

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No. S1 1 K 014590 16 Krž

Delivered on: 28 November 2016

Before the Appellate Panel composed of: Judge Dragomir Vukoje, PhD, presiding
Judge Tihomir Lukes, reporting judge
Judge Hilmo Vučinić, Panel member

PROSECUTORS' OFFICE OF BOSNIA AND HERZEGOVINA

v.

Zoran Bjelica and Novica Tripković

SECOND-INSTANCE JUDGMENT

Counsel for the Prosecutor's Office of Bosnia and Herzegovina:

Ćazim Hasanspahić

Counsel for the Accused Zoran Bjelica:

Attorney Milan Romanić

Counsel for the Accused Novica Tripković:

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Number: S1 1 K 014590 16 Krž

Sarajevo, 28 November 2016

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting as a Panel of the Appellate Division of Section I for War Crimes composed of Judge Dragomir Vukoje, PhD, as the presiding judge, and Judges Tihomir Lukes and Hilmo Vučinić, as the Panel members, with the participation of legal officer Ena Granić Čizmo as the record-taker, in the criminal case against the accused Zoran Bjelica and Novica Tripković for the criminal offense of War Crimes against Civilians in violation of Article 173, paragraph 1, subparagraph (c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180, paragraph 1 and Article 29 thereof, having deliberated on the respective appeals by the Prosecutor's Office of Bosnia and Herzegovina and counsel for the Accused Novica Tripković against the Judgment of the Court of Bosnia and Herzegovina S1 1 K 014590 14 Krl dated 28 April 2016, having held an open session of the Appellate Panel in the presence of Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Ćazim Hasanspahić, the accused Zoran Bjelica and his counsel Milan Romanić, and the accused Novica Tripković and his counsel Slavko Aščerić, pursuant to Article 310 of the Criminal Procedure Code of Bosnia and Herzegovina in conjunction with Article 313 thereof, on 28 November 2016 delivered the following

J U D G M E N T

The appeals filed by, respectively, the Prosecutor's Office of Bosnia and Herzegovina and counsel for the Accused Novica Tripković **are dismissed as ill-founded**, and Judgment of the Court of Bosnia and Herzegovina S1 1 K 014590 14 Krl dated 28 April 2016 **is upheld**.

Reasons

1. By Judgment of the Court of Bosnia and Herzegovina (Court of BiH) S1 1 K 014590 14 Krl dated 28 April 2016, the Accused Novica Tripković was found guilty that, by the acts described in the convicting part of the enacting clause of the impugned judgment, he committed the criminal offense of War Crime against the Civilian Population in violation of Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), in conjunction with Article 22 thereof, and, accordingly, the Court, by applying Articles 33, 38 and 41 of the CC SFRY, sentenced the accused to eight (8) years' imprisonment.
2. By the same judgment, pursuant to Article 188, paragraph 4 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), the Accused Novica Tripković was relieved of the duty to reimburse the costs of the criminal proceedings, which shall be paid from within budget appropriations. Pursuant to Article 198, paragraph 2 of the CPC BiH, the injured parties were instructed to take civil action to pursue their claims under property law.
3. Pursuant to Article 284, subparagraph c) of the CPC BiH, the Accused Zoran Bjelica was acquitted of the charge that by the acts described in the acquitting part of the enacting clause of the impugned judgment he committed the criminal offense of War Crimes against Civilians in violation of Article 173, paragraph 1, subparagraph (c) of the Criminal Code of Bosnia and Herzegovina (CC BiH), in conjunction with Article 180, paragraph 1 and Article 29 thereof.
4. In relation to the acquitting part of the judgment, the accused, pursuant to Article 189, paragraph 1 of the CPC BiH, is relieved of the duty to reimburse the costs of the criminal proceedings, which shall be paid from within budget appropriations. Pursuant to Article 198, paragraph 3 of the CPC BiH, the injured parties were instructed to take civil action to pursue their claims under property law.
5. The Prosecutor's Office of Bosnia and Herzegovina (Prosecutor's Office of BiH/Prosecution), as well as attorney Slavko Aščerić as counsel for the Accused Novica Tripković appealed the referenced judgment within the set deadline.
6. The Prosecutor's Office of BiH filed the appeal on the grounds of essential violation

of the criminal procedure provisions, erroneously and incompletely established facts, and the decision on the sentence – in relation to the Accused Novica Tripković.

