

Bosna i Hercegovina

Босна и Херцеговина



Court of Bosnia and Herzegovina

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**Number:** S1 1 K 003379 12 Krž 10

**Date:** Pronounced:

18 October 2012

Written verdict issued:

25 December 2012

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**Before the Panel composed of: Judge Azra Miletić, Panel President  
Judge Mirko Božović, Judge Rapporteur  
Judge Tihomir Lukes, Panel Member**

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

v.

**MOMIR PELEMIŠ AND SLAVKO PERIĆ**

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**SECOND INSTANCE VERDICT**

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

Erik Larson

**Defense Counsel for the Accused Momir Pelemiš:**

Miloš V. Perić

Ratko Jovičić

**Defense Counsel for the Accused Slavko Perić:**

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## IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, the Appellate Division Panel, Judge Azra Miletić, as the presiding judge, and Judges Mirko Božović and Tihomir Lukes as the Panel members, with the participation of legal advisor Emira Hodžić as the record-taker in the criminal case of the Accused Momir Pelemiš and Slavko Perić, charged with the criminal offence of Genocide in violation of Article 171(a), (b), (c) and (d), as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina (CC of BiH), deciding on the Appeals filed by the Prosecutor's Office of Bosnia and Herzegovina, Defense Counsel for the Accused Momir Pelemiš, attorney Miloš Perić, and Defense Counsel for the Accused Slavko Perić, attorney Miodrag Stojanović, and the Appeals filed by the Aggrieved Parties Azra Begović, Kiram Jašarević, Merko Ibrahimović, Dževad Ibrahimović, Razija Omerović, Remzija Muhić, Revdo Ibrahimović and Rahima Velić whereby they contest the Verdict No. S1 1 K 003379 11 Krl of 31 October 2011, rendered by the Court of BiH, having held a session in the presence of Erik Larson, Prosecutor of the Prosecutor's Office of BiH, and the Accused and their Defense Counsel, on 18 October 2012 issued the verdict that follows.

## VERDICT

**1. The Appeal filed by Defense Counsel for the Accused Momir Pelemiš**, attorney Miloš V. Perić, **is partially granted**, so that the Verdict of the Court of BiH No. S1 1 K 003379 11 Krl of 31 October 2011 is **revoked** insofar as relating to the Accused Momir Pelemiš, and in relation to this Accused the Court orders that a trial be held before the Appellate Division Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina.

**2. The appeal filed by Defense Counsel for the Accused Slavko Perić**, attorney Miodrag Lj. Stojanović, **is partially granted**, so that the Verdict of the Court of Bosnia and Herzegovina No. S1 1 K 003379 11 Krl of 31 October 2011, inasmuch as relating to this Accused:

**is revised:**

**a) with regard to the application of the Criminal Code**, by legally qualifying the offense of which the Accused Slavko Perić has been found guilty as the criminal offense of Genocide under Article 141 of the Criminal Code of the Socialist Federal Republic of Yugoslavia which was adopted pursuant to the Law on the Application of the Criminal

Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY<sup>1</sup>, as read with Article 24 (aiding) of the same Code, and, consequently

**b) with regard to the decision on punishment**, by application of the above provisions and Articles 33, 38 and 41 of the Criminal Code of SFRY, the Court **sentences the Accused to imprisonment for a term of 11 (eleven) years.**

Pursuant to Article 50 of the CC SFRY, the time that the Accused spent in custody from 5 November 2008 until the committal to serve the sentence of imprisonment under this Verdict shall be credited towards the sentence of imprisonment.

**3. The Appeal filed by the Prosecutor's Office of Bosnia and Herzegovina with regard to the Accused Slavko Perić is hereby dismissed as unfounded.**

**4. The Appeals filed by the Aggrieved Parties Rahima Velić and Kiram Jašarević, and the Appeal filed by the Aggrieved Parties Merko Ibrahimović, Dževad Ibrahimović, Razija Omerović, Remzija Muhić and Revdo Ibrahimović inasmuch as they relate to the decision on the property law claims are hereby refused as unfounded, while the Appeal of the Aggrieved Party Azra Begović, and the Appeal filed by the Aggrieved Parties Merko Ibrahimović, Dževad Ibrahimović, Razija Omerović, Remzija Muhić and Revdo Ibrahimović inasmuch as they relate to the costs of the criminal proceedings are hereby dismissed as inadmissible, thus the Verdict of the Court of BiH No. S1 1 K003379 11 KRI of 31 October 2011, in the part relating to the decision on the property law claims and the costs of the criminal proceedings with regard to the Accused Slavko Perić, is hereby upheld.**

## REASONING

### I. PROCEDURAL HISTORY

#### A. FIRST INSTANCE VERDICT

1. By the First Instance Verdict No. S 11 K 003379 09 Krl of 31 October 2011, the Accused Momir Pelemiš and Slavko Perić were found guilty because by the acts described

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<sup>1</sup> Hereinafter the CC SFRY.

in sections 1(a) and (b) of the Enacting Clause they aided and abetted others in the infliction of serious bodily or mental harms and killing of members of a group of Bosniak people, thus assisting in its partial destruction as a national, ethnical or religious group, and by doing so, according to the Enacting Clause of the Verdict, they committed the criminal offense of Genocide in violation of Article 171(a) and (b) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180(1) of the same Code.

2. The Accused Momir Pelemiš was sentenced to a prison sentence of sixteen (16) years, while the Accused Slavko Perić was sentenced to a prison sentence of nineteen (19) years. The time the Accused spent in custody from 5 November 2008 onwards shall be credited towards the sentence of imprisonment.

3. Pursuant to Article 188(4) of the CPC of BiH, the Accused were relieved of the duty to reimburse the costs of the criminal proceedings. Pursuant to Article 198(2) of the CPC of BiH, the Aggrieved Parties were instructed to take civil action to pursue their claims under property law.

## **B. APPEALS**

4. The Prosecution filed an appeal from the First Instance Verdict on the ground of the decision on the criminal sanction (Article 296(d)), as read with Article 300(1) of the CPC BiH in relation to both of the Accused. The Prosecution moved the Appellate Panel of the Court of BiH to uphold the findings of fact and law made by the Trial Panel, alter the prison sentence imposed on the Accused Slavko Perić and sentence him to imprisonment for a term of 45 years, alter the prison sentence imposed on the Accused Momir Pelemiš and sentence him to a prison sentence for a term of 30 years, and extend custody of both of the Accused.

5. Defense Counsel for the First-Accused Momir Pelemiš, attorney Miloš Perić, timely filed an appeal on the ground of essential violations of the provisions of the criminal procedure, of the incorrectly and incompletely established state of facts, violations of the criminal code, and the decision on criminal sanction, moving the Appellate Panel of the Court of BiH to grant the Appeal, revise the First Instance Verdict, acquit the Accused Momir Pelemiš of the charges and terminate his custody, or to grant the Appeal and issue a decision revoking the First Instance Verdict, order a trial before the Panel and terminate custody of the Accused Momir Pelemiš.

6. Defense Counsel for the Second-Accused Slavko Perić, attorney Miodrag Lj. Stojanović, timely filed an appeal on the grounds of essential violations of the provisions of the criminal procedure, violations of the criminal code, the incorrectly and incompletely established state of facts and the decision on criminal sanction, moving the Appellate Panel of the Court of BiH to grant the Appeal, revoke the First Instance Verdict and order a retrial and acquit the Accused Slavko Perić of the criminal responsibility for the commission of the criminal offense of Genocide in violation of Article 171(1)(a) and (b) of the CC BiH, or alter the First Instance Verdict and impose a more lenient sentence on the Accused Slavko Perić.

7. The Appeals from the First Instance Verdict were also filed by the Aggrieved Parties, Azra Begović, from the decision on the costs of the criminal proceedings, Kiram Jašarević from the decision on property law claims, Merko Ibrahimović, Dževad Ibrahimović, Razija Omerović, Remzija Muhić, Revdo Ibrahimović, from the decision on property law claims and decision on the costs of the criminal proceedings, and Rahim Velić in relation to the decision on property-law claim.

8. Defense Counsel for the Accused submitted their responses to the Prosecutor's Appeal, proposing that it be refused as unfounded, while the Prosecutor also submitted a response to the Defense Appeals, proposing that they be refused.

9. At the session of the Panel held on 18 October 2012, pursuant to Article 304 of the CPC of BiH, the appellants maintained their grounds and arguments of the appeal presented in writing.

## II. GENERAL ISSUES

10. Prior to providing reasoning for individual grounds of appeal, the Appellate Panel notes that pursuant to Article 295(1)(b) and (c) of the CPC of BiH the appellant must include in the appeal both the legal grounds for contesting the verdict and the reasoning behind the appeal.

11. Since pursuant to Article 306 of the CPC of BiH the Appellate Panel reviews the Verdict only within the limits of the grounds of appeal, the appellant is obliged to draft the appeal in such a manner that it can serve as a basis for reviewing the Verdict.

12. In this respect, the appellant must identify the grounds on which he contests the appeal, specify which part of the verdict, evidence or action of the Court he

contests, and present clear arguments in support of his claim.

13. 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.

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

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

14. 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 and relative violations of the criminal procedure are prescribed under Article 297 of the CPC of BiH.

15. Absolute essential violations of the CPC of BiH are listed in Article 297(1) subparagraphs a) through k) of the CPC of BiH and it is an irrefutable assumption that they negatively affected the validity of the rendered Verdict. Should the Panel establish an absolute essential violation of the criminal procedure, the Panel must revoke the first instance verdict, except in the cases set forth under Article 314(1) of the CPC of BiH.<sup>2</sup>

16. Relatively essential violations are specified in Article 297(2) of the CPC BiH. These violations arise if the Court did not apply a provision of the law, or the Court applied the provision incorrectly, which affected or might have affected a lawful and proper rendering of the verdict.<sup>3</sup> With respect to a relatively essential violation of criminal procedure provisions, the appeal is required to show both in what effect and why it affected or could

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<sup>2</sup>Article 314 **Revision of the First Instance Verdict:** (1) By honoring an appeal, the Panel of the Appellate Division shall render a verdict revising the verdict of the first instance if the Panel deems that the decisive facts have been correctly ascertained in the verdict of the first instance and that in view of the state of the facts established, a different verdict must be rendered when the law is properly applied, according to the state of the facts and in the case of violations as per Article 297, Paragraph 1, Item f) and j) of this Code.

<sup>3</sup> Ibid, p. 776.

have affected the rendering of a lawful or proper verdict.<sup>4</sup> The Appellate Panel will therefore find a violation of principles of criminal procedure only where the appellant shows that it is of substantial character and impossible to conclude that the alleged violation did not affect the rendering of a lawful or proper verdict. However, where the Appellate Panel is satisfied that a lawful and proper verdict was rendered notwithstanding a non-substantial procedural violation, the Appellate Panel will conclude that Article 297(2) of the CPC of BiH was not violated.

## **B. APPEAL OF THE ACCUSED MOMIR PELEMIŠ**

### **1. Article 297(1)(k) of the CPC BiH, the wording of the Verdict is incomprehensible, internally contradictory or contradicts the grounds of the Verdict, or the Verdict has no grounds at all or it does not cite reasons concerning the decisive facts**

#### **a. Defense arguments**

17. Within this sub-ground, the Defense alleges a number of syntagms which it deems incomprehensible, such as the permanent and forcible transfer, the existence of a widespread and systematic attack, in pursuance of the state and organizational policy, summary executions of able-bodied Bosniak men and boys, over 7,000 Bosniak men and boys, a double qualification of Pelemiš as Deputy Commander of the 1<sup>st</sup> Battalion and Acting Commander of the 1<sup>st</sup> Battalion. In this regard, the Appellate Panel points out that the Defense arguments in this respect are arbitrary and that these expressions were taken out of the context and cannot be viewed in isolation but within the described whole. In the absence of substantiated and supported allegations they were not subject of consideration at this point.

18. On the other hand, the Defense argues that the wording of the Verdict is internally contradictory, given that Pelemiš's command role is stated in the account of facts in the Enacting Clause of the Verdict, while the legal qualification of the criminal offense is related to Article 180(1) of the CC BiH. With regard to the arguments of fact pertaining to Pelemiš's command responsibility, the Trial Panel provided no reasons in the Verdict, nor was the Defense evidence taken into consideration. In addition, the Defense submits that,

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<sup>4</sup> Ibid.



considering the fact alleged in the Indictment that Slavko Perić was “under Pelemiš’s control” and in order to establish his command responsibility, the First Instance Verdict should have specified the activities Pelemiš undertook to that effect.

19. Furthermore, with regard to the knowledge of the Accused Pelemiš that the detainees would be killed, the Defense argues that this fact is not corroborated by any compelling or reliable evidence, and the First Instance Panel could not reach the conclusion on his knowledge about the killings solely based on the fact that Slavko Perić upon his return from the Brigade stayed in the Battalion Command in Manojlovići. In this regard, the Defense argues that the First Instance Panel did not properly evaluate the evidence, hence it failed to cite the reasons concerning the decisive facts.

**b. Findings of the Appellate Panel**

20. As for the appeal arguments pertaining to Article 297(1)(k) of the CPC BiH which are set forth in the preceding paragraph, the Appellate Panel finds that they are well-founded, that the wording of the contested Verdict is incomprehensible, that the reasoning thereof does not contain the reasons concerning the decisive facts, which gives rise to a suspicion that the statement of fact remained erroneously or incompletely established.

21. The account of facts from the wording of the Verdict, which is also alleged in certain parts of the reasoning of the Verdict, as the Defense for the Accused Pelemiš correctly observes, indicates that the First Instance Panel established that the relevant acts were carried out “under the command” of Momir Pelemiš, although finding him guilty by invoking Article 180(1), which fully equates individual responsibility for all modes of participation in the commission of the listed criminal offenses. In this way, the Accused Pelemiš could be responsible in case he is charged with ordering the commission of the offense, which does not arise from the Enacting Clause of the Verdict.

