SUD BOSNE I HERCEGOVINE

СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KŽ-06/190
Sarajevo, 21 May 2007

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section II for Organized Crime, Economic Crime and Corruption, in the Panel of the Appellate Division composed of Judge Dr. Manfred Dauster, as the Presiding Judge and Judges Vukoje Dragomir and Venceslav Ilić as members of the Panel, with the participation of Legal Adviser Željka Marenić as record-taker in the criminal case against the accused Mirsad Bektašević and Abdulkadir Cesur for the criminal offence of Terrorism in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item (f) as read with Article 29 of the BiH CC and the criminal offence of Obstructing an Official Person in Execution of his Official Activity in violation of 358, paragraph 1, of the Criminal Code of the Federation of Bosnia and Herzegovina (FBiH CC), as read with Article 26, paragraph 1 of the BiH CC, the accused Bajro Ikanović for the criminal offence of Terrorism in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item (f) as read with Article 29 of the BiH CC, and the accused Senad Hasanović for the criminal offence of Illicit Possession of Weapons or Explosive Substances in violation of Article 371, paragraph 2, in conjunction with paragraph 1 of the FBiH CC, as read with Article 29 of the BiH CC, deciding on the appeals filed by the defense counsel for the accused Mirsad Bektašević, attorney Idriz Kamenica, defense counsel for the accused Abdulkadir Cesur, attorney Šemso Temin, defense counsel for the accused Bajro Ikanović, attorney Amra Gurda, and the defense counsel for the accused Senad Hasanović, attorney Senad Dupovac and Kadrija Kolić, against the Verdict of the Court of Bosnia and Herzegovina number X-K-06/190 of 10 January 2007, at the session of the Panel held on 21 May 2007 passes the following

VERDICT

1. By upholding in part the appeals filed by the defense attorneys - for the accused Mirsad Bektašević, attorney Idriz Kamenica, for the accused Abdulkadir Cesur, attorney Šemso Temin, for the accused Bajro Ikanović, attorney Amra Gurda, and for the accused Senad Hasanović, attorneys Senad Dupovac and Kadrija Kolić and applying the provision of Article 314 of the Criminal Procedure Code of Bosnia and Herzegovina (BiH CPC), the Verdict of the Court of Bosnia and Herzegovina number X-K-06/190 of 10 January 2007 **is hereby revised** in the part imposing the sanction in the following manner: applying the provisions of Articles 39, 42, 48, and 53 of the BiH CC, the accused Mirsad Bektašević is sentenced to imprisonment for a term of 8 (eight) years for the committed criminal offence of Terrorism in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item (f) of the BiH CC as read with Article 29 of that Code; and for a term of 6 (six) months for the criminal offence of Obstructing an Official Person in Execution of his Official Activity in violation of 358, paragraph 1, of the FBiH CC, as read with Article 26, paragraph 1 of the

BiH CC. Therefore, applying the provision of Article 53 of the BiH CC, the Court sentences Bektašević to a single sentence for a term of 8 (eight) years and 4 (four) months. The time the accused Bektašević spent in custody between 19 October 2005 and 5 April 2007 shall be credited to the sentence under Article 56 of the BiH CC. The accused Abdulkadir Cesur is sentenced to imprisonment for a term of 6 (six) years for the criminal offence of Terrorism in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item (f) of the BiH CC as read with Article 29 of that Code, and for a term of 6 (six) months for the criminal offence of Obstructing an Official Person in Execution of his Official Activity in violation of 358, paragraph 1, of the FBiH CC, as read with Article 26, paragraph 1 of the BiH CC. Therefore, the Court sentences him to a single sentence of imprisonment for a term of 6 (six) years and 4 (four) months applying the provision of Article 53 of the BiH CC. The time the accused Cesur spent in custody between 19 October 2005 and 5 April 2007 shall be credited to the sentence under the provision of Article 56 of the same Code. The accused Bajro Ikanović is sentenced to imprisonment for a term of 4 (four) years for the committed criminal offence of Terrorism in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item (f) of the BiH CC. The time Ikanović spent in custody between 18 November 20005 and 5 April 2007 shall be credited to the sentence under the provision of Article 56 of the BiH CC. Applying the provisions of Articles 39, 42, and 48 of the BiH CC the accused Senad Hasanović is sentenced to imprisonment for a term of 6 (six) months for the committed criminal offence of Illicit Possession of Weapons or Explosive Substances in violation of Article 371, paragraph 2, in conjunction with paragraph 1 of the FBiH CC. The time Hasanović spent in custody between 24 November 2005 and 22 December 2005 shall be credited to the sentence under the provision of Article 56 of the BiH CC.

2. The remaining part of the first-instance verdict remains unrevised.

Reasoning

By the Verdict of the Court of Bosnia and Herzegovina No. X-K-06/190 of 10 January 2007, the Accused Mirsad Bektašević was found guilty of the criminal offense of Terrorism in violation of Article 201 (1) in conjunction with Paragraph (4) f), all in conjunction with Article 29 of CC BiH, for which he was sentenced to imprisonment for a term of 15 (fifteen) years, and of the criminal offense of Obstructing an Official Person in Execution of Official Activity in violation of Article 358 (1) of CC FBiH, in conjunction with Article 26 (1) of CC BiH, for which he was sentenced to imprisonment for a term of 6 (six) months. Hence, with the application of the rule on meting out punishment for criminal offenses in concurrence referred to in Article 53 of CC BiH, the first instance Court imposed on him the compound sentence of imprisonment for a term of 15 (fifteen) years and 4 (four) months, toward which the time he spent in custody as of 19 October 2005 was credited, whilst the second-Accused Abdulkadir Cesur was found guilty of the criminal offense of Terrorism in violation of Article 201 (1) in conjunction with Paragraph (4) f), all in conjunction with Article 29 of CC BiH, for which he was sentenced to imprisonment for a term of 13 (thirteen) years, and for the criminal offense of Obstructing an Official Person in Execution of Official Activity in violation of Article 358 (1) of CC FBiH, in conjunction with Article 26 (1) of CC BiH, for which he was sentenced to imprisonment for a term of 6 (six) months.

Hence, with the application of the rule on meting out punishment for criminal offenses in concurrence referred to in Article 53 of CC BiH, he was imposed the compound sentence of imprisonment for a term of 13 (thirteen) years and 4 (four) months, toward which the time he spent in custody as of 19 October 2005 was credited.

By the same Verdict the Court found the third-Accused Bajro Ikanović guilty of the criminal offense of Terrorism in violation of Article 201 (1) in conjunction with Paragraph (4) f), all in conjunction with Article 29 of CC BiH, and sentenced him to imprisonment for a term of 8 (eight) years, toward which the time he spent in custody as of 18 November 2005 was credited, whilst the fourth-Accused Senad Hasanović was found guilty of the criminal offense of Illicit Possession of Weapons or Explosive Substances in violation of Article 371 (2) in conjunction with Paragraph (1) of CC FBiH, all in conjunction with Article 29 of CC BiH, for which he was sentenced to imprisonment for a term of 2 (two) years and 6 (six) months, toward which the time he spent in custody from 24 November 2005 to 22 December 2005 was credited.

Pursuant to Article 186 (2) of CPC BiH, the Accused have been obligated to reimburse the costs of the criminal proceedings, on which the Court will render a special decision after the relevant data have been obtained.

The Defense Counsel for the Accused Mirsad Bektašević, Attorney Idriz Kamenica, the Defense Counsel for the Accused Abdulkadir Cesur, Attorney Šemso Temin, the Defense Counsel for the Accused Bajro Ikanović, Attorney Amra Gurda, and the Defense Counsel for Senad Hasanović, Attorneys Senad Dupovac and Kadrija Kolić, all filed appeals against this Verdict within the statutory time-limit.