7. Attorney Slavko Aščerić, Counsel for the Accused Novica Tripković, filed the appeal on the grounds of essential violation of the criminal procedure provisions and erroneously and incompletely established facts.

8. Responses to the appeals were submitted – by counsel for the accused who responded to the Prosecutor's Appeal, and by the Prosecutor who responded to the Appeal filed by Counsel for the Accused Tripković: each party petitioned that the other party's appeal be dismissed as ill-founded.

9. Pursuant to Article 304 of the CPC BiH, the Appellate Panel held a session on 28 November 2016, which was attended by Ćazim Hasanspahić, Prosecutor of the Prosecutor's Office of BiH, the Accused Zoran Bjelica and his counsel Milan Romanić, and the Accused Novica Tripković and his counsel Slavko Aščerić.

10. At the open session the Prosecutor briefly presented the contents of the appeal filed, maintaining the reasons and proposals given in the appeal in their entirety.

11. Counsel for the accused Tripković also presented the contents of the appeal filed, also maintaining all the reasons and proposals given in the appeal. The Accused concurred with his counsel, adding that he has never been to the location referred to in the Indictment.

12. Commenting on the appeal filed by the opposing party, Prosecution and defense teams petitioned that it be dismissed as ill-founded.

13. Pursuant to Article 306 of the CPC BiH, the Appellate Panel reviewed the impugned judgment insofar as it was contested by the appeals, inspected the case file and ruled as stated in the enacting clause for the following reasons:

I. CONVICTING PART OF THE JUDGMENT

A. GROUNDS FOR APPEAL: ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS

1. Appeal of Counsel for the Accused Novica Tripković

(a) Essential violation of the criminal procedure provisions under Article 297(1)(d) of the CPC BiH – violation of the right to a defense

14. Within the scope of this essential violation, the Defense first of all pointed out that they did not receive all the statements given by witness Obren Đorem to the Prosecution, with the Prosecution having an obligation to disclose to the Defense all the evidence at its disposal, not to make a selection thereof.

15. Furthermore, in his appeal counsel listed several witnesses where, according to him, their (non-)examination amounted to an unequal treatment which, in turn, constituted a violation of the right to a defense. In this respect, counsel referred to witnesses “FWS-191” and “Dado”. Arguing the inequality of parties to the proceedings, counsel also pointed to the examination of witness Naza Pervan, inferring that Prosecution has gained nothing by the examination of this witness, and comparing how the Defense, unlike Prosecution, was not allowed to examine certain witnesses. Furthermore, the Defense commented on witness “S5”, asking questions as to why the Prosecution withdrew this witness.

16. The Appellate Panel finds that the arguments are ill-founded.

17. In connection with a violation of the right to a defense that counsel is attempting to build on the alleged non-disclosure of all the statements given by witness Obren Đorem to the Prosecution, this Panel finds that it is not possible to challenge the validity of a first-instance judgment in that manner. Specifically, first and foremost, defense counsel failed to provide sufficient grounds to prove that the Prosecution selected the evidence in a malicious manner. Moreover, the appeal does not explain the manner in which the non-disclosure of some of the statements violated Defense's right in relation to the examination of this witness, considering that the Defense had an opportunity to cross-examine the witness at the trial and clarify the circumstances surrounding the (non-)disclosure of

statements, and also considering that defense counsel claimed in the appeal that he presented the disputable non-disclosed statement. Consequently, the Defense was not denied the right to build its thesis in relation to this witness' statement in any way.

