Bosna i Hercegovina *Bosnia and Herzegovina*

Sud Bosne i Hercegovine

Number: X_KRŽ-07/478
Date: Rendered on 19 February 2010

The Panel of the Appellate Division composed of:

Judge, Dr. Miloš Babić as the Presiding Judge
Judge Azra Miletić as the Reporting Judge
Judge Carol Peralta as the Member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

Against

MOMIR SAVIĆ

APPEAL JUDGMENT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:

Adnan Gulamović

Defense Counsels for the Accused, Attorneys:

Milan Romanić
Dragan Međović

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COURT OF BOSNIA AND HERZEGOVINA

Number: X-KRŽ-07/478
Sarajevo, 19 February 2010

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel of the Appellate Division composed of Judge, Dr. Miloš Babić as the Presiding Judge and Judges Azra Miletić and Carol Peralta as the Panel members, with the participation of Legal Advisor Melika Murtezić, as the Record-Taker, in the criminal case against the Accused Momir Savić, for the criminal offense of Crimes against Humanity, in violation of Article 172(1)h), in conjunction with items a), d), e), g) and k) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), deciding upon the Appeals of the Prosecutor's Office of Bosnia and Herzegovina and Defense Counsels for the Accused, Attorneys Milan Romanić and Dragan Međović, filed from the Verdict of this Court, No. X-KR-07/478, of 3 July 2009, following the Panel session, in the presence of the Prosecutor of the Prosecutor's Office of BiH, Adnan Gulamović, the Accused and his Defense Counsels, on 19 February 2010 rendered the following

V E R D I C T

The Appeal of the Prosecutor's Office of BiH, No. KT-RZ-205/06 is refused as unfounded, the Appeal of the Defense Counsel for the Accused Momir Savić is partly upheld, and the Verdict of the Court of B-H, No. X-KR-07/478, of 3 July 2009, **is revised** so that, pursuant to Article 284c) of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC of B-H), the Accused Momir Savić

IS ACQUITTED OF THE CHARGES

that during a widespread and systematic attack of the Serb Army, police and Serb paramilitary formations directed against the civilian Bosniac population in the territory of the municipalities of Višegrad and Rudo, knowing of such an attack, firstly as a member of an unidentified paramilitary formation during the activities of the former JNA Užice Corps, and thereupon as the Commander of the 3rd Company of the Višegrad Brigade of the Republika Srpska Army, during the period from 7 June 1992 through late September 1992, he frequently visited the house of T.B. in Višegrad, wearing his uniform and arms, where he raped her and humiliated her being dirty and untidy and telling her that „she had enough of giving birth to Muslim children and that she should now give birth to Serb children", he beat her and threatened her not to tell anything to anybody, and on one occasion he took the money she had, which all together caused a constant fear within her due to which she still feels health and mental problems,

whereby he would have committed

the criminal offence of Crimes against Humanity in violation of Article 172(1)h) in conjunction with sub-paragraph g) of the CC of BiH,

and also in the Decision on criminal sanction, so that the Accused

IS SENTENCED
to 17 (seventeen) years of imprisonment

for the offenses described in Sections 1, 2, 3, 4, 5, 7 and 8 of the operative part of the Trial Verdict, **which he was found guilty of for the criminal offense of Crimes against Humanity in violation of Article 172(1)h) in conjunction with items a), d), e), f), i) and k) of the CC of B-H.**

Pursuant to Article 56 of the CC of BiH, the time the Accused spent in custody from 14 December 2007 until 17 December 2008 has been credited towards the imposed sentence. The remaining part of the Trial Verdict remains unchanged.

R E A S O N I N G

PROCEDURAL HISTORY

1.By the Verdict of the Court of BiH No. X-KR-07/478, of 3 July 2009, the Accused Momir Savić was found guilty of committing, by the actions set out in Sections 1 through 8 of the operative part, the criminal offense of Crimes against Humanity in violation of Article 172(1)h), in conjunction with items a), d), e), g) and k) of the CC of BiH, so that he was sentenced to 18 years of imprisonment. The time the Accused spent in custody from 14 December 2007 until 17 December 2008 was credited towards the imposed sentence, and pursuant to Article 188(4) of the CPC of BiH, the Accused was entirely relieved of the duty to reimburse the costs of the criminal proceedings, while pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties were referred to take civil action with their claims under property law.

2. The Defense Counsels for the Accused, Attorney Milan Romanić and Attorney Dragan Međović, within the statutory deadline, filed the Appeal from the Trial Verdict because of the essential violation of the criminal procedure provisions, violation of the Criminal Code, incompletely and incorrectly established state of facts, and the decision on criminal sanction.

3.The Prosecutor's Office of Bosnia and Herzegovina filed its Appeal from the Trial Verdict because of the decision on criminal sanction, with a proposal to sentence the Accused to imprisonment for a term longer then 18 years.

4.The Defense submitted to the Court its response to the Prosecutor's Appeal with a proposal to dismiss it as unfounded.

5. At the Panel session held on 19 February 2010, pursuant to Article 304 of the CPC of BiH, the Appellants maintained their written appeal averments and reasons. The

Prosecutor briefly presented his response to the Appeal of the Defense Counsels with a proposal to dismiss it as unfounded.

6. Having examined the contested Verdict within the limits of the appeal averments, the Appellate Panel decided as stated in the operative part due to the following reasons:

GENERAL ISSUES

7. Prior to reasoning every particular appeal averment, the Appellate Panel points out that an appellant is under obligation, pursuant to Article 295(1)b) and c) of the CPC of BiH, to state, in an appeal, the grounds for contesting the verdict as well as the reasoning behind the appeal.

8. As pursuant to Article 306 of the CPC of BiH, the Panel of the Appellate Division shall review the verdict only insofar as it is contested by the appeal, the appellant is under obligation to draw the appeal so that it can be used as a basis to review the verdict.

9. In this respect, the appellant must concretize the appeal grounds contesting the verdict, specify which parts of the verdict, evidence or Court's action are being contested, and state a clear and corroborated reasoning in support of the submitted motion.

10.A mere blanket indication of the appeal grounds as well as pointing to the alleged anomalies during the main trial without specifying the appeal ground referred to by the appellant does not constitute a valid basis for reviewing the Trial Verdict, for the reason of which the Appellate Panel dismissed as unfounded the unreasoned and unclear appeal averments.

I ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS UNDER ARTICLE 297 OF THE CPC OF BIH

11. The Appellate Panel, first of all, considered the well-foundedness of the appeal averments suggesting the existence of essential violations of the criminal procedure provisions under Article 297(1) of the CPC of BiH, and found them to be ungrounded.

12. The essential violations of the criminal procedure, as a ground for appeal, are set out in Article 297 of the CPC of BiH.

13. Due to the gravity and importance of the committed violations of criminal procedure, the CPC of BiH differs between the violations which, if established as existent, generate an indisputable assumption that they negatively affected the validity of the pronounced verdict (absolutely essential violations) and the violations with respect to which, in each particular case, it is left to the Court to evaluate whether the established violation of the procedure affected or could have affected the validity of the verdict (relatively essential

violations).

14. The absolutely essential violations of the CPC of BiH are listed in Article 297(1)a) through k) of the CPC of B-H.

15. In case that the Panel establishes that there exist any of the essential violations of the criminal procedure provisions, it shall revoke the trial verdict, pursuant to Article 315(1)a) of the CPC of BiH.

16. Unlike the absolute violations, the relatively essential violations are not specified in the law, but they exist *if the Court has not applied or has improperly applied some provisions of this Code or during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict* (Article 297(2) of the CPC of BiH)

17. In the Appeal, the appellants point out the essential violations of the criminal procedure provisions under Article 297(1)d), h), j) and k) of the CPC of BiH, as well as Article 297(2) of the CPC of BiH.

1. The charges are exceeded (Article 297(1)j) of the CPC of BiH)

18. According to the Defense averments, this violation is reflected in the fact that, by the Indictment of the B-H Prosecutor's Office, the Accused is charged with the criminal offence in violation of Article 172(1)h), in conjunction with items a), d), e), f), i) and k) of the CC of B-H, all in conjunction with Articles 29 and 180(1) and (2) of the CC of BiH. Consequently, the Accused is charged with committing the criminal offence of Crimes against Humanity with several acts of complicity making him responsible as an individual perpetrator (Article 180(1) of the CC of BiH) but the Accused was also charged with command responsibility constituting a special type of individual criminal responsibility, as set out in Article 180(2) of the CC of B-H. By the contested Verdict, the Accused was not found guilty of the offences under items f) (torture) and i) (enforced disappearance of persons, moreover he was found guilty of only one type of individual responsibility, as an individual perpetrator of offences.

19. Deciding on the well-foundedness of this appeal averment, the Appellate Panel points to Article 280(1) of the CPC of B-H[1] that the verdict shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed. The objective identity of an offence is preserved if the offense in the verdict is the same or only different than the one charged, however it must never be more severe for the accused than the offense charged, nor can it be another offence, even if it is less severe than the one charged.