In his Appeal the Defense Counsel for the Accused Mirsad Bektašević, Attorney Idriz Kamenica, contests the first instance Verdict on the grounds of essential violation of the provisions of criminal procedure, violation of the Criminal Code, erroneously and incompletely established facts, the decision on the sentence and the decision on the costs of criminal proceedings and proposes revoking of the contested Verdict and scheduling a new trial or revising of the Verdict and acquitting the Accused Mirsad Bektašević of the charges he is sentenced for. Out of precaution, the Appeal contains the proposal that the pronounced sentence is revised into a considerably shorter sentence.

The Defense Counsel for the Accused Abdulkadir Cesur, Attorney Šemso Temin, filed an Appeal on all the grounds for appeal referred to in Article 296 of CPC BiH and proposed that the appeal be upheld, the first instance Verdict revoked and a new trial scheduled or that the first instance Verdict be revised so as to acquit the second Accused Abdulkadir Cesur of responsibility for the committed criminal offenses or, considering the circumstances, that the sentence imposed on him be reduced considerably.

The Defense Counsel of Bajro Ikanović, Attorney Amra Gurda, filed an Appeal on the grounds of essential violations of the provisions of criminal procedure, violation of the Criminal Code of BiH, erroneously and incompletely established facts, the decision on the sanction and the pronounced sentence and proposed that the first instance Verdict be revised so as to acquit the Accused Bajro Ikanović of the charges or that the Verdict be revoked and

a new trial before the Panel of the Appellate Division of the Court of Bosnia and Herzegovina scheduled.

The Defense Counsel for the Accused Senad Hasanović, Attorneys Senad Dupovac and Kadrija Kolić, filed an Appeal on the grounds of essential violations of the provisions of the Criminal Procedure Code, violation of the provisions of the Criminal Code, erroneously and incompletely established facts, and the decision on the sentence and proposed that the Appeal be upheld, the contested Verdict revoked and the Accused Senad Hasanović acquitted of the charges that he committed the criminal offense concerned or that the contested Verdict be revised and the Accused imposed a considerably more lenient sentence for the same offense, that is, imposed a suspended sentence.

The Prosecutor's Office of Bosnia and Herzegovina filed responses to the respective Appeals of the Defense Counsel and proposed that the Appeals be refused as unfounded and the first instance Verdict upheld.

Following the Appeals filed against the first instance Verdict the Appellate Panel, pursuant to Article 304 of CPC BiH, held a public session attended by the Prosecutor, the Accused, Mirsad Bektašević, Abdulkadir Cesur, Bajro Ikanović and Senad Hasanović, and their respective Defense Counsel. At the session, the Defense Counsel briefly presented their respective Appeals, fully reiterating the arguments and motions contained therein, while the Prosecutor fully reiterated the arguments contained in the responses to the Appeals.

The Appellate Panel reviewed the first instance Verdict insofar as it was contested by the Appeals, pursuant to Article 306 of CPC BiH, and rendered the decision as quoted in the operative part for the following reasons:

As an introductory remark, this Panel notes that the Appeals more or less repeat the objections raised in the course of the proceedings conducted so far to which the first instance Court, in the opinion of this Panel, gave appropriate and reasoned responses as to why it did not uphold them as well-founded.

With respect to essential violations of the provisions of criminal procedure

The Appeal of the Defense Counsel for the Accused Bektašević, Attorney Kamenica, argues that the adjournment of the main trial lasted longer than 30 days, in which case, pursuant to the provision of Article 251 (3) of CPC BiH, the main trial had to re-commence from the beginning. He claims, specifically, that the main trial in this case was adjourned on 8 September and resumed on 17 October 2006, whereby, in his opinion, an essential violation of the provisions of the criminal procedure referred to in Article 297 (2) of CPC BiH was committed. However, there is no material corroboration of this argument in the Appeal in the case file. It is obvious from the case file that the main trial continued between these two hearings on 25 September 2006, that is, within the statutory timeframe, hence, this argument of the Appeal proves to be unfounded.

Furthermore, this Appeal claims that the contested Verdict is incomprehensible, contradictory to itself and the evidence presented at the main trial, that it is burdened with a number of assumptions and, in particular, that the operative part lacks a description of the

perpetration. The latter argument of the Appeal is reiterated in the Appeal of the Defense Counsel for the Accused Ikanović, Attorney Amra Gurda, who adds the assertion that the operative part of the Verdict also lacks the second general element of the criminal offense, as it does not state the time of the perpetration of the terrorist act, which makes the operative part of the Verdict incomprehensible and which inherently and *ipso iure* constitutes an essential violation of the provisions of criminal procedure pursuant to Article 298 (1) c) of CC BiH (the Appeal quotes, obviously by mistake, a substantive regulation instead of CPC BiH), given the fact that the circumstances precluding criminal prosecution, and especially as to whether the statute of limitation on criminal prosecution applies, are dependent on the time of the perpetration of the criminal act.

However, in the opinion of this Court, concerns in the said Appeals are groundless, as Section I of the operative part of the Verdict clearly states in the description of the facts the actions of the Accused Bektašević, Cesur and Ikanović that they indeed undertook acting as co-perpetrators and the description of subjective facts is not lacking, either, which is finalized in their intent to commit a terrorist act. The operative part of the contested Verdict presents the facts and explains in the reasoning why it accepts them as proven following the prior appropriate and detailed evaluation of evidence. In other words, the Verdict establishes that Bektašević and Cesur came to Bosnia and Herzegovina in agreement with persons from abroad known to them, including Abdul Basit from Denmark, against whom proceedings for terrorism were conducted, with the intention to commit a terrorist act in the territory of Bosnia and Herzegovina and other European countries with the aim of forcing the Bosnia and Herzegovina Government and governments of other countries whose representatives, through international organizations, are currently present in Bosnia and Herzegovina to pull out their forces from Iraq and Afghanistan. The contested Verdict precisely sets their respective dates of arrival (Bektašević's on 27 September and Cesur's on 14 October 2005), as well as the dates objects were found in the apartments they used in Sarajevo (19 and 20 October 2005), the objects concerned clearly indicating their true intents and purpose of arrival in Bosnia and Herzegovina. Therefore the assertion of Defense Counsel Gurda that the operative part of the first instance Verdict does not contain the time of the perpetration of the act does not apply.

For the purpose of fulfilling the intent and goal of his arrival in Bosnia and Herzegovina Bektašević made a contact with the Accused Ikanović in Sarajevo, who, in agreement with him, acquired and handed over to him the stated quantity of explosive for the purpose of making an improvised explosive device. The Accused Cesur, contrary to the arguments in the Appeal filed by his Defense Counsel, was in possession of the explosive together with Bektašević, which is inherently indicated by the fact that he was undoubtedly found by the police in the apartment where the explosive was stored, that he saw from the other room Bektašević cutting with a knife and shaping the explosive, that he went to bed because he had a headache and, following Bektašević's testimony, the headache can be attributed to the strong smell of the "sweating" explosive, and that Cesur did not do anything in order to disassociate himself from Bektašević's actions while shaping the explosive despite the fact that it was a dangerous and very destructive substance. Therefore, the operative part of the first instance Verdict states the facts that constitute the elements of the criminal offense of terrorism and in the reasoning, on page 52, it states, *inter alia*, the reasoned grounds that the Court was guided with when applying certain provisions of the Criminal Code on the Accused and their act, as set forth in Article 290 of the CPC BiH (Contents of the Verdict).

In other words, the first instance Court distinctly states that the criminal offense concerned exists independently by the mere acquisition and possession of explosive (the act described in Item f) Paragraph (4) Article 201 of the CC BiH) provided the other requirements related to the intent of the perpetrator, goals and potential consequences are met.