22. If the Accused is found guilty on the ground of command responsibility of knowing that his subordinates were about to commit the criminal offense and that he failed to prevent it, then the Verdict does not describe how the Accused Pelemiš exercised his command role. In other words, the First Instance Verdict did not explain effective control over the subordinates in the given circumstances or the knowledge of the Accused Pelemiš about the actions of Slavko Perić, and no causal connection has been established between the command function of the Accused Pelemiš and others, that is, his

subordinate soldiers who took part in the underlying events and were, according to the Verdict, under Pelemiš's command. Thus, the explanation concerning the command role of Pelemiš is completely omitted, which renders the Verdict incomprehensible. Moreover, the Verdict does not cite the reasons concerning the decisive facts.

23. Furthermore, the Appellate Panel also points out the insufficiently reasoned decisive fact with regard to the knowledge of the Accused that the detainees would be executed and also the knowledge that the execution was undertaken with a genocidal intention to destroy in part or in whole the said ethnic group and that certain actions of aiding and abetting were undertaken to that end. The First Instance Panel is obliged to evaluate the presented evidence and present its conclusion on whether the evidence adduced is sufficient to conclude beyond a reasonable doubt that Momir Pelemiš knew by the afternoon hours of 15 July 1995 that the executions would take place or that he was aware of the executors' genocidal intention, for which purpose fuel, ammunition, heavy machinery, men etc. were requested from the Zvornik Brigade 1<sup>st</sup> Battalion, all of which being qualified in the factual account as the actions of aiding and abetting charged against the Accused Pelemiš. The First Instance Panel went on to determine what the Accused could not have known, not what he knew for sure.

24. The Appellate Panel therefore finds that the Appeal justifiably argues that the reasoning of the contested Verdict with regard to this ground of appeal does not contain the reasons concerning the decisive facts, and consequently the First Instance Panel failed to present in detail its position on these issues. It should be noted that the reasoning of a court decision should contain a clear and detailed reasoning on all facts and circumstances that constitute the essential elements of the criminal offense that are relevant for adjudication. The first instance panel's obligation is to dispose of the criminal case in such a manner as to reach, following a comprehensive examination of the case, clear, exact and concrete conclusions on whether the decisive facts have been proven, instead of making rhetorical conclusions.

25. In view of the foregoing, the Appellate Panel finds that the Defense appeal arguments concerning the essential violation of criminal procedure provisions stipulated in Article 297(1)(k) of the CPC BiH, which are set forth in paragraph 18, in relation to the Accused Momir Pelemiš, are well founded.

26. Having found the absolute essential violations of the criminal procedure provisions

which require mandatory revocation of the first instance verdict, the Appellate Panel granted the Appeal and, pursuant to Article 315(1)(a) and (b) of the CPC BiH, **revoked** the First Instance Verdict in the convicting part in relation to the Accused Momir Pelemiš, and ordered a trial before the Appellate Division Panel of the Court of BiH. These deficiencies will be removed in the retrial and, if necessary, in terms of Article 317 of the CPC BiH, the already produced evidence will be reproduced and, subject to review of other appeal arguments, new evidence may be presented as well.

27. Pursuant to the legal obligation under Article 316 of the CPC BiH, with regard to the partial revocation of the First Instance Verdict, the Appellate Panel cited only brief reasons for revocation.<sup>5</sup>

28. Considering that the Appellate Panel revoked part of the Verdict relating to the Accused Momir Pelemiš for the foregoing reasons, it did not engage in the examination of the appeal arguments pertaining to essential violations of the procedure, referred to in Article 297(2), that is, the erroneously and incompletely established state of facts referred to in Article 299 of the CPC BiH, and a violation of the Criminal Code.

### **C. APPEAL OF DEFENSE COUNSEL FOR THE ACCUSED SLAVKO PERIĆ**

#### **1. Article 297(1)(i) of the CPC BiH, the Verdict is based on the evidence that may not be used as the basis of a verdict under this Code**

##### **i. Appeal arguments of the Defense for the Accused Slavko Perić concerning the number of the detainees taken out and killed at the Branjevo Farm**

29. The defense argues that the First Instance Panel accepted as established the fact that “nearly 1,200 men”<sup>6</sup> were executed at the Branjevo Farm, whereas in section 1(a) of the wording it is alleged that all the detainees transported from the Kula school, at least 500 of them, were killed at the Branjevo Farm. The Defense further argues that paragraph

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<sup>5</sup> Article 316 of the CPC BiH: “*In the opinion of the verdict, in the part by which the first instance verdict is revoked or in the decision on revoking the first instance verdict, only brief reasons for revoking the verdict shall be cited.*”

<sup>6</sup> Established fact 171, Annex 1 to the First Instance Verdict.

201 of the contested Verdict cites the reasons for which the Panel did not accept the number of 1,200 men killed. The Defense for the Accused Slavko Perić points out that the First Instance Panel made a collision between the established fact and the Enacting Clause of the Verdict. In other words, the First Instance Panel made an error, since the fact concerning the number of those killed, which was initially accepted as established, is in direct collision with the Enacting Clause of the Verdict.

## ii. Findings of the Appellate Panel

30. In paragraph 201 of the First Instance Verdict the following is stated: “The Indictment (Count 2) alleges that up to 1,200 detainees were transported from the *Kula* School and killed at the Branjevo Farm. However, having reviewed the correspondence of the respective witness statements, the Panel established that this averment from the Indictment has not been proved, and established that at least 500 detainees were in the *Kula* School between 14 July and 16 July when they were transported to Branjevo, due to which the operative part has been modified in relation to the Indictment.”

31. This concerns the number of those killed, the fact that was accepted as established<sup>7</sup> in the procedural decision, but at the same time the fact that was subject of the Indictment which the Trial Panel had to determine beyond a reasonable doubt.

32. In reviewing the Defense appeal argument, the Appellate Panel relied on Article 4 of the Law on the Transfer of Cases, as read with Rule 94 (B) of the *Rules of Procedure*, according to which at the request of a party or *proprio motu* the Court may decide to accept as proven certain facts established by ICTY legally binding decisions, if they relate to matters at issue in the current proceedings or provided that certain criteria for the acceptance of such facts have been met. If accepted, such facts are considered proven. According to the Court, the primary purpose of Article 4 of the Law on Transfer is to achieve judicial efficiency and economy, thus eliminating the necessity to prove again the facts that had already been proven in previous proceedings. However, the application of this provision should be approached with caution and such facts cannot be considered absolutely proven. In other words, if the Panel accepts a fact as established, this does not

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<sup>7</sup> Decision to partly grant the Prosecution's Motion to accept established facts in the proceedings before the ICTY, paras. 12-17 of the First Instance Verdict

necessarily mean that the fact must remain unchanged if, in the course of the proceedings, a different account of facts is established.

33. Furthermore, bearing in mind the right to a fair trial, in case the accused, during the trial, wants to refute an established fact of which the Court formally took judicial notice, the accused, as a guarantee of the fairness of the proceedings, has the right to present evidence to challenge the credibility of adjudicated facts.<sup>8</sup> The analysis of the First Instance Verdict indicates that the Defense of the Accused in the present case<sup>9</sup> was afforded this right.

34. Bearing in mind the foregoing, the Appellate Panel is satisfied that the Trial Panel was justified in intervening in this regard considering the fact that based on the available evidence a different conclusion was reached. In citing the reasons for changing the Enacting Clause of the Verdict, the Trial Panel provided valid and substantiated findings<sup>10</sup> which are corroborated by the testimony of the witnesses whose accounts were mutually correlated<sup>11</sup>, thus the Appellate Panel refuses the Defense's argument as unfounded.

## **2. Defense's appeal argument: the facts constituting legal qualification or legal position were accepted**

### **a. Defense allegations**

35. The Defense for the Accused Slavko Perić submits that the accepted established facts under numbers 5, 8, 9, 10, 12, 13, 27, 48, 54, 63, 120, 163 and 169 in the First Instance Verdict constitute a legal qualification or legal position of the ICTY Chamber. The Defense submits that the Court consequently based a substantial part of the opinions on the entire event precisely on these facts, which has led to an essential violation of the criminal procedure to the detriment of the Accused.

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<sup>8</sup> Article 6(2) of the CPC BiH and Article 6(3)(d) of the European Convention.

<sup>9</sup> Paras. 15 and 16 of the First Instance Verdict.

<sup>10</sup> Paras. 203 and 204 of the First Instance Verdict.

<sup>11</sup> Paras. 200-219, witnesses Q, Zoran Gajić, Slobodan Đajić, Zoran Radosavljević, Pero Petrović and Slobodan Jović.

**b. Finding by the Appellate Panel**

36. With regard to this Defense's appeal argument, the Appellate Panel reviewed the underlying established facts and concluded that they do not constitute a legal qualification or a legal standpoint but they are findings of the ICTY Chamber on certain facts or events. Moreover, the Trial Panel in this case did not regard these facts as decisive and it did not base its Verdict solely on these facts, as stated in paragraph 18 of the First Instance Verdict.

37. In view of the foregoing, the Appellate Panel refused the Defense's appeal argument as unfounded.

**3. Appeal arguments: acceptance of statements of Van Duijn, Dražen Erdemović, Momir Nikolić, Dragan Obrenović**

**Defense arguments**

38. The Defense for Slavko Perić argues that the statements of Momir Nikolić and Dragan Obrenović given before the ICTY cannot be admitted into evidence, as these are the statements they gave as the Accused in the plea bargain, not as witnesses, as stipulated in Article 5 of the Law on the Transfer of Cases. The Defense further invokes the impossibility to cross-examine witnesses Van Duijn and Dražen Erdemović, and, according to the Defense arguments, the Verdict refers to those witnesses in relevant parts pertaining to Genocide.

39. The Appellate Panel concludes that the Defense's allegations with regard to these appeal arguments are groundless. Pursuant to Article 5 of the Law on the Transfer of Cases, the Trial Panel accepted the statements of witnesses, including, inter alia, Dražen Erdemović and Leendert van Duijn. The Trial Panel accepted the statements of the said witnesses because they could not appear before the Court for justified reasons and the Court found their statements relevant to the case under consideration. Given that the Defense was deprived of the opportunity to cross-examine these witnesses, the Trial

Panel accepted these transcripts as documentary evidence without basing the Verdict to a substantial extent on this evidence, but used it only as corroborating evidence.

40. The Appellate Panel examined whether the Trial Panel considered the possibility of these witnesses giving testimony directly before the Court or via video-link conference, that is, whether it examined the reasons for which these witnesses could not appear before the Court of BiH, and it concluded that the arguments stated in the First Instance Verdict<sup>12</sup> are realistic and justify the conclusion on the impossibility of their appearance before the Court of BiH, given that witness Leendert van Duijn had serious health problems, while Dražen Erdemović was not available as he entered the ICTY witness protection program for relocation and refused any communication.

41. In this respect, the Appellate Panel concludes that the use of the statements of these witnesses in the manner used by the Trial Panel does not amount to a violation of the right to a defense, and the Appellate Panel therefore refused the argument of the Defense for the Accused Perić as unfounded.

42. Furthermore, the Defense's argument concerning the statements of Dragan Obrenović and Momir Nikolić is groundless, given that the Trial Panel also accepted their statements which they gave as witnesses in the case no. IT -02-60-T (*Prosecutor v. Blagojević and Jokić*)<sup>13</sup>, pursuant to Article 5 of the Law on the Transfer of Cases.

#### **4. Trial Panel refused the motion to admit into evidence the statement of the Accused Perić which he gave before the ICTY**

##### **a. Arguments of the Defense**

43. The Defense submits that although the Trial Panel did not formally accept as evidence the statements the Accused Slavko Perić gave before the ICTY, it may be inferred from the context of the Verdict that the Panel used parts of this statement notably insofar as it relates to the knowledge of the Accused about the fate of the detainees.

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<sup>13</sup> T-141 and T-142.

<sup>13</sup> T-141 and T-142.

b. **Findings by the Appellate Panel**

44. The Appellate Panel concludes that this Defense appeal is arbitrary and bereft of compelling arguments and specific proof to corroborate its claim, in particular bearing in mind the findings of the Trial Panel about the knowledge of the Accused, and therefore it was refused as unfounded.

5. **Article 297(1)(k) of the CPC BiH, the wording of the Verdict is incomprehensible, internally contradictory or contradicts the grounds of the Verdict or the Verdict has no grounds at all or it does not cite reasons concerning the decisive facts**

a. **Arguments of the Defense**

45. The Defense submits that in Section 1 of the Enacting Clause of the Verdict it has been determined that Pelemiš and Perić: *“knowingly aided and abetted the members of the joint criminal enterprise“*, while the reasoning of the Verdict provides detailed arguments that the Court does not accept the theory of the Prosecution that the Accused committed Genocide but that they aided the perpetrators of the underlying offense and the members of the joint criminal enterprise. In this regard, the Defense argues that in the Enacting Clause of the Verdict, in the legal qualification of the acts of the Accused, it is stated that they committed Genocide in violation of Article 171(a) and (b), as read with Article 180(1) of the CC BiH. The Defense further argues that this has led to the Verdict being contradictory as it was necessary to specify in the Enacting Clause that their acts constitute aiding and abetting as a form of complicity in terms of Article 31 of the CC BiH.

b. **Findings of the Appellate Panel**

46. In analyzing the grounds of appeal through the argument of the Defense for the Accused Slavko Perić, the Appellate Panel primarily relied on the statutory provision governing absolute essential violations set forth in Article 297(1)(k) of the CPC BiH. An absolute essential violation of the criminal procedure provisions referred to in this subparagraph occurs when the first instance verdict, as a formal and legal court act, contains certain deficiencies in its enacting clause and reasoning, which are by their



nature such as to make it impossible to examine its lawfulness and correctness. It should be pointed out that the judgment in this case is not to be revoked because of unlawful or erroneous adjudication but because in terms of appeal arguments it cannot be determined what and how it was adjudicated.<sup>14</sup>

47. Although Defense Counsel for the Accused Slavko Perić does not state within this appeal sub-ground what specific violation has been committed, one can infer through the wording of the appeal argument that the Defense submits that the mentioned action is an omission of the Trial Panel that renders the wording of the Verdict incomprehensible and contradictory. As for the argument of the Verdict being contradictory, these contradictions relate exclusively to the decisive facts.<sup>15</sup> Consequently, the assertions on the contradiction of the legal qualification of the offense, as referred to by Defense Counsel, cannot be considered a contradiction in terms of subparagraph (k) of the CPC BiH. However, bearing in mind that the Court is not bound by the qualification from the appeal and that the appeal, by its content, is subsumed under the corresponding ground of appeal, the Panel concludes that this part of the appeal, in terms of its content, is well-founded, thus the Appellate Panel will reflect below on the legal qualification of the offense and justification of the appeal in this regard.

