

Bosna i Hercegovina

Босна и Херцеговина



Court of Bosnia and Herzegovina

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Case Number: S1 1 K 002735 12 Krž3

Date: 23 April 2012

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Before the Panel composed of: Judge Mirko Božović, Panel President  
Judge Redžib Begić  
Judge Phillip Weiner

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

LJUBIŠA VRANJEŠ AND MLADEN MILIĆ

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SECOND INSTANCE VERDICT

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

Dževad Muratbegović

**Defense Counsel for the Accused:**

Defense Counsel for the Accused Ljubiša Vranješ, attorney Nenad Balaban

Defense Counsel for the Accused Mladen Milić, attorneys Simo Tošić, Aleksandar Ristić and Vladimir Ilić

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**Number: S1 1 K 002735 12 Krž3**

**Sarajevo, 23 April 2012**

**IN THE NAME OF BOSNIA AND HERZEGOVINA!**

The Court of Bosnia and Herzegovina, the Panel of the Appellate Division of Section I for War Crimes composed of Judge Mirko Božović as the Panel President and Judge Redžib Begić and Judge Phillip Weiner as the Panel members, with the participation of Legal Officer Nevena Aličehajić as the record-taker, in the criminal case against the Accused Ljubiša Vranješ and Mladen Milić charged with the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina (CC BiH), as read with Article 29 and Article 180(1) of the CC BiH, deciding on the appeals of the Prosecutor's Office of Bosnia and Herzegovina, the Accused Ljubiša Vranješ and his Defense Counsel, attorney Nenad Balaban, and the Appeal of the Defense Counsel for the Accused Mladen Milić, attorney Simo J. Tošić, from the Verdict of the Court of Bosnia and Herzegovina number S1 1 K 002735 11 Krl dated 28 October 2011, following the public session of the Appellate Panel, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Dževad Muratbegović, the Accused Ljubiša Vranješ and his Defense Counsel, attorney Nenad Balaban, the Accused Mladen Milić and his Defense Counsel, attorneys Simo Tošić, Aleksandar Ristić and Vladimir Ilić, on 23 April 2012 rendered the following:

**VERDICT**

The Appeal of the Prosecutor's Office of Bosnia and Herzegovina is **dismissed as unfounded**, while the appeals of the Accused Ljubiša Vranješ and his Defense Counsel, as well as the Appeal of the Defense Counsel for the Accused Mladen Milić are **partially upheld**, and the Verdict of the Court of BiH number S1 1 K 002735 11 Krl dated 28 October 2011 **is revised in the part that concerns legal qualification of the offense and the decision on the sentence so that the acts of which the Accused were found guilty under the above-mentioned Verdict are now qualified as** the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH, as read with Article 180(1) of the CC BiH and Article 31 of the CC BiH, for which the Accused Ljubiša Vranješ and Mladen Milić, pursuant to the foregoing legal provisions and Articles 39, 42, 48 and

Article 49(a), as read with Article 50(1)(a) of the CC BiH, have been sentenced to imprisonment for the term of **eight (8) years each**, with the time they spent in custody from 8 September 2010 until 7 October 2010 and from 28 October 2011 onwards to be credited towards their sentence in accordance with Article 56 of the CC BiH.

The first instance Verdict remains unchanged in the remaining part.

### Reasoning

1. Under the Verdict of the Court of Bosnia and Herzegovina number S1 1 K 002735 11 Krl dated 28 October 2011, the Accused Ljubiša Vranješ and Mladen Milić were found guilty of having committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH, as read with Article 180(1) of the CC BiH, for which the First Instance Panel sentenced them to imprisonment for the term of ten (10) years each, with the time they spent in custody from 8 September 2010 until 7 October 2010 and from 28 October 2011 onwards credited towards their sentence in accordance with Article 56 of the CC BiH.

2. Pursuant to Article 118(4) of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC BiH), the Accused were relieved of the duty to reimburse the costs of the criminal proceedings, which were to be paid from budgetary appropriations of the Court. Pursuant to Article 198(2) of the CPC BiH, the aggrieved parties were instructed to take civil action to pursue their claims under property law.

3. The above Verdict was appealed within the statutory deadline by the Prosecutor's Office, the Accused Ljubiša Vranješ and his Defense Counsel, attorney Nenad Balaban, as well as the Defense Counsel for the Accused Mladen Milić, attorney Simo J. Tošić.

4. The Prosecution appealed on the grounds of the decision on the criminal sanction and moved the Appellate Panel to uphold the appeal and revise the first instance Verdict in the part that concerns the decision on the sentence and impose on the Accused longer prison sentences proportionate to the degree of the criminal responsibility of the Accused, their motives for perpetration of the offense and the degree of danger to the protected value.

5. Defense Counsel for the Accused Ljubiša Vranješ, attorney Nenad Balaban, appealed the Verdict on the grounds of essential violations of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH, on the basis of incorrectly or incompletely established facts, and, judging by the substance of the Appeal, on the grounds of violations of the criminal code. Counsel Balaban moved the Appellate Panel of the Court of Bosnia and Herzegovina to uphold the Appeal and revise the contested Verdict by acquitting the Accused Ljubiša Vranješ of the charges, or alternatively to revoke the Verdict and order a retrial before the Appellate Panel.

6. The Accused Ljubiša Vranješ also appealed the first instance Verdict on the same grounds as his Defense Counsel.

7. Defense Counsel for the Accused Mladen Milić, attorney Simo Tošić appealed on the grounds of violations of the criminal procedure provisions, violations of the criminal code and incorrectly or incompletely established facts. Counsel Tošić moved the Appellate Panel of the Court of Bosnia and Herzegovina to uphold the Appeal and revise the contested Verdict by acquitting Mladen Milić of the charges, thereby terminating his custody, or alternatively to revoke the contested Verdict and order a retrial before the Appellate Division panel.

8. The Prosecution responded to the appeals of the Accused Ljubiša Vranješ and his Defense Counsel, as well as the appeal of the Defense Counsel for the Accused Mladen Milić, and moved the Appellate Panel to dismiss the appeals as unfounded. Similarly, Defense Counsel for the Accused, attorneys Nenad Balaban and Simo Tošić, submitted their responses to the Prosecution's Appeal, in which they moved the Appellate Panel to dismiss the Appeal as unfounded.

9. Pursuant to Article 304 of the CPC BiH, a session of the Appellate Panel was held on 23 April 2012 with the following persons in attendance: the Prosecutor, the Accused Ljubiša Vranješ and his Defense Counsel, attorney Nenad Balaban, as well as the Accused Mladen Milić and his Defense Counsel, attorneys Simo Tošić, Aleksandar Ristić and Vladimir Ilić.

10. The Prosecution briefly explained their Appeal and stated that they maintain their arguments and motions as presented in their written Appeal. In their response to the Prosecution's Appeal, Defense Counsel for the Accused Ljubiša Vranješ and Mladen Milić stated that all Prosecution's averments were unfounded and that the Prosecution's

Appeal should be dismissed in its entirety, which the Accused Vranješ and Milić concurred with.

11. Defense Counsel for the Accused Ljubiša Vranješ also presented his Appeal and maintained all arguments and motions contained in his written Appeal, which was entirely concurred with by the Accused Vranješ.

12. The Accused Vranješ presented his own Appeal and maintained all averments and motions contained therein.

13. Defense Counsel for the Accused Mladen Milić, attorney Simo Tošić, presented the substance of the Appeal which he had filed in writing, while the new Counsel of the Accused Milić's own choice, attorney Ilić, additionally explained the Appeal, focusing primarily on the alleged essential violations of the criminal procedure provisions. The Accused Milić entirely agreed with the argumentation presented by his Defense Counsel.

14. Although two of the Defense Counsel for the Accused Milić, attorneys Ilić and Ristić, did not file any appeals in writing, the Appellate Panel concluded that in view of the fact that attorney Ilić's arguments, presented orally at the public session of the Appellate Panel, were confined to the grounds of appeal elaborated on in the Appeal filed by the Lead Counsel Tošić for the Accused Milić, the Appellate Panel will review these objections too, and they will be addressed in the Verdict.

15. The Prosecution argued that all averments by the Defense Counsel and the Accused were unfounded and moved the Appellate Panel to dismiss the appeals in their entirety as unfounded.

## **I. GENERAL CONSIDERATIONS**

16. Pursuant to Article 306 of the CPC BiH the Appellate Panel reviews the verdict only within the limits of the grounds of appeal, that is, the decision of the Appellate Panel is limited only to the issues raised and explained by the parties in their appeals. Furthermore, as for the substance of the appeal that may constitute a valid basis for review of the contested Verdict, the Appellate Panel notes that pursuant to Article 295(1)(b) and (c) of the CPC BiH the appellant must include in the appeal both the legal grounds for contesting the verdict and the reasoning behind the appeal.

17. In this respect, the appellant must identify the grounds on which he contests the verdict<sup>1</sup>, specify which part of the verdict, evidence or action of the Court he contests, and present clear arguments in support of his claim.

18. A mere impartial indication of the grounds of appeal, like indicating the alleged irregularities in the course of the first instance proceedings without specifying the ground of appeal that the appellant invokes, does not constitute a valid ground to review the first instance verdict. Therefore, the Appellate Panel dismissed as ungrounded all unreasoned and unclear grounds of appeal.

## **II. GROUNDS OF APPEAL UNDER ARTICLE 297 OF THE CPC BIH: ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS**

### **A. STANDARDS OF REVIEW**

19. A Verdict may, pursuant to Article 296 of the CPC of BiH, be contested on the grounds of essential violations of the provisions of criminal procedure. The essential violations of the criminal procedure are prescribed under Article 297 of the CPC of BiH. Given the gravity and importance of violations of the procedure, the CPC of BiH differentiates between the violations which, if their existence is established, create an irrefutable presumption that they negatively affected the validity of the rendered Verdict (absolutely essential violations)<sup>2</sup>, and the violations for which the Court evaluates, in each specific case, whether the established violation had or could have negatively affected the validity of the verdict (relatively essential violations).

20. If an essential violation of the criminal procedure provisions under Article 297(1) of the CPC BiH has been committed, with the exception of essential violations under Article 297(1)(f) and (j) of the CPC BiH, the Appellate Panel shall revoke the verdict in all such cases.