If this is taken into account, then the assertion of Attorney Gurda that the operative part of the Verdict remains on the level of legal definitions and assertions but that it lacks the corresponding facts is not grounded. Trying to maintain that theory in any way possible, this Appeal allows that Ikanović's keeping of the explosive may be qualified legally as a criminal offense from the group of offenses directed against the general public and property safety. Building up that concept, this Attorney's Appeal resorts to reduction of the state of facts, which method all the other Appeals use as well, by regarding the act of the Accused Ikanović in isolation, independently from the other evidence and the factual circumstances that the first instance Verdict analyses in minute detail and brings into a firm logical correlation. The contested Verdict clearly indicates that the actions of the Accused stated in Section I of the operative part constitutes their objective-subjective correlation, that is, that each of the actions of the Accused Bektašević, Cesur and Ikanović affects the entire body of their activities pertaining to this criminal offense and that the described action is followed by their subjective attitude, since each of them was aware that they were jointly perpetrating an act for the purpose of producing a prohibited consequence, which gives the said acts the form of co-perpetration. The first instance Verdict successfully expounded on this matter on pages 53 and 54, both from a theoretical and a practical standpoint concerning the specific case. Hence, the argument of Defense Counsel Gurda that there does not exist a joint decision on the act, *expresis verbis,* and that the evidence to prove it is lacking, as well as the argument of the Defense Counsel of the Accused Cesur, Attorney Temin, that the first instance Court accepted at face value the Prosecution's concoction on the joint action of the first and the second Accused and referred to that concoction throughout the complete Verdict, do not apply. To sum up, the Appeal of Attorney Gurda, which also pertains to the respective Appeals of Attorneys Kamenica and Temin, applies the method of unilateral revision of the state of the established facts, and it is well-known that the criminal code cannot be violated on that ground.

The Defense Counsel for the Accused Ikanović, Attorney Amra Gurda, resorts to this very method with respect to the actions of this Accused described in Section II of the operative part of the Verdict. In her Appeal, she finds an alleged contradiction between the operative part and the reasoning of the Verdict, claiming that in the contested Verdict the Panel established without any grounds whatsoever the important fact related to the essential question and dilemma who and when acquired and delivered the explosive, that is, handed it over to the first and the second Accused. The aforementioned assertion is justified by the fact that the operative part of the first instance Verdict reads that the Accused Bajro Ikanović, in concert with Bektašević, acquired and handed over to the Accused Bektašević and Cesur an unspecified quantity of explosive, whereas the reasoning of the same Verdict quotes the testimony of the Prosecution witness Amir Bajrić, who categorically said that he was the one who acquired the explosive.

Contrary to this position in the Appeal, a careful analysis and a comprehensive reading, not a fragmentary one, of the first instance Verdict show that it does not provide ground for any contradiction between its operative part and the reasoning with respect to the decisive fact

on which the criminal responsibility of the Accused Bajro Ikanović for acquisition of the explosive is based.

In other words, witness Amir Bajrić explained in detail in his testimony how he made contact with the Accused Ikanović and how he delivered to him a certain quantity of explosives, packed like salami and previously taken over from the Accused Hasanović. The hand-over of the explosive to Bajrić follows beyond doubt from the testimony of the Accused Hasanović and witnesses Ensar Aljević and Muhidin Osmanović. Therefore, the fact that witness Amir Bajrić acquired the explosive is not contestable, which he admitted in his testimony at the main trial, and the further hand-over of the explosive to the Accused Bajro Ikanović is not contestable, either. In the opinion of this Panel, the first instance Court justifiably gave credence to this witness, given the fact that in all the statements he gave, in the investigation and in the further course of the criminal proceedings (as a Prosecution witness and a Defense witness alike), he consistently stated that the Accused Bajro Ikanović discussed the acquisition of explosive with him 10-20 days prior to the month of Ramadan 2005, that he requested blasting caps and other weapons, as well as that prior to the acquisition of the first quantity of explosive Ikanović said that his friends needed it, on which occasion he also mentioned that two "brethren" of his were to come from abroad. Therefore, the conclusion of the first instance Court on the Accused Bajro Ikanović's participation in the acquisition of explosive for the Accused Mirsad Bektašević and Abdulkadir Cesur is correct, which conclusion, in addition to this witness' testimony, is also based on the other material evidence, facts and circumstances of the case concerned, contrary to the arguments in the Appeal. It should also be taken into account here that the Accused Bektašević, without indicating a valid reason, changed his testimony given in the investigation when he stated that a person had called him prior to his arrival in Sarajevo telling him that he should take a parcel containing a pistol with a silencer and explosive from underneath a wooden bench in a children's park. After having learned that Amir Bajrić had made an agreement on admission of guilt with the Prosecutor's Office of B-H, he claimed that he had gotten the explosive directly from Amir Bajrić.

The third Accused Ikanović also does not call into question the acquaintanceship and contacts with the Accused Mirsad Bektašević and Abdulkadir Cesur, claiming that he started socializing intensely with Mirsad immediately after they had struck up their acquaintanceship and that he agreed with his ideas and views. Although the Accused Ikanović and Bektašević claim that they had got acquainted with each other upon Bektašević's arrival in Sarajevo, that is, after 27 September 2005, the material evidence and the testimony of expert witness Muamer Fazlagić confirm exactly the opposite, since the toll ticketing of the mobile telephones that were undoubtedly used by Bektašević and Ikanović showed that on 17 June 2005, that is, much before Bektašević's arrival in B-H, a 43-second-long call from Bektašević's phone to Bajro Ikanović's phone was registered, which is an additional indication that there was a connection between these persons even before the period concerned. Furthermore, it is also beyond doubt that the Accused Ikanović dialed Bektašević's number the morning following Bektašević's arrest, which was registered as a missed call since the mobile telephone had been seized by the police by that time.

The Appeal of Defense Counsel Gurda contests the validity and credibility of witness Amir Bajrić's testimony because he entered an agreement on admission of guilt with the Prosecutor's Office of B-H. The Appeal claims that, with respect to the Accused Bajro

Ikanović, the first instance Verdict is based solely on this witness' testimony. To corroborate this argument, the Defense Counsel refers to the positions and decisions of the Constitutional Court of B-H, more precisely, its Decision No. AP-661/04 of 22 April 2005 establishing that the right to a fair trial provided for in Article II/3e of the Constitution of B-H and Article 6 (1) of the Convention is violated if a sentencing Verdict is based solely on the testimony of an accused who entered an agreement on admission of guilt and if no objective evidence that would confirm that testimony has been presented.

However, the Appeal did not quote the provisions of the aforementioned Decision in entirety. It is correct that the Constitutional Court concludes that the right to a fair trial provided for in Article II/3e of the Constitution of B-H and Article 6 (1) of the European Convention is violated if the sentencing Verdict is based to the greatest extent on the testimony of a witness who entered an agreement on admission of guilt with the Prosecutor and the Court fails to give a logical and convincing explanation for the evaluation of that particular and the other pieces of presented evidence but the evaluation seems arbitrary instead.

Therefore, in the specific case, the first instance Court would have committed the violation that the Appeal refers to only if the contested Verdict had been based on the testimony of witness Amir Bajrić (who made an agreement with the Prosecutor's Office) without the Court answering appropriately why it considered to be established that it was the Accused Bajro Ikanović who acquired the explosive concerned and handed it over to the Accused Bektašević and Cesur.

In the opinion of this Panel, the first instance Court gave a completely clear and logical (convincing) reasoning why it completely accepted the testimony of witness Amir Bajrić, which is acceptable for this Court as well, and which testimony, together with a series of the indirect evidence that the first instance Court evaluated carefully and which, in their entirety, make a logically connected unity, thus also confirm the accuracy of this witness' testimony, leads to the only possible conclusion that the Accused Bajro Ikanović committed the criminal offense he is charged with.

The arguments in the Appeal devaluing the testimony of witness Amir Bajrić by challenging the witness' credibility because of his history, as well as because of his agreement with the Prosecutor's Office, are unacceptable, given the fact that the Decision of the Constitutional Court of B-H that the Appeal refers to does not *a priori* devalue the testimony of such a witness, but states that, although such witnesses can often be unreliable, it is not inherently a reason not to give credence to such witness' testimony. In addition to this, the Defense had an opportunity to point to inconsistency and untruth in this witness' statements by using the instrument of cross-examination as well as direct examination when this witness testified as a witness for the Defense. However, it is a fact that in his testimony at the trial this witness reiterated his original statement given before the Prosecutor at the time when he did not and could not know that he would enter an agreement on admission of guilt with the Prosecutor's Office of B-H, which is another indication of the truthfulness of his testimony.

