

Bosna i Hercegovina

Босна и Херцеговина



**Sud Bosne i Hercegovine
Суд Босне и Херцеговине
Court of Bosnia and Herzegovina**

Case No. S1 1 K 017569 16 Krž 5

Delivered on: 12 May 2016

Written Judgment sent out on: 27 June 2016

Before the Appellate Panel composed of Judges:

Dr. Dragomir Vukoje, Panel Presiding

Hilmo Vučinić, member

Tihomir Lukes, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

the accused MATO ČONDRIĆ

SECOND-INSTANCE JUDGMENT

**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:
Mr. Milanko Kajganić**

**Counsel for the Accused:
Mr. Davor Šilić, attorney practicing in Mostar**

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Appellate Division of Section I for War Crimes, sitting in the Panel of judges composed of Dr. Dragomir Vukoje, as the Panel Presiding, and Hilmo Vučinić and Tihomir Lukes, as members of the Panel, with the participation of legal advisor Dženana Deljkić Blagojević, as the record-taker, in the criminal matter against the accused Mato Čondrić, charged with the commission of the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY), as read with Article 22 of the same Code, deciding on the appeal filed by the Prosecutor's Office of BiH from the Judgment of the Court of BiH No. S 1 1 K 017569 15 Kri of 18 September 2015, after a public session held pursuant to Article 304 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), in the presence of the Prosecutor of the Prosecutor's Office of BiH, Mr. Milanko Kajganić, the Accused and his Defense Counsel, on 12 May 2016, handed down the following:

J U D G M E N T

DISMISSING as ill-founded the appeal filed by the Prosecutor's Office of BiH and upholding the Judgment of the Court of BiH No. S 1 1 K 017569 15 Kri of 18 September 2015.

R E A S O N I N G

I. PROCEDURAL HISTORY

1. The Judgment of the Court of BiH, No S 1 1 K 017569 15 Kri of 18 September 2015, acquitted the accused Mato Čondrić of the charges that, by the acts described in Sections 1-3 of the Judgment enactment clause, he committed the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the CC SFRY, 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 the SFRY¹, as read with Article 22 of the same Code. Pursuant to Article 188(4) and Article 189(1) of the CPC BiH, the accused was relieved of the obligation to reimburse the costs of the criminal proceedings, while pursuant to Article 198(2) and (3) of the CPC BiH, the injured parties were instructed to file claims under property law in a civil action.

II. THE APPEAL

2. The Prosecutor's Office of BiH appealed the First-Instance Judgment on the grounds of essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH, and incorrectly and incompletely established facts under Article 299(1) of the CPC BiH.

3. The Prosecution moved the Appellate Division Panel to grant the appeal as well-founded, revoke the contested Judgment and order a hearing to be held before the Appellate Division Panel.

III. RESPONSES TO THE APPEAL

4. The accused's Counsel responded to the appeal filed by the Prosecutor's Office of BiH indicating that their appeal is ill-founded and moving the Appellate Panel to dismiss it as such.

5. On 12 May 2016, the Appellate Division Panel held a public session, where both the Prosecutor's Office of BiH and the accused's Counsel stood by their respective arguments presented in the written appeal and the response to the appeal.

IV. GENERAL CONSIDERATIONS

6. Prior to providing reasons for each appellate ground individually, the Appellate Panel notes that, pursuant to Article 295(1)(b) and (c) of the CPC BiH, the applicant should

¹ The Assembly of the SFRY adopted the Criminal Code of the SFRY at the Federal Council's session held on 28 September 1976 and published it in the Official Gazette of the SFRY, No. 44 of 8 October 1976. Following the declaration of the RBiH's independence, the CC SFRY was adopted as the law of the Republic of Bosnia and Herzegovina (with minor amendments) pursuant to the Decree with the force of law of 11 April 1992, and entered into force on the day when it was published.

include in his/her appeal both the grounds for contesting the judgment and the reasoning behind the appeal.

7. Since the Appellate Panel shall review the judgment only insofar as it is contested by the appeal, pursuant to Article 306 of the CPC BiH, the appellant shall draft the appeal in the way that it can serve as a ground for reviewing the judgment. In that respect, the appellant must specify the grounds on the basis of which he contests the judgment, specify which section of the verdict, piece of evidence or proceedings of the Court he contests, and adduce clear and substantiated reasons in support of the appeal.

