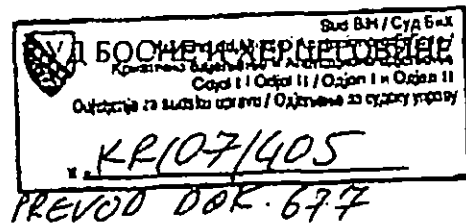


SUD BOSNE I HERCEGOVINE



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



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 Krnjić, 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 Šantićevo 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

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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.

Reasoning

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

Hukara, being the main witness of the prosecution, and correlates this testimony with other witnesses' testimony on these events and, based on all this testimony the Defence Counsel concludes that the Prosecutor's Office did not prove beyond reasonable doubt the events as stated in the Count 1 of the Indictment. On that occasion, the Defence Counsel stated all differences and contradictions in the prosecution witnesses' statements, both between the prosecution witnesses themselves and the differences in the statements of witnesses of the prosecution and the defence respectively, and also in regard to physical evidence reviewed by the Court. In regard to the second Count of the Indictment, the Defence Counsel states that this Count of the Indictment is solely grounded on the testimony of the witness "A" whose testimony was analyzed by the Defence Counsel who then concluded that, in this particular case, if the testimony of this witness were accepted, rape would not be the issue here as, for the criminal offence of rape to exist, there should exist the use of force or threat and intercourse with a female. The defence argues that a conclusion may be drawn from the testimony of the witness "A" that there was no force or threat, which may also be concluded based on the fact that the Prosecutor also amended the factual description of that of the Indictment when he gave up on arguing that the accused pushed the injured party on the two-seater sofa, ripped her clothes off and then raped her. In contesting the statement of this witness, the Defence Counsel analyzed the testimony of witnesses Nada Stanković and Lucija Govedarica which he correlates with the testimony of the witness "A" and, based on the analysis thereof, he concludes that, in this particular case, this was a fabricated event with which the accused Ranko Vuković is charged. In his closing argument, the Defence Counsel for the accused especially scrutinized the application of the Criminal Code through the application of the principle of legality which is included in both national legislation and in Article 11(2) of the Universal Declaration of the Human Rights of 10 December 1948. Having analyzed this principle, the Defence Counsel states that the generally accepted principle of legality has been expressed through the formulation *nullum crimen sine lege, nulla poena sine lege* - No one shall be held guilty of any penal offence on account of any act, that is no criminal sanction may be imposed on him, which did not constitute a penal offence at the time when it was committed. According to the Defence Counsel, the criminal offence of Crimes against Humanity was not part of the national criminal legislation in 1992. The criminal legislation of SFRY included the 1977 Criminal Code of SFRY and the Republic codes, including the CC of SR BiH. In such legal regulations, the international legal principles included in the international agreements could only be directly applied to the national legal system of SFRY following their ratification and publication in the *Official Gazette*. The Defence Counsel further states that the principles of international law which have been included in the International Conventions were not a part of the national criminal legislation of SFRY and did not foresee a sanction as required by the criminal law in accordance with the principle *nulla poena sine lege*, and that the same principle in the application of international law still exists in the current legal system. In stating the recent jurisprudence, the Defence Counsel notes that Article 4(a) of the CC BiH does not foresee in the national legal system a mechanism for the criminal prosecution of the Crimes against Humanity under the "general principles of international law", as the criminal responsibility may only be constituted on the basis of the documents of Parliament and their subsequent introduction into the criminal code. He argues that the general principles of international law have not been, nor are they now, a part of the national criminal code. For all these reasons, the Defence Counsel believes that the Court decision suggesting its jurisdiction over the Crimes against Humanity, which stems either from the customary international law or from the principles of international law, leads to essential violation of the ban pertaining

to *nullum crimen sine lege* and constitutes an impermissible extension of the Court jurisdiction *ratione materiae*.

In their closing arguments, the accused Ranko Vuković and Rajko Vuković stated that they entirely stood by the closing argument of their joint Defence Counsel and that they were not guilty of the crime with which they had been charged.

Having evaluated all presented evidence individually and in correlation, the Court, in a reliable and indisputable fashion, established in the convicting part of the Verdict that, in the period relevant to the crime, the accused persons, being members of the military and paramilitary forces, stayed in the territory of the Municipality of Foča, in the village of Podkolun and that, within a widespread and systematic attack by military, paramilitary and police forces of the then Serb Republic of BiH, directed against Bosniak civilians in the Municipality of Foča, being aware of that attack and that their actions were part of that attack, as members of these forces and with discriminatory intent, they persecuted Bosniak population on political, ethnic and religious ground whereby they, in collusion with other persons, took part in a Joint Criminal Enterprise with the common aim of depriving others of their lives (by committing killings), insofar as, 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, thus depriving him of his life, whereupon they headed out of the village, where 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.

The Court established such state of facts on the basis of the following:

It follows from Count 1 of the Indictment that the accused Ranko Vuković and Rajko Vuković have been charged with the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph a) of the CC BiH and the burden was on the prosecution to prove all essential elements of that offence, that is, the existence of a widespread and systematic attack directed against any civilian population, with the perpetrators' knowledge of such an attack and that the perpetrators' act was a part of the attack, that is, that there exists a nexus between the acts of the accused and the attack against the civilians.

It is indisputable that at the time of the events as charged there was a widespread and systematic attack on non-Serb civilians, which has been found in the final judgements of the ICTY in the case *Prosecutor versus Kunarac* (case no. IT-96-23-T and IT-96-23-23/1-T), and *Prosecutor versus Krnojelac* (case no. IT-97-25-T), by which judgements the Court, in its Decision of 14 December 2007 and upon the motion of the Prosecutor's Office, accepted as adjudicated the facts suggesting that, according to the 1991 census, Foča was a municipality with prevailing Muslim population (51.6%). Foča fell into the hands of Serbs some time between 15 and 18 April 1992, when the attack on the non-Serb population continued wherein the Serb forces destroyed the Muslim villages in the Municipality of Foča, burned down and destroyed several mosques and, between 10 April and early June 1992, they were arresting non-Serb civilians on a massive scale. By the same Decision the Court accepted as indisputable the facts that, in the period from July to November 1992, the Serb forces delivered an attack directed against Muslim civilians,

that after taking the towns and villages, the Serb forces – military, police and paramilitary units and sometimes even Serb villagers, plundered and torched the Muslim houses and apartments, fetched and captured the Muslim villagers and sometimes, in doing so, they beat and killed them. They kept women in the detention centres where they were mistreated in various manners, including frequent rapes. Almost all remaining Muslims, men and women from Foča, Gacko and Kalinovik were gathered, separated and confined and imprisoned in several detention centres such as Buk Bijela, Secondary School in Kalinovik, *Partizan*, Secondary School Centre in Foča and KP Dom in Foča, some of whom were killed, some raped or severely beaten up. In January 1994, the Serb authorities crowned their victory – predominance over the Muslims – by changing the name of Foča into Srbinja.

