

**SUD BOSNE I HERCEGOVINE**



**СУД БОСНЕ И ХЕРЦЕГОВИНЕ**

**COURT OF BOSNIA AND HERZEGOVINA**

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**Case No.: X-KRŽ-07/480**

**Date: Delivered: 22 April 2009**

**Sent out: 17 July 2009**

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**Before the Panel: Judge Tihomir Lukes, Presiding  
Judge John Fields  
Judge Hilmo Vučinić**

**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

**v.**

**MARKO ŠKROBIĆ**

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**APPELLATE VERDICT**

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**Counsel for the Prosecutor's Office of Bosnia and Herzegovina:**

**Mr. Milorad Barašin**

**Counsel for the Appellant Marko Škrobić:**

**Ms. Branka Praljak**

**Mr. Nikica Gržić**

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Number: X-KRŽ-07/480

Sarajevo, 22 April 2009

## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in the Panel of the Appellate Division consisting of Judge Tihomir Lukes as the Presiding Judge and Judges John Fields and Hilmo Vučinić as members of the Panel, with the participation of the Legal Officer Medina Hababeh as the minutes-taker, in the criminal case against the Accused Marko Škrobić, for the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), all in conjunction with Article 180(1) of the CC of BiH, deciding upon the appeals filed by Defense Counsels for the Accused Marko Škrobić, Branka Praljak and Nikica Gržić, and the Prosecutor of the Prosecutor's Office of BiH, Milorad Barašin, against the Verdict of the Court of Bosnia and Herzegovina number X-KR-07/480 dated 22 October 2008, at the session held in the presence of the Accused and in the presence of his Defense Counsels, Branka Praljak and Nikica Gržić, Prosecutor of the Prosecutor's Office of BiH, Milorad Barašin, on 22 April 2009 rendered the Verdict that follows.

## VERDICT

The Appeal filed by the Prosecutor's Office of BiH is refused as unfounded.

The Appeal filed by the Defense Counsels on behalf of the Accused Marko Škrobić is granted in part. The Verdict of the Court of Bosnia and Herzegovina number X-KR/07/480, dated 22 October 2008, is revised with respect to the decision on the sentence. Accordingly, for the committed criminal offense of War Crimes against Civilians under Article 173(1)(c) of the BiH Criminal Code (BiH CC), in conjunction with Article 180(1) of the BiH CC, pursuant to Article 49 and 50 BiH CC the Accused Marko Škrobić is sentenced to nine (9) years of imprisonment.

The remaining parts of the Verdict are upheld.

## REASONING

### I. PROCEDURAL HISTORY

#### A. The Verdict

1. Under the Verdict of the Court of Bosnia and Herzegovina X-KR-07/480, dated 22 October 2008, the Accused Marko Škrobić was convicted of the criminal offence of War

Crimes against Civilians in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the CC of BiH.

2. The Trial Panel, pursuant to Article 285 of the BiH Criminal Procedure Code (CPC BiH) and Articles 39, 42, 48 of the CC BiH, sentenced the Accused Marko Škrobić to a penalty of ten (10) years imprisonment. The time the Accused spent in custody, 19 December 2007 until 6 February 2008, was credited to the sentence of imprisonment, pursuant to Article 56 of the CC BiH. Pursuant to Article 185 and 188(1) of the BiH CPC, the Accused was ordered to pay the expenses of the criminal proceedings in the amount of KM 3,610.00.

## **B. The Appeals**

3. Defense Counsel for the Accused Marko Škrobić, Branka Praljak and Nikica Gržić, filed an Appeal against the Trial Verdict, requesting that the Appellate Panel uphold the Appeal, and either revise the contested Trial Verdict and acquit the Accused Marko Škrobić, or revoke the contested Trial Verdict and order a retrial before the Appellate Panel, on the following grounds:

- (1) Essential violations of the provisions of criminal procedure, pursuant to Article 297(1)(k) of the CPC of BiH;
- (2) Violations of the criminal code, pursuant to Article 298 of the CPC of BiH; and
- (3) Incorrectly or incompletely established facts, pursuant to Article 299 of the CPC of BiH;

4. The Prosecutor of the Prosecutor's Office of BiH, Milorad Barašin, filed an Appeal against the Trial Verdict on the grounds of the decision on criminal sanction, pursuant to Article 300 of the CPC of BiH, and moved that the contested Trial Verdict be revised and a sentence of imprisonment greater than 10 years be imposed.

5. The Appellate Panel, pursuant to Article 304 of the CPC BiH, held a session on 22 April 2009. The Defense and the Prosecutor verbally argued their appeals and fully supported their respective written arguments and proposals.

6. The Appellate Panel, having reviewed the Trial Verdict insofar as contested by the Appeal of the Defense, and the appeal of the Prosecution pursuant to Article 308 CC BiH, rendered the Decision as stated in the operative part for the reasons that follow.

## **II. APPELLATE STANDARDS OF REVIEW**

7. The primary grounds of appeal provided in the CPC of BiH are: 1) errors of procedural law (Article 297); 2) errors of substantive law (Article 298); 3) errors of fact (Article 299); and 4) errors in sentencing (Article 300).

### **A. Errors of Procedural Law**

8. Pursuant to Article 297 of the CPC of BiH, an appellant may appeal against the Trial Verdict on the grounds of: 1) procedural errors and 2) formal errors in the Trial Verdict.

9. The Appellate Panel will review an appeal on the basis of an alleged *absolute* procedural error, *de novo*, as such allegations raise an issue of law. The Appellate Panel will only revoke the Trial Verdict on the basis of an absolute procedural error where the error invalidates the Trial Verdict.

10. The Appellate Panel will review an appeal on the basis of an alleged *relative* procedural error *de novo*, as such allegations raise an issue of law. The Appellate Panel will only revoke the Verdict on the basis of a relative procedural error where the error invalidates the Verdict.

11. With respect to an allegation that a procedural error could have affected the rendering of a lawful or proper verdict, it is not sufficient for the Appellant to simply assert that the procedural error could have *hypothetically* affected the rendering of a lawful or proper verdict. Rather, the Appellate Panel will only conclude that a relative procedural error was committed when the Appellant establishes that it is impossible to conclude that the alleged error did not affect the rendering of a lawful or proper verdict. Thus, when an Appellate Panel is satisfied that a lawful and proper verdict was rendered notwithstanding the procedural error, the Appellate Panel will conclude that the Trial Verdict is not invalidated.