8. Mere arbitrary indication of the appellate grounds, and of the alleged irregularities in the course of the trial proceedings, without specifying the ground to which the applicant refers is not a valid ground for reviewing the Trial Judgment. Therefore, the Appellate Panel dismissed as *prima facie* ill-founded the unreasoned and unclear appellate complaints.

V. ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE

9. Essential violations of the criminal procedure provisions, as a ground of appeal, have been defined under Article 297 of the CPC BiH, and specified in Sub-paragraphs a) through k) of Paragraph 1 of the referenced Article.

10. With respect to the gravity and importance of the procedure violations, the CPC BiH distinguishes between the violations which, if found to exist, create an irrefutable presumption that they have adversely affected the validity of the verdict (absolutely essential violations) and the violations where the Court has discretion to evaluate, on a case-to-case basis, whether a found procedure violation affected or could have negatively affected the rendering of a proper verdict (relatively essential violations).

11. Unlike absolute violations, relatively essential violations are not specified in the law, but rather exist if the Court, during the main trial or in the rendering of a judgment, did not apply or improperly applied a provision of the law, which affected or could have affected the rendering of a lawful and proper judgment (Article 297(2) of the CPC BiH).

12. If the Panel finds any of the substantial violations of the criminal procedure provisions, it shall, pursuant to Article 315(1)(a) of the CPC BiH, revoke the trial judgment, except in the cases provided for in Article 314(1) of the CPC BiH.

A. GROUND OF APPEAL UNDER ARTICLE 297(1)(K) OF THE CPC BiH

1. The appeal filed by the Prosecutor's Office of BiH

13. The Prosecution indicates that, with regard to the alleged substantial violations of the criminal procedure under Article 297(1)(k) of the CPC BiH, the Judgment provides no reasons for the decisive facts which are substantial for finding the accused guilty as charged.

14. The analysis of the Prosecution's appellate arguments shows that they are completely based on the challenging of the properly and completely established facts. The Prosecution's appeal did not reasonably indicate that the Judgment contained any of the essential violations provided for in Article 297 of the CPC BiH. The Panel will therefore limit the examination of further appellate grounds only on the analysis of the appellate complaint concerning the proper nature of the established facts.

VI. GROUND OF APPEAL UNDER ARTICLE 299 OF THE CPC BIH: INCORRECTLY OR INCOMPLETELY ESTABLISHED FACTS

A. STANDARDS OF REVIEW

15. In the context of this appellate ground, the Appellate Division Panel observes that a judgment may be contested on the grounds of incorrectly or incompletely facts when the Trial Panel incorrectly established or did not establish a decisive fact, namely when new facts or evidence indicates so pursuant to Article 299 of the CPC BiH.

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

17. 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. 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”.

1. The appeal filed by the Prosecutor’s Office of BiH

(a) Section 1 of the enactment clause

18. Under this section of the acquitting part of the contested Judgment enactment clause, the accused was acquitted of the charges that, on an unspecified day in late July or early August 1992, in the Municipality of Bosanski Brod, on the premises of the *Polet* Football Club Stadium, where women had been imprisoned at one of its dressing-rooms, while discharging his duties of a guard on the referenced Stadium premises, in a room located on the Stadium ground floor that served as a (water heating) boiler-room, he forced N.H. into sexual intercourse under direct threats to her life, in such a manner that, having brought her from the dressing-room to the referenced room, he ordered her to strip off all her clothes, which the injured party did fearing for her own life, whereupon two unidentified members of the HVO, whom the accused had previously brought to that same room, raped here on a concrete pedestal, in the manner that one of them put his penis in her mouth while the other man put his penis in her anus, and when N.H. tried to defend herself, Mato Čondrić told her that she should not defend herself or otherwise he would kill her with a pistol he had pointed at her; and once the soldiers completed the rape after 15 to 20 minutes, the accused put the pistol barrel in her vagina, which was all covered in blood when he removed it, and ordered N.H. to wipe it with her T-shirt and wash it to prevent other detained civilians from seeing the blood.