**6. Argument of the Defense: Article 298(1)(d) of the CPC BiH, the code which cannot apply, has been applied to the criminal offense that is the subject of the indictment**

**i. Arguments of the Defense**

48. The Defense argues that the Trial Panel could not have applied the Criminal Code of Bosnia and Herzegovina, but in terms of Article 4 of the Criminal Code of Bosnia and Herzegovina the code more lenient to the perpetrator should have been applied, that is, the adopted CC of SFRY which was in force at the relevant time in 1995.

49. In paragraph 74 of the First Instance Verdict, the Trial Panel provides the reasons for which it holds that the CC BiH is more lenient in the present case, considering the fact that the CC of SFRY stipulated the death penalty for the underlying offense.

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<sup>14</sup> Commentary on the Criminal Procedure Code in Bosnia and Herzegovina, comment on Article 297(1)(k),

50. The Defense submits that this argument of the Trial Panel is erroneous, given that the RS Constitution of 28 February 1992 abolished the death penalty. The Appeal further invokes Article 2(4) of the Constitution of BiH whereby the European Convention prohibiting the death penalty shall have precedence over national laws, thereby also abolishing the death penalty. The Defense refers to the case law of the cantonal courts and the courts in the Republic of Croatia as well as the *Damjanović and Herak* case of the Constitutional Court of BiH. In conclusion, Defense Counsel refers to Cassese's position on the possibility of retroactive application of the law and that the Court of BiH should always apply the more lenient law whenever there is a difference between the old and new criminal provision governing the length of the sentence.

## ii. Findings of the Appellate Panel

51. The Appellate Panel accepted the appeal argument of the Defense for the Accused Slavko Perić with regard to the applicability of the criminal code. In addition to the said, the Appellate Panel also accepted the argument of the Defense with regard to the legal qualification of the offense.

52. Primarily, the Appellate Panel will reflect on the legal qualification chosen by the Trial Panel, within the Defense's appeal arguments, and subsequently on the application of the substantive law.

### 1. Conclusions of the Appellate Panel regarding the legal qualification of the offense

53. As for the legal qualification of the offense, the Trial Panel found the Accused Slavko Perić guilty of aiding and abetting Genocide and convicted him of the criminal offense of Genocide in violation of Article 171(a) and (b) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180(1) of the same Code. The Trial Panel held in the

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p. 774.

<sup>15</sup> Ibid p. 775.

reasoning of the Verdict<sup>16</sup> that the Accused Slavko Perić is individually responsible for aiding and abetting members of the joint criminal enterprise pursuant to Article 180(1) of the CC BiH.

54. In reasoning Article 180(1) of the CC BiH, the Trial Panel held: “Article 180(1) of the CC of BiH provides specific modes of liability and is limited to crimes against humanity and criminal offenses in violation of international law referred to in Articles 171 through 179 (with the exception of Article 176). It also provides additional modes of liability, separate and more specific compared to the ones referred to in the general section under Articles 21, 29, 30, 31 as read with Articles 33, 34 and 35 of the CC of BiH, providing that a person who planned, initiated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the listed criminal offenses shall be guilty of those offenses.”

55. As for the application of Article 180(1), the Appellate Panel notes that this Article provides as follows: “A person who planned, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (*Genocide*), 172 (*Crimes against Humanity*), 173 (*War Crimes against Civilians*), 174 (*War Crimes against the Wounded and Sick*), 175 (*War Crimes against Prisoners of War*), 177 (*Unlawful Killing or Wounding of the Enemy*), 178 (*Marauding the Killed and Wounded at the Battlefield*) and 179 (*Violating the Laws and Practices of Warfare*) of this Code, **shall be guilty of** the criminal offence.

56. Consequently, the analysis of the said Article clearly indicates that it equates all forms of participation in the perpetration of the criminal offense and the scope of culpability and punishment. Article 180 of the CC BiH has been derived from Article 7 of the ICTY Statute. Article 180(1) became part of the CC BiH after Article 7(1) had been enacted and interpreted by the ICTY to include, specifically, joint criminal enterprise as a mode of co-perpetration entailing individual responsibility.<sup>17</sup>

57. The international jurisprudence interpretation of the term “perpetrated” in Article 7(1), which was incorporated into domestic law as Article 180(1), specifically provides: (1) that JCE is a form of co-perpetration that establishes personal criminal responsibility; (2) that “perpetration”, as it appears in Article 7(1) of the ICTY Statute (and hence also in

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<sup>16</sup> Paras. 453-461.

Article 180(1) of the CC of BiH), includes a knowing participation in a joint criminal enterprise; and (3) that the elements of JCE are established in customary international law and discernible. The Appellate Panel, in applying the term “perpetrated” in Article 180(1), must consider the definition of that term as it was understood when it was adopted from international law into the CC of BiH<sup>18</sup>.

58. Bearing in mind the foregoing, any act stipulated in Article 180(1) of the CC of BiH makes the perpetrator of the criminal offense, by culpability and punishment, a co-perpetrator in a joint criminal enterprise.

59. As for the joint criminal enterprise as a mode of participation in the perpetration of the criminal offense,<sup>19</sup> the Trial Panel did not find that Slavko Perić was a co-perpetrator therein.<sup>20</sup> On the other hand, the Trial Panel characterized the acts of Slavko Perić as aiding and abetting, as correctly pointed out in the Appeal by Defense Counsel for the Accused.

60. In this regard, the Trial Panel characterized *actus reus of aiding* in genocide as follows: “*Actus reus of aiding [and abetting] is consisted of acts or omissions aimed at assisting, furthering or lending moral support to the perpetration of a specific crime, which **substantially contributed** to the perpetration of the crime. As noted in the Verdict, the acts of the accused and soldiers of the 1<sup>st</sup> Battalion under ... immediate supervision and control of Slavko Perić (guarding, blindfolding and escorting the prisoners to the execution site, making battalion resources available and loading of the dead bodies) have made a substantial effect upon the perpetration of the offense.*”<sup>21</sup>

61. As for the *mens rea* or the culpability required for aiding and abetting in genocide, the Trial Panel held: “*Regarding the mens rea for aiding and abetting in genocide, the Prosecution must prove beyond a reasonable doubt that the accused 1) knew or was aware of the genocidal intent of the principal perpetrator, and 2) with that knowledge/awareness, undertook acts assisting or contributing to the perpetration of*

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<sup>17</sup>The same position was taken in the cases of *Rašević and Todović*, First Instance Verdict, p.103; *Milorad Trbić*, First Instance Verdict, para. 205; *Ratko Bundalo* Second Instance Verdict, para. 238.

<sup>18</sup> The Constitutional Court of BiH concluded that the ICTY Statute is „an integral part of the legal system of Bosnia and Herzegovina“, as one of the documents governing the application of international law in BiH as stipulated in Article III(3)(b) of the Constitution of BiH, Abduladhim Maktouf, case no. Ap-1785/06, Decision on Admissibility and Merits on appeal from the Verdict of the Court of Bosnia and Herzegovina, 30 March 2007, para. 70; *Ratko Bundalo*, Second Instance Verdict, para. 239.

<sup>19</sup> *Ratko Bundalo*, Second Instance Verdict, para. 240.

<sup>20</sup> *Momir Pelemiš and Slavko Perić*, First Instance Verdict, para. 455.

*genocide. If those two elements have been satisfied, and the Panel has found that that is the case here, the accused need not have genocidal intent to be convicted of aiding [and abetting] in genocide.*<sup>22</sup>

62. Bearing in mind the foregoing, in deciding within the scope of the appeal argument of the Defense for the Accused, the Appellate Panel points out that the Trial Panel misapplied Article 180(1) of the CC BiH, given that it arrived at the conclusion that the Accused Slavko Perić was not a member of the joint criminal enterprise but an aider and abettor, and consequently it was necessary to apply here Article 31 of the CC BiH or Article 24 (Aiding) of the Criminal Code of SFRY, which defines aiding as a form of participation, that is, complicity in the perpetration of a criminal offense. The Appellate Panel holds that *actus reus* and *mens rea* of aiding in genocide, as alleged in the First Instance Verdict, can be subsumed under a typical form of aiding, as correctly interpreted by the Trial Panel which however applied the wrong statutory provision and therefore the Appellate Panel granted the Appeal and revised the First Instance Verdict in this regard.

## **2. Findings of the Appellate Panel regarding the application of the Criminal Code**

63. In reviewing the appeal argument of Defense Counsel that the Court should have applied in the present case the adopted CC of SFRY as the law that is more lenient to the perpetrator or the law applicable at the time of the offense, the Appellate Panel concludes that the argument is partially reasonable.

64. Article 4 of the CC of BiH prescribes the principle of time constraints regarding applicability of the law, which reads: (1) The law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense. (2) If the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient for the perpetrator shall be applied.

65. Article 4(a) of the CC of BiH provides for an exception to the application of Articles 3 and 4 of the CC of BiH, mandating that: Articles 3 and 4 of this Code shall not prejudice

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<sup>21</sup> Para. 457 of the First Instance Verdict.

<sup>22</sup> Para. 460 of the First Instance Verdict.

**the trial and punishment** of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law.

66. It follows from the aforementioned legal provisions that, as a rule, the law in effect at the time of the perpetration of the offense shall primarily apply to the perpetrator of the criminal offense (the *tempus regit actum* rule).

67. It is possible to depart from this principle only if it is beneficial to the accused, that is, only if, subsequent to the commission of the offense, the law has been amended in a way to become more lenient to the perpetrator.

68. The issue as to which law is more lenient to the perpetrator is resolved *in concreto*, that is, by comparing the old and new law(s) in each particular case.

69. Comparing the text of the laws, however, can provide a conclusive answer only if the new law decriminalized some offenses prescribed under the old law, in which case the new law is obviously more lenient. In all other cases, when a criminal offense is punishable under both laws, it is necessary to establish all the factors that may be relevant to the decision as to the more lenient law.

70. These factors primarily relate to the provisions on sentencing and meting out or reducing the sentence (as to which law is more lenient in this regard), measures of warning, possible accessory punishments, new measures that substitute the punishment (e.g. community service), security measures, legal consequences of the conviction, as well as the provisions pertaining to criminal prosecution and whether the new law envisages the basis for excluding unlawfulness, criminal liability or punishability etc.

71. The departure from the principle of the application of a more lenient law is allowed only in cases stipulated in Article 4(a), that is, only if the application of a more lenient law would prejudice the trial or punishment for acts that constitute criminal offenses according to the general principles of international law.

72. Accordingly, Article 4(a) of the CC of BiH allows for an exceptional departure from the principles set out in Articles 3 and 4 of the CC of BiH in order to ensure trial and punishment for such conduct which constitutes a criminal offense under international law, that is, which constitutes a violation of norms and rules that enjoy general support of all nations, that are of general importance and/or are considered or constitute universal civilizational achievements of the contemporary criminal law, **where such**

**conduct was not defined as criminal under the national or internal criminal legislation at the time of perpetration.**

73. In the instant case, the law in effect at the time of the commission of the offense, as well as the law currently in effect, qualifies the criminal conduct of which the accused was found guilty as a criminal offense.

74. Article 141 of the adopted CC of SFRY reads: “ Whoever, with the intention of destroying a national, ethnic, racial or religious group in whole or in part, orders the commission of killings or the inflicting of serious bodily injuries or serious disturbance of physical or mental health of the group members, or a forcible relocation of the population, or that the group be inflicted conditions of life calculated to bring about its physical destruction in whole or in part, or that measures be imposed intended to prevent births within the group, or that children of the group be forcibly transferred to another group, or whoever with the same intent commits one of the foregoing acts...”. Thus, both laws define the criminal offense of Genocide.

75. Further assessment as to which law is more lenient to the perpetrator shall be made by comparing the prescribed sentences.

76. The criminal offense of Genocide under Article 171 of the CC of BiH carries the sentence of imprisonment for a term not less than ten years or a long-term imprisonment. The criminal offense of Genocide under Article 141 of the CC of SFRY carries the sentence of imprisonment of not less than five years or the death penalty.

77. As noted earlier, a more lenient law is always assessed *in concreto*, that is, through assessing all the circumstances of a specific case. In this case it is necessary to bear in mind that the Appellate Panel revised the First Instance Verdict in part relating to the punishment for which the Panel will provide detailed reasons in the decision on criminal sanction. In this regard, the Appellate Panel, taking into account all mitigating and aggravating circumstances, imposed on the Accused a more lenient punishment than that imposed by the Trial Panel, which falls within the statutory prescribed sentence of imprisonment prescribed by the law in effect at the time of perpetration, that is, the adopted CC of SFRY.

78. When the foregoing is taken into account in comparing the respective punishments prescribed under the adopted CC of SFRY and the CC of BiH, with respect to the legally

prescribed range of punishment, it follows that the CC of BiH, as the law in effect at the time of the trial is not more lenient and/or more favorable for the accused in the instant case, because the adopted CC of SFRY prescribes for the underlying offense a sentence of imprisonment of not less than five years (up to fifteen years as the general legal maximum prison sentence), while the CC of BiH at least ten years (up to twenty years as the general legal maximum prison sentence).

79. Based on the foregoing and pursuant to Article 4 of the CC of BiH, the Appellate Panel concludes that in the present case it is under obligation to apply the CC of SFRY as the law in effect at the time of the commission of the criminal offenses, since the CC of BiH, which was adopted subsequent to the commission of the criminal offense, is not the law that is more lenient to the perpetrator in the instant case, for the reasons provided by the Appellate Panel and not for the reasons propounded in the Appeal of Defense Counsel for the Accused, and therefore it has revised the contested Verdict with regard to the legal assessment and qualification of the offense as stated in the Enacting Clause of the Verdict.