18. Having analyzed the impugned judgment within the scope of the arguments directed at the rejection of Defense's motion for examination of witnesses "FWS-191" and "Dado", the Appellate Panel upholds the reasons adduced by the Trial Panel in paragraphs 91-97 of the impugned judgment in their entirety as proper and reasoned. By making this conclusion, this Panel finds that a Defense's allegation of violation of the right to a defense primarily in relation to the rejection of the motion for examination of witness "FWS-191" is unfounded and void of arguments, because that was done not to discriminate Defense, to which Defense obviously alludes, but because of the provisions of the Rules of Procedure and Evidence as well as a Decision of the MICT dated 17 September 2014 (involving a protected witness who was granted protective measures before the ICTY, for which reason the testimony as well as disclosure of transcripts/documentation pertaining to this witness depended on the prior permission/consent of the MICT). In this connection, it is questionable what the Defense would gain from the examination of this witness, in view of the fact that the ICTY' Decision regarding this witness provides that the witness only has circumstantial ("*hear-say*") knowledge about the beating of one of the victims with which the accused Tripković is charged.

19. Finally, the Appellate Panel observes that in its arguments the Defense makes certain vague complaints that constitute certain statements and observations, but without being concretely formulated as per standards of review. Specifically, the Defense states that allowing the examination of Naza Pervan is an example of unequal treatment, or demands that the Court take a position as to why the Prosecutor withdrew witness "S5". In this Panel's view, such arguments must be *a priori* dismissed as ill-founded. However, it should be emphasized that it is not the Court's task to analyze why the Prosecutor withdrew a particular piece of evidence, as the Prosecutor has the exclusive right to dispose of the indictment based on certain evidence.

(b) Essential violation of criminal procedure provisions under Article 297(2) of the CPC BiH

20. Counsel alleged on several occasions in his appeal that certain witness interview records are not in compliance with Article 152(2) of the CPC BiH. However, although

this has not been precisely subsumed under an essential violation defined by Article 297(2) of the CPC BiH, the Appellate Panel finds that this complaint needs to be addressed within the scope of this statutory provision as the two are compatible in nature.

21. Specifically, counsel contended in the appeal that certain witness statements given to SIPA and Prosecution – the case in point: witnesses Enesa Hasanbegović, Obren Đorem, Branko Sladoje – are not consistent with Article 152(2) of the CPC BiH, i.e. the statements do not contain questions put to the witnesses, which, according to counsel, makes it unclear as to what the witnesses were responding.

22. The Appellate Panel finds that the arguments are ill-founded.

23. Proceeding from the content of Article 152(2) of the CPC BiH, and linking it to defense counsel's argument, the Appellate Panel first of all observes that the appeal does not specify the impact of the omissions on the rendering of a lawful and proper judgment.

24. Regardless of that, this Panel observes that the contention in the appeal that the manner of taking a statement during the investigation (without citing questions and answers) affected the lawfulness of that evidence is unfounded and void of arguments, particularly considering the fact that the statements were given voluntarily, under no duress or through any violation of human rights, while the Defense had the opportunity to clarify possible moot issues at the trial by cross-examining the witness.

B. GROUND FOR APPEAL: ERRONEOUSLY OR INCOMPLETELY ESTABLISHED

FACTS

1. Appeal of Counsel for the Accused Novica Tripković

25. Counsel for the Accused Tripković refuted the facts established by the First-Instance Panel, having analyzed the respective testimony of witnesses Enesa Hasanbegović, Obren Đorem, Branko Sladoje, Zumra Kovač, witness “B”, witness “A”, witness “S7”, Fadila Hatić, Zijad Hatić, Slavko Lalović and Duško Mandić. However, as presented below, the Appellate Panel found that all the arguments were unfounded.

26. In order to be systematic, the Panel will follow the defense counsel's appeal,

analyzing the arguments about the statements of the referenced witnesses immediately followed by a response.

27. With regard to witness Enesa Hasanbegović, the appeal alleges that the Panel is contradictory in the reasons that this witness's testimony was relied on to determine beyond doubt that Novica Tripković was a participant in criminal acts. In this respect, counsel submitted that there are discrepancies between this witness's statement given to SIPA and Prosecution and his trial testimony, that the witness did not know the accused prior to the critical incident and that her identification is disputable.