20. The Court is bound by the incident incriminated by the Prosecution, which is determined in full detail by the outcome of the main trial. The charges are not exceeded

[1] Article 280 of the CPC of BIH: "(1) *The verdict shall refer only to the accused person and only to the criminal offence specified in the indictment that has been confirmed, or amended at the main trial.*"

as long as, like in this particular case, the verdict remains within the limits of the incriminated incident as set out in the indictment and as it actually happened, and as long as the Trial Panel has not exceeded the framework of the offence described in the indictment. The Trial Court has mainly adopted the factual description of the offence set out in the Indictment, but it provided a different (correct) legal evaluation of the offence. Therefore, the Trial Panel did not exceed the charge by finding the Accused guilty as an individual perpetrator pursuant to Article 180(1) of the CC of BiH and not finding him guilty of the command responsibility pursuant to paragraph (2) of the same Article. The identity of the actual incident remained undisturbed in the challenged Verdict, and the facts constituting the essential characteristics of the criminal offence were not changed.

21. Contrary to the appeal averments, the Trial Court did not change the factual description of the criminal offence the Accused was charged with by finding the Accused guilty of a greater quantity of crimes than the one he was charged with in the confirmed Indictment.

22. Furthermore, the Trial Court is not bound by the Prosecutor's proposals regarding the legal qualification of the act[2]. The fact that the Trial Court did not, in terms of law, qualify the acts stated in the Indictment as torture and enforced disappearance – Article 172(1)f) and i) – does not constitute the exceeding of charges. The Court may have a different view concerning the legal evaluation of the act as compared to the view presented by the Prosecutor in the Indictment; therefore, the Court may qualify the act in the manner that it considers appropriate, giving its reasons in the reasoning of the Verdict. In this particular case, the legal qualification of the offence was given under the Counts of the Indictment supported by factual findings from the evidentiary procedure and by clear reasons of the Trial Court, which are fully accepted by the Appellate Panel; therefore the appellate averment that the charges are exceeded is entirely unfounded.

2. **The right to a defense was violated (Article 297(1)d) of the CPC of B-H)**

23. The Defense Counsels argue that the right of the Accused to a defense was violated by the alleged exceeding of the charges, as the Accused set up his defense predominantly in the manner aiming at challenging the thesis of the Prosecution about his command responsibility, moreover, the Defense also presented the evidence denying that the Accused committed the criminal offence of Crimes against Humanity under Article 172(1)f) and i) of the CC of B-H.

24. As evaluated by the Appellate Panel, this appeal averment is entirely unfounded.

25. Specifically, by the confirmed Indictment, the Accused is charged with the criminal offense of Crimes against Humanity in violation of Article 172(1)h), in conjunction with items a), d), e), f), i) and k) of the CC of B-H, all in conjunction with Article 180(1) and (2) of the CC of B-H, or, besides the command responsibility, he is also charged with the type of perpetration. In the situation where there is the major, the minor is neglected (*Ubi*

[2] Article 280 of the CPC of BIH: (2) "*The Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act*."

maior minor cessat), the Defense has been familiar with the charges from the very beginning, and therefore their pointing to the violation of the right to a defense is unfounded. As previously explained (see paragraphs 18-22), the First Instance Court has not exceeded the charges, and the Defense has been thoroughly informed about the facts and circumstances during the entire proceedings, or with the acts the Accused is charged with, therefore the manner in which the defense is structured in this particular case cannot represent grounds for appeal, nor can it constitute the violation of the right to a defense.

3. **The Court has not entirely resolved the contents of the charge by its Verdict (Article 297(1)h) of the CPC of B-H)**

26. The Defense holds that it should have been expressly stated in the operative part of the contested Verdict that no evidence exists that the Accused committed the offenses set out in Article 172(1)f) and i) of the CC of B-H, and that the Accused is not guilty under the command responsibility. The Defense Counsels find that, in doing so, the Panel acted contrary to the will of the Prosecutor and the principle that it is only the Prosecutor that determines the scope and subject of the criminal offense.

27. The Appellate Panel finds this appeal averment unfounded.

28. The objective identity of the charges and Verdict exists in its essential parts, in case it involves the same act or the same incident being the subject to trial. It must exist in its scope and contents. The facts that are not essential for the act or incident do not change the identity of the offense, so that the identity of the charges and Verdict is not changed if the circumstances involving more precise characteristics of the criminal offence that make it specific are changed in the Verdict, and if such characteristics are not decisive for the change of the contents of the charge. The identity of the charges and Verdict must exist in its scope and contents, or the Verdict must cover and resolve the contents of the charge in full, and it must relate to the final contents of the criminal proceedings.

29. The violation of objective identity between the charges and Verdict does not exist, nor does the absolutely essential violation of the criminal procedure provisions under Article 297(1)j) of the CPC of BiH, if the Trial Court, in its Verdict finding the Accused guilty of the offense alleged in the Indictment, gives a different legal qualification to that part, however under condition that such a different legal qualification corresponds to the accepted factual description (resulting from it) and that it is not more severe (more unfavorable for the Accused) than the one set out in the Indictment.[3]

30. Contrary to the appeal averments, the Appellate Panel finds that the Trial Court has resolved the contents of the charge in full, and that the objective identity between the Indictment and Verdict does exist. The Trial Court inferred, in the contested Verdict, a different conclusion concerning the legal evaluation of the offense as compared to the one presented by the Prosecutor in the Indictment, however the Court did not fail to

[3] *Commentary of the Criminal Procedure Code of Bosnia and Herzegovina*, Joint Project of the European Council and the European Commission (hereinafter referred to: Commentary of the Criminal Procedure Code), page 710 (see The Supreme Court of Croatia, I Kž-2002/1974, of 26 December 1975)

resolve the contents of the charge in full.

31. It should be emphasized that the Court may drop a certain unproved fact from the structure of the same criminal offense making an integral part of a continued criminal offense, under condition that such offense further exists legally. The interventions made by the Trial Court involve the factual findings of less important circumstances, which are not the elements of the underlying crime the Accused is charged with, and such circumstances did not affect the legal qualification of the criminal offense.

4. **The operative part of the Verdict is incomprehensible, internally contradictory or contradicted the grounds of the Verdict (Article 297(1)k) of the CPC of BiH**

32. The Defense, in its Appeal, has stated a number of facts and circumstances contesting the intent, causal connection between the acts of the Accused and the criminal offense of Crimes against Humanity, and pointed to the inconsistencies of the witness testimonies, specifically with regard to each Count of the Indictment severally, which all together, in the opinion of the Defense, makes the operative part of the Verdict incomprehensible, internally contradictory or contradicting the grounds of the Verdict.

33. The Appellate Panel finds it necessary to point out that contesting the accuracy of the factual findings from the Trial Verdict does not constitute grounds for appeal in terms of Article 297(1)k) of the CPC of BiH, but in terms of Article 299 of the CPC of BiH (incorrectly or incompletely established facts), which will be considered in Section II of this Verdict.

34. Absolutely essential violation of the criminal procedure provisions pursuant to Article 297(1)k) of the CPC of BiH exists when the Trial Verdict, as a formal court document, contains certain deficiencies in its operative part and reasoning, which, by their nature, make impossible the reviewing of its lawfulness and correctness.

35. Upon examining the contested Verdict in detail and with due attention, with regard to the existence of deficiencies that might constitute the essential violation of the criminal procedure provisions pursuant to Article 297(1)k) of the CPC of BiH, the Appellate Panel has concluded that the Verdict does not contain any deficiencies set out in item k), as arbitrarily stated in the Appeal, therefore the objections of the Defense Counsel had to be refused as unfounded.

36. Specifically, the factual description of the offense in the operative part is clear, defined and complete, and it contains the facts and circumstances constituting the essential elements of the criminal offense the Accused was found guilty of. The place and time of the perpetration of the criminal offense are stated in the operative part, and the acts of the Accused are clearly pointed out. The operative part of the Verdict includes all the essential elements of the criminal offense set out in Article 172 of the CC of B-H, with a precise description of individual underlying acts that are defined in all Sections of the operative part. The presented evidence is listed in the reasoning of the Verdict, alongside with the contents of that evidence, as well as the assessment of its credibility.

The contested Verdict provides for the reasons concerning the decisive facts that are relevant for sentencing in this criminal –legal matter, alongside with a detailed and comprehensive analysis of all the evidence, both individually and jointly.

5. **Essential violations of the criminal procedure provisions under Article 297(2) of the CPC of BiH**

37. The essential violation (so-called relatively essential violation) of the criminal procedure provisions under Article 297(2) of the CPC of BiH exists if the Court has not applied or has improperly applied some provisions of this Code during the preparation of the main trial or during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict.[4]

38. When a relatively essential violation of the criminal procedure provisions is in question, it is necessary for the appeal to point out not only the acts and failures reflecting a non-application or improper application of a certain provision of the procedural law, but to also point out how and why it affected or could have affected the rendering of a lawful and proper verdict,[5] or else examining whether a relatively essential violation of criminal procedure provisions was committed would turn into an *ex officio* examination.

Violation of Article 2 of the CPC of B-H – violation of the principle of legality

39. The Defense finds a violation of the principle of legality in the application of the Criminal Code of BiH instead of the Criminal Code of SFRY, which according to the Defense, should have been applied as the law that was in force at the time when the relevant offense was allegedly committed.

40. The Defense has also raised this appeal averment as a violation of the Criminal Code in terms of Article 298d) of the CPC of BiH, and it will be discussed within the grounds for appeal - violation of the Criminal Code under Article 298 of the CPC of BiH.

Violation of Article 3(1) of the CPC of BiH – Presumption of Innocence

41. The Defense argues that Article 3(1) of the CPC of BiH has been violated because the Trial Panel found the Accused guilty of all counts of the Indictment, although the Defense, during the proceedings, pointed to certain contradictions and incorrect and unreliable pieces of evidence of the Prosecution.