19. The contested Judgment did not find proved that the accused Čondrić had indeed committed the criminal offense described in this Count of the Indictment. Thus, by applying

the principle of *in dubio pro reo*, the Trial Panel decided to acquit the accused of the charges under the referenced Count.

20. To prove this Count of the Indictment the Prosecution primarily used the evidence given by the injured party N.H, the witnesses S.V., MC-1, MC-2, MC-3, Nermin Plehandžić and Šaban Šehagić, as well as statements of witnesses Stana Živković, Sofija Vidić and Koviljka Stanković that were read-out.

21. Having analyzed each piece of evidence individually, and the Prosecution's arguments in the context of tendered evidence, this Panel concluded that the Judgment paid due attention to the relevant parts of the injured party's evidence incriminating the accused, and properly correlated this evidence with the other evidence related to this Count of the Indictment, and that the Judgment was not substantially brought into question by the appellate complaints.

22. The Prosecution's appeal contests the Trial Panel's findings and indicates that the decisive facts were incorrectly established in relation to the three aspects of the evidentiary materials' evaluation by which this Count of the Indictment was being proved.

23. The completeness and correctness of the Trial Panel's findings concerning the facts ensuing from the witness N.H.'s evidence were contested first in relation to the inconsistency of her evidence compared with her earlier statements, and the inconsistencies of the witness-injured party N.H's evidence in relation to the statements of the other witnesses, who had been imprisoned along with the injured party N.H. Also contested were the Trial Panel's findings concerning the evidence offered by the Prosecution in relation to the issue of correct identification and identity establishment of a person named Mato, who had taken part in the commission of the criminal act described in Section 1.

24. The Panel first evaluated the injured party's evidence in relation to her previously given statements, and concluded that the reasons indicated in the prosecution's appeal, such as the expired time line or the survived trauma in relation to certain inconsistencies in her statements, were not of such a nature that they could be considered as irrelevant, and that they could be given a marginal significance. On the contrary, these statements indeed bring into question not the conclusion that the injured party had indeed experienced serious traumas due to the crimes commission, but they raise significant doubts into the accused's participation.

25. Therefore, the Panel cannot accept the complaint that the inconsistencies in the statements only concern the inconsistencies related to the presence of the witnesses Koviljka Stanković and Mara Stanić in the dressing-room (as indicated in para 5. of the appeal), or that the Trial Panel erroneously considers as decisive the facts concerning the similar inconsistencies or omissions in the statement. The prosecution indicates that it was exactly the injured party who provided at the main trial a comprehensive description of the incident, when she had been taken from and brought back to the dressing-room on the referenced day; that the other women confined there along with her testified that the person who had come to take her away and who did all that to her on the critical day was exactly the accused Čondrić, military police officer from Bosanski Brod whom they had known from before.

26. According to the Prosecution, the Trial Panel erroneously considers as decisive the fact that, in her evidence, the injured party departs from her previous statement given during the investigation (Exhibit T-1), where she did not mention that Koviljka Stojković and Mara Stanić were also present at the dressing-room on the critical day. The Prosecution argues that, due to all the traumas she had been through and the elapsed period of time since the criminal acts commission, the injured party cannot be expected to precisely remember other detained camp inmates present in the dressing-room at the moment when she was brought back there.

27. Having analyzed the contested Judgment, however, the Panel concluded that the reasons for this part of the appeal are ill-founded, particularly taking into account that the Judgment comprehensively analyzed all injured party's previously given statements in the context of her main trial testimony, from which not only one inconsistency is apparent. The Panel also provided acceptable reasons for the position that the injured party N.H.'s single evidence is insufficient to find with certainty that the accused is indeed the perpetrator of the described acts.