80. The Panel notes that paragraph 84 of the said Decision of the Constitutional Court of BiH reads: "*However, courts are allowed to apply the law to similar cases differently if they have objective and reasonable justification for doing so*". This is because one and the same law can be more lenient in one situation or more stringent in another depending on the circumstances, so, when several laws may apply, it is necessary to determine which law may be more favorable for the perpetrator.

**7. Appeal argument: the essential element of the criminal offense of Genocide - significant part of the group – has not been proved**

**i. Submissions by the Defense**

81. The Defense submits that the Trial Panel erred in concluding that a significant part of the group was destroyed and therefore one element of the criminal offense of Genocide is missing. Defense Counsel argues that a lot of the victims of the events in and around Srebrenica were a result of legal and legitimate combat activities during the breakthrough of the column of the 28<sup>th</sup> Division of the ABiH. In this regard, the Defense refers to the testimony of expert witness Richard Butler who, according to the Defense's assertion,



pointed out that the victims from the 28<sup>th</sup> Division that was making a breakthrough were soldiers of this unit or civilians who joined the military unit and were legitimate military target and that the battle with the column making the breakthrough was a regular military activity.

## ii. Findings of the Appellate Panel

82. Article 141 of the CC of SFRY, equally as Article 171 of the CC of BiH, requires as an essential element of the criminal offense of Genocide the destruction of a group, in whole or in part.

83. The Trial Panel found that this element was satisfied given that it found proved that the protected group, in the specific case Bosnian Muslims from Srebrenica, was substantially “exterminated”.

84. When the significant part of a group is considered, there is no set number thereto, but the number must be significant enough to have an impact on the group in whole, as correctly defined by the Trial Panel.

85. The Defense is trying to challenge this finding of the Trial Panel by arguing that the element of the “significant” part of the group was not satisfied, since one part of the victims in the column, according to the Defense’s allegations, was a legitimate military target.

86. The Trial Panel addressed the same issue, given that the Defense advanced the same arguments during the main trial.

87. Regarding the composition of the column that attempted to make way towards Tuzla and Kakanj, it has been indisputably determined that one part of the column included members of the 28<sup>th</sup> Division.<sup>23</sup> This fact derives, *inter alia*, also from the report of Richard Butler.

88. Finally, the Appellate Panel entirely upholds the finding of the Trial Panel that the number of the men killed in the column does not in any way significantly change the fact on the total number of the men who had been killed by Bosnian Serb forces after they took Srebrenica, nor can it to any extent affect the qualification of the offense, as the subject of

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<sup>23</sup> Para. 91 of the First Instance Verdict.

the underlying proceedings is not the column or the legitimacy of the attack on the column. Furthermore, a significant part of the group as an essential element of the criminal offense of Genocide in the present case is not viewed only in the context of the men killed in the column, but the consideration is given to the overall operation of killing Bosniak Muslim men from Srebrenica, which ultimately constitutes a significant part of the group given the total number of the men killed.

89. Therefore, this appeal argument of the Defense for the Accused Slavko Perić is refused as unfounded.

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

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

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

91. The Appellate Panel, when considering alleged errors of fact, will determine whether any reasonable trier of fact could have reached that conclusion beyond 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.

92. 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 reached by a Trial Panel.

93. 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”.

94. The Constitutional Court, with regard to direct or indirect circumstantial evidence, emphasizes that proving facts through circumstantial evidence is not by itself contrary to the principle of fair trial, as laid down in Article 6(1) of the ECHR.<sup>24</sup> However, proof of a fact by circumstantial evidence must be established beyond any reasonable doubt and tightly and logically interrelated so that the Trial Panel’s factual conclusion is the only possible conclusion in light of the evidence. Reasonable doubt is the criterion. It is very rare that a fact can be proven beyond any doubt. Indeed, sometimes circumstantial evidence, like the separate pieces of a puzzle when all put together, can be more compelling than direct eyewitness testimony, which can be subject to normal human error.

a. **Appeal argument of the Defense: Assistant Commander for Intelligence and Security of the Zvornik Brigade 1<sup>st</sup> Battalion cannot organize, supervise and issue instructions**

i. **Findings of the First Instance Panel**

95. The acts of the Accused Slavko Perić in his capacity of Assistant Commander for Security and Intelligence of the 1<sup>st</sup> Battalion are in Section 1(a) described as control, direction and supervision of the soldiers of the 1<sup>st</sup> Battalion. Further, in Section 1(b) the acts of Slavko Perić are described as deploying and instructing the soldiers of the 1<sup>st</sup> Battalion to go to the Pilica Dom, and securing, being present and deploying the soldiers of the 1<sup>st</sup> Battalion to go to the Pilica Dom, as well as giving instructions to the soldiers of the 1<sup>st</sup> Battalion to remove and load the bodies of the detainees.

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<sup>24</sup> M.Š., AP-661/04 (Const. Ct. of BiH), Decision on Admissibility and Merits, 22 April 2005, para. 36.

## **ii. Submissions of the Defense**

96. The Appeal argues that, according to the Enacting Clause of the Verdict, the authority that Slavko Perić had was not correctly determined. The Defense submits that the conclusion on the fact that Slavko Perić supervised, controlled and coordinated the detention of the Bosniaks in the school and secured the presence of and deployed the soldiers of the 1<sup>st</sup> Battalion and issued instructions to the members of the 1<sup>st</sup> Battalion does not arise from the documentary evidence in the case file or the finding and opinion of expert witness Petar Vugo.

97. Regarding the rights and authority of Assistant Commander for Intelligence and Security, the Defense refers in the Appeal to the finding and opinion of expert witness Petar Vugo in which, as the Defense argues, it is concluded that the Accused Slavko Perić did not have any individuals or organizational units subordinate to him and consequently he did not exercise any commanding function, including coordination, and, according to the rules of service of the security organ of the armed forces or the rules of service of the military police, the Instructions on control and command of security and intelligence organs, the Operating instruction for commands and staffs, the Brigade rules and the instructions prepared by Drago Nikolić, he did not have within his competence or under his command any forces to take any measures relating to these prisoners of war.

## **iii. Findings of the Appellate Panel regarding the authority of Slavko Perić**

98. Analyzing the appeal arguments raised by the Defense, the Appellate Panel concludes that they are unfounded. The Panel finds that the responsibilities and all the acts of the Accused Slavko Perić as stated in the First Instance Verdict were entirely corroborated by the produced evidence. The decisive facts correspond to the results of the evidence adduced, while the Defense, by its appeal arguments, did not call into question the correctness of the findings of fact and conclusions reached by the Trial Panel, which are also entirely upheld by this Panel.

99. The theory of the Defense is that in the evaluation of the evidence and expert opinions the Trial Panel did not provide valid argumentation regarding the actions and responsibilities of Slavko Perić. In view of the foregoing, the main question raised in

the Appeal is whether the Accused Slavko Perić could exercise control, direction and supervision over the soldiers of the 1<sup>st</sup> Battalion or deploy and issue the instruction to the members of the 1<sup>st</sup> Battalion at the time and in the manner as described in the Enacting Clause of the First Instance Verdict, which pertains to the detainees in the Kula school and Pilica Cultural Center.

100. The Appellate Panel reviewed the findings of fact reached by the Trial Panel through applicable regulations and expert findings referred to in the Appeal by Defense Counsel for the Accused Slavko Perić, as well as the factual situation on the ground which is also contested by the Appeal.

101. Primarily, it was indisputably determined in the first instance proceedings that Slavko Perić was at the relevant time Assistant Commander for Security of the Zvornik Brigade 1<sup>st</sup> Battalion.

102. According to the Instruction of the Zvornik Brigade Command of 21 September 1994, which is also referred to in the appeal by Defense Counsel for the Accused, the Assistant Commander for Intelligence and Security is an organ of the Battalion Command that is directly subordinate to the Battalion Commander to whom he answers for his work, while in the professional sense, he reports to the security organ of a higher command, as correctly concluded by the Trial Panel.<sup>25</sup>

103. By contesting any responsibility of the Accused Perić as the security organ or his authority over the members of the 1<sup>st</sup> Battalion, Defense Counsel also contests his responsibilities relating to the detainees.

104. However, contrary to these submissions of the Defense, the Trial Panel was correct in arriving at the conclusion that from the very moment the command of the 1<sup>st</sup> Battalion knew that a number of the detainees would be placed in the Kula school, the Accused Slavko Perić was actively involved in and informed of the issue regarding the detainees, as well as in the supervision of and giving instructions to the members of the 1<sup>st</sup> Battalion who were deployed in and around the Kula school and the Cultural Center, as well as the removal and loading of the detainees executed in the Cultural Center, which the Appellate Panel also upholds in its entirety.

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<sup>25</sup> Para.191 of the First Instance Verdict.

105. Even though the way in which the Command of the 1<sup>st</sup> Battalion in Manojlovići obtained information that a certain number of detainees would be interned in the in Kula school was disputable in the first instance proceedings, the Appellate Panel has held as most relevant the fact that the 1<sup>st</sup> Battalion had knowledge that the detainees would be brought. This was eventually established as indisputable. The Defense appeal also did not contest that Slavko Perić had knowledge about the forthcoming arrival of detainees.

106. The Appellate Panel also finds relevant the fact properly established by the Trial Panel that a certain number of members of the 1<sup>st</sup> Battalion were sent to the School together with Slavko Perić even before the arrival of first busses with detainees.<sup>26</sup> This fact ensued from the testimony of witnesses Bogoljub Gavrić and Rajko Babić. These witnesses undoubtedly testified that Slavko Perić was present around the school even before the detainees' arrival. In addition, these witnesses clearly and resolutely explained the presence and the way in which members of the 1<sup>st</sup> Battalion were deployed in and around the school. The Trial Panel explained in detail the presence of members of the 1<sup>st</sup> Battalion not only before the detainees' arrival but rather during the entire period the detainees were held in the Kula school,<sup>27</sup> their further escort to the execution site, and the subsequent presence of Slavko Perić and members of the 1<sup>st</sup> Battalion around the Pilica Cultural Center and their engagement in the loading of dead bodies. The role of members of the 1<sup>st</sup> Battalion will be addressed in the Verdict below.

107. In addition to members of the 1<sup>st</sup> Battalion, Military Police officers of a company within the Zvornik Brigade also secured the School. They had been ordered to go to the Kula school where they saw Slavko Perić. Witness Zoran Jović testified that, at his departure, he had reported to Slavko Perić.<sup>28</sup> The Appellate Panel does not exclude a possibility that members of the Bratunac Brigade were also present there, as properly concluded by the Trial Panel on the grounds of the evidence adduced.<sup>29</sup>

108. Within the Defense appeal arguments, the Appellate Panel had to examine the factual findings of the Trial Panel pertaining to the concrete acts of the Accused Slavko

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<sup>26</sup> Witnesses Zoran Bojić and Slobodan Jović; witness O1 stated that Drago Nikolić or a company commander of the Jasikovac Military Police gave him orders; it ensues from this witness's testimony that members of the Zvornik Brigade Military Police were also engaged to secure the detainees in Pilica, testimony dated 17 June 2011.

<sup>27</sup> Dragan Pantić, Zoran Gajić, Nedeljko Lazić, Pero Pavlović, Savo Stević, Mičo Manojlović, Mile Tejić, Juroš Jurošević (member of the 1<sup>st</sup> Battalion work detail) – all testified that they were near the School in Kula, which the Defense for the Accused Slavko Perić did not contest either.

<sup>28</sup> Witness Zoran Jović, testimony of 27 December 2010, p. 31 of the transcript.

<sup>29</sup> First Instance Verdict, para. 294.

Perić, that is, the way in which the Accused had executed the acts described as monitoring, controlling and instructing.

109. The Appellate Panel has applied the standard of examining whether a reasonable trier of fact adjudicating on factual issues would draw the conclusion beyond a reasonable doubt, and concluded that all the acts of the Accused were fully and properly established by the Trial Panel.

110. Witness Mile Tejić testified that the Accused Slavko Perić had deployed members of the 1<sup>st</sup> Battalion in the Kula school area. This witness stated that the Company Commander had ordered him to go to the Kula school, and report to Slavko Perić. The witness further stated that upon his arrival in the school, he reported to the Accused, whereupon he was assigned to stand guard on the school floor.<sup>30</sup> Defense witness Slavko Stević also testified that the Accused Slavko Perić had withdrawn soldiers from the frontline to secure the school.<sup>31</sup> Witness Savo Stević testified that while he was at the frontline, he received an order to secure the school in Kula, where he saw Slavko Perić.<sup>32</sup> Witnesses Stjepan Mitrović<sup>33</sup> and Rajko Babić<sup>34</sup> also testified about the role of the Accused Slavko Perić in the deployment of members of the 1<sup>st</sup> Battalion.

111. Witness Zoran Gajić (member of the 1<sup>st</sup> Battalion)<sup>35</sup> testified that Slavko Perić had ordered them to take detainees out of the school gym, whereupon they were tied and blindfolded in front of the school before being boarded onto buses. Witness Gajić stated that after his arrival in front of the school it was exactly Accused Slavko Perić who issued the assignment order.<sup>36</sup>

112. That Slavko Perić's role was not merely to be present in the school also confirms the fact properly established by the Trial Panel in para. 313 of the First Instance Verdict. The Verdict stated that Slavko Perić and Rajko Babić (members of the 1<sup>st</sup> Battalion Command deployed on site) agreed that Perić would go to the Battalion or Brigade

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<sup>30</sup> Testimony dated 25 February 2009, transcript p. 11.

<sup>31</sup> Testimony dated 29 September 2010, transcript p. 43.

<sup>32</sup> Testimony dated 26 May 2009, transcript p. 5 and 9.

<sup>33</sup> Testimony dated 11 October 2011, transcript p. 56.

<sup>34</sup> Testimony dated 28 April 2009, transcript p. 46.

<sup>35</sup> Testimony dated 13 May 2009, transcript p. 25.

<sup>36</sup> Ibid, transcript p. 11.

Command and ask for their relief and some reinforcement for members of the 1<sup>st</sup> Battalion because the twelve of them near the school had been already exhausted<sup>37</sup>.

