

Bosna i Hercegovina

Bosnia and Herzegovina



Sud Bosne i Hercegovine

Number: SU-10-431/10
Sarajevo, 29 November 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 Redžib Begić, as the President, and Judges Tihomir Lukes and Dragomir Vukoje as the Panel Members, with the participation of the Legal Adviser-Assistant Neira Kožo as the minutes-taker in the criminal case against the convicted person Branimir Glavaš, for the criminal offence of War Crimes against Civilians in violation of Article 120(1) of the Basic Criminal Code of the Republic of Croatia, that is, Article 173(1)(a) and (c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina, in the matter of the Appeal of the convicted person Branimir Glavaš, filed from the Verdict of the Court of Bosnia and Herzegovina, No. SU-10-431/10, of 20 September 2010 by his Defense Counsels, Attorneys Vasvija Vidović and Nikica Gržić, at the session held in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Jadranka Lokmić-Misirača, the convicted person Branimir Glavaš and his Defense Counsels, Attorneys Vasvija Vidović and Nikica Gržić, on 29 November 2010, rendered the following

VERDICT

The Appeal of the convicted person Branimir Glavaš, filed by his Defense Counsels **is partly upheld**, and the first instance Verdict of the Court of Bosnia and Herzegovina, No. SU-10-431/10, of 20 September 2010 **is revised** in the part of the decision regarding the crediting of the time spent in custody towards the sentence of imprisonment in the manner that the time the convicted person spent in custody in the Republic of Croatia, that is from 26 October 2006 to 2 December 2006 and from 18 April 2007 to 11 January 2008, as well as in Bosnia and Herzegovina from 14 May 2009 to 15 May 2009 and from 20 September 2010 onwards shall be credited towards the imposed sentence.

The remaining part of the first instance Verdict is upheld.

R e a s o n i n g

I Procedural History

1. By the Verdict of the Court of Bosnia and Herzegovina (hereinafter: the BiH Court), No. SU-10-431/10, of 20 September 2010, with respect to the Letter of Rogatory of the Ministry of Justice of the Republic of Croatia, No. 514-05-05-01-10-4 of 24 August 2010 seeking the takeover of the execution of the prison sentence of the convicted person Branimir Glavaš of 8 (eight) years, which was imposed on him by a final Verdict of the District Court in Zagreb, number: X K-rz-1/07 of 8 May 2009 – as revised by the Verdict of the Supreme Court of the Republic of Croatia, number: I Kž 84/10-8 of 2 June 2010, for the criminal offense of War Crimes against Civilians in violation of Article 120(1) of the Basic Criminal Code of the Republic of Croatia (hereinafter: the BCC of the RC), the convicted person Branimir Glavaš was sentenced to a prison sentence of 8 (eight) years for the criminal offense of War Crimes against Civilians in violation of Article 173(1)a) and c), in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH).

2. Pursuant to Article 57 of the CC of BiH, the time the convicted person spent in custody from 18 April 2007 to 11 January 2008 was credited towards the imposed prison sentence.

3. Pursuant to Article 185(3) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter referred to as the CPC of BiH), the convicted person shall cover the costs of the criminal proceedings, the scheduled amount of KM 150.00 (one hundred and fifty KM).

II Appeal

4. The Defense Counsels for the convicted Branimir Glavaš, Attorney Vasvija Vidović and Attorney Nikica Gržić filed an Appeal from the Verdict of the Court of BiH for: (1) essential violations of the provisions of the criminal procedure, (2) incorrectly and incompletely established state of facts, (3) decision on the sanction, and according to the contents of the appeal, for violation of the Criminal Code. The Defense moved the Panel of the Appellate Division of the Court of BiH to uphold the appeal and modify the contested Verdict of the Court of BiH No. SU-10-431/10 of 20 September 2010 by refusing the request of the Republic of Croatia seeking recognition of the foreign Verdict and the takeover of execution of the prison sentence, or to uphold the appeal and revoke the contested Verdict of the Court of BiH No. SU-10-431/10 of 20 September 2010, and schedule a retrial before that Court, or uphold the appeal and mete out a more lenient sentence to the convicted person than the one imposed.

5. At the session of the Appellate Division Panel held pursuant to Article 69 of the Law on International Legal Assistance in Criminal Matters (hereinafter the Law), in conjunction with Article 304 of the CPC of BiH, the Defense for the convicted person briefly presented their grounds of appeal and said that they fully maintained the arguments presented in the appeal, which was also confirmed by the convicted person Glavaš, and the Prosecution gave its response

with respect to them and moved that the appeal be refused as unfounded and the contested Verdict upheld.

