



**No:** X-KŽ-06/282

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**Panel:** Judge Hilmo Vučinić as the Presiding Judge  
Judge Phillip Weiner, as Panel Member  
Judge Miloš Babić, as Panel Member

**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

versus

**ZORAN ĐERIĆ, PERICA BUNDALO, RODOLJUB TRKULJA, STOJKO  
BLAGOJEVIĆ, MIRO JURIŠIĆ, MLADEN IVANIĆ, ZORAN ŠUPETA,  
DRAGIŠA DRAGUTINOVIĆ, ZDENKO SAKAN, MILORAD MARJANOVIĆ,  
MIRKO ROKVIĆ, RADENKO BOROJEVIĆ AND NOVICA DAVIDOVIĆ**

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**SECOND INSTANCE VERDICT**

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

**Heikki Wendorf**

**Defence Counsel for the appellant Miro Jurišić:**

**Mirko Dabić and Bekir Ferizović**

**Defence Counsel for the appellant Mladen Ivanić:**

**Siniša Đorđević**

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**Number: X-KŽ-06/282**  
**Sarajevo, 27 August 2009**

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

The Court of Bosnia and Herzegovina, Panel of the Appellate Division of Section II for Organized Crime, Economic Crime and Corruption, comprised of Judges Hilmo Vučinić, as the Presiding Judge, and Phillip Weiner and Dr. Miloš Babić, as members of the Panel, with the participation of the Legal Advisor -Assistant Neira Kožo, as the Minutes-taker, in the criminal case against the Accused Zoran Đerić, Perica Bundalo, Rodoljub Trkulja, Stojko Blagojević, Miro Jurišić, Mladen Ivanić, Zoran Šupeta, Dragiša Dragutinović, Zdenko Sakan, Milorad Marjanović, Mirko Rokvić, Radenko Borojević and Novica Davidović, for the criminal offence of Criminal Association, in violation of Article 370 (1) and (2) of the Criminal Code of Republika Srpska (CC RS), criminal offence of Abuse of Office or Official Authority, in violation of Article 337 (4) of the CC RS, criminal offence of Incitement to Abuse of Office or Official Authority, in violation of Article 337(4) as read with Article 24 of the CC RS, criminal offence of Forest Theft, in violation of Article 424 (2) of the CC RS, and the criminal offence of Giving Gifts and Other Forms of Benefit under Article 218 (1) of the Criminal Code of Bosnia and Herzegovina, deciding upon the Appeal of the Prosecutor's Office of Bosnia and Herzegovina dated 22 August 2008, the Appeal of the Defense Counsel for the Accused Miro Jurišić, Attorney Mirko Dabić dated 30 August 2008, and the Appeal of his Co-counsel, Attorney Bekir Ferizović dated 15 September 2008, the Appeal of the Accused Mladen Ivanić dated 16 September 2008 and the Appeal of his Defense Counsel, Attorney Siniša Đorđević dated 22 September 2008 filed from the Verdict of the Court of Bosnia and Herzegovina, number: X-K-06/282 dated 24 June 2008, at the session of the Panel held on 27 August 2009, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Heikki Wendorf, the Accused: Zoran Đerić, Perica Bundalo, Rodoljub Trkulja, Stojko Blagojević, Miro Jurišić, Mladen Ivanić, Zoran Šupeta, Dragiša Dragutinović, Milorad Marjanović, Mirko Rokvić, Radenko Borojević and Novica Davidović, in the absence of duly informed Zdenko Sakan, and their Defense Counsels – Attorneys: Goran Bubić, Nikica Gržić, Milica Cvijanović, Mirko Dabić, Siniša Đorđević, Ismet Mehić, in the absence of duly informed attorneys Dragan Radović, Nebojša Pantić and Bekir Ferizović, issued the following:

## **VERDICT**

### **I**

**The appeal of the Prosecutor's Office of Bosnia and Herzegovina is refused as unfounded, and the Verdict of the Court of Bosnia and Herzegovina, number: X-K-06/282 dated 24 June 2008 is upheld in relation to the Section dismissing the charges,** with regard to the Accused: Zoran Đerić, Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević, for the criminal offence of Criminal Association in violation of Article 370 (2) of the CC RS; and the **Section acquitting of the charges:** the Accused Mladen Ivanić for the criminal offence of Criminal Association in violation of Article 370 (1) of the CC RS; the Accused: Mladen Ivanić, Zoran Đerić, Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević, for the criminal offence of Incitement to Abuse of Office or Official Authority, in violation of Article 337 (4)

as read with Article 24 of the CC RS; the Accused Mladen Ivanić and Perica Bundalo for the criminal offence of Giving Gifts and Other Forms of Benefit in violation Article 218 (1) of the CC BiH; the Accused: Zoran Šupeta, Dragiša Dragutinović, Zdenko Sakan, Milorad Marjanović, Mirko Rokvić, Radenko Borojević and Novica Davidović, for the criminal offence of Abuse of Office or Official Authority in violation of Article 337 (4) of the CC RS;

The Appeals of the Defense Counsel for the Accused Miro Jurišić, attorneys Mirko Dabić and Bekir Ferizović, are refused as unfounded, while the Appeal of the Prosecutor's Office of Bosnia and Herzegovina is partially granted. The Verdict of the Court of Bosnia and Herzegovina, number: X-K-06/282 dated 24 June 2008 is **modified** in the part of the decision relating to the sentence with regard to the Accused Miro Jurišić. Thus, for the criminal offence of Forest Theft, in violation of Article 424 (2) of the CC RS, of which he was found guilty, the Accused Miro Jurišić is sentenced to a term of imprisonment of 2 (two) years and a fine is imposed in the amount of 10 (ten) thousand convertible marks as an "accessory" punishment. With regard to the criminal offence of Giving Gifts and Other Forms of Benefit under Article 218 (1) of the CC BiH, of which he was also found guilty, the Accused is sentenced to a term of imprisonment of 3 (three) years. Therefore, the **Accused Miro Jurišić, pursuant to Article 53(1), (2)(b) and (4) of the CC BiH, is sentenced to a single term of imprisonment of 4 (four) years and a fine is imposed in the amount of 10 (ten) thousand convertible marks**, which the Accused Miro Jurišić must pay within 6 (six) months after the Verdict becomes final, and should the Accused fail to pay the entire amount of the fine, pursuant to Article 47 of the CC BiH, it shall be substituted by imprisonment in such a way that each fifty convertible marks started is substituted by one day of imprisonment, whereby the imprisonment may not exceed one year;

The Appeal of the Prosecutor's Office of BiH in relation to the convicting part of the Trial Verdict concerning the Accused Mladen Ivanić for the criminal offense of Unconscientious Work in Office under Article 344(2) of the CC RS, is refused as unfounded, and the Appeal of the Defense Counsel for the Accused Mladen Ivanić, attorney Siniša Đorđević, is granted, and the Verdict of the Court of Bosnia and Herzegovina No. X-K-06/282 dated 24 June 2008 **in the convicting part concerning the Accused Mladen Ivanić, for the criminal offence of Unconscientious Work in Office, under Article 344 (2) of the CC RS, is hereby r e v o k e d**, and a retrial ordered before the panel of the Appellate Division of Section II for Organized Crime, Economic Crime and Corruption. .

**As to its remaining part, concerning the relief of the obligation to reimburse the costs of criminal proceedings and the forfeiture of two banknotes, the Trial Verdict shall remain unchanged.**

## **R e a s o n i n g**

### **II CASE HISTORY:**

#### **The Trial Verdict:**

1. By the Verdict of the Court of Bosnia and Herzegovina, number: X-K-06/282 dated 24 June 2008, the Accused Mladen Ivanić was found guilty of the criminal offence of Unconscientious Work in Office, under Article 344 (2) of the Criminal Code of

Republika Srpska (CC RS); the Accused Miro Jurišić was found guilty of the criminal offense of Forest Theft under Article 424(2) of the CC RS {for the actions referred to in Section I 2. (a) of the Operative Part of the Verdict} and Giving Gifts and Other Forms of Benefit under Article 218 (1) of the Criminal Code of Bosnia and Herzegovina (CC BiH) {Section I 2. (b) of the Operative Part of the Verdict}. With regard to the Accused Zoran Đerić, Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević, the charges were dismissed for the criminal offense of Criminal Association in violation of Article 370 (2) of the CC RS. The Accused Mladen Ivanić was acquitted of charges for the criminal offense of Criminal Association in violation of Article 370 (1) of the CC RS. The Accused Mladen Ivanić, Zoran Đerić, Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević were acquitted of charges for the criminal offense of Incitement to Abuse of Office or Official Authority, in violation of Article 337 (4) of the CC RS, as read with Article 24 of the CC RS. The Accused Mladen Ivanić and Perica Bundalo were acquitted of charges for the criminal offense of Giving Gifts and Other Forms of Benefit under Article 218 (1) of the CC BiH and the Accused Zoran Šupeta, Dragiša Dragutinović, Zdenko Sakan, Milorad Marjanović, Mirko Rokvić, Radenko Borojević and Novica Davidović were acquitted of charges for the criminal offense of Abuse of Office or Official Authority, in violation of Article 337(4) of the CC RS.

2. Pursuant to the Trial Verdict, the Accused Mladen Ivanić was sentenced to a term or imprisonment 1 (one) year and 6 (six) months, and the Accused Miro Jurišić was issued a single sentence of imprisonment for a term of 2 (two) years and fined in the amount of 10,000 (ten thousand) KM.
3. In addition, pursuant to Article 188(1) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), the Accused Miro Jurišić and Mladen Ivanić were ordered to reimburse the costs of the criminal proceedings. Pursuant to Article 189(1) of the CPC BiH, all the Accused (Mladen Ivanić, Zoran Đerić, Perica Bundalo, Rodoljub Trkulja, Stojko Blagojević, Zdenko Sakan, Milorad Marjanović, Mirko Rokvić, Zoran Šupeta, Novica Davidović, Radenko Borojević and Dragiša Dragutinović) who were acquitted of charges were relieved of the duty to reimburse the costs of the criminal proceedings and it was ordered that the costs be paid from the budget appropriations.
4. Furthermore, pursuant to Article 218(4) of the CC BiH, two bank notes of 500 (five hundred) EUR with serial numbers: N16012419168 and N16012419177 that were used as a bribe were ordered to be forfeited.

### **III. APPEALS AND RESPONSES:**

5. An Appeal was filed by the Prosecutor's Office of Bosnia and Herzegovina for an incorrectly and incompletely established state of facts and for a violation of the Criminal Code of BiH. The Prosecutor's submits that all the Accused should be found guilty of the criminal offences as charged under the Indictment dated 10 October 2007, and that the sentences of imprisonment imposed upon Mladen Ivanić and Miro Jurišić should be more severe. The Prosecutor also proposed that the Appellate Panel order a retrial in order to thoroughly assess and evaluate the evidence in a proper

manner. The Prosecutor's Office also submitted additional findings of the expert witness in forestry, Aleksandar Gavrić, dated 14 August 2008.