In addition to this, the testimonies of the witnesses -- policemen Nusret Čavčić and Mersiha Alić, witness Muhidin Osmanović and the Accused Senad Hasanović also indicate that this witness' testimony is truthful.

In other words, witness Amir Bajrić stated in his testimony that approximately a month prior to the arrest the Accused Bajro Ikanović told him that he knew that he, that is, Ikanović would also be arrested since some brethren had been arrested and that Ikanović warned Bajrić that the police would positively visit him, too, and advised him to keep quiet about everything and "clean the house". The witnesses – policemen confirmed this testimony, stating that during the search they found Bajro Ikanović's apartment to be very tidy and that Ikanović himself told them that he was expecting them.

Furthermore, the testimony of witness Amir Bajrić is in agreement with the respective testimonies of witness Muhidin Osmanović and the Accused Senad Hasanović concerning their encounter in the *Harisa* pastry shop and conversation about the explosive and their subsequent contacts regarding the delivery of the explosive to Bajrić. Admittedly, in both quoted examples it was not a matter of testifying about whether Amir Bajrić handed over the received explosive to the Accused Ikanović, but the confirmation of witness Bajrić's statement in other segments of his testimony indicates the consistency and credibility of his statement with respect to the other facts that he testified about, too.

Accepting Bajrić's testimony as truthful, the first instance Court did not make an essential violation of the provisions of criminal procedure, as the Appeal asserts, hence the argument on defect of the factual grounds of the contested Verdict cannot be accepted from this argument whereby the Appeal also raises the issue of erroneously and incompletely established facts concerning the existence of the decisive fact on the participation of the Accused Bajro Ikanović in the criminal offense of terrorism as a co-perpetrator, as the Verdict gave convincing, clear and complete answers about everything, as has already been explained.

Allegations relating to the lawfulness of evidence:

The appeals of defense counsel for the Accused Bektašević and Cesur, attorneys Idriz Kamenica and Šemso Temin respectively, in the context of essential violations of provisions of criminal procedure, submit that the first instance verdict is based on evidence on which, pursuant to the procedural law, a verdict cannot be based (Article 297(1)(i) of the CPC BiH). According to them, the evidence was not obtained in accordance with the provisions of the CPC BiH. The content of the appeals indicates two types of allegations. First, the evidence should not have been obtained through international legal assistance as it was necessary to apply the provisions of the national instead of international CPC and second, the evidence obtained by the relevant police authorities of the national state was not obtained in line with the provisions of the CPC BiH.

The allegation of defense counsel for the accused Bektašević, attorney Idriz Kamenica, relating to the lawfulness of evidence obtained in international legal assistance, such as the findings of the Danish police and the expert analysis of the voice from the tape seized from the accused Bektašević and allegedly recorded speech of that accused, as underlined, is that those pieces of evidence were obtained in an unlawful manner and as such have no foundation in the provisions of the CPC BiH. Defense counsel for the accused Cesur, attorney Temin, on his part, when considering this matter, submits that the first instance

court acted in contravention of Article 121 of the CPC BiH in accepting the evidence obtained from Denmark, Sweden and Great Britain.

However, in the opinion of the Court, the allegations made in such manner are entirely unfounded.

As a matter of fact, reference was made to Article 407 of the CPC BiH. The content of that provision suggests that international legal assistance entails taking certain procedural actions which are being taken in accordance with the legislation of the state taking such actions, given that international legal acts regulating this area do not contain rules by which a manner of obtaining evidence could be considered unlawful. Proceeding from this statutory provision, the first instance court was justified in deciding first on the admissibility of the evidence obtained in such manner and also when making the evaluation thereof. Thus, the first instance court, in addition to other pieces of evidence obtained in Sweden and Great Britain, also obtained the Report from the Danish Ministry of Justice, Department of Civil and Police Affairs, dated 8 November 2006, as well as the relevant legal provisions governing the conduct of proceedings in Denmark, the content of which relates to measures violating the secrecy of communication, appointment of the attorney to the person against whom the measure was granted, and authorization to the police as to under what circumstances they may conduct the search and seizure of objects from a suspect. In the specific case, the first instance court rightfully found that evidence obtained through formal police activities abroad (technical registration of facts and official documents) constitutes legally valid evidence. Moreover, even the defense of the accused did not argue during the first instance proceedings or in its appeals that the evidence, the acceptance of which was substantiated with compelling reasons and precisely quoted by the first instance court in the challenged verdict on pages 45-47, that the evidence was obtained through a violation of fundamental human rights or the rights of the defense, when only in that case would the evidence be unusable *ex judicio*.

Moreover, if international legal assistance is governed by some other laws in BiH or an international treaty, they take precedence over the CPC provisions. Thus, the provisions of the CPC BiH apply only in the absence of other laws in BiH or international treaties governing the issue of the provision of legal assistance. The first instance court was therefore right in refusing the objection of the defense in the challenged verdict related to the alleged unlawfulness of evidence which the appeal reiterates here, recalling the application of Article 3(1) of the 1959 European Convention on Mutual Legal Assistance in Criminal Matters, Article 8(1) of the 1977 European Convention for the Suppression of Terrorism, and Article 10 (2) of the 1997 International Convention on Suppression of Terrorist Bombing. All these Conventions have been ratified by the relevant BiH authorities. Thus, the state bodies are obliged to apply them while collecting the evidence through international legal assistance. It is difficult even to imagine that the suppression of international terrorism as an undeniable evil of modern society could successfully be carried out without efficient international legal assistance.

On his part, defense counsel for the accused Abdulkadir Cesur, attorney Šemso Temin, by quoting the first instance court's conclusion on page 45 of the challenged verdict that the evidence obtained in Denmark, Sweden and Great Britain was obtained in valid procedure and is lawful as such, submits a contrary conclusion, arguing that the court could not have

based its verdict on such evidence because it was obtained in contravention of Article 121 of the CPC BiH. There was no order by the preliminary proceedings judge for the actions taken with the view of obtaining evidence, consequently the challenged verdict gave rise to essential violations of provisions of criminal procedure under Article 297(1)(i) of the CPC BiH.

This appeal, as well as the appeal of attorney Kamenica, in the context of challenging the lawfulness of the evidence obtained in the said countries, takes a selective approach about the direct application of the provisions of the CPC BiH by deliberately leaving out of its perception, according to its needs, the provisions of this code pertaining to international legal assistance.

The same applies to the objections set out extensively in the appeal of attorney Kamenica pertaining to alleged unlawfulness in obtaining evidence during the search of the premises by the police because all the searches were conducted on the basis of the oral order by the preliminary proceedings judge and not on the written order as it should have been done. Bearing in mind the provision of Article 56 of the CPC BiH which prescribes the procedure when the preliminary proceedings judge receives an oral request for search and mindful of the official note of the judge dated 20 October 2005 who issued an oral order to search the apartment and other movable objects at Poligonska 71 and Novopazarska 422, then it cannot be seen what constitutes a violation of the law, particularly because it is only that court that is authorized to assess if a delay in the search of the premises would pose a danger, which the preliminary proceedings judge did in the specific case.

As to the allegations raised by attorney Temin that the first instance court based the verdict on the statements of persons who were from the FMoI intensely involved in preliminary activities, it does not mean that the first instance verdict is flawed. The Court notes here that the authorized official persons of the FMoI were not involved in preliminary activities (the so-called preliminary criminal proceedings do not exist under the new CPC B-H), but conducted activities within the investigation and under the Prosecutor's authorization, and that, in addition to this, the first instance court evaluated the statements of the heard members of the FMoI, which they gave as witnesses at the main trial and under oath, within the assessment of the factual substratum, on which the first instance court provided entirely acceptable and valid reasons, thus the argument in the Appeal that it is unlawful evidence is unfounded.

