

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine Суд Босне и Херцеговине

Court of Bosnia and Herzegovina

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Case No. S1 1 K 019816 17 Krž

Delivered on: 18 May 2017

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Before the Appellate Panel composed of Judges:

Redžib Begić, Panel Presiding

Mirza Jusufović, member

Dr. Miloš Babić, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v. the accused

MARIJAN BRNJIĆ

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SECOND INSTANCE JUDGMENT

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Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:  
Miroslav Janjić

Counsel for the accused:  
Mr. Rifat Konjić, Attorney practicing in Tuzla

Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88

Telefon: 033 707 100, 707 596; Fax: 033 707 225

## **C O N T E N T S**

<b>I. PROCEDURAL HISTORY .....</b>	<b>3</b>
<b>II. SESSION OF THE PANEL .....</b>	<b>4</b>
<b>III. GENERAL CONSIDERATIONS .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>IV. APPEALS FILED BY THE DEFENSE .....</b>	<b>6</b>
A. GROUNDS OF APPEAL UNDER ARTICLE 297(1) OF THE CPC BiH – ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS .....	6
B. GROUNDS OF APPEAL UNDER ARTICLE 298 OF THE CPC BiH: VIOLATIONS OF THE CRIMINAL CODE.....	11
C. GROUNDS OF APPEAL UNDER ARTICLE 299 OF THE CPC BiH: INCORRECTLY OR INCOMPLETELY ESTABLISHED FACTS.....	17
D. GROUNDS OF APPEAL UNDER ARTICLE 300 OF THE CPC BiH: SENTENCING...	25

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

The Court of Bosnia and Herzegovina, Section I for War Crimes, the Appellate Division Panel composed of Judge Redžib Begić, as the Panel Presiding, and Judges Mirza Jusufović and Dr Miloš Babić, as members of the Panel, with the participation of the legal advisor Elma Čorbadžić, as the record-taker, in the criminal matter against the accused Marijan Brnjić charged with the criminal offense of War Crimes against the Civilian Population in violation of Article 142 of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY<sup>1</sup>), in relation to the appeals of the accused Marijan Brnjić and the accused's defense attorney, Mr. Rifat Konjić, filed from the Judgment of the Court of BiH No. S1 1 K 019816 15 Kri of 9 December 2016, having held a public session in the presence of the accused Marijan Brnjić, the accused's defense attorney, Mr. Rifat Konjić, and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Mr. Miroslav Janjić, on 18 May 2017 handed down the following:

**J U D G M E N T**

**Dismissing as ill-founded** the appeals filed by the accused Marijan Brnjić and Mr. Rifat Konjić, the accused Marijan Brnjić's defense attorney, and upholding the Judgment of the Court of Bosnia and Herzegovina No. S1 1 K 019816 16 Kri of 9 December 2016.

**Reasoning**

**I. PROCEDURAL HISTORY**

1. The Trial Judgment of this Court, No. S1 1 K 019816 16 Kri of 9 December 2016, found the accused Marijan Brnjić guilty of committing, by the acts described in the Judgment pronouncement, the criminal offense of War Crimes against the Civilian

Population in violation of Article 142 of the CC SFRY, for which the Trial Panel sentenced him to imprisonment for a term of 6 (six) years, pursuant to Article 38 and Article 41 of the CC SFRY.

2. Pursuant to Article 188(4) of the CPC, the same Judgment relieved the accused of the obligation to reimburse the costs of the criminal proceedings.

3. Pursuant to Article 198(2) of the CPC BiH, the injured party was instructed that she may pursue her claims under property law in a civil action.

4. The referenced Trial Judgment was timely appealed by Mr. Rifat Konjić, defense attorney for the accused Marijan Brnjić, on the grounds of essential violation of the criminal procedure provisions, incorrectly and incompletely established facts and the decision on sentence, with a motion that the Court grant the appeal, revoke the Trial Judgment and order a main hearing, or revise the Trial Judgment and impose a less stringent sentence on the accused.

5. The accused Marijan Brnjić also appealed the Trial Judgment and moved the Appellate Panel to render a decision of acquittal.

6. The Prosecutor's Office of BiH did not submit its response to the defense's appeals within the statutory prescribed time frame.

## **II. SESSION OF THE PANEL**

7. Pursuant to Article 304 of the CPC BiH, the Appellate Division Panel held a public session, on 18 May 2017, in the presence of the accused Marijan Brnjić, his defense attorney, Mr. Rifat Konjić, and the Prosecutor of the Prosecutor's Office of BiH, Mr. Miroslav Janjić.

8. At the referenced session, the accused's counsel orally presented his appeal, and completely stood by the appellate complaints advanced. The accused agreed with the defense attorney's arguments and briefly presented his appellate complaints and invited the Appellate Panel to grant the appeal as well-founded.

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<sup>1</sup> Decree with the Force of Law of 11 April 1991 concerning the adoption of the Criminal Code of the Socialist Federative Republic of Yugoslavia as the Republic law (Official Gazette of the SFRY, No. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90).

9. The Prosecutor orally presented his response to the defense's appeals and moved the Appellate Panel to dismiss them as ill-founded in whole.

10. At the Appellate Panel session held on 18 May 2017, both the accused's defense attorney and the accused stood by their respective appellate grievances. The accused's defense attorney further emphasized that, had the injured party Duška Stojanović been included in the original Indictment, a single judgment would have been handed down because this was one and the same event, while in the referenced manner the Prosecution acted to the prejudice of the accused. In his address, the accused Brnjić referred to two issues. The accused indicated that Article 145 of the CC SFRY should have been applied to the factual description charged against him since it is more lenient to the accused, and contested the statement given by the injured party 14 months after the finality of the Judgment rendered in the first case conducted against him.

