



Number: X-KRŽ-06/298  
Sarajevo, 3 April 2008

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in the Panel of the Appellate Division consisting of Judge Dragomir Vukoja, as the Presiding Judge, and Judges Robert Carolan and Azra Miletić, as members of the Panel, with the participation of the Legal Officer Željka Marenčić, as minutes-taker, in the criminal case against the Accused Krešo Lučić for the criminal offense of Crimes against Humanity in violation of Article 172 (1) e), f) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: BiH CC) in conjunction with Article 180 (1) of the BiH CC and Article 29 of the BiH CC, deciding upon the Appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: Prosecutor's Office of BiH) number KT-RZ-130/05 dated 20 December 2007 and the Defense Counsel for the Accused, attorney Krešimir Zubak from Sarajevo, dated 24 December 2007, from the Verdict of the Court of Bosnia and Herzegovina, number X-KR-06/298 dated 19 September 2007, at the session held in the presence of the Prosecutor of the Prosecutor's Office of BiH, Slavica Terzić, the Accused Krešo Lučić and his Defense Counsel Krešimir Zubak, on 3 April 2008 rendered the following:

### DECISION

Granting the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina and Defense Counsel for the Accused Krešo Lučić, thus revoking the Verdict of the Court of Bosnia and Herzegovina, number X-KR-06/298 dated 19 September 2007 and a new trial shall be held before the Appellate Division of the Section I for War Crimes of the Court of Bosnia and Herzegovina.

### Reasoning

By the Verdict of the Court of Bosnia and Herzegovina (hereinafter: Court of BiH), number X-KR-06/298 dated 19 September 2007, the Accused Krešo Lučić, was pronounced guilty of having committed the criminal offense of Crimes against Humanity under Article 172 (1) c) and k) (*Section 1 of the operative part*) and f) (*Sections 2 and 3 of the operative part*) in conjunction with Article 180 (1) and Article 29 of the CC of BiH by the actions described in the operative part of the Verdict concerned.

For the aforementioned criminal offense the first instance panel sentenced the Accused to six (6) years of imprisonment, and pursuant to Article 56 of the BiH CC the time the Accused spent in custody, from 27 April 2006 until 19 January 2007, was credited towards the sentence of imprisonment, while pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: BiH CPC), the Accused was relieved of the duty to reimburse the costs of the criminal proceedings while the injured parties, pursuant to Article

198 (2) of the BiH CPC were referred to take civil action with their claims under civil procedure law.

By the same Verdict the Accused was acquitted of the charges that he committed the criminal offense of Crimes against Humanity under Article 172 (1) D) in conjunction with Article 180 (1) and Article 29 of the CC of BiH in the manner as described in Section 4 of the operative part of the Verdict concerned.

The Prosecutor's Office of BiH filed the timely appeal from both the sentencing and acquitting part of the Verdict, contesting it on all the grounds for appeal, moving the Appellate Panel to entirely grant the appeal as well-founded, modify the contested verdict so as to find the Accused guilty of all Counts of the Indictment, and sentence him to imprisonment for a longer period of time.

The Defense Counsel for the Accused also filed the appeal within the statutory time limit for an essential violation of the provisions of the criminal procedure, a violation of the Criminal Code, and the state of the facts being erroneously established, moving the Appellate Panel to grant the appeal and modify the first instance Verdict so as to acquit the Accused of the charges or revoke the Verdict and refers it to the Cantonal Court in Novi Travnik, being the court with the subject-matter and territorial jurisdiction, that is, to revoke the Verdict and schedule the trial.

At the session of the Appellate Panel, held pursuant to Article 304 of the CPC of BiH, both parties gave brief presentations of their appeals and responses to the appeals, and maintained their presented arguments and proposals entirely.

Having reviewed the contested Verdict insofar as contested in the Appeal, the Appellate Panel decided as stated in the operative part for the following reasons:

As regards the arguments of the appeal of both parties concerning the sentencing part of the Verdict as well as the arguments of the appeal of the Prosecutor's Office concerning the acquitting part of the Verdict, which may be brought down to the objection that the first instance Verdict essentially violated the criminal procedure provisions referred to in Article 297:(1) k) of the BiH CPC, the Appellate Panel found that the arguments are grounded given that the operative part of the contested Verdict does not contain the facts and circumstances constituting the elements of the criminal offense of Crimes against Humanity referred to in Article 172 of the BiH CC of which, under Sections 1, 2 and 3 the contested Verdict, the Accused was found guilty and under Section 4 of the same Verdict acquitted.

In other words, Article 285 (1) a) of the BiH CPC stipulates that in a guilty verdict, the Court shall pronounce "the criminal offense of which the accused is found guilty along with a citation of the facts and circumstances that constitute the elements of the criminal offense and those on which the application of a particular provision of the Criminal Code depends".

The primary element of the Crimes against Humanity referred to in Article 172 of the BiH CC constitutes "widespread or systematic attack directed against any civilian population, with knowledge and awareness of the perpetrator that his acts constitute a part of such an attack and perpetration of the acts by the perpetrator which are listed in the provision."

However, although the Accused, under the Sections 1 through 3 of the sentencing part of the Verdict, was found guilty precisely of the commission of the criminal offense referred to in Article 172 of the BiH CC the factual description of the operative part of the Verdict does not indicate a single fact which might be characterized as existence of "widespread or systematic attack".