6. The Defense Counsel for the Accused Miro Jurišić, Attorney Mirko Dabić also filed an Appeal from the Trial Verdict alleging essential violations of the criminal procedure provisions, violations of the criminal code, and an incorrectly and incompletely established state of facts. He further alleges that the sanction was improper and proposed that his appeal be granted, the contested Verdict revoked, and a retrial ordered by the Appellate Panel; or alternatively, that the contested Verdict be altered and the Accused acquitted of charges for the action described under Section I 2. (a) of the Operative Part; and for the action described under Section I 2. (b) of the Operative Part that the charges be dismissed or that the Accused be punished with a more lenient sentence.
7. Attorney Bekir Ferizović also filed an Appeal for the Accused Miro Jurišić alleging essential violations of the criminal procedure provisions, violations of the criminal code, and an incorrectly and incompletely established state of facts. He proposed that the Appeal be granted, the contested Verdict revoked and that the Appellate Panel order a trial; or alternatively, that the contested Verdict be altered and the Accused acquitted of the charges.
8. The Accused Mladen Ivanić filed an Appeal alleging an incorrectly established state of facts, violations of the criminal procedure provisions and a violation of the criminal code. He proposed that the Appellate Panel modify the contested Verdict and render an acquittal, or revoke the Trial Verdict and order a retrial.
9. Attorney Siniša Đorđević, Defense Counsel for the Accused Mladen Ivanić filed an Appeal, alleging essential violations of the criminal procedure provisions, violations of the criminal code, and an incorrectly and incompletely established state of facts. It was proposed that pursuant to Article 314 of the CPC BiH, the Appellate Panel modify the Trial Verdict by acquitting the Accused Mladen Ivanić of the criminal offence of Unconscientious Work in Office; alternatively, he argues that if the Appellate Panel establishes the existence of the reasons set forth in Article 315 of the CPC BiH, it should issue a decision revoking the conviction of the Accused Mladen Ivanić for the criminal offence under Article 344(2) of the CC RS and order a retrial before the panel of the Appellate Division.
10. Attorney Siniša Đorđević also submitted a response to the Prosecutor's Appeal arguing that the Prosecutor's Appeal be refused as unfounded in relation to those parts concerning the acquitting verdict for the Accused Mladen Ivanić and that it be granted in the part moving for the revocation of the Trial Verdict regarding the conviction for the offence of Unconscientious Work in Office.
11. The Accused Zoran Đerić, Stojko Blagojević and Zdenko Sakan filed a response to the Prosecution Appeal proposing that the Appeal be refused in its entirety and the Trial Verdict upheld. The Accused Novica Davidović filed a response to the Prosecution

Appeal and proposed that the Appellate Panel refuse the Appeal and that the Trial Verdict be upheld.

12. A response to the Prosecution Appeal was also filed by the Accused Perica Bundalo proposing that the Appeal be refused as unfounded pursuant to Article 313 of the CPC BiH, and the contested Verdict be upheld.
13. The Accused Rodoljub Trkulja submitted a response to the Prosecution Appeal and proposed that the Appellate Panel refuse the Appeal as unfounded and uphold the Trial Verdict.
14. The BiH Prosecutor's Office delivered its comment on the Appeals of the Defense Counsels for Miro Jurišić proposing that they be refused as unfounded. With regard to the Appeals filed by the Accused Mladen Ivanić, the Prosecutor argued that they be refused as unfounded and noted that the Trial Verdict should not be modified based on this Appeal.
15. The session of the Appellate Panel was held on 27 August 2009, pursuant to Article 304 of the CPC BiH. Paragraph (4) of the cited Article stipulates that failure of the parties and the defense counsel to appear at the session despite being duly summoned shall not preclude the session from being held. Therefore, the session was held pursuant to this provision, as the accused Zdenko Sakan and attorneys Dragan Radović, Nebojša Pantić and Bekir Ferizović failed to appear although they had been duly informed. At the session of the Appellate Panel, the parties briefly presented their respective Appeals and Responses, and stated that they entirely maintained their arguments presented in their Appeals.
16. Having reviewed the contested Verdict, the Panel of the Appellate Division rendered the decision as stated in the Operative Part herein for the reasons to follow:

#### **IV. ISSUES RELATING TO PART ONE OF THE OPERATIVE SECTION**

##### **Prosecution's Appeal**

##### **A. Statute of Limitations**

17. As for the part of the contested Verdict dismissing the charges pursuant to Article 283 sub-paragraph e) of the BiH CPC against the Accused Zoran Đerić, Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević for the criminal offense of Criminal Association in violation of Article 370 paragraph 2 of the CC of RS due to the statute of limitations, the Appeal by the Prosecutor's Office of BiH alleges that the Court thus violated the CC of BiH, that is, the provisions under Article 296 sub-paragraph b) and Article 298 sub-paragraph c) of the CPC of BiH because the statute of limitations in the case at hand pertains to the initiation of the criminal proceedings and that it does not mean that the entire criminal proceedings should be completed within the stated time limit. The appeal also states that the statute of limitations period with regard to the criminal prosecution was interrupted in March and April 2005 and subsequently in

August 2007, which means that the statute of limitations in the case at hand could not be applied.

18. According to this Panel, such an interpretation of the statute of limitations is unfounded and in contravention of the clear legal provisions regulating the issue of statute of limitations under which the period of statute of limitations for criminal prosecution may be extended by interruption only until the so-called absolute bar under the statute of limitations has taken place, that is, until twice as much time has elapsed as required by the law for the bar to criminal prosecution to take place (Article 112 paragraph 6 of the CC of RS)
19. Since the offense in question was committed in the period from 18 February to 20 May 2002, as charged in the Indictment, and since the statute of limitation with respect to this criminal offense was three years pursuant to the Criminal Code of RS in force at that time, while the absolute bar was six-years after the offence, and as no final verdict has been delivered yet, the statute of limitation is already applicable, that is, the right of the state to punish for the criminal offense at hand has expired. Therefore, according to this Panel, the First Instance Court rightly delivered the Verdict dismissing the charges pursuant to Article 283 sub-paragraph e) of the BiH CPC in conjunction with Article 298 sub-paragraph c) of the same Code.
20. However, the Appeal by the Prosecutor's Office of BiH does not raise a disputable issue in the case at hand, the issue pertaining to the application of new and extended periods under the statute of limitations as prescribed in the new criminal code that had entered into force before the statute of limitations became applicable under the law in effect until then. Specifically, since pursuant to RS CC of 2000, absolute bar under the statute of limitation for the relevant criminal offense had not taken place yet at that time, the question arises as to whether it is possible in the case at hand to retroactively apply the extended period of statute of limitations as provided under the (new) RS CC of 2003 or whether the principle of time constraints regarding applicability set forth in Article 4 paragraph 1 of the CC of RS applies because the new law with extended statute of limitations periods became a more severe law.
21. Even though there is an interpretation that in such cases a new criminal code should be applied, that is, the extended statute of limitations period because the foreseen punishment for this criminal offense does not seem to be more severe (and for that reason does not violate the principle of legality), this Panel finds that the new criminal code with extended statute of limitations periods may not be applied because it would imply a retroactive application of a new, more severe law, constituting a violation of the fundamental principle of time constraints regarding the applicability of the criminal code, that is the principle of non-retroactivity foreseen under Article 4 paragraph 1 of both the CC of RS and the CC of BiH. Specifically, without making analyses of this concept under criminal law (today, according to dominant mixed theories, this concept constitutes a functional unity of substantive and procedural law), this Panel finds that in the case at hand it should be taken into account that the issue of statute of limitation falls within the segment of punitiveness, appearing as one of its assumptions, which in this context should be taken into consideration while deciding on the issue of retroactivity. Therefore, nominal punishment is not relevant here,



which, indeed, does not seem more severe because of the extension of the statute of limitations periods pursuant to the new law. What is of relevance here is punitiveness and its expansion and therefore its aggravation, placing all the Accused in the case at hand in a less favorable position. Therefore, the new criminal code extending the statute of limitations periods may not be applied retroactively. In other words, extended statute of limitations periods may refer and apply only to the criminal offenses committed after the entry into force of the law bringing about such amendments, but by no means retroactively in connection with the criminal offenses and already imposed punishments. A different interpretation would infringe upon the meaning of the principle banning the retroactivity of the law, taking into account that Article 4 of the CC is not about punishment but about law (less severe- more severe), which implies all other provisions from the general and special part relevant to the more or less favorable position of the Accused under criminal law.

## **B. The Sufficiency of the Charge of Organized Criminal Association**

22. The Prosecutor submits that the First Instance Panel erred in acquitting the Accused Ivanić of the charge of Organized Criminal Association on the grounds that the indictment did not establish the criminal offence. The Prosecutor argues that the factual description in that count of the indictment was sufficient to establish the crime. Specifically, the facts indicating that the Accused Ivanić (1) served as President of the PDP party, (2) served as the chairman of the Presidency, (3) decided on the policies of the party and (4) was the key person in organizing the two meetings in which funds were illegally obtained, established the crime of Organized Criminal Association.<sup>1</sup>
23. An examination of the indictment indicates that the Accused Ivanić was prosecuted pursuant to Article 370(1) of the RS CC which stated:

Whoever organizes a group with a view to commit criminal offences punishable by imprisonment for a term of five or more years, shall be punished by imprisonment for a term between six months and five years.<sup>2</sup>

The Indictment alleges that the accused Ivanić organized a criminal association in order to commit the criminal offense of Abuse of Office or Official Authority under Article 337(4) of the RS CC as read with the crime of Incitement under Article 24 of the RS CC.

24. The Appellate Panel notes that the Trial Panel found that there were no acts necessary to establish that the Accused organized a criminal association pleaded in the Indictment. Specifically, the Trial Panel stated:

{t}he act of commission of this criminal offense is the organizing of an association with the aim of committing the criminal offences. The organizing constitutes all those activities by which the association

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<sup>1</sup> Prosecutor's Appellate Brief at page 6.

<sup>2</sup> This statute has been amended and now concerns criminal groups organized for the purpose of committing criminal offenses "punishable by imprisonment for a term of three years or more".

is formed, as well as those activities by which the existing association is consolidated, and such activities constitute a requirement for such an association could operate with the aim of committing the criminal offenses. Consequently, the organizing implies the forming of an association, the drawing up a plan for the commission of criminal offenses, the assigning of individual roles to the association members, and generally the taking of organizational measures necessary for the functioning of the association with the aim of committing the criminal offenses. In this regard, it is not evident from the factual description... that the accused Mladen Ivanić took any activity to form a criminal association, or to create a plan for the commission of the criminal offenses, or to assign individual roles to the association members, nor is it evident that he took any organizational activity which would be a requirement for the functioning of an association with the aim of committing the criminal offenses. Only the adducing in the factual description that the accused Mladen Ivanić directed the criminal association indicates by no means that the Accused took some of the stated activities which could give the Accused the property of a mastermind of the criminal association.<sup>3</sup>

25. The Prosecutor does not contest the legal analysis of the First Instance Panel but rather argues that the Trial Panel failed to realize that the four facts as cited above, established a sufficient factual basis to allege the crime of Organized Criminal Association. An examination of the indictment, however, indicates that facts two (2) through four (4) as alleged by the Prosecutor<sup>4</sup> are not included in the indictment. Therefore, these facts may not be considered in this appeal.
26. The Appellate Panel notes that Article 24 of the RS CC requires that the Prosecutor establish that an accused organized a criminal group. The allegation that an accused served as a "leader" does not necessarily establish that he organized a group since the roles of "leader" and "organizer" may be separate and distinct.<sup>5</sup> For example, a leader may not have participated in organizing an association while an organizer may have no leadership or supervision over the members of the group. Thus, the fact that the Accused Ivanić holds a position of leadership within the PDP does not provide any information on the issue of whether he organized a specific criminal association comprised of PDP officials.
27. The Appellate Panel further notes that an "organizer" is defined as "one who organizes; one who arranges systematically" while "organize" is commonly defined as "to co-ordinate parts or elements so as to form a systematic whole....to give a definite and orderly structure to."<sup>6</sup> A review of the indictment indicates that it fails to include any

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<sup>3</sup> Trial Verdict at page 119.

<sup>4</sup> See para.22 of this Judgment

<sup>5</sup> Accord, *United States v. Capps*, 48 F. 3d 1220 (6th Cir. 1995) (unpublished opinion) (where the Court differentiates the roles of leader and organizer).

<sup>6</sup> The Oxford English Dictionary at pages 923-24 (2<sup>nd</sup> ed. 1989). Accord Webster's Third New International Dictionary at page 1590 (1986) (where "organize" is defined as "to arrange or constitute into a coherent unity in which each part has a special function or relation....to unify into a coordinated functioning whole: to put into readiness for coherent or cooperative action."

facts either alleging that the Accused Ivanić organized the criminal association or from which it may be inferred that the Accused was an organizer. Therefore, the Appellate Panel concludes that the Trial Panel acted properly in acquitting the Accused Ivanić of the charge pursuant to Article 284 a) of the CPC BiH since the allegations contained in the indictment do not provide the facts necessary to allege that the Accused organized a criminal association.