28. The Appellate Panel concludes that the Defense, by its rather blanket allegations, failed to call into question the testimony of witness Enesa Hasanbegović to which the Trial Panel gave credibility with good reason and, in connection therewith, adduced sufficient reasons in paragraphs 196-204 of the trial judgment. Specifically, defense counsel made futile attempts to discredit witness Hasanbegović by pointing out practically irrelevant discrepancies in the statements given to SIPA, Prosecution and at the trial respectively. In this respect, this Panel notes that in the end, taking into consideration the witness's absolute certainty that it was the accused Tripković who took her husband Suad Hasanbegović away, it is irrelevant whether or not the accused had a cockade on his fur cap at that moment or some other similar features. The Appellate Panel finds that the condition in which the witness was at the moment when she perceived the accused – a state of fear and uncertainty for her own fate and the fate of her family – enabled her to recognize the accused without a dilemma, with other details becoming irrelevant. In that context, and with reference to the Defense complaining about the manner of identification, the Appellate Panel observes that the same question was already raised during the first-instance proceedings, and the reasoned response given in the first-instance judgment is also upheld by this Panel in its entirety:

“However, the witness, without any hesitation, remains consistent *“when my husband was called out, he was the first one whom I saw, I recognized him by his appearance and face”*. On this subject, the Defense tendered a photograph (Exhibit O2-5) in the case file, claiming that the photograph depicted the accused's appearance as it was at the time referred to in the factual account in the judgment. However, the Defense failed to offer a single proof in support of its contention that the photograph was taken at the relevant time period or even that the photograph depicted the accused.

Besides, the testimony of witness Enesa Hasanbegović leaves no room for any doubt with regard to the identification of the accused on the grounds that the witness is sure and positive in terms of identification of the accused when, testifying at the trial, without being asked, she recognized and pointed to

the Accused Tripković *“it is that gentleman over there, I see him sitting over there, in the second row, he has headphones and is wearing glasses.”* (paras. 200 and 201 of the impugned judgment).

29. Having assessed the defense counsel's argument in relation to the fact that the witness did not mention certain details in her prior statements and the discrepancies, the Appellate Panel concludes that a witness's answer depends considerably on the manner of examination, as a question prompts the witness to recollect a particular detail. That is precisely the reason why certain discrepancies may occur. In that process it is important that a witness is essentially clear with regard to relevant circumstances, without any doubts when identifying a person as a perpetrator, which was the case here. In particular, it is worth noting that the witness stated *that she remembered that face well because it permanently marked the fate of her family*. Furthermore, the Trial Panel, by lending credibility to this witness, was right in taking account of the fact that she did not want to make baseless accusations against anyone and, to that effect, she was adamant that the accused Tripković was the perpetrator and not the other persons who were also accused at the time.

30. Referring to the testimony of witness Obren Đorem in the appeal, defense counsel challenged the description and identification of the Accused Tripković.

31. In the Appellate Panel's view, defense counsel gives a cursory analysis of this witness's testimony too, attempting to discredit him by use of some details that are not decisive for determining the identity of the Accused Tripković. In making this finding, this Panel was mindful that the testimony of witness Obren Đorem is consistent with that of witness Enesa Hasanbegović, and that his testimony, on its own and in combination with the testimony of the referenced witness – as properly inferred by the Trial Panel – is credible and consistent. In this connection, the Panel observes that defense counsel, by challenging the identification of the accused by this witness, overlooked the fact that the witness confirmed that the accused Tripković and Marinko Bjelica would often show up and that they did not keep their identity hidden, with Tripković introducing himself as Vojvoda (Duke) Tripković. Based on the foregoing, it is irrelevant to contest the accused's description given by this witness.

32. Challenging the established facts by invoking the testimony of Branko Sladoje, defense counsel maintained that the witness did not make a single reference to the accused Tripković in his initial statement given to the Prosecutor, calling into question the

identification of the accused by this witness.

33. Taking into consideration the fact that the Trial Panel too observed that throughout his testimony this witness wanted to downplay the significance of his presence and denied any participation in the critical incident (he stated that he was uncomfortable with what has happened), certain discrepancies in the statements are understandable. Namely, if he was constantly making sure not to mention himself in connection with an incident, then it stands to reason that he omitted more details in such moments. What this Panel finds relevant and why it holds that Defense did not undermine the facts by refuting the testimony of this witness, is the fact that the testimony of Branko Sladoje is consistent with the testimony of Enesa Hasanbegović and Obren Đorem respectively, and they all remembered that the accused was carrying something, like a sword or a bayonet (according to witness Hasanbegović, it was a sabre), and they all remembered that he was always accompanied by his son who was 12-14 years old back then.

