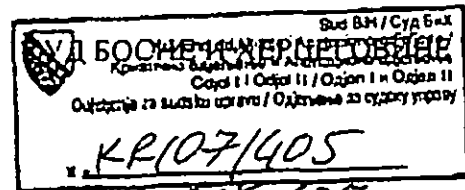


SUD BOSNE I HERCEGOVINE



Number: X-KR/07/405
Sarajevo, 4 February 2008



PREVOD DOK. 677

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, on the Panel composed of Judge Staniša Gluhajić, as the president of the Panel, Georges Reniers and Elizabeth Fahey as the Panel members, with the participation of legal adviser Šaćir Hadžić as the minutes-taker, in the criminal case against the accused Ranko Vuković and Rajko Vuković for the criminal offence of Crimes against Humanity in violation of Article 172 paragraph 1, subparagraph h) in conjunction with subparagraphs a) and g) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 29 of the CC BiH, as read with Article 180, paragraph 1 of CC BiH, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-31/06 of 28 August 2007, confirmed on 31 August 2007 and amended at the main trial on 17 January 2008, following the oral and public main trial during which the public was excluded for a certain period of time, in the presence of the accused persons, their joint Defence Counsel Veljko Čivša, lawyer from Sokolac, and the Prosecutor with the Prosecutor's Office of Bosnia and Herzegovina, Behaija Krmjić, on 4 February 2008 pronounced and publicly announced the following

VERDICT

THE ACCUSED: RANKO VUKOVIĆ, son of Vlado and Kosa, nee Bodiroga, born on 7 September 1969 in the village of Kozja Luka, Municipality of Foča, permanently residing in Foča, 13 Petra Bojevića Street, ID number 0709969131535, Serb by ethnicity, national of Bosnia and Herzegovina, worker, literate, secondary school education, married, father of two children, of medium income, previously convicted, the criminal proceedings pending against him for the criminal offence in violation of Article 250 (2) of CC BiH, in conjunction with Article 232(3) of CC BiH, currently in pre-trial custody, and

THE ACCUSED: RAJKO VUKOVIĆ, son of Vlado and Kosa, nee Bodiroga, born on 20 November 1972 in Foča, permanently residing in Foča, at 11 Šantićeve Street, Serb by ethnicity, national of Bosnia and Herzegovina, literate, secondary school education, married, father of three children, of low income, previously convicted, has been kept in pre-trial custody

ARE FOUND GUILTY

Of the following:

Within a widespread and systematic attack carried out by military, paramilitary and police forces of the then Serb Republic of BiH, directed against Bosniak civilians of the Municipality of Foča, with knowledge of such an attack and of their actions being a part of that attack, as members of these forces they persecuted Bosniak civilians on political, ethnic and religious grounds, taking part in the joint plan and its contribution to the

implementation of a common aim of depriving others of their lives (by committing killings), insofar as:

1. on an undetermined day in late May 1992, together with Ranko Golubović and Blagoje Golubović, armed with automatic weapons, they came to the village of Podkolun, the Municipality of Foča, and then arrived at the family house of Avdija Hukara, son of Hasan, born in 1909, whom they found in the house and shot at thus depriving him of his life, whereupon they headed their way leaving the village, following which they fired at Mejra Bekrija, daughter of Hasan, born in 1927, depriving her of life while she was hilling up potato in a tilled field near the road that they took, and then headed in an unknown direction.

Therefore,

Within a widespread and systematic attack carried out by military, paramilitary and police forces of the then Serb Republic of BiH, directed against Bosniak civilians of the Municipality of Foča, with knowledge of such an attack and of their actions being a part of that attack, as members of these forces and with a discriminatory intent, they persecuted Bosniak civilians on political, ethnic and religious grounds wherein they acted in collusion with other persons thus participating in Joint Criminal Enterprise with a common aim to deprive other persons of their lives.