### **C. Incitement to Abuse of Office or Official Authority**

28. The Prosecutor further argues that the First Instance Panel erred in acquitting the Accused Mladen Ivanić, Zoran Đerić, Perica Bundalo, Rodoljub Trkulja, and Stojko Blagojević on the grounds that the evidence was insufficient to establish that these individuals together as an organized group committed the crime of Incitement to Abuse of Office or Authority. Specifically, the Prosecutor claims that the evidence would have been sufficient to establish the charge but the Trial Panel failed to consider the following information: (1) that the Forestry Management Unit (hereinafter referred to as FMU) Directors received low salaries and could only have obtained the funds for a large political contribution by means of theft from their agencies; (2) the fact that former FMU Director Gogić obtained funds from a transportation contractor who provided the money out of gratitude for receiving a contract indicates that the money came indirectly from the FMU; (3) that the Accused Rodoljub Trkulja was present during the initial meeting where the funds were requested; and (4) that the Accused Mladen Ivanić performed a key role in organizing the meetings where funds were requested.<sup>7</sup>
29. The Accused Đerić and Blagojević submit that at the time of the alleged criminal acts, the crime of attempted incitement did not exist but was established in the year 2003. Therefore, since the evidence was insufficient to establish the crime of Abuse of Office pursuant to Article 337 (4) of the RS CC, the Trial Court had no option but to acquit the accused since attempted incitement did not exist in law.<sup>8</sup> The Accused Trkulja argues that the Trial Panel acted properly since there was no evidence supporting the charge against him.<sup>9</sup>

#### **a. Incitement**

30. Article 24 of the RS CC (the criminal offense of Incitement) states:

Whoever intentionally incites another to perpetrate a criminal offense, shall be punished as if he himself has perpetrated the offense.

In 2003, the Article was amended and a second paragraph was added which states:

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<sup>7</sup> Prosecutor's Appellate Brief at pages 6-8 (English version).

<sup>8</sup> Response to the Prosecutor's Appellate Brief by the Accused Đerić, Blagojević and Sakan at pages 2-3.

<sup>9</sup> Response to the Prosecutor's Appellate Brief by Accused Trkulja at pages 1-2

Whoever intentionally incites another to perpetrate a criminal offense for which a punishment of imprisonment for a term of five years or a more severe punishment is prescribed by law, and the criminal offense has never been attempted, shall be punished as for the attempt of the criminal offense.

31. According to the Commentaries of the Criminal Code, this additional paragraph applies to those situations where a person was incited to commit a crime but the offense was never committed.<sup>10</sup> As noted above, in this case, certain FMU Directors were incited to violate paragraph four (4) of Article 337 of the RS CC but that crime either did not occur or was not established. The Appellate Panel notes, however, that liability pursuant to paragraph two (2) of Article 24 cannot be considered since that paragraph was added to the RS CC approximately one (1) year after the acts alleged in the indictment occurred. Therefore, the Appellate Panel concludes that pursuant to the "Principle of Legality" as described in Articles 3 and 4 of the CC of BiH/RS, the Trial Court acted properly in determining not to consider paragraph two (2) of Article 24 of the RS CC.
32. The Prosecutor also argued that incitement, as stated in the first paragraph of Article 24 of the CC RS, would allow for situations where a person was incited but the underlying crime was not completed.<sup>11</sup> He does not, however, refer to any case law, commentaries or treatises supporting this argument.
33. In order to resolve whether "incitement" requires that the underlying crime be committed, the Appellate Panel must determine whether it is (1) a form of solicitation (where the act of inducing by itself would be sufficient to establish criminal liability)<sup>12</sup> or (2) a form of individual criminal liability (which would require that the underlying crime be committed in order for liability to ensue).
34. In the treatise *International Criminal Law*, the author considers incitement to be a form of accomplice liability and explains:
- Incitement to commit a crime is some form of instigation, inducement, encouragement, or persuasion to perpetrate the crime....Furthermore, incitement is a crime only under certain conditions: (i) it must be direct and explicit; (ii) commission of the crime by other persons must follow up. In other words, incitement is not punished per se, but only if it leads to the perpetration of a crime....Thus a causal connection is necessary between the instigation and the criminal conduct of the persons that committed the crime. ''<sup>13</sup>
35. The Appellate Panel notes that this view is consistent with the categorization of incitement within the section of the criminal code dealing with forms of liability. A review of the RS CC indicates that "incitement" has been included within the section of

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<sup>10</sup> Commentaries of the Criminal Code of BiH, Article 30 (Incitement) at pages 182-189 (2005).

<sup>11</sup> Prosecutor's Appellate Brief at page 8

<sup>12</sup> 2 W. LaFave, *Substantive Criminal Law* at pages 189 and 198 (2<sup>nd</sup> ed. 2003).

<sup>13</sup> A. Cassese, *International Criminal Law* at page 218 (2<sup>nd</sup> ed. 2008).

the Code titled “Accessories and Accomplices”. It is preceded by an article on accomplices (Article 23) and followed by an article on accessories (Article 25).

36. The Appellate Panel further notes that if “incitement” was a form of “solicitation”, there would have been no reason to amend the article and add a section for situations where the underlying crime was not committed as it would not have been necessary for criminal liability (as the act of soliciting one to commit a crime by itself establishes liability).<sup>14</sup>
37. Therefore, the Appellate Panel concludes that incitement as provided in the RS CC constitutes a form of individual criminal liability and thus requires that the incited crime be committed. In the case on appeal, since the allegation of incitement to commit the crime of Abuse of Office or Official Authority {Article 337 (4) of the CC RS} by the accused persons was not proven, the Trial Panel acted properly in acquitting the accused of these charges.
38. The Appellate Panel thus concludes that the Trial Panel did not err in acquitting the Accused of these charges and the Prosecutor’s appeal on this issue is therefore, dismissed.

#### **D. Liability for Giving Gifts or Other Forms of Benefits**

39. The Prosecutor submits that the First Instance Panel erred in its conclusion that the evidence was insufficient to establish beyond a reasonable doubt that the Accused Mladen Ivanić and Perica Bundalo committed the crime of Giving Gifts or Other Forms of Benefits in violation of Article 218(1) of the CC of BiH. Specifically, the Prosecutor alleges that the evidence was sufficient to convict all three Accused charged in the indictment (Miro Jurišić was the only Accused convicted of the charge) and that the Trial Panel should have convicted the Accused on the basis of the testimony of Witness Damjan Stanić.<sup>15</sup>
40. The Accused Perica Bundalo responds that there is no evidence linking him or the other Accused to the bribe or attempted bribe of the Prosecutor. Therefore, the First Instance Panel acted correctly in acquitting them of the charge.<sup>16</sup>
41. The Appellate Panel notes that an examination of the Trial Verdict indicates that the First Instance Panel, having reviewed the testimony of Witness Damjan Stanić, transcripts of the recorded conversations as well as documentary evidence, concluded that “there is no evidence to prove beyond a reasonable doubt that the accused Mladen Ivanić and Perica Bundalo committed the criminal offense...”<sup>17</sup>
42. The Appellate Panel notes that the Prosecutor has failed to refer to any testimony or specific piece of evidence that was not properly reviewed or considered by the First

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<sup>14</sup> 2 W. LaFave, *Substantive Criminal Law, supra* at pages 189 and 198.

<sup>15</sup> Prosecutor's Appellate Brief at pages 8-9.

<sup>16</sup> Appellate Brief of Perica Bundalo at pages 1-2.

<sup>17</sup> Trial Verdict at page 143.

Instance Panel. Nor does the Prosecutor identify the particular evidence supporting their allegation.

43. The Appellate Panel notes that since this factual predicate has not been established on appeal it need not review the allegation. Specifically,

...in order to establish an error of fact, the... {party} must in addition specifically address the evidence upon which the Trial Panel relied and the Trial Panel's reasoning, clearly showing how the Trial Panel's factual conclusion was unreasonable. Where the... {party} fails to do so, the ... {party} merely provides an alternative view of the facts and reargues its position at trial. As the Trial Panel's factual conclusions are accorded deference on appeal, the Appellate Panel will not evaluate the positions of the parties at trial, but will only consider arguments that the Trial Panel's factual conclusions are unreasonable. By failing to identify and argue how the Trial Panel's factual conclusions are unreasonable, the ... {party} has failed to properly raise the issue on appeal.<sup>18</sup>

44. The Appellate Panel has nonetheless reviewed the record and the First Instance Panel's findings and concludes that the Trial Panel's determination that the evidence failed to establish that the Accused Ivanić and Bundalo committed the crime as charged, was clearly reasonable.
45. The Appellate Panel initially notes that the tape recorded conversations between Damjan Stanić and Miro Jurišić do not establish that the Accused Ivanić and Bundalo were the source of the funds for the bribe of the prosecutor. A review of these recordings indicates that the Accused Jurišić wanted the bribe being made to the Prosecutor to serve as protection for the Accused Ivanić, Bundalo and himself. It should be noted, however, that neither accused (Ivanić or Bundalo) ever joined in these tape recorded conversations nor were they contacted by Jurišić in the presence of the Damjan Stanić.
46. A further review of the recorded conversations indicates that Jurišić consistently maintained that he had not spoken to Mladen Ivanić about the plan to bribe the prosecutor.<sup>19</sup> With regard to the Accused Bundalo, the recorded conversations are contradictory. For example, in the recorded conversation of 23 November 2006, Jurišić indicates that he had a meeting with Bundalo on Tuesday<sup>20</sup> but later concedes that he has not met with Bundalo and explains that they only spoke over the telephone.<sup>21</sup> This also conflicts with Jurišić's earlier conversation where Jurišić said that he did not want

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<sup>18</sup> *Prosecutor v. Mirko Todorović and Miloš Radić*, X-KRŽ-07/382 (Ct. of BiH) Appeal Judgment, 23 January 2009 at para. 94.

<sup>19</sup> See Exhibit 5-C-15 (English Transcript of 18 November 2006 Recorded Conversations) at page 30; and Exhibit 5-D-6 (English Transcript of 01 December 2006 Recorded Conversations) at pages 7 and 8.

<sup>20</sup> See Exhibit 5-C-21 (English Transcript of 23 November 2006 Recorded Conversations) at pages 7 and 14.

<sup>21</sup> *Ibid.* at page 27.

to discuss the matter over the telephone with Bundalo but needed to meet with him.<sup>22</sup> Jurišić further claims that Bundalo hardly said a word when they spoke but then describes Bundalo's discussion on the situation.<sup>23</sup> Finally, although Jurišić claims that only Bundalo could decide on the amount of the bribe or the percentages of the installments, Jurišić and Stanić agree on these amounts.<sup>24</sup> The Appellate Panel thus notes due to the conflicting nature of Jurišić's statements, it was within the First Instance Panel's discretion to find the recorded conversations to be of limited value in determining the role, if any, of the Accused Ivanić and Bundalo in the bribe.

47. The Appellate Panel notes that the recorded conversations do not establish beyond a reasonable doubt that all three accused are in agreement as to the decision to bribe the prosecutor with 50,000 KM. Nor do the recordings establish that the down payment of Euro 1,000 came from anyone other than Miro Jurišić or that the other accused agreed to that initial payment. In fact, after the down payment is made, in a recorded conversation dated 11 December 2006, Jurišić indicates that the others still have some matters which must be clarified before the agreement is finalized.<sup>25</sup>
48. The Appellate Panel further notes that telephone contact records neither establishes the charge nor provides the necessary corroboration. An examination of these records indicate that between 20 October 2006 and 20 December 2006, there was no telephone contact between the listed telephones for the Accused Jurišić and Bundalo.<sup>26</sup> In the same time period, there were thirty-five (35) telephone contacts between the Accused Bundalo and Ivanić as well as twenty-six (26) telephone contacts between the Accused Jurišić and Ivanić.<sup>27</sup> It should be noted, however, that there were no calls between the Accused Jurišić and Ivanić after 21 November 2006.<sup>28</sup> Therefore, the Appellate Panel agrees with the determination of the Trial Panel that the telephone call records were of limited value.<sup>29</sup>
49. The Appellate Panel notes that Damjan Stanić served as the Prosecution's key witness in relation to this charge. He testified that he initially met with Perica Bundalo at the Hotel Bosnia. After confirming that Stanić was working as an expert in this investigation, the Accused Bundalo asked "if something could be done to improve the situation—if you could help, we would reward you substantially."<sup>30</sup> He also testified that the amount of 50,000 KM was mentioned in relation to the reward.<sup>31</sup>
50. The witness further testified that he was asked as part of the undercover operation to learn who was involved in the bribing but concluded that "there was a controversy as to

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<sup>22</sup> Exhibit 5-C-15 at page 31-32

<sup>23</sup> Ibid. at pages 7-8, 14

<sup>24</sup> Ibid. at pages 19, 22 and 24.