34. Furthermore, defense counsel refuted the testimony of witness Zumra Kovač, arguing that she did not mention the Accused Tripković in her statement given to SIPA, with the witness trying to justify that by saying that she was not asked in that regard. In that respect, counsel asked why SIPA statement was not tendered into evidence by the Prosecution. Defense counsel commented on the testimony of, respectively, witnesses "B", "A", "S7", Zijada Hatić and Slavko Lalović along the same lines.

35. By commenting on the respective statements of witnesses Zumra Kovač, "B", "A", "S7", Zijada Hatić and Slavko Lalović, the Defense is overlooking the fact pertaining to the circumstances with respect to which the testimonies of those witnesses were analyzed. Namely, according to the impugned judgment, the referenced witnesses gave their statements and the Trial Panel analyzed them generally in relation to the incident when the men were taken away (some of whom were eventually killed) and not in relation to the identification of the perpetrator (in the case in question, the accused Tripković). That being said, the Appellate Panel finds there are no grounds to analyze defense counsel's arguments focusing on the question why the witnesses failed to mention the accused, because the testimonies of the witnesses were not given or analyzed in terms of the cited question but in terms of events in general at the relevant location.

36. The Defense relied on the testimony of witness Fadila Hatić to infer that Edin Bičo was not killed by a firearm as claimed by the Prosecutor, arguing that the witness learned

how Edin Bičo was killed directly from eyewitness Zlata Redžović.

37. In view of the fact that when testifying at the trial witness Zlata Redžović did not speak about the circumstances surrounding the death of Edin Bičo, it is clear to this Panel that the Defense's allegation concerning the acceptance of Fadila Hatić's alleged contention about the death of Edin Bičo cannot be taken into consideration as Ms. Hatić's knowledge in that regard would be circumstantial.

38. Moreover, defense counsel commented on the testimony of witness Duško Mandić, maintaining that he said that a veterinarian from Gacko, Edin Bičo and Sejdo Kešo were not taken to the upper floor of the school on the same day, which is in contrast to Prosecutor's contentions. Counsel also contended that this witness's testimony contradicts Obren Đorem's testimony.

39. In the Appellate Panel's view, the Defense applied a fragmentary approach to the testimony of Duško Mandić, using certain portions of his statement given to the Prosecution on 24 March 2010 which, when taken out of context, benefit the Defense, at the same overlooking this witness's trial testimony explained in detail in paragraphs 245-249 of the impugned judgment and found to be credible.

40. Finally, the Appellate Panel concludes that the defense counsel's analysis has not undermined the facts fully and properly established by Trial Panel. In that context, this Panel notes that in determining whether or not a Trial Panel's conclusion was reasonable, the Appellate Panel always bears in mind that findings of fact by a Trial Panel should not be lightly disturbed in view of the fact 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, particularly when the facts have been established properly and fully, as is the case here.

41. Therefore, this Panel, having analyzed the impugned judgment insofar as it was contested by the appeal, and assessed the testimony of the cited witnesses in their entirety in relation to the critical incident as well as a broad context of events at the *Miladin Radojević* Primary School in Kalinovik, found that the testimonies are true, clear, consistent, mutually compatible in terms of decisive facts and sufficient to make a finding beyond any reasonable doubt that victims Suad Hasanbegović, Sejdo Kešo and Edin Bičo were detained in the mentioned school and then murdered as described in the factual

account of the judgment, and that the Accused Novica Tripković participated in their murder.

C. GROUND FOR APPEAL: DECISION ON THE SENTENCE

1. Appeal of the Prosecutor's Office of BiH

42. Prosecution submits that the Trial Panel, taking into consideration the aggravating and extenuating circumstances, did not properly mete out the punishment for the Accused Tripković, concluding that an eight-year prison sentence is not adequate and would not achieve neither general nor specific deterrence goals.

