

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case number: S1 1 K 010132 15 Krž

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Before the Appellate Panel composed of Judges: Dr. Dragomir Vukoje, Presiding
Redžib Begić, Rapporteur
Meddžida Kreso, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

Indira Kamberić

SECOND INSTANCE JUDGMENT

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

Mr. Milorad Barašin

Counsel for the accused Indira Kamberić:

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Number: S1 1 K 010132 15 Krž

Sarajevo, 15 December 2015

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, composed of Judge Dr. Dragomir Vukoje, as the Panel Presiding and Judges Redžib Begić and Meddžida Kreso, as members of the Panel, with the participation of Legal Officer Ena Granić, as the Minutes-taker, in the criminal matter against the accused Indira Kamberić for the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (e) and (f), as read with Article 180(1) of the Criminal Code of Bosnia and Herzegovina, deciding on the appeals filed by the Prosecutor's Office of Bosnia and Herzegovina and Ms. Lejla Čović, defense attorney for the accused Indira Kamberić, from the Judgment of the Court of Bosnia and Herzegovina No. S1 1 K 010132 13 Krl of 17 April 2015, having held a public session of the Appellate Panel in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Mr. Milorad Barašin, the accused Indira Kamberić and her defense attorney, Ms. Lejla Čović, on 15 December 2015 handed down the following:

J U D G M E N T

dismissing as ill-founded the appeal filed by Counsel for the accused Indira Kamberić, **granting in part** the appeal filed by the Prosecutor's Office of Bosnia and Herzegovina, and **revoking in its sentencing part** the Judgment of the Court of Bosnia and Herzegovina, number S1 1 K 010132 13 Krl of 17 April 2015, and imposing on the accused Indira Kamberić **a sentence of imprisonment for a term of 4 (four) years** for the criminal offense of War Crimes against Civilians in violation of Article 142(1) of the Criminal Code of the Socialistic Federative Republic of Yugoslavia, as read with Article 22 of the same Code, under which she was found guilty, pursuant to the referenced legal provisions and Article 33, 38, 41, 42 and 43(1) of the same Code.

The Trial Judgment shall not be revised in its remaining part.

Reasoning

1. The Judgment of the Court of Bosnia and Herzegovina, No. S1 1 K 010132 13 Krl of 17 April 2015, found the accused Indira Kamerić guilty of committing, by the acts described in Section 1 and Section 2 of the conviction part of the Operative Part of the Judgment, the criminal offense of War Crimes against Civilians in violation of Article 142(1) of the Criminal Code of the Socialistic Federative Republic of Yugoslavia (CC SFRY), adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY¹, and, applying Articles 33, 38, 41, 42 and 43 of the CC SFRY, sentenced her to imprisonment for a term of 3 (three) years. Pursuant to Article 188(1) of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC BiH), as read with Article 186(2) of the same Code, the Accused shall reimburse the costs of criminal proceedings, the scheduled amount of which will be determined by the Court in a separate decision. Pursuant to Article 198(2) of the CPC BiH, the injured parties were instructed that they may pursue their claims under property law in a civil action.

2. Pursuant to Article 284(c) of the CPC BiH, the referenced Judgment acquitted the accused Indira Kamerić of the charges that, by the actions described in Section 1 and Section 2 of the acquitting part of the Operative Part of the Judgment, she committed the criminal offense of War Crimes against Civilians under Article 173(1)(c), (e) and (f), as read with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (the CC BiH), as read with Article 29 of the same Code. In relation to the acquittal, the Accused was, pursuant to Article 189(1) of the CPC BiH, relieved of the obligation to reimburse the costs of the criminal proceedings, which will be paid from within the budget appropriations of the Court. Pursuant to Article 198(3) of the CPC BiH, the injured parties were instructed to pursue their claims under property law in a civil action.

¹ The Criminal Code of the SFRY was adopted by the Assembly of the SFRY at the session of the Federative Council held on 28 September 1976 and published in the Official Gazette of SFRY, No. 44 of 08.10.1976. After the declaration of BiH's independence, the CC SFRJ was, pursuant to the Decree with the Force of Law of 11 April 1992, adopted as the law of the Republic of Bosnia and Herzegovina (with minor amendments), and entered into force on the day of its publication.

3. The referenced Judgment was timely appealed by the Prosecutor's Office of Bosnia and Herzegovina (the BiH Prosecution /Prosecution) and Ms. Lejla Čović, Counsel for the accused Indira Kamberić.
4. The Prosecution filed its appeal on the grounds of incorrectly and incompletely established state of facts and the sentencing decision, moving the Appellate Division of the Court of BiH to grant the appeal, revise the Trial Judgment in relation to the acquittal and impose on the Accused a lengthier prison sentence.
5. Counsel for the accused Indira Kamberić filed the appeal on the grounds of essential violations of the criminal procedure provisions, incorrectly and incompletely established state of facts, violation of the Criminal Code and the decision on sentence, moving the Appellate Panel of the Court of BiH to grant the appeal, revoke the challenged Judgment and order a hearing before the referenced Panel.
6. The Prosecution submitted no response within the statutory deadline to the appeal filed by the Accused's Counsel.
7. Counsel for the accused Indira Kamberić submitted her response to the BiH Prosecution's appeal within the statutory prescribed deadline, and moved the Appellate Panel of the Court of BiH to dismiss the referenced appeal as ill-founded.
8. Pursuant to Article 304 of the CPC BiH, the Appellate Panel held its session on 15 December 2015, which was attended by Mr. Milorad Barašin, Prosecutor of the Prosecution BiH, the accused Indira Kamberić and her Counsel, Ms. Lejla Čović.
9. During the public session, the Prosecutor briefly presented the substance of his appeal, and maintained all the reasons and proposals advanced in the Prosecution's appeal.
10. The Accused's Counsel presented her appeal's contents too, and fully maintained the reasons and proposals presented in the appeal. The Accused fully stood by her Counsel's argumentation.
11. The Accused's Counsel completely maintained the arguments and proposals contained in the response to the Prosecution's appeal, which were also fully maintained by the Accused.

12. Pursuant to Article 306 of the CPC BiH, the Appellate Panel examined the challenged Judgment within the grounds and arguments of the appeal, and decided as stated in the Operative Part herein for the reasons to follow:

I. CONVICTING PART OF THE JUDGMENT

A. APPELLATE GROUND CONCERNING THE ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS

1. Appeal filed by Counsel for the accused Indira Kamberić

(a) Essential violation of the criminal procedure provision under Article 297(1)(k) of the CPC BiH – the Operative Part of the Judgment is incomprehensive and contradictory to the reasons for the Judgment, and the Court provided no reasons on the decisive facts

13. According to the Accused's Counsel, the Trial Panel's Judgment found the Accused guilty as a person superior to the then present members of the HVO, while, in the reasoning of the Judgment, the Trial Panel found that the Accused was a member of the 101st HVO Brigade Bosanski Brod with no capacity of a superior person. Also, Counsel submitted that the way the Accused took part in the abuse of the injured party Hazba Nukić is unclear from the Operative Part of the Judgment, that the factual description of the Counts of the Indictment of which the Accused was found guilty contained no consequence of the criminal offense, and that, notwithstanding that no consequence was indicated in the Operative Part of the Judgment, the Trial Panel drew a conclusion, in the reasoning of the Judgment, concerning the consequences that resulted for the injured parties. According to the appeal, there is a contradiction between the finding under the Operative Part of the Judgment that the Accused was a member of the 101st HVO Brigade Bosanski Brod, and the finding in its reasoning, that the Accused was the Head of the Military Police Crime Sector.

14. Counsel's appeal further concluded that the Trial Panel provided no reasons on the decisive facts. Counsel submitted that the Trial Panel failed to evaluate a set of the Defense's documentary evidence concerning the Accused's capacity and, accordingly, made its findings solely on the basis of the Prosecution's evidence, which should have been evaluated as deficient in relation to the Defense's evidence.