11. In his oral response, the Prosecutor seized of the case argued that the assertions presented by both the accused's defense attorney and the accused in their respective appeals are ill-founded, in whole. In relation to the appellate grievance concerning the instrument of *res iudicata*, the prosecutor indicated that the accused's treatment of the injured party Milica Đekić is one criminal event, while his treatment of the injured party Duška Stojanović is another, and that there is no continuity between the referenced events since they took place at different premises and at different times. The Prosecutor therefore indicates that not even minimum requirements have been satisfied to apply the *res iudicata* instrument. The reason for subsequent examination of the injured party Duška is her unavailability to the Prosecutor's Office of BiH, since she lives in Australia. The referenced event affected her marital relations and was one of the reasons for which she left BiH, after telling her husband that she had been raped. According to the prosecution, the injured parties' evidence is identical in terms of the decisive facts, and both injured parties have known Marijan Brnjić very well.

### **III. GENERAL CONSIDERATIONS**

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

13. 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.

14. 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 *prima facie* dismissed as ill-founded the unreasoned and unclear appellate complaints.

#### **IV. APPEALS FILED BY THE DEFENSE**

##### **A. GROUND OF APPEAL UNDER ARTICLE 297(1) OF THE CPC BIH – ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS**

###### **(i) General considerations**

15. A Judgment may, pursuant to Article 297 of the CPC of BiH, be contested mainly on the grounds of an essential violation of the provisions of criminal procedure, which is always established in the cases specified in Article 297(1).

16. A substantial violation of provisions of criminal procedure is also established when the Trial Panel during the trial or in reaching the judgment failed to notice or incorrectly applied a provision of the Criminal Procedure Code, but only if it affected or might have affected the rendering of lawful and correct judgment.

17. With respect to an allegation that a violation of the principles of criminal procedure could have affected the rendering of a lawful or proper verdict, it is not sufficient for the appellant to simply assert that the procedural violation could have *hypothetically* affected the rendering of a lawful or proper verdict. Rather, the Appellate Panel will only find a violation of the principles of criminal procedure when 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. That is, 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.

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

19. The Appellate Panel further notes that the appellant must establish that the alleged formal error invalidates the Judgment. A non-essential violation does not invalidate the conclusion and reasoning of the Trial Panel and thus will not result in the revocation of the Judgment.

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

**(ii) Appellate grievances of the accused's defense attorney**

21. The defense attorney for the accused Brnjić submits in his appeal that the Trial Panel made essential violations of the criminal procedure provisions under Article 297(1)(k) and Article 297(2) of the CPC BiH because the Judgment did not provide the reasons for decisive facts, namely that, in the rendering of the judgment, the Panel omitted to properly apply the provision of the referenced Code, as a result of which the rendering of a lawful and proper judgment was absolutely affected.

22. The defense attorney for the accused Brnjić points to the Trial Panel finding that the instrument of *res iudicata*-adjudicated matter was not applicable because the injured party Duška Stojanović was not included in the original Indictment, wherefore the requirements for application of this instrument were not satisfied. However, the Judgment of the European Court of Human Rights (ECtHR) rendered in the case of *Oliveira v. Spain*, as well as the Judgment of the Supreme Court of Canada, found that the rule of inadmissibility of multiple convictions does not apply to the criminal offenses against life and limb, if such convictions concern different victims, and that it is indisputable in the concrete case that one and the same criminal offense of War Crimes against the Civilian Population was committed here.

23. The accused's attorney further indicated that, pursuant to the contested Judgment, the accused was charged that, on 4/5 June 1992, during the period between 00:00 and 04:00 hrs, in the place of Posavska Mahala, Odžak municipality, in one of the houses in the close vicinity of a bus stop, he raped Duška Stojanović, a Serb civilian, whom he had previously forcefully brought to the referenced site from the place of Novi Grad, along with other members of the HVO, took her in one of the rooms of the referenced house and raped her, while the final Judgment of the Court of BiH acquitted the accused Marijan Brnjić, along with Pavo Glavaš, Martin Barukčić and Ilija Glavaš, of the charges that he raped Milica Đekić and Ljubica Lešić on the night of 4/5 June 1992, during the period between 00:00 and 04:00 hrs, in the place of Posavska Mahala, Odžak municipality, in one of the houses in the close vicinity of a bus stop.

24. The appeal therefore indicates that in relation to both the charges including Dušanka Stojanović and the referenced final Judgment, it is quite obvious that the same event, the same day, time, place, and the same adjacent location are in question, and ultimately, that the same criminal offense is in question, that is, War Crimes against the Civilian Population under Article 142 of the CC SFRY.

25. Since a single event and the closely related acts which took place in continuity are in question, the criminal proceedings could not be conducted for the same event before the same Court, because it is an adjudicated matter (*res iudicata*). In the concrete case, double proceedings would have been conducted because the accused's acts described in the final Judgment and the referenced Indictment are not separated from each other since the same space, time and event are in question.



26. The accused's defense attorney further submitted that the contested Judgment provided no reasons for the decisive facts, whereby an essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH was made. Specifically, it was insufficient to merely indicate, in the reasoning of the contested Judgment, which facts the Trial Panel considers proven or unproven, and refer only to certain pieces of the adduced evidence. The Trial Panel should have presented the contents and results of the relevant adduced evidence, which formed the basis for a certain finding of fact.

27. In addition, the accused's defense attorney submitted that absolutely unacceptable is the Court's argument that the defense's evidence is unconvincing, particularly because it is indicated that the witnesses' evidence is different and that the evidence of certain witnesses did not concern the critical day, that is, the critical night.