43. In this respect, the Prosecution contends that the extenuating circumstances are referenced only superficially. On the other hand, in the context of aggravating circumstances, the Panel should have weighed the degree of guilt, the motives for perpetrating the offense, the circumstance under which the offense was perpetrated (i.e. that the accused openly demonstrated superiority in the presence of his underage son), the humiliation of the victims and, finally, that the accused had prior convictions for aggravated murder and war crimes.

2. Appeal of Counsel for the Accused Novica Tripković

44. Despite the fact that defense counsel neither contested the judgment on the grounds of the decision on the sentence nor gave any comment thereon, the Appellate Panel will review it as required by Article 308 of the CPC BiH¹.

¹ An appeal filed in favor of the accused due to the state of the facts being erroneously or incompletely established or due to the violation of the Criminal Code shall also contain an appeal of the decision concerning the punishment and forfeiture of the property gain (Article 300).

3. Appellate Panel's finding

45. The Appellate Panel finds that both the Prosecutor's argument and a potential discrimination in favor of the accused Tripković by virtue of the extended effect of the appeal are ill-founded.

46. Having examined the decision on the sentence with regard to the complaints filed, the Appellate Panel, within the scope of circumstances bearing on the type and magnitude of punishment (aggravating and extenuating circumstances), determined that the Trial Panel considered and reasoned the degree of guilt of the accused bearing in mind the sentencing framework stipulated for the criminal offense in question, the gravity of the perpetrated acts, the nature of the acts and the ensuing consequences.

47. In that connection, this Panel finds that the Trial Panel was right in assessing the following circumstances as aggravating circumstances on the part of the accused: the manner of commission of the criminal offense described in the enacting clause of the judgment, the degree of injury to the protected object, the consequences of the offense (the number of victims), the circumstances surrounding the perpetration of the offense, as well as the fact that that accused has been previously convicted of serious crimes (among others, the criminal offense of war crimes). On the other hand, the Trial Panel was right in assessing the following circumstances as extenuating circumstances: the accused is an elderly and family person (married, father of three children), and he showed proper decorum and respect for the Court, although the same is expected of persons who stand accused.

48. Consequently, having weighed all the referenced circumstances in their totality, this Panel too has concluded that the imposed punishment is proportionate to the gravity and consequences of the committed offense and that it would achieve the purpose of punishment in terms of both specific and general deterrence.

II. ACQUITTING PART OF THE JUDGMENT

A. GROUND FOR APPEAL: ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS

1. Appeal of the Prosecutor's Office of BiH

(a) Essential violation of criminal procedure provisions under Article 297(2) of the CPC BiH

49. The Prosecution submits that the Trial Panel, by failing to weigh the presented evidence when reasoning the acquitting part of the impugned judgment, violated Article 281(2) of the CPC BiH, especially in relation to the testimony of Branko Sladoje, which amounted to an essential violation of criminal procedure provisions under Article 297(2) of the CPC BiH.

50. The Appellate Panel finds that the argument is ill-founded.

51. First of all, the Appellate Panel finds that an argument formulated in this manner does not provide a sufficient ground for an analysis, and when one takes into account that the argument has been formulated in a way that it directly ensues from the allegations pertaining to erroneously and incompletely established facts, that is the reason more why the argument cannot be examined under this ground. In view of this, at this point the Panel will conclude that from the viewpoint of formal validity of the impugned judgment the Appellate Panel concludes that the Trial Panel adduced sufficient and altogether acceptable reasons in support of its views and factual findings by relying on relevant evidence corroborating the Panel's view as a whole, to be discussed in more detail in the reasons below. In this context, there is no basis to complain about the assessment of witness testimony, as attempted in the appeal, solely on the ground that the assessment of the testimony and the analysis conducted when making a finding on the testimony do not benefit a party to the proceedings. Having said that, the Appellate Panel finds that the Prosecution made a blanket statement in the appeal about the alleged violation, only noting the violation without offering any arguments and circumstances suggesting a different finding, which is inadmissible.