42. Presumption of innocence (*presumption iuris tantum*)[6] is defined in accordance with the international documents, stipulating that a person shall be considered innocent of a crime until his/her guilt has been established by a final verdict. By adopting this presumption, a suspect is relieved of the burden of proof and will be entitled to the privilege against self-incrimination. The presumption of innocence does not refer only to

[4] Article 297(2) of the CPC of BiH
[5] See Commentary of the Criminal Procedure Code, page 776
[6] So-called temporary presumption that is valid unless otherwise is proved.

the establishing of guilt but it also refers to other elements that are mutually related to the notion of criminal offense (*actus reus*, unlawfulness or punishability).

43. As assessed by the Appellate Panel, this appeal averment of the Prosecution is arbitrary, and it is not reflected in any example suggesting just how the presumption of innocence was violated during the main trial or which part of the contested Verdict contradicted this principle. The evaluation of evidence in itself does not constitute the violation of this principle, and the fact that, by the contested Verdict, the Court has not accepted the Prosecution's thesis, does not constitute a violation of the presumption of innocence.

Violation of Article 3(2) of the CPC of BiH – Violation of the Principle of "*in dubio pro reo*"

44. The Defense Counsels, in their Appeal, state that the Trial Court acted completely contrary to the principle of "*in dubio pro reo*", in the manner that it was sufficient for the facts incriminating the accused to appear as possible, however the facts in favor of the accused had to be proved with full certainty.

45. The principle of *in dubio pro reo* constitutes one of the direct consequences of the presumption of innocence, and the law explicitly prescribes that when in doubt, the Court must rule in favor of the accused.[7] Any doubt as to whether a certain legally relevant fact exists must be reflected in favor of the accused. The facts that are detrimental for the accused (*in peius*) must be established with full certainty, and if there is a doubt regarding such facts, they cannot be considered as established or proved. The facts in favor of the accused are considered to be established even if they are only probable or if there existence is doubted.

46. The Appellate Panel finds that the Trial Panel has evaluated each piece of evidence individually and in conjunction with other evidence, and inferred the conclusion on the existence of legally relevant facts. Therefore, in formal legal terms, the Trial Court has fully acted in accordance with legal obligations set out in Article 15 of the CPC of BiH and Article 281(2) of the CPC of BiH. However, the Appellate Panel finds that the application of the principle of *in dubio pro reo* needs to be considered within the Prosecution's averments as to whether the state of facts is correctly and completely established, or in the context of the probative value of presented evidence; further analysis regarding each count of the Indictment will be presented in Section III of this Verdict (incorrectly or incompletely established stated of facts)

Violation of Article 14 of the CPC of BiH – Equality of Arms

47. The Defense states that the Prosecutor did not act in accordance with this principle during the investigation and neither did the Trial Panel.

[7] Article 3(2) of the CPC of BiH: "A doubt with respect to the existence of facts constituting elements of a criminal offense or on which the application of certain provisions of criminal legislation shall be decided by the Court verdict in the manner more favorable for the accused.

48. Pursuant to Article 14 of the CPC of BiH, the Court, the Prosecutor and other bodies participating in the criminal proceedings are bound to study and establish with equal attention the facts that are inculpatory as well as exculpatory for the accused.[8] Therefore, in respect of the facts being studied and established (*in peius and in favorem*), a legal solution relies on the standard of "equal consideration". The facts being studied and established must be relevant to the criminal case.

49. Taking into regard the aforementioned, the Appellate Panel finds that the Defense did not point out how this principle was specifically violated, nor did it point to the possible effect of such violation on the lawful rendering of the Verdict. Therefore, this appeal averment was refused us unfounded. Upon examining the contested Verdict within the limits of the arbitrarily drawn appeal averment, the Appellate Panel finds that during the criminal proceedings that preceded the rendering of the contested Verdict, the Trial Panel fulfilled its legal obligation by studying and establishing the facts relevant to the legal characteristics of the criminal offense, criminal responsibility of the accused and imposing of an adequate criminal-legal sanction, as well as other legal provisions being applied in the criminal proceedings.

Violation of Article 15 of the CPC of BiH – Free Evaluation of Evidence

50. The Defense Counsels point out that the Court, in the contested Verdict, often made its conclusions without having described the evidence evaluation process, connecting certain pieces of evidence with other pieces of evidence, which should serve as a basis to make conclusions about whether a certain fact has been proved.

51. In the evaluation as to whether a certain fact exists or not, the Court is not bound or limited by formal evidentiary rules. Free evaluation of evidence is free of legal rules, which would *a priori* define the value of certain pieces of evidence. The value of evidence is not determined in advance, neither quantitatively or qualitatively. Evaluation of evidence includes its logical and psychological evaluation, and although there are neither legal nor formal rules of evaluation, it is associated with the rules of human thinking and experience.

The Appellate Panel finds that, in the contested Verdict, the Trial Court has evaluated every piece of evidence individually and its correspondence with the rest of the evidence, which the Court is obligated to do in terms of free evaluation of evidence. In its Appeal, the Defense does not mention which evidence has not been evaluated by the Court in the manner prescribed by the law. Contrary to the appeal averments, the Trial Court describes its process of evaluation of each individual piece of evidence by naming each piece of evidence, presenting its contents (the relevant part of the contents of the piece of evidence), and explaining the conclusion of the Court regarding the credibility and evaluation of each piece of evidence with respect to the conclusions of the Court about

[8] Article 14 of the CPC of BiH: "The Court, the Prosecutor and other bodies participating in the criminal proceedings are bound to study and establish with equal attention facts that are inculpatory as well as exculpatory for the accused."

essential characteristics of the criminal offense.[9] Therefore, the Appellate Panel finds that the Trial Panel has entirely methodologically applied the process of free evaluation of evidence, exactly in the manner prescribed by the CPC of BiH, therefore the violation of the criminal procedure provisions under Article 297(2) of the CPC of BiH does not exist. Whether the Trial Court attributed an adequate probative value to a certain piece of evidence within the context of establishing the relevant facts, or whether it was able to, based on a particular piece of evidence, substantially establish the facts, constitutes a process that is considered through the analysis of the established state of facts, which, within the scope of the appeal averments, will be reviewed in Section II of this Verdict.

II INCORRECTLY OR INCOMPLETELY ESTABLISHED STATE OF FACTS UNDER ARTICLE 299 OF THE CPC OF BIH

52. The standard of review in relation to alleged errors of fact to be applied by the Appellate Panel is one of reasonableness. The Appellate Panel, when considering alleged errors of fact, may substitute its own finding for that of the Trial Panel only where a reasonable trier of fact could not have reached the given contested conclusion on the state of facts.

53. In determining whether or not a Trial Panel's conclusion was reasonable, the Appellate Panel shall start from the principle that findings of fact by a Trial Panel should not be lightly disturbed. The Appellate Panel considers that the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the discretion of the Trial Panel. Thus, the Appellate Panel must give a margin of deference to a finding of fact reached by a Trial Panel.

54. An error of fact will cause the Appellate Panel to overturn a Verdict only if the error has caused a miscarriage of justice, which has been defined as a grossly unfair outcome in judicial proceedings, as when an accused is convicted despite a lack of evidence on an essential element of the crime.

55. In order to prove that there has been a miscarriage of justice, the Appellant must show that the allegedly incorrect and incomplete state of facts, established by the Trial Panel, throws a reasonable doubt on the guilt of the accused. In order for the Prosecutor to prove that there has been a miscarriage of justice, he must show that, upon taking into account the errors made by the Trial Panel while establishing the factual status, any reasonable doubt with respect to the guilt of the accused has been eliminated.

56.Therefore, the Appellate Panel will grant the appeal filed pursuant to Article 299(1) of the CPC of BiH, arguing that the factual status has been incorrectly and incompletely established, only in case when the Appellate Panel has concluded, first of all, that not a single reasonable trier of fact could reach the contested factual findings, and, secondly,

[9] Article 281(2) of the CPC of BiH: "*The Court is obligated to conscientiously evaluate every item of evidence and its correspondence with the rest of the evidence and, based on such evaluation, to conclude whether the Fact(s) have been proved*."

that the factual error caused a miscarriage of justice.

57. Article 299 of the CPC of BiH stipulates when a verdict may be contested because of the incorrectly or incompletely established factual status. Decisive facts are established directly by evidence or indirectly from other facts (indications or control facts). Only the facts being established by a verdict may be regarded as existent, and irrespective of the existence of decisive facts conclusions about their existence must always be made, or else there is no the established factual status (incompletely established factual status). In case a certain decisive fact has not been established in the manner it existed in the reality of a certain event, then there exists an incorrectly established factual status.

58.The Appellate Panel will provide its evaluation of whether the established factual status is incorrect with respect to the facts and findings referred to by the Defense in its appeal. This kind of evaluation requires a subjective criterion in the manner that it will be evaluated, based on the appeal averments, whether a certain decisive fact corresponds to the results of presented evidence.

59. According to the evaluation by the Appellate Panel, the appeal averments of the Defense that the Trial Court has incorrectly and incompletely established the factual status with respect to Sections 1, 2, 3, 4, 5, 7 and 8 of the operative part of the contested Verdict are unfounded.

60. Concerning Section 6 of the operative part of the Verdict, the Appellate Panel finds that it has not been proved beyond any reasonable doubt that the Accused committed the criminal offense he is charged with, and pursuant to the basic principle of *in dubio pro reo,* it acquitted Momir Savić of the charges concerning this Section of the operative part of the Trial Verdict.