6. The convicted person and his Defense submitted two pieces of evidence to the Court, specifically a Note on the conversation between Dr. Milorad Pupovac and Charles English, of 4 February 2004 and a set of newspaper articles, which had not been available to them earlier, which however show, as the Defense Counsel said, *that the proceedings conducted against Branimir Glavaš has a political dimension.*

7. In this regard, the Appellate Penal, having examined the above mentioned pieces of evidence, concluded that they were of no relevance given that the final Verdict has been rendered in this case. Also, it should be emphasized that these pieces of evidence do not have a probative force for the Court to decide differently.

8. After the contested Verdict was examined within the framework of the submitted appeal arguments, pursuant to Article 306 of the CPC of BiH, it was decided as stated in the operative part of the Verdict for the following reasons:

III Essential violations of the criminal procedure provisions and incorrectly and incompletely established state of facts

9. The appeal points out that the averment of the First Instance Panel of the Court of BiH was incorrect in stating that the authorities of The Republic of Croatia established the unavailability of Branimir Glavaš, that the documents attached to the Letter Rogatory were sufficient to render the contested Verdict, as well as that the Letter Rogatory was not premature. The Defense argues that the fact whether the Letter of Rogatory was premature or not constitutes a decisive fact that the First Instance Panel should have considered in accordance with the applicable Execution of Prison Sentence Act of the Republic of Croatia. Since it failed to do so, the state of facts was incorrectly and incompletely established in this part, and the provisions of the criminal procedure under Article 297(1)k) of the CPC of BiH were essentially violated, as the Verdict did not provide the reasons for not taking into account the relevant legislation of the Republic of Croatia.¹

10. Considering the above appeal averment, the Appellate Panel drew a conclusion that the First Instance Panel correctly established all the facts required to satisfy the conditions for the acknowledgment and the execution of a foreign verdict, in this specific case the final Verdict of the District Court in Zagreb.

11. Specifically, the First Instance Panel established with certainty that, besides the citizenship of the Republic of Croatia, the convicted person Branimir Glavaš holds the citizenship of Bosnia and Herzegovina.

12. Furthermore, Article 23(1)1) of the Agreement between the Governments of Bosnia and Herzegovina, the Federation of BiH and the Republic of Croatia on Mutual Enforcement of Judicial Decisions in Criminal Matters (Agreement) stipulates that the Letter Rogatory submitted

¹ Appeal, page 4

by the adjudicating state should be accompanied by a copy or a certified transcript of the court decision including a **confirmation of its legal finality and if necessary, a confirmation of its enforceability**.

13. In this context, one should be mindful of Article 63(1)a) of the Law stipulating that, if not otherwise defined by an international agreement, a foreign court judgment in criminal matters shall be executed only if, *inter alia*, **the verdict is final** and if it is rendered by a judicial authority of the sentencing state.

14. Consequently, the Appellate Panel finds that the Defense contention that in this case it was necessary to conduct the procedure for the execution of the prison sentence in the Republic of Croatia is meritless, for the reason that confirmation of the enforceability is requested only if necessary, while, pursuant to the legal provisions of this state, the legal finality of a verdict is the only condition required for the execution of a foreign judgment. The Verdict of the Cantonal Court in Zagreb became final by the rendering of the Verdict of the Supreme Court of the Republic of Croatia. Therefore, this Panel infers that the conditions required for execution of the relevant Verdict in Bosnia and Herzegovina have been satisfied, implying that the enforceability clause is not required and that the Letter Rogatory seeking the takeover of the execution of the prison sentence is not premature, as groundlessly stated in the Appeal.

15. The First Instance Panel of this Court determined that by his conduct the convicted Branimir Glavaš unquestionably demonstrated that he did not intend to return to the Republic of Croatia to serve the sentence under the final Verdict of the Cantonal Court in Zagreb. This conclusion was made based on the fact that the convicted person had left the Republic of Croatia before the Verdict became final, and that he settled in the territory of Bosnia and Herzegovina. However, the Panel finds it completely irrelevant that the convicted person was inaccessible to the judicial authorities of the Republic of Croatia. But despite this, it should be emphasized that the convicted person himself could have requested to serve the imprisonment sentence in Bosnia and Herzegovina, which he did at the session of the Appellate Panel.

