



Number: X-KRŽ-09/668
Sarajevo, 22 February 2010

IN THE NAME OF BOSNIA AND HERZEGOVINA!

Court of Bosnia and Herzegovina, Section I for War Crimes, in the Appellate Division Panel comprised of Judge Azra Miletić, as the presiding judge and Judge Dragomir Vukoje and Judge Tihomir Lukes, as the members of the Panel, with the participation of Legal Officer Medina Džerahović, as the Minutes Taker, in the criminal case against the convicted Dragan Đokić, for the criminal offence of War Crimes against Civilians set forth under Article 120 (1) of the Criminal Code of the Republic of Croatia, that is, Article 173 (1) a) of the Criminal Code of Bosnia and Herzegovina, upon the Appeal of the convicted Dragan Đokić lodged through his Defense Counsel Nenad Balaban from the Verdict of the Court of Bosnia and Herzegovina number X-KR-09/668 dated 5 November 2009, at the session held in the presence of the Prosecutor of the Prosecutor's Office BiH and in the absence of the convicted Đokić and his Defense Counsel, on 22 February 2010 rendered the following

VERDICT

The Appeal lodged by the convicted Dragan Đokić through his Defense Counsel is hereby **refused as unfounded** and the first instance Verdict of the Court of BiH number X-KR-09/668 of 5 November 2009 is hereby **upheld**.

Reasoning

By the Verdict of the Court of BiH, number: X-KR-09/668 dated 5 November 2009, rendered upon the Request of the convicted Dragan Đokić for the Transfer of the Execution of the Prison Sentence to Bosnia and Herzegovina, filed with the Court by the Prosecutor's Office BiH, together with the Letter of the Ministry of Justice of the Republic of Croatia number 514-07-01-01-08-6 dated 11 November 2008 and supporting documents, the execution of the final Verdict of the Cantonal Court in Sisak, the Republic of Croatia, number K-22/07, dated 26 September 2007, was authorized. By the mentioned Verdict, Dragan Đokić was convicted to the prison sentence of 12 (twelve) years for the criminal offence of War Crimes against Civilians, set forth under Article 120 (1) of the Criminal Code of the Republic of Croatia. Pursuant to the relevant provisions of the Law on International Legal Assistance in Criminal Matters (Official Gazette BiH, number 53/09), the competent Court (the Court of BiH in this specific case), established that all requirements have been fulfilled to take over the execution of the mentioned final Verdict, and, with the application of Article 68 of the cited Law, imposed on Dragan Đokić the prison sentence of 12 (twelve) years .

The convicted Dragan Đokić lodged the Appeal from the mentioned Verdict through his Defense Counsel, Nenad Balaban, Attorney from Banja Luka, for the decision on the criminal sanction based on Article 300 (1), moving the Appellate Panel to accept all the circumstances pointed out in the Appeal, modify the contested Verdict and pronounce a less severe punishment against the convicted person, closer to the legal minimum than to the legal maximum as it had been done in the contested Verdict.

At the session of the Appellate Panel, held in accordance with Article 69 of the Law on International Legal Aid in Criminal Matters (the Law), in conjunction with Article 304 of the CPC BiH, the Prosecutor of the Prosecutor's Office BiH briefly presented the Response to the Appeal, stating that the appellate arguments do not stand at all and proposing that the Appeal should be refused as unfounded.

Having reviewed the contested Verdict in accordance with Article 306 of the CPC BiH, the Court decided as stated in the operative part of the Verdict for the following reasons.

Firstly, when rendering the contested Verdict, the First Instance Panel correctly applied Article 68 (Rendering the Verdict) of the Law, bearing in mind that the Court is bound by the factual state established in the foreign Verdict. At the same time, the decision on the sanction is based on the criminal legislation of BiH, as prescribed under Paragraph 3 of the cited Article.