General elements of the criminal offence of Crimes against Humanity

61. In its Appeal, the Defense points out that it does not deny that a widespread attack occurred in the territory of the municipality of Višegrad in the spring of 1992, with the majority of casualties among the civilian Bosniaks. However the Defense denies that the Accused contributed to that attack by his acts and activities and argues that the Accused did not have knowledge of that attack.

62. Contrary to the appeal averments, the Appellate Panel finds that the Trial Court has correctly inferred that, beyond any reasonable doubt, there exists connection (objective and subjective) between the offense the Accused is charged with and the attack. Specifically, such conclusion is based on the presented evidence giving rise to the fact that the Accused[10] was a member of the formations that took part in the attack, and that he actively participated within the formations that were carrying out the attack. All the

[10] Prosecution and Defense witnesses testified about the role of the Accused; See: Witnesses Vojislav Topalović, Momir (Milan) Savić, Miladin Savić; physical evidence of the BIH Prosecutor's Office: Report on getting acquainted with brigade commanders, battalion commanders and company commanders of 24 December 1992; The personal registration file and unit file for Momir Savić;

incriminated acts the Accused is charged with (Sections 1, 2, 3, 4, 5, 6 and 8 of the operative part of the contested Verdict) occurred during a widespread and systematic attack, and the Accused (as the Commander of the military unit - the 3rd Company) took part in them, with knowledge and willingness to commit them. Taking into account that members of his unit were part of the attack and carried out the activities (*inter alia*: bringing of Bosniak civilians to the SUP for interrogation, taking away and summarily executing civilians, unlawful deprivations of liberty, forced transfer of population), which undoubtedly lead to a conclusion that they constituted a part of the attack, and that none of the acts of the Accused can be singled out from the context of the overall events in the municipalities of Rudo and Višegrad, the conclusion of the Trial Panel that the Accused, by his acts, acted within such attack and knew that his acts were part of that attack is entirely correct.

63. As opposed to the positions set out in the Appeal, the Appellate Panel holds that the Trial Court has provided a quite clear, logical and convincing explanation of the conclusion that all the actions of the Accused constitute part of a widespread and systematic attack, that they contributed to that attack, and that the Accused had knowledge of the existence of the attack within the scope of which he undertook particular criminal offenses as described in Sections (1, 2, 3, 4, 5, 6 and 8) of the operative part of the Trial Verdict, the conclusion of which has been fully accepted by this Panel as well. Therefore, this appeal averment has been refused as unfounded.

Status of the Accused

64. According to Defense, the fact that the Accused was Commander of the 3rd Company of the Višegrad Brigade has not been proved at all. The Defense holds that there is no evidence that the Accused had any commanding position before 14 July 1992.

65. With respect to establishing the status of the Accused, or the fact the Accused was Commander of the 3rd Company of the Višegrad Brigade, the Trial Court has found a basis for its factual findings in the presented evidence, predominantly in the statement that the Accused himself (the then Suspect) gave during the investigation[11], which is also supported by other presented evidence.[12]

66. The Defense does not deny the formal use of the statement given during the investigation, but it suggests that the change of the statement by the Accused during the main trial is justified.[13] As valuated by the Appellate Panel, the Defense does not point to the justified reasons due to which the Accused changed his testimony with respect to the

[11] The Accused stated that he was appointed Commander "*around 20 May 1992*", see: Suspect Examination Record, No. KT-RZ-205/06, of 14 December 2007, page 6

[12] See witness statements of: Vojislav Topalović, Momir(Milan) Savić and Miladin Savić

[13] Appeal by the Defense Counsels for the Accused:... *when the Accused, immediately upon his arrest, being kept in custody, charged with one of the most severe criminal offenses, during his first examination, irrespective of whether his Defense Counsels were present or not, gave his statement, which he would later,* ***based on other information that he obtained****, change during his testifying at the main trial, such as for example that the Accused became Commander of the 3rd Company on 13 July and not on 20 May 1991,..." page 23.*

fact describing when he became Commander of the 3rd Company. This fact concerns directly the Accused, his personal knowledge is based on his own memory, which he also presented in his statement given during the investigation. The Defense arbitrarily points to "other information", obtained subsequently, and it also refers to the passage of time. However, the fact that the passage of time may be a relevant factor that affects human memory is not definitely a justification for a subsequently changed testimony. Specifically, the Defense does not point to the justified or logical reasons on the basis of which it could be concluded that the Accused possibly had a misconception with respect to the fact describing his status as Commander of the 3rd Company, especially when taking into account that the rest of the presented evidence, being the control evidence by its nature, corroborates his statement given during the investigation with respect to this fact. Therefore, his change of the testimony given at the main trial cannot be regarded credible with respect to this fact.

67. The Trial Court has relied on the evaluation of presented evidence when it made its conclusion, considering, in addition to the statement of the Accused, the rest of the presented evidence in its correlation, which is reasoned clearly and in detail in the contested Verdict.[14]

68. The Defense points to individual pieces of evidence, suggesting that they do not corroborate the stated fact, however one should emphasize that the legal obligation does not involve an isolated evaluation of individual pieces of evidence, but evaluation of such pieces of evidence correlated to one another, which is correctly done in the contested Verdict indeed. The Defense has taken out of the context some pieces of evidence, having the character of control evidence, and based on them it made a different conclusion, which is not an acceptable form of evidence evaluation, but it is rather contrary to the CPC of BiH.

Section 1 of the operative part of the Verdict

69. According to the allegations of the Defense, the factual conclusions of the Trial Panel in respect of Section 1 of the operative part of the contested Verdict are unsustainable and unfounded. The Defense argues that the evidence of witnesses Ramiz Gušo and Nizija Gušo is completely adverse in each part, and draws attention to the failure of the Trial Panel to value the evidence of Witness Miloje Inđić, and to correctly regard the evidence of Witness Nizija Gušo given to the relevant German authorities.[15]

70. According to the Appellate Panel, the Trial Court correctly evaluated the evidence of Witness – aggrieved party Ramiz Gušo, who fully supports the factual allegations from Section 1 of the operative part of the Verdict, which were also confirmed in the evidence given by Witness Nizija Gušo, and also witnesses Šuhra Gušo and Bahrudin Gušo.

[14] Case No. X-KR-07/478, Judgement of 3 July 2009, pp. 38-43.
[15] Witness Examination Record for Nizija Gušo given at the Federal Criminal Administration of Germany on 29 and 30 June 2002.

71. In his testimony, Witness Ramiz Gušo describes the events which occurred in the territory of the Višegrad municipality at the relevant time, and describes in detail how he was deprived of liberty and taken to the building of the Secretariat of Internal Affairs (SUP), where he was kept in the basement about a week, together with other 23 persons. In their testimony witnesses Bahrudin Gušo and Šuhra Gušo confirm the fact that Bosniak civilians were held detained in the SUP, and that the Witness saw the Accused in front of the SUP building, when she talked with him about her son (Mirsad Gušo) who was also detained there. Ramiz Gušo also describes how he was taken into a room on the upper floor, where Captain Dragan and Momir Savić conducted interrogations, and he also clearly and consistently describes how during the interrogation he hit him with a fist and how he addressed him swearwords and curses. The contested Verdict contains detailed evidence of this Witness in the relevant part, which was evaluated as authentic and truthful and which conclusion was also fully accepted by the Appellate Panel.[16] The evidence of witnesses Bahrudin Gušo, Šuhra Gušo and Nizija Gušo in its relevant part supports the evidence of witnesses-aggrieved parties, specifically in parts of their evidence based on their personal feelings. Without any justification the Defense points to the contradictory character of their evidence, because they reflected the past time and related to unimportant circumstances, and reflected their personal way of comprehension of the events and facts described in Section 1 of the operative part of the contested Verdict. These witnesses have different ways of understanding facts and circumstances, which was conditioned by their different personal psychophysical characteristics, age, and different emotional perception of the relevant events, which resulted in certain discrepancies in their statements, but they were still consistent and clear regarding the facts which presented a foundation for the factual conclusions of the Trial Panel.

72. With regard to the statement of Witness Nizija Gušo given to the relevant German authorities, the Appellate Panel finds that the Trial Court correctly evaluated that evidence and concluded that it was not relevant to the subject matter of adjudication. Specifically, it relates to another person and another event, as specified in the contested Verdict. This statement does not diminish the probative value of the evidence given at the main trial in this case by Witness Nizija Gušo, for the subject of the testimony is not the same, and her testimony in this case is relevant in the part in which she supports the evidence of Witness Ramiz Gušo, as correctly concluded by the Trial Panel.

73. In their appeal, the Defense Attorneys of the Accused are contradictory with respect to the thesis of the Defense that this particular case involved „coached“ witnesses, and then the Defense itself also points to certain alleged contradictions of the „coached“ evidence. It is exactly the differences in the testimonies of witnesses Ramiz Gušo and Nizija Gušo that point out that these witnesses gave their evidence based on personal recollection, which was limited and conditioned by their participation in the relevant events. The testimony of Witness Ramiz Gušo was clear, consistent and detailed, which was logical given that he was a direct victim – damaged by acts of the Accused, while his mother Nizija Gušo testified about circumstances and facts which were known to her, about what she heard from her son and daughter, but also about what she personally saw. Thus, the Witness, in detail and clearly, described her visit to the SUP building, when she

[16] Case No. X-KR-07/478, Verdict of 3 July 2008, page 45

inquired about her son's destiny, which, although not being a direct subject matter of the Indictment, points to the authenticity of the evidence given by the Witness in the relevant part.

