

**BOSNA I HERCEGOVINA**



**БОСНА И ХЕРЦЕГОВИНА**

**THE COURT OF BOSNIA AND HERZEGOVINA  
СУД БОСНЕ И ХЕРЦЕГОВИНЕ**

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**Docket Number: S1 1 K 007209 15 Krž 3**

**Date of session: 11 March 2015**

**Date of issuance of written copy: 17 March 2015**

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**Before the Appellate Panel composed of: Judge Hilmo Vučinić,  
Presiding**

**Judge Mirza Jusufović, Rapporteur**

**Judge Redžib Begić, Member**

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

**v.**

**MIRSAD ŠIJAK**

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**SECOND-INSTANCE VERDICT**

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The Court of Bosnia and Herzegovina, Sarajevo, ul. Kraljice Jelene br. 88

Telefon: 033 707 100, 707 596; Fax: 033 707 155

**Docket Number: S1 1 K 007209 15 Krž 3**  
**Sarajevo, 11 March 2015**

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

The Court of Bosnia and Herzegovina, sitting in the Appellate Division Panel composed of Judge Hilmo Vučinić, as the Presiding Judge, and judges Mirza Jusufović and Redžib Begić, as the Panel members, with the participation of legal advisor Denis Podžić, as the record-taker, in the criminal case against the sentenced person Mirsad Šijak, in the procedure of Repetition of Criminal Proceedings under Article 324.a of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), deciding on the appeal filed by the sentenced person Mirsad Šijak, from the verdict issued by the Court of Bosnia and Herzegovina, No. S1 1 K 007209 14 Kvl of 24 December 2014, pursuant to Article 310(1) of the CPC BiH as read with Article 53(2)b) of the Criminal Code of Bosnia and Herzegovina, following a public session, in the presence of the sentenced person Mirsad Šijak, and in the absence of the duly summoned prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, on 11 March 2015 issued the verdict as follows.

**VERDICT**

**Partly granted is the appeal** filed by the sentenced person Mirsad Šijak, so the verdict of the Court of Bosnia and Herzegovina No. S1 1 K 007209 14 Kvl of 24 December 2014 **is modified in terms of decision on a compound sentence**, and Mirsad Šijak, pursuant to Article 53(2)b) of the Criminal Code

of Bosnia and Herzegovina, **is given a compound sentence of imprisonment of 7 (seven) years and 9 (nine) months**; pursuant to Article 56 CC BiH, the time spent serving the previous prison sentence imposed by the Supreme Court of the BiH Federation, No.: 070-0-KŽK-08-000016 of 2 April 2009, which became final on 27 January 2010, in the duration of 1 (one) year, and the hitherto served sentence of imprisonment under the verdict of the Court of BiH, No.: S1 1 K 007209 12 Kri of 18 January 2013, which became final on 15 November 2013, shall be credited towards the compound prison sentence.

## REASONING

1. The verdict of the Court of Bosnia and Herzegovina, No. S1 1 K 007209 14 Kvl of 24 December 2014, modified the final verdicts with regard to the sentencing, as follows: (1) verdict of the Court of BiH, No.: S1 1 K 007209 12 Kri of 18 January 2013, which became final on 15 November 2013, and under which Mirsad Šijak received a sentence of imprisonment of 7 (seven) years, and (2) verdict issued by the Supreme Court of the BiH Federation, No.: 070 - 0-KŽK-08-000016 of 2 April 2009, which became final on 27 January 2010, and under which Mirsad Šijak received a sentence of imprisonment of 1 (one) year, by taking as established the sentences imposed under those verdicts, so based on Article 53(2) of the Criminal Code of Bosnia and Herzegovina<sup>1</sup>, as read with Article 324a. of the Criminal Procedure Code of Bosnia and Herzegovina<sup>2</sup>, Mirsad Šijak received a compound sentence of imprisonment of 7 (seven) years and 11 (eleven) months.

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<sup>1</sup> Hereinafter: the CC BiH/ Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

<sup>2</sup> Hereinafter: the CPC BiH/ Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06m, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13.

2. Pursuant to Article 56 CC BiH, it was decided that the time the sentenced person Mirsad Šijak spent serving the sentence of imprisonment imposed by the Supreme Court of the BiH Federation, No. 070-0-KŽK-08-000016 of 2 April 2009, in the duration of 1 (one) year, and the hitherto served sentence of imprisonment under the verdict of the Court of BiH S1 1 K 007209 12 Kri of 18 January 2013, which became final on 15 November 2013, shall be credited towards the compound sentence.

3. The sentenced person Mirsad Šijak has timely appealed the foregoing verdict on the grounds of essential violations of criminal procedure provisions, moving that the verdict of the Court of BiH, No. S1 1 K 007209 14 Kvl of 24 December 2014, be revoked or modified in terms of sentencing, so that ultimately a more lenient sentence be imposed.