12. The Appellate Panel will review an appeal on the basis of an essential violation of the provisions of criminal procedure under Article 297(1)(k) of the CPC of BiH through a *prima facie* analysis of the Verdict. The Appellate Panel will examine whether, on its face, the wording of the Trial Verdict is incomprehensible, internally contradictory or contradicted the

grounds of the Verdict, or that the Verdict has no grounds at all or did not cite reasons concerning the decisive facts.<sup>1</sup> The Appellate Panel will not consider whether the Trial Panel committed an error of fact or law as part of this review, but will only ensure that the Trial Verdict formally contains all necessary elements for a well-reasoned verdict.

13. An appellant must establish that the alleged formal error invalidates the Verdict. A minor formal error or a formal error *that does not* prevent the Appellate Panel from ascertaining the conclusion and reasoning of the Trial Panel does not invalidate the Verdict and thus will not result in the revocation of the Verdict.

## **B. Errors of Fact**

14. The standard of review in relation to alleged errors of fact to be applied by the Appellate Panel is one of reasonableness.<sup>2</sup> When considering alleged errors of fact, the Appellate Panel will determine whether any reasonable trier of fact could have reached the contested factual finding. The Appellate Panel will only substitute its own finding for that of the Trial Panel when no reasonable trier of fact could have reached the contested factual finding.

15. The Appellate Panel shall bear in mind that in determining whether or not a Trial Panel's conclusion was reasonable, it will not lightly disturb the findings of fact of a Trial Panel. The Appellate Panel notes that the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Panel, and an Appellate Panel will generally provide appropriate deference to a finding of fact reached by a Trial Panel. Only where the evidence relied on by the Trial Panel could not have been accepted by a reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous" will an Appellate Panel substitute its own finding of fact for that of the Trial Panel.

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<sup>1</sup> See generally *Mirko Todorović and Miloš Radić*, X-KRŽ-07/382 (Ct. of BiH), Appeal Judgment, 23 January 2009, paras. 27-34, 55-58, 60-65, 69-72, and 73-75; *Nenad Tanasković*, X-KRŽ-06/165 (Ct. of BiH), Appeal Judgment, 26 March 2008, pp. 7-9.

<sup>2</sup> See generally *Todorović and Radić* Appeal Judgment, paras. 85-89; *Tanasković* Appeal Judgment, pp. 4-5.

**III. 1<sup>ST</sup> DEFENSE GROUND OF APPEAL:**  
**VIOLATIONS OF CRIMINAL PROCEDURE**

**A. Sub-Ground One: Insufficient grounds and explanation of the death of Stojko Glamočak**

16. The Defense for the Accused Marko Škrobić argued that the Trial Verdict failed to state the reasons for the conclusion that the Accused Marko Škrobić fired a bullet from his pistol at Stojko Glamočak's chest and that the bullet hit and caused the death of Stojko Glamočak. The Defense further argues that this alleged failure constitutes an essential violation of the provisions of criminal procedure pursuant to Article 297(1)(k) of the CPC of BiH.

17. The Prosecutor responded generally that the Appeal is unfounded and the Trial Verdict is lawful and correct.

18. In concluding that the crime alleged in the Indictment, that is, the murder of Stojko Glamočak, was proven beyond reasonable doubt, the Trial Panel concluded:

It is incontestable that one of the remaining soldiers who stayed with the other members of the Glamočak family came up to Stojko Glamočak, grabbed his chest and fired a shot directly at his chest, whereas Stojko Glamočak fell and died.<sup>3</sup>

19. The Trial Panel further concluded that this soldier was the Accused Marko Škrobić.

20. With respect to the testimony of witness Stana Glamočak, the Trial Panel found:

Given the very act of the murder of Stojko Glamočak, Stana Glamočak is a direct eye-witness of the murder. She saw the person who introduced himself as the neighbor Marko grabbing Stojko Glamočak's chest and firing one shot at his chest, whereupon the instant death of Stojko Glamočak occurred. [...]At every step of the investigations she has always identified the Accused. [...]However, we must underline that this witness, although she did not know the last name of the Accused at the time of the very incident, during her

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<sup>3</sup> Verdict, p. 17.

examination at the District Prosecutor's Office in Banja Luka recognized him in a photograph as the person who killed her father-in-law.<sup>4</sup>

21. The Trial Panel further found with respect to the testimony of this witness:

Although she was unsure while giving her first testimony, during her second testimony the witness was explicit and clear that it was exactly the accused Marko Škrobić who committed the murder of Stojko Glamočak.<sup>5</sup>

22. With respect to the testimony of witness Boro Glamočak, the Trial Panel found:

The witness Boro Glamočak stated that, although he did not see the murder of his father directly, when his wife told him that the murder was committed by the same person who introduced himself as the neighbor Marko, he immediately knew which Marko was in question and he said to her that it was Ora's Marko. Ora is the mother's name of the Accused. As that is a small place, the area where all residents know one another, the identification of the person by the parent's name can be sufficient to conclude which person is in question.<sup>6</sup>

23. In assessing the credibility of the testimony of these witnesses, the Trial Panel concluded:

Taking into account the above factors and viewing the totality of the evidence and the circumstances, the Trial Panel found the testimony of both Stana and Boro to be credible and decisive.<sup>7</sup>

24. Finally, the Trial Panel concluded:

The Prosecution has the burden of proof and the Trial Panel concluded that the totality of the evidence proved the accused committed the murder of Stojko Glamočak beyond a reasonable doubt.<sup>8</sup>

25. The Appellate Panel concludes that this ground of appeal is ill-founded. Contrary to the assertions of the Defense, the First Instance Verdict clearly states its reasons for the conclusion that the Accused Marko Škrobić fired a bullet from his pistol at Stojko Glamočak's chest and that the bullet indeed hit and caused the death of Stojko Glamočak.

26. Accordingly, this sub-ground of Appeal is refused.

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<sup>4</sup> Verdict, p. 19.

<sup>5</sup> Verdict, p. 20.

<sup>6</sup> Verdict, p. 20.

<sup>7</sup> Verdict, p. 23.

<sup>8</sup> Verdict, p. 23.

## **B. Sub-Ground Two: Intent**

27. The Defense for the Accused Marko Škrobić argued that the Trial Verdict failed to state reasons for the conclusion that the Accused Marko Škrobić acted with the intent to kill Stojko Glamočak. The Defense further argued that this failure constitutes an essential violation of the provisions of criminal procedure pursuant to Article 297(1)(k) of the CPC of BiH.