28. This Panel has examined the injured party's statements given before her trial testimony. Thus, in her 1994 statement (O-9), the injured party N.H. stated that, on one occasion during her imprisonment at the referenced location, one Mato took her out of the dressing-room, along with two other soldiers, whereupon they raped her along with him (the accused). On 28 December 2004, the injured party was also examined in relation to these circumstances (O-8), but she did not at all mention that such a thing befell her, nor did she mention the accused as one of the participants in the Bosanski Brod incident, even

though she obviously mentioned the other events and the ill-treatment to which she had been subjected. The injured party gave her next statement on 29 October 2014, when she spoke about the referenced incident, but only added then that she thought the accused's (last) name was Čondrić, and described him generally as an average height person, with a short brown hair and age around 30. The injured party also gave a statement on 4 November 2014 (DO-8), and indicated that she had been raped by Mato, whose last name was allegedly Čundrić or Čondrić, and that she learned about his identity from her inmates imprisoned along with her.

29. The Panel also agrees that the contents of such previously given statements indeed bring into question the credibility of the injured party's testimony itself, and raise doubts as to whether the injured party is indeed certain that the person in question is the accused Čondrić, particularly because she was not indicating so from the very beginning, and because she learned from other persons about his alleged identity as a perpetrator of the criminal acts since she had not known him from before. However, contrary to the Prosecution's position, that such inconsistencies are relative also due to the elapsed period of time since the referenced events occurrence, the Panel concludes that, notwithstanding the elapsed period of time and with no diminishing of the injured party's traumas resulting from the criminal acts committed against her, the character of these inconsistencies is such that they raise doubts into whether the accused was at all present during the incident at issue.

30. In addition, the injured party N.H. stated that she learned about the accused's identity from the other women imprisoned along with her at the dressing-room of the "Polet" Football Club, namely Stana Živković, Nada Lazić, Sofija Vidić and S.V., whom she told what had happened to her after she returned to the dressing-room, and that they told her that the person who raped her along with the two other members of the HVO, was Mato, military police officer from Bosanski Brod. The Trial Panel found, however, that none of the examined witnesses confirmed the injured party N.H.'s statement that, in the concrete case, the accused Čondrić is the perpetrator of the referenced acts. The Prosecution's appeal contests this fact indicating that the Trial Panel's finding is erroneous because one of the witnesses, Koviljka Stanković, whose statement was read out at the main trial (T-10), stated that, during their imprisonment at the camp, "Mato from Sijekovac" used to come to take them outside, and that the injured party N.H. was most frequently taken outside during that period.

31. The Prosecution also submits that the Trial Panel does not take into account the facts that imprisoned women had been repeatedly raped on a daily basis, and that it cannot be expected that any of these women can particularly remember something they had not eye-witnessed. Quite the opposite, the Prosecution tried to prove that exactly the other imprisoned women indicated that they had known the soldier who took H.N. outside, that exactly these women told H.N. who that person was, namely that he was one Mato. Pursuant to this principle, the Prosecution should have corroborated such injured party's statement with the statements of the other imprisoned inmates, instead of trying to justify such evidence deficiency with the fact that the gravity of such crimes should be taken into account in evaluating the credibility of the witnesses' statements, where they did not at all mention the accused Čondrić.

32. In addition to the witness Koviljka Stojković's statement, the Trial Panel also comprehensively analyzed the other statements and the evidence of the witnesses who had been imprisoned along with the injured party N.H., and who told her, according to the injured party, that it was Mato Čondrić who perpetrated the described acts. Like the Trial Panel, the Appellate Panel also concludes that these witnesses' statements do not prove the theory that the accused indeed took part in the described incriminating acts, and that the appellate complaints did not significantly bring into question the Trial Panel's findings.

33. Regardless of the horrible experiences of the witnesses imprisoned along with the injured party N.H., this Panel concludes that the fact that the perpetrator of the crime committed against the injured party N.H. is being clearly and loudly mentioned as a person whom certain imprisoned women had allegedly known and mentioned is, in and out of itself, specific, and it cannot be lightly accepted and disregarded that some of the witnesses would fail to mention such a significant fact.

34. Even if the feelings of shame and fear of the victims' stigmatization, and the unwilling mentioning or remembering of the traumatic events, are taken into account, the Panel holds, contrary to the appellate arguments, that such a traumatic incident enables victims to remember the perpetrator's name and physical appearance well if they had known him. In the concrete case, the injured party was allegedly told that one Mato from Sijekovac is the person who had taken her away, and it is unlikely that at least one of the 5 remaining imprisoned women cannot confirm that, if it was indeed true.