<sup>25</sup> Exhibit 0-II-9 (English Transcript of 11 December 2006 Recorded Conversations)

<sup>26</sup> See Exhibit 3-A-15--Analysis of toll-ticketing records of telephone calls

<sup>27</sup> Ibid. at page 4

<sup>28</sup> Exhibit 3-A-15—Schematic presentation of telephone contacts (listing telephones and dates of contact)

<sup>29</sup> Trial Verdict at page 145. In fact, the lack of telephone communication between the Accused Bundalo and Jurišić combined with the lack of contact between the three accused at key times in November and December, could be considered a factor raising doubt as to the validity of the charge.

<sup>30</sup> Testimony of Witness Damjan Stanić on 21 February 2008, Tape 1 at 1:08:35 to 1:09

<sup>31</sup> Ibid.

who was involved" since Jurišić would avoid answering certain questions.<sup>32</sup> The witness only knew that Jurišić wanted the bribe to protect Mladen Ivanić and Perica Bundalo.<sup>33</sup> The witness never testified whether anyone other than the Accused Jurišić was the source of the down payment of EURO 1000.

51. The First Instance Panel found that the witness provided "no credible information" as to whether the Accused Ivanić and Bundalo contributed to either the down payment or the remaining amount of the bribe.<sup>34</sup> The Appellate Panel notes that the witness never had any direct contact with Mladen Ivanić and his limited contact with Perica Bundalo at the Hotel Bosnia was not tape recorded. Consequently, the First Instance Panel was within its discretion in determining that the witness's testimony was of limited value.
52. The Appellate Panel concludes that the Trial Panel could have reasonably found that the conflicting nature of the tape recorded evidence when combined with a lack of corroboration provided a reasonable doubt in relation to the charge. Therefore, a reasonable trial panel could have properly acquitted the Accused Ivanić and Bundalo on the charge of Giving Gifts or Other Forms of Benefits in violation of Article 218(1) of the CC of BiH.

#### **E. Liability of the Forestry Management Unit Directors**

53. The Prosecutor alleges that the First Instance Panel erred in concluding that the evidence was insufficient to establish that the Accused Zenko Sakan, Milorad Marjanović, Mirko Rokvić, Zoran Šupeta, Novica Davidović, Radenko Borojević and Dragiša Dragutinović committed the crime of Abuse of Office or Official Authority. Specifically, he alleges that all of the Accused gave money which must have come from their FMU's as they did not have sufficient personal funds to do so.<sup>35</sup> The Accused Sakan argues that the First Instance Panel acted properly in acquitting the Accused since the evidence failed to establish that the Accused illegally obtained funds from their FMU's which were then given to a PDP representative.<sup>36</sup>
54. The examination of the case record indicates that the accused were charged with the criminal offense of Abuse of Office or Official Authority under Article 337(4) of the CC RS. This Article stipulates as follows:

(4) If the property gain acquired through the commission of the criminal offense described under paragraph 3 of this article exceeds 10.000 KM, the perpetrator shall be punished by imprisonment term ranging between one and eight years, and if the amount exceeds 50.000 KM, by imprisonment term ranging between two and ten years.

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<sup>32</sup> Testimony of Witness Damjan Stanić on 21 February 2008, Tape 3 at 51:40 to 53:45

<sup>33</sup> Ibid.

<sup>34</sup> Trial Verdict at 144

<sup>35</sup> Prosecution Appellate Brief at page 9.

<sup>36</sup> Appellate Brief of Goran Bubić for the Accused Derić, Blagojević and Sakan at page 3.



55. The First Instance Panel found that two (2) FMU Directors gave 7,000 KM (KM 5,000 from Mirko Rokvić and KM 2,000 from Milorad Gogić) but that the funds did not come from the FMUs that they managed. Moreover, while there is a "likelihood" that other Directors donated funds to the PDP, the Prosecutor failed to establish that over 10,000 was donated and that these funds had been illegally obtained from the FMUs.<sup>37</sup> Since these elements of the charge were not established, the Trial Panel acquitted the accused.
56. The Appellate Panel having reviewed the record concludes that the First Instance Panel's acquittal of the Accused was proper as the Prosecution failed to prove the allegation of the Indictment beyond a reasonable doubt. The Appellate Panel initially notes that the Prosecution failed to establish that all Accused donated funds and that it totaled over 10,000 KM. Although it may be inferred that other Accused donated funds<sup>38</sup>, such "likelihood" is not sufficient to establish these facts beyond a reasonable doubt.<sup>39</sup>
57. The Appellate Panel further notes that the fact that the Accused were not highly paid does not compel the conclusion that any funds donated had to have been illegally obtained from the FMU's. The funds could have been borrowed from friends or relatives, or taken from savings. The Prosecution could have also introduced financial accounting or auditing evidence to substantiate this allegation but failed to do so. Consequently, the circumstantial evidence introduced by the Prosecution is not sufficient to establish an allegation of the unlawfully obtained money from the FMU's.<sup>40</sup>
58. The Appellate Panel thus concludes that since the Prosecution failed to prove the essential elements of the criminal offense charged against the Accused beyond a reasonable doubt [(1) that the Accused donated funds, (2) in excess of 10,000 KM and (3) which had been illegally obtained from the FMU's] the First Instance Panel had no option but to acquit the Accused. Therefore, since the First Instance Panel's determination was reasonable and proper, as well as supported by sufficient arguments, the appellate allegations of the Prosecution are unfounded, wherefore the Appellate Panel must dismiss them.

## V ISSUES RELATING TO PART TWO OF THE OPERATIVE SECTION

### **Continuation of the Prosecution's Appeal**

#### **A. Time Period of the Forest Theft**

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<sup>37</sup> Trial Verdict at page 147 (English version).

<sup>38</sup> Ibid. and Prosecution Appellate Brief at pages 7 and 9.

<sup>39</sup> *Prosecutor v. Mirko Todorović and Miloš Radić*, Supra at para. 89 (where the Appellate Panel stated that "...proof of a fact by circumstantial evidence must be established beyond any reasonable doubt and tightly and logically interrelated so that the Trial Panel's factual conclusion is the only possible conclusion in light of the evidence.")

<sup>40</sup> Ibid.

59. The Prosecutor argues that the First Instance Panel erred in limiting the conviction of the Accused Miro Jurišić for forest theft only to the period after 01 November 2001. The Prosecutor alleges that the failure to convict the Accused for the full period as alleged in the indictment (from 29 June 1998 to 14 February 2002) is the result of erroneously established facts.<sup>41</sup> The Prosecutor does not identify either the alleged wrongly established facts or provide a factual basis supporting his argument. An examination of the record indicates that the Accused Jurišić did not respond to the Prosecutor's allegation other than his appeal claiming that the initial conviction was erroneous.<sup>42</sup>

60. Article 424 of the CC of RS states:

(1) Whoever, intending to steal, cuts down one or more trees in a forest and the quantity of timber cut exceeds three cubic meters, shall be punished by a fine or imprisonment for a term not exceeding two years.

(2) If the offense referred to in Paragraph 1 of this Article has been committed with the intention of selling the cut timber, or if the quantity of the cut timber exceeds eight cubic meters, or if the offense has been committed in a protected forest, national park or some other forest of a special purpose, the perpetrator shall be punished by a fine and imprisonment for a term between six months and five years.

61. An examination of the Trial Verdict indicates that the First Instance Panel convicted the Accused for the period of cutting after November 1st since the Accused had a legal basis for the cutting and removing of trees prior to that date.<sup>43</sup> Specifically, the Trial Panel found that prior to 29 June 1998, the Accused received quantities of wood pursuant to a government contract<sup>44</sup> and in the period prior to November 1st (from 01 September 2001 to 01 November 2001<sup>45</sup>) the Accused was authorized to cut and remove wood pursuant to an out-of-court settlement between the Republika Srpska Government and the Trgokomerc Ribnik Company (owned by the Accused).<sup>46</sup>

62. The Appellate Panel notes that the crime of Forest Theft requires a specific intent to steal. In order to prove this intent for the period prior to November 1st, the Prosecutor must demonstrate that the Accused was aware of the lack of a debt owed to his company at the time that he obtained the out-of-court settlement—in this manner, he would have obtained the settlement and authorization for the wood products as a result of fraud.

63. An examination of the record indicates that the amount of debt was disputed by the parties.<sup>47</sup> The Accused claiming that he was owed 758,349.90 KM (the amount of debt plus interest) for work performed in the Municipality of Ribnik, filed a lawsuit in the

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<sup>41</sup> Prosecution's Appellate Brief at page 3.

<sup>42</sup> Appellate Brief of Attorney Ferizović for the Accused Jurišić at pages 2-3.

<sup>43</sup> Trial Verdict at pages 105-06.

<sup>44</sup> Ibid. at pages 104-05.

<sup>45</sup> Ibid. at page 97.

<sup>46</sup> Ibid. at pages 105-06.

<sup>47</sup> Trial Verdict at page 88.

Municipal Court of Mrkonjić Grad on 13 June 2001.<sup>48</sup> The local Mayor submitted a proposal to the Republika Srpska Government for an out-of-court settlement in the amount of 705,369.00 KM.<sup>49</sup> In July of 2001, a Decision of the Republika Srpska Government authorized the settlement of the debt by allowing the cutting and removal of a quantity of timber from the FMU Ribnik.<sup>50</sup> In August of 2001, the Ribnik Mayor informed the Prime Minister that there were some questions as to the liability.<sup>51</sup> In September, 2001, the Mayor sent a letter identifying certain questionable invoices.<sup>52</sup> A meeting was held with FMU representatives and the Accused but the matter could not be resolved.<sup>53</sup> On 18 October 2001, the government decided to suspend the implementation of the out-of-court settlement.<sup>54</sup>

64. The Appellate Panel notes that on the basis of these facts, the First Instance Panel could have reasonably concluded that a dispute existed as to the extent of the liability and that the Accused believed that he was owed this debt. Therefore, a reasonable doubt arose as to the existence of criminal intent necessary to convict the Accused for the crime of Forest Theft in the period prior to 01 November 2001. In the period that follows, however, based on the Accused's actions, the Trial Panel could properly find that the necessary criminal intent existed. The Appellate Panel thus concludes that since a reasonable trial court could have reached the same conclusion as the First Instance Panel, this ground of appeal must be dismissed.

## **The Accused Jurišić's Appeal**

### **B. Validity of the Forest Theft Conviction**

65. The Accused Jurišić argues that the First Instance Panel erred in convicting him of the crime of Forest Theft. The Accused alleges that the Trial Verdict is incomprehensible, contradictory and unclear.<sup>55</sup> Specifically, the Accused submits that an essential violation occurred since : (1) the establishment of decisive facts was arbitrary<sup>56</sup> and not based on valid reasons<sup>57</sup>; (2) decisions on the credibility of witnesses were not based on valid reasons but rather on the fact that they "appeared in a logical sequence and confirmed a number of details and identical facts....";<sup>58</sup> (3) there is no explanation of the Accused's criminal intent;<sup>59</sup> and (4) that the operative section is "incomprehensible and unclear".<sup>60</sup>

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<sup>48</sup> Ibid. at page 79.