### **(iii) Conclusions of the Appellate Panel**

28. The Appellate Panel first notes that, in advancing appellate grievances pursuant to Article 297(1)(k) of the CPC BiH, the accused's defense attorney should have strictly complied with the formal aspects of the Judgment. Specifically, the accused's defense attorney subsumed the alleged violation of the *res iudicata* principle under the appellate ground of a criminal procedure violation, and indicated through that appellate ground that the concrete case concerns an already adjudicated matter. Since this is not a grievance under that appellate ground, but rather under the appellate ground of violation of the criminal code under Article 298(c) of the CPC BiH, the Appellate Panel will address the appellate grievance concerning the referenced violation in the part of the Judgment concerning the criminal code violations.

29. Having considered the referenced grievance of the accused's defense attorney, that the Trial Panel made essential violations of the criminal procedure provisions under Article 297(1)(k) and Article 297(2) of the CPC BiH because the Judgment provided no reasons for the decisive facts, as well as the case record and the Judgment reasoning, the Appellate Panel concluded that the grievance is ill-founded.

30. According to the Appellate Panel, the Trial Panel completely acted in compliance with the rule of Article 290(7) of the CPC BiH, and specifically and comprehensively presented which facts are considered as proved or unproved, and for which reasons. In addition, pursuant to the referenced provision, the Trial Panel gave its own evaluation of

the credibility of contradictory evidence, and provided the reasons for which it did not accept certain defense's grievances and proposals.

31. Contrary to the attorney's appellate grievance that the Trial Panel did not provide reasons for the decisive facts, the Appellate Panel holds that the Judgment pronouncement indeed contains the decisive facts concerning the place, the time and the manner of the commission of the crime charged against the accused Brnjić. Having examined the evidence, individually and in combination with the other relevant evidence, the Trial Panel provided, in the judgment reasoning, clear and concrete reasons for which a certain fact is considered proved or unproved. Given that the defense attorney did not concretize the decisive facts for which the contested Judgment provided no reasons, the Appellate Panel holds that the referenced grievance is arbitrary, and therefore dismisses it as ill-founded.

32. According to the Appellate Panel, also ill-founded is the defense attorney's complaint that the Trial Judgment made an essential violation of the criminal proceedings because it was insufficient to merely indicate the facts considered by the Trial Panel as proved or unproved, and refer to only certain evidence, and that it should have presented the contents of the relevant adduced evidence which formed the basis for a certain finding of fact. The Appellate Panel recalls that there is no statutory obligation to present in a judgment the contents of each piece of evidence individually, but rather an obligation to consider all the presented evidence in the decision rendering. Also, it would be irrelevant to impose on any trial panel an obligation to individually present and comprehensively explain in the judgment each piece of evidence individually, or each testimony and each piece of documentary evidence presented during the main trial.

33. With regard to the defense attorney's grievance concerning the admissibility of the defense's evidence, the Appellate Panel holds that, after a comprehensive evaluation of all evidence, individually and in combination (the evidence concerning the accused's alibi), the Trial Panel justifiably found that the referenced evidence is insufficiently convincing and mutually distinct, wherefore it could not accept the accused's alibi, that is, it could not find that the accused was outside the BiH territory at the time of commission of the offense charged against him. The Trial Panel presented the evaluation of all tendered evidence in paras. 54, 55 and 56 of the contested Judgment, which is also upheld by this Panel for the reasons already presented above.

34. Therefore, contrary to the appellate grievances, the Appellate Panel holds that the contested Judgment indeed presented the reasons for all decisive facts, and that by its Judgment, the Trial Panel made no substantial violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH.

## **B. GROUNDS OF APPEAL UNDER ARTICLE 298 OF THE CPC BiH: VIOLATIONS OF THE CRIMINAL CODE**

### **Standards of Review**

#### **(i) General considerations**

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

36. Where an error of law arises from the application in the Judgment of a wrong legal standard, the Appellate Panel may articulate the correct legal standard and review the relevant factual findings of the Trial Panel accordingly. In doing so, the Appellate Panel not only corrects a legal error, but also applies the correct legal standard to the evidence contained in the trial record in the absence of additional evidence, and it must determine whether it is itself convinced beyond any reasonable doubt as to the factual finding challenged by the Defense before that finding is confirmed on appeal.

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

#### **(ii) Appellate grievances of the accused Brnjić**

38. The accused Brnjić submits that the allegedly injured party in these proceedings, Dušanka Stojanović, gave her statement 17 months after the proceedings' opening, that is, at the time when she had learned all the facts and details pertaining to the proceedings. Thus, the injured party harmonized her statement with the statements given by other witnesses, Milica Đekić and Ljubica Lešić, and on the basis of that statement the Court confirmed the Indictment and initiated the proceedings while the first proceeding was still

pending. The accused submits that single proceedings should have been conducted concerning the same event, that is, the event that took place on the night of 4/5 June 1992, and that, in this case, there are two distinct judgments concerning the same event, one acquitting and the latter convicting, which is unacceptable.

**(ii) Appellate grievances of the accused's defense attorney**

39. The defense attorney advanced the appellate grievance concerning the criminal code violation in the part of the appeal concerning essential violations of the criminal procedure provisions. However, as already indicated above, the Appellate Panel will address the referenced grievance in the text below.

**(iii) Conclusions of the Appellate Panel**

40. With regard to the grievances advanced by both the accused's defense attorney and the accused Brnjić personally, that the concrete case is an adjudicated matter, the Appellate Panel holds that the Trial Judgment did not violate the principle of *ne bis in idem*, and that, accordingly, the contested Judgment provided clear and concrete reasons concerning the finding that the concrete case is not *res iudicata* (*already adjudicated matter*), which is also upheld by this Panel as valid.