On the other hand, in the reasoning of the contested Verdict the first instance panel undoubtedly established the existence of a widespread and systematic attack as well as that the acts of the Accused clearly constituted a part of such attack directed against Bosniak civilians of Kreševo and that he was fully aware thereof. In the process, the first instance Verdict neither provided any explanation as to the failure to include these decisive facts, which according to the conclusion of the first instance panel are proved beyond any doubt, nor did it acquit the Accused in the acquitting part of the Verdict as correctly noted in the appeal of the Prosecutor's Office.

It is obvious that the established irregularity makes the operative part of the contested Verdict self-contradictory but also contradictory to the reasons for the Verdict thus essentially violating the criminal procedure provisions referred to in Article 297 (1) k) of the BiH CPC.

Also, the appeal of the Defense Counsel, correctly states that the same essential violation was committed as regards the factual description of the offense given in Section 1 of the sentencing part of the Verdict.

In other words, by the aforementioned Section of the operative part of the Verdict the Accused is charged with the commission of the criminal offense of Crimes against Humanity referred to in Article 172 (1) e) (imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law) and k) of the same Article (other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health) in a manner that he unlawfully deprived of liberty civilians and committed other inhumane acts contrary to the rules of international law, and committed torture and other inhuman acts by beating the aforementioned detained persons.

However, in the factual description of Section 1 of the sentencing part of the first instance Verdict it is stated that the Accused "in June and July 1993, in the Kreševo Municipality, with members of the Kreševo Military Police who were his subordinates, unlawfully deprived of liberty the following Bosniak civilians: Aiša Agić from the village of Bukve, Našid Beganović, Halid Lušija, Adem Lušija from the village of Rakova Noga and Junuz Ahabović and Edin Hasandić from Kreševo."

Therefore, such factual description results in the criminal act referred to in Article 172 (1) e) of the BiH CC but not in the criminal act referred to in subparagraph k) of the same Article, indeed the reasoning of the contested Verdict, among other things, indicates that the element of commission of other inhumane acts referred to in to in Article 172 (1) k) of the BiH CC is that "the offence has not been stated differently in Article 172".

Considering the aforementioned, the same act in the concrete case, could not be legally defined both as unlawful deprivation of liberty (subparagraph e) and as other inhumane act of a similar character (subparagraph k) as it was done in the first instance Verdict which makes the operative part of the Verdict self-contradictory thereby incomprehensible. Thus an essential violation of the provisions of criminal procedure code referred to in Article 297 k) of the BiH CPC was committed.

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



Also well-founded are the arguments of the appeal of the Prosecutor that as regard Section 1 and 3 of the sentencing part of the first instance Verdict, having omitted parts of the factual description, which refer to the fact that the Accused "ordered the Bosniak civilian population to be taken away and imprisoned in the camps in the "Ivo Lola Ribar" Primary School in Kreševo and in the "Šunje" hangar in Kreševo, where the prisoners did not have sufficient food, water or necessary medical assistance, they were also taken to perform forced labor on a daily basis, where they performed hard labor" (Section 1) which pertain to the torture of the detainees Almedin Mušanović and Hajrudin Bejić (Section 3), in its reasoning the Verdict does not provide proper explanation for such a decision.

That is, the first instance Verdict mostly presents the testimonies of the witnesses and other evidentiary material, providing their arbitrary evaluation, although the Court was bound, pursuant to Article 290 (7) of the BiH CPC, to state specifically and completely which facts and on what grounds the Court found to be proven or unproven, furnishing in particular an assessment of the credibility of contradictory evidence and the reasons guiding the Court in ruling on individual legal matters and especially in ascertaining whether the criminal offense was committed and whether the accused was criminally responsible.

The aforementioned also refers to the acquitting part of the first instance Verdict given that the reasoning of the Verdict concerned does not contain clear explanation of the arbitrary conclusion that the Accused did not commit the acts he is charged with under Count 4 of the Indictment. As found by the Appellate Panel, in the concrete case the first instance panel has failed to state important substantial elements and results of the presented evidence including their logical evaluation in a manner as stipulated by Article 281 (2) of the BiH CPC, which, for example, refers to the testimony of the witness Meho Hodžić, for whom it is stated that many elements of his testimony were unclear and contradictory, while it fails to refer to specific facts or testimony supporting why it concludes that Meho Hodžić's testimony was unclear and /or contradictory.

Taking into consideration the aforementioned, the first instance panel in this part as well, omitting to state the reasons for decisive facts, essentially violated the criminal procedure provisions referred to in Article 297 (1) k) of the BiH CPC, and the Appellate Panel finds that there is a doubt as to the correctness of the factual description established by the first instance Verdict.

Given that the established essential violations of the provision of the criminal procedure constitute absolutely essential violations which require a mandatory revoking of the first instance verdict and that the above mentioned shortcomings also challenge correctness of the established state of facts, the Appellate Panel granted the appeals and pursuant to Article 315 (1) a) and b) of the BiH CPC, revoked the first instance Verdict and scheduled a new trial before the Appellate Panel.

In the retrial the essential violations of the provision of the criminal procedure code will be eliminated, the already presented evidence will be presented again and if required, evaluating other arguments of the appeal, the other evidence will also be presented.

Considering that the first instance Verdict has been revoked, the Appellate Panel did not engage in a detailed analysis of other arguments of the appeal, but, pursuant to Article 316 of the BiH CPC, it did not go beyond a brief presentation of reasons for revoking the

Minutes-taker  
Željka Merenić  
[signature affixed]

Presiding Judge  
Judge  
Dragomir Vukoje  
[signature affixed]

**REMEDY:** No appeal shall be allowed from this Decision.

*I hereby confirm that this document is a true and correct copy of the original written in Bosnian/Croatian/Serbian.*  
Sarajevo, 14 April 2008  
Certified Court Interpreter