<sup>49</sup> Ibid. at page 81; and Exhibit 3-C-5.

<sup>50</sup> Ibid. at page 80.

<sup>51</sup> Ibid. at pages 82, 83 and 88.

<sup>52</sup> Ibid. at pages 83 and 88; and Exhibit 3-C-17.

<sup>53</sup> Trial Verdict at page 82; and Exhibit 3-C-18.

<sup>54</sup> Ibid. at pages 80 and 94.

<sup>55</sup> Appellate Brief of Attorney Ferizović at pages 2-3 ; and Appellate Brief of Attorney Dabić at pages 2-3 (both citations refer to the English version of the briefs).

<sup>56</sup> Ferizović's Appeal at page 2.

<sup>57</sup> Dabić's Appeal at page 3.

<sup>58</sup> Ferizović's Appeal at page 2.

<sup>59</sup> Ibid.

<sup>60</sup> Dabić's Appeal at page 3.

66. The Appellate Panel finds that the Accused's allegations are mere conclusions without any factual basis. The Accused failed to identify any contradictory facts; nor does he refer to any portions of the Trial Verdict supporting his allegations on credibility. The Accused does not even refer to parts of the Operative Section that are incomprehensible or unclear.

67. In accordance with Article 297(1)(k) an essential violation of the provisions of criminal procedure occurs:

if the wording of the verdict was incomprehensible, internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all or if it did not cite reasons concerning the decisive facts.

68. In *Prosecutor v. Mirko Todorović and Miloš Radić*, X-KRŽ-07/382, Appellate Verdict dated 23 January 2009, at paras. 18-20, the Panel described the standards of review for such allegations:

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

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

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

69. The Appellate Panel notes that in reaching its conclusion, the Trial Panel evaluated the evidence, described the facts upon which it relied and described the reasoning in support of the decisive facts. Specifically, the First Instance Panel reviewed and assessed the testimony of Prosecution and Defense witnesses (including expert testimony) and the documentary evidence. The Trial Panel evaluated the testimony of these witnesses both individually and in combination with the testimony of other witnesses and documents in order to make credibility determinations.<sup>61</sup>
70. The First Instance Panel concluded that the Accused committed the crime of Forest Theft in violation of Article 424(2) of the CC of RS. The Trial Panel, however, limited the extent of the Accused's liability only to the period between 01 November 2001 and 14 February 2002.<sup>62</sup> The Trial Panel initially described the facts which were not being disputed and then addressed the remaining issues which had to be resolved.<sup>63</sup>
71. The Trial Panel assessed the testimony and report of the Expert Witness Aleksandar Gavrić and accepted his findings in relation to the cutting and the delivery of wood after November 1st.<sup>64</sup> In determining that the expert witness was credible, the Trial Panel explained how it was consistent with the testimony of witnesses Simo Tepić, Darko Vračar and Mile Vrtunić.<sup>65</sup> The Trial Panel then refers to certain government reports and documents which corroborate the testimony of these four witnesses.<sup>66</sup>
72. The Trial Panel also describes the Defense testimony that it reviewed and refers to the testimony of Đoko Todorović who was the key witness for the Accused.<sup>67</sup> The First Instance Panel concluded that the witness's testimony was not credible and explained the reasons for this finding—that his testimony was contradictory, conflicted with both documentary evidence and the testimony of his assistant.<sup>68</sup>
73. The First Instance Panel further addressed the existence of the element of criminal intent for the crime of Forest Theft and explained how it established beyond a reasonable doubt that the Accused possessed the necessary criminal intent. The Trial Panel described the witness testimony and documentary evidence supporting this finding.<sup>69</sup>
74. Having reviewed this section of the Trial Verdict, the Appellate Panel concludes that it is not unclear, incomprehensible or contradictory. The Trial Verdict carefully describes the facts upon which it relies and explains the reasons for relying upon them.<sup>70</sup> The

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<sup>61</sup> Trial Verdict at pages 104-111.

<sup>62</sup> Ibid. at page 105

<sup>63</sup> Ibid. at pages 105-106.

<sup>64</sup> Ibid. at pages 106-07 and 109

<sup>65</sup> Ibid. at pages 107-08.

<sup>66</sup> Trial Verdict at pages 108-09.

<sup>67</sup> Ibid. at pages 109-10.

<sup>68</sup> Ibid. at pages 110-11.

<sup>69</sup> Ibid. at page 111.

<sup>70</sup> Compare, *Prosecutor v. Nenad Tanasković*, X-KRŽ-06/165, Appeal Judgment, 26 March 2008 at page 8 (where the Panel notes that it "cannot find anything, at least in relation to these general allegations of the Defense, which makes the Verdict internally inconsistent about the conclusions or the reasoning used by the Trial Panel in finding the Accused guilty that were not well founded in the evidence. Further, the Verdict carefully lays out the facts it relies upon, why it relies upon them, the law which it applies to them, and the conclusions it reaches as a result.")

Trial Panel's determinations of credibility were clearly described and not arbitrarily decided. The Trial Verdict also provided proper reasoning in support of its finding as to the Accused's criminal intent. The Appellate Panel thus concludes that the arguments raised by the Accused are without merit and must be denied. Therefore, this appellate argument is dismissed as unfounded.

### C. Sufficiency of the Evidence as to Forest Theft

75. The Accused Jurišić argues that the First Instance Panel erred in concluding that he committed the crime of Forest Theft since the facts do not support this finding. Specifically, he argues that the facts do not establish beyond a reasonable doubt that trees were cut after November 1st or that the Accused possessed the necessary criminal intent.<sup>71</sup>

76. In the Trial Verdict, the First Instance Panel concluded that it

has found with absolute certainty that the accused Miro Jurišić, as director of the Trgokomerc Company, following the conclusion of the Government of 18 October 2001 which in fact was applied after 1 November 2001, organized the forest cutting in the FMU Ribnik, in the quantity of 1093.26 cubic meters of fallen trees, in order for his company to acquire a financial gain, although he was aware that there were no legal grounds for the cutting and receiving of woods from the FMU Ribnik.<sup>72</sup>

77. A review of the evidence indicates that on 18 July 2001, the Republika Srpska Government authorized the Trgokomerc Ribnik to conduct extraordinary cutting in the FMU Ribnik in order to satisfy a certain debt.<sup>73</sup> Thereafter, the cutting, skidding and delivery of wood products were performed.<sup>74</sup> On 18 October 2001, the Government issued a decision to suspend the implementation of its previous order.<sup>75</sup> On 31 October 2001, Milan Damjanović, a Republic Inspector issued an order to the FMU to discontinue all work on that project and as a result on 01 November 2001, Simo Tepić of the FMU Ribnik issued a written order that "the works on cutting, exports and dispatching of the wood assortments are to be immediately discontinued in Sections number 79 and 78...."<sup>76</sup> Simo Tepić testified that he understood the urgency of the situation and had his driver immediately transport the order to the FMU Offices and the unit performing the work in those sections.<sup>77</sup>

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<sup>71</sup> Ferizović's Appeal at pages 2-3 and Dabić's Appeal at pages 4-8.

<sup>72</sup> Trial Verdict at page 111.

<sup>73</sup> See Exhibit 3-C-14.

<sup>74</sup> Testimony of Simo Tepić on 06 February 2008 at 2:32:16 to 2:33:01 and 3:12:23 to 3:14:27; and Exhibit 3-B-4.

<sup>75</sup> See Exhibit 3-C-22.

<sup>76</sup> See Exhibit 3-C-26.

<sup>77</sup> Testimony of Simo Tepić on 06 February, 2008 at 2:34:25 to 2:34:59 and 2:50:15 to 2:51:28.

78. Simo Tepić further testified that even though the order was issued, it was not adhered to and wood was still being cut, skidded and delivered.<sup>78</sup> The witness became aware of this activity through the monthly reports.<sup>79</sup> The witness went to the FMU Director, Boro Čeko who confirmed that the works were continuing and provided various reasons for it.<sup>80</sup>
79. Witness Darko Vračar served as the Director of the Work Unit Crkvina<sup>81</sup> which was responsible for Sections 78 and 79.<sup>82</sup> The witness recalls that in late August a contract arrived at the FMU in relation to the Government Decision of July 18th.<sup>83</sup> Boro Čeko assigned the work to his Unit and named Đoko Todorović as the person responsible to implement the project.<sup>84</sup> The witness recalls, however, that a decision was sent to him ordering the suspension of the work in Sections 78 and 79.<sup>85</sup> This order was followed but on November 12th, Boro Čeko called Todorović and ordered him to continue the works.<sup>86</sup> As a result, the felling, delivery and dispatching of wood continued.<sup>87</sup> The cutting of wood was completed in Section 78 in December 2001<sup>88</sup> and its delivery continued into February of 2002.<sup>89</sup>
80. The witness contacted Boro Čeko and inquired as to how he should proceed since he received an order to suspend the work while Čeko had ordered Todorović to complete the Project. Čeko informed the witness that the project should continue and that the order to cease operations should not have been given to him.<sup>90</sup> The witness never learned the basis of Ceko's order to continue the work.<sup>91</sup>
81. Witness Mile Vrtunić testified that he was a Forest Keeper at the FMU Ribnik.<sup>92</sup> He recalls the Government Decision in 2001 allowing Trgokomerc to cut and dispatch wood in Sections 78 and 79.<sup>93</sup> The witness later was informed by Inspector Damjanović that this project was suspended. He testified that a few days later (after November 1st), however, the works continued but does not know who approved it.<sup>94</sup> This continuation involved the felling, extraction and delivery of wood to Trgokomerc.<sup>95</sup> He noted that the work "continued regularly as though there was no discontinuance."<sup>96</sup>

<sup>78</sup> Ibid. at 2:54:18 to 2:54:59; and Exhibit 3-B-19

<sup>79</sup> Ibid. at 2:55:15 to 2:55:53; and Exhibit 3-B-19

<sup>80</sup> Ibid. at 2:58:22 to 2:59:40; 3:00:03 to 3:01:13; and 3:09:24 to 3:09:45: See also Exhibit 3-B-4

<sup>81</sup> Testimony of Darko Vračar on 07 February 2008 at 07:43 to 07:57..

<sup>82</sup> Ibid. at 10:10 to 10:32.

<sup>83</sup> Ibid. at 32:34 to 32:46.

<sup>84</sup> Ibid. at 33:41 to 35:27.

<sup>85</sup> Ibid. at 45:41 to 46:05.

<sup>86</sup> Ibid. at 46:05 to 46:22.

<sup>87</sup> Ibid. at 46:22 to 46:33 and 55:45 to 56:08.

<sup>88</sup> Ibid. at 44:12 to 44:30 and 56:31 to 56:48.

<sup>89</sup> Ibid. at 52:02 to 52:38.

<sup>90</sup> Ibid. at 46:54 to 47:52.

<sup>91</sup> Ibid. at 49:47 to 50:47.

<sup>92</sup> Testimony of Mile Vrtunić on 07 February 2008 at 1:11:29 to 1:11: 55.

<sup>93</sup> Ibid. at 1:13:48 to 1:14: 34.

<sup>94</sup> Ibid. at 1:31:03 to 1:31:46; 1:32:40 to 1:32:50; and 1:40:50 to 1:41:23.

<sup>95</sup> Ibid. at 1:33:40 to 1:34:13.

<sup>96</sup> Ibid. at 1:41:23 to 1:41:35.