15. The Appellate Panel has concluded that the referenced appellate complaints are ill-founded.

16. Ill-founded is the Accused's Counsel appellate complaint that there is a contradiction between the Operative Part of the challenged Judgment and its reasoning, which is apparent from the fact that the Trial Panel found the Accused guilty as a person superior to members of the HVO, namely on the basis of command responsibility, while it ensued from the reasoning of the challenged Judgment that the Accused was just a member of the 101th HVO Brigade Bosanski Brod, namely that she had no capacity as a superior person. Contrary to such appellate assertion, the Appellate Panel has noted that the challenged Judgment did not find the Accused guilty on the ground of command responsibility, but rather on the ground of individual responsibility. Such a conclusion ensues not only from the legal qualification of the criminal offense of which the Accused was found guilty and the related reasons contained in the reasoning of the challenged Judgment, but also from the mere factual description of the criminal actions described in the Operative Part of the challenged Judgment, wherein both Counts under which the Accused was found guilty described the individual actions which the Accused had committed in complicity with other members of the HVO, rather than as a person superior to the HVO members who took part in the commission of the referenced actions. Pursuant to such a factual description, the Accused, as a member of the HVO, holding no such alleged function from which her capacity of a superior person would ensue, "participated" together with other members of the HVO in the mental and physical abuse of prisoners. Therefore, it is still unclear on what grounds the Accused's Counsel based her assertion concerning the Accused's alleged superior position and the related contradiction between the Operative Part of the Judgment and its reasoning.

17. According to this Panel, also ill-founded is the appellate complaint that the factual description of the criminal offenses, contained in both the Indictment and the conviction part of the Operative Part of the challenged Judgment, described no consequence, as an essential element of the criminal offense of which the Accused was found guilty, from which the incomprehensibility of the Operative Part of the Judgment would have been apparent, as the appeal stated. In addition, the appeal stated that the contradiction between the Operative Part of the Judgment and its reasoning also existed because the reasoning of the challenged Judgment contained the related reasons. It ensues from the reasoning of the challenged Judgment that, in paras. 180-186 of the challenged Judgment,

the Trial Panel analyzed the meaning of torture and inhumane treatment in terms of the provisions of international humanitarian law for the violation of which the Accused was found guilty. Thus, the Trial Panel found, in para. 187, that the actions covered by Section 1 of the Operative Part of the Judgment resulted in the consequences constituting torture due to their intensity, continuity, as well as their combination with several different acts of commission (the injured party suffered physical pain as a result of the received blows, as well as inevitable mental pain when she was forced to sit in the witness IK-3's lap; both physical and mental pain and outrages upon person's dignity when the witness IK-3 was forced, in the presence of other persons, to squeeze her breasts and nipples, tear down her underwear and squeeze her sex organ; and ultimately, she also suffered physical pain as a result of blows to her face that she had received from the Accused, as well as outrages upon person's dignity due to all the actions undertaken against her, including when the Accused used abusive language calling her "the Chetniks' whore"); while in relation to the injured party IK-3, the resulting consequences by their intensity satisfied (the elements of) inhumane treatment, considering that, pursuant to the Trial Panel's finding, the adduced evidence showed that the aim of the Accused and the co-perpetrators was not to obtain any information from him, but rather from Hazba Nukić. In relation to Section 2 of the Operative Part of the Judgment, the Trial Panel found, in para. 197, that it ensues beyond a doubt from the undertaken criminal action against Jovo Dujčić that he had certainly suffered severe physical pain and suffering, that injuries were inflicted to his physical integrity, all of which qualifies as inhumane treatment.

18. Even though the factual description under Sections 1 and 2 of the Operative Part of the Judgment contains no explicit conclusion about the consequences of the actions undertaken, the Trial Panel properly noted, in the reasoning of the challenged Judgment, that the related finding ensues objectively and undoubtedly from the actions described in both the Indictment and the Operative Part of the challenged Judgment, namely that the undertaken actions described in such a way were undoubtedly followed by the finding concerning their consequences, namely that the described actions implied the consequences stated in the reasoning of the challenged Judgment.

19. Therefore, ill-founded are the appellate complaints that the Operative Part of the challenged Judgment would be incomprehensive and contrary to its reasons because the operative part thereof did not explain the consequence as an essential element of the criminal offense of which the Accused was found guilty, while the reasoning of the

Judgment did provide the related reasons.

20. This Panel has noted that Counsel's appellate complaint, concerning the contradictions apparent from the fact that the Operative Part of the Judgment stated that the Accused was a member of the 101th HVO Brigade Bosanski Brod, while the reasoning concluded that she was the Head of the Military Police Crime Service within the referenced Brigade, is ill-founded and arbitrary. Specifically, one's membership of the military police does not, in itself, imply a membership in the Brigade, as a larger military formation, given the fact of membership in the military police which forms part of the Brigade, rather than the civil police. In view of the foregoing, the Panel concluded that, regardless of the mentioned position in the military police - Head of the Crime Service, the Accused indeed undertook all the actions as a member of the Brigade, which is, in the concrete case, a broader term covering the concrete position too.

21. In relation to Counsel's appellate complaint, that the Court provided no reasons on decisive facts, the Appellate Panel has noted that the *prima facie* examination of the challenged Judgment, as required under the standards of review under grounds of the essential violations, did not indicate that the described essential violation existed. The Trial Panel fully acted in compliance with Article 290(7) of the CPC BiH, which provides that the Trial Panel shall state the *facts* on which it relied. Along this line, it is important to note that such approach does not mean that, in drawing conclusions on the decisive facts in its judgment, the Court had to refer to each evidence individually and to the way of its correlation with other pieces of evidence, as the appeal improperly implied, but rather that the Judgment mentioned and presented the evidence that is of essential significance for drawing a conclusion about decisive facts. Therefore, the Appellate Panel has noted from the aspect of formal and proper nature of the challenged Judgment that the Trial Panel presented sufficient and entirely admissible reasons for its positions and the findings of fact by relying on the relevant evidence, which supports the overall position taken by the Court, to be comprehensively addressed further below.

22. According to this Panel, ill-founded is the appellate assertion that the Trial Panel failed to analyze all the evidence related to provision of reasons for the establishment of decisive facts concerning the Accused's membership in the HVO, existence of a nexus between the accused's actions and the accused's identity, which was submitted by both the Prosecution and the Defense in particular. The Trial Panel found, in para. 82, that: "The Panel has examined and evaluated in detail all the evidence adduced by both the

Defense and the Prosecution. *The Panel found that, in the Accused's case, there was no mistaken identification, and determined beyond a doubt, at the same time, the fact that the Accused's status during the critical period was that of a member of the 101st HVO Brigade*". Pursuant to the reasons for the Judgment presented in the paragraphs of the Judgment, and contrary to the referenced appellate assertion related to the decisive facts, the Trial Panel also examined the Defense's evidence, in addition to the Prosecution's evidence (para. 66-81 of the challenged Judgment), and based on this analysis provided the reasons for their determination. Therefore, this Panel has held that the Trial Panel did present the substance of all relevant evidence, and thereupon also the factual findings in relation to the Accused's status and identity, having provided the related sufficient reasons in the reasoning of the challenged Judgment.

23. In view of the reasons provided in relation to the determination of decisive facts of the Accused's status and identity, the challenged Judgment's reasoning, contrary to the adverse appellate assertion, also contains the reasons related to the existence of *nexus* between the act of commission of crime (since it is clear that the Accused committed the referenced offenses as a member of the HVO Brigade), and the armed conflict. The foregoing is certainly, or to say the least, apparent from the fact the armed conflict affected, to a significant extent, the Accused's ability to commit crime, that is, her decision to commit it.

24. Considering that a more detailed explanation of Counsel's complaint concerning the foregoing would turn into a process of reviewing the established state of facts, the Appellate Panel will, at this point, conclude that the challenged Judgment is *prima facie* concentrated on the examination and evaluation of the adduced evidence, based on which it found that the Accused's guilt has been proved, and that it will provide more comprehensive explanations in the part concerning the Defense's appellate complaints on the ground of incorrectly and incompletely established state of facts.

(b) Essential violation of the criminal procedure provisions under Article 297(1)(j) of the CPC BiH – the Court's Judgment exceeded the charges brought under the Indictment

25. According to the Accused's Counsel, the Trial Panel also made an essential violation of the criminal procedure provisions under Article 297(1)(j) of the CPC BiH having exceeded the charges brought under the Indictment by inferring the conclusions about the consequences of the Accused's actions, as an essential element of the criminal offense

charged against her (for both sections of the convicting part of the Judgment), while the factual substratum of the Indictment does not contain any of those consequences.