21. Where the appeal complains that a provision of the law was not applied or was misapplied, the Appellate Panel shall reassess whether such a violation had or could have

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<sup>1</sup> Pursuant to Article 296 of the CPC BiH (Grounds of Appeal) “[a] verdict may be contested on the grounds of: a) an essential violation of the provisions of criminal procedure; b) a violation of the criminal code; c) the state of facts being erroneously or incompletely established; d) the decision as to the sanctions, the forfeiture of property gain, costs of criminal proceedings, claims under property law and announcement of the verdict through the media.”

<sup>2</sup> Listed under Article 297(1) of the CPC BiH.

had a negative effect on the rendering of a lawful or proper verdict. Furthermore, it is not sufficient for the appellant to simply assert that the procedural violation could have *hypothetically* affected the rendering of a lawful or proper verdict, but it is necessary to explain that the violation is of substantial character, and that it indeed affected the rendering of a lawful or proper verdict. The mere fact that a provision of the law was not applied or was misapplied, in a situation where the Appellate Panel is satisfied that the violation was not of as substantial nature, and that a lawful and proper verdict was rendered notwithstanding the non-substantial procedural violation, does not have the character of an essential violation of criminal procedure provisions under Article 297(2) of the CPC of BiH.

22. Under Article 297(1)(k) of the CPC BiH it is prescribed that an essential violation of the provisions of criminal procedure will exist “if the wording of the verdict was incomprehensible, internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all or if it did not cite reasons concerning the decisive facts.”

23. The Appellate Panel will review any appeal on the basis of an essential violation of the provisions of criminal procedure under Article 297(1)(k) of the CPC of BiH through a *prima facie* analysis of the Verdict. The Appellate Panel will not, in examining whether, on the face of it, the wording is incomprehensible, internally contradictory or contradicted the grounds, or has no grounds at all or did not cite reasons concerning the decisive facts, consider whether the Trial Panel committed an error of fact or law as part of the analysis, but will only ensure that the Verdict formally contains all necessary elements for a well-reasoned and comprehensible verdict.

24. The Appellate Panel recalls that Article 297(1)(k) of the CPC of BiH is not a valid ground of appeal to contest the accuracy of facts established or not established by the Trial Panel. An error on establishing some decisive fact (incorrectly or incompletely established state of facts) under Article 299(1) of the CPC of BiH is the appropriate ground to contest the Verdict where the accuracy of the facts established or not established by the Trial Panel is contested. Appellants should confine appeals pursuant to Article 297(1)(k) to the formal character of the Verdict and should raise alleged errors of fact under Article 299.



## **B. APPEALS OF THE ACCUSED LJUBIŠA VRANJEŠ**

### **1. Appeal of the Accused Ljubiša Vranješ**

25. The Accused Ljubiša Vranješ filed an Appeal from the first instance Verdict, alleging essential violations of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH and incorrectly or incompletely established facts. However, having analyzed the substance of the Accused Vranješ's Appeal, the Appellate Panel concludes that it contains grievances that can exclusively be subsumed under the ground of appeal of incorrectly or incompletely established facts.

26. Therefore, the Appellate Panel will consider the grievances contained in the Accused Vranješ's own Appeal in the section of the Verdict addressing the issue of incorrectly and/or incompletely established facts, that is, grounds of appeal under Article 299 of the CPC BiH.

### **2. Appeal of the Defense Counsel Balaban for the Accused Ljubiša Vranješ**

27. Defense Counsel for the Accused Ljubiša Vranješ primarily argues in the Appeal that his client, when interviewed at the District Prosecutor's Office in Banja Luka on 8 September 2010, gave an honest and detailed account of what he knew about the incident in question and that both the Accused and he, as his Defense Counsel, were surprised by the Prosecutor's motion to order custody. His truthful account, as noted in the Appeal, caused a number of problems for the Accused, which he could have avoided had he accepted to give a statement as a witness. However, as the Defense Counsel submits, according to one of the fundamental principles of the criminal procedure referred to in Article 23 of the CPC BiH, the accused is not under any obligation to prove his innocence because the Prosecution bears the burden of proof.

28. In raising this objection, Defense Counsel for the Accused Vranješ does not invoke any specific ground of appeal. In view of its substance it remains unclear whether the Defense Counsel believes that the presumption of innocence has been violated and, if that is the case, what exactly constitutes the violation. As is evident from the Record of the Interview with the then suspect Ljubiša Vranješ<sup>3</sup>, he was cautioned that he was being interviewed as a suspect in the case and instructed about his rights in accordance with Articles 7, 8 and 143 of the Criminal Procedure Code of Republika Srpska (the CPC RS).

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<sup>3</sup> Record of interview with the suspect Ljubiša Vranješ number KT-RZ-5/10 dated 8 September 2010, District Prosecutor's Office in Banja Luka, Exhibit T-30.

The Accused Vranješ confirmed with his signature that he understood his rights and, upon the completion of the interview, that the record was a truthful representation of his statement. Additionally, the interview was attended by his Defense Counsel, attorney Nenad Balaban, who did not have any objections to the record. In light of the above and given that it cannot be concluded from the Appeal whether the Defense Counsel alleges a violation or misapplication of some fundamental principle of the criminal proceedings, while also failing to object to the unlawfulness of evidence (Suspect Interview Record), the Appellate Panel could not consider the merits of this objection as such, and therefore finds it to be *a priori* ungrounded.

29. The Appeal further argues that the Verdict contains essential violations of the criminal procedure provisions because the Court did not cite valid reasons concerning decisive facts, and because the Verdict is contradictory and incomprehensible in part, which is a result of erroneously or incompletely established facts.

30. As argued by the Defense Counsel for the Accused Vranješ in the Appeal, the First Instance Panel failed to properly apply the principle of free evaluation of evidence contained in Article 15 of the CPC BiH, which requires that all the evidence be evaluated individually and in correspondence with the other evidence. The Defense argues that the principle of free evaluation of evidence does not give the Court the freedom to take fragments of testimony, as was allegedly done in the first instance Verdict. Moreover, they argue that the First Instance Panel failed to take into consideration the Defense evidence, in particular the testimony of witnesses Zoran Popović, Zoran Mihajlović and Slobodan Radivojević, which is exculpatory evidence for the Accused. The Defense Counsel further argues that such conduct of the Panel, that is, its failure to evaluate the evidence in accordance with Article 15 of the CPC BiH, resulted in the Trial Panel's basing the Verdict on "unpermitted hypotheses and assumptions" uncorroborated by the presented evidence. As a result, the Defense submits that the contested Verdict does not provide valid reasons concerning the decisive facts. The Defense subsumes these objections under essential violations of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH, noting that this resulted in incorrectly or incompletely established facts. For this reason, these appeal arguments will be considered on both invoked grounds of appeal, primarily on the grounds of essential violations of the criminal procedure provisions.

31. The Appellate Panel concludes that these objections are without merit.

32. Contrary to the Counsel's appeal arguments, the Appellate Panel notes that an analysis of the first instance Verdict in its entirety indicates that one cannot conclude that it does not cite valid reasons concerning the decisive facts, as argued in the Appeal. Primarily, the structure of the reasoning of the first instance Verdict and the fact that it contains a number of sections providing an analysis of the evidence indicate that the First Instance Panel determined the decisive facts, which needed to be proven, and subsequently provided reasons that draw on the analysis of the evidence for each individual decisive fact.

33. It is true, however, that the reasoning of the first instance Verdict is based primarily on the testimony of witness Viktor Grgić and witness S-1, which in the view of this Panel is logical because these witnesses have first-hand knowledge about the incident in question: witness Grgić as the aggrieved party and the only eye-witnesses of the entire incident, and witness S-1 as the only person who was present at the time when the Grgić brothers were taken out of the house. This testimonial evidence, contrary to the Defense claims, was not evaluated selectively, nor were only fragments relevant to a convicting verdict taken from it. In contrast to this argument, it follows that the First Instance Panel evaluated the testimony of each of these two key witnesses individually, in correspondence with each other and in correspondence with the other evidence; and that based on this evaluation it determined the decisive facts. The Appellate Panel will consider whether the evaluation of evidence was sound and whether it resulted in correctly and completely established facts in its discussion of the grounds of appeal under Article 299 of the CPC BiH. However, the Appellate Panel rejects the Appeal argument that the evaluation of evidence was done selectively. The Appeal, when interpreting the testimonial evidence in the context of its arguments, refers to fragments of the witness testimony. In other words, when objecting that the Verdict does not cite valid reasons concerning decisive facts and stating the consequences of the alleged violation, the Defense Counsel, in fact, evaluates the evidence presented in the course of the first instance proceedings in the way the Defense interprets them, and unjustifiably claims that the evaluation of evidence was done in this manner by the First Instance Panel.

34. The Appellate Panel concludes that the arguments that the First Instance Panel failed to take into consideration the Defense evidence are also without merit. The First Instance Panel provided reasons on pages 41-43 of the contested Verdict as to why it did not consider the testimony of the Defense witnesses Zoran Mihajlović, Zoran Popović and

Slobodan Radivojević to be reliable and why it did not give credence to their testimony. Given that the First Instance Panel reviewed and evaluated this evidence and described the basis for its decision, the argument relating to the absence of reasons concerning decisive facts cannot be considered as having merit. In the section of this Verdict dealing with the issue of the grounds of appeal under Article 299 CPC BiH, the Appellate Panel will look at whether the findings by the First Instance Panel correspond to the facts as established by the sound analysis of the evidence.

### **C. APPEAL OF THE DEFENSE COUNSEL FOR THE ACCUSED MLADEN MILIĆ**

35. Defense Counsel for the Accused Mladen Milić argues in the Appeal that the portion of the Verdict that concerns the charges against the Accused Milić is contradictory to its reasoning because the evidence presented during the proceedings and explained in the Verdict does not reflect the state of facts as presented in its operative part. The Defense argues that it does not follow from the presented evidence that the Accused Milić reached Nenad Tešić's house together with the Accused Vranješ and another person, but that he stayed at the car park shared by the Tešić family and the police station. Additionally, the Defense argues that the Accused Milić had no knowledge of what was to be done with the Grgić brothers as he only had the role of a driver assigned to operate a motor passenger vehicle that night.