During the main trial, upon the motion of the Prosecutor's Office, the Court rendered a decision No. X-KR/07/405 to partially accept the adjudicated facts which were accepted by the ICTY Trial Chambers in the cases *Prosecutor versus Kunarac* (case no. IT-96-23-T and IT-96-23/1-T), and *Prosecutor versus Krnojelac* (case no. IT-97-25-T). The Court accepted these facts as proven on the grounds of Article 4 of the Law on Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Court in BiH (Law on Transfer of Cases), while the reasoning of the grounds for accepting these facts and the criteria for deciding on the offered facts, the Court provided in detail its reasoning in its written Decision of 14 December 2007. However, the Court did not accept all the facts as stated in the motion of the Prosecutor's Office; instead, it only accepted the facts which the Court found to satisfy all required criteria for being accepted as proven. The Court did not accept the defence objection to the acceptance of the established facts, whereby it argues that, by doing so, the right of the accused to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights (ECHR) would be violated. The Court accepted the defence objection that some facts offered by the Prosecutor's Office were irrelevant to the case and that some of them included the legal conclusions pertaining to the criminal responsibility of the accused, for which reason it only partially accepted the established facts as stated in the motion of the Prosecutor's Office. The defence did not contest the stated facts which the Court accepted, that is, it did not present any evidence whatsoever to contest authenticity of the adjudicated facts. In addition, the Court finds that Article 6 of the ECHR is not violated by accepting the established facts which are not directly related to the responsibility of the accused, bearing in mind the fact that acceptance of already established facts is consistent with the *lex specialis* Law on Transfer of Cases, and that the use of evidence obtained by the ICTY and the acceptance as adjudicated of those facts which were established in proceedings before the ICTY is not in contravention with the European Convention on Human Rights, whereby there is a restriction suggesting that the use of the stated evidence should not question the fair proceedings in its entirety and the responsibility of the accused. By giving the opportunity to the other party in the proceedings, that is, to the defence, to respond to the motion for acceptance of the adjudicated facts and to challenge such a motion, the Court took due care that the criminal proceedings be fair. On the other hand, pursuant to the stated legal provision of Article 4 of the Law on Transfer of Cases, the Court may, at its own initiative or at the proposal of the parties, accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY and, since the motion includes exactly those ICTY decisions pertaining to the existence of the elements of a widespread and systematic attack and the adjudicated facts therein indicating

the role of the Serb forces – military, police and paramilitary units in that attack, after hearing the parties, the Court accepted some facts as proven.

This conclusion of the Court is certainly corroborated by the statements of the examined prosecution witnesses Bajro Hukara, Zahida Hukara, Fadil Mekić, Munib Bekrija and the witness under the pseudonym "A", who testified on the manner and the circumstances under which they themselves and the members of their families had been expelled from the territory of the Municipality of Foča. Witnesses Bajro Hukara, Zahida Hukara and Fadil Mekić lived in the village of Podkolun, Municipality of Foča, before the war, and it is evident from their testimony that, from April 1992, the Serb forces began to come to their villages on which occasions they interrogated the inhabitants, plundered their property, threatened them etc., for which reason they had to flee to the woods where they hid and, after the murder of the Bosniak civilians in the village of Podkolun in late May the same year, all inhabitants were expelled and went to live in the territory of other municipalities under the control of the Army of BiH. These facts are partially corroborated by the defence witness Pašana Sejfić, who was also a pre-war inhabitant of the village of Podkolun and who, together with the witnesses Bajro Hukara and Zahida Hukara, fled to the woods from the Serb forces, and by the defence witnesses Ramiz Rahman, Hilmo Hukara and Ramiz Hadžimusić who lived in the area towards Kozja Luka, Municipality of Foča, and who stated with one accord that, in the month of April or May 1992, they left their pre-war homes heading toward other areas outside the territory of the Municipality of Foča. Witness under the pseudonym "A", Bosniak by ethnicity, testified that she left her place of residence in the Municipality of Foča in September 1992 after the Serb forces had taken her husband away in the month of June the same year, whom she has never seen again, while the witness Munib Bekrija, as an inhabitant of the place of Miljevina, Municipality of Foča, stated that, in early May 1992, the Serb forces took his brother away from the village of Podkolun, first to Miljevina and then to the KPD Foča, and that he also had to leave his place of residence. On the other hand, as already stated, in contesting the motion of the Prosecutor's Office to accept as established the existence of a widespread and systematic attack directed against the Bosniak civilians in the territory of the Municipality of Foča, the defence did not provide evidence to convince this Court that this attack was not directed against the non-Serb population in that area.

The fact that, in the territory of the Municipality of Foča to which the village of Podkolun belongs, there was a widespread and systematic attack on the non-Serb civilians during the period relevant to the Indictment (late May 1992), is therefore deemed to be established. In that matter, the Court is satisfied that, in the context of the crime against humanity under customary international law, their actions are not restricted to the existence of the "armed conflict"; that is, their actions need not necessarily be part of the conflict.

In regard to the remaining mandatory essential elements of the criminal offence of crimes against humanity, it is indisputable that, in late May 1992, the accused Ranko Vuković and Rajko Vuković were in the territory of the Municipality of Foča where they were born and resided, first in the place of Kozja Luka and then in Miljevina, which both belong to the Municipality of Foča. Their stay in the territory of the Municipality of Foča, that is, in the stated places, stems from both the testimony of the accused persons as witnesses and the testimony of defence witnesses Kosa Vuković, Stanojka Govedarica, Lucija Govedarica and Nada Stanković, wherein the prosecution witnesses Bajro Hukara, Zahida Hukara and

Munib Bekrija also stated in their testimony that the accused persons had been in that area in the period concerned. On the other hand, physical evidence reviewed by the Court, that is, the Certificate issued by the Municipality of Foča General Administration Section, No. 04-835-1-280 of 7 August 2007 undoubtedly suggests that the accused Ranko Vuković participated in the war from 8 April 1992 to 31 January 1997 and that he belonged to the Military Postcode 7141 Srbinje (Foča).

Therefore, based on the foregoing evidence pertaining to the accused Ranko Vuković, it is indisputably established that, in the month of May 1992, he was a member of the Serb army and that, as such, at the time of the commission of the criminal offence, he was in the territory of the Municipality of Foča, which the accused himself does not contest.

The Court did not accept the defence of the second-accused Rajko Vuković who stated that, during that period, he was a pupil who went to school in Foča every day and that he finished his education that year. The Court accepts physical evidence of the defence suggesting that Rajko Vuković was issued a Certificate dated 22 May 1992 showing that he finished III class of the Wood Processing Secondary School Centre in Foča and that in August the same year he was also issued a school-leaving certificate by the Wood Processing Secondary School Centre in Foča, and it also accepts the Certificates issued by the Municipality of Foča General Administration Section as physical evidence suggesting that Rajko Vuković participated in the war from 7 March 1993 to 26 January 1996 and that, before that, he did his national service from 6 July 1992 to 6 March 1993. Based on the testimony of the witnesses Bajro Hukara, Zahida Hukara, Fadil Mekić, Pašana Sejfić, Miladin Stanić and Cvijeta Stanić, the Court found that the event as charged took place in late May 1992, given the unanimous testimony of these witnesses in regard to the time concerned.

However, in evaluating evidence pertaining to the participation of Rajko Vuković in the event as charged, the Court accepted an indisputable fact that, at the time of the event concerned, he was a person of age, nineteen and a half years old, and that, according to the accepted fact established by the ICTY, the armed conflict in the town of Foča broke out on 8 April 1992, and that it is absolutely disputable as to whether the teaching process was organised in the Foča schools at all at the relevant time, wherein the event itself with which the accused has been charged has not been specified in terms of time so that it is not precisely known which day was in question, wherein it is stated that it took place in late May 1992 instead.

