SUD BOSNE I HERCEGOVINE

Ref. number: X-KRŽ-06/234
Sarajevo, 23 October 2007

PREVOD 374

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina sitting on the Panel of the Appellate Division of Section I for War Crimes comprising Judge Azra Miletić as the Presiding Judge and judges Finn Lynghjem and Jose Ricardo Juan de Prada Solaesa as the Panel members, with the participation of the Legal Associate Lejla Fadilpašić as the Minutes-taker, in the criminal case against the accused Zoran Janković for the criminal offence of Crimes against Humanity in violation of Article 172 (1) (h) as read with sub-paragraphs (a) and (d) of the Criminal Code of Bosnia and Herzegovina (BiH CC), deciding upon the Appeal filed by the Prosecutor's Office of Bosnia and Herzegovina from Verdict Ref. number X-KR-06/234 dated 19 June 2007, at the session held in the presence of the accused, his Defense Counsel – attorney Dragoslav Perić and Mirsad Strika, Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, on 23 October 2007 rendered the following:

VERDICT

Dismissing as unfounded the Appeal filed by the Prosecutor's Office of Bosnia and Herzegovina Ref. number KT-RZ-142/06 dated 23 August 2007 and upholding the Court of Bosnia and Herzegovina Verdict Ref. number X-KR-06/234 dated 19 June 2007.

REASONING

The Court of Bosnia and Herzegovina Verdict Ref. number X-KR-06/234 dated 19 June 2007 acquitted the accused Zoran Janković of the charges that by actions described under sections 1 and 2 of the operative part of the Verdict he committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) (h) as read with sub-paragraphs (a) and (d) of the Criminal Code of Bosnia and Herzegovina (hereinafter: BiH CC).
Pursuant to Article 189 (1) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the BiH CPC), the accused was relieved of the duty to reimburse the costs of the criminal proceedings under Article 185 (2) (a) through to (f) of the BiH CPC and it was decided that the cited costs, as well as the necessary expenses and the Defense Counsel's fee shall be paid from the budget, whereas, pursuant to Article 198 (3) of the BiH CPC, the injured party was advised to take civil action.

The cited Verdict has been appealed by the Prosecutor's Office of BiH on the grounds of an essential violation of the provisions of criminal procedure under Article 297 (1) (k) of the BiH CPC and erroneously or incompletely established facts under Article 299 of the Bi

CPC, and the Appellate Panel has been moved to grant the Appeal and reverse the contested Verdict by finding the accused guilty of the offense with which he is charged in the amended Indictment, or else to revoke the first instance Verdict and order retrial.

The Defense Counsel for the accused has filed a response to the Prosecution Appeal stating that the presented evidence support the doubt about the subjective identity of the Indictment and moved the Court to dismiss the Appeal filed by the Prosecutor's Office of BiH as unfounded and uphold the first instance Verdict.

At the session of the Appellate Panel held on 23 October 2007, in accordance with Article 304 of the BiH CPC, the Prosecutor's Office of BiH maintained their allegations and their motion presented in the Appeal, whereas the Defense presented their brief response to the Appeal and presented the Court with additional evidence, four photographs of the monument to Zoran Obrenović, which they were unable to present before because the said monument had not been finished.

Given the fact that the said evidence could not have been presented at an earlier stage, and also that the Prosecution did not object to its presentation, the Panel accepted these pieces of evidence and evaluated them in connection with other pieces of evidence presented in the course of the first instance proceedings.

Having reviewed the first instance Verdict within the limits of the averments of the Appeal, the Appellate Panel ruled as set forth in the operative part herein for the following reasons:

Challenging the first instance Verdict on the grounds of an essential violation of the provisions of criminal procedure under Article 297 (1) (k) of the BiH CPC, the Prosecution in their Appeal submit that the first instance Panel committed this essential violation of the provisions of the criminal proceedings because the operative part of the Verdict is incomprehensible and contrary to the reasoning of the Verdict and because the reasons provided in the Verdict are entirely unclear and contrary, whereas in terms of decisive facts there is a significant contradiction between what the reasoning of the Verdict states about the contents of the records on the identification of the suspect and the real contents of those records.