82. As a Forest Keeper, the witness maintained an official diary or logbook concerning activities in his area of responsibility.<sup>97</sup> Within his logbook are discussions relating to the activities of the Trgokomerc company in November and December in relation to Section 78 of the forest.<sup>98</sup> The described activities constitute in his opinion, forest theft.<sup>99</sup>
83. Aleksandar Gavrić, an expert witness testified that having examined various government records, he concluded that the cutting and extraction of wood continued after November 1st and that it was delivered to Trgokomerc.<sup>100</sup>
84. The First Instance Panel also reviewed numerous documents indicating that trees continued to be cut, skidded or extracted and then delivered to Trgokomerc after the order to cease on November 1st, including: Exhibit 3-C-29 (Report of Regional Inspector Milan Damjanović dated 8 May 2002)<sup>101</sup>, Exhibit 3-C-33 ( Report "On the Enforcement of the Decision Issued by the RS Government on the Out-of-Court Settlement Between the RS Government and the DI "Trgokomerc Ribnik" dated 13 June 2005); Exhibit 24-A-10" (Expert Report of Aleksandar Gavrić), Exhibit 6-B-1(Audit Report of the FMU's dated 15 June 2004); Exhibit 3-B-4 (Statement of Simo Tepić dated 10 January 2005); Exhibit 3-B-19 (Statement of Simo Tepić dated 7 June 2007); Exhibit 3-B-21 (Statement of Mile Vrtunić dated 07 June 2007); and Exhibit 6-A-2A (Official Log or Diary of Forest Keeper Mile Vrtunić).
85. The First Instance Panel further reviewed the records of the FMU Ribnik relating to the cutting (felling), extraction (skidding) and dispatch (delivery of wood to Trgokomerc) in relation to sections 78 and 79 of the forest.<sup>102</sup>
86. In analyzing all of this evidence, the First Instance Panel credited the testimony of Expert Witness Gavrić. While the Accused has alleged certain weaknesses in this evidence<sup>103</sup>, the Appellate Panel concludes that the Trial Panel could still have reasonably given weight to his evidence.<sup>104</sup> Specifically, even assuming the validity of the allegations, the fact that his evidence was corroborated by documentary exhibits as

<sup>97</sup> Ibid. at 1:41:56 to 1:42:31.

<sup>98</sup> Testimony of Mile Vrtunić, supra at 2:08:34 to 2:21:14.

<sup>99</sup> Ibid. at 2:18:00-2:18:23 and Exhibit 3-B-21 ( where Mile Vrtunić explains that "there was stealing of logs through the dispatch notes—one dispatch note per two or more rounds")

<sup>100</sup> Testimony of Aleksandar Gavrić on 13 March 2008 at 1:14:25 to 1:16:00 and 1:17:40 to 1:18:35 and at Part II of that same date at 2:33:35 to 2:34:40.

<sup>101</sup> In the same Exhibit it is noted that the FMU "acted neither according {to} the Conclusion of the RS GOVERNMENT nor the Order of the Republic inspector or upon its own order and continued the exploitation of the section after the order issuing."

<sup>102</sup> See e.g., Exhibits C-1 to C-10 and B-11 to B-28

<sup>103</sup> The Accused alleged that the witness is not a certified expert, that his work is tainted due to his association with Damjan Stanić and that his analysis is incomplete since he failed to review the Trgokomerc business records. The Accused, however, has failed to demonstrate that the witness lacks the skills and experience necessary to be qualified as an expert. Nor has the Accused demonstrated any involvement of Damjan Stanić in relation to Gavrić's work in this case or that a review of Trgokomerc's records would have affected this witness's findings.

<sup>104</sup> Compare *Prosecutor v. Pavle Strugar, Case No.: IT-01-42, Trial Judgment, 31 January 2005 at para. 210 (where the Trial Court relies upon an expert witness's report even though it has certain weaknesses or deficiencies).*



well as the testimony of other witnesses, were reasonable and sufficient bases for the Trial Panel to rely on his evidence.

87. The Appellate Panel also concludes that the Trial Panel could have reasonably found that Đoko Todorović's testimony lacked credibility since it conflicts with both the testimony of other witnesses and exhibits, and is further contradicted by his own writings and statements.
88. The Appellate Panel further concludes that the Trial Panel's finding that the Accused possessed the necessary criminal intent was reasonable based on the supporting evidence. An examination of the record indicates that in the evening after Simo Tepić issued an order suspending the project, the Accused contacted Tepić and said " {w}hat have you done? You shouldn't have done it." Tepić responded that he was acting "in accordance with the binding decision of the Government and the Forestry Inspector."<sup>105</sup> Thereafter, the Accused was involved in the continued cutting, removal and receipt of wood products in violation of the order.<sup>106</sup> The Appellate Panel notes that having assessed the evidence concerning the Accused's actions and statements, the Trial Panel could have reasonably concluded that the Accused possessed the necessary criminal intent to commit the offense being charged.
89. The Appellate Panel thus concludes that an examination of the record indicates that the Trial Panel's findings and conclusions in relation to the crime of Forest Theft are reasonable and supported by the evidence. Therefore, the Accused's allegations of an error by the Trial Panel are without merit.

#### **D. The Conviction for Giving Gifts or Other Forms of Benefit**

##### **a. Incitement to Commit a Crime**

90. The Accused Jurišić argues that the First Instance Panel erred in its conclusion that Damjan Stanić's actions did not constitute an incitement for the Accused to commit a criminal offence. Specifically, he claims that the "aggressiveness" and "arrogance" of Damjan Stanić while serving as an undercover operative resulted in his being incited to offer a bribe.<sup>107</sup> He further claims that it was Damjan Stanić who raised the issue of offering a bribe and continued to raise the issue in their conversations.<sup>108</sup> The Accused, however, does not identify any particular statement or action of Stanić in the recorded conversations that support his allegation.<sup>109</sup>
91. The First Instance Panel, having reviewed the testimony of Damjan Stanić and the tape recorded conversations concluded that:

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<sup>105</sup> Exhibit 3-B-4

<sup>106</sup> See Testimony of Mile Vrtunić, supra at 2:08:34 to 2:21:14; Exhibit 6-A-2A; and Exhibit 3-B-21

<sup>107</sup> Ferizović's Appeal at page 4 and Dabić's Appeal at pages 8-9.

<sup>108</sup> Dabić's Appeal at page 9.

<sup>109</sup> Trial Verdict at page 58 (noting that the Accused raised the issue at trial but also failed to specify the actions used to incite him to commit a crime).

contrary to the arguments by the Defense, the Court could not ascertain that the Informant incited the accused Miro Jurišić to perpetrate the criminal offence. The fact that the Informant led Miro Jurišić to the conversations does not imply that he incited him or led him to commit a criminal offence, which is what the Defense has been trying to present without any ground.<sup>110</sup>

92. Paragraph 5 of Article 116 of the CPC BiH states in its pertinent part that:

police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offence. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offence committed in relation to those measures.

93. The Commentaries of the CPC of BiH explain that:

Incitement has been regulated by Article 30 of the Criminal Code of BiH wherein it is emphasized that incitement is intentionally making another person commit a criminal offence. It follows that our law recognizes the notion of "police provocations" as a method for exclusion of criminal prosecution of the incited person. On the other hand, the possibility that the police provocations cause the pronouncement of an acquitting verdict (subjective and objective tests) exists in the legal system of the USA and it is known under the name of entrapment. By foreseeing a prohibition for incitement to the commission of a criminal offence, our legislation has fallen within those legal systems that prohibit incitement...<sup>111</sup>

94. The Appellate Panel finds that an examination of the record and applicable law indicates that the conclusion of the Trial Panel was reasonable and proper. The Appellate Panel notes that in the first conversation between the Accused Jurišić and Damjan Stanić, it was the Accused who raised the issue of giving a bribe to the prosecutor.<sup>112</sup> When Stanić later indicates that he knows someone who could assist with the matter, the Accused is ready and willing to immediately meet with that person.<sup>113</sup>

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<sup>110</sup> Ibid. at page 60.

<sup>111</sup> Commentaries of the CPC of BiH, Article 116 at page 360 (2005).

<sup>112</sup> Exhibit 5-B-13 at page 72 (Line 2479).

<sup>113</sup> Ibid. at page 73 (Line 2544).

95. In their second conversation on 18 November 2006, the Accused Jurišić explains that they have to arrive at an amount so that he can divide it among the others.<sup>114</sup> He says that he has been given approval to negotiate with Stanić but does not indicate who provided the authorization.<sup>115</sup> The Accused later explains that he is trying to get the others to agree to the bribe as he does not believe that he could provide all of the money himself.<sup>116</sup> During the conversation, Jurišić frequently refers to an amount of "apples" which Damjan Stanić testified was a code word for money.<sup>117</sup>
96. In the third meeting, the Accused tells Stanić about speaking with Perica Bundalo but notes that he (Jurišić) and Stanić will "run it" including determining the necessary amount.<sup>118</sup> The Accused warns that if rumors of this become public, there will be no money.<sup>119</sup> During the conversation, Stanić asks about the amount of down payment. Jurišić indicates that he must get approval from Bundalo as to the amount.<sup>120</sup> They later negotiate the matter and agree to a down payment of five percent (5%).<sup>121</sup> Jurišić then explains that now that there is some agreement, he can go to the others and explain that he will try to bribe the prosecutor.<sup>122</sup>
97. The Appellate Panel notes that an examination of the recorded conversations suggests that the Accused was at all times ready, willing and able to commit the crime. It was the Accused Jurišić who (1) initiated the idea of offering a bribe,(2) constantly referred to bribery plans, (3) negotiated the amount of the down payment, and (4) was planning to approach others in order to have them provide a share of that bribe. This is not a case of a weak minded or inexperienced individual being induced or tricked into committing a crime; rather, the facts indicate that the Accused was a businessman and politician who had previous experience with the criminal justice system. Nor is there any evidence that Damjan Stanić used any threats, coercion or cajoling in his conversations with the Accused. The Appellate Panel thus concludes that the First Instance panel could have reasonably found that the Accused was not incited to commit the alleged crime. Therefore, this allegation of error is deemed to be without merit.

## **b. Sufficiency of the Evidence Supporting the Conviction**

98. The Accused further argues that the First Instance Panel erred in its finding that the evidence was sufficient to support a conviction for the offence of Giving Gifts or Other Forms of Benefit pursuant to Article 218(1) of the CC of BiH. The Accused submits that since the key meeting where the funds were allegedly given was not recorded and

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<sup>114</sup> Exhibit 5-C-15 at pages 23 (Lines 738 to 754) and 27 (Lines 886 to 898).

<sup>115</sup> Ibid. at page 28 (Lines 921 to 928).

<sup>116</sup> Ibid. at page 33 (Lines 1083 to 1094).

<sup>117</sup> Testimony of Damjan Stanić on 04 March 2008 (Tape # 1) at 1:14:28 to 1:16:00.

<sup>118</sup> Exhibit 5-C-21 at pages 14 and 16.

<sup>119</sup> Ibid. at pages 17-18.

<sup>120</sup> Ibid. at page 19.

<sup>121</sup> Ibid. at page 22.

<sup>122</sup> Ibid. at pages 22-23.

since the witness Damjan Stanić's testimony is not credible, the evidence is not sufficient to establish the alleged offence.<sup>123</sup>

99. The Appellate Panel concludes that an examination of the evidence indicates that the Trial Panel's determination that the alleged offence was established is reasonable and is supported by the evidence. As noted in the previous Section A, the Accused met with the undercover operative Damjan Stanić and initiated the idea of bribing the prosecutor. He further discussed the amount of the down payment.
100. Damjan Stanić testified that on 30 November 2006, he met with Jurišić. During the meeting, the Accused gave one thousand Euro's (Euro 1,000) to Stanić's which was then placed in Stanić's notebook. The money was to be given to the prosecutor as a down payment. The Accused explained that he had to contact the others to collect their share of the money.<sup>124</sup> The Accused further stated that these funds were being given to protect Ivanić, Bundalo and himself.<sup>125</sup> The notebook containing one thousand Euro's (two bank notes totaling 1000) was given to the police<sup>126</sup>. These items as well as the receipt for the funds were later introduced as Exhibits at trial.<sup>127</sup>
101. In the conversation that occurred on 01 December 2006, there is a discussion of one thousand Euro's (Euro 1,000) being given to show the prosecutor that the offer of a bribe was "serious."<sup>128</sup> In a later conversation on 11 December 2006, while the Accused was explaining how he was trying to get five others to split the amount of the bribe, he mentions that he already "gave 1000".<sup>129</sup>
102. The Appellate Panel finds that the tape recorded conversations combined with the testimony of Damjan Stanić and other corroborating evidence<sup>130</sup> constituted a sufficient basis for the Trial Panel to reasonably conclude that the Accused Jurišić committed the offence of Giving Gifts or Other Forms of Benefit. Therefore, since the evidence established the alleged offence beyond a reasonable doubt, the allegation of error is deemed to be without merit.