By doing so they,

committed the criminal offence of Crime against Humanity in violation of Article 172 (1) (h) in conjunction with subparagraph a) of CC BiH, and Article 29 of CC BiH, as read with Article 180 (1) of CC BiH,

and therefore, pursuant to Articles 39, 42, 48 and 56 of CC BiH, the Court

SENTENCE

them to a term of imprisonment of 12 (twelve) years each

The time spent in pre-trial custody from 18 September 2007 onwards shall be credited towards the pronounced sentence of imprisonment against the accused Ranko Vuković.

The time spent in pre-trial custody from 12 July 2007 to 19 September 2007 and from 26 September 2007 onwards shall be credited towards the pronounced sentence of imprisonment against the accused Rajko Vuković.

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused persons shall be relieved of the duty to reimburse the costs of criminal proceedings and they shall therefore be paid from the budget of the Court.

Pursuant to Article 198 (1) and (2) of the CPC BiH, the injured parties: Aljo Hukara and Munib Bekrija are instructed that they may pursue their claim under property law in civil action.

II

Pursuant to Article 284 (1)(c) of the CPC BiH, the accused Ranko Vuković

IS ACQUITTED OF THE CHARGES

That,

Within a widespread and systematic attack carried out by military, paramilitary and police forces of the then Serb Republic of BiH, directed against Bosniak civilians of the Municipality of Foča, with knowledge of such an attack and of their actions being a part of that attack, as a member of these forces, he persecuted Bosniak civilians on ethnic and religious grounds wherein he committed an act of rape against another person using force and making threats, directly attacking upon her life and limb, insofar as:

2. on an undetermined day, in July 1992, in Miljevina, the Municipality of Foča, he came in front of the apartment building in which the injured party "A" resided, and then entered the apartment through the unlocked door and entered the kitchen where he found the injured party and asked her to undress, which she did from fear, and then he pushed her on a two-seater sofa that was in the kitchen and then he raped her, whereupon he left the apartment threatening that she would vanish into thin air if she told anyone what had happened.

Whereby,

he would have committed the criminal offence of Crime against Humanity in violation of Article 172 (1) (h) in conjunction with subparagraph g) of the CC BiH, as read with Article 180 (1) of the CC BiH.

Pursuant to Article 198(3) of CPC BiH, the injured party who has been employed the pseudonym "A" by the Court, is instructed that she may pursue her claim under property law in a civil action.

R e a s o n i n g

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number: KT-RZ-31/06 of 28 August 2007, which was confirmed on 31 August 2007, Ranko Vuković and Rajko Vuković were indicted that, by the actions as described under Count 1 of the Indictment, they had committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph a) of CC BiH and Article 29 of CC BiH, as read with Article 180(1) of CC BiH. The accused Ranko Vuković alone was also indicted under Count 2 of the Indictment which alleges that he had committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph g) of CC BiH, as read with Article 180(1) of CC BiH.

On 17 January 2008 at the main trial, the Prosecutor amended the Indictment by changing the factual description of the Indictment under Count 1, whereby he deleted the text "dressed in camouflage military uniforms" and the text "and then took a radio cassette

player from the house". In regard to Count 2 of the Indictment, the factual description in the Indictment was also amended whereby, instead of the part stating "having noticed the injured party "A" collecting laundry from a clothes-line in front of the apartment building in which she resided, taking the opportunity when she was entering her apartment he followed her in and immediately asked whether she would undress herself or whether he should do that for her, and when she remained silent to that and offered no response, he cursed her mother, pushed her on a two-seater sofa that was in the room and ripped all her clothes off" and a new text was added to read: "he came in front of the apartment building in which the injured party "A" resided, and then entered the apartment through the unlocked door and entered the kitchen where he found the injured party and asked her to undress, which she did from fear, and then he pushed her on a two-seater sofa that was in the kitchen", while the remaining part of the factual description stayed unchanged. In the amended Indictment, the Prosecutor also changed the legal definition whereby he, in the part pertaining to Count 1 of the Indictment suggested that the accused Ranko Vuković and Rajko Vuković committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph a) of the CC BiH, added: "in conjunction with Article 29 of CC BiH" while he did not change the legal definition in the remaining part. The Prosecutor stood by the text of the amended Indictment until the completion of the main trial.

At a hearing held on 13 September 2007, the accused Ranko Vuković and Rajko Vuković entered a plea of not guilty of the criminal offence with which they have been charged in the Indictment.