On the other hand, the accused Rajko Vuković was seen on several occasions in April and May 1992 coming armed to the village of Podkolun, Municipality of Foča. To wit, it stems from the testimony of the witness Zahida Hukara that, from the beginning of the armed conflict, Rajko Vuković, together with his brothers and the Golubović brothers, often came to the village of Podkolun, and the same witness stated that she was present when Rajko Vuković, whom she knew from before, came to her village together with an unknown person from Miljevina who was Commander, and one more person from Selište, on which occasion they lined up the women and old persons and Rajko asked them to find his brother Luka and then he pushed the rifle bayonet under her throat, neck and mouth and pointed the same rifle at her and other women present, while the other two were hitting her father-in-law Avdija Hukara with their rifles into his chest which caused Avdija to fall down on the ground. Witness Bajro Hukara, who knew Rajko Vuković well, before the war, as Rajko came to Bajro's house looking for his brother Luka who worked with Bajro's son in

the nail factory and who stayed with them overnight, heard from his wife Zahida and his father Avdija that, in April and May, Rajko Vuković was always with a group of persons used to come to their village of Podkolun asking for Luka who had disappeared and that he heard from Zahida that, on one occasion, Rajko Vuković, pushed his rifle bayonet into her mouth, that they lined up women and that someone from the group pushed his father to the ground. It follows from the testimony of both witnesses that, on that occasion, Avdija Hukara addressed Rajko Vuković in particular and said to him that someone would survive that as well and tell about that. The Court accepted as truthful and convincing the statements of Zahida Hukara and Bajro Hukara as in this part they entirely match and supplement the testimony of other witnesses and physical evidence. To wit, the accuracy of the testimony of these witnesses pertaining to the disappearance of Luka Vuković also stems from the Death Certificate for Luka Vuković, which evidence is accepted by the Court and from which it is evident that Luka Vuković died on 25 April 2005, which is the date of his disappearance. The statements of these witnesses suggesting that the deceased Luka Vuković worked in the nail factory in Kozja Luka before the war are also corroborated by the accused Ranko Vuković during his testimony. In his testimony, the accused Ranko Vuković stated that, after Luka disappeared, Ranko looked for his brother Luka who was found dead no earlier than 10 July the same year, and that he assumed that the murderers were the Muslims. This all suggests that the statements of the witnesses Bajro Hukara and Zahida Hukara are quite truthful when they stated that, while looking for his brother, Rajko Vuković on several occasions arrived armed in the village of Podkolun which was only populated by Muslims.

Therefore, the Court finds that the fact that the accused Ranko Vuković was in the army at that time and that Rajko Vuković, being armed, moved around the area of the village of Podkolun clearly establishes that, during the critical period of time, the accused persons undoubtedly had knowledge of the attack on the Bosniak civilians and, based on the method of perpetration and the consequences thereof, the Court finds not only that the accused were aware of that attack and agreed that their actions should be part of the attack, but they actually wanted their actions to be a part of that as well. Therefore, the Court found that the accused had knowledge of a widespread and systematic attack directed against the Bosniak population at that time and that their actions were part of that attack, by which all essential elements of the criminal offence - crime against humanity - have been satisfied.

Furthermore, the Court holds that it has been undoubtedly established in the proceedings that, in late May 1992 in the village of Podkolun, Municipality of Foča, two inhabitants, Bosniak civilians, Avdija Hukara and Mejra Bekrija, were killed by firearms in that Avdija Hukara, born in 1909, was found in the house in which he was deprived of life, and Mejra Bekrija, born in 1926, was deprived of life outside the village while she was hilling up potato in a tilled field. Such state of facts stems from both the testimony of the witnesses Bajro Hukara, Zahida Hukara, Fadil Mekić and Munib Bekrija, and the physical evidence - Report on Exhumations in the territory of the Municipality of Foča - Srbijne, made by the Cantonal Court in Gorazde, and two Forensic Reports, gravesite - location in the village of Podkolun, Municipality of Foča, produced by the Gorazde Cantonal Court in the case No. Kri 9/01. To wit, it follows from the statement of the witness Bajro Hukara that, on the relevant day in late May 1992, he eye-witnessed both the dead body of his father Avdija Hukara in their family house, whom he buried below the family house the same day, and the dead body of his aunt Mejra Bekrija who had hilled up potato in a tilled field near the road,

whose dead body he carried to the brook first and then, together with Fadil Mekić, he carried her to her house. On that occasion the witness saw two bullet-wounds on his father Avdija's body, one in the head, under the eye so that his all brain was out on the couch, and the other in the thorax area, while, on the body of Mejra Hukara, he observed the wounds across her chest which were inflicted by a fire in rapid succession. Witness Zahida Hukara also, on the same day, saw the dead body of Avdija, her father-in-law, in their family house, and she observed two wounds on him, one in the head, under the eye and the other in the thorax area, that her father-in-law leaned against the couch and that his head was blown away: "nothing of it left", and that, the same day, she also saw a dead body of Mejra Bekrija who had hilled up potato that day, but she was afraid of coming closer to her. This witness stated that she and her husband Bajro had buried her father-in-law below the house without delay and that the same day, before his murder, she had seen her father-in-law in the house and asked him how he was doing. Witness Fadil Mekić stated in his testimony that, on the relevant day, Avdija Hukara and Mejra Bekrija were killed and that, that day, after these killings, he came to the village of Podkolun where he observed that Bajro Hukara had buried his father Avdija below the house and then, together with Bajro Hukara, he carried the dead body of Mejra Bekrija from the brook to her house. This witness noted that, on that occasion, he saw that Mejra's body was soaked with blood and that everything indicated that she had been mowed down by a fire in rapid succession. The testimony of the witness Munib Bekrija suggests that after Fadil Mekić had informed him that his mother Mejra was killed, he came to the village of Podkolun and found her dead body lying in her house. He himself buried his mother's body below the house and, as it was night, he did not see the wounds on her body. He states that he was present when his mother's body was exhumed and when the expert team leader said that her death was painless as the whole magazine had been fired at her. Witness Pašana Sejfić, defence witness, also corroborated that, on the relevant day, Mejra Bekrija had tilled up potato in a tilled field. That day, after coming back to the village of Podkolun again, the same witness heard from Hana Hukara that Avdija Hukara had been killed and she also heard from the witness Bajro Hukara that Ranko Vuković had killed Mejra Bekrija. The testimony of the witnesses Bajro Hukara, Zahida Hukara, Pašana Sejfić, and the witnesses Miladin Stanić and Cvijeta Stanić, indisputably establishes that on the relevant day and at the relevant time, in the village of Podkolun, there was shooting. Witness Bajro Hukara stated in his testimony that he first heard two single shots from the direction of the village, while he was hiding in the lime-pit, and afterwards he heard shots fired in rapid succession, whereas the witness Zahida Hukara states that she heard two single shots coming from the direction of her house and then she heard shots fired in rapid succession. The defence witness Pašana Sejfić stated in her testimony that she heard that the shooting began in the village and that it did not last long, while the defence witness Miladin Stanić noted in his statement that he heard the shooting coming from the direction of the village of Podkolun, both single and in rapid succession, which shooting was also heard by the witness Cvijeta Stanić. The Court gave credence to the testimony of these witnesses pertaining to the foregoing facts, as their statements almost entirely match and supplement each other, and their statements are also corroborated by the physical evidence reviewed by the Court, that is: Record on Exhumations and the Forensic Reports. It is evident in the Record on Exhumations carried out in the territory of the Municipality of Foča-Srbinje which was made by the Cantonal Court in Goražde, in the case No. Kri:10/01 of 28 September 2001, that the body marked with No. 385 was exhumed in the Podkolun area, in the garden owned by Suljo Bekrija, and that clothes were also found with the body, including some objects, and that this was the body of Mejra Bekrija,