16. Consequently, having examined the operative part of the Verdict, the Appellate Panel found that it was sufficiently clear and comprehensible, and that the grounds stated in the reasoning do not contradict it. The Appellate Panel finds that the form and substance of the Verdict are in accordance with the provisions of the procedural law as well as with Article 68 of the Law.

17. The Appeal also argues that the Court violated Article 14(2) of the CPC of BiH, as it did not consider with equal attention the facts that were exculpatory for Branimir Glavaš, which the Defense presented, as well as the facts that were inculpatory for him, which affected the rendering of a lawful and proper verdict and resulted in an essential violation of the criminal procedure provisions under Article 297(2).²

18. In this regard, the Appellate Panel notes that, in establishing and examining the decisive facts, the method required under Article 14 of the CPC of BiH concerning the “*of equality of*

² Appeal, page 7

arms” principle was not violated. All the facts were considered with equal attention, not losing sight of any fact that was important for the rendering of the Verdict.

19. Based on the above, this Appeal finds arbitrary and unfounded the appeal averment of the Defense that the facts exculpatory for the convicted person were not considered.

IV Violation of the Criminal Code

20. The Appeal also points out that Article 120 of the BCC of the Republic of Croatia, and Article 142 of the CC of SFRY, do not stipulate any form of command responsibility involving the failure to prevent and punish, thus none of these actions that resulted from a failure (Sections 1 and 2d) of the operative part) could be subsumed under any of these provisions. In particular, it could not be subsumed under Article 173(1)a) and c), in conjunction with Article 180(1) of the CC of BiH.³

21. First of all, the Appellate Panel wishes to stress as the basic starting point that the issue of selection of a more favorable law is not addressed *in abstracto* but *in concreto*, i.e. not by a generalized comparison of old and new law or laws, but rather by comparing them in view of a specific case, as one and the same law can be more favorable for one accused and more severe for another one, depending on the criminal offense he is charged with, the manner in which the elements of that criminal offense are prescribed by the law, and the provisions regarding the guilt or punishment for that offense.

22. In this regard, this Panel finds that the First Instance Panel addressed the issue of the application of the substantive law very seriously and thoroughly, and it made a correct conclusion that in this specific case the CC of BiH should be applied and not the CC of SFRY. This argument is also accepted by this Panel.

23. Specifically, pursuant to Article 142 of the CC of SFRY, the criminal offense of War Crimes against Civilians carried the prison sentence of at least five years or death penalty, while the applicable law prescribes the prison sentence of at least ten years or a long-term imprisonment. Having compared the above mentioned punishments, the First Instance Panel made a correct conclusion that the punishment prescribed by the applicable law is in any case more lenient than the one that was previously prescribed, irrespective of the fact that the previous law prescribed five years as the lowest sentence for the reason that, pursuant to customary international law, it was established that death penalty is in any case more severe punishment than a long-term imprisonment, and also, pursuant to the customary law, the accused has an

³ Appeal, page 11

absolute right not to be executed, and the state is obliged to secure that right, which was done by the adoption of the new law.

24. It is also indisputable that, according to the principle of legality, no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, was not defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law (Article 3 of the CC of BiH, however, according to the time constraints regarding applicability, the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence, and if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied (Article 4 of the CC of BiH). The principle of legality is also prescribed by Article 7(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as ECHR) as well as by Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR).

25. Consequently, the obligations taken over by the State of Bosnia and Herzegovina, resulting from the ECHR, constitute an important argument in favor of the application of the CC of BiH.

26. Furthermore, the Appellate Panel points out that legality of the application of the 2003 CC of BiH in the proceedings before the Court of BiH has been already thoroughly considered and addressed in the Decision in the Abduladhim Maktouf case by the Constitutional Court of Bosnia and Herzegovina.⁴

27. The conclusion from the above mentioned Verdict against Maktouf supports this in stating: *“In practice, no legislation of any of the states of the former Yugoslavia provided the possibility of imposing life imprisonment or long-term prison sentences, which the International Criminal Tribunal for the former Yugoslavia did quite often (cases of Krstić, Galić, etc.) At the same time, the concept of the CC of SFRY was such that it did not provide either long-term or life imprisonments, however death penalty was prescribed for the most severe criminal offenses, and less severe criminal offenses carried a maximum prison sentence for a term of up to 15 years. Consequently, it is clear that one sanction cannot be separated from the totality of the purpose that was desired to be achieved by the penal policy at the time when that law was in force.”*⁵