28. The Prosecutor responded generally that the Appeal is unfounded and the Trial Verdict is lawful and correct.

29. The Appellate Panel recalls the reasoning of the Trial Verdict set out above.

30. The Appellate Panel concludes that the Trial Panel's finding as to the Accused's intent to kill is implicit in the factual findings and legal conclusions detailed in the Trial Verdict. The Trial Panel specifically stated all facts necessary to reach the conclusion that the Accused acted with direct intent which is sufficient to establish the Accused's criminal liability for the murder.

31. In addition, the conclusion that the Accused acted with direct intent is the only conclusion open to a reasonable trier of fact. That is, it is clear that no reasonable trier of fact could conclude, on the facts, that the Accused did not act with direct intent.<sup>9</sup> The facts determined by the Trial Panel establish, as a matter of law, that the Accused acted with the intent necessary to establish his criminal liability. The Appellate Panel concludes that a reading of the Trial Verdict as a whole establishes very strong and convincing facts from which undoubtedly arises the existence of both the knowledge and the will on the part of the Accused regarding the commission of the criminal offense. That is, the Accused had knowledge of his actions and he intended to commit the offense (*dolus directus*).

32. Therefore, the Appellate Panel concludes that this ground of appeal is ill-founded. Accordingly, this sub-ground of appeal is refused.

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<sup>9</sup> The Appellate Panel notes that the Accused did not argue at trial that he only accidentally fired his pistol at the victim, nor does any other evidence in the trial record even hint at that possibility.

#### **IV. 2<sup>ND</sup> DEFENSE GROUND OF APPEAL: APPLICATION OF SUBSTANTIVE LAW**

33. The Defense for Accused Marko Škrobić argued that the Trial Panel committed an error of law by applying the CC of BiH in the contested Verdict rather than the CC of the SFRY in force at the time of perpetration of the criminal offense. Specifically, the Defense argued that the CC of SFRY should have been applied as the more lenient law to the Accused.

34. The Appellate Panel recalls that the legality of the application of the 2003 Criminal Code of BiH in proceedings before the Court of BiH was fully considered by the Trial Panel and exhaustively considered and addressed by the Constitutional Court in its *Maktouf* decision.<sup>10</sup> The Defense failed to raise any additional issues or arguments that would cause the Appellate Panel to reconsider the application of the Constitutional Court's conclusions in the instant proceeding.<sup>11</sup> The Appellate Panel thus shares the position of the Trial Panel on the applicability of the BiH CC *in concreto*, finding all presented arguments well-founded, especially if taken into account the punishability for the crime at the time when it was committed (*in tempore criminis*) according to customary international law, and that it falls under the category of a “criminal offense under the general principles of international law” as set forth in Article 4a) of the Law on Amendments to the BiH CC and “general principles of law recognized by the community of nations” as laid down in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Such a position of the Panel has been additionally supported by the fact that the punishment prescribed by the BiH Criminal Code is in any case more lenient than the death penalty in effect at the time of perpetration, which satisfies the principle related to the time constraints regarding applicability, or the application of the law more lenient to the perpetrator.

Therefore, the Appellate Panel considers that this ground of appeal is ill-founded, and accordingly, is refused.

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<sup>10</sup> *Abduladhim Maktouf*, AP- 1785/06 (Const. Ct. of BiH), Decision on Admissibility and Merits on the appeal from the Verdict of the Court of Bosnia and Herzegovina (“*Maktouf* Decision”), 30 March 2007, paras. 60-79.

<sup>11</sup> *See also*

**V. 3<sup>RD</sup> DEFENSE GROUND OF APPEAL:**  
**IDENTITY OF THE PERPETRATOR**

35. The Defense for the Accused Marko Škrobić argued that the evidence presented during the main trial did not prove beyond a reasonable doubt that “the Accused Marko Škrobić was in the group of armed persons, that he was the one who grabbed Stojko Glamočak’s chest, and fired a round from his pistol in his direction.”

36. In support of its argument, the Defense made a number of factual contentions related to the testimony of witnesses upon whom the Trial Panel relied in reaching its conclusion.

37. The Prosecutor responded generally that the Appeal is unfounded and that the Trial Verdict is lawful and correct.

**A. Sub-Ground One: Boro Glamočak**

38. The Defense for the Accused Marko Škrobić argued that the Trial Panel erred in finding Boro Glamočak’s identification of the Accused as the shooter to be credible. The Defense attacked the credibility of this witness on four related grounds.

39. First, the Defense argued that the testimony of Boro Glamočak establishes that he did not know the Accused prior to the incident.<sup>12</sup> The Defense contended that this conclusion is corroborated by the claim that Boro Glamočak was never able to visually identify the Accused on any occasion during the investigation. The Defense further noted that Boro Glamočak never described the Accused’s physical appearance in detail, stating only that he was dark, thin and about 19, 20 or 21 years old at the time the crime was committed.

40. Second, the Defense argued that Boro Glamočak’s testimony was inconsistent regarding the moment when he realized that the shooter was the Accused.<sup>13</sup> Specifically, the Defense argued that Boro Glamočak for the first time stated at the main trial that he realized the

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<sup>12</sup> Appeal, pp. 3-5.

<sup>13</sup> Appeal, p. 5.

Accused's identity when being escorted from his house, and that Boro Glamočak had never before mentioned this detail.

41. Third, the Defense argued that Ljubomir Petrušić's testimony regarding the contemporaneous statement given by Boro Glamočak is not credible.<sup>14</sup> In particular, the Defense noted what it considered to be numerous inconsistencies and gaps that undermine the credibility of Ljubomir Petrušić's testimony. Among other inconsistencies, the Defense noted that Ljubomir Petrušić incorrectly identified where the Accused was from, and incorrectly testified that Boro Glamočak had told him that the soldiers had "pushed, maltreated and beat [the Glamočak family][...]", which is inconsistent with the testimony of other witnesses. The Defense further noted that Ljubomir Petrušić did not recall other more severe crimes that occurred at around the same time, even though Ljubomir Petrušić testified that he remembered this particular crime because it was still shocking at the time.

42. Fourth, the Defense argued that the Trial Panel erroneously evaluated the testimony of Boro Glamočak that he "did not know any person by the name of Marko Škrobić except the Accused, nor did he know that there were at least four persons with the same name and surname living in Duratovci who were of the same age as the Accused."<sup>15</sup> Although the Trial Panel concluded that this testimony corroborated the identification of the Accused by Boro Glamočak, the Defense argues that in fact, this testimony suggests that "having heard from his wife that neighbors had told her that the person she was talking about was Marko Škrobić, and taking into account that the witness did not know of the existence of more than one person by that name, [the witness] suspected that it could only be Ora's Marko." The Defense thus argues that Boro Glamočak identified the Accused because he was the only Marko Škrobić he knew, rather than first identifying the Accused as Ora's Marko, and only then learning from the witness's wife that Marko Škrobić was the shooter.