B. GROUND FOR APPEAL: ERRONEOUSLY OR INCOMPLETELY ESTABLISHED
FACTS

1. Appeal of the Prosecutor's Office of BiH

52. The Prosecution submits that the Trial Panel erroneously established the facts in relation to the accused Zoran Bjelica, relying on the presented evidence to arrive at an erroneous finding that there is no proof that the accused committed the criminal offense charged under the Indictment.

53. Specifically, having analyzed the testimony of witness Branko Sladoje, the Prosecution submits that it is truthful, convincing and consistent, with no discrepancies in comparison to the investigative statement. Furthermore, the Prosecution linked this witness's testimony to the testimony of witness Obren Đorem, finding that they are compatible and clear. The Prosecution also objected that the Trial Panel, when reasoning the acquitting part of the impugned judgment, took into consideration the testimony of witnesses who were detained in the Hall/Gym and did not see who was entering or what was taking place on the upper floor, but not the key witness Branko Sladoje who described the incident with clarity and precision, with no ambiguities whatsoever.

54. The Prosecution submits that the testimony of witness Branko Sladoje has also been corroborated by testimony of other witnesses and documentary evidence and, in that respect, referred to the testimony of witnesses "B", "A" and "S7" respectively.

55. The Appellate Panel finds that the arguments are ill-founded.

56. Having analyzed the acquitting part of the impugned judgment insofar as it is contested by the appeal, the Appellate Panel concludes that the Trial Panel established the fact properly and fully, and arrived at a proper conclusion that one could not rely on the testimony of the referenced witnesses – who gave detailed accounts of events at the relevant time period, including the abduction and subsequent murder of detained civilians Suad Hasanbegović, Sejdo Kešo and Edin Bičo – to determine the criminal responsibility of the Accused Zoran Bjelica beyond any doubt, in view of the fact that none of the Prosecution witnesses (Enesa Hasanbegović, Fadila Hatić, Amira Grebović, Sejda Kešo, Zijada Hatić, Rada Zečević, Enesa Zečević, Zumra Kovač, and protected witnesses "A",

“B” and “S7”) linked the Accused Zoran Bjelica to the referenced incidents in any way.

57. Despite the fact that in an attempt to prove the guilt of the Accused Zoran Bjelica the Prosecution stressed the testimony of witness Branko Sladoje by arguing that the said witness's testimony is convincing, truthful and consistent, this Panel concludes that the Trial Panel was right to conclude that this witness lacks credibility with regard to the presence of Zoran Bjelica at the material time in view of the fact that this witness's claim has not been corroborated by any other witness examined, including Obren Đorem and Slavko Lalović. It is true that witness Obren Đorem, as well as some other witnesses, spoke about the arrivals and potential presence of Zoran Bjelica at the school, but none of them confirmed his presence in the critical incident as the only relevant and decisive fact that could lead to a different decision. In this Panel's view, potential presence of the Accused Bjelica, linked to the critical incident in the appeal, is therefore irrelevant as long as it is not directly related to the incident and matched the time of the incident. None of the witnesses specified the exact time period when they saw the Accused Zoran Bjelica and none of the examined witnesses tied the accused to the events charged in any way, in order for the Panel to be satisfied that the accused did in fact perpetrate the referenced acts and that the Trial Panel established the facts erroneously.

58. This Panel shares the Trial Panel's view that witness Branko Sladoje, as a result of his obvious efforts to downplay the significance of his presence and deny any participation in the critical incident, made a mistake in remembering or in perception, i.e. the witness simply confused the situations when exactly he saw the Accused Zoran Bjelica and under what circumstances.

59. Furthermore, in connection with Prosecutor's allegations about the credibility of this witness on the grounds of absence of discrepancies between the investigative statement and the trial testimony, the Appellate Panel observes that the existence of certain discrepancies is precisely the reason why the Trial Panel decided not to assess this witness's testimony as the Prosecutor suggested. To wit:

“That the case in question obviously involves a case of mistaken identity or an unintentional mistake in remembering also follows from this witness's testimony. Namely, in describing the Accused Zoran Bjelica this witness is the only one to claim that *“he was injured in his leg and that he noticed that he was limping”*. When asked by defense counsel if that may have been Marinko Bjelica, the witness stated that he did not know.