A close analysis of the challenged verdict as to whether it has deficiencies that could constitute an essential violation of criminal procedure under Article 297 of the CPC BiH reveals with absolute clarity that there are no such deficiencies and consequently no essential violations of the procedural provisions, as submitted in the appeals, have been occasioned. Such position cannot be undermined by the allegations set forth in the appeals of the Defense Counsel for the accused intended to offer assurances that this procedural violation was committed after all. The opening and general allegations that the challenged verdict has formal deficiencies definitely remained general and of no use for any argument, despite the attempts of elaborating those deficiencies alleged in the Appeals. That is to say, that objection has been elaborated and substantiated by theories according to which the verdict sets out the reasons on relevant facts, which are unclear and contradictory but again the objection lacks valid explanations. This panel has closely analyzed the challenged

verdict and found that no remarks can be made against it in the context of violations of provisions of criminal procedure. Elaborative methods deployed in the verdict are entirely in accordance with the provisions of the procedural law governing this matter. The verdict first enumerates the pieces of evidence presented, including the testimony of the accused and then sets out the content of those pieces of evidence without any differences in relation to their actual content – the records or documents on which they are presented; it reveals their own or mutual contradictions, assessing them from both aspects, namely by content and credibility; it certainly justifies all these assessments (e.g. on page 55 of the reasons it substantiates why it did not accept the theory of the prosecution that apart from Bektašević, Cesur also packed the explosive and fastened with sellotape three trotyl bullets to the black intertwined belt), thus the allegations from the appeal of attorney Temin that there was no assessment of the defense evidence are unfounded. Contrary to this appeal, as well as to the appeal of attorney Gurda, the challenged verdict gave no rise to a violation of the methodological approach in assessing and establishing conclusive facts as provided by Article 14 of the CPC BiH which relates to the principle of "equal consideration", given that it evaluated and established both the inculpatory and exculpatory facts. Following this valid methodological-procedural approach, the verdict provides valid grounds for each fact it considers unequivocally established, regardless of the category of such fact (conclusive, indicational, verifying), without omitting any fact that was relevant for adjudication or finding any contradiction in such evaluation. Thus, there is no essential violation of provisions of criminal procedure as submitted by all three appeals in relation to paragraph I of the operative part of the verdict.

The allegations of the defense counsel for the accused Senad Hasanović, within this ground for appeal, challenge the first instance verdict for not containing the reasons on conclusive facts, namely not expounding the way in which the fourth-accused Senad Hasanović acquired and held in his possession the said explosive substances, given that the evidence presented corroborates that Hasanović Senad did not know it was an explosive. Moreover, witness Amir Bajrić intentionally kept him in the false belief that the explosive was out of order and good for nothing, thus the counsel for Senad Hasanović argues that the view of the court that the intentional action on part of the accused Senad Hasanović was proved is inadmissible. In addition to this, the appeal submits that the accused actually only accidentally found, but did not hold in his possession, the substance in question, thus the court expands the essence of the criminal offence, inappropriately giving itself legislative jurisdiction, given that the legal definition of the criminal offence at issue does not have the term "to find".

Unlike the positions set forth in the appeal, this panel finds that the first instance court, by a comprehensive evaluation of all evidence presented in relation to all circumstances, such as the discovery, possession and handing over of explosive by the fourth-accused Hasanović, derived the only possible conclusion and that is that the accused Hasanović Senad did commit the crime in the manner charged against him. The fact is that he did accidentally come across the explosive in the "Gaj" woods. However, all his subsequent actions with regard to his use of the explosive clearly lead to the conclusion that the fourth-accused had a clear intention of holding this substance in his possession. After he found it, together with his friend Muhidin Osmanović, he left, and actually hid, the trunk with explosive in the woods without reporting it to the relevant authorities. These facts were not contested during the first instance proceedings even by the accused. Moreover, they were confirmed by

witness Osmanović. Thereafter, after the conversation in the pastry shop "Harisa", the fourth-accused went on two occasions to the location at which the substance was and then first he brought a sample and then a fairly large quantity of it to Amir Bajrić, knowing with certainty that Bajrić was interested in this substance and that he promised him a rifle for it, which confirms that the fourth-accused not only "found" but also held in his possession and used this substance for a longer period. The persistence of the defense counsel set out in the appeal that the accused Hasanović "found", but did not "acquire" or "hold in possession" the explosive is rather an issue of expression than the principal issue and it does not in any way cast doubt on the fact that the accused Hasanović committed the criminal offence charged against him (the first instance court was justified in concluding that the fact of finding the substance does not entail a difference, in terms of quality or terminology, from acquisition thereof).

With regard to the intent on the part of the accused, in commission of the crime, in the sense of his awareness of the substance actually being an explosive, is sufficiently illustrated by the fact that the fourth-accused, after the conversation with Bajrić in the pastry shop "Harisa" brought this substance twice to Amir Bajrić, expecting from him a favor in return, that is a rifle. Bajrić himself explicitly stated that he heard the conversation between the fourth-accused and his friend Muhidin Osmanović, when talking about the explosive in the pastry shop for which he got interested and engaged in that conversation. Although Osmanović and Hasanović do not use the expression explosive in their statements, they describe in detail the color and the nature of the found substance. When questioned by the Prosecutor, Hasanović responded that they assumed later that it was an explosive. All this undoubtedly confirms the rightful conclusion of the first instance court about the awareness of the fourth-accused that it was explosive. The actions of Hasanović after he found the explosive and the way in which he handed it over to Bajrić lead to the conclusion that he was aware that the possession of explosives was prohibited to citizens, and it is not relevant whether the explosive substance was usable or not, because that does not constitute an essential element of this criminal offence.

For the foregoing reasons, the allegations of the defense attorney of the fourth-accused Senad Hasanović with regard to his criminal responsibility are entirely unfounded, hence inadmissible.

The accused Senad Hasanović was, by the first instance verdict convicted of commission of the criminal offence of illicit possession of weapons and explosive substances under Article 371(2) in conjunction with Paragraph 1 of the CC FBiH, as read with Article 29 of the CC BiH, namely he committed this crime in co-perpetration. This Panel, however, not being bound by the legal description of the offence, omitted from the operative part of the verdict the provision of Article 29 of the CC BiH which pertains to co-perpetration, since even the factual description in the first instance verdict does not designate Hasanović as a co-perpetrator in the criminal offence of Terrorism under Article 201(1) in conjunction with paragraph 4(f) of the Criminal Code of Bosnia and Herzegovina.

As to erroneously and incompletely established facts:

The appeal of defense counsel Kamenica, joined by defense counsel Temin, as to the arrival of the accused Bektašević and Cesur in Bosnia, widely expound that their arrival was

exclusively motivated by their intention to spend the month of Ramadan in Bosnia, that the accused Cesur wanted to familiarize himself with Bosnia of which he had some previous information, whereas the arrival of the accused Bektašević was motivated also by a military training and not, if we speak of their intention, to carry out a terrorist act. Defense counsel for the accused Bektašević refers to the testimony of Anes Čengić and Dragan Papić, members of the BiH Federation MoI, that they had information that Bektašević was coming from Sweden to Bosnia to receive military training. The inspection of the main trial records dated 20 July and 22 July 2006 show that the witness Čengić stated that sometime in July 2005, they had unchecked information that certain persons were making preparations for carrying out a terrorist attack and coming to Bosnia. They were told it was a person named Mirsad because of some sort of training. Thus, the witness, contrary to the allegation in the appeal, does not specify the type of training. Witness Papić does not state it either. It is only witness Sijamhodžić that speaks about the nature of the training when stating that they had information that Mirsad Bektašević was to come to Bosnia with the view of completing military training and instruction in the preparation of an explosive device. Based on their evidence, it can be concluded that the mentioned witnesses presented their operational information about the purpose of Bektašević's arrival, but not their averments about Bektašević's arrival for the purpose of doing military service as defense counsel Kamenica intended to present it. In order to check these facts which are sufficiently substantiated in the first instance verdict on page 39 as to why this argument of the defense is not accepted, the court, in terms of Article 303(2) of the CPC BiH obtained the Report of the BiH Ministry of Defense No. 08-04-1-2209-1/07 dated 14 May 2007 the content of which indicates that in October 2005 there was no recruitment of persons for military service in the Federation of BiH, that the last class of recruits from this entity was sent to do military service on 1 June 2005, which means before the last arrival of the accused Bektašević in Bosnia, whereby his defense theory is manifestly ill founded.