26. The Appellate Panel has concluded that the referenced appellate complaint is ill-founded.

27. The referenced complaints were evaluated, in part, in para. 19 of this Judgment. The Panel concluded, with the related reasons provided above, that the appeal unjustifiably stated that the factual description of the criminal offense contained in the Operative Part of the Judgment, which was as adopted from the Indictment, contains no description of the consequence, as an essential element of the criminal offense of which the Accused was found guilty.

28. Therefore, since the Trial Panel made no related interventions in the Indictment's factual description, and since the full objective identity between the Indictment and the Operative Part of the Judgment already exists, the appeal unjustifiably objected that the charges were exceeded, as a result of which the above referenced violation of the criminal procedure provisions would have been made.

29. In relation to the Defense's referral to the case law in another case, concretely the Trial Judgment in *Edin Džeko*, where an acquitting judgment was rendered for certain counts, and considering the absence of consequence in the factual description of the offense, the Appellate Panel has noted that the conclusions on the violations made are being drawn within the appellate arguments and the situation on a case-to-case basis, that is in each concrete case individually.

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

30. Counsel submitted that the Trial Panel made an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH because it improperly applied Article 152(2) of the CPC BiH, when it dismissed the Defense's objection concerning the lawfulness of the Prosecution's Exhibits T-1 and T-3.

31. The Defense also submitted that the Prosecution's Exhibit T-31 (List of military police members as at 28 June 1992) should not have been admitted into evidence in terms of

Article 274(2) of the CPC BiH (proving of the content of writing), although the Trial Panel did admit it.

32. The Appellate Panel has held that the referenced complaints are ill-founded.

33. The first issue to be analyzed here is what exactly constitutes an essential/substantial violation of the criminal procedure provisions under Article 297(2) of the CPC BiH indicated in Counsel's appeal. The referenced provision provides as follows:

“There is also a substantial violation of the principles of criminal procedure if the Court has not applied or has improperly applied some provisions of this Code or during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict.”

34. Starting with the referenced provision substance, and correlating it with Counsel's complaint, the Appellate Panel has primarily noted that, in her appeal, Counsel did not explain the effects of the Trial Panel's indicated omissions concerning the lawfulness and the proper nature of the challenged Judgment, in order to be able to evaluate if it had any significant effect.

35. Therefore, a possible existence of the referenced substantial violations of the criminal procedure provisions could not be examined either.

36. Notwithstanding the foregoing, this Panel has noted that the appeal stated unjustifiably and with no arguments whatsoever, that the way of taking the statements from the witnesses during the investigation, without any question and responses being stated, has affected the lawfulness of this evidence, particularly taking into account the fact that the statements were given on a voluntary basis, with no extortions and the possible violations of human rights, and that the Defense could have clarified possibly disputable issues during the main trial through witness cross-examination.

37. As to Counsel's appellate complaints concerning the disputed Exhibit T-31 (proposal no. 15), the Appellate Panel has fully accepted the Trial Panel's view presented in para. 26, or the related reasons provided in paras. 85, 86 and 87 of the challenged Judgment. Having taken such a position, this Panel was primarily mindful of the substance of the Letter of the District Prosecutor's Office in Dobož, No. KT-P3-15/13 of 12 October 2010, attached to which was the disputed Military Police Members List for 28 June 1992. The referenced List contained quite an acceptable explanation that it was determined upon the checks made that CSB Dobož's authorized official persons had discovered the List at issue

and thereupon filed a criminal report concerning Bosanski Brod, No. 02-963/93 of 9 August 1993. The Appellate Panel has correlated the referenced fact with the Letter noting that no related information existed, that most likely no record was produced concerning the seizure of this document, but also that no records were made concerning many other documents seized in the similar way either, and concluded that there was no doubt into the authenticity of this exhibit and that thereby its lawfulness is unquestionable.

**B. APPELLATE GROUND UNDER ARTICLE 299 OF THE CPC BiH-
INCORRECTLY OR INCOMPLETELY ESTABLISHED STATE OF FACTS**

1. Appellate complaints advanced by Counsel for the accused Indira Kamberić

(a) The Accused's identity and capacity during the critical period

38. Counsel's appeal, filed on the ground of incorrectly and incompletely established state of facts, primarily contested the Panel's finding concerning the Accused's membership in the 101st HVO Brigade Bosanski Brod during the critical period. Counsel submitted that the Trial Panel omitted Prosecution's Exhibit T-21 from the reasoning, which supports the Defense's theory that the Accused was a civilian rather than a soldier.

39. In relation to the foregoing, Counsel also submitted that, in the challenged Judgment, the Trial Panel evaluated, to the prejudice of the Accused, only a portion of the document – Exhibit T-28, pursuant to which the Accused's name was included on the salary lists for August and September 1992, and did not evaluate the portion thereof stating that the Accused's name was not registered in the official records of the Military Issues Department of the Municipality Bosanski Brod. The Defense also pointed to Exhibit T-29 (Ministry of Defense Letter), which only indicated the Accused's possible membership of the HVO units. In Counsel's view, the foregoing was insufficient for proving that the war crime offense existed at all. Also, the Defense supported its theory with Prosecution's Exhibits T-30 and T-31, comprehensively explained it on pages 17 and 18 of the appeal, and submitted that the referenced evidence was evaluated only vaguely.

40. The appeal further stated that the Panel was in possession of a series of Defense's documentary evidence – HVO lists from the critical period (Exhibit O-21), containing the names of certain persons mentioned by the witnesses, but without the Accused's name,

yet the Panel gave them no credit at all, but rather evaluated Prosecution's evidence only.

41. In support of its theory that the Accused worked as a civilian, the Defense also pointed to Exhibits O-10 and O-11, and concluded that the examination of the Defense's witnesses Ferid Osmičić, Rešad Bundavica and the Accused herself also confirmed the referenced theory.

42. In contesting the Accused's identity in her appeal, after paraphrasing the witnesses' testimonies in favor of the defense (Ferid Osmičić, Rešad Bundavica, the Accused herself and Snježana Čavalić), Counsel concluded that, with regard to the Accused's identity, the Trial Panel's challenged Judgment dealt with the Prosecution witnesses' testimonies exclusively. Contrary to the Trial Panel's findings of fact, Counsel argued that the Prosecution's witnesses, who had known the Accused from before the war, were not able to identify the Accused in the courtroom as Indira whom they had seen at the Polet stadium (the testimony of witnesses IK4, Željka Dujanić, and IK 5). The Defense argued that the testimonies of witnesses Hazba Nukić and IK 1 were not correlated with witness Stana Živković's testimony.

43. The appeal particularly referred to witness Slobodanka Vidić's testimony, and stated that it was contrary to witness Ferid Osmičić's testimony.

44. The Appellate Panel has held that the referenced complaints are ill-founded.

45. Contrary to the appeal's assertions, the Appellate Panel has concluded that the Trial Panel properly established the state of facts, and therefrom drew a proper conclusion regarding the Accused's status, namely that she was indeed a member of the 101st Bosanski Brod Brigade.

46. In support of such Appellate Panel's view stands primarily the comprehensive reasoning of the Trial Verdict, wherein the Trial Panel, having examined all the evidence and stated the crucial ones leading to such a decision, explained the basis on which it found that the Accused's status was determined as such.

47. Having made such a conclusion, the Appellate Panel primarily noted, contrary to Counsel's appellate allegations, that the omission of Exhibit T-21 from the reasoning of the Judgment does not mean that it was not evaluated at all, particularly taking into account that the content of the Letter itself provided the information which was evaluated based on

the other evidence too (e.g. Exhibit T-28). To this effect, the Appellate Panel recalls that the Trial Panel is not obligated to refer to each piece of the presented evidence individually², but rather, taking the account of all the evidence, it will refer in the judgment only to the key evidence which has led to the rendering of the decision as such.

48. Contrary to Counsel's appellate complaints, the Appellate Panel has further concluded that the Prosecution's Exhibit T-28 was properly evaluated. In this regard, para. 84 of the challenged Judgment stated as follows:

"Truly, the referenced Ministry's Letter stated that the Accused was registered neither in the Ministry's official records nor in the VOB-1, 2 and 3 or VOB 1-women and others. However, based on the other existing evidence, namely the referenced members' control lists and the lists of military persons originating from the relevant period, which, correlated with the other adduced evidence, undoubtedly pointed to the Accused's status in the armed forces, the Appellate Panel has held that this fact is not of decisive significance in the way as presented by the Defense."