Throughout the proceedings, the Court took care to protect the identity of the witnesses and the protected witness "A" in particular, by stating in the Verdict the witness's pseudonym instead of the full name, whereas full details of the referenced witness are entered into the case file which is also placed under the special protection. For the purpose of the adequate protection of witness's identity, the Court excluded the public from a part of the main trial held on 7 December 2007, which will be elaborated in the text below.

The Prosecutor presented the following evidence:

As proposed by the Prosecutor's Office of BiH, the following witnesses were heard: Bajro Hukara, Zahida Hukara, Aljo Hukara, Fadil Mekić, Munib Bekrija, Blagoje Todorović, Dragiša Milutinović, and the protected witness under the pseudonym "A".

Furthermore, during the main trial, the Court reviewed the following pieces of evidence proposed by the Prosecutor's Office of BiH: Record on Exhumations of the Cantonal Court in Gorazde, performed in the territory of the Municipality of Foča-Srbinje, No. Kri:10/1 of 28 September 2001, Forensic Report of the Cantonal Court in Gorazde No. Kri-9/01, mass grave site in the area of the village of Podkolun, Municipality of Foča of 28 September 2001, case no. 385, Forensic Report of the Cantonal Court in Gorazde No. Kri-9/01, mass grave site in the area of the village of Podkolun, Municipality of Foča of 28 September 2001, case no. 386, Certificate of the Municipality of Foča, General Administration Section, No. 04-835-1-280 of 7 August 2007 pertaining to the participation of Ranko Vuković in the war, Certificate of the Municipality of Foča, General Administration Section, No. 04-835-1-280 of 7 August 2007 pertaining to the participation of Rajko Vuković in the war, Record of

the State Investigations and Protection Agency on the deprivation of liberty of Rajko Vuković No. 17-04/02-04-2-7/07 of 11 July 2007, Excerpt from the criminal records re. Ranko Vuković and Rajko Vuković, Public Security Station Foča, No. 13-1-8/02-248-2-340/07 of 19 July 2007, Record on Examination of witness "A" made before the Prosecutor's Office under No. KT-405/04 of 9 September 2004.

The defence for the accused presented the following evidence: the following persons were heard as witnesses: Pašana Sejfić, Ramiz Rahman, Hilmo Hukara, Ramiz Hadžimusić, Miladin Stanić, Cvija Stanić, Nada Stanković, Lucija Govedarica a.k.a. Ranka, Dragan Djević, Kosa Vuković, Stanojka Govedarica, and the accused Ranko Vuković and Rajko Vuković.

The Court reviewed the following physical evidence presented as evidence by the defence for the accused during the main trial: Statement of witness Pašana Sejfić given to the Defence Counsel for the accused, lawyer Veljko Čivša on 27 September 2007, Death Certificate for Avdija Hukara No. 03-12-13-3867/07 of 25 October 2007, Death Certificate for Mejra Bekrija No. 03-12-13-3868/07 of 25 October 2007, Death Certificate for Luka Vuković No. 04-202-3-351/07 of 26 September 2007, photographs of the house of the witness A, photographs of the house of the witness Lucija Govedarica, Certificate of the General Administration Section of the Municipality of Foča No. 04-835-2 of 8 January 2008 certifying that Rajko Vuković served the army, Secondary School Certificate, school year 1991/92, No. 257-9/92 of 25 August 1992 for Rajko Vuković, Certificate of a finished class dated 22 May 1992, Statement of Bajro Hukara given to the Security Service Centre under number 689 on 3 December 1993, Record on examination of witness Bajro Hukara No. KT-RZ-30/06 and KT-RZ-31/06 given to the Prosecutor's Office of BiH on 19 September 2006, Record on examination of witness Munib Bekrija No. KT-RZ-30/06 and KT-RZ-31/06 given to the Prosecutor's Office of BiH on 5 October 2006, Record on examination of witness Fadil Mekić No. Kt-RZ-30/06 and 31/06 given to the Prosecutor's Office of BiH on 5 October 2006, Record on examination of witness Aljo Hukara No. Kt-RZ-30/06 and 31/06 given to the Prosecutor's Office of BiH on 19 September 2006, Record made on 24 January 2006 on the premises of the Prosecutor's Office of BiH in regard to receiving an oral report by Aljo Hukara, Record on examination of witness Zahida Hukara No. Kt-RZ-30/06 and 31/06 made on the premises of the Prosecutor's Office of BiH on 24 July 2007, Anonymous statement given to the National Gendarmerie, Military Police Multinational Unit Mostar, the Gendarmerie Investigation and Surveillance Platoon (PGSI) Rajlovac, of 18 November 2003 and the translation from French to B/C/S language, Official Note made by the International Prosecutor Mr. Halbach in the case of the Prosecutor's Office of BiH No. KT 405/04 of 2 August 2004, summons to the witness "A" to be examined in the investigation pertaining to the case of the Prosecutor's Office of BiH, No. Kt 405/04 of 3 August 2004, a tourist map of BiH.