Moreover, the appeal of defense attorney Kamenica, within the context of challenging the expert analysis of Mirza Jamaković, indicates that the first instance court failed to establish whether the found explosive was usable, or if it had any explosive power, although the expert witnesses Hilmija Mašović and Mirza Jamaković agreed to the very relevant fact that it was an explosive (explosive mixtures) made on the basis of nitro-glycerine, trinitrotoluol and ammonium nitrate. The first instance court, on pages 24, 25 and 26 provided sufficient reasons about this finding, thus the challenged verdict in this part does not have any deficiency. As to the second ground for appeal, it is true that the challenged verdict submits that it was an imprecisely determined amount of explosive but not less than 19,842 grams, but that cannot lead to the conclusion that it is a contradiction, since the first instance court stated the found quantity of explosive in the lower, indisputably determined quantity, which does not mean there was no more of it.

As to the establishment of the intention on the part of the accused under paragraph I of the operative part of the verdict for the commission of a terrorist act, the first instance court finds support for its findings in the presented physical evidence, particularly the determined quantity of explosive in the apartment in which the accused Bektašević and Cesur stayed, which they do not challenge, and the content recorded on a VHS cassette. Defense counsel Kamenica cautions that the identity of the two masked and uniformed persons was not established, and that the voice that can be heard from that cassette cannot be accepted as belonging to the accused Bektašević, as reflected in the challenged verdict which accepts

the expert analysis of an expert witness from the USA, given that he determined that the voice, with a large probability, namely not with 100% accuracy, belonged to Bektašević, and that, if nothing else, the principle *in dubio pro reo* should be applied.

In addition to that, according to defense counsel Kamenica, the taking of a voice sample from Bektašević for expert analysis was not done in accordance with the law because he was not previously informed about it. This objection is, however, entirely unfounded, since, as clearly and precisely reasoned by the first instance verdict, the voice sample used for the expert analysis was taken on 8 February 2006 during the examination of the accused Mirsad Bektašević at the Prosecutor's Office of BiH. In the specific case, an audio record was made of that examination, the accused was properly informed about the recording and his examination was attended by his defense counsel.

As to the phonetic expert analysis by the phonetic expert from London, Allen Hirson, the Court provided compelling reasons as to why this particular expert was hired and not a national one, stating that there are simply no experts of that profile in BiH (the general principle in the criminal law requires that what is not exclusively prohibited is allowed and the national procedural code does not prohibit hiring of foreign experts). The objection of the defense of Bektašević that the results of the phonetic expert analysis of the voice from the VHS cassette could not be accepted because it was not done with 100% accuracy is inadmissible for the reason that the expert witness stated that the voice from the VHS cassette belonged to Bektašević because it was on a high level of the probability scale. It is not necessary for the expert witness to state his position in absolute categories as pleaded by the defense, in particular, if other objective evidence supports this expert analysis. It is not disputable that the mentioned VHS cassette was found during the search in the pocket of the accused Bektašević's trousers. Moreover, the results of the expert analysis of the camera and video footage are indisputable as well which suggest that the VHS cassette was undeniably recorded on the video camera which Bektašević undoubtedly borrowed from his aunt Izeta Hamidović to record, as he told her, according to her testimony, a wedding ceremony. The objection of Kamenica that the search was unlawfully carried out in Izeta and Zafir Asotić's house because the accused Bektašević was not present is unfounded because his presence is not necessary, because he is not the owner of the apartment after all and the police acted in full compliance with the law during the conduct of the search.

The content of the said cassette portraying armed persons with caps that were found during the search of the apartment and seized by the police and the audio recording in which the brothers (by religion) are preparing for the attacks and say they are going to attack Al-Qufar who are killing their Muslim brothers in Iraq, Afghanistan and many other countries, that the weapons showed were going to be used against Europe and those whose forces are deployed in Iraq and Afghanistan, that the two brothers shown on the tape had sold their lives to please Allah and help their brothers and sisters – detect the purpose of arrival and the true intentions of the accused Bektašević and Cesur and the accused Ikanović in co-perpetration with them who supplied them with the explosive, the very explosive the possession of which is, along with other objects, prohibited to citizens, indisputably found in the apartment at Poligonska 71.

If, in addition to this, the words from the audio recording from the video-tape portraying persons ready to sacrifice for the achievement of the said goals and the way of assembling

the time fuse, the egg-timer and closed circuit, are brought into connection with the suicide belt (which was, according to expert witness Šahić, exclusively intended as an anti-personnel terrorist bomb kit) found in that apartment with three trotyl bullets of 100 grams each, a blasting cap and one timer, if, during the search of the apartment in which Bektašević lives in Sweden, his testament was found in case of his death and two books one of which relates to the making of an explosive and the other is a combat manual, the content of his internet communication of the first and the second-accused with the person accused in Denmark of terrorist acts, that according to the testimony of Bajrić the accused Ikanović stated when an SFOR vehicle was passing by that "Jihad should be carried out here" – which is elaborated in detail in the contested verdict and finalized in its conclusion on page 51 when stating that it is a well-founded fact according to which the prevailing contents of the files on Bektašević and Cesur's computers are related to the actions of the western countries in Iraq and Afghanistan, that they talk about fighting those countries and those assisting them, that suicides are being encouraged and glorified, which, when brought into connection with what the accused did in Sarajevo, shows that they had the intention of committing the same or a similar offence.

If we bear in mind such logical conclusion of the first instance court, the persistence of the defense attorneys of the accused, Kamenica and Temin, to show the whole thing from a harmless aspect, this does not in any way deprive the said conclusion of the first instance court of necessary validity. Their arguments would indeed have *prima facie* foundation if viewed independently and in the context that it is not prohibited to citizens to have the said books, or to be in possession of the computer files pertaining to the war in Iraq and Afghanistan, nor is it unusual for Muslims to write a testament and the like. However, if those pieces of evidence are interrelated then they contextualize the facts by giving them a totally different meaning, exactly as concluded by the first instance court, thus the objection of the defense of all three accused under paragraph I of the operative part of the first instance verdict that the intention of producing prohibited consequences and accomplishing the purpose of the activity taken were not established is unfounded.

As to the commission of the criminal offence closely described under paragraph III of the operative part, defense counsel for the accused Bektašević, attorney Kamenica, argues that his client could not have been found guilty of the criminal offence of obstruction of an official in executing his official duty for the reason that the first instance court wrongfully evaluated the evidence presented. The appeal submits that the existence of the criminal offence requires that the official duty the obstruction of which is carried out must be taken within the official duty, and as the search by the police officers was not done in accordance with the provisions of the CPC, this, according to the appeal, means that the official persons carried out the activity beyond their official duty hence it cannot enjoy legal protection. Such a theory of appeal is not sustainable because it is based on mistaken premises, since police officers Čengić, Papić and Sijamhodžić, while conducting the search of the mentioned premises, acted in full compliance with the provisions of the CPC. As rightfully found in the first instance verdict, when the police officer Čengić tried to serve the accused Bektašević with a written search warrant issued on the basis of an orally issued order by the preliminary proceedings judge, Bektašević blocked with his body the entrance into the house and started shoving with his body police officer Čengić. In addition, this procedural provision does not define the scope of the official duties of the official persons, which is contained in another substantive provision.