49. Therefore, contrary to Counsel's ungrounded complaint, the Trial Panel did evaluate Exhibit T-28 in its entirety, but despite the fact that one portion of the evidence did not indicate that the Accused was indeed a member of the referenced Brigade, it correlated it with all the other evidence, and properly concluded that the Accused's status in the armed forces was undoubtful.

50. Having examined the Defense's complaint concerning Exhibit T-29, and the fact that the Trial Panel had accepted the Defense's submission in this regard, having nevertheless correlated it with the other evidence, and presented a finding contrary to the Defense's conclusion, the Appellate Panel concluded that the Defense's approach to this piece of evidence, as well as to many others, was partial, and that it adjusted this evidence to suit the Defense's position aimed at avoiding the Accused's guilt for the charged events. Having evaluated the referenced Exhibit, the Trial Panel found that neither this Exhibit nor Exhibit T-28 was of such importance to be able to conclude beyond a doubt, based solely on those exhibits, that the Accused was a member of military formations. However, having properly acted and evaluated all the admitted evidence, the Trial Panel provided reasons for its comprehensive evaluation, both individually and in combination, made a comparison

² Appeals Chamber in *Kvočka* recalls that it is in the discretion of the Trial Chamber as to which legal arguments to address. With regard to the factual findings, the Trial Chamber is only required to make findings of those facts which are essential to the determination of guilt on a particular count. It is not

between the Defense's and the Prosecution's evidence, and, based on such an evaluation, established the decisive fact concerning the Accused's membership in military formations.

51. Therefore, even when the challenged Judgment referred to indicia only, in the concrete case to (the Accused's) "*optional membership of the HVO units*", it did so by presenting the evidence concerning a variety of the circumstances which, in their combination, configures the existence of the concrete fact of the Accused's capacity. The Appellate Panel has noted that such a position is supported in para. 86 of the challenged Judgment, along which line it particularly notes the following: "... *However, in evaluating this possibility in relation to the other adduced evidence, that is, the fact ensuing from the consistent testimonies of the Defense's witnesses, that they used to see the Accused or the person whose name at the time was Indira Vrbanjac, mother's name Nevza nee Čosić, in the police station and at the Polet stadium, wearing a uniform of the HVO military police, together with other members of the HVO, that is, in the offices located on the upper floor above the dressing rooms where the prisoners were detained (to be comprehensively explained further in the Judgment), then this evidence points, beyond any reasonable doubt, to such a status of the Accused. ...*" Therefore, the Appellate Panel was at this point mindful of the position pursuant to which "*those circumstances usually exist in combination only because this concrete fact indeed existed*"³, and thus concluded that, in the light of the advanced appellate complaints, it could not conclude that there was also any reasonably possible conclusion on the basis of the same evidence other than that drawn by the Trial Panel, which would imply that a certain fact, concretely the membership of a military formation, perhaps did not exist at all.

52. In view of the appellate grounds, the Appellate Panel has noted that Counsel's complaint that Exhibit T-30 was not correlated with the Accused's testimony is ill-founded. In examining the referenced complaint's content, the Appellate Panel has observed that the referenced evidence – the information concerning the Accused's salary calculation in the amount of KM 3,200.00, matching the period of 8 (eight) months participation in the armed forces (as also noted in the above referenced Letter), is exactly connected with the Accused's assertion that, since the conflict's outbreak up until the capture of Bosanski

necessary to refer to the testimony of each witness or every piece of evidence on the trial record (Appeals Chamber Judgment in *Kvočka et al.*, paras. 23-25).

³ ICTY, Appeals Chamber Judgment in *Delalić*, para. 458.

Brod by the VRS, in October 1992, she had been present in Bosanski Brod, whereupon she left BiH and returned no sooner than the conflict ended. Based on the foregoing, the Trial Panel found that the additional salary calculation was registered exactly for the period corresponding to the critical period. Therefore, the fact that the Trial Panel did not correlate the Accused's testimony in the way that suited the Defense, does not mean that it did not do so at all, but, on the contrary, that it did evaluate them mutually, and in a proper way, according to the Appellate Panel.

53. With regard to Exhibit T-31 (already challenged by the Defense in the part concerning essential violations of criminal procedure provisions (see para. 37 of the present Judgment), Counsel attempted to weaken this Exhibit by presenting Defense's Exhibits O-21, O-10 and O-11, arguing that the Trial Panel accepted the referenced Prosecution's Exhibit as deficient, with no evaluation of the Defense's Exhibits, which undoubtedly indicated that the Accused was a civilian. Having examined such Counsel's arguments, the Appellate Panel concluded that they are arbitrary and ill-founded, and maintained its conclusion that, contrary to the Defense's assertions, the Trial Panel did examine all the tendered evidence, provided its comprehensive evaluation, individually and in combination, confronting the Defense's and the Prosecution's evidence, and based on such an established state of facts rendered its decision on the relevant fact, concretely the Accused's membership of the 101st Bosanski Brod Brigade. In making such a conclusion, the Appellate Panel relied on the Trial Judgment's proper findings in para. 91 of the challenged Judgment. The Appellate Panel noted that the decisive fact supporting Exhibit T-31 or the disputable list of the Brigade members is the fact that the document's content corresponds with the witnesses' testimonies, namely that the same names were mentioned in both the List and the witnesses' testimonies, including Indira's name. On the other hand, the Appellate Panel has concluded that the evidence concerning the Accused's work in the Municipality does not in any way mean that the Accused *a priori* could not have worked at both places. Even if the fact that the Accused worked on sealing off the apartments and on the issuance of bridge-crossing permits, it does not, in the Appellate Panel's view, preclude quite a realistic possibility that the Accused was also present at the Polet stadium in the referenced capacity.

54. In view of the foregoing and in considering the Defense's complaints referring to a possibly mistaken identity, the Appellate Panel has concluded that they are, as such, ill-founded and aimed at avoiding the (accused's) responsibility. On the other hand, the

Appellate Panel has held that the Trial Panel's findings are completely proper, supported with arguments, and made based on the evaluation of all evidence, which in its combination provides the basis for an undoubtful conclusion about the Accused's identity.

55. In making such a conclusion, the Appellate Panel primarily referred to Slobodanka Vidić's testimony. Contrary to the Defense's assertions, this witness confirmed beyond a reasonable doubt the fact that, when it comes to a person named Indira, this is exactly the accused Indira Kamerić, whose maiden name is Vrbanjac, and whose mother is Nevzeta nee Ćosić. In this regard, the complaints aimed at challenging the referenced witness's testimony by connecting it with the allegedly opposite testimony of Ferid Osmičić, are unsuccessful because this Panel has upheld the view of the Trial Panel, which clearly found that when witness Vidić spoke about the frontyard of the house where she had encountered the Accused, the witness implied the frontyard owned by the Accused's grandfather and mother, rather than the Accused's apartment. Therefore, the Defense's submission that the Accused had lived in a housing facility did not bring into doubt witness Vidić's testimony.

56. The Appellate Panel has further noted that the Trial Panel properly correlated witness Slobodanka Vidić's testimony with that of witness Stana Živković, which were subsequently also properly correlated with Hazba Nukić's testimony. According to the Appellate Panel, ill-founded are the Defense's submissions that the Trial Panel considered only certain portions of the referenced testimonies. Specifically, exactly the appellate complaints had a partial approach to the referenced testimonies, and evaluated and correlated them in the way most suitable to support the Defense's theory. Therefore, it is clear that witnesses Vidić and Živković had been brought in before Hazba Nukić, and that up until that moment witness Živković had already learned that the person's name was Indira, and could accordingly inform Hazba Nukić about it. The trial hearing transcript of 20 March 2014, also referred to by the Defense pointing to the Court's superficial approach to Nukić's and Živković's testimony, showed the following:

Judge: Good. Please, tell me, when was the first time you essentially learned who that blond woman was, the one with the make-up, who had interrogated you?

Witness: In the room (cell), from my inmates in the camp, my late aunt Stana Živković and Marija Stanić, who had known her.

Judge: Yes. Yes. How did they know her? Do you know that?

Witness: They were from the same place; they were neighbors.

...

Judge: Good. I will ask only a few more questions regarding the colleague's questions. Thus, as far as I understood, you have learned from these other women detained together with you that this person's name is Indira Vrbanjac, isn't that correct?