113. The Trial Panel properly concluded on the grounds of the witnesses' statements that on 15 June Accused Slavko Perić and members of the 1<sup>st</sup> Battalion were present at the Cultural Center's site in Pilica. The foregoing ensued from the statements of witnesses Milan Jovanović<sup>38</sup>, Zoran Radosavljević, Zoran Gajić<sup>39</sup>, Juroš Jurošević<sup>40</sup> and others. The Trial Panel examined in detail each witness's statement individually and in combination, and brought them in a logical whole.

114. Witness Radivoje Lazarević testified that dead bodies of the detainees killed in the Pilica Cultural Center were loaded in an organized way. Witness Lazarević stated that Accused Slavko Perić had given him a small piece of paper with a written order to call the men in the labor detail to go to the road leading to Branjevo.<sup>41</sup> Witnesses P-18<sup>42</sup>, Cvjetko Marković<sup>43</sup> and Cvjetko Stević<sup>44</sup> testified that the Accused was present in the Cultural Center during the mopping up and loading operation. The Trial Panel also took into account the testimony of Jakov Stevanović who testified about Accused Slavko Perić's role in the operation of mopping up and loading of the bodies. It ensues from this evidence that Slavko Perić asked for men for the loading operation and that he assigned tasks, as properly established by the Trial Panel.<sup>45</sup> Witness Cvjetko Stević<sup>46</sup> further testified that the Accused Perić had ordered him to load the bodies.

115. In view of the foregoing, the Trial Panel properly concluded that as an Assistant Chief of Security, the Accused Slavko Perić participated in the operation of the removal of bodies from the Dom, that he instructed members of the 1<sup>st</sup> Battalion to come for assignments, to which effect they were provided with food and drinks<sup>47</sup>, and that the Accused was in charge of the operation and issued orders on site. The Trial Panel also properly concluded that the operation of the removal of bodies constituted an act of aiding and abetting, given that this was not a classical operation of "clearing of the terrain" in

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<sup>37</sup> Testimony of witness Rajko Babić dated 28 April 2009.

<sup>38</sup> Testimony dated 1 June 2009, transcript p. 13.

<sup>39</sup> Testimony dated 13 May 2009, transcript pp. 24 and 38.

<sup>40</sup> Testimony dated 1 February 2010, transcript p. 21.

<sup>41</sup> Testimony dated 24 August 2009, transcript p. 48.

<sup>42</sup> Testimony dated 17 December 2009, transcript pp. 47 and 48.

<sup>43</sup> Testimony dated 24 May 2010, transcript p. 31.

<sup>44</sup> Ibid transcript p. 12.

<sup>45</sup> Testimony dated 2 November 2009, pp. 29, 30, and 56, First Instance Verdict, para. 349.

<sup>46</sup> Testimony dated 25 April 2010, transcript p. 16.



military terms but rather an operation of the security organs to remove the bodies and traces of crime. In this operation, the bodies were not counted, and traces of the crime not collected with a view to initiate criminal proceedings against the perpetrators in the future. The Trial Panel properly concluded that this was a duty of the Assistant Chief of Security.<sup>48</sup>

116. That Accused Slavko Perić was continually involved in the detainees' issue ensues, *inter alia*, from the testimony of witness Dragan Jovanović. This witness testified: "I know that Slavko Perić non-stop, that is, constantly requested and constantly worked on it, as to how long the people would stay and where and when they would leave."<sup>49</sup> The evidence further indicates that on 15 July, the Accused went to the Zvornik Brigade Command in Karakaj<sup>50</sup> with regard to detainees.<sup>51</sup> On the same day, Dragan Obrenović, Vujadin Popović, Drago Nikolić<sup>52</sup> and Vinko Pandurević<sup>53</sup> were at the same place and at the time when the liquidations were carried out within the Zvornik Brigade zone of responsibility.

117. The Appellate Panel brought into mutual connection all concrete acts of the Accused and the security authorities mentioned both in the findings of expert witness Petar Vuga<sup>54</sup>, and other documentary evidence, primarily the Instruction of the VRS Main Staff on the Command and Control over the Security and Intelligence Organs of the VRS dated 24 October 1994<sup>55</sup> and the Battalion rules.<sup>56</sup> The Appellate Panel established that the Trial Panel properly concluded that these authorities pertained to control, direction and supervision, and that this was indeed the competence of the Accused.

118. The Defense appellate arguments that the security organ could not issue orders, but could merely propose to the commander certain measures pertaining to the field of security, and that it was only the commander who could issue orders, are ill-founded. The Trial Panel's conclusion, upheld by this Appellate Panel too, is that the Accused Perić had no role in issuing orders, but exactly in executing them.

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<sup>47</sup> Witnesses Zoran Bojić and Zoran Jović, P-18.

<sup>48</sup> Excerpt from the Rules of Service of Security Organs, p. 40 of Report by Petar Vuga, Exhibit D-II-26.

<sup>49</sup> Testimony dated 10 June 2009, transcript p. 20.

<sup>50</sup> Witness Zoran Bojić, witness statement dated 11 June 2009, transcript p. 14, Milan Jovanović 1 June 2009, transcript p. 18.

<sup>51</sup> Rajko Babić, 28 April 2009, transcript p. 45, witness Pantić Dragan 25 January 2009, transcript p. 19

<sup>52</sup> T-141 Testimony of Dragan Obrenović dated 2 October 2003 in the case IT – 02- 60-T pp. 81 and 82.

<sup>53</sup> *Ibid* p. 91.

<sup>54</sup> Report by Petar Vuga D-II-26.

<sup>55</sup> O-I-25 Instruction on the Command and Control: Para. 2. Security – intelligence shall be professionally directed by centralized security-intelligence organs.

<sup>56</sup> Battalion rule O – I – 26.

119. The Trial Panel properly brought into connection all the above referenced acts of Slavko Perić and the role of the security organs in the overall events related to the detainees brought to the Kula school and Cultural Center, thereby under the Zvornik Brigade zone of responsibility.

120. More specifically, the Trial Panel correctly concluded, on the basis of evidence adduced at the main trial, that a certain number of orders related to the detainees' matters were issued by the security organ. Locations for the interment of men from Bratunac were designated by Vujadin Popović (Assistant Chief of Security, Drina Corps), Drago Nikolić, Assistant Chief of Security, Zvornik Brigade et al.<sup>57</sup> The Trial Panel admitted into evidence the transcript of Dragan Obrenović's testimony. This witness stated that he gave no detainees-related order to the Battalion commands because Drago Nikolić was in charge of this matter, together with Popović and Beara. During the first instance proceedings, the witnesses mentioned several times that high-ranking officers were present around the Kula school<sup>58</sup>, and that Slavko Perić had communication with them.

121. These facts, associated with the fact that at the critical time Slavko Perić was Deputy Chief of Security, lead to the conclusion that he was one of authorized persons in the chain of command within the security organ of the 1<sup>st</sup> Battalion. The accused Slavko Perić had the authority to coordinate the operation at site around the school and the Cultural Center by controlling and directing members of the 1<sup>st</sup> Battalion, as properly held by the Trial Panel too.

122. Exactly these factual findings of the Trial Panel, that as a security organ member Slavko Perić was deployed to secure the school for the arrival of detainees in the 1<sup>st</sup> Battalion area, assign members of the 1<sup>st</sup> Battalion and for the subsequent arrival of the security organ high-ranking officers and communication with them, have led to the conclusion that the issue of detainees was under the competence of security organs, and thereby of the security organ of the 1<sup>st</sup> Battalion present in the Kula school and the Cultural Center area. The report of expert witness Richard Butler addressed this issue too. The report stated that in directing the military police, the security organ shall secure prisoners of war when necessary<sup>59</sup>. In his testimony of 22 February 2012, this expert witness stated that "*A security officer at the battalion level was often an assistant commander for*

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<sup>57</sup> Para. 196 of the First Instance Verdict.

<sup>58</sup> Witness O – 1 testimony dated 17 June 2011, Dragan Jovanović, testimony dated 10 June 2009, transcript p. 24, witness Rajko Babić, testimony dated 29 April 2009, transcript pp. 54 and 55.

Intelligence,... together with other battalion organs, shall ensure that the detainees are secured and transported to a certain location designated as the place from which they will be further transported.”

123. The Defense Counsel pointed to the observation made by the expert witness Richard Butler that he was not aware of any document under which the detainees were handed over to the 1<sup>st</sup> Battalion, and that the Bratunac Brigade was supposed to carry out its task related to detainees until they were handed over to some other unit. Notwithstanding the foregoing, the Appellate Panel notes that the Defense took this expert witness’s submission out of context. More specifically, transportation of a portion of detainees from the Bratunac Brigade zone of responsibility, *inter alia*, to the zone of responsibility of the 1<sup>st</sup> Battalion of the Zvornik Brigade should be viewed within the overall context of the Srebrenica-related events in July 1995, as properly concluded by the Trial Panel. It is correct that no formal document was issued with regard to this matter. However, the superior command (Ljubiša Beara, Vujadin Popović, Drago Nikolić and others)<sup>60</sup> agreed that the detainees would be transferred from the Bratunac Brigade zone of responsibility to the Zvornik Brigade zone of responsibility. The absence of formal document does not exclude the responsibility of the 1<sup>st</sup> Battalion for the events occurring in its zone of responsibility. The presence of not only members of the 1<sup>st</sup> Battalion but members of the military police and the Bratunac Brigade too exactly shows that it was one organized operation the objective of which was to execute all captured men.

124. In view of the foregoing, the Appellate Panel concludes that the Trial Panel made proper factual findings about Slavko Perić’s role related to the detainees and his leading role over members of the 1<sup>st</sup> Battalion who were involved in the actions described in the First Instance Verdict. The Appellate Panel also concluded that the Defense appellate arguments did not bring into question the proper factual findings of the Trial Panel and thereby the role of the Accused Slavko Perić in the overall events.

125. As to the powers of the Accused Slavko Perić, the Defense appeal contested the Trial Panel findings that were, among other things, made on the basis of evidence given by witness Zoran Gajić. The Defense contested the credibility of this witness, having considered it as “absolutely disputable”. The Defense challenged this witness’s testimony both in relation to the events in the Kula school and the Cultural Center. Therefore, the

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<sup>59</sup> Richard Butler report, p. 16. para. 3.19.

Appellate Panel will in this part refer to the Defense appellate arguments related to this witness's credibility.

126. The Appellate Panel considers ill-founded the Defense appellate argument related to the credibility of witness Zoran Gajić. More specifically, the Defense referred, *inter alia*, to paragraph 308 of the First Instance Verdict where the Trial Panel evaluated the credibility of evidence given by this witness.

127. According to the Appellate Panel, the Trial Panel provided valid reasons in explaining the extent and reasons for which this witness was given credence. In addition, the Panel has brought the testimony of witness Zoran Gajić into relation with the other witnesses' statements which did not bring into question the accuracy of witness Gajić's statement either.

128. There were no grounds in the Defense appellate arguments to refer to the witness's testimony fragments in which the Panel held that witness Zoran Gajić's testimony was uncertain and hesitant. On the other hand however, the Trial Panel noted that unlike most witnesses, this witness gave more comprehensive evidence, that he had even incriminated himself to a certain extent, and that he had in detail described the acts of other witnesses who were present at the critical time both near the Kula school and in the Cultural Center.

129. Furthermore, the Defense referred to the testimony of witness Stanko Kostić with a view to contest the credibility of witness Zoran Gajić. According to the Defense, witness Kostić testified that he had not been present in front of the Cultural Center with Zoran Gajić.

130. The Appellate Panel concludes that it is apparent from this witness's testimony that witness Zoran Gajić had mentioned witness Kostić within the Kula school context rather than the Cultural Center, and that this objection of the Defense is ill-grounded.

131. When it comes to the other witnesses who had contested this witness's testimony in the first instance proceedings (Milan Lazarević), the Trial Panel provided valid reasons for not giving credence to these witnesses. Accordingly, the Trial Panel stated in para. 306: *"The Panel finds that the testimony of Milan Lazarević, who had reasons to deny his arriving in the Center at the time when the detainees were there, did not bring into question the truthfulness of Zoran Gajić's testimony. More specifically, he provided very*

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<sup>60</sup> First Instance Verdict, para. 196.

*specific details about Milan's presence on the Center's gallery, about which he also spoke when he gave his statement to the Prosecution investigators. This witness stood by his statement even at the main trial".* The Appellate Panel has fully upheld this conclusion.

b. **Defense appellate arguments: members of the 1<sup>st</sup> Battalion who were in front of the Kula school and in Pilica on 14, 15, and 16 July were not tasked to safeguard the detainees**

i. **Conclusions of the Trial Panel regarding the role of members of the 1<sup>st</sup> Battalion in the Kula school and Pilica**

132. The Trial Panel has found that soldiers of the 1<sup>st</sup> Battalion were deployed to guard the detainees and secure the area around and in the Kula school. In addition, the Trial Panel concluded that members of the 1<sup>st</sup> Battalion had blindfolded the detainees and tied their hands, taken them out of the school, boarded them onto busses and escorted the buses to the Branjevo Farm.

ii. **Defense arguments**

133. In the previous section of the Verdict, the Appellate Panel has upheld the factual findings of the First Instance Verdict related to the presence of members of the 1<sup>st</sup> Battalion in and around the Kula school, which the Defense Counsel for the Accused did not contest either.

134. The Defense, however, argues that the Trial Panel's conclusion, that the task of members of the 1<sup>st</sup> Battalion was to safeguard the detainees, is arbitrary and incorrect. The Defense argued that the task of members of the 1<sup>st</sup> Battalion was to secure the village. The Defense's view is that this fact was insufficiently reasoned and that no reference has been made to all adduced evidence, which resulted in an incompletely established state of facts.

135. The Defense appellate arguments also contested that members of the 1<sup>st</sup> Battalion had any role in taking the detainees out of the school, their loading onto buses and escorting them to the Branjevo Farm.

### iii. Findings of the Appellate Panel

136. The Appellate Panel infers that the Trial Panel had properly and fully established the state of facts pertaining to the role of members of the 1<sup>st</sup> Battalion related to the detainees brought to the Kula school.

137. The Defense for the Accused did not contest that members of the 1<sup>st</sup> Battalion were present around the Kula school, about which many witnesses have testified too. Notwithstanding this fact, the Defense contested certain factual findings concerning the exact site of their deployment.