41. According to this Panel, the Trial Panel properly found that the Court of BiH's previous Judgment, No. ... of 31 December 2015, acquitting the accused Brnjić of the charges that, as a member of the HVO Odžak, during the war and the armed conflict between the RS and the HVO, in the night of 4/5 June 1992, in the place of Posavska Mahala, he raped Serb civilians Milica Đekić and Ljubica Lešić, and convicting him for the rape of civilian Vera Bjelić committed on 3 July 1992, does not at all concern the injured party in the present case, Dušanka Stojanović, who was not included in the Indictment in that case. Also correctly evaluated was the fact that *mens rea* in the act of rape charged against the accused is apparent from the "intent to penetrate with one's sex organ into other person and the awareness that it takes place without the victim's consent." Thus, a special emphasis is given to the existence of awareness that the incriminated act is being committed against a person. Therefore, it is properly found that any act of rape carries a punishment, in relation to any person against whom it was committed, due to which the requirements for the application of the "*res iudicata*" instrument in the concrete case were not satisfied.

42. Also, contrary to the defense attorney's grievances, that in the concrete case the Trial Panel cannot refer to the Judgment of the European Court in the case of *Oliveira v. Switzerland* and the Judgment of the Supreme Court of Canada in the case of *R v. Prince*<sup>2</sup>, because the referenced Judgments addressed the criminal offenses against life and limb, while the concrete case concerns a single criminal offense known as War Crimes against the Civilian Population, are unacceptable in this Panel's view because, regardless of the fact that the concrete case concerns the criminal offense of War Crimes against the Civilian Population, there is no substantial difference with regard to the violated value. Commission of the act of rape also violated the injured party's body, as well as his/her dignity and honor, in the circumstances of war and armed conflict, when these values are even more protected under national and international law than at the peace time. Thus, Article 142 of the CC SFRY provides for even a lengthier punishment for "*Whoever in violation of international law at the time of war, armed conflict or occupation orders or commits.... rape...*".

43. Article 4 of the CPC BiH provides for the principle of *ne bis in idem* pursuant to which "*No person shall be tried again for the criminal offense he has been already tried for and for which the legally binding decision has been rendered*". The same principle is also prescribed under Article 4(1) of Protocol No. 7 to the ECHR.

44. Bearing in mind the defense's belief that the standards presented in the Judgment rendered in the *Oliveira v. Switzerland* do not apply to the criminal offense of war crimes, the Panel holds it necessary to further state the reasons provided in the ECtHR Judgments corroborating the Trial Panel's argument presented in the contested Judgment, which is also acceptable for this Panel.

45. In the case of *Oliveira v. Switzerland*, the European Court found admissible the existence of "*separate punishable offenses even if they are all part of a single criminal act*", since it is an example of a single act constituting various offenses. The Court thus concluded that there has been no violation of Article 4 of Protocol No. 7 since that provision prohibits people being tried twice for the same offense. It would admittedly have been more consistent with the principles governing the proper administration of justice for sentence in respect of both offenses which resulted from the same criminal act, to have been passed by the same court in a single set of proceedings. The fact that such a

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<sup>2</sup> *R v. Prince* (1986) Supreme Court of Canada (480).

procedure did not follow in the applicant's case is, however, irrelevant as regards compliance with Article 4 of Protocol No. 7 since this provision does not preclude separate offenses, even if they are all part of a single criminal act, being tried by different courts.

46. The Appellate Panel accepts the Prosecution of BiH's arguments concerning the reasons for which the accused's criminal act committed on the same day against all injured parties was not prosecuted within a single (previous) case, where it was indicated that the injured party was unavailable to the Prosecutor's Office of BiH because she has lived and worked in Australia since 1995. Thus, the witness gave her statement no sooner than in 2015, when she came to Bosnia and Herzegovina. This Panel holds that the referenced reasons are quite reasonable and objective.

47. Following the adoption of the criteria in the Judgments rendered in *Gradinger v. Austria*<sup>3</sup>, *Oliveira v. Switzerland and Fisher v. Austria*<sup>4</sup>, the European Court of Human Rights consolidated its hitherto case law concerning the issue of *ne bis in idem* in the case of *Zolotukhin v. Russia*, in which the criterion of "identity of the material acts" was introduced. Thus, in the Judgment passed in the case of *Zolotukhin v. Russia*, the Grand Chamber explained that (the principle of) *ne bis in idem* must be understood as prohibiting the prosecution or trial of a second offense in so far as it arises from the identical facts or the facts which are substantially the same, where a prior acquittal or conviction has already acquired the force of *res judicata*. The referenced criteria were subsequently also applied to other cases tried before the European Court of Human Rights.

48. Having compared, in the concrete case, the factual description of the offense in relation to which the accused Brnjić was acquitted of the charges under the Judgment of the Court of BiH No. ... of 31 December 2015, as upheld by the Judgment of the Appellate Judgment of the same Court, No. ... of 23 May 2016, with the factual description of the offense charged against the accused in the present case, of which the contested Judgment found him guilty as charged, the Appellate Panel concluded that the Trial Panel's finding, that it was not an identical or substantially identical factual description of the event, was proper. Specifically, the Defense justifiably submitted that it is an event

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<sup>3</sup> ESLJP, *Gradinger v. Austria*, 33/1994/480/562, the criterion of "same conduct" or "the same state of facts" was applied as a crucial criterion, regardless of the legal qualification of the offense within the national law.