43. With respect to the credibility of Boro Glamočak, the Trial Panel concluded that his identification was credible because he consistently identified the Accused as the shooter:

The Court gave credence to the testimony of the witness Boro Glamočak having found that his recognition testimony was credible and reliable, because in respect of establishing whether the Accused was in the group of armed

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<sup>14</sup> Appeal, pp. 5-6.

<sup>15</sup> Appeal, pp. 6-7.

persons, the witness gave the same statement immediately after the event to Ljubomir Petrušić as well as at the Prosecutor's Office of BiH and at the main trial. The facts reported that day have not changed in substance in 15 years.<sup>16</sup>

44. The Trial Panel also considered that the testimony of Ljubomir Petrušić corroborated the testimony and identification of Boro Glamočak. Ljubomir Petrušić was a police officer in Kotor Varoš at the time of the killing. He testified that Boro Glamočak reported the murder to the police the day after the killing, and that Boro Glamočak identified the Accused as the shooter at that time. The Trial Panel found:

[...] There is no doubt that the witness gave the account of the event the following day after the murder. Ljubomir Petrušić testified he remembered the date clearly because it was the last day of the month. The incident clearly left an impression on him as this was still early in the war and senseless acts of violence were still shocking.

Ljubomir Petrušić confirmed Boro's testimony when he gave his testimony at the main trial. On 31 July 1992 he received a criminal report about the murder of Stojko Glamočak, which indicated the known perpetrator Marko Škrobić, and that he received that information from Boro Glamočak who reported the murder of his father and who recounted to him all the circumstances surrounding the relevant event. The witness stated that he personally wrote the statement but that it got lost because of the state of war (he explained his office was ransacked some time after taking this statement), but that after a certain time it was reconstructed, and that he remembered the date of taking the statement well because he remembered the last date in the month well. Due to the state of war no further action was taken on the criminal report.<sup>17</sup>

45. Although Boro Glamočak was not always able to visually identify the Accused when presented with photographs, the Trial Panel reasoned that this did not affect the credibility of his identification:

Although the witness Boro Glamočak was not able to recognize him in the photograph at the Prosecutor's Office of BiH several years after the incident, that is, he was not sure that the Accused was exactly the person in the photograph, he nevertheless was able to identify the Accused during the very incident.<sup>18</sup>

46. The Trial Panel concluded that Boro Glamočak's identification of the Accused was credible.

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<sup>16</sup> Verdict, p. 18.

<sup>17</sup> Verdict, pp. 18-19.

<sup>18</sup> Verdict, p. 20.

47. The Appellate Panel concludes that the Defense failed to establish that the Trial Panel's finding was unreasonable. The Appellate Panel considers that while the Defense did highlight certain issues that could have raised questions at trial concerning the credibility of Boro Glamočak's identification, those issues do not establish that a reasonable trier of fact, on the basis of the evidence before the Trial Panel, could not have found Boro Glamočak's identification to be credible. Therefore, the Appellate Panel finds that the Defense has not shown that the Trial Panel's finding was unreasonable.

48. The Appellate Panel notes that the key to Boro Glamočak's credible identification of the Accused is that the Trial Panel found that Boro Glamočak identified the soldier as "Ora's Marko" *prior to* his wife learning from her neighbors that the shooter was named "Marko Škrobić". The Defense failed to establish that it was unreasonable for the Trial Panel to find that identification to be credible.

49. The Defense's arguments can be summarized briefly:

- 1) Boro Glamočak did not know the Accused, and thus could have only guessed that "neighbor Marko" was "Ora's Marko".
- 2) Boro Glamočak did not state, prior to his testimony at the main trial, that he realized the shooter was "Ora's Marko" when being escorted to the forest.
- 3) Ljubomir Petrušić's confirmation of Boro Glamočak's contemporaneous statement is not credible.
- 4) Boro Glamočak only knew one Marko Škrobić and thus only guessed that the shooter identified as Marko Škrobić was "Ora's Marko".

50. The Appellate Panel determines that the Defense failed to establish that the Trial Panel unreasonably found that Boro Glamočak knew the Accused prior to the relevant events. The Trial Panel found that the witness knew the Accused by sight and that the witness realized this as the event unfolded. Contrary to the Defense's argument that the Boro Glamočak's testimony establishes that he did not know the Accused at all, Boro Glamočak in fact clearly testified that "I knew [the Accused]...I knew him by sight". The witness testified further, "I knew his parents well."

51. Moreover, the Defense did not introduce any other evidence to demonstrate that the Trial Panel's conclusion that Boro Glamočak knew the Accused prior to the events was unreasonable. The Trial Panel recognized that Boro Glamočak could not identify the photo

of the Accused, but found that this did not affect the credibility of the witness's contemporaneous identification. Similarly, the Trial Panel considered that the witness's bare verbal description of the Accused was consistent with Boro Glamočak knowing the Accused by sight but not knowing the Accused as well as he knew the Accused's parents. The Appellate Panel considers that the Defense failed to establish that this analysis and finding by the Trial Court was unreasonable.

52. The Appellate Panel further determines that the Defense failed to establish that the alleged inconsistency regarding when Boro Glamočak realized the Accused's identity made the Trial Panel's finding unreasonable. The Appellate Panel considers that whether the witness realized the Accused's identity on the way to the forest or the location where he and his family were held, or whether he realized the soldier was "Ora's Marko" after learning from his wife that the soldier identified himself as "neighbor Marko", a reasonable trier of fact could still find the witness's identification of the soldier as "Ora's Marko" to be credible. More specifically, the Appellate Panel notes that whether the witness realized it was "Ora's Marko" on the basis of seeing him alone, or whether the witness realized it was "Ora's Marko" after learning it was "neighbor Marko", in both cases the witness still identified the shooter as "Ora's Marko" *before* learning the surname of Marko Škrobić. That is, as noted above, the crucial fact is that the witness learned the Accused's identity prior to and independent from his wife learning that the shooter was "Marko Škrobić" from her neighbors.