Witness Branko Sladoje did not give this description of the Accused Zoran Bjelica in the statement given during the investigation (T-3)², where he, as opposed to what he said at the trial (that the accused was injured in his leg and that he was limping), claimed that Zoran “*at that time had a beard all over his face and not like on the photograph (that was shown to him for identification purposes) in the area surrounding his mouth*”. This is in contradiction to the description of the accused given by witness Rada Zečević. Ms. Zečević knew the accused from before and she said that he, when she saw him, did not have a beard or a moustache.” (paras. 353 and 354 of the impugned judgment)

60. Consequently, although witness Branko Sladoje claims that Zoran Bjelica came to the primary school on the critical day accompanied by Marinko Bjelica and Novica Tripković, this Panel finds that the Trial Panel was right in concluding that a decision on the guilt of the Accused Zoran Bjelica could not rely solely on the testimony of this witness and not be corroborated by any other witness although everyone was present at the primary school where the critical incident occurred. For those reasons, in the absence of other reliable and corroborating evidence, the Accused Bjelica was acquitted of the charge of perpetrating the acts described in the factual account of the Amended Indictment.

(a) Omitting the murder of Hašim Hatić from the facts of the Indictment

61. Prosecution asked the question what was unclear in relation to Hašim Hatić compared to Sejdo Kešo, Suad Hasanbegović and Edin Bičo that led the Trial Panel to find that Hašim Hatić was not killed on the same occasion. Prosecution submits that the Trial Panel's finding cannot rely on the fact that Mirko Aškraba said in his statement (read out at the trial) that he transported three bodies to the Grajseljsko polje, considering that bodies of victims were transported to other locations as well. In the Prosecutor's view, the fact that the body of Hašim Hatić has not been exhumed, on its own, is not sufficient not to find Zoran Bjelica and Novica Tripković guilty of his murder too.

62. The Appellate Panel finds that the arguments are ill-founded.

63. This Panel also reviewed the part of the judgment containing the reasons why the name of Hašim Hatić was omitted from the factual account in the enacting clause of the judgment, and found that the Trial Panel was right to act in that way. Namely, although

² T-2 Record of Interview of Witness Branko Sladoje, Prosecutor's Office of BiH, T20 0 KTRZ 0000145 07 (KT-RZ-90/07) dated 15 June 2010 and Record of Interview of Witness Branko Sladoje, Prosecutor's Office of BiH, T20 0 KTRZ 0007385 13 dated 15 July 2010;

Obren Đorem stated that civilians Sejdo Kešo, Hašim Hatić, Edin Bičo and a veterinarian from Gacko were killed in the school, he cannot claim that Hašim Hatić was there when that incident occurred because he did not see the bodies of the victims. In contrast, witness Branko Sladoje said in his statement that Obren told him that there were three bodies; he could not recall if Hatić was killed. In addition, it clearly ensues from the testimony of witness Duško Mandić that Suad Hasanbegović, Sejdo Kešo and Edin Bičo were in the classroom. On top of all that is the testimony of witness Mirko Aškraba who said that he transported three dead bodies to the Grajselsko polje and left them there wrapped up in blankets. Consequently, the only proper finding is the one made by the Trial Panel in the impugned judgment. In this context, it is worth noting that the mortal remains of Suad Hasanbegović, Sejdo Kešo and Edin Bičo were exhumed from the said site and identified, making it clear that the presented evidence did not confirm that Hašim Hatić was killed at the time and in the manner as stated in the factual account of the Indictment. For those reasons, omitting the name of Hašim Hatić from the factual account in the enacting clause of the judgment was a proper course of action.

64. Based on the foregoing, pursuant to Article 310(1) in conjunction with Article 313 of the CPC BiH, the Panel has ruled as stated in the enacting clause of this judgment.

RECORD-TAKER

Ena Granić Čizmo

PRESIDING JUDGE

Dragomir Vukoje, PhD

LEGAL REMEDY: No appeal is allowed against this judgment.