born in 1926, from the village of Podkolun, whose identity was established by her son Sulejman Bekrija who was present. The same Record suggests that the body marked with number 386 was exhumed at the location of Podkolun, in the garden owned by Bajro Hukara, and that the clothes and a lighter were also found with the body and that that was the body of Avdija Hukara, born in 1909 in the village of Podkolun whose identity was established by his son Bajro Hukara who was present. Also, the Forensic Report made by the expert team of the Clinical Centre in Tuzla, in the case of the Cantonal Court in Gorazde, No. Kri 9/01, case number 385, suggests that the skeleton remains found are of human origin and that they belong to a female between 25 to 83 years of age, that the cause of death was the head fracture, a pelvis and thorax gunshot wounding. The evidence of the injury includes the multiple fractures involving skull and facial bones, fracture of the inner epiphyseal left part of the collar bone, and the I and V left ribs, multiple fracture of the IV lumbar vertebrae and the lower epiphyseal part of the left femur, and the perforating defect of the wing of the left *os ilium*, with inside direction. The identity of the person: Mejra Bekrija, born in 1927, from the village of Podkolun, Municipality of Foča. The Forensic Report made by the same expert team in the case of the Cantonal Court in Gorazde, No. Kri 9/01, case number 386, suggests that the skeleton remains found are of human origin and that they belong to a male between 36 and 86 years of age, and that the cause of death was the head fracture possibly caused by firearms. The evidence of the injury includes the multiple fracture of the skull bones which were partly burned, a fragmented back curve of the cervical vertebrae, and the multiple fracture of the upper thoracic vertebra and possibly the front epiphyses of some ribs on both sides. Identity: Avdija Hukara, born in 1909, from the village of Podkolun, Municipality of Foča. The Death Certificates issued for Avdija Hukara and Mejra Bekrija by the Ustikolina Registry Office indicate that these persons died in 1992.

It was disputable during the proceedings as to whether the accused persons had taken part in the killing of Avdija Hukara and Mejra Bekrija in the manner as presented in the Indictment. In resolving this disputable and most important circumstance, the Court took the already established facts as the starting point wherein they establish that the accused, at the time of the event concerned, were in the territory of the Municipality of Foča or, more precisely, in the place of Miljevina and that, during that period, both accused were armed, that is, the accused Ranko Vuković as a member of a military unit and the accused Rajko Vuković as a person who used to be seen with a group of other persons all coming armed to the village of Podkolun. It stems from the consistent statements of the witnesses Bajro Hukara, Zahida Hukara and Pašana Sejfić that, on the relevant day, Zahida and Pašana were hilling up potato in the tilled field of Bajro Hukara while Bajro Hukara was standing guard when, in the morning, armed persons, soldiers, headed toward their village of Podkolun. Witness Bajro Hukara observed a group of people coming from the direction of *Vranje stijene* (Vranje Rocks) and began to call his wife Zahida and his neighbour Pašana who were hilling up potato, and that he saw that the group deployed in a way that four of them separated and set off towards the village of Podkolun and the others took their positions around the village. The same witness, on that occasion, did not recognize those persons but he heard Pašana say: "There the Chevniks come", and then Pašana and Zahida fled to the village and he hid himself in the nearby lime-pit. This witness also saw that the referenced four persons took the road to enter the village however, after they entered the village, he could not see what they were doing in the village. The other soldiers, apart from the stated four persons, did not enter the village on that occasion. Witness Zahida Hukara stated that

she did not either see or hear the arrival of these persons, but she heard Pašana, who assisted her in tilling up potato that day, saying: "Zahida, there they are. They are coming. Let's beat it, Zahida". She and Pašana fled to the village where, in Pašana's house, there were other elderly women and men to whom Pašana said to run away and then the two of them set off fleeing towards the nearby woods when she heard that someone from the group of those four persons who had detached themselves from the larger group and who progressed towards the village from its upper part asked them not to flee, but she could not recognize who they were. Witness Pašana Sejfić, on the relevant day in May 1992, while hilling up potato, stood up for a moment and saw four persons heading towards the village of Podkolun whereby two of them led the way, the third pointed a rifle at them as if to shoot, while the fourth waved them to run away. She told Zahida then: "There they come", and Zahida responded that they were "our people", and the witness said they were not. Then they together rushed to the house and then to the woods. Pašana could not recognize any of the four persons and she only saw a rifle in the hands of the third one as he pointed it at their direction but did not fire and, as for the others, she could not see if they carried weapons. Considering such statements of the referenced witnesses which match and supplement each other pertaining to the essential elements, the Court found that it was an indisputable fact that, when Avdija Hukara and Mejra Bekrija were killed, four armed persons were in the village of Podkolun.

It follows from the testimony of the witnesses Zahida Hukara that, in the woods into which she had fled, this witness and Pašana Sejfić climbed a hornbeam tree from which they could see the entire village and that she was watching two men coming in front of her house and banging the rifles on the door yelling: "Get out", and then one of them entered the house while the other stayed in front of the door, and then she heard two gunshots and then she saw that the one who had entered the house left it and then they both proceeded up the road. Prior to the described event which took place in front of the house, she saw that the four persons split and two of them came in front of her house and the other two came in front of the house of Bejdana Hukara which was located at the highest point of the village, some 100 meters away from her house, where the two men were moving around the house and found something and took it away. On that occasion, she could not recognize anyone of the four of them nor did she see how they were dressed, but she noted that she saw them gathering in the village again and then they left the village heading towards the place where Mejra was hilling up potato, and then she heard shots fired in rapid succession. In her testimony, the witness Pašana Sejfić corroborated the statement of Zahida Hukara stating that the entire village, including the house of Avdija Hukara, could be seen from the hornbeam tree which this witness climbed. Witness Bajro Hukara categorically states that, at the time while he was hiding in the lime-pit, he saw four persons leaving the village and noted that all four of them passed some twenty meters away from him, that is, as he stated precisely, exactly nineteen steps away from him. The witness was one hundred percent certain that, on that occasion, he saw that the first person approaching to him was Ranko Vuković who was armed with a submachine gun, he was followed by his brother Rajko Vuković and then Ranko Golubović and Blagoje Golubović who carried a tape-recorder and a knitting-machine in his hands. The same witness notes that at the time they all had submachine guns. It stems from the statements of the witness Bajro Hukara that all four of them then headed towards the tilled field where Mejra Bekrija was and she who had previously hilled potato, that he saw them standing in front of Mejra with their backs turned to him, that he asked her something and that she responded that she did not know, and then he heard