However, in further reasoning, the Appellant fails to state how the incomprehensibility of the operative part of the Verdict itself is reflected and in what way it is contrary to the reasoning of the Verdict, while from the reasoning of the Appeal it can be concluded that the Prosecution is actually of the opinion that the Court erroneously evaluated the presented evidence, especially evidence related to the identification of persons conducted on 16 May 2006 on the Tuzla Canton Ministry of Internal Affairs premises, and that based on such erroneous evaluation the Court also made an erroneous inference on the liability of the accused for the criminal offence with which the Indictment charges him, which represents grounds for appeal under Article 299 of the BiH CPC and not Article 297 (1) (k) as stated in the Appeal.

Due to the foregoing, or more precisely due to the lack of appropriate explanation of the grounds of Appeal related to the essential violation of the provisions of the criminal proceedings, the Appellate Panel was unable to review the well-foundedness of the

whereas in terms of the objections to the validity and completeness of the established facts of the case, which essentially the Appeal indicates, the Panel found that these grounds are unfounded and therefore dismissed it as such.

Namely, the first instance Panel acquitted the accused of the charges that on 29 April 1992, in the territory of the village of Snagovo, Zvornik Municipality, together with other persons, he captured a group of Bosniak civilians and then in front of the house owned by Ibrahim Ibrahimović, by firing from automatic weapons, they killed 36 civilians and thereafter set their bodies on fire. The Panel decided as set forth above because, based on the established facts of the case, they were unable to establish beyond any reasonable doubt that it was the accused who undertook the actions detailed in this section of the operative part. Having analyzed the statements of witnesses who testified about the circumstances described under this section of the Verdict, the Appellate Panel also finds that based on the cited statements it is impossible to establish with certainty that Zoran Janković undertook the actions with which he is charged.

During the proceedings, with respect to this section of the Verdict, the Court heard numerous witnesses, and based its decision to the greatest extent on the statements and the identification made by the witnesses – eyewitnesses to the respective incident, which is entirely upheld by this Panel as well, finding that these represent the most reliable source of information on this particular incident. In the course of the investigation, witnesses Marhiza Krupinac, Zlatija Mujanović, Abdulah Mujanović and Muharem Mujanović participated in the identification, while the records on this investigative action, as well as the accompanying photodocumentation, have been presented as Prosecution evidence. The cited evidence shows that only witnesses Zlatija Mujanović and Muharem Mujanović, in both identification rounds, recognized the accused as the person who captured them on the critical occasion and a person who was involved in the killing of the said 36 civilians, whereas witnesses Marhiza Krupinac and Abdulah Mujanović on both occasions pointed to other persons.

The Prosecution is correct when in their Appeal they state the first instance Verdict is erroneous when it states that none of the mentioned witnesses was able to recognize the accused, or more precisely that Muharem Mujanović not once pointed at the accused, but instead at a person much taller and older than the accused, who was also pointed at by Marhiza Krupinac, while witness Zlatija Mujanović was undecided between the accused and his brother. The first instance Verdict obviously confuses the names of witnesses who took part in the identification, however this does not cast doubt on the fact which is undoubtedly shown by the presented evidence and which says that only 2 out of the total of 4 witnesses identified the accused Zoran Janković.

This Panel finds unacceptable the explanation given by witness Marhiza Krupinac, referred to by the Prosecutor in his Appeal, according to which during the identification, due to great fear, she intentionally failed to point at the accused, but instead pointed at a completely different person, because the same witness gave evidence at the main hearing with no fear and while the accused was present in the courtroom, as opposed to the identification itself carried out on the premises of the Tuzla Canton Ministry of Internal Affairs when the accused was in a separate room and had no possibility of seeing the witness. Also unfounded is the allegation made in the Appeal according to which the witness's

justified since, following the announcement of the first instance Verdict, the accused stated before a journalist of the Balkan Investigative Reporting Network that he was going to press charges against those who said lies about him and that they would "pay for everything", because the described incident took place following the completion of the first instance proceedings, whereas the identification was carried out during the investigation.