36. Having analyzed the appellate arguments of the Accused Mladen Milić, arguing that the operative part of the Verdict is contradictory to its reasoning, the Appellate Panel concludes that they are without merit. It should be noted that Counsel does not argue that the operative part of the Verdict is contrary to its reasoning, but rather that the evidence, as explained in the Verdict, does not reflect the state of facts as presented in the operative part of the Verdict. Such an objection can only relate to incorrectly or incompletely established facts, so the Panel will review it under that ground of appeal.

37. Furthermore, the Counsel point to deficiencies of the operative part of the Verdict, which, in their view, are reflected in the fact that the exact location of the commission of the criminal offense is not mentioned in the operative part, that there is no reference in the operative part of the Verdict, but only in its reasoning, to the fact that the Accused Milić was unarmed, that it is wrongly stated that the Accused Milić reached the Tešić house

together with the Accused Vranješ and another person because all the time he was alone at the parking lot shared by that house and the police station, that it is stated in the operative part of the Verdict that the Grgić brothers were „ordered“ to get out of the vehicle and keep walking, which, in the Defense's view, could not have been done by the Accused Milić because immediately upon his arrival at the building of the Municipality he returned to the police parking lot, and, finally, that it is stated in the operative part of the Verdict that the Accused Milić „backed away“, but it is not clear whether he backed away on foot or by car. The Defense argues that all of this resulted in essential violations of the criminal procedure provisions, but also incorrectly or incompletely established facts with respect to the status of the Accused and their exact location at the time of the incident.

38. In making these arguments, Counsel does not specify which essential violation of the criminal procedure provisions has been committed. The allegation suggesting that the operative part of the Verdict is incomprehensible is subsumed under essential violations of the criminal procedure provisions stipulated in Article 297(1)(k) of the CPC BiH. However, having analyzed the operative part of the Verdict from the formal aspect, the Appellate Panel concludes that it is not incomprehensible. Contrary to the appeal arguments, the operative part of the Verdict points to all elements of the criminal offense of which the Accused were found guilty, including the time and place of the commission of the criminal offense, as well as all the circumstances that characterize the offense both in the objective and subjective sense, and that are required for the existence of the criminal offense and guilt of the Accused. On the other hand, the Defense allegations aim to challenge the correctness and completeness of the established facts. Hence, the Appellate Panel will review these allegations in the section of the Verdict dealing with the ground of appeal under Article 299 of the CPC BiH.

39. At the public hearing scheduled by the Appellate Panel, the Accused Milić's Defense Counsel (Aleksandar Ilić) provided their position as to what constituted essential violations of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH. Primarily, he argued that the operative part of the Verdict is incomprehensible because the Accused Milić was found guilty as an accessory, while it is not clear from the operative part of the Verdict which acts of the Accused Milić constitute aiding and abetting, nor is any distinction made between the acts of the Accused Vranješ and Milić. Moreover, he argued that the operative part of the Verdict is incomprehensible because there is no description of the subjective element, intent of the Accused Milić in view of the fact that aiding and

abetting can be committed only with intent. By noting in the reasoning of the contested Verdict that „... the Accused Vranješ and Milić did not share the intention to kill with Goran Marković... [t]hey did not want the offense to be committed“, the First Instance Panel, in their view, denies the existence of intent on the part of the Accused Milić.

40. Contrary to these appellate arguments, the Appellate Panel concludes that it is clear from the operative part of the contested Verdict what specific actions were taken by the Accused Milić, which objectively constitute the acts of aiding and abetting the member of MP 7551 Banja Luka (hereinafter referred to as “Markan”) to murder the two Grgić brothers and seriously wound the third brother Viktor Grgić. It follows from the operative part of the contested Verdict that the Accused Milić, together with the Accused Ljubiša Vranješ and Markan, arrived in front of Nenad Tešić's house, in which the brothers Zdravko, Ivo and Viktor Grgić who were civilians were staying. The Accused Vranješ ordered these men to come with them for interrogation, and they were transported in a Ford Escort operated by the Accused Milić. He transported the Grgić brothers, the Accused Vranješ and Markan, to the building of the Kotor Varoš municipality. Upon arrival they were ordered to exit the vehicle and to move, one after the other, along the sidewalk in the direction of Teslić. The Accused, together with Markan (who was armed with an automatic rifle), escorted the prisoners by walking next to the Grgić brothers, whereas the Accused Vranješ, also armed with an automatic rifle, walked a few meters behind them. Finally when Viktor Grgić asked him (Milić) „Where are you taking us?“, he did not say anything in response but backed away. The acts of the Accused Milić have been fully individualized and concretized in the operative part of the contested Verdict and, therefore, the Appellate Panel concludes that the Appeal argument that the operative part of the contested Verdict is incomprehensible is without merit. Moreover, the Appellate Panel is satisfied that the nature and the manner in which the acts of the Accused Milić were carried out, as explained in the operative part of the Verdict, in terms of the subjective element, leave no room for any dilemmas concerning the awareness of the Accused, that is, that he acted with knowledge that his acts would assist in the commission of the crime. With respect to the objections concerning incorrectly or incompletely established facts, the Appellate Panel will review whether the presented evidence supports the state of facts described in the operative part of the contested Verdict, but, with regard to the allegation of essential violations of the criminal procedure provisions, the Appellate Panel concludes that these objections are without merit.

41. Counsel Ristić also argues that the contested Verdict is internally contradictory because there is a reference in its reasoning to the acts of aiding and abetting in the objective sense, physical aiding and abetting, but there is no explanation as to which specific acts of physical aiding and abetting were undertaken by the Accused. The Defense further argues that giving advice or moral support to the main perpetrator may also constitute aiding and abetting, and in the Defense's view it remains unclear whether the Accused Milić was found guilty of physical aiding and abetting or aiding and abetting in the form of advice or moral support to the main perpetrator.

42. Contrary to the appeal arguments of the Counsel, the Appellate Panel concludes that the fact that paragraph 186 of the contested Verdict lists the acts of the Accused, which the First Instance Panel found to constitute physical aiding and abetting, that is, physical assistance to another person in committing the criminal offense, and the fact that the next paragraph 187 explains that encouragement or moral support may also constitute aiding and abetting, does not make the contested Verdict internally contradictory. Following a comprehensive analysis of the relevant section of the reasoning of the contested Verdict dealing with *actus reus* and *mens rea* of the Accused, it becomes clear to any objective observer that, unlike paragraph 186 which essentially describes the acts of the Accused in the present case, paragraph 187 talks about aiding and abetting in general and the ways in which this mode of criminal liability may be incurred. For these reasons the Appellate Panel concludes that this objection by the Defense for the Accused Milić is without merit.

### **III. GROUNDS OF APPEAL UNDER ARTICLE 299 OF THE CPC BIH: INCORRECTLY OR INCOMPLETELY ESTABLISHED FACTS**

#### **A. STANDARDS OF REVIEW**

43. The standard of review in relation to alleged errors of fact to be applied by the Appellate Panel is one of reasonableness.

44. The Appellate Panel, when considering alleged errors of fact, will determine whether any reasonable trier of fact could have reached that conclusion beyond a reasonable doubt. It is not any error of fact that will cause the Appellate Panel to overturn

a Verdict, but only an error that 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.

45. 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 recalls, as a general principle, 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 by a Trial Panel.

46. The Appellate Panel may substitute its own finding for that of the Trial Panel only where a reasonable trier of fact could not have reached the original Verdict, the evidence relied on by the Trial Panel could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is „wholly erroneous“.

## **B. APPEALS OF THE ACCUSED LJUBIŠA VRANJEŠ**

### **1. Appeal of the Accused Ljubiša Vranješ**

47. In his Appeal, the Accused Vranješ presented chronologically his own version of the incident in question, implying that the Court incorrectly established decisive facts.

48. In this context, the Accused Vranješ argued that witness Danko Kajkut, on whose testimony, among others, the first instance Verdict relies, gave a false testimony, and that his claim that he had told Witness S1 that one of the Grgić brothers was alive was not true because even Witness S-1 herself said that she had heard it from Želimir Brkić.

49. Having reviewed the testimony of Witness S-1 from the main trial and the testimony of witness Danko Kajkut, the Appellate Panel concludes that the objection to the allegedly false testimony of witness Danko Kajkut is without any merit. It follows from the testimony of Witness S-1 that the morning after the Grgić brothers had been taken out of her house, Željko Brkić, who worked in the labor detail, came to her husband's shed and told her that earlier that morning they found bodies of Ivo and Zdravko Grgić near the Memorial to the fallen heroes from World War II, while Viktor Grgić was most probably alive. As the witness explained, she did not talk directly to Želimir Brkić, but by the look on her husband's face who was standing in the yard together with him and knowing what type of work Želimir



Brkić was doing in those days, she knew that he came for a reason. She learned later on from Danko Kajkut that Viktor Grgić indeed survived the incident, which witness Danko Kajkut confirmed when he testified at the main trial. Witness Kajkut testified that he told Witness S-1 that he had information that Viktor Grgić was alive and may not have known that Witness S-1 had already heard about the death of the Grgić brothers from another source. Therefore, the Appellate Panel concludes that the Appeal argument questioning the correctness of the established facts and credibility of witness Kajkut is without merit. Besides, this particular circumstance, regardless of who initially told Witness S-1 about the incident in question, could not have any bearing on the conclusion about the decisive facts concerning the murder of two brothers and serious wounding of the third. Potentially, it could have an effect on the issue of credibility of witness Kajkut, but, as already indicated above, the Accused Vranješ's objection to this effect was unsuccessful.

50. Furthermore, the Accused Vranješ argued that Viktor Grgić's testimony that he used to see the Accused Vranješ during the entire time of his detention at Nenad Tešić's house and his interrogation at the MUP /Ministry of Interior/ Kotor Varoš, and that Grgić had known him by his nickname of "Kubura", were not true given that, as he put it, he came to Kotor Varoš only 5 days before the incident in question and he did not have that nickname at the time, but got it only later.