Likewise, the appeal of attorney Temin in relation to the second-accused Cesur underlines that the first instance court drew a conclusion about his criminal responsibility for the criminal offence under Article 358(1) of the CC BiH, which remained in the attempt, only on the basis of the statements of the police officers, whereas the Court gave no weight to the fact that there are no prints on the pistol which was knocked out of Cesur's left hand, nor did it wonder how it was possible that the person holding a pistol with the intention of using it does it with his left hand though he is right-handed, or that the accused Bektašević asserted that on the critical event Cesur was not in possession of the pistol. The panel finds that the first instance court provided compelling reasons for giving credit to the statements of the police officers heard as witnesses noting that witnesses Čengić, Papić and Sijamhodžić had no reason to falsely charge the accused. The fact that witness Sijamhodžić at one point saw the accused Cesur holding a pistol in his left hand indicates that it was a circumstantial fact which, bearing in mind the dynamics of the event, does not mean that he would not shift the pistol to his right hand and even if that was not important from the aspect of the charges against him, in particular that he attempted, by a threat of direct use of force, to obstruct an official person in performing his official duty. Based on the given facts, the fact that Cesur held the pistol with a silencer in his left hand and it was shown later that a bullet was in the chamber, by objective principle it attributes to the threat a meaning of being serious and feasible, because witness Sijamhodžić could not have known whether Cesur, seeing him with his index finger on the trigger of the pistol, was right or left-handed and his shout "Cenga, pistol!" supports his fear of Cesur actually using the pistol. In addition, the panel finds grounds for such reasoning in the fact that the accused Bektašević could not have seen at that point what was going on in the room in which Cesur was, because he was busy jostling with the police officer Čengić preventing him from entering and searching the house.

The first instance verdict already gave its position on this by making factual conclusions on the basis of the evidence presented, which was not by any means challenged by the appeals, at least not in the way they do, thus the arguments on erroneous and incomplete establishment of facts are unfounded.

With reference to violations of the criminal code:

In his grounds for appeal, Attorney Temin denies the existence of the act of perpetration and the intention to commit the criminal act of terrorism on the part of the second-accused Cesur, contending that there is an essential violation of the criminal code in this respect referring to Article 298(b) of the BiH CC (this defense attorney also erroneously refers to the substantive instead of the procedural code), as the non-existence of the act of perpetration rules out the criminal liability of Cesur.

To corroborate such a theory in his appeal, this defense attorney asserts that the explosive was in the possession of the first-accused Bektašević before the arrival of Cesur in Sarajevo and that Cesur had never been in the possession of the explosive whatsoever, which is indicated in the statements of the other accused, in the statements of the witnesses Amir Bajrić, Izeta Hamidović and Zafir Asotić, as well as the results of the biological expert evaluation carried out by Elvira Karahasanović and the DNA analysis by Rijad Konjhodžić. He contends that the VHS tape – the evidence to which the Court gave decisive significance

when making inferences about the intention of the accused to commit the terrorist act - was recorded prior to Cesur's arrival in Sarajevo. Additionally, this defense attorney submits that the recording on the tape in question was made in May or June and by no means in October, at which time the leaves and the grass could not have been that green in Sarajevo. In other words, this appeal maintains that the erroneously established state of facts by the first-instance court was a result of the Court's erroneous evaluation of evidence, which consequently led to the violation of the criminal code.

Contrary to this appeal, the Panel holds that the first-instance court evaluated each piece of evidence on its own and in correspondence with the rest of the evidence. It was solely based on such an evaluation that the Court made inferences as to whether a fact had been proven or not, which is also a requirement under the provision of Article 281(2) of the BiH CPC.

That this is correct can be inferred by analyzing the contents of the disputed verdict (pages 44, 48, 49 and 55 in particular). The analysis indicates, a point underscored in the prosecutor's response to this appeal, that Cesur's actions were closely connected and coordinated with the actions of the accused Bektašević. Cesur arranged his arrival from Copenhagen in Sarajevo in agreement and coordination with the accused Bektašević, but also with a number of persons who had also been charged with terrorist acts in Denmark, among them Abdul Basit, who has been convicted of such actions by a final verdict. In addition to that, his acquaintance and contact with those persons were confirmed by the accused Cesur himself when he identified the persons in the photographs during his testimony. It is also not a matter of dispute that from his arrival in Sarajevo until his arrest, Cesur occupied two apartments together with Bektašević, where, besides a large quantity of explosives, quite a few substances were found which may be used to make an improvised explosive device of huge destructive power. All of those substances were available to him and he was in the actual possession of those together with the accused Bektašević. He stated that Cesur would watch him from another room cutting the explosive. Bektašević himself confirms the words of Cesur, namely that he had headaches in his apartment, obviously, as a result of strong odor emanating from the explosive (the explosive was "sweating"). As to the arrival of Cesur in Sarajevo, the Internet chat of 15 October 2005, which was retrieved from the PC seized in Denmark is particularly relevant. The same chat was retrieved from the PC seized from the Internet Club "Hollywood" in Sarajevo (Prosecution exhibit number 24-a). In his testimony, the accused Cesur admitted visiting the aforementioned Internet Club in Sarajevo together with Bektašević on a daily basis and using its services; together with Bektašević, Cesur used the same e-mail address and they had chats with persons from Denmark, Abdul Basit and Elias Ibn Husein, charged with terrorist acts; the time was recorded when the accused Bektašević and Cesur interchangeably took the keyboard of the PC. On that occasion, in the chat with Ibn Husein, Cesur was asking him for money, *amer* (leader) was mentioned, Cesur replied in his messages that he would not go back empty-handed, that he would record the items, so that they (the items) may be seen by them etc. The accused Cesur said himself that he had seen the VHS tape found in one of the back pockets of Bektašević's jeans when he was arrested in the apartment they occupied at the address *Novopazarska* number 422, although the tape was found in the Bektašević's apartment at the address *Poligonska* number 71, which confirms in itself that Cesur was aware of the tape. Additionally, the fact that Cesur was there together with the accused Bektašević when he was arrested, and that he was found holding a gun and a bullet in the

chamber in his left hand, and that a silencer was attached to the gun, says enough about his state of mind and the circumstances in which he found himself.

What else can be said about the allegations in the appeal pertaining to the surroundings in which the VHS tape was recorded, and about the fact that not all of the weapons and the other objects that can be seen were found with the accused, other than that they are hypothetical, given that the exterior seen in the tape could have been recorded around Sarajevo and at higher altitudes when it is green in October too, that, in addition to that, the messages that were uttered were said in a closed room, and as to the mortars, automatic rifles, and other weapons seen in the footage, which were not found by the police, they could have been timely moved to an unknown location. Moreover, subsequent events about which Bajrić testified reveal that the first three accused took that into account, namely the accused Ikanović said to Bajrić to "clean the house", then the police officers who came to arrest Ikanović affirmed that the apartment was extremely tidy when they arrived, and Cesur admitted that the apartment in the *Poligonska* Street looked as if abandoned. The fact that the accused Bektašević and Cesur had not had the time to tidy the house by the moment the police arrived is a different matter, however.

Therefore, there are too many facts, even details which together lead to the same conclusion the first-instance court reached beyond a reasonable doubt, namely that Cesur actively participated together with the accused Bektašević, for the opposite theory presented by the defense attorney Temin to hold, to wit that Cesur's actions contain no elements of the criminal act of terrorism.

In a situation when 20 or so kg of explosive were found in the possession of the accused Bektašević and Cesur, the explosive that was supplied to them by the accused Bajro Ikanović, to whom the explosive had been handed over by witness Bajrić (who identified in the photographic documentation the explosive that had been found in the possession of the first and the second accused), then the suicide belt and the video tape showing how to assemble and activate an explosive device, as well as the suicide note with a threat to Europe, which facts were established by the first-instance court beyond doubt and have the character of decisive facts, it follows that, based on the properly and completely established state of facts, the Court properly concluded that the criminal offence and the criminal liability do exist in the case of the accused Bektašević, Cesur and Ikanović.