138. In this respect, the Appellate Panel considers as proper the Trial Panel's conclusion that certain members of the 1<sup>st</sup> Battalion were deployed at the school playground, that some of them secured the school side entrances, and that a portion of members of the 1<sup>st</sup> Battalion was inside the school itself. The Trial Panel drew the foregoing conclusions on the basis of many witnesses' statements, including the witnesses who were members of the 1<sup>st</sup> Battalion.

139. Witness Bogoljub Gavrić, a school teacher who had lived in a building just across the school, saw the arrival of Slavko Perić with a group of ordinary soldiers, among whom he recognized Stanko Perić aka Gajo, the Accused's brother.<sup>61</sup> The witness responded to the Prosecutor's question that they were: "*just ordinary domestic troops*"<sup>62</sup>, and that his impression was that Accused Slavko Perić had known them. This witness testified that soldiers were deployed: "*around the school, at the entrance in the school and at the exit toward the playground*",<sup>63</sup> as correctly concluded by the Trial Panel too. Witness Rajko Babić, member of the 1<sup>st</sup> Battalion Command, also testified that members of the 1<sup>st</sup> Battalion were present there. The Trial Panel has quoted in detail this witness's testimony.<sup>64</sup>

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<sup>61</sup> Witness testimony dated 27 May 2009, transcript page 44.

<sup>62</sup> Witness testimony dated 27 May 2009, transcript page 43.

<sup>63</sup> Witness testimony dated 27 May 2009, transcript page 53.

<sup>64</sup> First Instance Verdict, para. 272.

140. Witnesses-members of the 1<sup>st</sup> Battalion Dragan Jovanović, Rajko Babić, Dragan Pantić, Zoran Gajić, Stanko Kostić, Pero Pavlović, Savo Stević, Mićo Manojlović and Mile Tejić also explained their positions at which they were deployed around the school.

141. Even though all the witnesses-members of the 1<sup>st</sup> Battalion have tried to describe that they had an irrelevant role to secure the village, the Trial Panel properly concluded, on the basis of diligent evaluation and examination of evidence, that, nevertheless, their role was to secure the detainees, and that the explanation they provided about their role was unconvincing, but logical too, if it is viewed from the aspect of their role of guards and the related attempt to diminish it in their evidence.<sup>65</sup>

142. Witness Dragan Jovanović testified that together with other members of the 1<sup>st</sup> Battalion, he had moved around the area behind the school. Certain witnesses testified that, while still at the frontline, they were ordered to come to the Kula school area.<sup>66</sup> Witness Mile Tejić, who had come from the frontline to the Kula school, testified that following his arrival in front of the school, Perić ordered them to stand in front of the classrooms and prevent the Bosniaks from going out; that while he was in the school, he saw members of the 1<sup>st</sup> Battalion.<sup>67</sup> Even Radivoje Matić, witness for Accused Slavko Perić's Defense, testified that he was asked to send 7-10 men to secure the detainees, even though he was not certain as to whether the Kula school was in question at all.<sup>68</sup> The Trial Panel properly associated the statements of witness Juroš Jurošević, member of the work detail, given both during the investigation and at the trial. This witness confirmed that he was present near the Kula school. In the statement given during the investigation, this witness said that someone had given him a rifle and told him to prevent the detainees from escaping from the gym.<sup>69</sup>

143. These witnesses testified about the site at which they were deployed. Witness Savo Stević testified that the company commander had ordered him to go to the Kula school to secure the detainees from Srebrenica, and that he did this together with other soldiers and members of the 1<sup>st</sup> Battalion. The Trial Panel has undoubtedly concluded from the

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<sup>65</sup> First Instance Verdict, para. 270.

<sup>66</sup> Savo Stević, Mićo Manojlović, Mile Tejić, Pero Pavlović.

<sup>67</sup> Testimony transcript dated 27 May 2009, pgs. 7 and 8, para. 286 of the First Instance Verdict.

<sup>68</sup> Witness testimony at the main trial dated 8 February 2011.

<sup>69</sup> First Instance Verdict, para. 292.

foregoing statements and the testimony of Mićo Manojlović<sup>70</sup> that the objective of deployment of members of the 1<sup>st</sup> Battalion was to secure the detainees.

144. The testimony of witness Rajko Babić supported in part the conclusion that members of the 1<sup>st</sup> Battalion indeed secured the detainees and prevented them from escaping. Witness Babić testified that it had been agreed that Accused Perić would ask for some reinforcement. The Trial Panel correctly concluded from the foregoing that members of the 1<sup>st</sup> Battalion had actual roles and tasks, that in concert with other soldiers they secured the detainees and that they could not simply leave their posts unless their relief was provided before they leave.<sup>71</sup>

145. Slavko Perić's Defense submitted in the appeal that a mere act of securing the detainees does not amount to a war crime. Along this line, the Trial Panel drew a similar conclusion in para. 318 of the Trial Verdict, which was upheld by the Appellate Panel too. The Defense, however, referred to the witnesses' statements given at the main trial. These witnesses testified that they were convinced the detainees would be exchanged, and that their possible knowledge that the detainees would be executed would have amounted to aiding and abetting in the crime. The Appellate Panel has noted that it was not the witnesses' guilt but rather the Accused's guilt that was a subject of determination in this case, and that the Trial Panel concluded that the Accused had knowledge that the detainees would be executed. The Verdict will address this matter further below. The Appellate Panel also noted that, by the actions stated in the Verdict, the Accused directed members of the 1<sup>st</sup> Battalion with the objective to secure the detainees, that he had knowledge about the intent of principal perpetrators to execute the detainees, and that exactly by controlling and directing the deployment of members of the 1<sup>st</sup> Battalion, the Accused aided and abetted in the commission of the crime.

146. The Defense also contested the Trial Panel's conclusion that the detainees' blindfolding and tying their hands amounted to an act of aiding and abetting. The Defense referred to the findings of expert witness Petar Vuga and his explanation that military persons were obliged to do so in the transportation of captives for the reasons of the unit security, and that it was illogical to blindfold someone intended for execution.

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<sup>70</sup> Witness Mićo Manojlović, page 51 of the testimony transcript dated 26 May 2009: „I was told to go to a classroom on the floor, secure the detainees and relieve the guard who had secured them“. Page 54: „We were told to prevent them (detainees) from approaching and opening the windows, and to watch them from the doorway.“

<sup>71</sup> First Instance Verdict, para. 313.



147. With regard to the acts of tying the detainees' hands and their blindfolding, the Trial Panel referred to Exhibit T-164 (Letter by the Security Administration of the Drina Corps of 15 April 1995 ordering that the detainees must have their hands tied and that they must be blindfolded) and concluded that, as such, these acts were not illegitimate.<sup>72</sup>

148. The referenced act, however, cannot be viewed separately, but rather within the context of overall events, including the detainees' securing and their taking to the Branjevo Farm, as correctly concluded by the Trial Panel. All the foregoing led to a single conclusion beyond a doubt that all these actions in their entirety amount to the act of aiding and abetting.

149. More specifically, the Trial Panel was mindful of the fact that the captives were bussed out by a number of busses, that the detainees from the first bus had their hands tied, but that prior to boarding onto the third bus the captives had their hands tied and were blindfolded in order to be prevented from seeing the detainees from previous buses killed.

150. The Trial Panel has also properly found that, even though members of the 1<sup>st</sup> Battalion perhaps had not even known what would happen to the detainees at the time they headed off toward the Branjevo Farm, they became aware of this after the first bus with the detainees returned empty shortly thereafter. In view of the foregoing, witness Juroš Jurošević testified that the shooting from Branjevo could be heard all the way to the school.<sup>73</sup>

151. On the basis of the statements of witnesses who had escorted the buses, the Trial Panel further concluded that it was hardly possible that they did not discuss this on their way back to take the other detainees for execution. Even though the Defense tried to contest the testimony of witness Zoran Gajić who had escorted the detainees in the bus from the school to Branjevo, the Appellate Panel has established that the Trial Panel properly concluded that a portion of members of the 1<sup>st</sup> Battalion did escort the busses with detainees from the Kula school to the Branjevo Farm and back. Witnesses Zoran Gajić and Stanko Kostić clearly testified about the foregoing. The Trial Panel has examined their statements and brought them into connection with other evidence. Notwithstanding that there were certain understatements and inconsistencies in their

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<sup>72</sup> First Instance Verdict, para. 338.

<sup>73</sup> Testimony of witness Juroš Jurošević dated 1 February 2010.

statements, these witnesses were resolute and clear in essential parts of their statements.<sup>74</sup>

152. The Appellate Panel considers ill-founded the objections of the Accused's Defense in relation to the statements of witnesses Rajko Babić, Mile Tejić, Mićo Manojlović and Savo Stević, who contested the accuracy of their testimony.

153. More specifically, the Trial Panel evaluated all the witnesses' statements both individually and in combination, including the statements of witnesses contested in the Defense's appeal. The Trial Panel provided a detailed explanation, as well as realistic and reasonable arguments for the fact that certain witnesses were given credence and certain were not, and in which part of their testimony. The foregoing did not ultimately bring into question a possibility to make a different factual finding. This Panel has fully accepted all the factual findings of the Trial Panel concerning the role of members of the 1<sup>st</sup> Battalion.

**c. Defense Appellate Arguments: Members of the 1<sup>st</sup> Battalion did not secure the detainees in the Cultural Center in Pilica, nor did they have any tasks in this regard, and they did not take part in the loading and transportation of dead bodies to the Branjevo Farm**

**i. Conclusion of the Trial Panel**

154. The Trial Panel concluded on the basis of the evidence adduced that members of the 1<sup>st</sup> Battalion were present in the Cultural Center in Pilica and that their task was to secure the detainees. The Trial Panel inferred that the Accused Slavko Perić had deployed members of the 1<sup>st</sup> Battalion to safeguard and secure the area around the Cultural Center in Pilica, and that on 17 July they removed the bodies of killed captives from the Cultural Center, loaded them on trucks and transported them to the Branjevo Farm.

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<sup>74</sup> First Instance Verdict, paras. 334, 335 and 336.

## ii. Defense Arguments

155. The Defense contested that members of the 1<sup>st</sup> Battalion were present in the Cultural Center in Pilica, and referred to the testimony of witness Milan Jovanović. The Defense contested the testimony of witness Zoran Gajić too.

## iii. Findings of the Appellate Panel

156. The Appellate Panel concluded that the Defense appeal arguments are arbitrary and groundless given that the witnesses-members of the 1<sup>st</sup> Battalion confirmed that they had been present near the Cultural Center, as properly concluded by the Trial Panel too. Although the witnesses provided quite different reasons for their being present in and around the Cultural Center, the Trial Panel provided valid reasons for not giving credence to the witnesses in this segment. The conclusions regarding the Cultural Center were inferred by the Trial Panel on the basis of statements of witnesses Savo Stević, Mićo Manojlović, Zoran Radosavljević, Milan Kalajdžić, Zoran Gajić, and Juroš Jurošević. These witnesses testified about their presence around the Cultural Center and their role in this area, as fully accepted by the Appellate Panel too. Even though all witnesses tried to avoid testifying about their role in this area, their evidence about their presence on site was completely clear and unequivocal.

157. Witness Savo Stević testified that he and Mićo Manojlović were in an inn across from the Cultural Center following the departure from the Kula school,<sup>75</sup> as properly established by the Trial Panel too. Witness Mićo Manojlović<sup>76</sup> also confirmed that he had been present near the Cultural Center, even though these witnesses' statements were not consistent with regard to precise dates of their presence around the Cultural Center.

158. Witness Manojlović testified he had seen the detainees upon climbing the balcony window, together with Mile Tejić, and that an unknown soldier had told them they had to kill and torture the detainees.<sup>77</sup> The Trial Panel correctly established on the basis of

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<sup>75</sup> Testimony of witness Savo Stević dated 26 May 2009, transcript pp. 19 and 20.

<sup>76</sup> Testimony of witness Mićo Manojlović dated 26 May 2009, transcript p. 60.

<sup>77</sup> Ibid.

testimony of Milan Jovanović, a driver within the Battalion Command<sup>78</sup>, that on 15 July Milan Perić was on several occasions present around the Cultural Center.

159. The Defense contested the Trial Panel's factual findings in paras. 304 and 305 of the First Instance Verdict in the parts thereof referring to witnesses Milan Lazarević, Milan Kalajdžić and Nebojša Stevanović, arguing that these witnesses were not members of the 1<sup>st</sup> Battalion. This submission of the Defense is groundless because the Trial Panel did not state at all that they were members of the 1<sup>st</sup> Battalion, but rather that certain witnesses testified that Kalajdžić and Stevanović were not members of the 1<sup>st</sup> Battalion.<sup>79</sup> These witnesses' statements were quoted in order to establish the accuracy of witness Gajić's testimony which the Trial Panel took into account, while the Defense contested it. More specifically, witness Gajić testified that he had seen Milan Kalajdžić, who himself confirmed that he had been present in the Cultural Center, and who gave a clear and detailed response, as described by witness Zoran Gajić too<sup>80</sup>.

160. All the witnesses provided clear and accurate facts, which, mutually combined, undoubtedly lead to the conclusion that on 15 and 16 July 1995 members of the 1<sup>st</sup> Battalion were indeed deployed around the Cultural Center in Pilica with the task to secure the detainees. The foregoing was confirmed by witness Juroš Jurošević, who testified that he had been a member of the 1<sup>st</sup> Battalion work detail and that he went to the Cultural Center with the task to secure the detainees, as correctly concluded by the Trial Panel. This witness testified that he had heard the shooting from the Cultural Center direction and that he went there with the task to stand guard around the Center.<sup>81</sup>

161. The Defense appellate arguments did not bring into question the factual findings of the Trial Panel, which have been fully accepted by this Panel too. The foregoing was also confirmed by witness Zoran Radosavljević. This witness testified at the main trial that a courier had informed him that he had to stand guard as there were insufficient men who would secure the detainees, and that he had to take a rifle for this purpose.<sup>82</sup> Witness Gajić also testified that following his arrival in the Center, he saw a member of the 1<sup>st</sup> Battalion, Stanko Perić, standing near a machine gun with its barrel turned upward.<sup>83</sup>

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<sup>78</sup> Testimony of witness Milan Jovanović dated 1 June 2009, transcript pp. 11, 18 and 24.