51. Contrary to the appeal arguments of the Accused, Witness S-1 and Viktor Grgić, whose testimony was accepted by the First Instance Panel as truthful and reliable, clearly described that they knew the Accused Vranješ from before by his nickname „Kubura“, and that they used to see him prior to the incident in front of Tešić's house in the yard shared by the Tešić's family and the police station. Also, the Accused Vranješ himself did not dispute the fact that he had been at the place where the incident occurred, which was confirmed – apart from Witness S-1 and Viktor Grgić – by other witnesses (both Prosecution and Defense witnesses) who had indirect knowledge of that fact. Bearing in mind that both Grgić and Witness S-1 identified the Accused Vranješ at the main trial as the person with the nickname of „Kubura“ who came in front of Tešić's house for the Grgić brothers on that critical night, the Appellate Panel is satisfied that there is no question as to his identity. As for the objection concerning the time when the Accused Vranješ got this nickname, the Appellate Panel concludes that it has no relevance to establishing the decisive facts.

52. Furthermore, in his Appeal the Accused Vranješ refers to the part of

witness Grgić's testimony where he said that he clearly saw Markan shooting, but did not see the Accused Vranješ fire his weapon, and had the Accused Vranješ wanted to shoot, he (Grgić) would have been dead. As for the incident itself, the Accused Vranješ stated that they had stopped the car before reaching the Municipal building, having passed the Fire Station. They walked past the Municipal building in the direction of the old prison when Viktor Grgić told his brothers to escape and they tried to do so. Markan reacted instinctively and fired at the brothers, killing two and seriously wounding Viktor Grgić who survived. In the view of the Accused Vranješ, this is confirmed by the testimony of Witness Grgić who said that no one went after him nor was anyone looking for him. Further, he argued that there was no intention to deprive the Grgić brothers of their lives and that he was in a state of shock after the incident, which is why he did not know when or with whom he had returned to the police station.

53. Contrary to the arguments of the Accused and following a conscientious review of the evidence, in particular witness Grgić's testimony, the Appellate Panel concludes that the Accused Vranješ correctly described witness Grgić's testimony in the part in which he mentioned who fired on them and the role of the Accused Vranješ in this incident. The fact that the Accused Vranješ did not fire on the Grgić brothers is evident also from the reasoning of the first instance Verdict, and is the basis for the Accused Vranješ being found guilty as an accessory in the commission of this criminal offense. However, the Appellate Panel notes that, in reference to this witness's testimony, the Accused Vranješ overlooks certain details that point to the existence of his awareness that they were not taking the Grgić brothers to the prison, contrary to his appeal arguments.

54. It follows from the testimony of the witness Viktor Grgić that during the entire trip from Nenad Tešić's house (where he and his brothers had been placed under house arrest) to the place where the car stopped, there was no conversation at all between the Accused and the third person who was with them. Again, without any exchange of words between the Accused themselves and with Markan, Viktor Grgić and his brothers were ordered to exit the vehicle and move, one after another, along the sidewalk in the direction of Teslić. Finally, there was no communication between the Accused Vranješ and Milić and Markan as they passed the Municipal building and continued towards the edge of the town, where, as depicted in the video evidence<sup>4</sup>, there is no building that resembles a prison or investigative facility but only a small park with a Memorial to the fallen heroes

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<sup>4</sup> Exhibit T-1.

from World War II. If the claim of the Accused Vranješ that he thought they were taking the Grgić brothers to the old prison behind the Municipal building were true, when they passed the walkway leading to the old prison at the latest it would be reasonably expected that he would have asked Markan where they were going. This moment was significant for witness Grgić, too, because, having realized that he and his brothers were not being taken to the prison behind the Municipal building, he asked the Accused Milić "Where are you taking us?" The Appellate Panel concludes that all these circumstances suggest that the Accused Vranješ, contrary to the appeal arguments, knew and was aware of what was going to happen to the Grgić brothers and that he desired or at least consented to the occurrence of the above indicated consequences. Although the Accused Vranješ did not directly fire on the Grgić brothers, as correctly established by the First Instance Panel, it does not exonerate him from the guilt of having participated in the incident in question as an accessory, which will be explained in more detail in later sections of this Verdict.

#### **Appeal of the Defense Counsel Balaban for the Accused Ljubiša Vranješ**

55. Defense Counsel Balaban for the Accused Ljubiša Vranješ argued in the Appeal that the Prosecution failed to present evidence suggesting that the Accused acted upon previous agreement, for which they were found guilty. He submits that even the Prosecutor said that an agreement did not exist, but that it is assumed that an agreement existed because the Accused did not react to Markan's fire. As Counsel Balaban argued, contrary to the finding by the First Instance Panel, the Accused Vranješ, as the duty police officer acting upon the order of his superior command, had to transfer the Grgić brothers from Nenad Tešić's house to the prison located behind the Municipal building.

56. Counsel Balaban argued that this is corroborated by the testimony of witness Viktor Grgić who clearly described the brothers' movements once they exited the vehicle, and Markan's position in relation to them. The witness noted that at the moment when Markan started shooting, the Accused Vranješ was about 5 meters behind them and outside of his (Viktor's) field of vision. This witness further testified, as argued in the Appeal, that Markan was the person who ordered that he and his brothers get out of the car, and whose voice he recognized at the time. Furthermore, Counsel Balaban alleged that the testimony of witness Slobodan Radivojević was, in his view, unjustifiably overlooked by the First Instance Panel merely because this witness provided the wrong date of the incident. In spite of that fact, Defense Counsel submits that judging by the logical coherence and the amount of detail in his testimony it was clear that this witness spoke of the incident

relevant to the present case. He testified that Markan acted upon Slobodan Dubočanin's order to find 2-3 men to take the Grgić brothers to prison and that, although he did not know who had been engaged by Markan to carry out the order, he (Radivojević) heard the next day that two of the brothers had been killed. Counsel Balaban further argued that this evidence is corroborated by witnesses Darko Grujić, Zoran Popović and Zoran Mihajlović, whose testimony was also overlooked by the First Instance Panel. They testified that Slobodan Dubočanin was the most senior officer, that he was the only one who could issue orders, while the Accused Vranješ, according to witness Grujić's testimony, could not issue any orders. Witness Popović testified that on the critical night, when it was requested of him to transport the Grgić brothers to prison, the Accused Vranješ was on duty near the MUP building.

57. As a result of these errors, Counsel Balaban argued that the First Instance Panel wrongly determined that with the exception of witness Radivojević (whose testimony was not considered to be credible by the First Instance Panel), no other witness confirmed that the order to take the Grgić brothers to prison had been issued by Slobodan Dubočanin. In fact, according to the Defense, witnesses Zoran Popović and Zoran Mihajlović confirm this decisive fact in their testimony.

58. In raising this objection, Counsel Balaban overlooks the fact that the First Instance Panel changed the legal qualification of the offense in the contested Verdict, finding that as a result of the lack of evidence on the existence of the "previous agreement" between the Accused and Markan, as well as deficiencies in the factual description of the Indictment related to the substance of the alleged previous agreement, the acts of the Accused Vranješ and Milić do not satisfy the elements of co-perpetration, as charged in the Indictment. Instead, the First Instance Panel found them guilty as accessories in the incident in question. Contrary to the appeal arguments, the First Instance Panel correctly noted that „[i]n the case of aiding and abetting, no proof is required of the existence of a common concerted plan between the aider (or abettor) and the person or persons who committed the criminal offense.“ Since the evidence indicates that the Accused were aware that by their actions they assisted Goran Marković in committing the criminal offense and since an accessory is individually responsible for the committed criminal offense under Article 180(1) of the CC BiH, the First Instance Panel found them guilty as accessories in the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH.

59. Further, as noted above, in response to allegations concerning essential violations of the criminal procedure provisions, Defense Counsel Balaban argued without any factual basis that the First Instance Panel overlooked the testimony of Defense witnesses or considered only fragments of their testimony. In the context of the assessment of decisive facts, the Appellate Panel notes that it was defense counsel, not the first instance panel, that selectively interpreted the evidence and took into consideration only fragments of testimony. With respect to the testimony of witness Grgić, (contrary to the appellate arguments) this witness was not clear on who ordered him and his brothers to exit the vehicle, after they had arrived in front of the Municipal building. It follows from his testimony that he is not sure whether they were ordered to exit the vehicle by the Accused Vranješ or „Markan”. However, it is clear that the order was issued, that the Grgić brothers obeyed it, that they moved along the sidewalk in the direction of Teslić accompanied by armed persons (except for Milić) and the Accused Milić, and that ultimately two brothers were killed while the third one was seriously wounded.

60. Counsel Balaban correctly noted that witness Grgić testified that when Markan started shooting he did not see the Accused Vranješ in his field of vision. However, the Appellate Panel concludes that this fact is not of decisive importance for the existence of the criminal offense as the Accused Vranješ's contributed to its commission as an accessory. It follows from the testimony of witness Grgić that the Accused Vranješ was the person who together with Markan came to the door of Nenad Tešić's house and ordered the Grgić brothers to come with them. The Accused Vranješ was in the vehicle that transported the Grgić brothers to the Municipal building, and was present when they were ordered to exit the vehicle. The Accused Vranješ then accompanied them, proceeding at the distance of 3-4 meters behind the Grgić brothers while armed with an automatic rifle. He was also present at the place where the two brothers were executed while Viktor Grgić was seriously wounded. In his investigative statement<sup>5</sup>, the Accused Vranješ did not dispute that he was present at the time when Markan started firing at the three brothers, but states that he was approximately 5 meters behind the Grgić brothers and that from the place where they got off the car to the place where they were shot, they covered the distance of about 5 meters. On the basis of Viktor Grgić's testimony and the recording of the visit to the site where witness Grgić showed the places where the car stopped and where they were shot, it can be concluded that from the time they left the vehicle the Grgić brothers covered a somewhat greater distance than what the Accused Vranješ suggested

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<sup>5</sup> Record of interview with the suspect Ljubiša Vranješ, number KT-RZ-5/10 dated 8 September 2010.

in his statement (approximately 20 as opposed to 5 meters). Therefore, the Appellate Panel concludes that this fact, as suggested by the Accused Vranješ's investigative statement, in no way casts any doubt on the fact that he was present at the time and place of the incident.