#### **E. The Legality of Damjan Stanić's Service as an Informant**

103. The Accused Jurišić argues that the First Instance Panel erred in its admission of the tape recorded conversations finding the use of Damjan Stanić as an informant did not violate the CPC of BiH. The Accused submits, however, that paragraph 6 of Article 118 of the CPC of BiH permits only police officers to serve as informants. He further argues that the use of Damjan Stanić in this undercover capacity constituted a violation of the

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<sup>123</sup> Ferizović's Appeal at page 4 and Dabić's Appeal at pages 10-11.

<sup>124</sup> Testimony of Damjan Stanić on 04 March 2008 (Tape 2 and Part 2) at 39:09 to 43:31.

<sup>125</sup> Ibid. at 43:41 to 45:13.

<sup>126</sup> Testimony of Damjan Stanić on 21 February 2008 (Tape 3) at 55:20 to 57:05.

<sup>127</sup> Exhibits 5-F-22, 5-F-31 and 5-F-32.

<sup>128</sup> Exhibit 5-D-6.

<sup>129</sup> Exhibit 0-II-9

<sup>130</sup> Radoslav Vignević, who serves as a Police Inspector also testified in this case as to his role in the undercover operation, which corroborated the testimony of Damjan Stanić.

Article and any evidence resulting from Stanić's service must be excluded.<sup>131</sup> The Accused, however, does not refer to any legal citations in support of his argument.

104. The First Instance Panel rejected the allegation concluding that:

Article 116(5) and Article 122 of the BiH CPC clearly confirm that other persons may participate in the execution of special investigative actions besides the police authorities, which is why the averment of the Defense for the Accused Miro Jurišić that the informant must be a police officer is unfounded and not corroborated. In view of that, none of the provisions of the BiH CPC prescribes the obligation that the informant must be a police authority.<sup>132</sup>

105. The Appellate Panel finds that the Trial Panel did not commit an error of law in its conclusion that the use of Damjan Stanić as an informant did not violate the CPC of BiH. The Appellate Panel notes that an examination of the Section of the CPC of BiH relating to Special Investigative Actions<sup>133</sup> indicates that a number of the articles refer to the use of persons other than police officers in investigations.<sup>134</sup> Furthermore, there is no prohibition on the use of persons other than police officers as informants.

106. An examination of Article 116(2)(e) of the CPC BiH indicates that it authorizes "the use of undercover investigators and informants" during special investigative actions. Paragraph 6 of that same Article which defines the phrase "undercover investigator" does not include the capacity of informant as part of their duties or responsibilities. There is no definition listed for an informant.

107. The Appellate Panel notes that in the absence of clarifying language, the general rule of interpretation requires an understanding of the statutory term in the general accepted sense of the word.<sup>135</sup> The term "informant" has been commonly defined as "someone who gives secret information about someone else, especially to the police."<sup>136</sup>

108. The Commentaries to Article 116(2)(e) of the CPC BiH further provide a definition of the term "informant". Specifically:

{a}n informant is not a police officer. In a criminal-tactical sense, an informant is a person temporarily or permanently hired by the police to be secretly engaged and used for obtaining information about the criminal offense and the perpetrator thereof. Unlike the undercover investigator, the informant has no police powers whatsoever. On the other

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<sup>131</sup> Ferizović's Appeal at page 5 and Dabić's Appeal at page 10.

<sup>132</sup> Trial Verdict at page 61.

<sup>133</sup> See Chapter IX of the CPC of BiH, Articles 116 to 122.

<sup>134</sup> See Articles 116, 118 and 122.

<sup>135</sup> See *Prosecutor v. Milan Mulinović*; Case No. IT-05-87-T, Judgment, 26 February 2009 at para. 207.

<sup>136</sup> Longman Dictionary of Contemporary English at 730 (3rd Ed. 2003). See also *Black's Law Dictionary* at page 849 (9th ed. 2004) (where "informant" is defined as "one who informs against another; esp. one who confidentially supplies information to the police about a crime, sometimes in exchange for a reward or special treatment."

hand, this person just like an undercover investigator acts on the basis of the same legal requirements and performs his activities in the criminal environment.<sup>137</sup>

109. The Appellate Panel finds that the Accused Jurišić has failed to demonstrate that the CPC of BiH prohibits anyone other than a police officer from being an informant. The Appellate Panel concludes that a review of Article 116 and its commentaries as well as the common definitions of the terms therein indicates that the phrase "undercover investigators and informants" refers to two separate and distinct categories of investigative personnel; the former being a police officer and the latter is a person who is not a police officer.
110. The Appellate Panel thus concludes that the First Instance Panel did not commit an error of law in ruling that the use of Damjan Stanić as an informant did not violate the CPC of BiH. Therefore, this allegation is refused as unfounded.

#### **F. Sentencing of the Accused Jurišić**

111. The Accused Jurišić argues that the First Instance Panel erred by imposing too harsh a sentence upon him. The Accused submits that the Trial Panel failed to consider certain important mitigating factors (including family circumstances, poor health and the circumstances surrounding the crimes) while overemphasizing a particular aggravating factor (the Accused's involvement in a similar offense in April, 2002).<sup>138</sup>
112. The Prosecutor argues that the First Instance Panel erred by imposing a sentence that is too lenient based on the aggravating factors. The Prosecutor submits that the amount of the damage and bribery of an important official combined with a criminal record of similar activity warrants a higher sentence. Therefore, the compound sentence for the accused should be the prison sentence for a term of 5 years.<sup>139</sup>
113. In *Prosecutor v Mirko Todorović and Miloš Radić*, the Appellate Panel articulated the standards of review for appeals of sentencing decisions. The Panel stated:

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

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

However, the Appellate Panel will not revise the decision on sentencing simply because the Trial Panel failed to apply all relevant legal provisions. Rather, the

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<sup>137</sup> Commentaries of the CPC of BiH, Article 116 at page 357 (2005).

<sup>138</sup> Dabić's Appeal at pages 11-12.

<sup>139</sup> Prosecutor's Appellate Brief at 9-10.

Appellate Panel will only reconsider the decision on sentencing if the appellant establishes that the failure to apply all relevant legal provisions occasioned a miscarriage of justice. If the Appellate Panel is satisfied that such a miscarriage of justice resulted, the Appellate Panel will determine the correct sentence on the basis of Trial Panel's factual findings and the law correctly applied.

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

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

The Appellate Panel recalls that the Trial Panel is not required to separately discuss each aggravating and mitigating circumstance. So long as the Appellate Panel is satisfied that the Trial Panel has considered such circumstances, the Appellate Panel will not conclude that the Trial Panel abused its discretion in determining the appropriate sentence.<sup>140</sup>

114. Having convicted the Accused Jurišić, the First Instance Panel sentenced him to a compound sentence of two (2) years and imposed a fine in the amount of KM 10,000 (ten thousand) based on the prison sentence for a term of nine (9) months and the fine of KM 10,000 (ten thousand) for the criminal offense of Forest Theft and the prison

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<sup>140</sup> *Prosecutor v. Mirko Todorović and Miloš Radić*, Supra at paras. 180-186.

sentence for a term of one (1) year and six (6) months for the offense of Giving Gifts or Other Forms of Benefit.<sup>141</sup>

115. The Appellate Panel after having reviewed the record, concludes that the First Instance Panel abused its discretion in the imposition of punishment upon the Accused Jurišić. The Appellate Panel agrees with the appellate arguments of the Prosecution that the First Instance Panel did not recognize the significance of the aggravating factors. Therefore, this Panel holds that the imposed compound sentence of imprisonment for a term of 2 (two) years is too lenient for this Accused and decided to partially uphold the Prosecutor's appeal and dismiss the defense appeal in relation to this part of the Verdict. As regards the fine in the amount of KM 10,000 (ten thousand), this Panel has not considered it since the appellate arguments did not refer to the fine.
116. An examination of the evidence indicates that the Accused Jurišić performed the key role in the commission of both crimes. The Accused continued to cut trees and remove the wood even though he was ordered by the RS Government to suspend his activities. He got others to assist including government personnel and used various fraudulent schemes to illegally obtain the wood products.<sup>142</sup> Furthermore, it should be noted that the crime involved the theft of over one thousand cubic meters of wood.<sup>143</sup> With regard to the bribery charges, the Accused was responsible for the crime occurring. He even provided the down payment until he could determine whether other persons would agree to provide the remaining funds for the bribe.
117. As regards the aggravating circumstances on the part of the Accused, the Trial Panel did not take into consideration the degree of criminal responsibility of the accused Jurišić. In this respect, the Panel did not take into consideration the *mens rea* of the Accused, although all the actions of which the accused Jurišić was found guilty by the Trial Verdict were taken with direct intent, which is the most severe form of culpability under our criminal law and certainly requires a more severe punishment.
118. With regard to the offense of Giving Gifts or Other Forms of Benefit, the Appellate Panel further notes that the Trial Panel failed to recognize the gravity of the crime. With the exception of the bribery of a judge, there is no act of bribery more serious than the one at issue here and thus the Accused must be punished accordingly. In fact, the acts of bribery in this case did not just concern a high ranking prosecutor but rather constituted an attempt to impair and corrupt the criminal justice system of Bosnia and Herzegovina.
119. As an aggravating circumstance, the Appellate Panel also took into account the persistence and the inclination of the Accused toward the commission of the criminal offense of Forest Theft, which is reflected in the number of criminal actions taken. In particular, the fact that this criminal offense was continuously repeated as well as his prior convictions were not adequately evaluated by the first instance panel. As regards the Accused's activities before and after the Indictment, the Appellate Panel notes that the Accused was convicted two times (in 1979 and 1984) and sentenced to imprisonment for a term of 3 (three) years and for a term of six months, respectively. He

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<sup>141</sup> Trial Verdict at pages 4-5.

<sup>142</sup> See Exhibit 3-B-21.

<sup>143</sup> Trial Verdict at page 107.



was also convicted of the criminal offense of Forest Theft following the charges in this case and sentenced to imprisonment for a term of 9 (nine) months..<sup>144</sup>

120. The degree of danger or injury to the protected value should in this case be considered as aggravating circumstances. The accused Jurišić was convicted of the criminal offense of Forest Theft, because he organized the forest cutting in the FMU Ribnik as the owner and the director of the *Trgokomerc d.o.o. Ribnik* company, in the quantity of **1093.36 cubic meters**, so that the *Trgokomerc d.o.o. Ribnik* would obtain financial gain. In this respect, Article 424(2) of the CC RS stipulates that the size of the tree trunks must be larger than eight cubic meters. The foregoing indicates that the accused Jurišić cut much more tree trunks than stated in this legal provision, which the Trial Panel should have also taken into account in the process of meting out the punishment for this criminal offense.
121. The Appellate Panel recognizes the existence of certain mitigating factors in determining punishment. The Accused Jurišić is married, has five (5) children and claims to be in poor health. There was no violence involved in the commission of the crime and the Accused acted properly at trial. The Appellate Panel notes, however, that the grave and serious nature of the crime of bribery in this case combined with the Accused's criminal history and the quantity of wood illegally taken far outweighs the mitigating factors.
122. Furthermore, in issuing a fair and just sentence, the Appellate Panel recognizes that the punishment must serve to deter the Accused and others from committing similar criminal acts. Since these offenses constituted an assault upon the natural resources of Bosnia and Herzegovina as well as its criminal justice system, such conduct must be deterred for the protection of the state.
123. In accordance with the foregoing, the Appellate Panel upheld the Prosecutor's appeal in part and revised the Trial Verdict in the sentencing part concerning the accused Miro Jurišić, and for the criminal offense of Forest Theft under Article 424(2) of the CC RS determined the prison sentence for a term of 2 (two) years and a fine in the amount of KM 10,000 (ten thousand) as accessory punishment, and in relation to the criminal offense of Giving Gifts and Other Forms of Benefit under Article 218(1) of the CC BiH the prison sentence for a term of 3 (three); therefore, pursuant to Article 53(1)(2) b) and paragraph (4) of the CC BiH, he is sentenced to a compound sentence of imprisonment for a term of 4 (four) years and a fine as accessory punishment in the amount of KM 10,000 (ten thousand). The Accused Miro Jurišić is obliged to pay this fine within the period of 6 (six) months following the day when this verdict becomes final. If the Accused fails to pay the fine in its entirety, it shall be substituted by imprisonment pursuant to Article 47 of the CC BiH, in such a way that each fifty convertible marks of the amount that remain unpaid shall be substituted by one day of imprisonment, whereby the imprisonment may not exceed one year.
124. The Appellate Panel holds that this punishment is commensurate to all the circumstances in this case relevant to the duration of the sentence and that the purpose of punishment will be achieved as stipulated under Article 39 of the CC BiH.