shots fired in rapid succession from that direction and he did not hear her voice any longer. He states that he did not see who of the four of them actually fired, but he assumes that it was done by the accused Rajko Vuković as he had seen before that that he was the only one with his gun at the ready, nor did he see the moment of shooting and killing of Mejra Bekrija. Immediately afterwards he was watching Ranko Vuković firing his submachine gun in rapid succession down the brook, and then all four of them went to Pljusak and Vranja Stijena where they all gathered and headed towards the village of Utolovići. The same witness made almost identical statement in regard to this event to the Security Service Centre Sarajevo on 3 December 1993 and on the Witness Examination Record made in the Prosecutor's Office of BiH on 19 September 2006, which statements the Court accepted and tendered into the case file as the defence evidence. The Court gave credence to this witness as it found that the witness described in a convincing fashion what he had heard and seen on the relevant day and which actions he had taken, that he was certain and precise in regard to all key moments and essential elements of the referenced criminal offence, whereas the discrepancies between the statements given by this witness at the main trial and those in the investigation are minor and some of them were resolved during the cross examination, while some of them simply resulted from the examinations being carried out by different people. Also, the Court finds the deviations pertaining to the precise dates of certain events are quite normal and expected since this witness repeatedly noted at the main trial that he did not remember the exact dates and that it should be "at about that time", that he did not remember the exact date on which his father was killed and that it was the late May only, which is expectable given that the event concerned happened during a period which was extremely stressful and traumatic to the witness, at the time when the witness had to flee from his house and stay in the woods and when his father and his aunt were killed on the same day. For all these reasons it is not reasonable to expect identical statements to be made by this witness. The testimony of the witness Bajro Hukara was also corroborated by the witness Zahida Hukara who emphasized that, on the relevant day, her husband Bajro told her that he had been in the lime-pit and that he had seen the accused Vuković Ranko and Rajko, and Ranko Golubović and Blagoje Golubović passing by him down the road and that they had shot at and killed Mejra Bekrija. Also, the witness Pašana Sejfić stated that Bajro Hukara told her that he had eye-witnessed that Ranko Vuković killed Mejra Bekrija. Witness Munib Bekrija notes in his statements that, in 1997, he heard from the late Huso Sejfić who was hiding on the relevant day in the lime-pit below the house of the witness's mother, that he had seen that the accused Ranko Vuković and Rajko Vuković, together with the Golubović brothers, killed his mother Mejra Bekrija. During the cross examination, this witness stood by his claim that he heard from Huso Sejfić that the referenced four men were exactly those who had killed his mother and he noted that his previous statement made before the Prosecutor's Office was incorrect in stating that Huso told him that he had seen a group of soldiers among whom he recognized Ranko Vuković, which he explained by stating that he said so during the investigation as it was noted in the summons that he would be examined in the Ranko Vuković case, and that he believed that a group of people included several persons as listed by Huso. Witness Aljo Hukara who is Bajro Hukara's brother, also stated in his testimony that Bajro told him, after reaching Sarajevo with his family during the war in 1993, that on the day concerned he had seen the accused Ranko Vuković and Rajko Vuković, and Golubović Ranko and Blagoje approaching Mejra Bekrija in the tilled field and that he then had heard shots fired in rapid succession killing Mejra. The witness also made such a statement before the Prosecutor's Office on 19 September 2006, which evidence has been accepted by the Court even though, Blagoje Golubović was

not named at that time and he was only referenced as the brother of Ranko Golubović. In agreement with his other brothers, this witness filed an oral report pertaining to this event to the Prosecutor's Office on 24 January 2006, which has been tendered into the court file as evidence and which suggests that he filed the report against the accused Ranko Vuković and Rajko Golubović. During the cross examination, when asked to explain as to why he had filed a report against only two persons and not against all four of them and why it was stated in the description of the event that, at the time, Bajro saw a group of 5 soldiers reaching Mejra, the witness explained that he personally had not known any of the stated persons and he therefore could not have remembered the name of Rajko Vuković and Blagoje Golubović and that that was the reason for not reporting them, and that it was likely that when filing an oral report, he mechanically said that there were five soldiers in the group. The same witness stood by his statement that Bajro told him that he had seen four soldiers and that he named them to him, and that those were the accused Ranko Vuković and Rajko Vuković and the Golubović brothers. Bearing in mind the fact that, in 1993, the witness Bajro Hukara named all four persons in his statement made to the PSC Sarajevo, whom he had seen and recognized on the relevant day, and considering that the same year, upon his arrival in Sarajevo, he told his brother Aljo Hukara about this event, the Court holds that the witness Aljo Hukara, who was not an eye-witness of the event and who did not know the referenced persons, could have forgotten the names of two out of four persons recognized by Bajro and that it is possible that he mechanically stated, when filing the report and when he was not examined as witness, that Bajro had seen a group of five soldiers. The fact is that, when examined in the Prosecutor's Office as witness on 19 September 2006, this witness stated that there were four persons and that he then named the accused Ranko Vuković and Rajko Vuković and Ranko Golubović, while he did not state the name of Blagoje Golubović and he said instead that the fourth person was the brother of Ranko Golubović, and he stood by this statement. The Court gave credence to the statements of the witnesses Munib Bekrija and Aljo Hukara, finding them truthful and convincing and holding that they do not differ in the essential elements either mutually or when compared with other witnesses' statements which the Court accepted, but that they supplement each other and the Court accepts them as such.

The Court also accepted as convincing the statements of Bajro Hukara and Zahida Hukara wherein they said that they knew the Vuković family from before the war and that they knew the accused Rajko Vuković and the late Luka Vuković, as their son worked with the late Luka Vuković in the nail factory in Kozja Luka from where the Vukovićs come, and that Luka was a good friend of their son who used to visit them at their home and it happened once that the accused Rajko Vuković came to their house looking for his brother Luka who had stayed with them overnight. It is indisputable that the village of Podkolun is close to the village of Kozja Luka in which the accused lived, and that Kozja Luka was the central point of these villages as there was a school, a local community office, a nail factory and a shop in Kozja Luka and therefore, all inhabitants of the nearby villages used to come to Kozja Luka to meet their specific needs and they had the opportunity to meet the inhabitants of that village and the entire area. Witness Bajro Hukara also noted he knew Ranko and Rajko Vuković and Ranko and Blagoje Golubović from before the war and as neighbors, since their village of Podkolun is about four kilometers away from the village of Kozja Luka and two to three kilometers away from the village of the Golubović brothers. The same witness states that they often met previously and always exchanged greetings, and he knew that Ranko Vuković worked as a waiter in the restaurant *At Zeljo's* in

Miljevina and that he often dropped by the restaurant and had a beer. It also stems from the testimony of the defence witness Pašana Sejfić that, the same day when the event concerned took place, Bajro Hukara told her that Ranko Vuković had killed Mejra Bekrija, which undoubtedly indicates that he knew him from before. The protected witness "A" stated in her testimony that the accused Ranko Vuković worked as a waiter in a restaurant in Miljevina, which also corroborates the accuracy of the statement made by the witness Bajro Hukara wherein he stated that he had known him well.