28. *“In this regard, the Constitutional Court holds that it is impossible to simply “eliminate” one sanction and apply other more lenient sanctions, thus practically leaving the most severe criminal offenses inadequately punished.”*⁶

⁴ Constitutional Court of Bosnia and Herzegovina, Decision on Admissibility and Merits in the Abduladhim Maktouf case, No. AP 1785/06, of 30 March 2007

⁵ Decision of the Constitutional Court of BiH in the Abduladhim Maktouf case, paragraph 68

⁶ Ibid, paragraph 69

29. Therefore, this Panel fully accepts the above mentioned views of the Constitutional Court of BiH concerning the application of the CC of BiH, considering them to be clear, logical, based on the law and applicable to this specific case.

30. After it was determined that the CC of BiH is applicable to the relevant case, it should be pointed out that the acts of the convicted person Branimir Glavaš, described in the factual description of the final Verdict of the District Court in Zagreb or of the contested Verdict, satisfy all essential elements of the criminal offense under Article 173(1)a) and c) of the CC of BiH, in conjunction with Article 180(1) of the CC of BiH, of which he was found guilty by the First Instance Panel of the Court of BiH.

31. In this regard, it should be pointed out that Article 180(1) of the CC of BiH prescribes that: *“A person who planned, **ordered**, perpetrated or instigated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment. “*

32. Consequently, the Appellate Panel holds that when the above cited provision is applied to the present case, it clearly follows that the perpetrator of the criminal offense, namely Branimir Glavaš, is individually responsible for all the acts described in the operative part of the contested Verdict due to the fact that, *inter alia*, the criminal offense of War Crimes against Civilian can also be perpetrated by the acts of the person that had a commanding role; it needs to be pointed out that a criminal offence can be perpetrated by an act or omission to act, pursuant to Article 21 of the CC of BiH.

33. Therefore, this Panel finds unfounded the Defense appeal averment that only Article 180(2) of the CC of BiH (command responsibility) could have been applied to the acts under sections 1 and 2d) of the operative part of the Verdict. In addition, section 2d) of the operative part should be interpreted and analyzed in the context of the previous introductory sentence, in order to establish the nexus between the criminal acts and the convicted person Branimir Glavaš.

34. As it is correctly stated in the Appeal, Article 142 of the CC of SFRY and Article 120 of the BCC of RC do not stipulate command responsibility, however that does not mean that Article 180(1) of the CC of BiH is not applicable to the established factual state for the reason that paragraph (1) of the above mentioned Article covers paragraph (2) as a less severe form of participation. Consequently, this is one criminal offense that the convicted person Glavaš committed by his act and omission to act.

35. Considering all the above mentioned, the Appellate Panel finds unfounded the appeal arguments in this regard, noting that the First Instance Panel correctly applied the CC of BiH to

the factual state established by the final Verdict of the District Court in Zagreb, which was entirely transferred to the operative part of the contested Verdict.

36. The Defense of the convicted person also points out in the appeal that the issue of proper crediting of the time spent in custody towards the imposed punishment had not been previously resolved in the Republic of Croatia, and as a result, the state of facts was incompletely and incorrectly established⁷.

37. It should be primarily pointed out that the First Instance Panel, when rendering the contested Verdict, was correctly guided by the relevant provisions of Article 68 of the Law⁸, taking into account that the Court was bound by the state of facts established in the foreign verdict, while the decision on the criminal sanction was based on the criminal legislation of BiH, as stipulated in paragraph (3) of the cited Article.

38. In this regard, the Appellate Panel considered the Defense appeal argument, and concluded that it is well-founded. However, the error of the Court does not render the First Instance Verdict invalid and/or incomplete in terms of the established state of facts from which essential elements of the criminal offense of War Crimes against Civilians ensue, or in terms of the subjective relation of the convicted person Branimir Glavaš towards the criminal offense.

39. Therefore, the Appellate Panel revised the contested Verdict in that part and based on the data from the relevant case records, it ordered that the time the convicted person Branimir Glavaš spent in custody from 26 October 2006 to 2 December 2006 (as determined by the Decision of the District Court in Zagreb, No. Kv-rz-12/10, K-rz-1/07 of 10 November 2010), and the period from 18 April 2007 to 11 January 2008 (determined by the Verdict of the District Court in Zagreb, No. X K-rz-1/07 of 8 May 2009) shall be credited towards his prison sentence, as well as the period from 14 May 2009 to 15 May 2009 (determined by the Decision of the Court of BiH, No. Ex-22/09, of 14 May 2009, and terminated by the Decision of the Court of BiH, No. Ex-21/09 of 15 May 2009) and the period from 20 September 2010 onwards (determined by the Decision of the Court of BiH No. SU-10-431/10 of 20 September 2010).