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<sup>144</sup> Trial Verdict at page 3

125. Taking into consideration the aforementioned reasons, the appellate allegations of the Defense in relation to the sentence imposed on the accused Miro Jurišić are irrelevant.

## VI. ISSUES RELATING TO PART 3 OF THE OPERATIVE SECTION

### Prosecutor's Appeal

126. As regards Count I 1 of the contested Verdict, the Prosecutor's Office holds that when all the different parts of evidence are put together, they show that the only logical version of the events is the one given by the Prosecution and that the accused persons are guilty as charged, and that the Trial Panel lifted the burden of proof so high that it is virtually impossible for the Prosecutor to present evidence which would be sufficient for the Court. Furthermore, the Prosecutor states that the Trial Panel found that criminal intent of accused Ivanić - causing damage to the FMU Ribnik as the Prime Minister of RS - was not referred to in the factual description of the Indictment and that therefore the criminal offence Abuse of Office or Official Authority could not be at issue here. However, the Prosecutor's Office holds that it is clear based on the factual description that Ivanić had to have had the knowledge that his actions would cause damage to the FMU Ribnik as no financial check-ups were made regarding the existence or nonexistence of the debts. The Prosecutor's Office further notes that the Court itself stated in its reasoning that accused Ivanić acted with intent, knowing that damage could occur to the FMU Ribnik.<sup>145</sup>

127. The Trial Panel found that the factual description of the criminal offense with which the accused Mladen Ivanić is charged under the Indictment did not contain all the essential elements of the criminal offense of Abuse of Office or Official Authority under Article 337(4) of the CC RS.<sup>146</sup>

128. Taking into consideration the foregoing, the Appellate Panel notes that under Article 337(4) of the CC RS, the essential element of the criminal offense of Abuse of Office or Official Authority is the **acquired property gain** in the amount exceeding KM 10,000, while the Prosecutor's Office, both in the first instance proceedings and in the appeal, pointed exclusively to the **damage** caused. Specifically, the damage as an essential element of this criminal offense is stipulated under Article 337(1)(2) of the CC RS. However, although paragraphs (1) and (2) of this Article require the existence of damage, the factual description of the criminal offense does not comprise the **intent** of the Accused, the existence of which is necessary for all forms of the criminal offense under Article 337 of the CC RS.

129. The Prosecutor's Appeal provides only general reasons why the Court should have convicted the Accused Mladen Ivanić of the criminal offense of Abuse of Office or Official Authority, alleging that the panel lifted the burden of proof too high, leaving no room for the Appellate Panel to review the contested Verdict in detail in that regard.

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<sup>145</sup> Prosecutor's Appeal at pages 1 and 2

<sup>146</sup> Trial Verdict at page 68

130. Based on the foregoing, the Appellate Panel upheld the finding of the Trial Panel that the legal qualification in the Indictment in relation to the accused Mladen Ivanić cannot be accepted and therefore dismissed the Prosecutor's Appeal as unfounded.

## **The Accused Ivanić's Appeal**

### **A. Validity of the Conviction for Unconscientious Work in Office**

131. The Defense Counsel for the Accused Ivanić argues that the Trial Verdict is internally contradictory as regards the elements of the criminal offense with which the Accused is charged, resulting in essential violation of the criminal proceedings provisions under Article 297(1) subparagraphs j) and k) of the CPC BiH. The Appeal states, *inter alia*, that in the operative part of the Trial Verdict, the Panel failed to mention the fact stated in the Indictment that the Accused Ivanić „knew that the debt did not exist“ and that, as regards the Unconscientious Work in Office, he also acted with intent in relation to the causing of damage.

132. An examination of the record indicates that the Accused was initially charged with the offence of Abuse of Office or Official Authority in violation of Article 337(4) of the RS CC. This Article states:

(3) An official or responsible person who, with the intent to acquire for himself or another a material gain, uses his office or official authority, by overstepping his official authority or fails to execute his official duty shall be punished by imprisonment for a term between six months and five years.

(4) If the material gain acquired in the course of the commission of the offense referred to in Paragraph 3 of this Article exceeds 10,000 KM the perpetrator shall be punished by imprisonment for a term of between one and eight years and if the material gain exceeds 50,000 KM, the perpetrator shall be punished by imprisonment for a term between two and ten years.

133. The First Instance Panel concluded that the factual description in the indictment was defective since it:

does not allege the intent of the Accused to cause damage to a third person, that is, to the FMU Ribnik, which is a subjective element of this criminal offense. Given that the intent of the Accused, as an essential element of this criminal offense, is missing in the factual allegation, this criminal offense does not exist as charged against Mladen

Ivanić in the Indictment.<sup>147</sup>

134. The First Instance Panel determined, however, that the factual description was still sufficient to allege the lesser included offense of Unconscientious Work in Office in violation of Article 344 (2) of the RS CC. This Article states:

- (1) {a}n official person who, knowingly breaches the law or other regulations, fails to exercise due supervision or in any other way manifestly acts in a clearly careless manner in the performance of his official duties, although he was aware or was obligated to be aware and could have been aware that it could result in a serious breach of the rights of another or serious damage to property, and thereby such breach or property damage occurs, shall be punished by a fine or imprisonment for a term not exceeding two years.
- (2) If the serious breach of rights of another or damage to property in the amount that exceeds 50,000 KM has occurred as a result of the offense referred to in Paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term of between one and eight years.

135. The First Instance Panel found the Accused guilty of this offense. Specifically, the Trial Panel found that there were "un-reconciled claims and liabilities" prior to the Government decision on 18 July 2001<sup>148</sup> and that the documentation supporting the out-of-court settlement was not reliable as it did not include the positions of all of the parties as to the debt.<sup>149</sup> The Trial Panel further found that by not waiting for a proposal by the Ministry of Agriculture, Forestry and Water Management as agreed upon in the previous meeting, the Accused had no "grounds to propose" the matter and had failed to establish that a debt existed.<sup>150</sup> The First Instance Panel concluded that the Accused acted in an unconscientious manner in proposing legislation to pay a debt when the amount was contested.<sup>151</sup>

136. An examination of the Operative Part of the Verdict indicates that it conflicts with or contradicts the reasoning and findings of the Trial Panel, which is well reasoned in the Appeal. Specifically, the Trial Verdict states that "{I}vanić had the responsibility of this decision, as according to Article 7 of the Law on RS Government, the Prime Minister is in charge of supervising the actions of the Government and Ministries."<sup>152</sup> In its findings, the First Instance Panel did not find the Accused responsible on the basis that he supervised governmental activities but only found that he coordinated the work of the ministries and ensured the implementation of laws.<sup>153</sup>

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<sup>147</sup> Trial Verdict at pages 77-78.

<sup>148</sup> Trial Verdict at page 88

<sup>149</sup> Ibid.

<sup>150</sup> Ibid. at pages 91-92.

<sup>151</sup> Ibid. at page 92.

<sup>152</sup> Ibid at page 3.

<sup>153</sup> Ibid. at page 94.

137. The Appellate Panel further notes that the term "supervise" is commonly defined as "to be in charge of a group of workers or students and be responsible for making sure that they do their work properly."<sup>154</sup> Article 7 of the Law on Government of the Republika Srpska does not use the word "supervise" or even authorize the Prime Minister to perform a similar function in relation to the actions of the government and ministries.<sup>155</sup> Therefore, the Accused's liability cannot be found on this basis since the Accused did not possess this special duty or responsibility.
138. The Operative Part of the Trial Verdict also states that "{h}e did not have legal or any other basis to suggest and prepare the issue for decision making in the RS Government Session, which he presided, as neither the RS Government nor Ribnik Municipality owed any money to Trgokomerc d.o.o. based on the mentioned contracts."<sup>156</sup> This conclusion conflicts with the findings of the First Instance Panel which did not find that the Accused had no legal basis to suggest or prepare the matter but rather found that his actions were negligent by his prematurely having the matter determined by a vote.<sup>157</sup>
139. Therefore, in addition to the fact that the Operative Part of the contested Verdict is internally contradictory, it is also contradictory to the reasons stated in the Verdict. In this regard, the Trial Panel states in the reasoning that the Accused **acted with intent**, because he was aware that damage could be incurred by such manifestly unconscientious action, and that he wanted such action<sup>158</sup>. Furthermore, the Trial Panel found that the Accused was aware that, due to such unconscientious manner of his, a great property damage could be incurred to the FMU Ribnik<sup>159</sup>, which certainly exceeds KM 50,000, which is a grave form of the Unconscientious Work in Office under Article 344(2) of the CC RS.
140. Although the Trial Panel did not find the existence of intent, which is an essential element of the criminal offense of Abuse of Office or Official Authority, it erred in failing to refer in the Operative Part to the subjective relation of the Accused toward the criminal offense of Unconscientious Work in Office. Specifically, it is necessary to establish the Accused's *mens rea* regarding the criminal offense of which he was convicted under the Trial Verdict.
141. Accordingly, the issue here is that Operative Part of the contested Verdict does not show the subjective relation of the accused Mladen Ivanić toward the criminal offense of Unconscientious Work in Office and that the arguments in the Reasoning of the contested Verdict are not in accordance with the Operative Part.
142. The Appellate Panel concludes that the Appeal of the Defense Counsel for the Accused Ivanić provides valid arguments on the violation of the criminal procedure

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<sup>154</sup> Longman Dictionary of Contemporary English at page 1449 (3<sup>rd</sup> ed. 1995).

<sup>155</sup> Article 7 reads that the "President of the Government represents the Government, directs and coordinates the activities of the Government and the ministries in policy making, ensures the coordinated work between the Government and ministries, ensures the enforcement of the Government's enactments, cooperates with other Republic authorities, gives his opinion to the President of the Republic on the imminent war danger or state of war, signs the acts of the Government and performs other tasks set out under this law."

<sup>156</sup> Trial Verdict at page 3.

<sup>157</sup> Ibid. at page 78.

<sup>158</sup> Trial Verdict at page 90

<sup>159</sup> Trial Verdict at page 83

provisions under Article 297(1) k) of the CPC BiH, wherefore the Appellate Panel has granted the Appeal, revoked the Verdict in that part and ordered a retrial before the Panel of the Appellate Division.

143. Taking into consideration that the contested Verdict has been revoked due to essential violations of the criminal procedure provisions which, beyond doubt, had a negative effect on the lawfulness and validity of the pronounced Verdict, and as a retrial has been ordered, the Appellate Panel finds it pointless to consider other grounds of appeal. Therefore it only provided brief reasons for revoking the Verdict as set forth under Article 316 of the CPC BiH.

144. During the retrial, essential violations of the criminal procedure provisions shall be eliminated, the adduced evidence shall be presented again and with respect to the evaluation of other appellate arguments new evidence shall be presented as necessary.

145. Based on the foregoing and pursuant to Article 310(1) as read with Article 314 and 315(1)(2) of the CPC BiH, it has been decided as stated in the Operative Part of this Verdict.

**Record-taker:**  
Neira Kožo

**Presiding Judge**  
Hilmo Vučinić

**LEGAL REMEDY:** This Verdict may not be appealed.