4. The sentenced person Mirsad Šijak notes in his appeal that the challenged verdict is unclear and incomprehensible and that the Court assessed twice what was essentially one and the same set of circumstances concerning the total number of committed offenses, which is why he believes that, in terms of grammar, that was one and the same set of circumstances, because of which he was held accountable twice for the same offense, only under different Articles of the CC BiH. In his appeal, the sentenced person stated that, in making the decision on imposing a compound sentence of imprisonment, the Court should have particularly considered the extenuating circumstances, such as the lapse of time, the status of the sentenced person, his property status, which is borderline poverty, that he is a father of two unemployed children and that his mother is bed-ridden. Apart from the aforementioned, the sentenced person Šijak says that, as a sentenced person, he has been qualified into the positive group 'A' in the environment where he lives, and that he has demonstrated full cooperation on a penological plan. The sentenced person believes that, given his positive

behavior, he should be given a chance and hope for the future through the imposition of a lesser compound sentence.

5. The BiH Prosecutor's Office has not submitted any response to the sentenced person's appeal.

6. Pursuant to Article 304(1) and (4) of the CPC BiH, on 11 March 2015 the Appellate Division Panel held a public session in the presence of the sentenced person Mirsad Šijak, and in the absence of the duly summoned prosecutor of the BiH Prosecutor's Office.

7. The sentenced person stood by his appellate grievances submitted in writing, and pointed to his difficult material situation, his family circumstances and his proper behavior while serving the sentence of imprisonment, as well as the circumstances based on which he sought a lesser sentence of imprisonment.

8. Pursuant to Article 306 of the CPC BiH, the Appellate Panel reviewed the verdict within the bounds of appeal, and issued the decision as stated in the Operative Part for the reasons that follow.

9. The Appellate Panel, above all, notes that the First-Instance Panel has properly applied all statutory rules for the repetition of criminal proceedings under Article 324a. of the CPC BiH.

10. However, unlike the First-Instance Panel, this Panel has, while making its decision, taken into account, besides the circumstances already established by previous verdicts, also the circumstances that emerged subsequently concerning the sentenced person Mirsad Šijak, which may be of importance in imposing a harsher or lesser sentence, to which the sentenced person points in his appeal on solid grounds. The First-Instance Panel said in the appealed verdict that in meting out a compound sentence it took into account all mitigating and aggravating circumstances that were

considered in previous verdicts, wherein it did not consider new circumstances, which is quite understandable given that the sentenced person had not pointed to any in his petition for a compound sentence of imprisonment, but he only did so in the appeal from the verdict.

11. The Appellate Panel particularly considered the new circumstances pertaining to the current difficult material situation the sentenced person and his family have found themselves in, as well as the sentenced person's status as a model prisoner and his proper behavior while serving the sentence of imprisonment. The Prosecutor's Office did not challenge these arguments offered by the sentenced person, despite having had a chance to do so by way of response to the appeal, so the Panel accepted those arguments, bearing in mind the principle of *in dubio pro reo* set forth in Article 3 of the CPC BiH according to which facts in favor of the accused shall be accepted even when they are merely probable. That is why the Appellate Panel took into account the mentioned circumstances and found them to be mitigating, and ultimately concluded that a compound sentence of imprisonment of 7 (seven) years and 9 (nine) months is adequate to all the circumstances of the case in question, which pertains to both the circumstances related to the gravity of the criminal offenses the sentenced person has been found guilty of, as well as to the circumstances related to the personality of the sentenced person, and that such a compound sentence would fully meet the purpose of punishment as set forth in Article 39 of the CC BiH, both from the aspect of special and from the aspect of general deterrence.

12. It should be noted that in his appeal the sentenced person proposed that the time he spent in custody be credited towards his compound sentence of imprisonment. However, having reviewed the case record, the Appellate Panel concluded that no custody or extended custody of the sentenced person had been ordered during the criminal proceedings conducted against him, so, pursuant to Article 56 of the CC BiH, only the time he spent serving

his sentence of imprisonment under the verdict of the Supreme Court of the BiH Federation No. 070-0-KŽK-08-000016 of 2 April 2009 in the duration of 1 (one) year, and the time he has hitherto spent serving the sentence of imprisonment under the verdict of the Court of BiH No. S1 1 K 007209 12 Kri of 18 January 2013, which became final on 15 November 2013, has been credited towards his compound sentence of imprisonment.

13. Pursuant to the aforementioned, under Article 310 of the CPC BiH, as read with Article 53(2)b) of the CC BiH, it was decided as stated in the Operative Part of the verdict.

**RECORD-TAKER:**

**PRESIDING JUDGE**

**Legal Advisor**

**Denis Podžić**

**Hilmo Vučinić**

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