61. Furthermore, with respect to the testimony by witnesses Popović and Mihajlović, it is accurate that the witnesses confirmed that Slobodan Dubočanin was the superior to the units to which Markan and Milić belonged and that he, Dubočanin, as the witnesses stressed, was the only one who could issue orders. Witness Zoran Popović also confirmed that vehicle travel logs had to be issued by Slobodan Dubočanin or someone he authorized, adding that he did not see Dubočanin at the Police Station that night. Furthermore, it is beyond dispute that on the relevant day the Accused Milić was issued with the vehicle that transported the three Grgić brothers to the site where they were executed/wounded. However, witness Mihajlović did not indicate who, if anyone, ordered that the Grgić brothers be taken from the house where they stayed (Witness S-1's house) and sent to the prison. Taking this evidence into consideration, it is clear that none of the witnesses, as erroneously claimed by Counsel for the Accused Vranješ in his Appeal, unequivocally confirmed that Slobodan Dubočanin ordered that the Grgić brothers be taken to prison, with the exception of Witness Slobodan Radivojević whose testimony the Court did not rely on. In finding that Witness Radivojević's testimony was not reliable, the First Instance Panel was not, as argued in Defense Counsel's Appeal, solely guided by the fact that the witness stated that the incident occurred on the eve of St. Peter's Day, 6 July 1992 (which proved to be wrong) but also by the fact that his testimony contradicts every other piece of evidence presented. Thus, as properly assessed by the First Instance Panel, none of the witnesses confirmed hearing Slobodan Dubočanin issue the order to the Accused Markan, nor could one claim with certainty that he was there at all at the Police Station on the night in question. Moreover, the fact that the Accused Vranješ and Milić were members of different formations suggests that they could not receive orders from the same command; nor could Markan, as a member of military structures, issue orders to the Accused Vranješ as a police officer of the Banja Luka CJB. In particular, the impugned Verdict's finding that the relevant event was not the result of an incident involving only Markan is reasonable and supported by the fact that neither the Accused Vranješ nor the Accused Milić reported the incident or advised anyone thereof. Moreover, in this Panel's view, the fact that the Accused did not communicate during the ride from the house of Witness S-1 to the place where the vehicle stopped and the Grgić brothers were

ordered to proceed on foot in the direction of Teslić (including even at the moment as they were crossing the path leading towards the Municipal building where according to the Accused and the witnesses the old prison was located), supports the First Instance Panel's determination that there was no order or intention to take the Grgić brothers to the prison behind the Municipal building for interrogation. On the contrary, this Panel holds that the First Instance Panel could have reasonably established these facts from the evidence – the Grgić brothers were taken out of the house they were held in order to be murdered.

62. Furthermore, Defense Counsel maintained in his Appeal that the First Instance Panel erred in finding that the Grgić brothers were civilians<sup>6</sup>. According to Counsel, that fact was established erroneously, which resulted in the erroneous legal qualification of the offense. In that context, Counsel argued that the imprisonment of the Grgić brothers was not unlawful, since they possessed illegal weapons and were involved in supplying weapons, which he claims was confirmed by Viktor Grgić himself. He further argues that Witness Brkić, and even Witness S-1 confirmed that, while under house arrest in Tešić's house, the Grgić brothers were interrogated by authorized officials about such circumstances.

63. The Appellate Panel dismisses such arguments as unfounded.

64. The First Instance Panel addressed the issue of status of the Grgić brothers as one of the decisive facts in the present case and found, contrary to Defense appeal arguments, that the Grgić brothers were civilians, and this Panel concludes that this finding is proper. The Panel notes that Viktor Grgić, Witness S-1, witnesses Muhamed Sadiković, Želimir Brkić and Milka Grgić testified about the status of the Grgić brothers at the relevant time. Witness-aggrieved party Viktor Grgić, Witness S-1, and other witnesses, who were eyewitnesses to the events related to the time the Grgić brothers spent in detention/imprisonment on the Police Station premises and at Nenad Tešić's house, all indicated that the Grgić brothers wore civilian clothes the whole time. This fact is additionally corroborated by the reports of exhumation of mortal remains of Ivo and Zdravko Grgić<sup>7</sup> and the supporting photo documentation<sup>8</sup>, indicating that the brothers Zdravko and Ivo Grgić wore civilian clothes. Moreover, Witness Ejub Bašić, the doctor who

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<sup>6</sup> Citing Defense documentary evidence: List of killed HVO members, issued by the Welfare Administration of the Ministry of Defense of the Croatian Community "Herceg-Bosna", statements by witnesses Muhamed Sadiković and Želimir Brkić, and statement by Witness Viktor Grgić.

<sup>7</sup> Exhibit T-7.

<sup>8</sup> Exhibits T-5 and T-6.

cleaned and dressed Viktor Grgić's wounds the day after Grgić was wounded, stated that the aggrieved party Viktor Grgić was wearing a T-shirt and summertime trousers.

65. The conclusion by Counsel for the Accused Ljubiša Vranješ that the Grgić brothers were army members at the time of their arrest relies on the fact that they possessed illegal weapons; and for that reason, their capturing constituted a legitimate military goal. Contrary to such claim, this Panel notes that the aggrieved party Viktor Grgić described in detail the situation about the weapons as well as his status and that of his brothers at the time and just before their deprivation of liberty. According to his testimony, he and his brothers were not army members at the time when they were deprived of liberty. As for his brother Zdravko who was married to a Serb woman, he pointed out that Zdravko had been called up to join the reserve forces, but he never responded. This was also confirmed by Witness Milka Grgić, the wife of the deceased Zdravko Grgić. Witness Viktor Grgić further noted that he owned a licensed pistol, adding that he bought a rifle from Serb reservists because of the tense situation in Kotor Varoš. He reported possessing those weapons to the Kotor Varoš Police station on a number of occasions, and ultimately surrendered them on the morning when the Serb forces captured Kotor Varoš and when he and his brothers were deprived of liberty. Witness S-1, too, confirmed that the Grgić brothers were not in the military and that they wore civilian clothes. The civilian status of the Grgić brothers was additionally confirmed by Defense witnesses Muhamed Sadiković (alleging that the Grgić brothers wore civilian clothes prior to their arrest), Zoran Popović and Zoran Mihajlović.

66. Witness Milka Grgić, the wife of the murder victim Zdravko Grgić, gave evidence to the effect that her late husband and his brother Viktor were civilians, that they were in the catering business, and that her husband "arranged" with the local authorities not to be sent to the military. The witness corroborated Witness Viktor Grgić's testimony about an insecure and tense situation in Kotor Varoš, mentioning, among other things, a hand grenade being thrown at their establishment; according to Witness Viktor Grgić's testimony, all that motivated him to buy a rifle.

67. Contrary to Defense Counsel's submissions, and as properly found in the impugned Verdict, the fact that the Grgić brothers were placed under house arrest (in Nenad Tešić's home) after spending several days in detention at the Kotor Varoš CJB unequivocally suggests that they did not have the status of prisoners of war. In addition, regarding Defense Counsel's submissions that Viktor Grgić and his brothers were not civilians because they were interrogated by authorized officials on the subject of



weapons possession, the Panel notes that there is nothing disputable about that fact. Witness Viktor Grgić and Witness S-1 both confirmed that the interrogation of the Grgić brothers involved the issue of weapons possession as well. However, in this Panel's view, one must not disregard the testimony by Witness S-1 who said that Viktor was interrogated over a cup of coffee and drinks, without any harassment, and that all that was “nonsense” because the Grgić brothers did not have weapons.

68. With regard to the documentary evidence referred to in Defense Counsel's Appeal, this Panel holds that the First Instance Panel could have reasonably found that the evidence does not support Counsel's claim that the Grgić brothers did not have the status of civilians. In assessing the evidence, one must not disregard the testimony by Defense witness Muhamed Sadiković. This witness, whose testimony was considered by the First Instance Panel, emphasized that the HVO retroactively compiled lists of killed soldiers, in 1993 and 1994, in order to give financial aid to the families of the Croats who were killed<sup>9</sup>. According to this witness, such lists were compiled by Bosniacs as well, also retroactively. The accuracy of the witness's testimony is additionally supported by the fact that the list referred to in Defense Counsel's Appeal is dated 28 May 1994, hence it was compiled almost two years following the incident in question.

69. Based on the foregoing, this Panel concludes that the First Instance Panel could have reasonably found that the Grgić brothers did not have the status of prisoners of war at the time of their arrest.

70. Finally, in challenging the facts as established in the first instance Verdict, Counsel noted that the First Instance Panel properly determined that the Accused Vranješ and Milić were not co-perpetrators in the criminal offense in question. Counsel added that the Accused could not have been accessories either, because accessories are required to possess intent; more precisely, it must be shown that they were aware that their acts help another commit a prohibited act and they are required to be aware of elements of the offense they aided, which was not the case here.

71. Notwithstanding the fact that Counsel for the Accused Vranješ, when raising appeal grounds for challenging the first instance Verdict, does not include violation of the Criminal Code, this Panel finds that those arguments, by their substance, need to be subsumed

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<sup>9</sup> This witness's testimony is corroborated by the testimony of Witness Milka Grgić, stating that four years after her husband's murder she started receiving financial support in the amount of 300 KM per month.

under the said appeal ground. Those arguments will therefore be presented when considering the appeal ground under Article 298 of the CPC of BiH.

**C. APPEAL BY COUNSEL FOR THE ACCUSED MLADEN MILIĆ**

72. In challenging the established facts in the impugned Verdict, Defense Counsel phrased the appeal arguments in the same manner as advocated during the first instance proceedings. To wit, the appeal argues: that the Accused Mladen Milić did not participate in any way in taking the Grgić brothers out of Nenad Tešić's family house; that he did not know that the Grgić brothers were supposed to be taken out on the night in question (he was only requested to take them for interrogation because he happened to be with the vehicle on the parking area in front of the Police Station); that he had no connection whatsoever with the actions involving the murder of two brothers and the wounding of one brother and, finally, that the Accused Milić was not present when the Grgić brothers were shot. In contrast, the Appeal does not dispute that the Accused Mladen Milić used the motor vehicle he was issued with on the night in question to drive the Grgić brothers from the Kotor Varoš Police Station parking area to a location between the Fire Station and the Municipality building, from which they were taken to the execution site.