74. Contrary to the appeal averments, the Appellate Panel found that the Trial Court correctly evaluated evidence of Witness Miloje Inđić, and trusted him in the relevant part related to the fact that this Witness helped Ramiz Gušo to leave Višegrad. This Witness does not have information about the events described in Section 1 of the operative part of the contested Verdict, which was clearly stated in the contested Verdict, and in his testimony he did not challenge the credibility of Witness Ramiz Gušo, as was rightly assessed by the Trial Court.

75. According to the assessment of the Appellate Panel, the Trial Court established the factual findings in respect to Section 1 of the contested Verdict with complete assurance and concluded that criminal elements under Article 172(1) k) of the CC of BiH were satisfied in the actions of the Accused, which was also fully accepted by the Appellate Panel.

Section 2 of the operative part of the Verdict

76. In its appeal, the Defense did not dispute that the event described in Section 2 of the operative part of the Verdict actually took place, but it contested the participation of the Accused therein, pointing out that Witness Mehmedalija Topalović did not know the Accused and that the statement of Witness Vejsil Hota did not suggest any violent conduct of the Accused.

77. With regard to this Section of the operative part, the contested Verdict was based on the evidence of Witness Mehmedalija Topalović and Witness Vejsil Hota, which the Trial Panel read out at the main hearing pursuant to Article 273(2) of the CPC of BiH.

78. In a clear and precise manner, Witness Mehmedalija Topalović described the events which took place in the village of Meremišlje in the Municipality of Višegrad. This Witness did not know the Accused personally, which he did not try to conceal or present differently, but he learned about the participation of the Accused (his identity) in the events he eye-witnessed from Vejsil Hota. According to the assessment of the Appellate Panel, the Trial Court correctly evaluated evidence given by this Witness, which was clear, truthful, consistent and authentic. When the statements of these two witnesses are evaluated in their mutual correlation, it appears that the event in Meremišlje occurred in the manner as described in Section 2 of the Trial Verdict, which the Accused personally did not dispute, just as he did not dispute his presence. Furthermore, the Panel rightly took into account the consistency of evidence, which clearly pointed to a direct involvement of the Accused in this event, and it also rightly evaluated the statement of Witness Vejsil Hota, which directly incriminated the Accused and which at the same time was consistent with the evidence of Witness Mehmedalija Topalović.

79. Accordingly, pursuant to the assessment of the Appellate Panel, the appeal averments of the Defense of the Accused are unfounded, and they have not cast any doubt on the conclusions in respect of decisive facts, which were rightly established by the Trial Court.

Section 3 of the operative part of the Verdict

80. The Defense Attorneys of the Accused points out to the fact that, although the Indictment had not been amended or specified at the main trial, the Trial Court changed the time of perpetration of the criminal offence in this Section, in the manner that instead of "23 May 1992", it stated that the event took place „around 23 May 1992", which, according to the Defense, is an important issue in establishing the responsibility of the Accused. The Defense points to the fact that the Accused helped Bosniaks and that the Trial Court conclusions are not corroborated by the presented evidence.

81. The Appellate Panel finds the averments of the appeal to be unfounded, presenting only blanket and selective reference to parts of the witnesses' evidence, pointing in that way to the alleged contradictions in their evidence. Particular differences in the evidence given by the witnesses regarding what they heard when gathering in Drinsko, resulted from the fact that the witnesses did not reach the gathering place at the same time, but that they were arriving there during a period of time.

82. Regarding the time when the event referred to in Sections 3 and 4 respectively of the operative part of the Trial Verdict took place, the Appellate Panel finds that the Trial Court gave clear, full and logical explanation as to why it specified the factual description in the manner to state „around 23 May" as the time when the relevant events took place, in both Sections of the operative part. Witnesses for the Prosecution and Defense, who were heard, specified 23 and 24 May 1992 as the dates relevant to these counts of the Indictment. Given the lapse of time, and taking into account that the witnesses experienced very difficult moments, this minor difference concerning the dates does not represent a difference that could question the credibility of their evidence, specifically given the fact that their evidence regarding the facts contained in these two Sections was thoroughly examined. Therefore, the Appellate Panel considers the intervention of the Trial Panel with regard to specifying the dates in Sections 3 and 4 of the operative part of the first instance Verdict to be fully justified for the reasons specified and reasoned in the contested Verdict, which are also fully accepted by this Panel.

83. The witnesses who were heard regarding the circumstances from this count of the Indictment, and who participated in the event, described in detail what happened at the place known as „cemetery" in the settlement of Drinsko. Their evidence was also supported by evidence of the witnesses who had direct knowledge about the relevant event.[17] The Accused himself does not dispute that the relevant event indeed happen.

[17] Prosecution witnesses: Husein Mujakić, Almasa Hadžić, Mirsad Hubić, Medo Tabaković, Šuhra Gušo, Latifa Hodžić, Redžep Salić and Fadil Salić agree that the relevant event took place at the „cemetery" around 23 May 1992.

84. Based on the evidence given by witnesses it follows that they were forced to leave the territory, and that they were clearly told, specifically they clearly understood it that way, that they could not take anything with them and that they had to leave Drinsko. Contrary to the averments of the appeal, it clearly follows from the evidence given by the witnesses that they did not have any realistic possibility to chose, but that they were forced to leave Drinsko, as was rightly established and concluded by the Trial Court.

85. Regarding the averment of the Defense that the Accused helped Bosniaks, which was given in the evidence of the Defense witnesses, the Appellate Panel considers important to emphasize that, as it follows from the presented evidence, the Accused did help some people of Bosniak nationality, which does not reduce or annul his responsibility or his participation in the events closely described in Section 3 of the operative part of the Trial Verdict, which represent a forceful transfer of population (Article 172(1) d) of the CC of BiH), as rightly concluded by the Trial Court, which was also fully accepted by the Appellate Panel.

Section 4 of the operative part of the Verdict

86. The Defense disputes the date (23 May 1992) referred to in Section 4 of the Trial Verdict, specifying 24 May 1992 as the date when the relevant event allegedly took place. In their appeal the Defense Attorneys state that none of the heard female witnesses knew the Accused or saw him on the critical date in Željača. The Defense Attorneys present their defense thesis by pointing to the alibi, in the manner that in the afternoon the Accused was on his way to Rudo with Witness Miloje Inđić, which was also confirmed by the fact that Witness Fadil Salić saw the Accused in the village of Šip.

87. Regarding the date when the relevant event took place, the Appellate Panel accepts the conclusion of the Trial Panel that it took place on the same day when the population of Drinsko was forcefully transferred, specifically around 23 May 1992, about which the Appellate Panel expressed its position in the above explained part which relates to Section 3 of the operative part of the Verdict (see paragraph 83).

88. Based on the evidence of witnesses Ramiza Mustafić, Medina Gušo, Hafiza Gušo and Fehiba Hubić, the Trial Panel established with certainty that the Accused took part in taking Bosniak civilians from their houses, their questioning in the house of Aziz Mešanović, where they were beaten and afterwards taken to the hill of „Kik“ in the woods of „Pušin Do“, where with the use of fire arms they deprived them of their lives. In its appeal, the Defense does not dispute that the event took place in the manner as described in this Section of the operative part of the Trial Verdict, but it negates participation of the Accused therein. The Trial Panel examined the evidence provided by the witnesses also in relation to the material documentation and the evidence of the court expert Dr Vedo Tuco, which supported allegations of the witnesses in the relevant part.

89. Regarding the identification of the Accused, specifically his participation in the event, the Trial Panel gave an extensive explanation from which it followed that the Panel

thoroughly examined the statements of the witnesses, and analyzing them in their mutual correlation reached a conclusion on the participation of the Accused in the relevant event.

90. Specifically, Witness Medina Gušo knew Momir Savić and Dragan Savić from before, which she clearly and thoroughly explained, specifying and presenting the facts and circumstances which additionally pointed to the fact that the person in question was the Accused (Vitorka's son Momir). Also, the witnesses agree regarding the description of physical features of the Accused, which is of crucial importance, and the Trial Panel also rightly evaluated the fact that it was a small territory where all people generally knew each other, so recognition of a person by parent's name may suffice for the purpose of his/her identification. Witness Ramiza Mustafić stated that she did not know the Accused well, but that she only saw him two-three times, providing a detailed description of his physical appearance (short, rather stout, sturdy, slightly bold and dark) stating that she witnessed when other people addressed him by his name and also by „Commander". Witnesses Hasiba Mešanović and Hafiza Gušo, although not personally knowing the Accused, but who was known by their close family members, during their testimony provided a sufficient number of facts and circumstances so that it can be claimed with certainty that the relevant person was the Accused Momir Savić, as established by the Trial Panel.

91. In the contested Verdict the Panel has rightly evaluated the evidence of the witnesses, thoroughly stated the contents of those parts of their evidence relevant for adjudication, and concluded that evidence was in agreement and mutually consistent in the decisive part relating to actual actions of the present persons, the identity of the Accused and the ten men who had been taken away on that day, as well as regarding the manner in which it happened.