Witness: Yes, from Stana Živković...

Judge: Good, and from...

Witness: and from Mara Stanić.

Judge: In relation to this...

Witness: And from Koviljka too.

...

Judge: Good. When they told you this, namely that they were neighbors, have I understood correctly that they are neighbors, did they say where, how they were neighbors; how they knew each other, and whom they knew among Indira's folks, etc.? Was there any other discussion in relation to the facts they presented to you regarding their acquaintanceship?

Witness: Well, for example, the deceased Stana Živković knew her mother directly, since the time she worked in the "Elektrodistribucija" company on the collection of electricity bills payment, and they used to have coffee together.

Judge: Good.

Witness: I was so told by Stana Živković. That's how I learned this.

57. Therefore, it was exactly the Defense who took a partial approach to the referenced testimony because, as obvious from the testimony, apart from the name of Živković, also mentioned were the names of Marija Stanić and Koviljka Stojković, whom witness Nukić generally mentioned as the accused Kamerić's neighbors living in the same town; however, in adjusting this testimony to its views, the Defense did not make it precise or emphasize that witness Nukić stated that she had known the accused Kamerić's mother rather than the Accused personally. Therefore, ill-founded is the complaint that witness Hazba Nukić's testimony is untrue. This Panel has also noted that witness Koviljka Stojković properly testified about the Accused's identity, which was omitted by the Defense, since obviously it does not support its theory, and which is mentioned in para. 102 of the challenged Judgment as follows:

"In addition, the Accused's testimony was correlated with the Defense's

documentary evidence, showing that the Accused was an employee of the Bosanski Brod Municipality; with witness Koviljka Stojković's testimony read out at the main trial, where the witness stated that "... once we have arrived at the stadium, they took us out of the vehicle and brought us into a room where *Indira Vrbanjac* worked. Then I addressed *Indira Vrbanjac* whom I had known from before through my sister, who had worked in the Bosanski Brod Municipal Assembly..."⁴; it was also correlated with the testimony of witness Jelka Maleš, Koviljka Stojković's sister, which was read out at the main trial, and in which the witness recalled that several uniformed women were in the Polet stadium prison, including Indira whom she had known from before; and, ultimately, with the read out testimony of witness Savo Pejić, who stated "...I think that the person in charge of the camp was one *Indira*, lawyer, who also took the most active part in the torture of captured Serbs.... Her office was right at the entrance to the Stadium premises....". The Panel has found beyond a doubt that these witnesses also identified the person named Indira Vrbanjac as the Accused, who was indeed a lawyer, employed with the Municipality.⁵

58. In view of the foregoing, the complaint regarding the witness IK-1's testimony is also ill-founded. In relation to Željko Dujanić and IK-4, the Panel concluded the following. The Appellate Panel has held that the process of witness IK-4's identification of the accused is rather problematic and only to a lesser extent reliable, in terms of the Prosecutor's short question if he recognized the Accused or not, particularly bearing in mind that all the witnesses, pursuant to their own characteristics of perception, observe and present what they had memorized in relation to the face and body of the person they testify about, and that, understandably, given witness IK-4's state of fear and uncertainty at the time, he might have experienced and viewed the referenced situation differently, and that, while re-experiencing his traumas during the testimony, he could not, in an instant, correlate the Accused's physical appearance, which has surely changed in the meantime. In relation to witness Željko Dujanić's testimony, the Appellate Panel reviewed the main trial transcript dated 25 February 2014, and noted that the Defense, in constructing its complaint on this ground, had a partial approach to this testimony and took into account only the last response given by the witness after several questions posed in relation to the Accused's identification. Along this line, the Panel has noted that the witness was confused several times with regard to the Accused's physical appearance, because it was manifestly changed, which obviously resulted in his ultimate response.⁶ It is also interesting that, at

⁴ T-10.

⁵ T-10 – Witness Examination Record, made in chronology by the State Investigation and Protection Agency, No. 17-12/03-04-2-115-81/07 of 6 December 2007; T-6 - Witness Examination Record for Savo Pejić, made by the Police Station Modriča, No. 11-6/02-230-194/04 of 9 July 2004; T-7 Witness Examination Record for Jelka Maleš, made by the Police Station Brod, No. 11-9/02-230.5-9/06 of 29 May 2006.

⁶ **Judge:** Good. Prosecutor, you may proceed. Do you know, are you aware that Indira Kamerić is present in this courtroom? Do you recognize her?

Witness: Well, she has changed, and I think she is not like....

this point, the Defense referred to this (non)-identification, which had been alleged to be unlawful, pursuant to the transcript.⁷

59. The Accused's identification by witness IK-5 is irrelevant, particularly in relation to the referenced part of the convicting part of the Judgment, since an acquittal had been rendered in relation to the acts committed against IK-5.

60. Ultimately, in relation to the witnesses on which the Defense insisted as they suited its theory (Ferid Osmičić, Snježana Čavalić and Rešad Bundavica), this Panel has fully upheld the Trial Panel's finding in paras. 113 and 114 of the challenged Judgment, which provided the evaluation of these witnesses' testimonies.

61. In making such a conclusion, the Appellate Panel was, as well as the Trial Panel, mindful of the changeable character of certain (personal) characteristics, such as are the hair color, eye-sight, etc. As also found by the Trial Panel, the findings of the eye clinic are irrelevant, considering that it does not originate from the relevant period. In relation to the hair color, this Panel has also pointed to Exhibit T-14, from which it ensues that the Accused used to have bright (blond) hair at a certain period of time in the past, which further undoubtedly points to the conclusion that at certain stages of her life she had changed her hair colors. Based on the foregoing, neither witness Osmičić nor the Accused were credited along this line.

62. Therefore, based on all the foregoing, the Defense's appellate complaints related to the Accused's capacity are ill-founded, which upholds all the factual findings of the Trial

Judge: Could you identify her today? Do you remember her?

Witness: Well, I could not recognize her in the street if we met...

Judge: Bearing in mind her physical appearance and the fact that you had known her, would you be able to recognize her today?

Witness: Well, I could recognize that appearance/figure, now ...

Judge: Look carefully around the courtroom if there is any such person in here? If you remember, if you can, and if you cannot, just say that you cannot identify her.

Witness: I cannot...

Judge: Pardon me?

Witness: She doesn't even remotely look like she used to.

⁷**Prosecutor:** Is she here among us today?

Witness: Yes.

Prosecutor: Can you show her before the Court?

Witness: She is over there, across from us.

Prosecutor: Please, describe to us what is she wearing?

Counsel: Objection, Honorable Judges. I am just objecting. This is an unlawful identification, non-compliant with the CPC.

Panel regarding the Accused's membership of the 101st Bosanski Brod Brigade. Accordingly, also proper is the challenged Judgment's finding of the established nexus between the act of commission (of the offense) and the armed conflict, as the key element in the proving of the criminal offense of War Crimes against Civilians.

(b) Section 1 of the Operative Part of the Judgment (Count 2 of the Indictment) – abuse of prisoners Hazba Nukić and IK3

63. In relation to Section 1 of the Operative Part of the Judgment, Counsel primarily challenged again the Accused's status, that is, her membership of the 101st Bosanski Brod Brigade. The Defense further attempted, through the presentation of the previous statements of the witnesses-injured parties, Hazba Nukić and IK-3, to indicate that these witnesses had not mentioned the critical incident before, and that is unclear why the expert witness's Finding and Opinion or Exhibit T-39 was admitted, considering that it cannot be correlated with Section 1 of the Operative Part of the Judgment, which also brings into question the testimony of witness Stana Živković, arguing that all the foregoing resulted in the incorrectly and incompletely established state of facts.

64. The Appellate Panel has held that the foregoing appellate complaints are ill-founded.

65. This Panel primarily noted that it has already provided the explanation of the conclusion concerning the properly established fact of the identity of the female individual named Indira, whom the two witnesses-injured parties, Hazba Nukić and IK-3, described as one of the co-perpetrators of the ill-treatments they had suffered as described in this Section of the Operative Part of the Judgment.