<sup>4</sup> Judgment in *Fisher v. Austria* – The ECtHR found a violation of the principle of *ne bis in idem* because the two offenses were not distinct in terms of the "underlying elements", or the essential factual elements, but one offense encompassed all untrue acts contained in the other offense.

which took place on the same day, and at about the same site, where the accused acted in the same capacity. However, in the present case, the accused's behavior and acts were directed against quite a different injured party, who was not included in the referenced Indictment, for which reason the accused was not at all prosecuted for that offense. The Appellate Panel has also held that exactly these facts are crucially significant for the evaluation of justifiability of the *res iudicata* complaint, rather than the time continuity and the site where the event took place. In the given situation, the time and the site identity are irrelevant. Otherwise, if those facts (the time continuity and the approximate location) were so primary and significant as presented by the defense attorney's appeal, they would have automatically mean the absence of the accused's culpability for all the acts he had undertaken on the same night in one of the adjacent rooms against the injured party Dušanka Stojanović, whose rights and physical integrity were also protected under both national and international law.

49. The justifiability of the finding that this is not a *res judicata* matter is further corroborated with the fact that, in the case completed with a final Judgment rendered against the accused Marijan Brnjić and others, the Panel of the Court of BiH analyzed the other segment of the events and the treatment accorded by the referenced accused and the other accused persons to quite different injured parties, and that due to the lack of evidence, and by applying the principle of *in dubio pro reo*, a judgment of acquittal was handed down for the acts of rape committed against the injured parties Milica Đekić and Ljubica Lešić, while Duška Stojanović was not at all indicated as an injured party in the referenced final Judgment.

50. This Panel considers as justified the assertion of the accused and his attorney that, in the concrete case, a single proceeding should have been conducted in relation to all segments of the events that took place in the night of 4/5 June 1992 and the rape of all injured parties, including Dušanka Stojanović. However, also justified are the reasons presented by the Prosecutor for which that was practically impossible (the injured party having moved to and residing in Australia, and her giving a statement to the Prosecutor's Office no sooner than in 2015), which are, in this Panel's view, quite a reasonable, justified and objective obstacle for which no single proceeding could be conducted. The foregoing, however, does not automatically mean that the non-conduct of single proceeding but rather the conduct of two separate proceedings was directly to the prejudice of the accused's rights. The fact that the earlier Judgment acquitted the accused of the charges for the acts he had undertaken on the same night against the injured parties Milica Đekić

and Ljubica Lešić does not in any case mean that the accused would be also acquitted of the charges for the acts he had undertaken against the injured party Dušanka Stojanović, which were not at all dealt with in the referenced proceedings. On the other hand, since the accused was in the former proceedings convicted of the acts he had taken a month later against a third person (Vera Bjelić), the non-imposition of a single sentence for the two acts (the rape of Vera Bjelić and the rape of Dušanka Stojanović) will be remedied after the rendering of the present Judgment and the accused's request, in the procedure of quasi reopening of the proceedings in terms of Article 324a of the CPC BiH, with the imposition of a single sentence (for which the requirements will obviously exist). Thus, the accused will in no case be brought to a less favorable position in relation to a situation where the single proceedings were conducted under the two referenced Indictments.

51. As to the fact that the accused was under the contested Judgment convicted of the criminal offense of War Crimes against the Civilian Population, of which he was already convicted before, this Panel reiterates that the subject of the previous proceedings was not the act of rape of the injured party Dušanka Stojanović, and that therefore, regardless of the same qualification of the offense, the previous proceedings could not be an obstacle for conducting the proceedings where the contested Judgment was handed down, and a decision made in relation to the accused's acts undertaken on the same night against the injured party Dušanka Stojanović, whose highest personal value protected under international law, or her life, body and dignity, protected under the ECHR, the then applicable BiH Constitution and the laws, were violated. Therefore, in view of the foregoing, the defense attorney's complaint advanced along this line was also dismissed as ill-founded. Such a position of the Appellate Panel in relation to the prosecution of the acts constituting the criminal offense of a war crime, which were not the subject of the previous proceedings conducted for the same offense, is also based on the ICTY's positions taken in several cases (e.g. the case *v. N. Orić et al.*).

52. In relation to the foregoing, the Appellate Panel also recalls the ECtHR's case *Marguš v. Croatia*<sup>5</sup>, where the ECtHR takes a step further and particularly notes that "there was a growing tendency in international law to regard amnesty for acts amounting to grave breaches of human rights as unacceptable. It concluded that by the filing of a new indictment against the applicant and the rendering of a judgment of conviction for the

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<sup>5</sup> *Marguš v. Croatia* of 27 May 2014.



committed war crimes against civilians, the Croatian authorities acted in compliance with the requirements of Article 2 of the Convention (Right to Life) and Article 3 of the Convention (Prohibition of torture and inhuman or degrading treatment)".

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

**(i) General considerations**

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

54. 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.

55. 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.

56. 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".

57. Article 299 of the CPC BiH provides that a verdict may be contested because the state of facts has been incorrectly or incompletely established. Decisive facts are being proved directly through evidence, or indirectly from other facts (indicia or control facts). Only the facts contained in the judgment can be viewed as existent, while regardless of the existent decisive facts, a judgment must always provide reasons for their existence. Otherwise, there will be no established state of facts (incompletely established facts). If a

decisive fact was not proved in the manner as it indeed existed in the reality of an event, there is an incompletely established state of facts.

58. 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>6</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.

59. The Appellate Panel will provide an evaluation as to whether the state of facts has been incorrectly established in relation to the facts and findings contested in the defense's appeal. As already indicated, for such an evaluation, the Panel should apply a standard pursuant to which all appellate grievances will be addressed and evaluate whether a decisive fact ensues from the tendered evidence.

