responsibility of the Accused are not inconsistent, but clear and precise, and this Panel accepts them as such in their entirety.

This Panel also considers the objection concerning the incorrectly or incompletely established facts to be unfounded.

In fact, the Defense does not deny that, on the relevant occasion, the Accused was a member of a military formation, that is, the Sabotage Company within the 2nd Detachment of the Municipal Staff of Territorial Defense in Visoko, wore a uniform and carried a weapon and had the assignment to search the family houses of the Ristović and Damjanović families in the village of Hlapčevići and take the persons found there to the collection center located in the Culture Center in Hlapčevići, Visoko Municipality.

It is also indisputable that the Accused and several other persons conducted the search and subsequently took with them Željko Ristić, Dušanka Ristić, Danica Damjanović, Zoran Damjanović and Slavko Damjanović.

However, the Defense contests the conclusion of the first instance Panel that the persons taken were civilians, that their hands were tied upon their capture.

Sretko Masal was among them. The Defense Counsel states in the Appeal that it is generally known that, at that time and place, all able-bodied men were engaged in military formations and stresses that Sretko Masal invented that he had been captured and wounded on the relevant occasion in order to settle his status on the basis of being wounded. Nevertheless, this Panel finds the aforementioned arguments in the Appeal to be too general and contrary to the facts presented by the eyewitnesses to the event. The first instance Verdict is based on these statements and they are completely precise and mutually in accord and, as such, the most credible source of information on the events that the Accused is charged with.

That is to say, it follows from the evidence of the Prosecution witnesses Suad Kapo, Smajo Kapo, Abid Kapo, Kemal Karahodžić and Muharem Karahodžić that the persons were captured on 20 June 1992, taken out of their houses in the early morning, with no weapon on them. All witnesses stated that those persons, including two women, were their neighbors and civilians. Witness Kemal Karahodžić said that they were all taken out of their houses in pajamas, while Željko Ristić had a T-shirt on. The injured parties Zoran Damjanović and Sretko Masal, also confirming their civilian status, said that they were not members of any military formation at the moment of capture. The Appellate Panel, on the basis of the above established facts, also considers that it is clear that the captives were not taking part in the hostilities at the moment of the capture and, like the first instance Panel, concludes that, given the provision of common Article 3 (1) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, they had the status of civilians. The Appellate Panel finds that the argument in the Appeal that it is generally known that at that time and place all able-bodied men were engaged in military formations is too general, and, given the aforementioned facts, insufficient to contest the conclusion of the first instance Panel. In any way, it is customary law that "civilians and persons *hors de combat* must be treated humanely", regardless of whether the conflict is international or non international (Rule 87).

Furthermore, all Prosecution witnesses, both the ones who observed the event and the injured party Zoran Damjanović, who was indisputably in the group of captured civilians, confirmed beyond doubt that Sretko Masal was one of the captives. In addition to this, the witnesses also confirmed that the hands of all the captives were tied. Kemal Karahodžić and Muharem Karahodžić stated that, after the shooting, the injured party Sretko Masal came wounded in their courtyard and that they provided him with accommodation in their house and treated him for several days. Witness Muharem Karahodžić clearly remembered that he untied the hands of the wounded Sretko Masal. Contrary to this, Defense witness Mevludin Topalović was the only one saying that Sretko Masal was not present on the relevant occasion. Given the aforementioned, the Appellate Panel also considers that the Prosecution witnesses' statements are credible primarily because they are mutually consistent and very precise and because the witnesses had known Sretko Masal from before and paid full attention to what was happening to their neighbors, as they personally confirmed. Topalović, on the contrary, was a member of the same unit as the Accused

and he conducted the operation with the Accused on the relevant day. His statement is opposite to the statements of seven other witnesses and it is not corroborated by a single piece of evidence. Thus, it obviously aimed at playing down the responsibility of the Accused.

This Panel finds that the remaining part of this witness' evidence is equally insufficiently clear and precise so as to refute the evidence given by witnesses Zoran Damjanović, Suad Kapo, Smajo Kapo, Abid Kapo, Kemal Karahodžić and Muharem Karahodžić concerning the other facts related to the event. That is to say, the Defense states that the Accused, wishing to prevent Željko Ristić from escaping and not having much time to think, shot at Ristić. After that, the others also tried to run away, which is why the Accused shot at them, too. The Defense concludes from this that the Accused did not act with direct intent and stresses that the Accused would not have shot at all if Ristić had not tried to run away. However, this assertion by the Defense was not corroborated by a single eyewitness, including Defense witness Mevludin Topalović, who only assumed that the captured civilians started running away since at that very moment he allegedly turned to the other side and only heard the shooting. All other witnesses stated clearly that the civilians were lined up against a wall, that the Accused told Željko Ristić to step out and asked him where the weapons were and, as Željko answered he did not know, the Accused first shot at him and then at the other civilians. Witness Abid Kapo even stated that the civilians just slid down the wall after the burst, which confirms that they did not move from the spot next to the house where the Accused had brought them to. In addition, as the contested Verdict correctly states, the fact that the Accused made a turn off the road leading toward the Youth Center and lined up the captured civilians against the wall and his conduct after the shooting also lead to the conclusion that he did not act on an impulse, as the Defense wants to present. However, it is important to stress that, even if the captured civilians had really tried to escape, the acts of the Accused would not be permissible nor would it be possible to characterize his conduct as an armed member of a military formation who shoots at the tied civilians lined up against a wall as any form of negligent conduct.