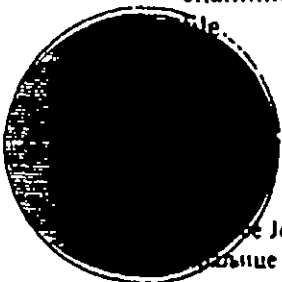
Considering the state of facts thus established, having analyzed the relevant case in terms of time and space, the Court undoubtedly concluded that, on the relevant day, the accused Ranko Vuković and Rajko Vuković, together with the Golubović brothers, as members of the military and paramilitary forces of the Serb Republic of BiH, each armed with automatic rifle entered the village of Podkolun in which they were at the time when Avdija Hukara was murdered by firearms in his family house, whereupon they all together headed out of the village and came across an old woman, Mejra Bekrija, who was hilling up potato, and shot at her thus depriving her of life, and then headed in an unknown direction. The Court holds that, in committing the referenced criminal offence, the accused Ranko Vuković and Rajko Vuković are individually responsible as members of the Joint Criminal Enterprise, since, on the day concerned, they and the Golubović brothers shared common intention, that is, the deprivation of life of other persons, and they were engaged in the execution of the common purpose together with other persons. The Court finds in this particular case that the accused persons participated in the commission of the crime as co-perpetrators, whereby several persons with a common purpose participate in a criminal activity and execute it jointly. Pursuant to Article 29 of the CC BiH, if several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, each shall be punished as prescribed for the criminal offence. Joint perpetration or co-perpetration includes an objective element which reflects in the participation or a decisive contribution to the perpetration of the criminal offence, and a subjective element which is the mutual agreement of the co-perpetrators, that is the existence of a common plan or a purpose, and the key issue pertaining to the co-perpetrators is their cooperation within the common plan¹. Any co-perpetrator is responsible for the entire criminal offence committed within the common plan. In this particular case, the accused need not have committed physically the act of murder to be held responsible: it is sufficient if they willingly participated in the common plan and that they intended to have such an outcome. On the relevant occasion, the accused Ranko Vuković and Rajko Vuković, together with the Golubović brothers, entered the undefended village of Podkolun after detaching themselves from a larger group of people, they entered the village each armed with automatic rifle and then, at short time intervals, first Avdija Hukara was killed by firearms in his family house and shortly afterwards Mejra Bekrija was also killed by firearms by one or more of them in the tilled field outside the village where she was previously hilling up potato. Throughout this period of time, none of the Accused took any negative action, that is, none of them took a specific position and voiced opposition to such a conduct of the group in question in terms of preventing the murders from taking place, or in terms of opposition to the murders, or in terms of leaving the scene of crime on account of the events that took place. On the

¹ Prosecutor versus Papić, Appellate Panel verdict of 6 December 2007, case No. X-KŽ-06/270, para. 12; Prosecutor versus Bekrišević, Trial Panel verdict of 10 January 2007, case No. X-K-06/190, para. 60 (confirmed upon the appeal)

contrary, after the murder of Avdija Hukara in his house, the accused and the Golubović brothers started to leave the village and then got off the road and they all together came to the tilled field where Mejra Bekrija was and, after a short conversation, they shot at her thus depriving her of life. This suggests that the accused agreed with the Golubović brothers to perpetrate the murder of the two persons. In doing so, it is not necessary or required that the agreement about the perpetration of these killings should be reached beforehand. A common plan may also be executed tacitly and even without previous preparation, whereby a conclusion on its existence may be reached based on the fact that several persons act together towards the execution of a common criminal plan. In this particular case, the fact that the accused, together with the Golubović brothers, detached themselves from a larger group and entered the village each armed with automatic weapons and that in the village and in the close vicinity of the village two people were killed in a short period of time, clearly suggests that they acted jointly to implement a common plan, and within a Joint Criminal Enterprise. The ICTY jurisprudence defines various categories of a Joint Criminal Enterprise. The main difference between these categories refers to the issue as to whether or not a crime with which a person is charged has been included in a subject matter of a common criminal plan. If the crime with which a person is charged has been included in a subject matter of a joint criminal enterprise, the perpetrators must act in compliance with a common criminal design and share a common criminal purpose. Even if a crime with which a person has been charged is beyond the subject matter of a joint criminal enterprise, a participant shall become responsible for natural and foreseeable criminal offences of other participants, and the accused shall be found guilty if it is reasonable that he anticipated that other participants in the common plan would take part in these criminal actions. The accused have been charged with the murder of Avdija Hukara and Mejra Bekrija. Evidence presented by the Prosecutor's Office led into an inescapable conclusion that the accused acted within a joint criminal enterprise. These several persons jointly committed these criminal offences and that there existed a common decision that the criminal act should be committed. The accused were aware of their acting jointly with other persons and that they intended to execute a common plan. Considering that the accused have been charged with the perpetration of a criminal offence of Crime against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph a) of the CPC BiH, *mens rea* of the accused is also comprised in a fact that they shared a common discriminatory intent of a joint criminal enterprise since, within a widespread and systematic attack directed against the Bosniak civilians of the Municipality of Foča, having knowledge of such an attack and that their actions are part of that attack, 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, they deprived other persons of life.

In evaluating the presented evidence, or in establishing and reviewing the decisive facts, the Court started at Article 14 of the CPC BiH pertaining to equality of arms, given that it paid equal attention to the examination and establishing of the facts, both inculpatory and exculpatory for the Accused.

During the evidentiary proceedings, the defence presented a number of evidence by examining several witnesses and tendering many pieces of material evidence into the case



The Court has stated which parts of the statements it accepted concerning defence witnesses Pašana Sejfić, Miladin Stanić and Cvijeta Stanić, given that those statements are consistent with and complement other pieces of evidence accepted by the Court as convincing and reliable. The Court has not accepted other allegations of witness Pašana Sejfić because, in its opinion, she obviously intended to conceal decisive facts inculpatory for the Accused. For that purpose, the witness claimed that on the material day Bajro Hukara did not tell her which soldiers had been in the village, while only following several successive questions from the member of the Panel and the presiding judge did she say that it was true that Bajro Hukara told her then that Ranko Vuković had killed Mejra Bekrija. In explaining the difference in the statements, the witness stated she knew the Vukovići well and that she did not mention that fact because she did not see that herself. The Court has not accepted as convincing the statement of this witness that on the material day Zahida Hukara did not climb the hornbeam with her but that she was under the hornbeam for a while. To wit, the Court finds completely illogical and unconvincing the testimony of this witness in the part where she stated she had climbed the hornbeam and could see the village, including the house of Bajro Hukara which is only 10 meters away from her house; however, she was not looking at what was going on in the village but turned her head away. In the opinion of the Court, one who runs to the woods and climbs a tree while running away from armed individuals entering the village, and can see the village and their house from that spot, quite normally has the need to see what is happening in the village, where the armed individuals are moving and what is happening with the house. The Court finds the explanation the witness gave saying she was not watching from the hornbeam is completely illogical and unconvincing. On the other hand, by claiming that she was with Pašana on the hornbeam and able to see the village, Zahida Hukara stated quite naturally what she had seen and heard then. She explained to the Court all the details concerning the whereabouts of the armed individuals, what they had done and where, based on which the Court concluded she testified about the event she had experienced and not something she learned subsequently. The Court has not accepted the statement of witness Pašana Sejfić asserting that the entrance door to Bajro Hukara's house could not be seen from the hornbeam she had climbed. To wit, the statement of witness Zahida Hukara implies that while she was on the hornbeam, she saw two armed individuals reaching her family house, one of whom entered the house in which Avdija Hukara, her father-in-law was, while the other one stayed in front of the door. Such a statement complements the testimony of witness Bajro Hukara who said that Avdija had lived separate in their family house and that they had had separate entrances, one entrance on one side and the other on the other side of the house. Having in mind that the referenced house had two entrances, on two different sides, it can be concluded with good reason that witness Zahida Hukara was able to see the entrance door to the house. With regard to this circumstance, witness Bajro Hukara stated he had built the new house after the war. Having in mind the testimony of witness Pašana Sejfić that she was on good terms with the Vuković family, as well as that she did not want to state some inculpatory facts for the Accused, the Court has not accepted as convincing the statement of this witness that on the material day she saw four individuals entering the village, wearing olive-drab uniforms and caps on their heads, as it found that such a statement was given in order to diminish the criminal responsibility of the Accused. This in particular since, according to her statement, the witness was 500 meters away from those individuals, which is quite a distance for such an observation. The testimony of witness Pašana is in contradiction with the statements of witnesses Bajro Hukara and Zahida Hukara who were

together with Pašana on the same spot at the time those individuals appeared but could not see how they were dressed.