35. When it comes to the other evidence with which the prosecution tried to corroborate the injured party N.H.'s evidence, the prosecution's appellate arguments concerning this

part of the Trial Judgment cannot be accepted as well-founded. The Court examined two witnesses, S.V. and MC-2, and read out the statements of Stana Živković, Koviļjka Stanković and Sofija Vidić, who could not be examined. Even though they testified about many traumatic events to which they had been subjected, none of these two examined witnesses mentioned the accused Čondrić at any moment, nor did any of the remaining witnesses mention the accused at all. Witness S.V. could not even identify the accused from the 1992 and 1994 photos with which she was presented. Witness MC-2 did not mention hearing at all that N.H. told the other women what had happened to her.

36. It clearly ensues from the statements of Stana Živković, Sofija Vidić and Koviļjka Stojković that the injured party was indeed subjected to ill-treatment in the dressing-room of the *Polet* Football Club. The Panel observes, however, that none of the three referenced persons mentioned the accused either as the perpetrator of the act at issue, or the person who took the injured party N.H. outside the dressing-room. The Prosecution submits, along this line, that it is impossible that the victims of such tortures would remember something that occurred just once, or something which they had been told about, wherefore the Trial Panel erroneously evaluated the three witnesses' statements as evidence which is not in compliance with the injured party N.H.'s testimony. The Panel, however, concludes that such prosecution's complaint is ill-founded because the injured party is certain that these three persons were present on the critical day when she was taken away. However, it is not likely that none of these witnesses would not be able to remember the referenced incident with the injured party if the incident indeed occurred in the manner as the injured party indicated, particularly if the injured party stated that the referenced witnesses had known him.

37. The prosecution also submits that the Trial Panel erroneously considers as unreliable the recognition and identification of Mato Čondrić by the injured party, who stated that "she recognized him without beard." Along this line, the prosecution indicates that the Trial Panel did not evaluate the evidence of witness MC3, who had known the accused from before the war, and used to meet him during captivity, but who could not remember if the accused had any beard during the critical period. The prosecution further submitted that the Trial Panel also did not take into account the prosecution's evidence T29 and T30, that is, the Person Identification Record of 18 November 2014 and the Photo album No. 2 of 17 November 2014, containing the photos from which the injured party did not identify any person as a perpetrator of the criminal act. Ultimately, the prosecution submits that the Trial Panel did not take into account the testimony of witness Šaban

Šehagić, who was the chief of duty guard service within the military police of the 101st Brigade of the HVO at the *Polet* Stadium, and who remembered that, during the critical period, the accused used to visit the Stadium and prisoners imprisoned down at the dressing-rooms.

38. When it comes to the Prosecution's complaint, that the Panel did not take into account the evidence of witnesses MC3 and Šaban Šehagić, the Panel observes that the Trial Judgment did not indeed refer to these witnesses' evidence, but that none of these witnesses testified with certainty about any facts, and that their information was rather based on what they "believed/thought". The Panel therefore considers that they have no particular relevance.

39. As to the evaluation of the Identification Records and the photos, despite the accused's identification by the injured party N.H. from the photos, the Trial Panel correlated this identification with the significant inconsistencies in the injured party's testimony and her previous statements. This Panel also upholds the finding that such identification, in and out of itself, is not unconvincing. However, in the circumstances when the witness indicates in the two statements that the person who committed the rape was present only at that specific time and that she never saw this person again (the main trial testimony and T1), contrary to the two statements where she stated that one Mato, who committed the rape along with two other HVO soldiers, used to come there every day and every night (the 1994 statement and the statement of 29 October 2014, O-7), the Panel holds that the Trial Panel properly found that such identification of the accused by the injured party is unconvincing, and that the identification of the accused as the perpetrator of the criminal act cannot be based on such an identification.

40. Having considered all the evidence adduced, the Panel concluded that the appellate complaints did not significantly bring into question the Trial Panel's findings regarding this Count of the Indictment. The Panel holds that, based on such a quantum of evidence, it cannot be concluded with certainty that the accused's participation in the criminal act in the described manner can be proved beyond a reasonable doubt. In such a manner, everything still remains at an assumption level, which stands much below the 'beyond a reasonable doubt' standard which the prosecution's theory must satisfy in order for the court to render a judgment of conviction.