53. The same is true regarding the Defense's argument that the Trial Panel incorrectly evaluated the fact that Boro Glamočak only knew *one* Marko Škrobić from the area. The Appellate Panel notes that this fact would be relevant only if the witness had learned the name Marko Škrobić *before* identifying the shooter as "Ora's Marko".

54. As to the credibility of witness Ljubomir Petrušić, the Appellate Panel considers that the Defense merely highlighted reasons why a reasonable trier of fact could find the witness not credible. However, none of the arguments cited by the Defense establish that no reasonable trier of fact could find the witness credible. In particular, while the Defense highlighted certain inconsistencies and gaps in the witness's memory, a reasonable trier of fact could still conclude, as the Trial Panel did, that Ljubomir Petrušić's testimony that Boro Glamočak identified the Accused contemporaneously is credible notwithstanding those inconsistencies and gaps. The Appellate Panel notes that the primary fact that the witness testified to was

Boro Glamočak's contemporaneous identification of the Accused. The Appellate Panel considers that a reasonable trier of fact could make that finding as that fact is the most important fact and it is also the fact most likely to be remembered accurately by the witness.

55. Accordingly, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel was unreasonable in its finding that Boro Glamočak's identification of the Accused was credible.

### **B. Sub-Ground Two: Stana Glamočak**

56. The Defense for the Accused Marko Škrobić argued that the Trial Panel erred in finding credible Stana Glamočak's identification of the Accused as the shooter. The Defense attacked the credibility of this witness on four related grounds.

57. First, the Defense argued that the Trial Panel erroneously concluded that Stana Glamočak's visual acuity was sharp. The Defense noted that she "did not know exactly whether there were four or five persons in front of the house, whether all of them or only some of them were armed, if they had uniforms, how many of them had stockings on their heads, when did they take the stocking off their heads, whether Marko had a stocking on his head." The Defense further noted that Stana Glamočak only provided a bare description of the shooter, that he was a "dark, short, thin boy, who was not older than 21." The Defense concludes that these facts demonstrate that the witness's visual acuity was not in fact sharp and that her identification of the Accused was therefore not credible.

58. Second, the Defense argued that the Trial Panel erroneously concluded that Stana Glamočak consistently identified the Accused during the investigation. The Defense argued that Stana Glamočak testified that she did not remember the identification, which is contrary to the testimony of witness Dragoslav Perišić, upon which the Trial Panel relied, who testified that that Stana Glamočak, as well as Boro Glamočak, identified the Accused on that occasion.

59. Third, the Defense argued that the Trial Panel erroneously relied on Stana Glamočak's identifications of the Accused during the investigation and at the main trial. In particular, the Defense argued that Stana Glamočak's identification of the Accused by photograph was

unreliable because the witness was led to identify the Accused. The Defense argued that, contrary to the Trial Panel's conclusion, Stana Glamočak did not identify the Accused from among four photographs of persons named Marko Škrobić. The Defense argued that Stana Glamočak was shown only one photograph, which was of the Accused, at both the District Prosecutor's Office and at the Prosecutor's Office of BiH. The Defense argued that this procedure both violated the CPC and impermissibly led the witness to identify the Accused as the shooter, contaminating and rendering not credible Stana Glamočak's identification of the Accused as the shooter. The Defense also argued that Boro Glamočak testified "that he and his wife Stana Glamočak did not identify the Accused from among four photographs of persons by the same name of Marko Škrobić."

60. Fourth, the Defense argued that Stana Glamočak's testimony that her neighbors informed her that "Marko Škrobić" was the shooter is not a credible identification of the Accused, as those neighbors were not present at the time of the killing.

61. The Trial Panel found that Stana Glamočak was a direct eyewitness of the killing of Stojko Glamočak. The Trial Panel found that Stana Glamočak identified the Accused as the soldier who killed Stojko Glamočak both on prior occasions when she was shown photographs and in the courtroom during the main trial.

62. In reasoning that Stana Glamočak accurately identified the Accused as the shooter, the Trial Panel relied primarily upon the witness's consistent visual identification of the Accused. As the Trial Panel stated:

At every step of the investigations [Stana Glamočak] has always identified the Accused. The first time she was shown pictures at the District Prosecutor's Office she picked him out of a group of 4 photos. The four photos were of persons of the same name, Marko Škrobić. [...] Stana testified she had never seen Marko since that date, but she identified the Accused that time and every time since. What is significant about this identification is that she picked out the one Marko who was the son of Ora. Only one Marko meets this test and she accurately selected him.

[...] However, we must underline that this witness, although she did not know the last name of the Accused at the time of the very incident, during her examination at the District Prosecutor's Office in Banja Luka recognized him in a photograph as the person who killed her father-in-law.

Although she was unsure while giving her first testimony, during her second testimony the witness was explicit and clear that it was exactly the accused Marko Škrobić who committed the murder of Stojko Glamočak.<sup>19</sup>

63. Recognizing the potential unreliability of eyewitness identifications, the Trial Panel applied a five-part test in determining whether the witness's identification of the Accused was credible. The Trial Panel formulated this test as follows:

- 1) the opportunity of the witness to view the actor during the event;
- 2) the witnesses degree of attention to the actor at the time of the event;
- 3) the witness's capacity to observe the event, including his or her physical and mental acuity;
- 4) whether the witness's identification was made spontaneously and remained consistent thereafter or whether it was the product of suggestion; and
- 5) the nature of the event being observed and the likelihood that the witness would perceive, remember and relate it correctly (this last factor relating to whether or not it was an ordinary event or not).<sup>20</sup>

64. Finally, the Trial Panel applied this test to Stana Glamočak's identification:

In evaluating Stana's testimony, the court found that she had ample time to view the accused. This incident lasted a number of hours. Her attention was riveted on the Accused as he was the killer of her father-in-law, the others are vaguer to her but they were not killers. As she had three children with her to protect it is unlikely she took her eyes off him. She was an adult at the time and had no mental or physical impairments that might affect her memory. Her initial id of the Accused was made spontaneously from among 4 different photos. Although her neighbors first suggested the name of Marko Škrobić to her there is no evidence this contained a description of him. If anything the name came after she told her neighbors of the incident. This is not clear at the main trial as the neighbors are now dead. It is equally a possibility, being in a small village, that by mid-morning many knew of this incident (see testimony of Ivo Marić) as well as the perpetrators. Her husband only identified the Accused as Marko, son of Ora. She testified that she never saw him again until the Main Trial. Given that the nature of the event was so shocking it is clear she could hold the memory of a face and still be confused by other less important details after all this time. Both positions can be equally true. Given this, the totality of her testimony was believed by the Trial Panel.<sup>21</sup>

65. The Trial Panel noted that Stana Glamočak was initially unable to identify the Accused in the courtroom during the main trial, although on another date she was able to in fact identify the Accused during the main trial. In reasoning that Stana Glamočak's initial inability to

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<sup>19</sup> Verdict, pp. 19-20.