73. Defense Counsel's main argument that the Accused Milić did not come to Nenad Tešić's house relies on an analysis of Witness S-1's testimony given at the main trial; this witness is, in addition to the witness-aggrieved party Viktor Grgić, the only person who witnessed the Grgić brothers being taken from the house where they were being held under house arrest. This witness gave a detailed account at the main trial, stating that on the night in question someone knocked on the door to Nenad Tešić's house, that she opened the door and saw persons nicknamed "Kubura" and "Markan" wearing uniforms and carrying weapons. Kubura said that they came to take Viktor and the brothers for interrogation. In her investigative statement, the witness stated that there were three persons outside the door, one of them being the Accused Milić. At the main trial, however, the witness corrected herself, explaining that it was possible due both to the passage of time since the incident and the conversation she in the meantime had with the aggrieved party Viktor Grgić that she made a mistake and that the Accused Milić might not have been at the house door.

74. Contrary to the appeal argument, this Panel concludes that the First Instance Panel's assessment of Witness S1's testimony is reasonable and supported by

the evidence. Nonetheless, the Panel notes that the issue whether the Accused Mladen Milić came on the night in question to the door of the house where the Grgić brothers were being held or, as argued in the Appeal, whether he was on the parking area in front of the Police Station, is not of decisive importance if it is established that Nenad Tešić's house was in close vicinity of the Police Station and that there was a shared parking area. This fact, that the parking area was in close vicinity of the house where the Grgić brothers were being held, is supported by the evidence (documentary evidence and witness testimony), and can also be seen on the photographs and video recording of the crime scene<sup>10</sup>. According to Witness S-1's testimony, when "Kubura" and "Markan" came to the door of Nenad Tešić's house to take custody of the Grgić brothers, she saw a passenger motor vehicle on the parking lot with the headlights on; she could not identify the vehicle but assumed it was a *Ford Escort* that she used to see within the perimeter of the Police Station. She could not say if she saw anyone inside or standing by the vehicle.

75. The Panel has correlated this witness' testimony with that of Witness Viktor Grgić, the aggrieved party and the sole eyewitness to the entire incident. He testified that three persons came for him and his brothers on the night in question. The Accused Vranješ was at the door, while the other two men were standing next to him. When explaining where the two other men were, the witness alleged that someone was by the vehicle, but that "they were all there, in that front yard, 5-6 meters away". However, even accepting the Defense claim that the Accused Mladen Milić did not approach the door to Nenad Tešić's house but stayed on the parking area by the automobile, it still would not affect the verdict.

76. However, contrary to arguments of Counsel for the Accused Milić, this Panel cannot accept the Defense contention that he did not know that the Grgić brothers were being taken anywhere that critical night, but that he only happened to be with the service vehicle on the CJB parking lot, having just returned from Banja Luka, when, as part of his official duty, he was told to drive Vranješ, Markan and the three Grgić brothers to the Municipality building. He believed that they were being taken for interrogation, and that it was his "moral obligation", considering that it would be safest if he drove them.

77. Contrary to appeal arguments analyzing the course of the relevant incident by using fragments of witness testimony, making a proper conclusion about the said decisive facts requires the examination of the incident as a whole. Specifically, according to Witness Viktor Grgić's testimony, there was no communication between the Accused Vranješ, the

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<sup>10</sup> Video recording and photographs of the First Instance Panel's on-site visit on 5 October 2011.

Accused Milić and Markan; the witness and his brothers were ordered to enter the vehicle, followed by Milić who sat on the driver's seat, Markan was in the passenger seat and Vranješ who was in the trunk, whereupon the vehicle set out. Nor was there any communication between the Accused and Markan during the ride. In the Panel's view, this suggests that both accused, as well as Markan, knew where the Grgić brothers were being taken. In that context, one also needs to take into consideration the fact that the incident occurred late in the evening, after 22.00 hours, and that the Accused Milić had knowledge (not contested by Defense Counsel's Appeal) that the Grgić brothers had already been under house arrest at Nenad Tešić's house for quite some time.<sup>11</sup> Therefore, at a minimum, it would be suspicious why these persons, who were civilians, were being removed from the house arrest late in the night for any kind of interrogation; if the Accused Milić was not aware of the intention of taking the Grgić brothers out on the night in question, after he was requested to transport these persons it would reasonably be expected that at least a question would be put to the persons requesting such transportation.

78. Furthermore, the vehicle stopped upon arrival at the location between the Fire Station and the Municipality building, and the Grgić brothers were ordered to exit. Counsel's Appeal further indicates that the facts in the impugned Verdict were established erroneously because the operative part states that the Grgić brothers "were ordered" to alight from the vehicles, although Witness Grgić was decisive in his testimony that Markan was the one that issued the order; Counsel argued that the Accused Milić is accordingly unjustifiably charged with issuing the cited order.

79. The argument that the facts have been established erroneously is dismissed by this Panel as unfounded. It is beyond dispute that the Accused Milić stopped the vehicle upon arrival at the location in the vicinity of the Municipality. Although it is accepted (as argued by Defense Counsel), that the Accused Milić was not the one who ordered the Grgić brothers to alight from the vehicle, Witness Grgić, contrary to appeal arguments, could not say with certainty who among the present persons ordered him and his brothers to alight from the vehicle. Thus, failing to specify whether it was the Accused Vranješ or Markan, the witness, however, did not dispute the fact that one of those two men ordered them to come out and start walking along the curb towards Teslić. Furthermore, the witness described in detail how he and his brothers were walking in a single file, how the accused

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<sup>11</sup> According to Witness S-1's account, they spent three weeks under house arrest.

Vranješ was 4-5 meters behind them carrying an automatic rifle, how the accused Milić was walking to his left and carried no weapons, and how Markan was behind the Accused Milić, and armed with an automatic rifle.

80. In the view of this Panel, the fact that the Verdict's Operative Part did not emphasize that the Accused Milić was not armed does not amount to facts being established incompletely, as argued in Defense Counsel's Appeal. The Verdict's Operative Part does not suggest that the Accused Milić carried any weapons, and the Verdict's reasoning section, through an analysis of the testimony, explains that Witness Viktor Grgić, Witness S-1 and the Accused Vranješ did not confirm that the accused Milić was armed. Therefore, contrary to Counsel's arguments, the fact that the Verdict's Operative Part does not indicate that the Accused Milić did not have any weapons but merely indicates that he was wearing a T-shirt and camouflage trousers, does not suggest that he was armed, which would then lead to an erroneous establishment of facts.

81. Finally, the Appellate Panel dismissed as unfounded the argument of the Accused Mladen Milić indicating that the Accused was not present at the scene when Markan opened fire. In this Panel's view, Counsel's claim that "backing away" of the Accused Milić referred to by Witness Grgić was in fact the Accused's leaving the scene (corroborated by the fact that the Accused was not in Witness Grgić's field of sight when the shooting commenced) has no foundation whatsoever. The same also applies to Counsel's claim that the facts in the Verdict were established incompletely because the issue whether Witness Grgić saw the automobile that transported them at the moment when the shooting commenced has not been elucidated. Contrary to Counsel's claim, this Panel notes that the issue of the vehicle being in Witness Grgić's field of sight---bearing in mind that the Grgić brothers covered a considerable distance after the vehicle stopped and they exited, and the fact that Witness Grgić ran in the opposite direction from the spot where the vehicle stopped---is of no relevance to the issue of presence of the Accused Milić during the incident.

82. The Panel notes that Witness Grgić testified about speaking to the Accused Milić. Specifically, he asked him where they were being taken when he realized that they passed by the road leading to the Municipal building where he assumed the prison was located. That is when the Accused Milić started to move away. While it is also true that the witness testified that the Accused Milić was not in his field of sight when the shooting commenced, the Defense's claim that the accused left the scene is not supported by the facts. Rather,

according to Witness Viktor Grgić, at the moment when the accused Milić started moving back (after failing to answer the witness's question about the location where he and his brothers were being taken to), Markan cocked his rifle and opened fire immediately thereafter. Therefore, this Panel concludes that the First Instance Panel could have reasonably and properly found that, based on the testimony by Viktor Grgić as the only eyewitness to the incident in question, the time between the moment when the witness asked the Accused Milić where they were taking him and his brothers and the moment when Markan cocked his rifle and opened fire was too short of a time for the Accused Milić to go anywhere. In addition, the accused Vranješ, when describing the relevant incident in his investigative statement, confirmed Witness Grgić's contentions regarding their presence at the scene. Specifically, he indicated that he and the Accused Milić were present but emphasized that they were taken by surprise as they did not expect Markan to start shooting. Consequently, this Panel, concludes that the First Instance Panel could have reasonably found the backing away of the Accused Milić as an act aiding in the perpetration of the criminal offense, which will be addressed in detail in the Verdict's section on violations of the Criminal Code.

83. Finally, the Appellate Panel will consider the oral submissions provided by Attorney Ilić (as Counsel for the Accused Mladen Milić) at the appellate session, alleging that the First Instance Panel's finding that the Accused Milić aided in the perpetration of the criminal offense was erroneously established. The Accused argues that no evidence was presented during the first instance proceedings indicating that the Accused Milić intentionally aided Markan in perpetrating the criminal offense in question. Consequently, Defense Counsel submits that the Accused Milić's acts consisting of the transportation for interrogation and then backing away did not contribute to the perpetration of the criminal offense; rather, since the Accused Milić knew nothing of further treatment of the Grgić brothers, the *mens rea* element of aiding is missing and it cannot be determined whether the Accused Milić intended to aid in the perpetration of the offense or was aware of the acts and the ensuing prohibited consequence. The Appeal further argues that the First Instance Panel's finding concerning the decisive facts relies on circumstantial evidence that may be used as evidence in criminal proceedings, but only if it is logically linked and suggests only one possible conclusion. In the case in question, Defense Counsel argues that the Accused Milić had good reason to believe that he was transporting the Grgić brothers to prison.

84. The Panel has already provided the reasons for finding that the Accused Milić was aware that he was aiding Markan's impermissible act, and those reasons will not be reiterated at this point<sup>12</sup>. With regard to the act of backing away by the Accused Milić, the Trial and Appellate Panels concluded that this was an act that, together with his transporting and escort of the Grgić brothers, aided in the perpetration of the offense. In light of the position of the accused and the Grgić brothers, and the position of Markan, as stemming from the evidence<sup>13</sup>, this Panel concludes that the First Instance Panel could have reasonably found that the Accused Milić, by moving back, „created room“ for Markan to fire those shots. However, as the Panel will address the issue of *mens rea* and *actus reus* of aiding in the context of appeal arguments relative to violations of the Criminal Code, it will not further elaborate on this appellate argument at this point in order to avoid unnecessary repetition.