66. The attempt of the Accused's Counsel to bring into doubt the testimonies of the witnesses-injured parties given at the main trial where they comprehensively described the critical incident, by pointing to their previous statements, is groundless and inadmissible in this Panel's view. In making such a conclusion in relation to Hazba Nukić, the Appellate Panel was led by the fact that this witness has also been subjected to many other, much more serious instances of ill-treatment, and that her testifying about the referenced abuse, also a very difficult incident, was most likely irrelevant to her at the time, when she was in the situation of recounting the details and re-experiencing the traumas originating from far more dramatic incidents. In relation to the witness IK-3, this Panel has held that, most likely, it was inconvenient to him to talk about someone else's "suffering", considering that

the critical incident addressed in Section 1 of the Operative Part of the Judgment to a much larger extent affects the dignity of the injured party Hazba Nukić. Therefore, the Panel considers as completely proper the Trial Panel's factual findings comprehensively explained in the first instance Judgment, which were primarily based on the testimonies of these witnesses-injured parties, particularly bearing in mind the reasons for the challenged Judgment provided in para. 156: "*The Panel has held that it is impossible that anyone would make up such an incident, and particularly that not just one person but two persons should give false evidence about it. ...*"

67. In relation to the Defense's complaint concerning the irrelevance of Exhibit T-39 – the expert witness's Finding and Opinion, the Appellate Panel has noted that the Trial Panel obviously evaluated it as a supporting one, particularly with regard to the fact that the injured party Hazba Nukić had been abused as a prisoner at the Polet Stadium in Bosanski Brod, as well as that she did mention this when she spoke about the history of her disease. The testimony of Stana Živković was evaluated in the same manner. Therefore, in addition to the key evidence, the injured parties' testimonies, the foregoing was also evaluated in terms of the support of the referenced statements about their stay and ill-treatment at the Polet Stadium rather than as the direct evidence in relation to the critical incident. In view of the foregoing, these appellate complaints advanced by the Accused's Counsel are also dismissed as ill-founded.

68. Despite Counsel's repeated referral to the alleged practice in other judgments, this Panel has reiterated that it takes action in the concrete case, with no obligation to correlate this case with other cases, but exclusively with the obligation to review the concrete state of facts, within the limits of the complaints advanced in the appeal at issue.

(c) Section 2 of the Operative Part of the Judgment (Count 3 of the Indictment) – Abuse of prisoner Jovo Dujić

69. Contesting the proper nature of the established state of facts in relation to this Section of the Operative Part of the Judgment, Counsel's appeal pointed to the lack of logic and inconsistencies in the testimonies of the witnesses who gave evidence about the charged event. The appeal tried to contest the Accused's participation in the referenced incident and concluded that the Court should have acquitted the Accused of the referenced charges by applying the principle of "*in dubio pro reo*".

70. Further in relation to the referenced incriminating event, Counsel contested the Accused's membership of the armed forces.

71. The Appellate Panel has concluded that the foregoing complaints are ill-founded.

72. Contrary to the submissions of Counsel, who wanted to use the witnesses' different positions during the abuse of Jovo Đujić to support the defense's theory by highlighting the alleged inconsistencies in the witnesses' testimonies, this Panel has held that, in para. 172 of the Trial Judgment, the Trial Panel quite properly found as follows:

"In addition, all essential parts of witness Narić's testimony are consistent with that of witness IK-4, who also testified in such a way from which the Panel concluded, beyond a doubt, that he was indeed an eye-witness to the incident at issue. Also, the Panel took into account the important fact ensuing from these two witnesses' testimonies, namely that they did not observe the event from the same site. Witness Narić was inside the stadium premises, whereas witness IK-4's testimony shows that IK-4 stood in front of the entrance (to the stadium premises), that is, on the football pitch. It also ensues from the witnesses' testimonies that prisoner Đujić was repeatedly abused during the same day, namely that soldiers made breaks and returned to beat him anew. Therefore, it is certain that the two witnesses indeed saw different segments of the event at issue."

73. Therefore, after such a Trial Judgment's reasonable and proper finding, the Appellate Panel considers inadmissible Counsel's complaints by which she made efforts to treat as contradictions the inconsistencies in the testimonies of the witnesses, who had obviously watched different segments of the incident from different positions, which, if granted, would have resulted in the finding that their testimonies were unreliable, and, ultimately, in the application of the principle of "*in dubio pro reo*".

74. Considering Counsel's brief appellate reference to the section of witness Branislav Narić's unadmitted testimony, where he stated that the Accused had jumped on the prisoner's backs with high-heeled shoes (on her feet), and that she also raised the issue of shoes at the Appellate Panel's session (in terms that it is impossible that the Accused could wear high-heeled shoes, since the size of the referenced shoes to be adequate for the Accused did not exist at all), the Appellate Panel referred to the Trial Panel's finding in para. 177 of the challenged Judgment. The Appellate Panel noted that the allegation concerning the Accused's jumping in high-heeled shoes was dismissed, wherefore it cannot be presented to support the defense either, as it was anyway omitted from the factual description. This does not mean that this witness had falsely charged the Accused, as the appeal alleged.

75. With regard to Counsel's objection concerning the Accused's capacity, that is, raising anew the issue of the Accused's membership of the 101st Brigade Bosanski Brod, this Panel has referred to the earlier presented explanation of such complaint's unjustifiability.

76. In view of all the foregoing, the Appellate Panel has ultimately held that the Trial Panel did establish the state of facts completely and properly in relation to Sections 1 and 2 of the convicting part of the Operative Part of the Judgement wherefore, as already explained, it dismissed as ill-founded all the complaints advanced on this ground. In this regard, it is important to note that, in determining the justifiability of the Trial Panel's finding, the Appellate Panel has always borne in mind that it should not lightly disturb the state of facts established by the Trial Panel, considering that the presentation and evaluation of the evidence tendered at the main trial is primarily the Trial Panel's task. Therefore, by relying on the standard of a reasonable trier of fact, the Appellate Panel should also take account of the state of facts established by the Trial Panel.

C. APPELLATE GROUND UNDER ARTICLE 298 OF THE CPC BIH – VIOLATION OF THE CRIMINAL CODE

1. The appeal filed by the Accused's Counsel

(a) The finding concerning the "civilian victims"

77. Even though Counsel subsumed her challenging of the referenced finding under the appellate ground of the incorrectly and incompletely established state of facts, on which the proper application of the Criminal Code depends, the related appellate complaints will be addressed in this part of the Judgment.

78. In contesting the injured party IK-3's civilian status, Counsel referred to the evidence this witness gave at the main trial, while, in support of her position that the injured party Jovo Dujic was not a civilian, Counsel pointed to the substance of Exhibit O-21, that is, the Operative Group Command Certificate of 20 September 1993 indicating that Jovo Dujic had been killed as a member of the VRS.

79. The Appellate Panel has held that the foregoing appellate complaints are ill-founded.

80. With regard to the challenged civilian status of witness IK-3, that is, the Accused's

Counsel emphasis placed on his testimony, the Appellate Panel has reviewed the main trial transcript of 27 March 2014, and concluded that the Defense had considered the referenced witness's testimony but partially, using only a part thereof in the way that suited it best. Along this line, the Appellate Panel has pointed to the following section of the referenced testimony:

Prosecutor: Have you surrendered those weapons at a certain point?

Witness: Yes, I have.

Prosecutor: When and to whom?

Witness: When we were expelled from Barica, after the HVO cleansed these three villages and expelled us to the other bank of the Ukrina river, to the village of Bosanski Lužani, where we surrendered our weapons.

Prosecutor: To whom did you surrender your weapons?

Witness: We surrendered it in the Local Community of Bosanski Lužani, where the office of Red Cross or the Crisis Staff President was seated. I do not know what was there at the time...It began there.

...

Prosecutor: When were you captured?

Witness: When we started off towards the place of Osinje, as we received information that my neighbor Jovo Stjepanović's (*unclear*) were placed in Osinje. We started off by car. At the Komarica barricade, along the ordinary Dobož – Derventa route, barricades were set up, and anti-tank mines planted along the entire road. That is where we were stopped.

Prosecutor: Who manned this barricade?

Witness: The HVO. However, even prior to this, they had placed at this site a young man, member of the reserve police force, the then militia, who stopped us. When he asked for our documents, I noticed some persons coming towards the vehicle from both the left and right sides.

Judge: Can we make it concrete now, without going so broadly into details, that is, can we be mindful of the factual status of the Indictment?

Prosecutor: We can. We can. We are coming to that. What happened to you at the barricade?