Pursuant to Article 261 (2)(e) of the CPC BiH, the Court decided for the transcript of the statement made by the protected witness "A" in this Court's case against the accused Nedo Samardžić, No. X-KRN-05/49 of 15 March 2006, to be read. In the trial held on 20 November 2003, upon the motion of the Defence Counsel, pursuant to Article 235 of CPC BiH, the Court excluded the public while deliberating upon the motion to have the referenced transcript read, for the purpose of protection of personal and intimate life of the

protected witness "A", since this witness is the victim of rape and the details thereof may go deep in this witness's personal and intimate life.

Also, at the trial held on 7 December 2007, pursuant to Article 240 of CPC BiH, the Panel rendered a decision to partially depart from the regular order of the presentation of evidence at the main trial, whereby it enabled that, prior to cross examination of the protected witness "A", the parties and the Defence Counsel become familiar with the statement of the witness "A" which was given in this Court's case against Nedo Samardžić. On that occasion, pursuant to Article 235 of CPC BiH, the Panel rendered a decision to exclude the public in the part of the session at which the protected witness's statement was read, since the witness also testified as the alleged victim of rape in the case against Nedo Samardžić, and taking into account the content of her testimony, the Court decided to exclude the public in that part so as to protect the intimate and private life of the witness.

Pursuant to Articles 12 and 13 of the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, the Court rendered a decision on 17 August 2007 to order the protection measures pertaining to all witness's details and employed the pseudonym "A" under which the witness would testify. During the proceedings, as moved by the Prosecutor's Office of BiH and as requested by the witness to be granted the additional protection measures due to her fear that her own security and the security of her family would be endangered by her testimony in the proceedings, the witness was enabled to testify from another room by utilizing electronic distortion of the image, while the voice remained undistorted.

The Court acted in such a manner as it found that the witness "A" is a witness under threat and a vulnerable witness and that there existed the reasonable grounds for the parties and the Defence Counsels not to be present in the same room with the witness and that, by granting the measures as requested, the protection of her personal security and the security of her family would be ensured.

After the evidentiary proceedings, the Prosecutor stated in his closing argument that the essential element of the criminal offence of Crimes against Humanity, the existence of a widespread and systematic attack directed against civilians, stemmed from all presented evidence of the prosecution, both the testimony of the examined witnesses and the physical evidence, which undoubtedly establish that the accused Ranko Vuković and Rajko Vuković had committed this criminal offence at exactly the time and the location and in the manner as factually described in the amended Indictment of the Prosecutor's Office. The Prosecutor submits that, in its Decision of 14 December 2007, the Trial Panel accepted as proven the facts which had been adjudicated by the Trial Chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the cases *Prosecutor versus Kunarac* (case no. IT-96-23-T and IT-96-23/1-T), the judgements of the Trial Chamber of 22 February 2001 (*Kunarac*) and *Prosecutor versus Krnojelac* (case no. IT-97-25-T), judgement of the Trial Chamber of 15 March 2002 (*Krnojelac*). By accepting these facts, it has been established that, according to the 1991 census, Foča had 40.513 inhabitants: 51,6% Muslims, 45,3% Serbs and 3,1% of others. Foča fell into the hands of Serbs some time between 15 and 18 April 1992, when many Muslims who stayed in Foča during the combat began to flee, and afterwards the Serb forces continued to attack the non-Serb civilians. Apart from taking the town itself, the Serb forces launched the military operations with the aim of capturing and destroying the Muslim villages in the Municipality of Foča, which were exposed to the attacks until early June 1992. In his closing argument, the Prosecutor further analyzed the testimony of the witnesses Bajro Hukara, Zahida Hukara, Fadil Mekić and Munib Bekrija arguing that no later than April 1992, the inhabitants of the village of Podkolun had to hide in the woods for fear of the Serb army. The statements of these witnesses establish that, in May 1992, both accused arrived in a group of Serb