<sup>20</sup> Verdict, pp. 22-23.

<sup>21</sup> Verdict, p. 23.

identify the Accused did not affect the credibility of her later identification, the Trial Panel reasoned:

Although she was unsure while giving her first testimony, during her second testimony the witness was explicit and clear that it was exactly the accused Marko Škrobić who committed the murder of Stojko Glamočak. Her initial unsurety was caused by fear from the courtroom, which was obvious during her first testimony. Due to the stress of the proceedings, the witness examination had to be stopped, after which the witness was taken to the hospital, recovered and came back at a later day (twice) to provide coherent testimony.<sup>22</sup>

66. Accordingly, the Trial Panel concluded that Stana Glamočak's identification of the Accused was credible.

67. The Appellate Panel considers that the most substantial issue the Defense has raised concerning the credibility of Stana Glamočak's visual identification of the Accused concerns the identification process during the investigation. The Appellate Panel determines that the Defense's other arguments do not establish that the Trial Panel unreasonably found Stana Glamočak's visual identification of the Accused to be credible.

68. The Appellate Panel concludes that a reasonable trier of fact could find that the details raised by the Defense did not raise doubts concerning the accuracy of Stana Glamočak's visual identification. Most importantly, the Appellate Panel notes that the Trial Panel conducted an exhaustive analysis of the circumstances and facts of that visual identification before concluding that it was credible. It is clear that the Trial Panel fully considered the factors that relate to the credibility of a visual identification, and on that basis concluded that Stana Glamočak's visual identification was credible. The Defense did not point to any circumstances or facts that would establish that the analysis and conclusions by the Trial Panel were unreasonable. The Appellate Panel considers that the details highlighted by the Defense are comparatively minor as compared to the witness's direct observation of the face of the soldier who killed Stojko Glamočak, her father-in-law, as the Trial Panel concluded. A reasonable trier of fact could conclude, as the Trial Panel did, that the ability of a witness to remember and identify a face is not dependent on the witness's ability to verbally articulate the features of that person.

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<sup>22</sup> Verdict, p. 20.

69. With respect to the prior visual identifications of the Accused by Stana Glamočak, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel erred in relying on those visual identifications, meaning that the Defense's arguments lack adequate factual support that would lead the Court to conclude otherwise.

70. The Appellate Panel concludes that the Defense failed to establish that the Trial Panel erroneously determined that Stana Glamočak consistently identified the Accused during the various visual identification procedures. The Trial Panel gave greater weight to the documentary evidence over Stana Glamočak's recollection with respect to the results of prior identification procedures. The Defense failed to establish that the conclusion of the Trial Panel was unreasonable.

71. A significant issue raised by the Defense concerns the manner in which the visual identification procedures were performed, particularly with respect to the first visual identification procedure. The Appellate Panel concludes that the Defense failed to establish that the Trial Panel unreasonably found the prior identification procedures to be credible and probative.

72. As noted, the Defense argued that the Trial Panel erred in concluding that Stana Glamočak was presented with four photographs of persons named Marko Škrobić at the first visual identification procedure conducted at the District Prosecutor's Office in Banja Luka. The Defense argued that, to the contrary, the witness was only shown one photograph, that of the Accused, on that occasion, as well as at the Prosecutor's Office of BiH, and that the witness's identification of the Accused was therefore directed and tainted.

73. However, the Appellate Panel determines that both the Trial Panel and the Defense were incorrect in their characterization of the manner and course of the visual identification procedures. Specifically, contrary to both the Trial Verdict and the submissions of the Defense, the first visual identification procedure was conducted at the home of Stana Glamočak on 2 February 2005. As shown by Exhibit O-4, on that occasion Stana Glamočak was shown four photographs of persons named Marko Škrobić and she identified the Accused. The Trial Panel's incorrect characterization of the identification procedure is

unquestionably harmless, as the Trial Panel merely incorrectly identified the location of the first identification procedure where the witness was shown four photographs.

74. Furthermore, and again contrary to the submissions of the Defense, Stana Glamočak was not shown only one photograph during the visual identification procedure conducted at the District Prosecutor's Office of Banja Luka on 23 February 2005. Exhibit O-1 states that the witness was shown "several" photographs and that the witness positively identified the Accused from among those photographs. The witness herself stated during her testimony that she was shown two photographs on that occasion and that she positively identified the Accused. Whether the witness was shown "several" or two photographs, she was shown more than one photograph, and she unquestionably positively identified the Accused.

75. The Appellate Panel notes that Stana Glamočak was first shown four photographs of persons named Marko Škrobić, from which she positively identified the Accused, and then shortly thereafter was shown at least two photographs, from which she again positively identified the Accused. Contrary to the assertions of the Defense, Stana Glamočak was not led or directed to identify the Accused, as she was presented with multiple photographs during these visual identification procedures, from which she positively identified the Accused. The Appellate Panel concludes that the visual identification process was not tainted by the manner in which the initial visual identifications were conducted.

76. Having reached that conclusion, the Appellate Panel concludes that the Defense failed to establish their claim that the Trial Panel unreasonably found the prior identification procedures to be credible and probative. The Appellate Panel considers that although the visual identification procedures may not have been completely in strict conformity with the relevant provisions of the CPC, that does not render them inadmissible. The Appellate Panel further considers that it was unquestionably reasonable for the Trial Panel to conclude that "any [procedural] irregularity did not violate the integrity of the selection [process]."<sup>23</sup> Having reviewed all the evidence and taking into account all the circumstances, the Trial Panel found that the prior identification procedures were credible and probative. The Defense failed to show that the Trial Panel's finding was unreasonable.

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<sup>23</sup> Verdict, p. 19.

77. Accordingly, in light of the above, the Appellate Panel concludes that the Trial Panel reasonably found Stana Glamočak's identification of the Accused to be credible.

78. The Appellate Panel commends the approach taken by the Trial Panel in identifying and applying a five-part test to assessing the credibility of eyewitness testimony. The Appellate Panel considers that such an approach promotes clear, logical, standardized, and transparent reasoning, allowing the Appellate Panel and the public to easily understand the methodologies applied by the Trial Panel and the reasoning used. The Appellate Panel considers that the Trial Panel's use of such a test contributes to the "best practices" of the Court of BiH.