<sup>79</sup> First Instance Verdict, para. 304.

<sup>80</sup> First Instance Verdict, para. 305.

<sup>81</sup> Witness testimony dated 1 February 2010, transcript p. 29.

<sup>82</sup> Testimony dated 1 December 2010, transcript p. 22.

<sup>83</sup> Witness Zoran Gajić, 13 May 2009, transcript p. 38 and 39.

162. The Appellate Panel has dismissed the Defense appellate arguments pertaining to the role of members of the 1<sup>st</sup> Battalion and the Accused alone in loading the bodies of killed men and their transportation to the Branjevo Farm. The Appellate Panel has provided clear arguments in paras. 114, 115 and 116 of the Verdict in the part addressing the conclusions about the role that Slavko Perić had in this territory. Therefore, the Panel will not repeat the same arguments.

163. This Panel has established that the Defense's appellate arguments contesting the Trial Panel's conclusion, that the 1<sup>st</sup> Battalion asked for mechanization to be used for a mass grave at the Branjevo Farm, are ill-founded. More specifically, the Trial Panel referred to the documentary evidence from which it clearly and unequivocally transpired that the 1<sup>st</sup> Battalion asked for heavy mechanization<sup>84</sup> that was used to coordinate the burial of killed men. On the other hand, the Trial Panel concluded on the basis of adduced evidence that it was members of the Engineering Company, rather than members of the 1<sup>st</sup> Battalion, who had buried the bodies in the mass grave. The foregoing was also established in the ICTY final judgments. This fact was supported by both the documents and the witnesses' statements.

164. The Defense appellate arguments did not bring into question the accuracy of the Trial Panel's factual findings regarding the presented facts, wherefore they were refused as ill-founded.

d. **Defense appellate arguments: Accused Slavko Perić did not know what would happen to the detainees**

i. **Defense submissions**

165. The Defense argues that the Trial Panel's conclusion, that Accused Slavko Perić had knowledge about what would happen to the detainees, was not supported with any evidence, and that the Trial Panel drew an arbitrary conclusion on this matter. The appeal states that the Trial Panel used Dragan Obrenović's testimony to precisely determine the moment when Slavko Perić had become aware of the detainees' destiny. The Defense argues that witness Dragan Obrenović nowhere mentioned any contact with Slavko Perić.

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<sup>84</sup> T-50, UČ 174, T-50.

The Defense further submits that, even though the testimony of Slavko Perić was not formally admitted into the case record, it was nevertheless used to corroborate the submission that the Accused knew that the detainees would be executed.

**ii. First Instance Verdict**

166. The Trial Panel has established that the Accused Slavko Perić knew that the detainees would be executed, and that by the afternoon hours of 15 July he already had this knowledge.

**iii. Findings of the Appellate Panel**

167. The Appellate Panel has concluded that the Trial Panel's finding that the Accused Slavko Perić knew that the detainees would be executed was proper.

168. More specifically, the Appellate Panel inferred this on the basis of circumstantial evidence. The Constitutional Court of Bosnia and Herzegovina<sup>85</sup> has held that determination through indicia does not violate the principle of a fair trial pursuant to Article 6(1) of the European Convention on Human Rights. The case law has established a rule of proof by way of circumstantial evidence in which indicia must act as a strong closed unity which allows that only one conclusion is drawn about the relevant fact, and which objectively fully excludes a possibility of drawing a different conclusion in relation to the same fact.

169. In compliance with the foregoing view, it has been accepted that the basis for a convicting verdict may merely be a large number of facts established on the grounds of circumstantial evidence, which has been undoubtedly established, which is mutually logically and strongly connected, so that it constitutes a complete whole and with full certainty points to a single possible conclusion that it was exactly the accused who committed the criminal offense which is the subject of charges, and that the evidence adduced excludes any other possibility.<sup>86</sup>

170. The Supreme Court of Croatia has also presented such a view inferring that, in addition to the lack of direct evidence, the responsibility of the accused shall be established when the mutual combination of adduced pieces of circumstantial evidence

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<sup>85</sup> Decision of the Constitutional Court of BiH, case No. AP 5/05 para. 31.

<sup>86</sup> Commentary on the Criminal Codes of BiH.

(indicia) is such that they appear as fully harmonized links in a chain, do not constitute a summary of evidence but rather a system of indicia, and which in mutual combination exclude any possibility other than the one established by the Trial Court.<sup>87</sup>

171. The facts presented in the operative part of the Verdict were properly viewed by the Trial Panel within the context of the overall events in the Zvornik Brigade zone of responsibility, for which a large body of evidence was offered, and which has been established under the final ICTY judgments and verdicts of the Court of BiH too.

172. The Panel has properly determined the same pattern of conduct at all sites where the detainees from the Bratunac Brigade area were brought to the zone of responsibility of the Zvornik Brigade, and temporarily rounded up from 14 July in Orahovac, Petkovci (from midnight to dawn of 15 July), Kozluk (from afternoon to the evening of 15 July), Branjevo (16 July), and Dom Pilica (16 July).<sup>88</sup>

173. The Trial Panel inferred that at the time when the executions had already commenced in the Zvornik Brigade area, Accused Slavko Perić went to the Brigade Command in Karakaj, as confirmed herein by the already mentioned statements of witnesses Rajko Babić<sup>89</sup>, Zoran Bojić<sup>90</sup> and Milan Jovanović<sup>91</sup>.

174. More specifically, the Trial Panel properly determined that during the 13-16 July period, a large number of members of the Zvornik Brigade were deployed to transport, secure and execute the detainees. Witness Tanacko Tanić testified about the events in Orahovac on 14 July. The witness stated he had concluded that the detainees would be killed. Back in the barracks, the witness saw a group of people sitting in the duty officer's office and commenting on a job well done, and that the men who carried out the executions should be rewarded. The witness also stated that, given the scale of the event, the execution of prisoners in Orahovac was a common knowledge in the barracks already on the 15<sup>th</sup> of July. In Orahovac, this witness saw Popović and Drago Nikolić, members of the security organ, of which Drago Nikolić was Slavko Perić's first superior in the security organs chain. In addition, the Trial Panel properly stated the confirmation of witness

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<sup>87</sup> Supreme Court of Croatia, Kž 1744/68.

<sup>88</sup> First Instance Verdict, para. 403.

<sup>89</sup> Testimony of Rajko Babić, 28 April 2009, transcript p. 46.

<sup>90</sup> Testimony of Zoran Bojić, 11 June 2009, transcript p. 14.

<sup>91</sup> Testimony of Milan Jovanović, 1 June 2009, transcript p. 18.

Nebojša Jeremić that the execution of prisoners was a common knowledge in the Standard barracks.<sup>92</sup>

175. The Trial Panel concluded that present in the barracks on 15 July had been main participants in these events, namely Dragan Obrenović, Vinko Pandurević, Dragan Jokić, Dragomir Vasić, Ljubiša Borovčanin. The foregoing transpires from the evidence of witness Dragan Obrenović<sup>93</sup> who stated that they had discussed the problems relative to the prisoners' guarding and their execution.

176. In view of the foregoing, the Trial Panel inferred that all the men inside the Standard barracks became aware of the mass killings of the prisoners on 15 July. The Trial Panel took into account the fact that on that very day Slavko Perić went to the Standard barracks to discuss the issue of prisoners<sup>94</sup>, and learned at that point what had earlier happened with detainees and that the detainees in Pilica would be killed too. The Appellate Panel has fully accepted these findings as well.

177. The Trial Panel's conclusion about the Accused Slavko Perić' awareness was drawn not only on the basis of the fact that he was present in the Standard barracks but also on the grounds of the witnesses' statements. The witnesses testified that the executions of detainees and the presence of high-ranking officers had been discussed already at the Kula school site. Witness Dragan Jovanović<sup>95</sup> saw an officer near the Kula school who had looked for Slavko Perić and asked him what they had waited for and why the men were not executed yet. Witness Rajko Babić<sup>96</sup> stated that he was not certain on which date (14 or 15) he saw an officer who told him that he had thought they would be the first who would execute the detainees. The witness clearly stated after his conversation with this high-ranking officer that he had not believed that the detainees would be exchanged. Witness Zoran Bojić testified that he had seen two officers near the Kula school, one of which was in charge, who shouted and mentioned the killings too.<sup>97</sup> Witness

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<sup>92</sup> First Instance Verdict, para. 412.

<sup>93</sup> T-141 T-141 testimony of Dragan Obrenović dated 2 October 2003 in the case IT – 02- 60-T, p. 81 and 82.

<sup>94</sup> Witness Rajko Babić, transcript page 45, testimony of 28 April 2009; witness Dragan Pantić, 25 January 2009, transcript p. 19.

<sup>95</sup> Testimony dated 10 June 2009, transcript p. 24.

<sup>96</sup> Testimony dated 29 April 2009, p. 54 and 55.

<sup>97</sup> Witness testimony of 11 June 2009, transcript p. 14. „He (the officer) stated that he would kill, something like that, but I do not know who would be killed. When I asked Zoran why this officer had shouted, he answered that Slavko went to Standard and asked that these people be relocated. (Zoran) stated that this was the reason for which he had shouted and asked who dared to go there and decide on the matter without him. It was something along this line.“



Zoran Jović<sup>98</sup> testified about this too. The Defense witness O1 testified that he had seen a high-ranking officer near the Kula school with a military security officer and that this officer reminded him most of Beara<sup>99</sup>.

178. In view of the foregoing, the Trial Panel properly concluded that on 15 July, before the detainees were taken out of the school, the Accused Slavko Perić had knowledge that they would be executed, and that given the objective and scale of the crime, he was aware of the genocidal intent of the perpetrators of the crime.

179. The Defense contested that Slavko Perić had knowledge about the principal perpetrators' intent of destruction, having referred to the testimony of witness Dragan Obrenović, and having argued that he did not mention Slavko Perić's name.

180. The Appellate Panel has examined the First Instance Verdict within the appellate arguments of the Accused's Defense and concluded that the Trial Panel provided quite clear reasons, supported with arguments,<sup>100</sup> that the principal perpetrators acted with intent, that the Accused had knowledge about their intent, and that the Trial Panel provided its reasons not only in paragraphs addressing the knowledge of the principal perpetrators<sup>101</sup>, but also in the part related to the Accused's knowledge that the detainees would be executed. The Defense arguments did not bring into question the findings of the Trial Panel.

## **V. APPEAL FROM THE DECISION ON SENTENCE**

### **A. STANDARDS OF REVIEW PURSUANT TO ARTICLE 300 OF THE CPC OF BiH**

181. As set out in Article 300 of the CPC of BiH, a decision on sentence may be appealed on two grounds.

182. A decision on the sentence may be contested primarily if relevant provisions of the law were not correctly applied by the Court to fashion the sentence. The Appellate Panel,

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<sup>98</sup> Testimony of 27 December 2010, transcript p. 20.

<sup>99</sup> Testimony given at the main trial on 17 June 2011.

<sup>100</sup> T-125, transcript of the testimony of Miroslav Deronjić, T-142 transcript of the testimony of Momir Nikolić, T-163. O-I-10 Drina Corps order dated 13 July 1995, testimony of Srećko Aćimović, testimony of Duško Vukotić, p. 34-36 testimony transcript dated 28 January 2011.

<sup>101</sup> First Instance Verdict, paras. 436- 445.

however, will not alter the decision on sentence only because the Trial Panel failed to apply all relevant legal provisions but rather if the appellant has proved that this failure resulted in issuing an improper verdict. If the Appellate Panel has found that an incorrect sentence was issued, a proper sentence will be fashioned on the grounds of the state of facts as established by the Trial Panel and by proper application of the law.

183. On the other hand, the appellant may contest the decision on sentence because the Trial Panel has improperly exercised its discretion in meting out the appropriate sentence. The Appellate Panel notes that the Trial Panel has a wide discretion in fashioning an appropriate sentence as it can, in the best possibly way, examine and evaluate the evidence at the main trial. Accordingly, the Appellate Panel will not modify the Trial Panel's examination of both aggravating and extenuating circumstances and the gravity attributed to these circumstances, unless the appellant is successful in proving that the Trial Panel has abused its wide discretion.

184. More specifically, the appellant must show that the Trial Panel has given weight to insignificant and irrelevant issues, failed to give any weight or sufficient weight to relevant issues, that an obvious error was made in relation to the facts to which discretion was applied, or that the Trial Panel Decision was unjustified, or simply unfair to such an extent that the Appellate Panel can infer that the Trial Panel has improperly used its discretion.

185. In view of the foregoing, the Appellate Panel finds that the sentence against Accused Slavko Perić was not properly fashioned in the first instance proceedings, and that the appeal of the Accused's defense in this regard is well-founded. Given the foregoing, the appeal of the BiH Prosecutor's Office with regard to Slavko Perić is hereby refused as ill-founded.

186. Having examined the First Instance Verdict insofar as contested by the appeal of Accused Slavko Perić's Defense concerning the duration of imposed sentence, and in terms of Article 308 of the CPC of BIH (*Extended Effect of the Appeal*), the Appellate Panel concluded that the appeal was well-founded, and imposed on the Accused a sentence of imprisonment for a term of 11 (eleven) years. More specifically, the Appellate Panel has inferred that the contested Verdict properly established the facts and circumstances relevant to the fashioning of sanction, and therefore accepted them as such.

**i. Submissions of the Defense for Accused Slavko Perić**

187. The Defense Counsel's Appeal stated that the sentence is too stringent bearing in mind that the Accused had neither killed nor ordered the killing of any person whatsoever. In addition, the Accused took no part in the planning of, nor was he physically present during the transportation of the Bosniak population, or the separation of able bodied men, and made no decisions about detention sites. The Defense Counsel also pointed to a very difficult family situation of the Accused.