soldiers in the village of Podkolun and then, together with brothers Golubović Blagoje and Ranko, detached from the group and entered into the Muslim village where they, in his house, shot and deprived of life Avdija Hukara and then Mejra Bekrija while she was hilling up potato in a tilled field. After these killings of the civilians in the village of Podkolun, all the remaining inhabitants of the village were forced to hide in the woods and then they transferred to the territory controlled by the Army of BiH. This fact was also corroborated by the testimony of the defence witnesses Ramiz Rahman, Hilmo Hukara and Ramiz Hadžimusić. Having evaluated this evidence, the Prosecutor submits that it may be concluded beyond reasonable doubt that, in the period when the offences with which the accused have been charged were committed, there existed a widespread and systematic attack of the armed forces of the then Serb Republic of BiH, which was solely directed against Bosniak civilians in the Municipality of Foča. The Prosecutor argues that the accused had knowledge of the existence of the broad-based and widespread attack directed against the Bosniak civilians in the Municipality of Foča, and that the actions they undertook were a part of that attack, which all stems from the presented evidence. The Prosecutor further argues that the Indictment alleges that the accused committed these offences by their participation in a Joint Criminal Enterprise, the aim of which was to deprive others of their lives and so they acted in collusion with Ranko Golubović and Blagoje Golubović, wherein their participation in this Joint Criminal Enterprise is considered to be the most adequate form of responsibility of the accused for the committed criminal offence, which form of responsibility follows from Article 180(1) of CC BiH. In regard to the element of intent, the Prosecutor submits that it is clear that the accused persons, together with other members of the group, quite knowingly and intentionally committed the actions which resulted in the deprivation of life of the injured parties. In regard to the actions described under Count 2 of the Indictment, which pertain to the accused Ranko Vuković, the Prosecutor argues that it is clearly and undoubtedly proven through the testimony of the protected witness "A", which is entirely corroborated by the Record on examination of this witness, made on 9 September 2004 under No. KT-405/04 in the Prosecutor's Office of BiH, and that this testimony cannot be questioned by any evidence whatsoever presented by the defence. Based on the presented evidence, the Prosecutor submits that it may be concluded that, in the actions of the accused which are described under Count 2 of the Indictment, the objective element of the criminal offence of rape which he committed against the injured party "A" is entirely satisfied. The accused Ranko Vuković had the full intent to achieve the sexual penetration of the injured party, and he was aware that, while taking those actions, there was no consent of the injured party, from which it clearly stems that there existed his whole aim and intent to commit the offence by his actions with which he has been charged. Believing that the accused Ranko Vuković and Rajko Vuković are responsible for the perpetration of this criminal offence with which they are charged, the Prosecutor moved the Panel to find them guilty and to accordingly sentence them to a term of imprisonment which is adequate to the gravity of the committed crimes, whereas, in regard to the accused Ranko Vuković, only a long-term sentence would be adequate.

In his closing argument, the joint Defence Counsel for the accused Ranko Vuković and Rajko Vuković, lawyer Veljko Čivša, analyzed the evidence presented by both the prosecution and the defence and, based on the analysis, he moved the Court to acquit both accused persons, claiming there was no evidence proving that the accused persons committed the criminal offence with which they have been charged in the Indictment. In regard to the first Count of the Indictment and the event in the village of Podkolun, Municipality of Foča, the Defence Counsel analyzes the statements of the witness Bajro