### **C. Sub-Ground Three: Ivo Marić**

79. The Defense for the Accused Marko Škrobić argued that the Trial Panel concluded "that the statement of Boro and Stana Glamočak was corroborated in part by the statement of Ivo Marić, but failed to evaluate the part of the statement of this witness, the best-man of Glamočak family, in which he explicitly claimed that he had not told either Boro or Stana Glamočak that Marko Škrobić had killed Stojko Glamočak, although the witness Stana Glamočak claimed so."<sup>24</sup> The Defense argued that the Trial Panel erroneously evaluated and used Ivo Marić's testimony, which supports the argument of the Defense that the Trial Panel erroneously found that the Accused was the person who killed Stojko Glamočak.

80. The Appellate Panel concludes that the Defense has failed to establish that the Trial Panel erroneously evaluated and utilized the testimony of Ivo Marić.

81. The Appellate Panel notes that, contrary the Defense's suggestion, the Trial Panel did not conclude that "the statements of Boro and Stana Glamočak were corroborated in part by the statement of Ivo Marić" with respect to the identification of the Accused. Rather, it is evident from the Trial Verdict that the Trial Panel relied on the testimony of Ivo Marić only to establish that the killing occurred when no major attack was ongoing and that many in the village knew of the killing soon afterwards.

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<sup>24</sup> Defense Appeal, p. 9.

82. Further, the Defense did not allege or establish that the highlighted inconsistency between the testimony of Ivo Marić and the testimony of Stana Glamočak established that Stana Glamočak's testimony was not credible. A single inconsistency in a witness's testimony does not *ipso facto* establish that the witness is not credible.

83. Accordingly, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel erroneously evaluated and used the testimony of Ivo Marić.

#### **D. Sub-Ground Four: Motives of Prosecution Witnesses**

84. The Defense for the Accused Marko Škrobić argued that the Trial Panel erred in concluding that no explanation was provided by the defense "as to the motive for which the witnesses Stana and Boro and Ljubomir Petrušić would lie." The Defense noted that during the main trial it did not suggest that the witnesses Stana and Boro consciously lied. The Defense argued, nonetheless, that the testimony of the witnesses was improperly induced by "suggestions by other persons and their actions".

85. In support of its submission, the Defense summarized and reiterated its prior arguments noted above, arguing that evidence and relevant circumstances support the proposed interpretation that the witnesses' identifications of the Accused are the "result of suggestions by other persons and their actions."

86. The Defense also cited the testimony and statement of Irena Todorović, the daughter of Stana and Boro Glamočak. The Defense argued that there is a discrepancy between her Statement to the Prosecutor of BiH on 14 June 2007 (Exhibit O-8) and her testimony at the main trial on 9 May 2008. The Defense further argued that this alleged discrepancy supports its proposed interpretation.

87. The Appellate Panel concludes that the Defense has failed to establish that the Trial Panel erred in its evaluation of the evidence.

88. The Appellate Panel notes that the Defense has merely provided an alternative interpretation of the evidence adduced at the main trial. On appeal, the Defense must specifically address the reasoning and conclusions of the Trial Panel. Merely reciting

evidence and providing an alternative interpretation of that evidence does not establish that the Trial Panel's conclusions were unreasonable.

89. In addition, the Appellate Panel recalls that it has previously rejected the arguments the Defense restated in support of its proposed interpretation of the evidence.

90. The Appellate Panel further finds that the Defense incorrectly characterized the statement and testimony of Irena Todorović. The Defense claimed that in her Statement to the Prosecutor's Office of BiH on 14 June 2007, Irena Todorović stated that her parents had told her that "[...]it *could be* Marko Škrobić" who killed her grandfather. However, in the Statement, Irena Todorović actually stated, "They [her parents] told me that *Marko had* killed him[...]" (Emphasis Added). Irena Todorović did not state to the Prosecutor of BiH on 14 June 2007 that her parents had told her it "*could be*" Marko Škrobić who killed her grandfather, as claimed by the Defense in its appeal (Emphasis Added). At the main trial, Irena Todorović testified that her parents had told her that "*Marko Škrobić had* killed" her grandfather (Emphasis Added). Accordingly, there was no discrepancy between Irena Todorović's statement to the Prosecutor's Office of BiH and her main trial testimony.

91. Therefore, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel erred in its evaluation of the evidence. Accordingly, this sub-ground of appeal is dismissed.

#### **E. Sub-Ground Five: The Accused's Alibi**

92. The Defense for the Accused Marko Škrobić argued that the Trial Panel erred in finding that the alibi evidence presented by the Defense was not credible.

93. In particular, the Defense argues that the Trial Panel erroneously concluded that the defense witnesses had a motive to lie due to their friendship with the Accused and that the Defense witnesses did in fact "adjust" their testimonies to provide the Accused with an alibi.

94. The Accused presented alibi evidence that he was on the front line and did not leave Kotor Varoš at the relevant time. The Trial Panel found that this alibi evidence was not credible.

95. In particular, the Trial Panel reasoned that the Accused did not present solid evidence in support of his alibi other than his own testimony:

The witness Slavko Bujdo tried to corroborate the alibi of the Accused, but his testimony is inconclusive, because the Witness listed in general the places where the Accused was at the relevant time, without knowing where the Accused was exactly.<sup>25</sup>

96. Accordingly, the Trial Panel concluded that the Accused's alibi defense was not credible and that it did not raise reasonable doubt concerning the identification by Boro and Stana Glamočak of the Accused as the shooter.

97. The Appellate Panel concludes that the Defense failed to establish that the Trial Panel's finding was unreasonable. Contrary to the assertion of the Defense, the Trial Panel's finding regarding the credibility and content of the witness's testimony was not contradictory. Having considered the content of the witness's testimony and analyzed the credibility of the witness in light of all the circumstances, the Trial Panel found that the witness did not provide a credible alibi for the Accused. The Appellate Panel concludes that the Defense failed to establish that the Trial Panel's analysis and finding were unreasonable.

98. The Appellate Panel further concludes that the Defense failed to establish that the Trial Panel did not conduct an objective evaluation of the evidence and the witnesses. The Defense did not support this claim other than by noting that the Trial Panel did not believe the testimony of the defense witnesses but did believe the testimony of the prosecution witness Ivo Marić who was a friend of the victims. This is clearly not sufficient to establish that the Trial Panel did not evaluate the evidence objectively.