40. Given the fact that the convicted person Branimir Glavaš, at the session of the Panel of the Appellate Division of the Court of BiH requested that the day when he was deprived of liberty in the Republic of Croatia, i.e. 17 April 2007, be credited towards his imposed prison sentence, this Panel, in the absence of evidence to suggest that the above mentioned information is true, was

⁷ Appeal, page 7

⁸ Article 68 of the Law says:” (1) The relevant Court sitting as an interlocutory Panel of three judges shall decide on the request to recognize and enforce a foreign judgment in criminal matters. (2) The Prosecutor, the sentenced person and the Defense Counsel shall be notified that the Panel session will be held to render a decision.(3) In deciding upon the request, the Court shall be bound by the state of facts established in the foreign judgment and, in the operative part of the verdict to be rendered it shall also include the entire operative part and the name of the Court as stated in the foreign judgment, and it shall impose a punishment, while the decision on the punishment shall be based on the criminal legislation of Bosnia and Herzegovina. The reasons guiding the Court in imposing the punishment shall be entered into the reasoning part of the verdict. (4) The recognized foreign judgment in a criminal case shall be enforced as if rendered by the recognizing Court itself. (5) In rendering a verdict, the Court may not impose a punishment more stringent than the one imposed by the foreign Court.

not able to decide about it. However, Article 71(4) of the Law⁹ leaves the possibility for the convicted person to subsequently request that the above mentioned day spent in custody be credited towards his prison sentence under the conditions stipulated in the cited provision.

41. Pursuant to Article 68(3) of the Law, the Appellate Panel did not engage in a more detailed reconsideration of the state of facts established by the Court's decision, and pursuant to the provision of Article 57 of the CC of BiH, it credited the time that the convicted person Branimir Glavaš spent in custody towards his prison sentence, as stated above.

V. Criminal Sanction

42. In the appeal, the Defense also argued that the punishment was too heavy due to the circumstances of the case. They claim that the First Instance Court did not, by a single word, reason the decision on the sanction, which he was bound to do pursuant to Article 290(8) of the CPC of BiH¹⁰.

43. Having examined the decision on the sanction within the appeal allegations, the Appellate Panel finds that the First Instance Panel appreciated all the circumstances bearing on the magnitude of punishment, as stipulated in Article 48 of the CC of BiH.

44. Specifically, the contested Verdict was mindful of the scope of punishment for the relevant criminal offense, prescribed by the law, the purpose of punishment, in particular the degree of criminal liability of the convicted person, the circumstances in which the offense was perpetrated, the degree of danger or injury to the protected value, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offense.

45. Having reconsidered the contested Verdict, the Appellate Panel finds, contrary to the Defense appeal allegations that the First Instance Panel adequately assessed all the mitigating and aggravating circumstances and took account of all subjective and objective factors concerning the criminal offense and its perpetrator. Therefore, the imposed prison sentence of 8 (eight) years, crediting the time spent in custody, as the Appellate Panel also concludes, constitutes an appropriate punishment, proportionate to the gravity of the criminal offense that the accused was found guilty of, considering the protected value violated by this offense.

46. The appeal also suggests that the Court of BiH should impose the punishment pursuant to Article 48 of the CC of BiH, appreciating the already established mitigating circumstances and including a new mitigating circumstance, specifically the correct conduct of Branimir Glavaš before the Court of BiH and authorities of BiH, in accordance with the legislation and penal

⁹ Article 71(4) of the Law says: "If the judgment rendered by the sentencing State that served as a basis for the sentence enforcement request has been revoked or revised, at the request of the sentenced person and upon the new judgment of the sentencing State the relevant Court on Bosnia and Herzegovina shall reopen the proceedings to recognize a foreign judgment in the criminal case, and decide on the further serving of the sentence."