85. Based on the foregoing, this Panel holds that the First Instance Panel made reasonable and proper findings concerning the decisive facts by relying on the evidence produced during the first instance proceedings. Furthermore, Defense Counsel's arguments claiming that the impugned Verdict relies on mere assumptions and that the facts in the Verdict have been established erroneously are unfounded as being without merit.

#### **IV. APPEAL GROUNDS UNDER ARTICLE 298 OF THE CPC OF BIH: VIOLATION OF THE CRIMINAL CODE**

##### **A. STANDARDS OF REVIEW**

86. An appellant alleging an error of law must identify, at least, the alleged error, present arguments in support of his claim and explain how the error affects the decision resulting in its unlawfulness.

87. Where the Appellate Panel concludes that the Trial Panel committed an error of law but is satisfied as to the factual findings reached by the Trial Panel, the Appellate Panel will revise the Verdict in light of the law as properly applied and determine the correct sentence, if any, as provided under Articles 314 and 308 of the CPC of BiH.

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<sup>12</sup> See para. 80 of Verdict's reasoning section.

<sup>13</sup> Statement by Witness Viktor Grgić, CD-video recording compiled during the on-site visit with the aggrieved party Viktor Grgić (Exhibit T-1), Banja Luka CJB Crime Scene Sketch No. UV-1910/09 dated 22 October 2009 (Exhibit T-9).

## **B. APPEAL BY COUNSEL FOR THE ACCUSED MLADEN MILIĆ**

88. Counsel for the Accused Mladen Milić alleges a violation of the Criminal Code as an appeal ground, but fails to specify such a violation.

89. The Appellate Panel has concluded that Counsel alleges a violation of the Criminal Code because he claims that the acts of the Accused Mladen Milić cannot satisfy the requirements for aiding in the perpetration of the criminal offense he is charged with.

90. Notwithstanding the fact that Counsel for the Accused Ljubiša Vranješ did not challenge the Verdict for containing violations of the Criminal Code, he did however note that the acts of the Accused Ljubiša Vranješ did not satisfy elements of the act of aiding, and the Panel will address such arguments as part of that appeal ground.

91. The accused Ljubiša Vranješ and Mladen Milić were found guilty of aiding Markan in murdering two persons and an attempted murder of a third person, whereby they committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH as read with Article 180(1) thereof.

92. Article 180(1) of the CC of BiH, defining forms of perpetrator's individual responsibility, reads as follows:

“A person who planned, ordered, perpetrated or otherwise aided or abetted in the planning, preparation or execution of a criminal offense referred to in Article...173 (War Crimes against Civilians)... of this Code, shall be guilty of the criminal offense...”

93. Aiding is defined by Article 31 of the CC of BiH, reading as follows:

(1) Whoever intentionally helps another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced. (2) The following, in particular, shall be considered as helping in the perpetration of a criminal offense: giving advice or instructions as to how to perpetrate a criminal offense, supplying the perpetrator with tools for perpetrating the criminal offense, removing obstacles to the perpetration of criminal offense, and promising, prior to the perpetration of the criminal offense, to conceal the existence of the criminal offense, to hide the perpetrator, the tools used for perpetrating the criminal offense, traces of the criminal offense, or goods acquired by perpetration of the criminal offense.“

94. Defense Counsel for both accused argued that the acts of the accused Ljubiša Vranješ and Mladen Milić did not amount to aiding and abetting, and, since the



perpetrator's act was a result of an "excess", his intent was not shared by the Accused.

95. The Panel notes that accessory liability does not require the intent to commit a particular crime, which exists in relation to the perpetrator. However, in presenting this argument the Defense Counsel apparently ignored the provision set forth in Article 32(1) of the CC of BiH, according to which *the accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent*. Consequently, the Defense Counsel err in claiming that the accessory's intent must also pertain to the *actus reus* of the crime they are aiding and abetting. On the contrary, it means that the aider and abettor must be aware that by his acts he is aiding and abetting the perpetration of the impermissible act by another person. Such a position also ensues from international case law, where in the *Haradinaj* case the court said: "The aider and abettor must also be aware of the principal perpetrator's criminal acts, although not their legal characterization, and his or her criminal state of mind".<sup>14</sup> The *mens rea* element requires desire to aid the perpetrator of the offense or, at a minimum, a consent of the accessory, meaning that aiding and abetting may be done with direct or indirect intent. In addition, it should be noted that a conviction for aiding requires that an offense was committed or attempted to be committed or, at a minimum, that preparatory actions were carried out, wherein it is not necessary that the perpetrator is criminally liable, or that he has been punished.

96. With regard to the acts of the Accused (*actus reus*), this Panel is of the view that the defense counsel unjustifiably argue that those acts did not amount to aiding.

97. According to the evidence, the Accused Vranješ, together with Markan, went to the door of the Tešić family house where the three Grgić brothers were detained as civilians; it was late at night and the accused was armed and wearing a uniform. The accused, as an officer of the Banja Luka Public Security Center (hence a police officer), demanded that the Grgić brothers accompany them for interrogation. After the Grgić brothers were ordered to enter the vehicle, he (Vranješ), Markan and the Accused Milić drove off to a building in the vicinity of the Municipality, where the Grgić brothers were then ordered to exit the vehicle. He was one of the persons marching the Grgić brothers, namely he was "the escort" who was armed with an automatic rifle. The Accused Vranješ maintained a distance of several meters behind the Grgić brothers as they were moving along the curb until they reached the spot where they were shot. Furthermore, he was present when

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<sup>14</sup> Prosecutor v. Haradinaj et. al., Case No.: IT-04-84-~~3~~<sub>3</sub> Trial Judgment, 03 April 2008 at para. 145.

Markan opened fire at the Grgić brothers and, finally, he failed to report to anyone the perpetration of the criminal offense that he witnessed.

98. According to the evidence, the Accused Milić was part of the group of three persons who came to take the Grgić brothers for interrogation on the night in question. After the Grgić brothers entered the vehicle and sat on the back seat, he sat in the driver's seat. The vehicle containing the Grgić brothers, Markan and the Accused Vranješ was driven to a place in the vicinity of the Kotor Varoš Municipality building. After the Grgić brothers were ordered to alight from the vehicle, form a single file and start walking in the direction of Teslić, the accused Milić served as an escort by walking to the side of the Grgić brothers, together with Markan who was armed with an automatic rifle. He is the person to whom the aggrieved party Viktor Grgić addressed a question, inquiring where they were taking them (at the moment when the Viktor Grgić realized that they were not being taken to the prison which he assumed to be behind the Municipal building); the Accused gave no answer but started moving back. This Panel notes that the First Instance Panel could have reasonably found that by this move (moving backwards) he created room for Markan to discharge a burst of fire that murdered two and wounded one of the Grgić brothers; the Accused was present during this incident. Finally, the Accused did not report to anyone the incident that he witnessed.

99. Therefore, the Accused carried out a series of acts that, contrary to Defense Counsel's arguments, were acts aimed at enabling another to perpetrate a criminal offense, or acts that contributed to the perpetration, although not decisively. In that regard, this Panel shares the First Instance Panel's view that aiding does not require Prosecution to prove that the criminal offense would not have been committed without the contribution made by the aider and abettor.<sup>15</sup>

100. Having examined the appellate arguments related to the subjective elements of the criminal offense (*mens rea*), this Panel concludes that the evidence supports the impugned Verdict's findings that the Accused knew that the person they were aiding would commit a murder, that the perpetration of the offense was not limited to Markan's acts, as well as the finding that both Accused were aware that their acts would assist in the commission of the offense, namely that they intentionally carried out the acts of aiding for which they were found guilty. All the circumstances surrounding the course of the incident indicated that the findings of the First Instance Panel are reasonable and proper. In that

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<sup>15</sup> First Instance Verdict, para. 187, citing *Mrkšić/Šljivančanin* Appeals Chamber Judgment.

context, the Panel took into account the following facts: the incident occurred at the time when the Grgić brothers were under house arrest, they were removed from the house late in the evening, allegedly in order to be interrogated, the Accused Vranješ (as a police officer) came in a uniform and armed to the door of the house where the Grgić brothers were held and demanded that they accompany them, that both Accused escorted the brothers as they walked in the direction of Teslić (with a particular emphasis on the conduct of the Accused at the key moments when there is no communication between them whatsoever, not even at the point when they were passing by the path leading to the Municipal building where the old prison was allegedly located), the Accused Milić's moving back at the moment when the aggrieved party Viktor Grgić asked him where they were taking them, and the fact that they did not report to anyone what had occurred.

101. It should be emphasized at this juncture, contrary to appellate arguments, that the Accused need not share the intent of the perpetrator or have the intent themselves. It will suffice if they had awareness that their acts assisted an impermissible (criminal) act and that they were aware of the crime that will occur. This position stems from the ICTY Appeals Chamber judgment in *Kvočka*<sup>16</sup>,

“the aider or abettor must have intended to assist or facilitate, or at least have accepted that such a commission of a crime would be a possible and foreseeable consequence of his conduct. **Further, it is not necessary that the aider or abettor know the precise crime that was intended or which was actually committed.** If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to assist or facilitate the commission of that crime and is guilty as an aider or abettor.”

102. Therefore, the appellate arguments unjustifiably claim that the Accused cannot be convicted given that the First Instance Panel ultimately found that the Accused Vranješ and Milić did not share intent and desire to murder the Grgić brothers, which Markan possessed. Contrary to such claims, this Panel notes, for the reasons given above, that sharing the murder intent is not required to incur their responsibility as accessories. The ICTY has taken this view<sup>17</sup>, noting

„Where the *mens rea* of the principal perpetrator is an element of the principal crime, the aider and abettor need not share the intent of the principal perpetrator, but he or she must be aware of the intent of the principal perpetrator“

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<sup>16</sup> See *Miroslav Kvočka et al.* Trial Chamber Judgment, IT-98-30/1-T, para. 255.