Given the aforesaid, the Appellate Panel fully accepts the conclusion of the first instance Panel that the Accused committed the aforementioned acts with direct intent, that is, being aware of the act he was committing and willing to commit it.

The Defense also alleged that the Accused's degree of mental capacity was such that his intellectual and voluntary abilities were considerably diminished. This allegation is also unfounded. The neuropsychiatrist, as expert witness, concluded in both the written Finding and Opinion and the testimony given at the main trial, that the mental capacity of the Accused at the time of the commission of the criminal offense was diminished, but not considerably. It, therefore, follows that the requirements to punish the Accused less severely under Article 34 (2) of the CC B-I, as the Defense proposes, are not met.

The Defense claims that the first instance Panel made an erroneous application of substantive law. The Appellate Panel considers unclear the argument that, in the specific case, the Court should have made a comparative examination of all individual charges and the manner in which they are treated in the CC SFRY and the CC B-H, and, after that, applied the CC SFRY as a more lenient law, given that the Accused was charged with one Count in the Indictment, of which he has been found guilty. This criminal offense was regulated by both Criminal Codes; it was punishable by death penalty under the CC SFRY, whereas the strictest punishment set forth by the CC B-H is the sentence of long term imprisonment for the maximum term of 45 years. In the contested Verdict, the first instance Panel gave fully comprehensive and valid reasons why it applied the CC B-H to the concrete acts of the Accused, and correctly referred to the Decision of the Constitutional Court of B-H No. AP 1785/06. The Appellate Panel fully accepts the presented arguments, both with respect to the deviation from the principle of time constraints regarding the applicability of the Criminal Code and to the conclusion that the punishment set out by the CC B-H is, in any case, more lenient than the death penalty that was in effect at the time of the commission of the criminal offense. Based on the foregoing, the Appellate Panel refuses as unfounded the aforementioned Appeal argument.

The Appellate Panel finds that the respective objections made by the Prosecutor and the Defense Counsel concerning the pronounced sentence are also unfounded. In fact, the first instance Panel, when meting out the punishment, carried out a very detailed analysis and evaluation of all the extenuating and aggravating circumstances. On the basis of such analysis, the first instance Panel sentenced the Accused to the compound sentence of long term imprisonment for the term of 30 years. The Appellate Panel finds the sentence to be appropriate for achieving the purpose of punishment stipulated in Article 39 of CC B-H, especially given the fact that the pronounced compound sentence incorporates the part of the sentence for the term of 20 years that the Accused served pursuant to the final Verdict of the Cantonal Court in Zenica No. Kv-52/05 of 20 July 2005, which was replaced under the Decision of the President of the Federation of B-H No. 01-602/97 of 3 September 1997 by the prison sentence of 19 years and further reduced for four additional months under the Decision of the President of the Federation of B-H No. 01-011-765/98 of 24 November 1998. The Appellate Panel considers that, when meting out the punishment, the first instance Panel took into account and attached the appropriate importance to the extenuating circumstances the Defense Counsel stressed in that context, namely that, at the time relevant to the Indictment, the Accused was 23, deeply traumatized by the war experience in Croatia, and is of an extremely poor financial standing. However, the reference to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the respective *Simić* and *Erdemović* cases is not applicable in this case, since the accused Niszet *Simić*, unlike in the referred cases, did not plead guilty. In the course of the proceedings, the Accused pleaded not guilty of the criminal offense he was charged with. The Appeal insists on this view because of the incorrectly and incompletely stated facts. However, contrary to the arguments in the Appeal, the admission

of certain facts from the description of the criminal offense cannot be considered as an admission of guilt for the criminal offense concerned. Therefore, it cannot constitute a circumstance for a more lenient punishment and carry the same weight as a full admission of guilt. The Appellate Panel finds the Appeal by the Prosecutor's Office of B-H to be unfounded as well, since its Appeal also does not contain any facts that the first instance Panel has not already appropriately taken into account as aggravating when meting out the punishment. Therefore, the Panel finds the pronounced sentence completely appropriate to the degree of criminal responsibility of the Accused, the motives for perpetrating the offense, the degree of injury to the protected value and the personal situation of the Accused.

Based on the foregoing, pursuant to Article 310 (1) and in conjunction with Article 313 of the CPC B-H, the decision was rendered as quoted in the operative part of the Verdict.

Record-taker

Lejla Fadilpašić
[signature affixed]

Presiding Judge of the Panel

Judge Azra Miletić
[signature affixed]
[seal of the Court of B-H affixed]

LEGAL REMEDY: An appeal from this Verdict shall not be allowed.

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

Surtjevi, 4 December 2007

Certified Court Interpreter for the English Language