99. Therefore, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel erred in evaluating the Accused's alibi evidence. Accordingly, this sub-ground of appeal is dismissed.

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<sup>25</sup> Verdict, p. 21.

## **F. Conclusion**

100. In light of the foregoing, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel unreasonably found that the Accused was the soldier who killed Stojko Glamočak.

101. The Appellate Panel has concluded that the Defense failed to establish that the Trial Panel's individual assessments and findings were unreasonable. Namely, the Appellate Panel has concluded that the Trial Panel reasonably found the identifications by Boro and Stana Glamočak to be credible, reasonably found the Accused's alibi evidence to be not credible, reasonably evaluated the testimony of Ivo Marić, and reasonably evaluated the evidence as a whole. Moreover, the Appellate Panel notes that as the Trial Panel's finding was based upon multiple pieces of evidence, a conclusion that the Trial Panel erroneously evaluated one piece of evidence would not compel the conclusion that the Trial Panel's finding as to the Accused was unreasonable.

102. Further, examining the Trial Panel's reasoning and findings as a whole, the Appellate Panel concludes that the Defense failed to establish that the Trial Panel unreasonably found that the Accused was the soldier who killed Stojko Glamočak.

103. Accordingly, this ground of appeal is refused.

**VI. 4<sup>TH</sup> DEFENSE GROUND OF APPEAL:**

**CAUSE OF DEATH**

104. The Defense for the Accused Marko Škrobić argued that “the Court did not establish through any piece of evidence that the bullet fired from the pistol in the direction of the victim Stojko Glamočak on the relevant occasion actually hit the victim and killed him.”

105. The Appellate Panel concludes that this ground of appeal is ill-founded. The Trial Panel cited the eyewitness testimony of Stana Glamočak that the soldier shot Stojko Glamočak in the chest with a pistol and that Stojko Glamočak then died. Therefore, the Trial Panel established that the bullet fired from the pistol was the cause of death.

106. Accordingly, this ground of appeal is refused.

**VII. 5<sup>TH</sup> DEFENSE GROUND OF APPEAL:**  
**DECISION ON THE SENTENCE**

107. The Defense for the Accused Marko Škrobić argued that the Trial Panel erred in sentencing the Accused to a 10 year term of imprisonment.

108. In reviewing the decision on the sentence and bearing in mind the application of Article 308 of the CPC BiH, this Panel takes into account that the Trial Panel considered the circumstances that affect the length of punishment, as prescribed by Article 48 of the CC BiH (General Principles of Meting out Punishments). The Trial Verdict takes into account the legislative framework for pronouncing the sentence for the criminal offense and the general principles for the determination of the type and duration of the punishment. They include the purpose of punishment, the degree of criminal liability of the Accused, the circumstances in which the offense was perpetrated, the past life of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence.

109. In considering the Appeal, the Appellate Panel takes into account that the Trial Panel imposed on the Accused a criminal sanction prescribed by law but finds that the Trial Panel failed to properly exercise its discretion under the law regarding the appropriate duration of the criminal sanction. That is, the Trial Panel failed to fully consider the possibility of pronouncing a more lenient sentence. The Trial Panel's explanation of extenuating circumstances on the part of the Accused stated in general terms that the Accused is a "married, family man". In the opinion of the Appellate Panel, the Trial Panel should have more precisely considered that the Accused is a married, father of two minor children.

110. The Appellate Panel concludes that although the Trial Panel considered extenuating circumstances to the extent that a sentence could have been imposed for a period of imprisonment below ten (10) year duration as provided by law, the Trial Panel failed to provide adequate importance to the fact the Accused has two minor children when it determined the sentence. Thus, the sentence as pronounced was too severe.

111. The Appellate Panel determines that based on all relevant factual findings, the Trial Panel correctly concluded that there are no aggravating circumstances on the part of the Accused.

112. The Trial Panel also correctly determined various extenuating circumstances with respect to the Accused. They include his past life, the fact that at the time of the commission of the criminal offense he was only twenty-one (21) years of age, his conduct after the commission of the criminal offense, his proper conduct during the trial, his compliance with the measures imposed on him rather than custody and that he has no prior criminal conviction record. Within the context of his personal situation, this Panel finds that greater importance should have been given to the fact that the Accused is father of two minor children and this fact should have been considered in addition to other extenuating circumstances.

113. This is particularly important because of the responsibility for his children, which is an important factor to be considered when pronouncing a sentence. This issue was not adequately considered when it was stated in the Trial Court Verdict that the Accused “is a married family man”. A person can be married, that is, he can have a family, with or without children. The responsibilities of a person with children can be significantly different than a person without children.

114. After a detailed analysis of all the extenuating circumstances, both individually and in mutual correlation and bearing in mind that there are no aggravating circumstances on the part of the Accused, the Appellate Panel finds that the circumstances in their entirety, as prescribed under Article 49(b) of the CC BiH, amount to highly extenuating circumstances and that the proper purpose of punishment can be attained by a sentence of nine (9) years of imprisonment.

115. In reviewing the part of the Trial Verdict with respect to the decision on sentence pursuant to Article 308 of the CPC BiH, the Appellate Panel upholds the Appeal of the Defense on that claim and revises the Trial Verdict in part by sentencing the Accused Marko Škrobić to imprisonment for a period of nine (9) years. Pursuant to Article 56(1) of the CC BiH, the time the Accused has spent in custody from 19 December 2007 to 6 February 2008 shall be credited to the sentence. The Appellate Panel finds that this punishment is proportionate to the circumstances of this specific case and also to the extent of danger to or

violation of the public good. These circumstances influence the duration of the imposed sentence by which the purpose of punishment as prescribed under Article 39 of the CC BiH shall be achieved.

116. Based upon the Appellate Panel's Decision and reasoning on the sentence, the appellate claims of the Prosecutor's Office regarding sentence are refused.

### **VIII. DECISION ON THE APPEALS**

117. In accordance with the foregoing and pursuant to Article 310(1) in conjunction with Article 314 of the CPC BiH, it is decided as stated in the operative part of the Appellate Verdict.

118. The appellate claims of the Accused are not well-founded except for the issue of the length of sentence of imprisonment. Therefore, the Trial Verdict is upheld in all other aspects pursuant to Article 310 of the CPC BiH in conjunction with Article 313 of the CPC BiH.

**PRESIDENT OF THE PANEL**

**JUDGE**

**Tihomir Lukes**

**RECORD-TAKER:**

**Medina Hababeh**

**NOTE ON LEGAL REMEDY:** No appeal lies from this Verdict.