92. The Trial Panel did not accept the thesis of the Defense based on the alibi, evaluating the testimonies of the Defense witnesses Miladin Savić, Momir (Milan) Savić and the Accused himself as being unconvincing regarding claims that the Accused was not present at the scene, and that he did not undertake the described actions. The Trial Panel rightly established the direct involvement of the Accused in the actions described in this Section of the operative part of the first instance Verdict, taking into account the consistency of all evidence which clearly pointed to such conclusion.

93. Furthermore, the Defense has rightly stated the fact that Witness Fadil Salić testified that he had seen the Accused in a vehicle made „Niva" in the location of Šip.[18] However, the Defense has taken and evaluated this fact out of context of other facts and course of events. Based on the evidence of this Witness, it clearly follows that he together with the other persons set off outside of Drinsko (following the event described in Section 3), and that he saw the Accused passing by in a car.

[18] Transcript, Savić Momir Case, X-KR-07/478, 9 October 2008, p. 11, Witness Fadil Salić: „We ran across the rocks in the Kruševica river and came up to Šip, when we got on the asphalt in Šip, as soon as we came on the asphalt to go to Moremiši, the same „Niva" appeared with the driver and Momir, and they only passed by us with great speed and went away."

94. Given that the Defense Witness Miladin Savić stated that Zeljača was a part of Drinsko (approximately 1 kilometer away from the Drinsko cemetery), it was utterly logical to conclude that the Accused was present in the area of Drinsko „cemetery“ when the gathering of the Drinsko population took place, and afterwards he was present and took part in the event described in Section 4 of the contested Verdict (Zeljača – the Kik Hill – Pušin Do). Given the short distance of the place, which directly follows from the evidence of witnesses, and the fact that the Accused used a car, his presence at one of the mentioned places does not exclude his presence at the other one, as the Defense is incorrectly trying to present.

95. Regarding the killing of civilians at the location of Pušin Do, the Appellate Panel finds that the Trial Court correctly established the participation and responsibility of the Accused, as the conclusion of the Trial Court was the only possible conclusion that could be reached based on the presented evidence. Although the witnesses were not direct eyewitnesses of the very act of killing, there was no disruption of the causal connection between the events.

96. Given all the above stated, the Appellate Panel concluded that the appeal averments were unfounded and that the factual status regarding this Section of the operative part of the Trial Verdict was established with certainty.

Section 5 of the operative part of the Verdict

97. With regard to Section 5 of the operative part of the Trial Verdict, the Defense, in its appeal, pointed to the contradictions in the testimonies of witnesses Šaban Ćato, Rasim Ćato and Fahro Ćato, disputing in that way their authenticity. The Defense refers to the testimonies of witnesses Vojislav Topalović and Milenko Jević, which provide alibi for the Accused.

98. Having examined the contested Verdict within the appeal averments, the Appellate Panel found them to be unfounded.

99. Specifically, Witness Šaban Ćato eye-witnessed the event described in this Section of the Trial Verdict, that is, the killing of Suad Kurtić. The Witness clearly and in detail described the entire event, starting from the moment when he was captured together with Suad Kurtić, the very act of killing, as well as his encounter with the family of the killed person (Rasim Ćato and Fahra Ćato) when he informed them about what had happened, about which they testified at the main trial and in the relevant parts supported the testimony of this Witness. The Trial Panel has thoroughly analyzed the evidence of this Witness, evaluating it in mutual correlation with the testimonies of witnesses Rasim and Fahra Ćato, and concluded that the evidence was authentic, accurate and reliable, which was also fully accepted by the Appellate Panel. The Defense, in its appeal, states a series of facts and circumstances of which these witnesses, according to the Defense, provided contradictory evidence. According to the Appellate Panel the Defense based its position on the analysis of supplementary facts, without putting them in correlation with the

decisive facts, established with full certainty based on evidence of the mentioned witnesses whose statements were consistent, clear and authentic.

100. Regarding the fact that Witness Rasim Ćato changed his evidence at the main trial in respect to the statement given during the investigation, the Appellate Panel found that the Trial Court provided sufficient explanation as to why it partly accepted the statement of this Witness taken during the investigation.[19]

101. Regarding the identification of the Accused, the Trial Court has thoroughly analyzed the evidence of Witness Šaban Ćato, guided by the opinion of the Appellate Panel of the International Criminal Tribunal for the former Yugoslavia in the *Kupreškić* case, as well as by the criteria set in the *Marko Škrobić* case[20], and it correctly assessed that evidence of the eyewitness in this case was reliable, authentic and truthful. Contrary to the averments of the appeal, the Trial Panel did not base its decision exclusively or in a decisive part on „the recognition of the Accused in the courtroom", as the Defense is trying to show. The Trial Panel provided a thorough analysis of the evidence of Witness Šaban Ćato regarding the event he witnessed, as well as the events which took place before or after that event, evaluating also the other presented evidence regarding the presence of the 3rd unit members in the relevant territory, the relation between the Accused and Dragan Savić, the fact that during the search of the house of the mother of the Accused, a sniper with a telescopic sight was also seized, as well as the personality of the Accused (his age, and possible influence on his memory), reaching in that way factual conclusions regarding the identity of the Accused, which was also fully accepted by this Panel. The facts and circumstances emphasized by the Defense cannot alone constitute a foundation for identification of the Accused, but when analyzed in their mutual correlation, they undoubtedly confirm that the person who committed the actions described in this Section was exactly the Accused Momir Savić.

Section 7 of the operative part of the Verdict

102. According to the Defense averments, the facts established before the Trial Panel do not suggest that the Court has inferred a reliable and correct conclusion with respect to Section 7 of the operative part of the Trial Verdict. The Defense states that the heard witnesses (Šuhra Gušo, Hajrija Kos, Omer Delija, Sabina Maslo) did not know the Accused, and that the Defense contested the testimony of Witness Suada Logavija by hearing the Witness Stanimir Kirdžić.

103. The Defense averments that some of the heard witnesses did not know the Accused are correct; however the Trial Panel based its conclusion concerning the presence and participation of the Accused in the incriminated incident on all pieces of the presented evidence, considering them individually and in correlation with one another. The eye-witnesses consistently described being expelled from their homes in Dušće, as well as the incident that followed (arrival of the column at the "Employment Bureau" building, and

[19] Case No X-KR-07/478, Verdict of 3 July 2008, page 74
[20] *Marko Škrobić (X-KR-07/480)*, Verdict of the Court of BiH of 22 October 2008, page 26

the taking away of five men). Witness Suada Logavija knew the Accused, which clearly results from her testimony. This witness describes the physical features of the Accused, and during the main trial, while identifying the persons depicted on the photographs, she recognized the Accused without any doubt. She also described in detail how she knew the Accused, specifically that the Accused was the person whom she used to see when he would come to visit Stanimir and Slobodanka Kirdžić, and that he was the same person who had arrived in a white "Lada Niva" car on the critical occasion and talked with "Leka", which is when five Bosniak men were singled out from the column. The Trial Court correctly evaluated the testimony of this witness as compared with the testimonies of other witnesses, which corroborated parts of her testimony. The Witness Omer Delija described the arrival of the "Niva" car and he also associated the taking away of five men with that arrival, which happened chronologically.

104. Taking into account the consistency of the witness testimonies with respect to decisive facts as well as the overall events that occurred on 13 June 1992, the Trial Panel has correctly inferred that the testimony of the Witness Stanimir Kirdžić is not credible, which is a conclusion that has been fully accepted by the Appellate Panel as well. According to the evaluation of the Appellate Panel, the Trial Court has correctly considered and decided to put trust in witness Suada Logavija, whose testimony is relevant and involves several issues and the circumstances that were the subject of the decision of the Trial Panel; contrary to the appeal averments, the testimony of this witness has entirely contested the testimony of the Witness Kirdžić, for the reasons that are presented in detail by the Trial Court, the conclusion of which has been fully accepted by this Panel.

105. Contrary to the appeal averments, as a result of a detailed analysis of all presented evidence, the Trial Panel has come to a conclusion that it was only the Accused that could give an order to his soldiers to expel the civilians from Dušće. The Trial Court explains the legal notions relevant to the subject of decision in detail.[21] The fact that the Court has not found anybody that was able to hear the Accused ordering directly "Leka" to single out five men does not diminish the strength and importance of other factual findings in this case. Specifically, as correctly suggested by the Trial Court, all types of criminal responsibility may be proved by direct evidence or indications, and the required *mens rea* is that the Accused "acted being aware of the substantial probability that as a result of his conduct a criminal offense or omission would occur", which does not need to be stated explicitly, but may be inferred from the circumstances.

106. The Trial Court has provided a detailed explanation regarding the role of the Accused at the incriminated time, when he performed the duty of Commander of the 3rd Company of the Višegrad Brigade. This position involved the power of decision-making and issuing of orders and decisions. It clearly follows from the stated evidence that the Accused could and had to know what was happening in the municipality of Višegrad, predominantly in the areas where members of his company were located. The Defense witnesses who were members of the 3rd Company of the Višegrad Brigade are also consistent in the part describing that the Accused was "in charge", which together with

[21] See: Case No. X-KR-07/478, of 3 July 2008, page 92-93

other evidence justifies the conclusion of the Trial Panel that the Accused had the required authority and an active control over his soldiers, which is a basis for the conclusion that he was the only one who could give an order to his soldiers to undertake the described actions against the civilians of Bosniak ethnicity.

107. The Defense does not deny the fact that the incident occurred in the manner described in the Indictment either, but denies the participation of the Accused by endeavoring to depict the Accused as a person who tried to help the civilians. Friendly relations of the Accused with certain persons – Bosniak civilians – do not diminish his role and participation in the incriminated events; moreover, as properly indicated by the Trial Court, it is just that selective behavior that suggests his possibility to influence the overall developments.