In addition to that, the statement this witness gave at the main hearing is not exactly precise when it comes to the identity of the person who according to her committed the cited acts, since everything she knows about him is what he himself said – that his name was Zoran and that he was from Belgrade, and that he showed her the knife he had allegedly used to slit throats in Vukovar, while she learned about the family name Janković only later and that was indirectly, from other persons. Witness Muharem Mujanović also mentions a certain Major Zoran in his statement, who according to him had a white bird on his sleeve, which undoubtedly represented the insignia of a paramilitary formation know as *Beli orlovi* /White Eagles/, while witness Zlatija Mujanović in her response to the Court's question said that she had heard of Dragan and Zoran, but not that the family name was Janković, or more precisely she learned that only indirectly, 4 years ago.

Linking the above mentioned facts with the evidence presented by the Defense, who during the proceedings pointed out that at that same time, a certain Zoran Obrenović, a Major from Serbia, who was a member of White Eagles, was in that area, therefore this Panel finds that it is not possible to establish with certainty that the accused Zoran Janković is the Major Zoran that the witnesses talked about.

Namely, in his statement witness Rado Kulić says that in April 1992, in the village of Kosovača, which is a neighboring village to the villages of Snagovo, Caparde, Kusonje, Pantići and Jeremići, he was on guard and he remembers the arrival of two volunteers from Serbia. This fact was also confirmed by the witness Savo Kulić, who was also on guard, and who remembers two armed men who introduced themselves as White Eagles and said that they had been brought by Zoran Obrenović. The book "Kalesija – preparation and defense from aggression in 1992" by Sead Omerbegović and Halid Tubić, on page 122 mentions a certain Zoran Obrenović, an officer, member of White Eagles, and describes the way he died, which is supported by a photograph of the monument built in memoriam of Zoran Obrenović, especially those adduced at the Appellate Panel session, which clearly show that the poem engraved on it is dedicated to the killed "Snagovljan" Major Zoran.

Everything described above is also supported by the statements of the Defense witnesses Milan Tanacković, Ibro Smajlović, Đorđe Pejić and Gavro Ikić, correctly referred to by the first instance Verdict, who confirmed that they saw the accused in Dubnica on a daily basis and were on guard duty with him up until early May 1992, whereby they actually cast doubt on the statements of the Prosecution witnesses according to which the accused was on the Vukovar battlefield and then on 29 April 1992 at the place covered by Section 1 of the operative part.

The facts mentioned above give this Panel too a reason to doubt the identity of the person seen by the witnesses in the mentioned area, or in other words lead to the conclusion that it is possible that the incriminated actions were committed by Zoran Obrenović aft[illegible] which was the Defense's point during the proceedings.

Based on everything mentioned above and through the application of the principle *in dubio pro reo*, the doubt about this decisive fact related to the identity of the person who committed the incriminated actions had to be resolved in a way which is most favorable for the accused, or in other words he had to be acquitted of the charges as was correctly done in the challenged verdict.

This Panel is satisfied that the averments of the Appeal challenging the regularity of the established facts of the case in relation to Section 2 of the Verdict are also not founded.

Namely, the Prosecution charged the accused that on 27 May 1992 he arrived in front of the house of Ibro Alibašić, where previously members of the Serb paramilitary formations and the Šekovići Guard had rounded up over 100 civilians, kicked Rukija Ramić in the back and then ordered that all rounded up civilians be forced onto trucks and transported to Serbia, upon which men were separated from women and children, after which the women and children were forcibly transferred from the region where they lawfully resided in the direction of Memići, while the men were detained during the night in the reading room in Kula where they were physically abused, and a certain number of men killed, while those who survived were transported to other camps in the territory of the municipalities of Kalesija, Vlasenica and Bijeljina.

Based on the presented evidence, the first instance Panel was unable to even establish with certainty the presence of the accused on the scene, and therefore his role as someone who issued orders in the process of the forcible transfer of the population. This conclusion is entirely supported by this Panel too, taking into consideration primarily statements by witnesses Ibro Alibašić, Mehmed Cakor, Ibrahim Burek, Lutvija Alibašić and Rukija Ramić, direct eyewitnesses to the incident described in this section of the operative part.

Witnesses Rukija Ramić and Lutvija Alibašić, who were present on the critical occasion, both stated that the person who they say is the accused Zoran Janković arrived at the scene after the men were separated from the women and children, and according to witness Rukija Ramić, he arrived in a yellow Mercedes, whereas witnesses Ibrahim Burek and Mehmed Cakor, who were also taken to the said location, do not mention the accused Zoran Janković being there and point out that they do not know that person. Witness Ibro Alibašić, who knows the accused from before, also states that he did not see the accused in the group of people who were brought in front of his house on 27 May 1992 and points out that after he was transported to Osmaci by truck, the women and children stayed in the yard.