**ii. Submissions of the BiH Prosecutor's Office**

188. According to the Prosecution, the Trial Panel imposed on Accused Slavko Perić too lenient sentence of 19 (nineteen) years in prison and thereby failed to fashion a more appropriate sentence in relation to the circumstances that had a bearing on a greater or lesser punishment. Having acted in such a manner, the Trial Panel acted in violation of Article 300(1) of the CPC of BiH.

189. The Prosecution argues that in line with Article 2 of the CC of BiH, the types and the range of criminal sanctions shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of risk to protected values. Given that the Accused Slavko Perić was sentenced for aiding and abetting in the crime of genocide, the Prosecution argues that by his acts, apparent from the approval to use the capacities, his control over the troops, his personal coordination and control over the detention, transportation and removal of bodies operations, the Accused committed the acts that aided and abetted in the commission of genocide. The Prosecution also argued that without the Accused's participation, Bosniak men and young boys could have been neither detained in the Cultural Center in Pilica and the Kula school, nor executed at these sites, and at the Branjevo farm, and that the operation of the removal of bodies from these sites could not have been undertaken.

190. The Prosecution further argues that a criminal sentence must be based on the necessity and proportionality to the suffering of direct and indirect victims of the crime, which can be concluded from Article 48 of the CC of BiH. The number of people who died and a large number of those affected by the criminal offenses bear on the gravity of the

criminal offense.

191. The Prosecution appeal stated that, in line with Article 39 of the CC of BiH, the purpose of punishment is to express the community's condemnation of the Accused's behavior. In the concrete case, Accused Perić was a mid-level organizer and had a key role in the implementation of genocide, wherefore his punishment must be increased so as to reflect the guilt.

192. In line with Article 6 and 39 of the CC of BiH, the Prosecution argued that a sentence must be sufficient to deter others from perpetrating criminal offenses. Slavko Perić was aware of the events that had occurred in the Zvornik municipality, and he had control over others in the acts of detention, transportation to execution sites, the killing and the removal of corpses.

193. The Prosecution also argues that, pursuant to Article 39 of the CC of BiH, the criminal sanction must be based on the necessity, and must be proportionate to the requirement to increase the consciousness of citizens of the danger of criminal offenses and the fairness of punishing. The Prosecution therefore argues that the 19-year punishment is far more lenient than most of the sentences imposed by the Court of BiH for aiding and abetting in genocide, and that it does not properly punish the Accused's criminal liability for the most heinous crimes seen in Europe since World War II. In this regard, the Prosecution submits that the Trial Panel erred by not allowing that the previous records on examination and the statements of the Accused Slavko Perić given before the ICTY be admitted into evidence. Otherwise, the Trial Panel would have imposed a more stringent sentence. With the Accused Perić's role in mind in fashioning the criminal sanction, the Trial Panel did not take into account a number of aggravating factors.

194. Finally, the Prosecution moved the Appellate Panel to alter the Trial Panel's sentence and impose on the Accused a sentence of imprisonment for a term of 45 years.

### **iii. Findings of the Appellate Panel**

195. Bearing in mind that on the one hand the Prosecutor points to the evaluation of aggravating circumstance, and the Defense to the evaluation of extenuating circumstances on the other hand, the Appellate Panel will present its own view. The Appellate Panel

has held that the imposed altered sentence of imprisonment is proportionate to the gravity of the offense and the Accused's role and participation in the incriminating events, and that it will achieve the purpose of imposing the sentence and the purpose of punishment in terms of Article 33 of the adopted CC of SFRY.

196. More specifically, the Trial Panel considered the position and the acts taken by the Accused as a high degree of criminal liability or the guilt, and took them as aggravating circumstances, even though it was not explicitly stated. The Trial Panel did not consider the Accused's prior conviction as an aggravating circumstance given the nature of the offense of which he was convicted.

197. The Panel did not take into account as an extenuating circumstance the fact that the Accused is a family man, nor did it consider particularly extenuating the Accused's correct conduct before the Court. In his closing argument, the Accused did express his remorse and the Panel took this fact as an extenuating circumstance to a limited extent.

198. The Appellate Panel has held that the aggravating and extenuating circumstances on the part of the Accused Slavko Perić were not correctly evaluated, as a result of which, and from the aspect of both general and special prevention, the sentence imposed (19 years in prison) does not amount to an adequate sanction for the criminal offense committed.

199. In view of the foregoing, the Appellate Panel altered the First Instance Verdict in relation to Slavko Perić, and imposed on the Accused a sentence of imprisonment for a term of 11 (eleven) years for aiding and abetting in genocide, as factually described under Section 1(a) and (b) of the First Instance Verdict. In fashioning the sentence, the Panel has taken into account all the facts and circumstances established under the First Instance Verdict (the Accused's degree of guilt, and his conduct and personality) that were correctly established but incorrectly evaluated. More specifically, the Appellate Panel concluded that the sentence of 11 years in prison is adequate to reflect the acts of which the Accused was found guilty, whose protected object is of a wider social significance, and as such, prescribed by the international legislation too, and has a particular gravity from the mental, moral, religious, customary and other aspects of the lives of both the aggrieved parties themselves and their families.

200. As to the degree of the Accused Slavko Perić's guilt, the Panel has pointed out the facts that members of the battalion under his supervision and coordination were not

involved in the killings of prisoners, and that the Accused neither ordered nor personally killed any prisoner. The Accused, however, was found guilty as aider and abettor, for which type of complicity in the commission of criminal offense the law prescribed a possibility to impose a more lenient sentence. As to the Accused's position, the Trial Panel was right in concluding that the Accused was an Assistant Chief of Security of the 1<sup>st</sup> Battalion. The Trial Panel, however, failed to take into account the fact that Accused Slavko Perić was the lowest link in the security organ's chain of command, which significantly diminishes his degree of guilt. In addition, the Appellate Panel was also mindful of the fact that at the time of the crime commission, that is, at the time he assumed this role, the Accused was age 28, which was not the age that would enable the Accused to have mature attitudes toward the events he was faced with.

201. On the other hand, the Panel finds ill-founded the Prosecution's submissions related to the sentence imposed on the Accused Slavko Perić. More specifically, the basis of the Prosecution's appellate arguments were the overall events in Srebrenica during the critical period, of which the Accused Slavko Perić was not found guilty at all. Furthermore, the Prosecution's appeal presents the acts of the Accused Slavko Perić as the acts without which the criminal offense of genocide would not have been committed, which essentially does not amount to the acts of complicity, and which the Trial Panel did not evaluate as such either. The Prosecutor refers to the statements of Slavko Perić given before the ICTY, which would have been of key importance for fashioning the sentence against Accused had they been admitted into evidence. Given that the referenced statements were not admitted into the case record as evidence, namely the Prosecution's appeal was not directed along this line but it rather considered the evidence which formally and legally does not form an integral part of the case record, the Appellate Panel refused this Prosecution appellate argument as ill-founded too.

## **VI. DECISION ON CLAIMS UNDER PROPERTY LAW AND COSTS OF THE CRIMINAL PROCEEDINGS**

202. Pursuant to Article 198(2) of the CPC of BiH, the Trial Panel instructed the aggrieved parties that they may file their claims under property law in civil action since the Court found that the information gathered during the proceedings did not provide a reliable

basis for awarding costs in full or in part.<sup>102</sup> On the other hand, pursuant to Article 118(4) of the CPC of BiH, the Trial Panel relieved the Accused of the duty to reimburse the costs of criminal proceedings, having found that otherwise the support of the Accused and the persons he is obliged to support would be jeopardized.

**(i) Appeals of the Aggrieved Parties**

203. Appeals from the First Instance Verdict were timely filed by the injured parties Azra Begović, Kiram Jašarević, Merka Ibrahimović, Dževad Ibrahimović, Razija Omerović, Remzija Muhić, Revda Ibrahimović and Rahima Velić.

204. Given that the First Instance Verdict was revoked in relation to the Accused Pelemiš, the Appellate Panel will consider the appeal only in relation to Slavko Perić.

**(ii) Legal grounds to file appeals from the decision on claims under property law**

205. Article 290 of the CPC of BiH prescribes that the pronouncement of the verdict shall contain the decision on a claim under property law if any such claim was made. In the concrete case, Annex 3 of the First Instance Verdict provides a list of persons who filed claims under property law and the amounts thereof.

206. Article 296(1)(d) prescribes that a verdict may be contested on the grounds of the decision on the costs of criminal proceedings and claims under property law.

207. Article 293(1) prescribes that the injured party may file an appeal too, while Paragraph (2) concretizes the right of the injured party to contest the decision on costs of the criminal proceedings and with respect to the decision on the claim under property law.

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<sup>102</sup> First Instance Verdict, paras. 476 and 477.

208. Article 300(3) prescribes that a decision on a claim under property law may be contested when the Court has rendered the decision on these matters contrary to the provisions of law.<sup>103</sup>

**(iii) Legal grounds to contest the decision on the costs of criminal proceedings**

209. Article 188(4) of the CPC of BiH prescribes the following: “In the decision which settles the issue of costs the Court may relieve the accused of the duty to reimburse all or part of the costs of criminal proceedings as referred to in Article 185(2) subparagraphs (a) through (h) of the CPC of BiH, if their payment would jeopardize the support of the accused or of persons whom the accused is required to support economically. If these circumstances are ascertained after the decision on costs has been rendered, the judge may issue a separate decision relieving the accused of the duty to reimburse the costs of criminal proceedings.”

a. **Appeal of injured party Azra Begović**

i. **Submissions of the injured party**

210. The injured party Azra Begović appealed the decision on duration of the sentences imposed on both Accused, being of the opinion that the sentences were too lenient.

ii. **Findings of the Appellate Panel**

211. Bearing in mind that the injured party appealed the decision on sentence, the Appellate Panel, pursuant to Article 312 of the CPC of BiH, refused the appeal as ill-founded.

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<sup>103</sup> Provisions related to claims under property law, Chapter XVII of the CPC of BiH.



b. **Appeal of injured party Kiram Jašarević**

i. **Submissions of the injured party**

212. The injured party Kiram Jašarević contested the decision on the claim under property law but specified no reasons for the appeal whatsoever.

ii. **Findings of the Appellate Panel**

213. Given that the injured party Kiram Jašarević stated no concrete appellate reasons to indicate that the Court has possibly rendered the decision on the injured parties' claims under property law contrary to the provisions of law, the Appellate Panel refused his appeal as ill-founded. The injured party may pursue his claim under property law in a civil action.

c. **Appeal of injured party Rahima Velić**

i. **Arguments of the injured party**

214. The injured party appealed Annex 3 to the Verdict containing a list of injured parties, the amounts of claims under property law sought and the names of killed persons. Attached to the appeal were the following documents: Certificate of the Institute for Missing Persons BiH (Mr. Hasan Velić, BAZ – 905599/01) – Information of the BiH Prosecutor's Office No.: KT- R2 74/08- Specialists findings and opinion, and a motion that the appeal be granted.

ii. **Findings of the Appellate Panel**

215. A review of Annex 3 of the Verdict has shown that the name of Rahima Velić was indicated on the list of persons who filed claims under property law.

216. The Appellate Panel has reviewed the case record in relation to the appeal of the injured party Rahima Velić and established, like the Trial Panel, that the information in the case record offered insufficient grounds for awarding costs in full or in part. Therefore, the

Appellate Panel correctly instructed the injured party to pursue her claims under property law in a civil action.

217. In view of the foregoing, the Appellate Panel has refused the injured party's appeal as ill-founded.

**d. The appeal of injured parties Merka Ibrahimović, Revda Ibrahimović, Remzija Muhić, Razija Omerović and Dževad Ibrahimović**

**i. Submissions of the injured parties**

218. Injured parties Merka Ibrahimović, Revda Ibrahimović, Remzija Muhić, Razija Omerović and Dževad Ibrahimović appealed the Court decision on the costs of criminal proceedings and the decision on claim under property law, moving the Panel of the Appellate Division of the Court of BiH to alter the Verdict in the part related to the claim under property law, alter the Verdict in the part related to the costs of the proceedings, and order the accused/convict to reimburse the full amount of the costs of the proceedings resulted in relation to and from the conducted criminal proceedings, from the commencement through the completion thereof.

219. The injured parties filed a claim under property law as members of the family of killed Šemso Ibrahimović who had been killed in the Srebrenica events in July 1995. The appeal of the injured party stated that a sufficient body of evidence was adduced on the grounds of which the Trial Panel should have decided on the claim under property law sought in the amount of KM 250,000.00.

**ii. Findings of the Appellate Panel**

220. The Appellate Panel considers as correct the Trial Panel's conclusion that the information in the case offered insufficient grounds for awarding costs in full or in part. More specifically, the Trial Panel properly evaluated the fact that the identity of all men killed in the school, Branjevo or the Cultural Center was not established, and that, accordingly, the Panel could not establish which families would be entitled to compensation in the concrete case. In view of the foregoing, the Appellate Panel has

refused as ill-founded the appeal of injured parties Merka Ibrahimović, Revda Ibrahimović, Remzija Muhić, Razija Omerović and Dževad Ibrahimović.

221. The appeal of injured parties advanced general averments which did not bring into question the decision of the Trial Panel under which Accused Slavko Perić was relieved of the duty to reimburse costs of the criminal proceedings in full. The reasoning of the Trial Panel's Verdict provided valid reasons due to which the Accused Slavko Perić was relieved of the duty to reimburse costs of the criminal proceedings, which were fully upheld by this Panel too.

222. However, bearing in mind the fact that, as a secondary subject in the proceedings, an injured party may contest the verdict (or a part thereof) only in case she/he has a direct legal interest (to remedy the suffered damage), which is obviously not the case in this specific case, the Panel refused as inadmissible the appeals of injured parties in this part.

223. As to the appeal of the BiH Prosecutor's Office from the First Instance Verdict in relation to Accused Momir Pelemiš, the Appellate Panel has not considered it at all given that the First Instance Verdict in relation to this Accused was revoked, wherefore it became irrelevant to rule on the referenced appeal.

224. In view of the foregoing reasons, pursuant to Articles 312, 313, 314 and 315 of the CPC of BiH, the Panel of the Appellate Division decided as stated in the operative part herein.

**RECORD-TAKER:**

**Emira Hodžić**

**PANEL PRESIDENT**

**JUDGE**

**Azra Miletić**

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