**(ii) Appellate grievances of the accused's defense attorney, Mr. Rifat Konjić**

60. The accused's defense attorney contested the credibility of witness Milica Đekić. The defense attorney submitted that, at the main trial, the witness changed the statement she had given before the Prosecutor's Office of BiH on 28 March 2014 in relation to the issue of whether all women had been driven in a single vehicle, or the sisters had been driven away by Brnjić and Barukčić, while the remaining women were driven in another vehicle, and in relation to the sequence of persons who had raped her – was Brnjić or Barukčić the first one to rape her. It was disputable for the defense if witness Milica Đekić had known the accused Brnjić at all.

61. The appeal further indicated that witness Duška Stojanović appears as a witness no sooner than after the accused Brnjić was ordered into custody since the proceedings against him were already pending in relation to the event that had taken place on 4/5 June 1992, during the time period between 00:00 hrs and 04:00 hrs, which involved Milica Đekić

and Ljubica Lešić, and of which he was acquitted under the final Judgment. An issue arises as to why Duška Stojanović did not appear earlier, particularly taking into account that Milica Đekić had mentioned her in her statements.

62. Witness Duška Stojanović was examined on 4 September 2015 on the premises of the Prosecutor's Office of BiH, and not even six months elapsed between her examination during the investigation and the main trial examination. Thus, if in her statement given during the investigation the witness did not remember something well, one can expect that she will also not remember that after six months either. At the main trial, however, Duška Stojanović significantly changed her statement in relation to Marijan Brnjić. During the investigation, the witness stated that she had seen Marijan Brnjić standing in the court yard with a flash-light, while at the main trial she changed her statement claiming that the accused had stood at the door.

63. Thus, witness Duška also changed her statement in relation to the issue of the women being driving away. During the investigation, the witness stated that four of them were driven away by one vehicle, while at the main trial she stated that three women had been in the vehicle, while the forth woman was in another vehicle. The defense also considers as disputable the witness's statement given during the investigation that Marijan Brnjić had first forced her to strip off her clothing, then slapped her in her face, pushed her down on a bed and raped her, while at the main trial she stated that she started taking off her shirt by herself, while Marijan tore off her panties and started raping her. The defense submitted that these inconsistencies cannot be that easily disregarded.

64. The defense submits that it is a decisive fact to determine the accused Marijan Brnjić's whereabouts at the time of the event, or more precisely, even before the mere event, as well as its aftermath, and if the witnesses concretely and clearly confirmed that the accused was in Germany just prior to the occurrence of the event, then it is quite understandable that, at the indicated time, he could not have been present in (the place of) Posavska Mahala. Also, the Panel's finding, that the holiday of Pentecost is fifty days after Easter, rather than forty, as the witness indicated, was not proved by anything, and that it is unacceptable that the Panel entered in the Judgment something which was not contained in the case record.

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<sup>6</sup> M.Š., AP-661/04 (BiH Constitutional Court), Decision on Admissibility and Merits of 22 April 2005, para. 36.

65. The defense notes that both the final First-Instance and the Second-Instance Judgments acquitted Marijan Brnjić of the charges related to the events that had taken place on the night of 4/5 June 1992, between 00:00 and 04:00 hrs, which included Milica Đekić and Ljubica Lešić. The testimony of Milica Đekić and Ljubica Lešić were not accepted in the Judgments of either the Trial or the Appellate Panel, so it does not seem possible that, in this procedure, this Court should accept these witnesses' testimony concerning the same event.

**(iii) Appellate grievances of the accused Marijan Brnjić**

66. In his appeal, the accused considers as disputable and unacceptable the fact that the accused was a member of the 102<sup>nd</sup> Brigade of the HVO. Also unacceptable for the accused is the explanation of the reasons for which the Trial Panel did not accept the accused's alibi, which was, in addition to the documentary evidence, also corroborated with the testimony of the defense's witness. In addition, the Panel incorrectly indicated that the defense's witnesses have family relations with the accused, and incorrectly explained that the Prosecution witnesses had identified the accused, because it is illogical that they can identify someone whom they had not seen for 24 years, that only the accused Brnjić was in the courtroom and thus they had no other option but to point at him.

67. Also, the Court based its assumption that the accused was a member of the HVO in June 1992 on the attached documentary evidence, while the first essential fact is that the HVO did not at all exist in June 1992.

68. In the context of the accused's identification by the witnesses, the accused indicated that, in the night of 4/5 June, there was no electricity in the Odžak municipality, and that they could see nothing. The appeal also contested the testimony of witness Duška who stated that he had attended the primary school along with the accused during all eight years, indicating that Duška attended the primary school in Novi Grad, her place of origin, while the accused attended the first fourth grades in the primary school in the place of Posavska Mahala, which is his place of origin.

69. According to the accused, while giving her statement the same witness used the information probably obtained from the internet, because she gave her statement no sooner than 17 months after the proceedings against the accused had been initiated. The

accused also indicated that the statement mentioned by the witness as being given in 1992 did not appear anywhere during the proceedings, and that she certainly did not mention Marijan therein, since otherwise the Prosecution would have used it during the proceedings.

70. The accused contested that the witnesses Milica Đekić and Ljubica Lešić had known him at all.

71. Ultimately, the statements and the trial testimonies of the Prosecution witnesses Duška Stojanović, Milica Đekić and Ljubica Lešić are distinct to such an extent that it is difficult to conclude which of the witnesses is telling the truth. The accused further indicates that the witnesses' statements are distinct mutually, and that their trial testimonies also differ from their respective statements given during the investigation. Thus, the witnesses are inconsistent with regard to the person who had come to take them away; the number of soldiers; whether Marijan held in his hand a flashlight or not; whether the soldiers wore any masks or not; which persons were present in the car; were all witnesses present in the same car or not; where they were taken; were they held in the same house or not.