All of the appeals in relation to the accused Bektašević, Cesur and Ikanović object to the expert evaluation by Professor Ćurak Nerzuk, arguing that it is utterly subjective, unconvincing, and unfounded. Consequently the accused persons' intention to cause damage to Bosnia and Herzegovina by taking the above described actions in order to carry out a terrorist act was by no means proven, which damage would be reflected, *inter alia*, in delayed accession of Bosnia and Herzegovina to the Euro-Atlantic integration. In other words, the appeals emphasize that such damage to Bosnia and Herzegovina did not occur. Consequently, the legal elements of the criminal offence at issue do not exist. Contrary to the arguments presented in the appeals, the Panel has found that the disapproval by the accused parties of both the expert study prepared by Ph.D. Professor Nerzuk Ćurak and his opinion presented in his testimony at the main trial and of his expertise and qualifications for him to be presenting his opinions about the damage inflicted on Bosnia and Herzegovina do not provide a single valid argument to refute the conclusions this expert has reached.

The first-instance court properly accepted the finding and opinion of the expert witness in relation to the damage, being an essential element of the criminal offence the accused are charged with, which has been inflicted on Bosnia and Herzegovina, hence on the International Community, moreover in view of the facts that Bosnia and Herzegovina is undoubtedly a part of the International Community and still a country under the strong influence of international institutions. Bearing in mind the protected value in relation to this criminal offence, which is the country of Bosnia and Herzegovina and its institutions, as well as international institutions, the first-instance court properly concluded, taking into account the finding and opinion of Ph.D. Professor Nerzuk Ćurak, that the damage inflicted on those institutions was indeed a result of the deliberate actions taken by the accused, that is of the very possession of the explosive and of making it usable (preparing a suicide belt), and is reflected in the delay of progress and integration of Bosnia and Herzegovina. The damage that was inflicted, as the expert witness says, is one that lasts and will last in the future. As to the competence of Professor Ćurak, it is not disputable that he is a University Professor at the Department of Security Studies of the School of Political Science in Sarajevo, specializing in Geopolitics. The appeals filed by the defense give no arguments whatsoever to challenge his competence. Instead, the objections were related to the education and personality of this expert witness and intended to defame him.

With reference to the sanction and the costs of the criminal proceedings:

Reviewing the decision on sanction in relation to the objections in all four of the appeals, this Court has taken into account the fact that the first-instance court evaluated the circumstances on the part of the accused that may lead to reducing or increasing the sentence, as provided for in Article 48 of the BiH CC (general rules for meting out a punishment). The verdict did take into account the statutory limitations set out for the criminal offences, the purpose of the sanction, and all the circumstances that may lead to its reduction or increase, the degree of the criminal liability of the accused in particular, the motive for committing the criminal offence, the degree of threat, that is endangering of a protected value, the circumstances in which the offence was committed, as well as the previous life of the perpetrators, their personal circumstances, and their conduct after the perpetration of the offence. Hence, among the mitigating circumstances, the first-instance court took into account the facts that all the persons are very young, without previous convictions (Cesur, Ikanović and Hasanović), that Bektašević grew up in an incomplete family, and in the case of Hasanović his poor financial situation, while Ikanović is a family man and father of two juvenile children. Among the aggravating circumstances the court evaluated were the accuseds' persistence in the perpetration of the criminal offence, in view of the number and the type of the actions taken, the quantity of the explosive and the danger it poses, the degree of endangering the protected value, and the potential consequences that might have ensued had they not been detected. However, when reviewing the evaluation of the first-instance panel regarding the existence of mitigating and aggravating circumstances on the part of the accused and the reasons given by the Court in that respect, this Panel finds that the mitigating circumstances on the part of the accused have not been sufficiently manifested in the imposed sentences, hence the sentences are too harsh. Moreover, when balancing the aggravating circumstances against the mitigating circumstances, the first-instance court took into account some that constitute the essence of the criminal offence itself, which was justifiably indicated by the defense attorney Kamenica, which as such may

not be taken into account when meting out a punishment. Specifically, the first-instance court took into account as an aggravating circumstance the persistence in perpetration of the offence, considering the number and the type of the actions carried out, the quantity of the explosive and the danger it poses. Even if the latter could stand, the number and the type of the actions carried out, as stated, constitute the essence of the criminal offence in question. Furthermore, the first-instance court failed to separate the actions of each of the accused individually, even in relation to the fourth-accused Hasanović, who had not been charged with the criminal offence of terrorism at all. As opposed to */as written/* the accused Cesur, Ikanović and Hasanović, the court should have taken into account as a mitigating circumstance on the part of Bektašević too his previous non-conviction, given that an education measure imposed on him while he was a juvenile does not amount to a previous conviction. This Court holds that the appeals filed by the defense attorneys for the accused, each from its own point of view, justifiably indicated that. Besides, the Panel notes that, when it comes to the degree of risk posed by the Accused Cesur as a perpetrator of the criminal offense, that the quantum of the criminal zeal he demonstrated was not such as to warrant the punishment imposed on him by the first-instance verdict. Also, in relation to the Accused Bektašević, when the first-instance court established the fact that he is a rather young person, this Panel holds that the principle of graduality in meting out criminal sanctions was not sufficiently taken into account, all the more because this accused too has no criminal record, which was already referred to in the foregoing text.

Maintaining the position that the sentences imposed on the accused are inadequate in relation to the mitigating circumstances, particularly in relation to the actions of co-perpetration, given that each of the co-perpetrators is held accountable proportionally to the degree of his contribution in the perpetration of the criminal offence, pursuant to the provision of Article 314 of the BiH CPC, this Panel has upheld in part the appeals of all of the accused and revised the first-instance verdict in the part imposing the sanction by imposing a sentence of imprisonment for a term of 8 (eight) years on the accused Mirsad Bektašević for the criminal offence in violation of Article 201(1) in conjunction with paragraph 4(f), as read with Article 29 of the BiH CC and the sentence of imprisonment for a term of 6 (six) months for the criminal offence in violation of Article 358(1) of the FBiH CC, in conjunction with Article 26(1) of the BiH CC, therefore applying the provision on concurrence set out in Article 53 of the BiH CC Bektašević is imposed a single sentence of imprisonment for a term of 8 (eight) years and 4 (four) months; the accused Abdulkadir Cesur is sentenced to imprisonment for a term of 6 (six) years for the criminal offence in violation of Article 201 paragraph 1, in conjunction with paragraph 4, item (f) of the BiH CC as read with Article 29 of that Code, for a term of 6 (six) months for the criminal offence in violation of 358, paragraph 1, of the FBiH CC, as read with Article 26, paragraph 1 of the BiH CC, therefore the Court sentences him to a single sentence of imprisonment for a term of 6 (six) years and 4 (four) months applying the provision of Article 53 of the BiH CC; the accused Bajro Ikanović is sentenced to imprisonment for a term of 4 (four) years for the criminal offence in violation of Article 201, paragraph 1, in conjunction with paragraph 4, item *(f)* of the BiH CC in conjunction with Article 29 of the BiH CC, whereas the accused Senad Hasanović is sentenced to imprisonment for a term of 6 *(six)* months for the committed criminal offence in violation of Article 371, paragraph 2, in conjunction with paragraph 1 of the FBiH CC; under the provision of Article 56 of the BiH CC, credit shall be given to all of the accused for the period they spent in custody, as stated in the operative part of this Verdict. The Panel holds that the sentences meted out in such a way are

proportionate to the degree of danger posed by the criminal offences committed and the accused themselves as the perpetrators, and that they will serve to achieve the purpose of punishment set out in Article 39 of the BiH CC, both from the point of view of the special and the general prevention, and raise awareness among citizens about the threat posed by such criminal offences and the justifiability of sanctioning the perpetrators thereof.

With regard to the appeal of the defense attorney for the accused Bektašević on the matter of costs of the criminal proceedings that the accused is under the obligation to pay as imposed by the first-instance verdict, this Panel holds that the position taken by the first-instance panel in relation to the payment of those costs is correct. The allegation in the appeal that it was established during the first-instance proceedings that Bektašević had no property is arbitrary, given that such an allegation was not supported by valid arguments, and the defense for this accused had never proposed any evidence in relation to that circumstance.

In view of all of the above, it has been decided as stated in the operative part of this Verdict pursuant to the provision of Article 314 of the BiH CPC.

Record-taker
Željka Marenić

Presiding Judge
Dr. Ofaried Daister