Since the accused is charged that in front of the house of Ibro Alibašić he ordered that civilians be separated (men from women and children) and forcibly transferred, it renders unclear the allegation of the Prosecution according to which "witnesses Ibrahim Burek, Mehmed Cakor and Ibro Alibašić were after all unable to see the accused at the scene because, according to them, and according to other witnesses, men were previously taken to the reading room in Kula". Bearing in mind the cited averment of the Appeal, it is clear that the Prosecutor himself does not deny that the accused was not present when men were separated from women and children, but that he allegedly arrived later, which in itself is contrary to the factual description of this section of the operative part, according to which, having arrived in front of the house of Ibro Alibašić, he ordered the said separatio[redacted]

foregoing shows that the accused was not present at the scene when the order for separation was given, and none of the Prosecution witnesses had knowledge about who actually ordered the separation.

Furthermore, the Appellate Panel does not find that it has been proved that the accused Zoran Janković subsequently arrived in front of the house of Ibro Alibašić and so that he hit the injured party Rukija Ramić in the way as described in Section 2 of the operative part. Namely, the witnesses who directly connect the accused with the scene are Rukija Ramić and Lutvija Alibašić. However, as the first instance Panel also correctly noted, Rukija Ramić herself does not claim in her statement that the accused kicked her in the back, since she was not in a position to see who was kicking her, and none of the other witnesses mark the accused as the person who undertook the cited action.

Besides, the testimony of this witness, as well as the testimony of witness Lutvija Alibašić includes a number of illogicalities and inconsistencies, which make this Panel too doubt the identity of the person who was present when they were forced onto the truck. Both witnesses in their statements claim that, having arrived in front of Ibro Alibašić house in a vehicle, the accused asked one of the soldiers what they were waiting for and why they were not taking the civilians to Serbia, saying that he had just arrived from Snagovo. Both state that they had known the accused since childhood and that this was the reason why they recognized him on this critical occasion. However the facts they mention in this regard and which the first instance Verdict correctly emphasizes and analyses separately, lead this Panel too to doubt their ability to recognize the accused in the first place. This is especially true for the portion of Rukija Ramić's statement, who first said that she was very well acquainted with the accused and then that she played with him when they were children and went to school with him, and that later she did not see him again up until 27 May 1992.

However, as is correctly pointed out by the first instance Panel as well, this Panel also finds that it is little probable that the witness, being 9 years older than the accused, could have played with him when they were children, or go to school at the same time he went to school, and especially that she was able to recognize him on 27 May 1992 only based on the memory she had of him from those days.

Witness Lutvija Alibašić also did not see the accused for 19 years, since he was thirteen years old, and the validity of her statement was additionally undermined by the statement of witness Ibrahim Burek, who was also present in the said yard on 27 May 1992, and was himself an injured party of the said offence, and who stated at the main trial that he did not know the accused and that prior to his testimony he was contacted by the brother-in-law of witness Lutvija Alibašić and asked him to confirm her statement before the Court and say that the accused Zoran Janković was also present on the critical occasion.

Based on such facts of the case and in the opinion of the Appellate Panel, the first instance Panel is correct to conclude that there is no valid evidence that the accused Zoran Janković was present at all at the time and in the place described in details in Section 2 of the operative part, while the Prosecution failed to offer the Court a single piece of evidence which would lead to the conclusion that the accused held any position which would enable him to issue orders with respect to the incident which occurred on that occasion.

Based on the foregoing and in this Panel's opinion, due to the lack of evidence, the accused was to be acquitted of charges for the acts mentioned in Section 2 of the operative part, as was correctly done by the first instance Panel.

Based on the foregoing and pursuant to Article 310 (1) as read with Article 313 of the BiH CPC, the Court ruled as set forth in the operative part herewith.

Minutes-taker:

Lejla Fadilpašić

Presiding Judge:

Azra Miletić

LEGAL REMEDY: There is no right of Appeal from this Verdict.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian language.

Sarajevo, 8 April 2008

[redacted]

Certified Court Interpreter for English Language

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