#### **(iv) Conclusions of the Appellate Panel**

72. Having considered the defense's appellate grievances indicating that the facts were incorrectly and incompletely established in the contested Judgment, and having comprehensively analyzed the contents of both the contested Judgment and the case record, the Appellate Panel concluded that these grievances are ill-founded.

73. Contrary to the appellate grievances of the accused's defense attorney and the accused personally, the Appellate Panel has held that the Trial Panel properly found that the accused indeed committed, in the manner described in the factual segment of the contested Judgment pronouncement, the criminal offense of War Crimes against the Civilian Population in violation of Article 142 of the CC SFRY by the act of rape of the injured party Duška Stojanović, which ensues from the testimony of the injured party Duška Stojanović, which was corroborated, in terms of the decisive facts, with the testimony of witnesses Milica Đekić and Ljubica Lešić, and the documentary evidence – Report of the SJB Novi Grad of 15 June 1992.

**74.** The Appellate Panel also upholds the reasons and the interpretations provided in the contested Judgment that the accused's act was linked, to a sufficient extent, with the war activities, considering his membership in the 102<sup>nd</sup> Brigade of the HVO Odžak, as ensues from documentary Exhibits – Register of the Odžak Municipality Assembly concerning conscripts born in 1966, to the name of Marijan Brnjić <sup>7</sup>, and the Document of the Federation Ministry for Issues of War Veterans and Disabled Persons in the Defense-Liberation War – Section for the issue of military obligations records, confidential number 07/9-03/1-82-6/14 of 23 June 2014.<sup>8</sup>

**75.** In connection with the complaints of the accused's defense attorney and the accused personally contesting the testimony of witnesses Duška Stojanović and Milica Đekić, this Panel holds that the contested Judgment provided a comprehensive and clear evaluation of these witnesses' evidence, along with the reasons for which the Panel accepted their evidence as convincing. In the part providing the evaluation of evidence given by witnesses Milica Đekić and Ljubica Lešić, the Trial Panel reasonably indicates that the Prosecution witnesses' evidence indeed contained minor inconsistencies relating to the critical event, but that they are irrelevant to the determination of the decisive facts on which the belief, that the criminal offense exists and that the accused is criminally liable, is based.

**76.** This Panel considers as ill-founded the appellate grievances contesting the credibility of witnesses Duška Stojanović and Milica Đekić in relation to the inconsistencies between their respective statements given during the investigation and the main trial testimony. The Panel took into account that the witnesses explained the referenced inconsistencies providing accordingly a clear and understandable explanation. The Panel also took into account that, in evaluating the referenced witnesses' evidence, the Trial Panel properly bore in mind that these witnesses are traumatized; they felt enormous fear because, upon their abduction, they had to leave their minor children behind; and that, due to their condition, they could not pay any attention to details, but their evidence was nevertheless consistent regarding the decisive facts.

**77.** Thus, the Appellate Panel completely upholds the position presented in the contested Judgment, that the referenced witnesses' evidence is consistent with regard to

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<sup>7</sup> Prosecutor's Office of BiH, Exhibit No. T-10.

<sup>8</sup> Prosecutor's Office of BiH, Exhibit No. T-9.

the accused's presence in Novi Grad at the critical time, where the injured party resided, and with regard to the taking of the injured party and the other women to Posavska Mahala, where the rape was committed.

**78.** The inconsistencies between Duška Stojanović's statement given during the investigation and her trial testimony indicated by the defense attorney, which are related to the issues of whether the injured party and the other women were driven to Posavska Mahala by one or two vehicles, whether the injured party undressed herself before the rape or not, and whether the accused stood in the court yard or in front of the door are, in this Panel's view, the circumstances sufficiently explained by the witness at the main trial. The Appellate Panel reviewed both the witness's statement given during the investigation and her trial testimony, and concluded, contrary to the defense attorney's grievances, that the witness indicated in her both statements that two vehicles had been parked in front of the house, while only specifying subsequently who was present in the car along with her during the drive to Posavska Mahala<sup>9</sup>. The Appellate Panel reminds the defense that the manner in which the injured party undressed herself is not a substantial fact for this incriminating incident, particularly taking into account that the accused used force and threats. Also, the issue/fact of whether the accused actually stood in the court yard, or in front of the house is irrelevant in the context of that part of the witness's evidence since the witness explained at the main trial that she had seen the accused from a distance of 1.5 meter, which was the width of the staircase.

**79.** In relation to the defense's appellate grievances contesting that witnesses Duška Stojanović, Milica Đekić and Ljubica Lešić had known the accused at all and that they could recognize him on the critical day, in addition to the Trial Judgment's finding that Duška Stojanović used to see the accused through her school days, comprehensively described him (as a tall man, with big eyes and shades under the eyes, dark-hair), and identified him in the courtroom, the Appellate Panel further indicates that witnesses Milica Đekić and Ljubica Lešić also stated that they had known the accused, described him as a tall man, with dark complexion and thick eye-brows, who resided in Posavska Mahala. The

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<sup>9</sup> Main trial testimony of witness Duška Stojanović dated 9 March 2016 - **A:** Thereupon, you were placed in the vehicle, the three of you, Milica Nedić, Milica Đekić and you? **Witness:** And Ljubica Lesić too. They found her somewhere, while Milica Nedić was in another car. **A:** Was Milica Nedić in the other car or not? **Witness:** We were together driven to the house, but we were not (placed) together with them in the house. **Panel Presiding:** Did you..., when you started off from there towards Posavska Mahala, how many women were in that car? **Witness:** I and Milica Đekić were certainly there, my brain is blocked. I cannot ... any more. I know that I saw Ljubica coming with them, but what happened subsequently ...

accused's grievance, that witness Duška Stojanović could not have known him from the school days since they were neither the same generation nor did they attend the school in the same place, is ill-founded because the witness explained, in this context, that there was a primary school in Posavska Mahala with only four grades, so the accused had to attend another school until the eighth grade, while in her statement given during the investigation, the witness stated that she knew the accused because they had attended the same school, although she was three or four years younger than him, but he was of the same age as her brother, and they always played jokes among themselves.