Witness: Well, we were captured there. Our car was confiscated. We were abused; my colleague was shot at. This is a short version, since I have given many statements. This is just a brief account in which you can find all you are asking about, where I could describe...

Prosecutor: Witness IK-3, please. I know that you have given several statements, but please, could you just respond to these concrete questions

related to what I am interested in concerning this case.

Witness: OK, yes. I will tell you briefly...

Judge: Mr. IK-3, please always listen to the Prosecutor's question first and then respond in accordance with the questions posed. If any further explanation is necessary, the Prosecutor will clearly ask for a particular additional explanation.

Witness: OK.

Prosecutor: Concretely, where were you captured? What place was in question?

Witness: The village of Komarica.

Prosecutor: Who captured you?

Witness: The Croatian Defense Council or the HVO. They transported us to Slavonski Brod from there.

81. Therefore, it is obvious from the foregoing that the Defense took into account only a part of the referenced witness's testimony, while taking no account of the part where the witness stated that, already before his capture, the injured party had surrendered his weapons, and that he was captured at the barricade as a civilian and unarmed person, rather than as a soldier.

82. In relation to the injured party Jovo Dujić, this Panel has upheld the Trial Panel's finding since there is no reliable document concerning this person's status as a prisoner of war. Thus, the Panel had to conclude that the referenced person was a civilian, particularly taking into account that all prisoners were interned together during their captivity at the stadium, including those who were undoubtedly civilians, even in the Defense's view, and that they were all unarmed for a protracted period of time. It obviously follows from the foregoing that the party to the conflict that had captured the prisoners treated none of them as a war prisoner.

83. Since obviously, at the moment when they surrendered to members of the HVO, or when they were subjected to ill-treatment by the Accused, neither witness IK-3 nor Jovo Dujić were treated as persons captured in the conflict, even the Accused should have considered them as civilians, as the challenged Judgment properly found in para. 132. Given the foregoing fact, the witnesses-victims enjoyed the protection of Article 3 of the Geneva Convention on the Protection of Civilian Persons at Time of War of 12 August

1949⁸, even during their first contact with the Accused. This is a decisive fact which the Accused had reason to know and with regard to which the Trial Judgment presented valid reasons.

84. Article 3 of the Convention strictly defined the category of protected persons. Pursuant to this Article, protected persons shall be those taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention or any other cause. Therefore, not only that several categories of persons have been protected by one article, but these persons are also equaled with regard to their status.⁹

85. In view of the witnesses' testimonies, the concrete case obviously concerns the category of 'detained' persons. Considering the overall circumstances, the Accused had reason to know both this and that those persons were entitled to adequate protection, as also properly found in the Trial Judgment.¹⁰

86. In view of all the foregoing, the Accused's actions concerning the treatment accorded to the referenced persons were properly legally qualified as War Crimes against Civilians under Article 142(1) of the CC SFRY.

(b) Consequences of the criminal offense

87. The Appellate Panel has considered Counsel's appellate complaints advanced in this regard, and concluded they are just a repetition of the complaints advanced in relation to the essential violations, along which line this Panel has already provided its evaluation, to which it refers at this point, with no other considerations thereof (see paras. 17-19 and 27-29 of the Judgment).

⁸ Common Article 3 of the Geneva Conventions, the so called 'small-scale Convention' – this Article is common to all the four 1949 Geneva Conventions.

⁹ See *Prosecutor v. Duško Tadić*, case No. IT-94-1-T, Opinion and Judgment, 7.5.1997., para. 616. ("Even if they were members of the armed forces of ... or otherwise engaging in in hostile acts prior to capture, such persons would be considered 'members of armed forces' who are 'placed hors de combat by detention'." Consequently, those persons enjoy the protection of those rules of customary international law applicable to armed conflicts, as contained in Article 3 of the Statute.)

¹⁰ See *Prosecutor v. Pavle Strugar*, case No. IT-01-42-A, Appeals Chamber Judgment, 17.7.2008., footnote 460 (... if a victim was found to be detained by an adverse party at the time of the alleged offense against him, his status as either civilian or combatant would no longer be relevant because a detained person cannot, by definition, directly participate in hostilities. Therefore, an attack against such person would automatically be unlawful.)

(c) Essential elements of the criminal offense of War Crimes against Civilians; findings of the Panel concerning the existence of “complicity”; findings of the Panel concerning the existence of intent

88. Bearing in mind that Counsel’s appellate grounds were combined, that is, correlated with the above referenced grounds for the purpose of drawing a final conclusion, this Panel has held that the referenced complaints should be addressed jointly in order to respond to them in a unified and understandable manner.

89. Starting from the fact that the Accused’s status was not that of a superior person, Counsel submitted that, in relation to the witness IK-3’s apprehension and abuse, there is no action directly undertaken by the Accused to which any consequence could be attributed. In relation to Hazba Nukić’ torture, Counsel concluded that the actions, which occurred in the Accused’s presence but were committed by other persons against the referenced injured party, cannot be charged against the Accused on the ground of individual responsibility, and that the other two slaps cannot qualify as inhumane treatment.

90. In relation to the actions undertaken against the injured party Jovo Dujić, the appeal stated that the acts committed by others were again attributed to the Accused, and that an issue arises as to whether the Accused’s actions – hitting (the prisoners) with an iron bar – indeed resulted in any consequences.

91. In view of the foregoing, Counsel submitted that Article 298(a) and (b) of the Criminal Code was violated (the charged offense is not a crime, there are circumstances precluding the criminal responsibility).

92. In relation to the existence of complicity, Counsel submitted that the related Trial Panel’s finding was not made based on the proper application of Article 22 of the CC SFRY, and that the related reasons, provided in the challenged Judgment, bring into doubt the perpetrator’s activity.

93. The Defense submitted that the challenged Judgment provided only an arbitrary note in relation to the Accused’s psychological/mental relationship as a perpetrator.

94. The Appellate Panel has concluded that the referenced appellate grounds are ill-founded.

95. With reference to the relevant parts of the present Judgment addressing the foregoing issue, the Appellate Panel has primarily recalled that the Accused was neither charged under the Indictment nor found guilty under the challenged Judgment on the ground of command responsibility, but rather on the ground of individual responsibility.

96. In this Panel's view too, the Trial Panel properly found that, in terms of Article 22 of the adopted CC SFRY, complicity indeed existed in the Accused's actions factually described in the Operative Part of the challenged Judgment.

97. Pursuant to Article 22 of the CC SFRY, the Appellate Panel has noted that the general prerequisite for complicity, as a form of participation in the crime commission, is a joint decision to commit an offense: each perpetrator (individually) decides to commit an offense; each person, along with another person, commits his/her own offense, but the contribution itself is such that, within both the joint decision to commit the offense and the division of roles, it is a substantial part of the process of the offense realization plan(ning). The focus is on the *joint commission of offense*, which is being realized by way of *joint participation* in the very act of commission or in some *other way*. Co-perpetrator's participation in the commission of crime is substantially expressed in the fact that, in acting with intent related to the criminal offense, together with other persons, the co-perpetrator undertakes such actions on which the manner and the extent to which the offense will be effectuated depend. Therefore, in the concrete case, the Accused did act with intent; the Accused wanted the occurrence of its consequence, and, accordingly, during the entire process of realization of the criminal offense, the Accused as a co-perpetrator had the will and possibility to have a decisive impact on the development of events and the occurrence of the consequences covered by intent.

98. In relation to the injured party Jovo Dujić, the Panel had held that, in the absence of arguments, the Defense again raises the issue of consequence, and an illogical issue of whether the Accused's hitting of the victim with an iron bar indeed resulted in the prohibited consequence. In this regard, the Panel has referred to para. 197 of the challenged Judgment.

99. In relation the challenged existence of subjective or mental relationship of the Accused as a co-perpetrator, and the Defense's submission related to the absence of the reasoning for the element of knowledge and awareness of the consequence itself, the Appellate Panel has held that, in para. 199 of the challenged Judgment, the Trial Panel

made a proper and sufficiently reasoned finding by stating as follows:

“In addition, the Panel has found that the element of intent - *mens rea* existed, and that it is apparent from the Accused’s awareness that by her actions she is committing a criminal offense. This is so bearing in mind all the circumstances under which the actions against the injured parties were committed, particularly the length and intensity of mistreatment, as well as the other circumstances. The Panel has found that the Accused was aware of both her actions and the fact that the prohibited consequences would occur as a result of her actions. Thus, the Accused’s conduct clearly showed that she indeed wanted to effectuate such a consequence. Therefore, considering that no evidence was tendered which would bring into doubt her mental competence/sanity at the time of the referenced actions’ commission, the Accused is held criminally liable for the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY (adopted based on the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY), which was committed in terms of Article 11 of the CC SFRY, as read with Article 22 of the CC SFRY.”