108. According to the evaluation of the Appellate Panel, the Trial Court has correctly established, based on a comprehensive analysis of all the presented evidence, that it is proved, beyond any reasonable doubt, that the Accused, in his role of commander, participated in the severe deprivation of liberty of Nezir Delija, Osman Demir, Ahmet Delija, Uzeir Nuhanović and Midhat Nuhanović, and that he, also in his capacity as commander, in the described manner, took part in the expulsion of Bosniak civilians from the settlement of Dušće, the conclusion of which has been fully accepted by this Panel.

Section 8 of the operative part of the Verdict

109. The Defense denies the facts established with respect to Section 8 of the operative part of the Trial Verdict, stating that a different factual status results from the statements of witnesses Fatima Mujakić and Latifa Hodžić and the protected witnesses A and B. According to the opinion of the Defense, anything that the Accused undertook in relation to the events that occurred on the Limski Most and in Drinsko on 30 June 1992 constitutes a consistent compliance with the rules governing the treatment of civilians in a combat zone.

110. Concerning the factual status under Section 8 of the operative part of the Verdict, the Appellate Panel holds that the Trial Panel has given a comprehensive and detailed analysis of the statements of the witnesses that testified about the circumstances from this Section, making a proper conclusion being fully accepted by this Panel too. Specifically, it follows from the consistent testimonies of witnesses Fatima Mujakić, Latifa Hodžić, protected witnesses A and B that the Bosniak civilians were deprived of liberty against their will on the Limski Most and taken to Drinsko and then to the school *Hasan Veletovac* in Višegrad. The above mentioned witnesses describe, in detail and clearly, the overall circumstances surrounding the action that occurred on 30 June 1992. Contrary to the appeal averments, the Trial Panel has given a clear and detailed explanation regarding the conclusion that the action was contrary to the basic rules of international law, which follows from the presented evidence. The Trial Panel has properly considered the fact that all detained persons were civilians and that they were not given any explanation for their deprivation of liberty, as well as the fact that the Accused, as Commander of the Unit that was positioned on the Limski Most, certainly knew that, in case of his depriving

a certain person of liberty, it had to be based on and prescribed by the law.

111. In its Appeal, the Defense also points to the ethnicity of both the Prosecution witnesses and the Defense witnesses, which, according to this Panel, does not constitute a valid argument to contest the factual status. The Trial Court has established the factual status by considering the contents of each piece of evidence and each witness statement, both individually and correlated with one another, and based on such analysis made its conclusions about the decisive facts. The Trial Court has thoroughly reasoned the conclusions about the existence of the discriminatory intent on the part of the Accused for each Section of the operative part of the Verdict, which is arbitrarily denied by the Defense, and then also, with regard to this appeal averment, points to the fact that the Accused helped several Bosniak civilians, which, in this context, does not diminish either the participation or responsibility of the Accused, but it points to his actual possibility and ability to influence the fate of the Bosniak civilians.

Section 6 of the operative part of the Verdict (Acquitting Part)

112. In the opinion of the Defense, the Trial Panel has not, beyond any reasonable doubt, established that the Accused committed the criminal offense he is found guilty of in Section 6 of the operative part of the Verdict under Article 172(1)g) of the CC of BiH – rape. Specifically, the Defense holds that the Trial Court has not considered the testimony of witness Nada Miličević, without any justified reasons, while it has put its entire trust in Witness T.B. The Defense points out that the aggrieved party reported the alleged rape 17 years after the Accused had allegedly maltreated and raped her, and that during that period of time she never informed anybody about that, but she only became aware of that once the Accused was placed in custody. The Defense also points to a series of illogical points in the testimony given by the aggrieved party, especially the fact that she was not able to explain her intimate relationship with one Spasoje Vidaković, which took place during the same period.

113. The Appellate Panel finds this appeal averment of the Defense well-founded.

114. The Court is bound to render acquittal not only when it is proved that the accused has not committed the criminal offense he is charged with but also when there is no sufficient evidence that the accused has committed the criminal offense. When in doubt, the Court must decide in favor of the accused.

115. The Appellate Panel holds that the established factual status is not sufficient to draw the conclusion that the Accused raped T.B. in the manner described in Section 6 of the operative part of the Trial Verdict.

116. With respect to this Section, the Panel has considered the testimonies of T.B., Nada Miličević and the Accused with particular attention, finding that the level of probability that the incriminated incident happened in the manner described in the operative part does not reach the standard threshold of "beyond any reasonable doubt", specifically the factual status has not been established with full certainty.

117. It has been indisputably established that the Accused used to visit T.B. at her work-place as well as her home, and that T.B. and the Accused had a sexual relationship, specifically in the period from 7 June 1992 until September 1992, which is not denied by the Defense either. However, it cannot be established from the presented evidence, with full certainty, whether the sexual relationship was forced upon the aggrieved party in the manner constituting a violation of international humanitarian law.

118. Specifically, the testimony of T.B. is nowhere corroborated with additional evidence and possible control evidence, while the relevant parts of her testimony are challenged by the testimony of the Witness Nada Miličević.

119. The Trial Court has correctly pointed to the fact that the Witness Nada Miličević is a relative of the Accused, however the fact that she is not a close relative of the Accused cannot be ignored either, so the existence of a distant family link in itself cannot constitute a basis to conclude that the Witness has a motive to help the Accused avoid criminal responsibility.

120. According to the statement of Witness T.B., everybody knew what was going on between her and the Accused ("*even the ants knew that he was coming to me*"), and they called her "Momir's whore".

121. Explaining the contradictions in the testimonies of witnesses T.B. and Nada Miličević, the Trial Court stated: "*It is quite a logical question to ask whether it is realistic that a mature woman, who has such family status, who is dedicated to her family and to seeking a way how to save it, without knowing the accused until then, felt such emotions for him all of a sudden, and showed her intimate emotions for him in front of everyone and that she started to openly foster an intimate relationship with him...*"[22], and that the aggrieved party does not have a motive to incriminate the Accused and expose herself to the inconvenience that a criminal proceedings before the court would cause her.

122. However, taking into regard that T.B. is a married woman and mother, who lived in a small community where she was addressed as "Momir's whore", one cannot ignore that the very facts the Trial Panel finds relevant for placing (entirely) the trust in witness T.B. may also be considered so as to constitute a motive to incriminate the Accused for the purpose of her own rehabilitation.

123.It is true that the rape victims reluctantly and with great difficultly talk about their experience, and sometimes they keep it deeply inside of them for many years. However, under the circumstances when everybody in the small town knows about the relationship between T.B. and the Accused, it is illogical and it seems unconvincing that the Witness-the Aggrieved Party has not talked about that for many years, until the moment when the Accused was put into custody, especially due to the fact that she does not live in the same community where the Accused lives. Witness T.B. does not give a logical explanation as to why she has not talked about the rape before, or why she points to it only after so many

[22] See the Case No. X-KR-07/478, Verdict of 3 July 2008, page 81

years passed and after the Accused was placed into custody, especially because she faced the fact that everybody knew about her relationship with the Accused, both her own original community and her family, which means that she had no reason for a long-lasting silence in order to hide such traumatic events in her life, which seriously undermined the credibility of the witness.

124. The aggrieved party, according to her own testimony, used to go to work on daily basis and communicated with people, she was not kept detained and no movement and contact restrictions were imposed on her apart from those that were also the restriction factor for others due to the state of war; she used to travel to Serbia and she came back contrary to the prohibition of the Accused, in order to have an abortion.

125. Taking into account these indisputable facts, this Panel finds that the Trial Court has not established in a reliable manner that the sexual relation between the Accused and the aggrieved party took place by the use of force, or that there existed such circumstances that might be considered coercive, not necessarily including force or a threat of force, as can be recognized in the situations where rape victims are kept detained, quite often seen in prisons where a prison guard takes advantage of such situation or in other circumstances where there can be no real consent of the victim for a sexual intercourse, where the victims are detained in military headquarters, detention centers, apartments, and similar places.

126. The Defense has also, with a good reason, pointed out that the part of the testimony of witness T.B. concerning the arrival of Spasoje Vidaković at her house is contradictory, unclear and confused. It could be also concluded from the testimony of T.B. that the Accused changed his relation to her after he had learnt about another man, and soon after that he stopped visiting her. These facts and circumstances might point to a possibly voluntary relationship between T.B. and the Accused.

127. Based on the above mentioned, the Appellate Panel finds that it cannot be established, with full certainty, that the sexual relationship between T.B. and the Accused was coercive. Regarding the facts that go in favor of the Accused, it is sufficient that they are rendered probable or possible in order to be considered by the Court as established. When the Court has doubts, as is the case of the factual status with respect to this Section of the operative part of the Trial Verdict, a sentence must be delivered in favor of the accused.

128. According to this Panel, the nature of deficiency in the contested Verdict is such that it can be removed by modifying it. The Trial Panel has established all the facts relevant for deciding on the matter, however it has incorrectly concluded that it was, with certainty, established that the sexual relationship between T.B. and the Accused was coercive and without consent of the aggrieved party. According to the evaluation of the Appellate Panel, and as the Defense points out with a good reason, the established factual status leaves the Court in doubt. Therefore, the Appellate Panel, having applied the principle *in dubio pro reo*, decided to acquit the Accused Momir Savić of the charges with respect to this Section.