Analyzing the appellate arguments, this Panel noticed certain discrepancies between the appellate ground – the decision on the criminal sanction set forth under Article 300 (1) of the CPC BiH and the reasoning of its justification. In fact, in the introduction, the appellant clearly contests the first instance Verdict for the stated reasons, while in the reasoning he develops the argumentation in the direction of different appellate ground – erroneous or incomplete state of facts, which, in his opinion, affected the length of the sentence. The appellant persistently repeats the fact that the defense was aware that in the stage of the criminal proceedings before this Court, it was not possible to contest the factual state, which the Panel believes to be correct and in line with the relevant legal provision. However, then he stresses the mistakes in the factual state as mitigating circumstances in favor of the convicted person, which is contradictory to what had been previously stated.

In fact, the appellant questions the identity of the convicted person as the perpetrator of the criminal offence, the type of the weapon he allegedly carried, as well as the credibility of the eye-witnesses, whereby he directly contests the factual state of the final Verdict rendered by a foreign court and the criminal responsibility of the convicted Đokić for the committed criminal offence. The Panel concludes that such approach lacks legal foundation, considering that, pursuant to the legal provision cited above, the relevant Court is bound by the factual state established in the foreign Verdict, which implies it is impossible to contest it on this appellate ground.

The arguments stated by Defense Counsel in favor of his position cannot be assessed as the circumstances favorable for Đokić which could affect the gravity of the criminal sanction in accordance with article 48 (1) of the CC BiH (mitigating and aggravating circumstances), considering those were the facts questioning the very criminal responsibility of the convicted person.

Further, the facts which, in the opinion of the appellant, also must have been assessed as mitigating circumstances, for example, that more than 18 years have elapsed since the perpetration of the crime, that the criminal offence in question carries the sentence of 15 years in prison, that the convicted person is 57 years old, that so far he has served over 4 years of the sentence, that he behaved well, in the opinion of this Panel, lack quality the mitigating circumstances should have in order to affect the decision on the sanction, that is, to lead to the pronouncement of a less stringent sanction. With respect to the elapse of time from the perpetration of the criminal offence, the Panel points out the general rule that criminal prosecution and the execution of punishment for the criminal offence of war crimes are not subjects to statute of limitation. The facts regarding the part of the sentence served so far and good behavior of the convicted person are not relevant circumstances that would be considered for the type and length of the criminal sanction.

The Appellate Panel finds that the First Instance Panel, in the contested Verdict, when deciding on the gravity of the punishment, correctly assessed the circumstances which could influence the length of the sentence, as prescribed under Article 48 of the CC BiH (General Principles on Meting out Punishment), bearing in mind that it is not possible to pronounce a more severe punishment than the one which the foreign court pronounced in accordance with Article 68 (5) of the Law. In fact, the First Instance Panel bore in mind the legal framework for pronouncing the punishment for the criminal offence, general rules on the type and length of punishment, paying attention to the purpose of the punishment and correctly assessing the gravity of the criminal offence, the degree of criminal responsibility and all possible aggravating and mitigating circumstances, stating that the mitigating circumstances include the facts that the convicted person is a family man, father of two children, has no previous record. On the other hand, there were no aggravating circumstances. Therefore, all circumstances that affect the duration of the sentence have been correctly assessed. The First Instance Panel adequately used their discretion right while assessing them concluding that they, in their entirety, justify the pronounced sentence.

So, having considered the decision on criminal sanction upon the Appeal of the Defense Counsel for the convicted Đokić, the Panel finds that the pronounced prison sentence is adequate to the gravity of the offence and circumstances under which it had been committed, as well as to the degree of criminal responsibility and the personality of the convicted person. Therefore, in the assessment of this Panel, and contrary to the appellate arguments of the Defense Counsel, all mitigating and aggravating circumstances in relation to the accused were correctly assessed and hence the pronounced prison sentence of 12 (twelve) years suits the purpose of punishment, from the point of view of general and special deterrence, envisaged under Articles 6 and 39 of the CC BiH and therefore all appellate arguments were refused as unfounded.

Due to the reasons stated above, the appellate arguments of the Defense Counsel for the convicted Đokić lack the necessary factual basis and therefore, pursuant to Article 313 of the CPC BiH it was decided as stated in the operative part of this Verdict.

Minutes Taker	PRESIDENT OF THE PANEL JUDGE
Medina Džerahović /signature/	Azra Miletić /stamp and signature/

INSTRUCTION ON LEGAL REMEDY: No appeal lies against this Verdict.