41. Therefore, the prosecution's complaints, that the Trial Panel did not consider the tendered evidence wherefore the facts remained incompletely or incorrectly established, are unacceptable.

(b) Sections 2 and 3 of the enactment clause

42. Under Section 2 of the enactment clause of the Trial Judgment, the accused was acquitted of the charges that, on 2 June 1992, in the Municipality of Bosanski Brod, on the premises of the SJB Bosanski Brod old building, namely in one of its offices, along with other members of the military police whom he knew, the accused took part in the mental and physical ill-treatment of civilian Marko Mitrić, who had been arrested on the previous day by members of the HVO, brought to the referenced building, and, after being shortly interrogated by one of the military police superiors, this superior officer invited other members of the military police, six of them in total, including the accused, all in the HVO uniforms, and ordered them to beat Marko Mitrić, which they did along with the accused; they started beating Mitrić with batons, a shovel, kicking and punching him; the accused punched and kicked Marko Mitrić, and when Mitrić fell on the ground as a result of the received blows, they continued kicking him until he fainted; thereupon they poured water over him so that he regain his consciousness; and the accused Čondrić kept beating him in the same manner with other military police officers until Marko Mitrić fainted again.

43. Under Section 3 of the enactment clause, the accused was acquitted of the charges that, on an unspecified day, in late June or early July 1992, in the Municipality of Bosanski Brod, on the premises of a prison located in a warehouse of the *Beograd* department store, in the settlement of Tulek, he took part in the mental and physical ill-treatment of civilian Marko Mitrić, in such a manner that, after Marko Mitrić's transfer from the SJB Brod old building to the Tulek prison, the accused came to the referenced prison along with an unidentified HVO soldier, and, in its front yard, Mato Čondrić started kicking and punching Marko Mitrić, slapping his face and hitting him with a shovel in his back, until Marko Mitrić fell on the ground due to the received blows.

44. In relation to the two referenced Sections, the Prosecution submitted that the Trial Panel did not evaluate as convincing pieces of evidence the statements given by the injured party Marko Mitrić in relation to these incidents, considering that the injured party could not be examined at the main trial due to his procedural inability to give evidence. The prosecution submits that, despite the fact that the witness did not give evidence at the

main trial, the Panel should have also accepted and based its judgment on the statements previously given by this injured party because those are convincing statements.

45. The Panel observes that, the witnesses MC 3, MC 4, Nermin Plahadžić and Josip Blažević were examined with regard to the two referenced Sections, while only witness MC 3 gave evidence with regard to Section 3. In addition to the above mentioned witnesses, the statements of witness Koviljka Stojković and the injured party Marko Mitrić (T13-T16) were also tendered as evidence. All tendered evidence indicated that the injured party Mitrić was physically ill-treated on the premises of the SJB Bosanski Brod, and, along this line, the Trial Judgment provided a comprehensive evaluation of evidence, which is also upheld by this Panel. None of the tendered evidence, however, indicated that the accused indeed took any part in the mental and physical ill-treatment of the injured party Marko Miletić, as alleged in the Indictment.

46. The only evidence incriminating the accused Čondrić is the evidence given by the injured party Mitrić as a single victim-witness. The injured party Mitrić gave evidence on 15 November 1994 (Exhibit T-13) before the Basic Court in Derventa, when he also mentioned the accused Čondrić while specifying the names of the persons who had beaten him at the old police building. Chronologically, the injured party gave a statement on 28 March 2006 (O-11), where he confirmed that he had been ill-treated, but did not indicate that the accused Čondrić had taken any act of beating. In the statement that he gave at the Prosecutor's Office of BiH on 19 November 2014 (T-15), the injured party also repeated his allegations related to the accused's participation in his ill-treatment, while in his last statement of 2 December 2014 (T-16), the injured party also mentioned the manner in which the accused Čondrić had inflicted injuries on him.