<sup>17</sup> *Haradinaj et al.* Appeals Chamber Judgment, IT-04-84-A, para. 58, citing Appeals Chamber judgments in *Krstić, Simić, Krnojelac.*

In the case in question, the accused were aware that Markan intended to murder the Grgić brothers even though they did not share that intent (which, according to this Panel, is confirmed by the fact that neither of them opened fire at or ran after Viktor Grgić when he fled). Furthermore, the awareness of Markan's intent, coupled with a series of acts they undertook to contribute to the perpetration of the offense (to be discussed below), makes them liable as accessories in the offense.

103. Based on the foregoing, this Panel has concluded that the acts of the Accused satisfy elements of the act of aiding and abetting, as found by the First Instance Panel. However, for the purpose of a more precise and more complete legal qualification of the acts of the Accused, and taking into consideration Article 280(2) of the CPC of BiH, providing that the Court is not bound by the Prosecutor's proposal regarding the legal qualification of the act, this Panel has decided to revise the Verdict's legal qualification of the act and find the Accused Ljubiša Vranješ and Mladen Milić guilty of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH as read with Article 180(1) and Article 31 of the CC of BiH.

## **V. APPEAL GROUND UNDER ARTICLE 300 OF THE CPC OF BIH: DECISION ON THE SENTENCE**

### **A. STANDARDS OF REVIEW**

104. The decision on sentence may be appealed on two distinct grounds, as provided in Article 300(1) of the CPC of BiH.

105. The decision on sentence may first be appealed on the grounds that the Trial Panel failed to apply the relevant legal provisions when fashioning the punishment. However, the Appellate Panel will not revise the decision on sentence simply because the Trial Panel failed to apply all relevant legal provisions. Rather, the Appellate Panel will only reconsider the decision on sentence if the appellant establishes that the failure to apply all relevant legal provisions occasioned a miscarriage of justice. If the Appellate Panel is satisfied that such a miscarriage of justice resulted, the Appellate Panel will determine the correct sentence on the basis of Trial Panel's factual findings and the law correctly applied.

106. Alternatively, the appellant may challenge the decision on sentence on the

grounds that the Trial Panel abused its discretion in determining the appropriate sentence. The Appellate Panel emphasizes that the Trial Panel is vested with broad discretion in determining an appropriate sentence, as the Trial Panel is best positioned to weigh and evaluate the evidence presented at trial. Accordingly, the Appellate Panel will not disturb the Trial Panel's analysis of aggravating and mitigating circumstances and the weight given to those circumstances unless the appellant establishes that the Trial Panel abused its considerable discretion.

107. In particular, the appellant must demonstrate that the Trial Panel gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Panel's decision was so unreasonable or plainly unjust that the Appellate Panel is able to infer that the Trial Panel must have failed to exercise its discretion properly.

108. The Appellate Panel recalls that the Trial Panel is not required to separately discuss each aggravating and mitigating circumstance. So long as the Appellate Panel is satisfied that the Trial Panel has considered such circumstances, the Appellate Panel will not conclude that the Trial Panel abused its discretion in determining the appropriate sentence.

#### **B. PROSECUTION APPEAL**

109. The Prosecutor's Office of Bosnia and Herzegovina challenged the first instance Verdict's decision regarding the sentences imposed on the Accused Ljubiša Vranješ and Mladen Milić. In the view of the Prosecution, the First Instance Panel did not properly find the following aggravating circumstances on the part of the Accused: the Accused never expressed their regrets to the Grgić family, the victim Ivo Grgić was 22 years old at the time of his murder, the victim Zdravko Grgić is survived by his wife and two minor children, the aggrieved party Viktor Grgić sustained serious bodily injuries with permanent consequences, and at the relevant time the Accused, as members of the RS MoI special detachment, were tasked with protecting the civilian population but they abused those duties. Furthermore, in Prosecution's view, the First Instance Panel did not give adequate weight to the aggravating circumstances on the part of the Accused Milić because the sentence should have been harsher due to his prior convictions. On the other hand, it is

Prosecution's view that the First Instance Panel gave too much credit to the mitigating circumstances on the part of the Accused Vranješ and Milić.

110. This Panel dismisses as unfounded all of the Prosecution arguments indicating that the First Instance Panel imposed too lenient sentences on the Accused.

111. First, with regard to not expressing regret to the aggrieved party Viktor Grgić and the family members of his slain brothers, this Panel observes that this is a factor indicating the perpetrator's conduct after the fact. Thus, expressing a sincere regret and apology to the victim or their family would constitute a mitigating factor on the part of the Accused. In contrast, the absence of an apology to the victims cannot constitute an aggravating factor. Furthermore, contrary to Prosecution's argument, the circumstances relative to the consequences of the offense, when they compose an integral and constituent part of the offense, cannot be regarded additionally as an aggravating factor. In the case in question, the consequences of murdering two civilians and seriously wounding one civilian, regardless of the age and family situation of the persons who were killed, do not go beyond the statutory consequences of the offense of which the Accused were found guilty to the extent where they could be considered as aggravating circumstances. In addition, the Panel observes in relation to the serious bodily injury sustained by the aggrieved party Viktor Grgić, the Account of Facts in the Verdict does not indicate that the injury had had permanent consequences. In addition, according to the Verdict's Operative Part, only the Accused Vranješ was a member of the special police detachment, and not both Accused, as claimed in Prosecution's Appeal; this fact was evaluated in relation to the Accused's contribution to the commission of the offense as an accessory and it cannot be evaluated twice. In relation to the Accused Milić, the Prosecution's Appeal unjustifiably claims that the Court did not take into account his prior convictions; since the Accused was previously convicted of an offense which does not fall into the same group of offenses, and since eight years have passed since the imposed sentence, this Panel concludes that giving more weight to this factor than was given by the First Instance Panel when meting out the sentence would be inappropriate.

112. Finally, regarding the Prosecution's argument that the mitigating circumstances on the part of both Accused have been given too much credit, this Panel dismisses such arguments as unfounded, albeit observing that the Accused Vranješ's unemployment status cannot be regarded as a mitigating circumstance in meting out the sentence.

113. Based on the foregoing, the Appellate Panel concludes that the Appeal by the Prosecutor's Office of Bosnia and Herzegovina is unfounded in its entirety.

**C. EXTENDED EFFECT OF THE APPEALS BY THE ACCUSED LJUBIŠA VRANJEŠ, ACCUSED VRANJEŠ'S COUNSEL AND COUNSEL FOR THE ACCUSED MLADEN MILIĆ**

114. Notwithstanding the fact that the Accused Vranješ, his defense counsel, and the Accused Mladen Milić's defense counsel, did not appeal the decision on the sentence, this Panel notes that since Article 308 of the CPC of BiH requires that the issue of punishment be appealed<sup>18</sup> it will review the first instance Verdict's section on the sentencing as part of the appellate process.

115. Having examined whether the sentences imposed on the Accused under the impugned Verdict are correct and lawful, the Appellate Panel initially took into consideration the fact that the Accused have been found guilty of aiding in the perpetration of a criminal offense and, in connection therewith, the provision of Article 31(1) of the CC of BiH providing that the punishment for the accessory may be reduced.

116. The Panel further took into account all of the circumstances set out in Article 48 of the CC of BiH, which constitute factors of punishment, including the mitigating circumstances properly established by the First Instance Panel (with the exception of the Accused Ljubiša Vranješ's unemployment status), and the aggravating circumstances on the part of the Accused Mladen Milić (his prior convictions). This Panel, as had the First Instance Panel, found no aggravating circumstances on the part of the Accused Ljubiša Vranješ, while the mitigating circumstances are that he is a family man and father of a minor child.

117. In relation to the Accused Milić, the aggravating circumstances include his prior convictions for the criminal offense of Forging Documents in violation of Article 377(1) of the Republika Srpska Criminal Code (CC of RS) and the criminal offense of Misleading for the Purpose of Certification of False Matter in violation of Article 381(1) of the CC of RS (Judgment No. ...); the accused was ordered to pay a 4,500.00 KM compound fine. However, the Panel took into account the nature of the offenses for which the accused was convicted as well as the passage of time since the previous judgment. As for the

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<sup>18</sup> Article 308 of the CPC of BiH reads as follows: "An appeal filed in favor of the accused due to the state of the facts being erroneously or incompletely established or due to the violation of the Criminal Code shall also contain an appeal of the decision concerning the punishment and forfeiture of the property gain (Article 300.)"

Accused Milić, mitigating circumstances are that he is a family man and father of two minor children.

118. In addition, this Panel considered the surrounding circumstances and consequences of the offense in question, that the victims included three brothers (two were murdered and one sustained serious bodily injuries), that the victims did not contribute to the commission of the offense, the age of those who were killed, as well as the fact that the murder victim Zdravko Grgić is survived by his wife and two minor children. However, notwithstanding the impugned Verdict's position that the Accused committed a number of acts constituting aiding and abetting, as well as the nature of the protected values and consequences of the offense for which the Accused have been found guilty, this Panel is of the view that the present case does not exclude the application of the above cited statutory provision allowing mitigation of the statutory sentence imposed on the Accused as accessories in the offense.

119. Accordingly, this Panel has decided to revise the first instance Verdict's decision on the sentence and, by applying Article 49(1)(a) of the CC of BiH providing that the court may set the punishment below the limit prescribed by the law or impose a less stringent type of punishment when law provides the possibility of reducing the punishment (in the present case, Article 31(1) of the CC of BiH allows such a possibility) and evaluating all the circumstances surrounding the case in question (in particular, individual contribution by both Accused to the commission of the offense), sentenced the Accused to eight (8) years' imprisonment each, holding that the imposed sentences will fully achieve both specific and general deterrence goals of the purpose of punishment laid down in Article 39 of the CC of BiH. Pursuant to Article 56(1) of the CC of BiH, the time that the Accused spent in custody from 8 September 2010 until 7 October 2010, and from 28 October 2011 onwards shall be credited towards the sentence of imprisonment.

120. For the reasons stated above, the Panel has delivered the Verdict as stated in the Operative Part above pursuant to Article 314(1) of the CPC of BiH.

**MINUTES-TAKER**

**PRESIDING JUDGE**

**Nevena Aličehajić**

**Mirko Božović**

**LEGAL REMEDY:** No appeal lies from the present Verdict.