The Court has accepted the testimonies of witnesses Miladin Stanić and his wife Cvijeta Stanić who are consistent in stating they have known the Vuković family and the Accused well ever since they were children. They saw a group of soldiers from Miljevina leaving towards the village of Potkolun in the morning hours of the material day, while after the same group of soldiers had returned they noticed one of them carried a tape player and the other one a knitting machine. The Court has not been able to verify the authenticity of witness Miladin Stanić's statement that a soldier named Slaviša carried the knitting machine and the other unknown soldier the tape player, because the testimony of witness Blagoje Todorović, father of the late Slaviša, and which was accepted by the Court as convincing, implies he did not see it nor did he know anything about the knitting machine his son allegedly had carried. He also does not know whether his son was in the village of Utolovići at all at the time, nor does he know whether he knew witness Miladin Stanić. With regard to the testimonies of witnesses Miladin Stanić and Cvijeta Stanić claiming that in the group of soldiers leaving and coming back they saw neither the Accused nor the Golubović brothers whom they also knew, the Court finds that, given the fact that there are other directions leading to the village of Potkolun, the Accused did not necessarily have to be in that group of soldiers. In evaluating the testimonies of those witnesses, particularly witness Miladin Stanić, the Court had in mind that this witness did not want to give a brandy still to Bajro Hukara since he refused not to testify before the Court about what he had seen when the sister of the Accused asked him that. The mentioned witnesses were consistent in saying that they knew some of the soldiers. During the examination concerning that circumstance, witness Miladin Stanić only mentioned the names of Slaviša and one Čiča, who got killed, and a soldier whose last name was Milutinović, and claimed he did not know his first name. Apart from soldier Slaviša Todorović, knowing his full name as well as that he got killed, witness Cvijeta Stanić refused to give the names of other soldiers whom she knew. Only following the Courts' insisting on her obligation to tell the Court everything she knew and her rather long hesitation, she nervously stated she also knew Dragiša Milutinović but underlined she was afraid of even mentioning his name. Having in mind consistent statements of those witnesses that they have known the Accused ever since they were children and that they attended the same social events and gettogethers, as well as that they all liked the Vuković family, it is difficult to expect those witnesses to testify that they had seen the Accused in the group of soldiers. This in particular since that they did not want to provide the Court with the details concerning other soldiers who are still alive.

The Court finds the testimony of witness Dragiša Milutinović completely unconvincing, given that he mostly refused to answer questions, invoking his right not to answer questions if the truthful answer would expose him to prosecution. The Court got the impression that the witness gave such answers in order to avoid any possibility of involving himself with the incriminating event in the village of Potkolun or his participation in the referenced event.

Witness Dragan Dević testified about meeting witness Munib Bekrija in a shop in Miljevina claiming that the accused Ranko Vuković was not present in the shop during that meeting, and that he did not pull a knife in front of this witness. The mentioned witness was proposed by the defence in order to discredit prosecution witness Munib Bekrija who, in his statement in the Prosecutor's Office on 5 October 2006, stated that in 1998, he entered a shop in

Miljevina where he saw Dragan Đević, while the accused Ranko Vuković entered immediately thereafter, pulled a knife in front of him and cut a chewing gum saying "Just how many of them did I...". The Court concluded that during his testimony at the main trial, witness Munib Bekrija did not mention the event at all, and therefore was not subjected to direct or cross examination, which is why the Court was unable to evaluate the reliability of the witness statement which was not given before the Court.

The Court did not accept the testimonies of the accused Ranko Vuković and Rajko Vuković given before the Court in the capacity of witnesses, as it believed their statements were given exclusively for the purpose of avoiding criminal responsibility. In addition, the testimonies of the Accused given in the capacity of witnesses are completely in contradiction to the testimonies of witnesses whom the Court found convincing and to whom it gave credence.

With regard to the acquitting part of the Verdict, based on the evidence presented at the main trial, the Court could not establish beyond reasonable doubt that within a widespread and systematic attack carried out by military, paramilitary and police forces of the then Serb Republic of BiH, directed against the Bosniak civilians of the Foča Municipality, being aware of the attack and that his actions were part thereof, as a member of the forces the accused Ranko Vuković persecuted Bosniak civilians on ethnic and religious grounds by raping a person using force and making threats, directly attacking her life and limb, insofar as on an undetermined day in July 1992, in Miljevina, the Foča Municipality, came to the apartment where the injured party A lived, entered through the unlocked door and came to the kitchen where he found the injured party; he then told her to undress which she obeyed out of fear, whereupon he pushed her on a two-seater sofa that was in the kitchen, raped her, and then left the apartment threatening that she would vanish into thin air if she told this to anyone, whereby he committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) (h), as read with item (g) of the same Article, all in conjunction with Article 180 (1) of the CC BiH.

With regard to this Count of the Indictment, the prosecution proposed and examined only one witness at the main trial, that is the injured party A, and tendered into the case file the Record on the examination of this witness made by the Prosecutor's Office under No. KT-405/04 dated 9 September 2004. The defence proposed and examined witnesses Nada Stanković, Lucija Govedarica aka Ranka, and Stanojka Govedarica, while, for physical evidence, it tendered two photographs depicting the apartment building of the injured party A and witness Lucija Govedarica, as well as an anonymous statement given by witness A to the National Gendarmerie, Multinational Unit of the Military Police Mostar, PGSI Unit */Surveillance and Intervention General Squads/* Rajlovac, dated 18 November 2003, translated from French into BCS, the Official Note made by International Prosecutor Halbach in the Prosecutor's Office of BiH case No. KT 405/04 dated 2 August 2004 and summons to witness A to be examined in the investigation in the Prosecutor's Office of BiH case No. KT 405/04 dated 3 August 2004.