129. The Appellate Panel has substituted the findings of the Trial Panel with its own finding regarding this Section of the operative part of the Trial Verdict, finding that a reasonable trier of fact could not establish the contested factual status in the manner as it was done by the Trial Court, in which process, considering that this error of fact did not cause an overall miscarriage of justice, the revoking of the entire Verdict was not deemed to be justified, for the reason of which the Trial Verdict is now modified only with respect to Section 6 of the operative part of the Verdict, pursuant to Article 314(1) of the CPC of BiH.

III VIOLATION OF THE CRIMINAL CODE – ARTICLE 298d) of the CPC of BiH

130. In its Appeal, the Defense suggests that the violation described under I 5 a) of the Appeal also constitutes the violation of the Criminal Code: the Court has incorrectly applied the law, resulting in an incorrect legal qualification of the offense and finding the Accused guilty of that offense.

131. The Defense appeal averments are unfounded contesting the material application of the law or pointing out that, instead of the CC of BiH, the Trial Court should have applied the CC of SFRY as the law coinciding with the time of the underlying act, which is, according to the opinion of the Appellant, more lenient regarding the existence of the criminal offense as such, as well as the prescribed criminal-legal sanction.

132. The Defense does not deny the basic principles contained in Articles 3 and 4 of the CC of BiH and Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which the Trial Court applied in its Verdict.

133. Article 172 of the CC of BiH prescribes the criminal offense of Crimes against Humanity that is defined by Article 5 of the ICTY Statute, as certain particular offenses "when committed in armed conflict, whether international or internal in character, and directed against any civilian population". At the time of perpetration of the criminal offense, the Crimes against Humanity as a particular criminal offense was not explicitly provided for in the Criminal Codes of Bosnia and Herzegovina.

134. However, the status of punishability in customary law with regard to crimes against humanity and attributing individual criminal responsibility for its perpetration in 1992 has been confirmed by the UN General Secretary[23], the International Law Commission[24], as well as the jurisprudence of the ICTY and the International Criminal Tribunal for

[23] Report by the UN General Secretary with respect to paragraph 2 of the Security Council Resolution No. 808, of 3 May 1993, paragraphs 34-35 and 47-48

[24] The International Law Commission, Commentary on the Draft Law on the Crime against Peace and Security of the Mankind (1996), Article 18

Rwanda (ICTR)[25]. These institutions have concluded that punishability of crimes against humanity constitutes an imperative norm of international law or *jus cogens*[26], due to which it is indisputable that crimes against humanity were part of international customary law in 1992. This conclusion was also confirmed by the Study on International Humanitarian Law[27] made by the International Committee of the Red Cross. According to that Study, "Serious violations of international humanitarian law constitute war crimes" (Rule 156), "Individuals are criminally responsible for war crimes they commit", (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspect. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects." (Rule 158)

135. Article 4a) of the CC of BiH describes "the general principles of international law". Article 7(2) of the ECHR describes "the general principles of law recognized by civilized nations", while Article 15(2) of the International Covenant on Civil and Political Rights describes "the general legal principles recognized by international community". As neither international law nor the ECHR is familiar with a notion that is identical to the one used in Article 4a) of the CC of BiH, this notion, on the one hand, actually constitutes a combination of "the principles of international law", as recognized by the UN General Assembly and the International Law Commission, and "the general principles of law recognized by the community of nations", as recognized by the Statute of the International Court of Justice and Article 7(2) of the ECHR, as well as Article 15(2) of the International Covenant on Civil and Political Rights.

136. The principles of international law, as recognized by the General Assembly Resolution No. 95(I) (1946) and the International Law Commission (1950), are relevant to "the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal" hence to crimes against humanity. "The principles of international law recognized in the Nurnberg Covenant and Judgment of the Tribunal", which were adopted by the International Law Commission in 1950 and submitted to the General Assembly through Principle VI.c. stipulate that crimes against humanity are punishable as a crime according to international law. Principle I stipulates that: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II stipulates that: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law".

137. The jurisprudence of the European Court of Human Rights emphasizes the application of Article 7(2) as compared to the application of Article 7(1) of the ECHR in

[25] ICTY Appellate Chamber, *Tadić,* Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, of 2 October 1995, paragraph 141: ICTY, Trial Chamber, *Tadić* Judgment, of 7 May 1997, paragraph 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraph 563-577

[26] The International Law Commission, Commentary on Draft Articles on Responsibilities of States for Internationally Wrongful Acts (2001), Article 26

[27] Jean-Marie-Henchaerts and Louise Doswald-Beck; International Customary Law, ICRC, Cambridge University Press, 2005

several similar cases[28] where the existence and punishability of crimes against humanity as a criminal offense were exactly the subject of dispute. In the case of *Kolk and Kislyiy vs. Estonia*, the European Court "recalls that interpretation and application of the national law, in principle, falls within the jurisdiction of national courts...[29] which is also applicable when the national law is relevant to the rules of general international law or international treaty.

138. Therefore, the criminal offense of crimes against humanity can be, in any case, subsumed under "the general principles of international law" stipulated in Article 4a) of the CC of BiH. Now, no matter whether we consider this issue from the point of view of customary international law or the point of view "of the principles of international law", it is indisputable that crimes against humanity constituted a criminal offense in the relevant period, which means that the principle of legality was satisfied. However, one should not ignore the fact that the basic criminal acts listed in Article 172 of the CC of BiH can be also found in the law that was in force during the relevant period (at the time of perpetration of the offense), specifically in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY, or that the charged acts were punishable under the criminal law that was in force at that time. Finally, with respect to Article 7(1) of the ECHR, the Court notes that the application of Article 4a) is additionally justified by the fact that the imposed sentence is, in any case, more lenient than the death penalty that was applicable at the time of perpetration of the offense, which also satisfied the application of the principle of applicability of criminal law in terms of time, or the application of "the law that is more lenient to the perpetrator".

139. The Appellate Panel believes it is necessary to point out that the legality of application of the 2003 Criminal Code of BiH in the proceedings before the Court of BiH has been thoroughly considered and decided by the Constitutional Court of BiH in the Case of *Maktouf and Neđo Samarđić* AP 519/07.

140. Therefore, the Appellate Panel considers the stated appeal averments unfounded, finding that the Trial Panel has correctly applied the law to the correctly established factual status, when it legally evaluated and qualified the acts of the Accused Momir Savić as the acts of the criminal offense of **Crimes against Humanity in violation of Article 172(1)h), in conjunction with items a), d), e), f), i) and k) of the CC of BiH**.

IV) DECISION ON PUNISHMENT

141. The Defense also disputes the Trial Verdict for the decision on punishment, stipulating that in the closing argument they failed to list a number of mitigating circumstances on the part of the Accused, which according to the Defense would result in a more lenient sentence. The Defense emphasizes that, on several occasions, the Accused made efforts to save the endangered Bosniak civilian population, that does not have

[28] See for example the ECHR Judgment in the case of Naletilić against Croatia, 51891/99 and Judgment
[29] See *Papon against France*, No. 54210/00, ECHR 2001-XII and *Touvier against France*, No. 29420/95, Decision of the Commission of 13 January 1997.

criminal record, that he is a family man of low income, his proper conduct during the entire criminal proceedings, and the expressed regret for the suffering of the Bosniak civilian population.

142. In its appeal, the Prosecutor's Office of BiH specifies that the Trial Court did not evaluate the role and contribution of the victims, in the sense that they did not cause or contributed to the perpetration of the criminal offence in any way, being also a significant circumstance, and the motive for perpetration of the criminal offence.

143. Contrary to the averments of the Defense appeal, when meting out the criminal sanction the Trial Court did not fail to evaluate the fact that the Accused helped some of the Bosniaks families to remain in Drinsko. This very fact shows that the Accused could significantly influence the fate of Bosniak civilians, which is a conclusion that was in its entirety also accepted by this Panel.

144. Regarding the other circumstances, the Trial Court thoroughly evaluated both mitigating and aggravating circumstances and, guided by the goals of general and special prevention, concluded that the sentence of imprisonment for a term of 18 years corresponded to the gravity of criminal offence and the level of criminal responsibility of the Accused. Taking into account that the Appellate Panel partly granted the Defense appeal and relieved the Accused of the charges regarding the actions described in Section 6 of the operative part of the Trial Verdict, which inevitably reflected the length of the imposed sentence of imprisonment, it reduced the sentence to 17 years of imprisonment. When meting out this punishment, the Appellate Panel was fully guided by the facts and circumstances established on the part of the Accused in the first instance proceedings. His determination in the perpetration of numerous crimes, the level of responsibility of the Accused, his status, the number of perpetrated criminal acts, and treatment of victims, have been correctly evaluated as aggravating circumstances on the part of the Accused.

145. The fact that victims of the actions of the Accused were civilians, who mainly belonged to one ethnicity, does not represent an aggravating circumstance, and contrary to the appeal averments of the Prosecutor, the fact which is decisive for establishing the important elements of the criminal offence cannot at the same time be considered as an aggravating circumstance (discriminatory intent).

146. For the above mentioned reasons, pursuant to Articles 313 and 314 of the CPC of BiH, the Panel of the Appellate Division rendered its decision as stated in the operative part of the Verdict.

PRESIDENT OF THE PANEL
JUDGE
Dr. Miloš Babić

Record taker:
Melika Murtezić

LEGAL REMEDY: No appeal lies from this Decision.