¹⁰ Appeal, pages 11 and 12

policy of BiH. In addition, it is argued that the purpose of punishment could be fully achieved with a more lenient punishment¹¹

47. In contrast to the defense assertions, the Appellate Panel finds that the First Instance Panel, in deciding on the punishment, correctly evaluated the circumstances of this specific case, taking into account that in rendering the verdict, the Court may not impose a punishment more stringent than the one imposed by the foreign Court, pursuant to Article 68(5) of the Law. Consequently, all the circumstances influencing the length of the punishment have been correctly considered and the First Instance Panel properly exercised its discretion in evaluating them and concluded that, in their totality, they warrant the imposed punishment.

48. In this regard, the imposed prison sentence of 8 (eight) years is adequate to the purpose of punishment from the aspect of both general and special prevention, pursuant to Articles 6 and 39 of the CC of BiH.

49. Therefore, the Appellate Panel concludes that the First Instance Panel, in deciding on the type and length of the sanction, acted in accordance with Article 48, 49 and 50 of the CC of BiH and meted out a prison sentence to the convicted person Branimir Glavaš which is below the prescribed minimum for the criminal offence of War Crimes against Civilians as referred to in Article 173 of the CC of BiH. Pursuant to the CC of BiH, the above mentioned criminal offense carries a prison sentence for a term of at least ten years or a long-term imprisonment.

50. Given that, as stated above, in this case the Court, may not impose a more stringent punishment than the one imposed by the foreign Court, this Panel has also taken into account the principle of the ban on *Reformatio in Peius*, or Article 307 of the CPC of BiH, stipulating that: “*If an appeal has been filed only in favor of the accused, the verdict may not be modified to the detriment of the accused*”. This provision is applicable in this case given that the Prosecution did not file its appeal from the First Instance Verdict of this Court.

51. The First Instance Panel considered both mitigating and aggravating circumstances on the part of the convicted person, which were noted in the Verdict of the District Court in Zagreb, No. X K-rz-1/07 of 8 May 2009 and in the Verdict of the Supreme Court of the Republic of Croatia, No. I Kž 84/10-8 of 2 April 2010. Thus, in terms of mitigating circumstances, the Panel appreciated that he had no previous convictions, his personal and family circumstances, and beyond the context of the relevant events, his participation in the homeland war and his contribution to the defense of the Republic of Croatia, while the aggravating circumstances included the gravity of the committed criminal offenses, primarily from the aspect of social unacceptability of his actions directed towards an unprotected category of civilians in time of war or an armed conflict, and the fact that innocent persons were executed, the manner in which those acts were committed and persistence in committing the executions, and finally, the number of victims.

52. The First Instance Panel has especially appreciated the mitigating circumstances found on the part of the convicted person, accepting them as particularly mitigating circumstances

¹¹ Appeal, page 12

pursuant to Article 50(1)a) of the CC of BiH, due to which it pronounced a sentence against Branimir Glavaš below the statutory minimum prescribed for the relevant criminal offense.

53. In this regard, the correct conduct of the convicted Glavaš before this Court and the Institutions of BiH should by no means be overrated so as to additionally mitigate the punishment of the convicted person. Therefore, the Appellate Panel has dismissed as unfounded the Defense appeal allegations concerning the particularly mitigating circumstances of the case at hand.

54. Given that the Defense for the convicted person referred to the application of a more lenient law mainly in relation to the criminal sanction, it should be reiterated that the CC of BiH was applied and not the CC of SFRY, as requested in the appeal.

55. It should be also mentioned out that, according to the principles of international law as well as jurisprudence of all international courts that have dealt with such matters, the maximum punishment in the relevant system of criminal sanctions is always attached to the offenses similar to those Branimir Glavaš was sentenced for. In this regard, the notion of punishment includes the idea of adequate and not symbolic sanctioning as it would contradict the very purpose of punishment.

56. However, no case is the same as another and each case is considered in the light of the circumstances of that individual case. Therefore the First Instance Panel, having considered all the circumstances of the case at hand, the mitigating circumstance in particular, sentenced Branimir Glavaš to the prison sentence of 8 (eight) years, which is below the statutory minimum prescribed.

57. With regard to the discretion of any Judge or Panel to assess the circumstances of a certain case, the Appellate Panel finds that the criminal sanction imposed on the convicted person Branimir Glavaš is adequate and appropriate, that is, just.

58. Based on the above and pursuant to Article 310(1), in conjunction with Article 314 of the CPC of BiH, the Appellate Panel has decided as stated in the operative part of the Verdict.

Minutes-Taker
Neira Kožo

PRESIDENT OF THE PANEL
Judge
Redžib Begić

LEGAL TREMEDY: No appeal lies from this Verdict.