D. APPELLATE GROUND UNDER ARTICLE 300 OF THE CPC BiH – DECISION ON SENTENCE

100. Considering that the Prosecution’s appeal also challenged the convicting part of the Judgment in relation to the length of sentence, the Appellate Panel will at this point evaluate the complaints of both the Prosecution and the Defense concerning the convicting part of the Judgment on the referenced ground. Also, the Panel will further below particularly address the remaining part of the Prosecution’s appeal challenging the acquittal under the Operative Part of the Judgment.

1. Appeal filed by the Prosecution

101. The Prosecution submitted that the three-year prison sentence is inadequate, particularly bearing in mind the consequences, the victims’ constant degradations and their number, motives, humiliation, continuity, far-reaching effects and the fact the victims will suffer from the related permanent consequences. The appeal concluded that neither special nor general deterrence could be achieved by the imposed sentence, which offered no satisfaction for the victims whatsoever.

2. Appeal filed by the Accused's Counsel

102. Counsel's appeal concluded that, considering that the Court made the essential violations of the criminal procedure provisions and incorrectly and incompletely established the state of facts, the Accused should be relieved of criminal liability. Considering such an appeal, the Appellate Panel had to review the sentencing decision made under the challenged Judgment on the ground of extended effect of the appeal laid down in Article 308 of the CPC BiH.

3. Conclusion of the Appellate Panel

103. The Appellate Panel has noted that the Prosecution's appeal justifiably indicated that the sentence imposed on the Accused is too lenient and inadequate to the gravity, the consequences of the criminal offense of which the Accused was found guilty, and the degree of the Accused's criminal liability. In making such a conclusion, the Appellate Panel has primarily relied on the fact that it is rather rare, as described in Section 1 of the convicting part of the Operative Part of the Judgment, that a woman should be able to commit such ruthless acts against another woman, with no compassion or thoughtfulness whatsoever, points to a greater degree of the Accused's criminal responsibility, and that, in the concrete case, it should have been evaluated as an aggravating circumstance. In view of the foregoing, and bearing in mind Article 33 of the CC SFRY, which regulates the purpose of punishment, the Appellate Panel has concluded that the sentence of imprisonment for a term of 4 (four) years is the only adequate punishment for the criminal offense of which the accused Indira Kamerić was found guilty, that, from the aspect of both the special and general deterrence, such a sentence is justified and necessary in order to achieve the purpose of punishment.

104. Considering the foregoing explanation, and the earlier conclusions that the Trial Panel made no violation of the criminal procedure provisions, that the state of facts was established properly and completely, and that the aim of the Defense's related complaint was merely to acquit the Accused of her responsibility with no consideration of the length of sentence, in terms of its reduction, the Appellate Panel has concluded, based on the foregoing and with no explanations in more detail, that Counsel's appeal is ill-founded, even in its extended effect.

105. For all the foregoing reasons related to the convicting part of the Judgment, the

appeal filed by the Accused's Counsel had to be dismissed as ill-founded, and the Prosecution's appeal honored in part. Thus, pursuant to Article 314(1) of the CPC BiH, the Appellate Panel revised the Trial Judgment in its sentencing part and decided as stated in the Operative Part of the Judgment.

II. APPELLATE GROUNDS IN RELATION TO THE ACQUITTAL

A. APPELLATE GROUND UNDER ARTICLE 299 OF THE CPC BIH – INCORRECTLY AND INCOMPLETELY ESTABLISHED STATE OF FACTS

106. Since the Appellate Panel shall act strictly within the limits of appellate grounds and arguments, it has primarily noted that the Prosecution's appeal provided no complaints in relation to Section 1 of the acquitting part of the Judgment, wherefore the Judgment could not be reviewed in this part at all. Therefore, the Panel will further below provide only the reasoning concerning the examination of the challenged Judgment from the aspect of the incorrectly and incompletely established state of facts in relation to Section 2 of the acquitting part of the Operative Part of the Judgment.

1. Section 2 of the acquitting part of the Operative Part of the Judgment (Count 4 of the Indictment)

107. Having referred to the testimonies of witnesses IK-1 and IK-5, as well as to Hazba Nukić's statement given during the investigation, the Prosecution concluded that the Court should not have acquitted the Accused of the charges under this Count of the Indictment.

108. The Appellate Panel has held that the referenced complaint is ill-founded.

109. In making such a conclusion, the Appellate Panel has relied on the Trial Panel's proper finding that there are multiple differences in the witnesses' testimonies regarding the referenced Count of the Indictment, and that, in such a situation, considering the lack of evidence, the decision had to be made pursuant to Article 284(c) of the CPC BiH.

110. The Prosecution's allegation that the Court erred by not crediting the witness IK-1's testimony, is ill-founded because the Trial Panel, which was best positioned to evaluate

the evidence given directly before it, found in para. 229 of the Trial Judgment that, obviously, the referenced witness did not want to state anything she was uncertain about, and that, accordingly, she emphasized when something was a mere assumption and provided the related explanations. Thus, this witness clearly explained with regard to the Accused that the witness's impression, as well as that of the other witnesses, was that the Accused was the person in charge, and that on this basis she also assumed that the Accused took the prisoners out together with Manda. The foregoing is acceptable for this Panel too. Therefore, considering both the foregoing and the fact that the witness designated the person named Manda as the principal culprit, and charged the Accused merely on the assumption that she was "the person in charge", while the Prosecution did not develop its theory on the basis of any leading or commanding function on the part of the Accused, the Appellate Panel has concluded that the Prosecution's complaint is ill-founded and arbitrary.

111. In relation to the Prosecution's allegation that the Accused should not have been acquitted of charges on the ground of responsibility, considering the testimony of witness IK-5, who affirmed that the accused Indira Kamberić had showed to soldiers some imprisoned women, who were subsequently taken to perform forced labor, and repeatedly raped on such occasions, the Appellate Panel has concluded that this assertion did not bring into doubt the state of facts established in this part of the challenged Judgment. Specifically, the testimonies of witnesses IK-1, Hazba Nukić, Slobodanka Vidić, Savo Pejić and Sreto Pavlović are contrary to witness IK-5's testimony, as also found by the Trial Panel in para. 232 of the challenged Judgment. Along this line, the Appellate Panel has primarily upheld the challenged Judgment position that the alleged finger-pointing at witness IK-5 and Hazba Nukić cannot be directly correlated with their subsequent taking to perform forced labor and subjecting them to abuse. This is so considering that this witness explained that the taking the women away would occur subsequently, and that other soldiers, rather than those who had been present there together with Indira at the moment when they were pointed at, would come to take them away.

112. Considering that the Trial Panel already accepted as reliable the testimony of witness Slobodanka Vidić, who had known the Accused from before, which was evaluated as reliable in relation to Section 1 of the convicting part of the Judgment, that in relation to this charge witness Vidić stated that she had never seen Indira taking any women out of the locker room, and that the Panel clearly stated, by accepting Hazba Nukić's evidence in

relation to Section 1 of the convicting part, that the fact that this witness did not want to unjustifiably charge the Accused contributed to its reliability since the witness did not blame her for the events covered by Count 4 of the Indictment, the Appellate Panel has concluded that witness IK-5's testimony, which contradicts the foregoing, could not be accepted since it was the only such evidence, and that due to the inconsistencies in the referenced testimonies, pursuant to the principle of "*in dubio pro reo*", an acquitting decision had to be rendered in relation to the referenced charge under Count 4 of the Indictment.

113. Considering this Panel's view, that the state of facts was properly established in relation to the acquitting part of the Judgment, any deliberation on the criminal sanction along this line would be irrelevant.

114. For the foregoing reasons, the Appellate Panel has concluded that the Prosecution's appeal unjustifiably challenged the acquitting part of the Trial Judgment on the ground of incorrectly or incompletely established state of facts.

MINUTES-TAKER

Legal Officer

Ena Granić

PANEL PRESIDENT

JUDGE

Dr. Dragomir Vukoje

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