47. Therefore, the Panel concludes from all the injured party's statements that he was not consistent in indicating that the accused Čondrić each time participated in his ill-treatment and in giving a more comprehensive description of the abuse. This is so considering that, in his 2006 statement, the injured party did not at all mention the accused's participation in his ill-treatment, and particularly that he mentioned the details of the mere act of abuse no sooner than in his December 2014 statement (T-16). In addition, the Trial Panel properly observed that, during the investigation conducted in the case conducted against the accused Indira Kamberić, this injured party (Mitrić) also gave statements concerning the ill-treatment at the Polet camp; that a forensic evaluation of his mental health and his capacity to give evidence was also carried out during the referenced

proceedings; that forensic expert Vjekoslav Kovačević found that the injured party's mental health was compromised as a result of ... wherefore he had no capacity to give evidence before the court in the referenced case; and that the forensic expert concluded that he could not exclude a possibility that, due to such a mental state, the injured party is not prone to fabrication of certain events and incidents. For the foregoing reasons, the Panel renders as correct the Trial Panel's finding concerning the significance of the fact that the injured party gave a comprehensive statement about the accused's participation in the beating of the injured party Mitrić no sooner than in 2014.

48. The Trial Panel also carried out a forensic evaluation of this injured party's mental state in the present proceedings through Vjekoslav Kovačević, forensic expert in neuropsychiatry. Once a new expert evaluation was carried out for the purposes of the present proceedings, the referenced forensic expert also found that the injured party Mitrić suffers from ... as a result of which permanent changes of personality have been developed, and again, in the present proceedings, the forensic expert could not exclude a possibility that, considering the nature of the illness, the injured party might be prone to creating his own views of certain events.

49. In the concrete case, only the statement of the injured party Mitrić incriminated the accused that he had committed the acts described in the two referenced Sections. However, the statements of the injured party given hitherto in relation to the events at issue are inconsistent, and require further explanations, which could not be obtained since the injured party was not examined during the first-instance proceedings. In addition, as properly indicated by the Trial Panel, in dealing with this issue it is necessary to analyze the case law of both the European Court of Human Rights and the Constitutional Court of BiH with regard to the protection of the right to a fair trial.

50. In a number of its decisions, the European Court of Human Rights has confirmed its position that there is a violation of Article 6(3)(d) of the European Convention in situations where there was no adequate and foreseen opportunity for the accused to examine the witness, a judgment of conviction cannot be exclusively or mostly based on that witness's

evidence.² In this regard, the Trial Panel also properly referred to the case law of the BiH Constitutional Court, who adopted the same position with regard to the referenced issue.³

51. Obviously, all other evidence tendered in relation to the circumstances addressed in Sections 2 and 3 of the Judgment enactment clause does not prove any other fact but the fact that the injured party was indeed ill-treated at the *Polet* camp in the described manner. The Trial Panel also properly indicated the foregoing, and this Panel upholds the finding that, in such circumstances of the case, when only the injured party incriminates the accused Čondrić in his deficient and inconsistent statements, which cannot be subjected to cross-examination for verification and possible further explanations of the ambiguities raising doubts into these statements, in addition to the fact that no other tendered evidence points to the accused as the perpetrator of the acts described in Sections 2 and 3, this Panel agrees that the Trial Panel's finding that the accused participated in the incriminating events lacks the minimum required for a proof 'beyond a reasonable doubt' standard, which was not successfully contested by the prosecution's appellate complaints, wherefore this part of the appeal is also ill-founded.

52. In view of the foregoing, and considering that there are no grounds for which the judgment is being contested by an appeal, it was decided as stated in the Judgment enactment clause, pursuant to Article 313, as read with Article 310 of the CPC BiH.

Record-taker:

Legal Advisor

Dženana Deljković Blagojević

PANEL PRESIDING

JUDGE

Dr. Dragomir Vukoje

LEGAL REMEDY NOTE: No appeal lies from this Judgment.

² The Judgments in *Kostovski* of 20 November 1989, p. 21; in *Windisch* of 27 September 1990, p. 11. in *Isgro* of 19 February 1992, p. 12-13; in *Saidi* of 20 September 1993, p.57.

³ Para. 75 of the Trial Judgment.