80. Witness Duška Stojanović's statement related to the recognition of the accused in the critical night of 4/5 May 1992 at the moment when the flashlight illuminated his face, is corroborated with witness Milica Đekić's evidence. In responding at the main trial to the question of who lined up the women, this witness indicated: *"...Marjan and his... the moonlight was as bright as a day, they had batteries, but you do not even need them when you know the man ..."*

81. In the Appellate Panel's view, the Trial Panel clearly explained why it did not accept the accused's alibi, namely for which reasons it could not conclude on the basis of the adduced evidence that the accused was outside the BiH territory at the time of the commission of the crime charged against him. Thus, the contested Judgment indicated in its para. 56 the following: *"The defense witnesses, Marko Antunović, Pero Ilić, Ivo Brnjić and Šimo Bajušić did not state in their respective evidence that, on the critical day, or in the night of 4/5 June 1992, they were in Germany together with the accused. Also, neither witness Klara Brnjić nor the accused personally indicated in their evidence where they had been and what they had been doing on the referenced day. All examined witnesses are either in friendly relations with the accused or have close family ties with him wherefore they have a motive to help him prove that he was outside the BiH territory..."* The referenced reasoning is quite clear, logical and justified, which is why this Panel also upholds it as valid, and finds the appellate grievances to be ill-founded.

82. In any concrete case, a decision on the accused's guilt is being made on the basis of evidence tendered in that particular case. Thus, according to the Appellate Panel, the referral of the accused's defense attorney and the accused personally to the evidence and its evaluation in the other case – the previous case completed with the final Judgment against the accused Brnjić, where the accused was acquitted of the charges that he had raped the injured parties Milica Đekić and Ljubica Lešić, and where, in addition to the



accused, there were several other co-perpetrators, does not bring into question the validity of the evaluation of evidence tendered in the present criminal case.

83. In view of all the foregoing, the Appellate Panel dismisses as ill-founded all the appellate grievances contesting the established facts.

## **GROUND OF APPEAL UNDER ARTICLE 300 OF THE CPC BiH: SENTENCING**

### **(i) General considerations**

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

77. The decision on sentence may first be appealed on the grounds that the Trial Panel failed to apply the relevant legal provisions when fashioning the punishment.

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

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

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

Panel is able to infer that the Trial Panel must have failed to exercise its discretion properly.

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

## **(ii) Appellate grievances of the Defense**

82. The appeal of the accused's defense attorney also contested the length of the imposed criminal sanction, indicating that it is too stringent considering that practically there are no aggravating circumstances at all.

83. The defense submits that the Trial Panel incorrectly rendered as an aggravating circumstance the manner of the crime commission, which is practically an element of the criminal offense and cannot be considered an aggravating circumstance. The defense attorney submits that, where there are extenuating circumstances and no aggravating circumstances on the part of the accused, the purpose of punishment prescribed by the law would be achieved by even a more lenient punishment.

## **(iii) Conclusions of the Appellate Panel**

84. Having reviewed the decision on sentence within the appellate grievances and arguments, the Appellate Panel concluded that the prison sentence imposed on the accused was properly fashioned and that the Trial Panel paid equal attention to both the extenuating and the aggravating circumstances related to the accused. Specifically, Article 41 of the CC SFRY provides that the Court shall fix the punishment for a criminal offense within the limits provided by statute for such an act, taking into account all the circumstances bearing on the magnitude of punishment, or extenuating and aggravating circumstances.

85. As the extenuating circumstances on the accused's part, the Trial Panel took into account that the accused is a family man, father of three children, as well as his proper conduct while being on trial. On the other hand, among the aggravating circumstances, the

Trial Panel took into account the degree of violation of the protected value, particularly the manner in which the act of rape was committed, wherein the accused demonstrated both brutality and the lack of any sympathy for the victim.

86. In the Appellate Panel's view, the Trial Panel provided a proper finding, in compliance with Article 41 of the CC SFRY, concerning the overall circumstances relevant to the selection of type and length of the sentence imposed on the accused. In addition, this Panel considers as ill-founded the defense attorney's grievance that the Trial Panel should not have regarded the manner of the crime commission as an aggravating circumstance, that is, the demonstrated brutality and lack of any sensitivity for the victim, considering that the manner of the act commission is an underlying element of the criminal offense.

87. The Appellate Panel indicates that the manner of the act commission, the demonstrated brutality and the lack of any sensitivity for the victim on the accused's part do not form an underlying element of the criminal offense but may rather be categorized as *the circumstances under which the act was committed*, as provided for in Article 41(1) of the CC SFRY, as one of the circumstances the Court shall take into account in fixing the punishment.

88. Therefore, the imposed prison sentence of 6 (six) years is a punishment adequate to the crime gravity, the brutality with which the crime was committed, to all the circumstances pertaining to the case, as well as to the perpetrator's personality, the effects for the injured party, by which the purpose of both the special and the general deterrence can be achieved. Therefore, the Appellate Panel renders as ill-founded the defense's appellate grievances regarding the decision on sentence.

89. For the foregoing reasons, pursuant to Article 313 of the CPC BiH, the Appellate Division Panel decided as stated in the Judgment pronouncement.

**Record-taker:**

**Legal Advisor**

**Elma Čorbadžić**

**PANEL PRESIDING**

**JUDGE**

**Redžib Begić**

**LEGAL REMEDY NOTE:** No appeal lies from this Judgment.