In direct examination, the prosecution witness, the injured party A, testified that she had lived with her husband and three minor children in an apartment in her place of residence and that her husband was taken away in June and she has never seen him ever since. At that time, her children attended the 4th, 2nd and 1st grades of elementary school. After that, she

was taken to forced labor; they came to her door, windows, harassed and frightened her, searched her apartment and took the fuses out. She knew the accused Ranko Vuković from before because he worked as a waiter in a bar at Nada Stanković's house, so very often he passed by her apartment building when going to work. She knows that the accused Ranko Vuković lived in Kozja Luka because her aunt whom she sometimes visited lived there as well. She had never had any contact with the accused Ranko before and she only used to see him when he was coming to work. One night, in June or July 1992, he knocked at her door which had previously been forced open and entered finding her in the kitchen listening to the radio news. She was alone in the kitchen and her children were in the other room. She said the accused Ranko Vuković had first asked her which news she was listening. Then he asked her what she would say if her kind came, whether she would hide him. After that, he told her she had to undress and that she had 5 minutes to do that. She stated he had not beaten or insulted her. She was in her trousers and a T-shirt, she undressed herself but she could not remember whether she undressed fully or partly. She was afraid of him because it was night. He only took off his trousers and forced himself on her on a two-seater sofa in the kitchen. Then he threatened her not to tell anyone about it because she would vanish into thin air. Never again has he come to her place nor has she seen him ever again. She could not remember whether she had told anyone about the accused Ranko Vuković. After that, when others started visiting, she mentioned those visits to her neighbour Ranka. She stated she was afraid to tell her neighbors Nada and Ranka that she had been raped. She stayed until September in her place of residence and then left with her children. At that time, she had no health problems but she was constantly afraid whether she would survive. Having left her place of residence, she reported to a psychiatrist and she has been taking tranquilizers. She stated she had given several statements to the Prosecutor's Office and the Court in various cases in which she testified.

In direct examination, the prosecutor presented this witness with inconsistencies in her statements given at the main trial before the Court and in the investigation, stating that in the investigation, the witness stated that the accused Ranko had thrown her on the two-seater sofa and ripped her clothes off, while at the hearing she said she had taken off the clothes herself. The prosecutor requested the witness to say which one was true and where the inconsistencies came from, whereupon the witness stated she could not remember whether the Accused had thrown her or threatened her as it was a long time ago, but she knew he had touched her.

In cross-examination, the witness mentioned Nada Stanković and Ranka Govedarica as persons who were hiding and helping her at the time. The witness confirmed to the defence counsel that she had given several statements until that moment, while she gave the first statement to international observers in 2003 when she asked to remain anonymous. The defence counsel showed her the statement in which there is no mention of the referenced event or the name of the accused Ranko Vuković. Having been asked to explain why it was so, the witness had no answer thereto. The defence showed her some photographs on which she recognized her apartment building where she lived at the time and said that her neighbour Ranka had lived in an apartment building below hers and that apartment building was shown on one photograph. Following a question posed by the Court, the witness stated that she had known the accused Ranko several months before the event as he had worked by as a waiter and she used to see him on his way to work and when he visited his cousin who lived in the same bloc of flats. She got his name from the regulars at the

bar where he worked. She described him as a black-haired and rather tall individual. She stated that the event relative to the charges occurred in July, one or two hours after she had collected the clothes and that she had not dared to tell anyone about it. She said she was first raped by the Accused and, later, others started visiting, in twos or threes. She also stated that the Accused came by night when her lights were off as it was forbidden to put the lights on, he did not have a weapon but she could not remember how he was dressed, or whether he wore uniform.

Witness Nada Stanković testified that during the period relative to the charges she had lived in the same place as witness A, and that witness A had lived in the vicinity of her house with her husband and three children. She was on good terms with witness A and they met on a daily basis. She did not know whether something bad happened to witness A during that period apart from her husband being taken away and that witness A then stayed in her apartment until September that year. She stated her cousin owned a bar located in her house, and Mićo Vuković, the Accused's brother had worked there. She knew the accused Ranko and Rajko Vuković but she does not know whether witness A knew them.

Witness Lucija Govedarica aka Ranka testified that she had known witness A for some time as they had lived nearby. They met every day, were on good terms and she knows her husband was taken away because witness A told her about it. She stated she had not noticed witness A being in other unpleasant situations during the period relative to the charges and that, after her husband had been taken away, she stayed in the apartment until September that year. She did not know the accused Ranko and Rajko Vuković until 1992 when they came to her place of residence as refugees. She knew their brother Mićo Vuković who, at that time, used to work as a waiter in a bar located in Nada Stanković's house, in the vicinity of her apartment, although she did not visit that bar herself. She stated the accused Ranko Vuković had not worked in the bar nor had she noticed him visiting the bar. She also stated witness A had never told her that someone had come to her apartment or mistreated her. She also did not notice that the witness appeared as a raped person at the material time.

Witness Stanojka Govedarica testified she had lived in the same apartment building as witness A. She knows that witness A's husband was taken away in July 1992, whereupon she stayed in the apartment with three children until September or October that year. She does not know whether the witness ran away from the apartment during that time nor does she know whether she was in unpleasant situations or whether she was raped. She stated she was on good terms with witness A, they spoke often but she did not notice any signs, physical or mental, that she had been raped. She stated there had been a bar in the house of Nada Stanković, and that Mićo Vuković had worked there as a waiter. She stated Ranko Vuković had never worked in that bar nor had he visited her. She is distant cousin to the Vuković family, through grandparents. She told witness A she was related to Mićo Vuković but she never mentioned to her, nor was asked by her, whether Mićo had any brothers. Besides Mićo, his brother Luka visited her in her house, as they are of the same age, unlike Ranko and Rajko who are much younger than her so they had nothing in common. After Luka disappeared, the Vuković family came to Miljevina from Kozja Luka and she used to see them only sometimes, but rarely and she did not help them. She does not know whether the Accused were in the military then as she only saw them in civilian clothes.

Witness Kosa Vuković testified that her late son Mićo Vuković had worked in a bar at Nada Stanković's.

During the evidentiary proceedings, the Court read out witness A's testimony given before this Court in the case against the accused Nedo Samardžić, case No. X-KRN 05/49 dated 15 March 2006.

At the main trial, the Prosecutor tendered into the case file the Record on statement of this witness given to the Prosecutor's Office of BiH in the case No. KT 405/04 dated 9 September 2004 during which the witness was shown an anonymous statement she had given to the National Gendarmerie. The defence showed the same Record to the witness during the cross-examination.

During the direct examination of witness A, the Court refused the prosecution motion to admit into the case file the statements this witness had given in other cases when the witness testified about the referenced event because the Prosecutor stated the witness had stated nothing different from that said at the main trial. The referenced statements had not been previously shown to the witness in order to point at certain inconsistencies therein. On that occasion, the prosecution did not want to tender into the case file the Record on Examination of this witness made in the Prosecutor's Office in the case against the accused Ranko Vuković, which was shown to the witness in the direct examination in order to point out certain inconsistencies therein. The Court based its decision on Article 273 (1) of the CPC BiH which reads that prior statements given during the investigative phase are admissible as evidence at the main trial or when used in rebuttal. Given that the proposed Records were not used in rebuttal of witness A's allegations, the prosecution motion was refused.

In the analysis of the presented evidence with regard to Count 2 of the Indictment, the Court could not establish beyond reasonable doubt that the accused Ranko Vuković committed the criminal offence with the commission of which he has been charged under the amended Indictment, due to the reasons that follow:

The Court was mindful of the fact that, given the time and the place of the alleged criminal act, it cannot expect the prosecution to have material evidence implying that the injured party was raped and to have material evidence proving that the Accused is the perpetrator.

Witness A testified that she had known the accused Ranko Vuković because he had worked as a waiter in a bar located in Nada Stanković's house. She used to see him passing by her apartment building when going to work and she got his name from the regulars at the bar. The witness also stated that the Accused had lived in Kozja Luka and he had a female cousin who lived in her apartment building; she described him as a black-haired and rather tall person. The Court accepted these allegations of the witness as they were consistent with and complemented other pieces of evidence presented at the trial. Witness Bajro Hukara, whose testimony was also accepted by the Court, also claimed that the accused Ranko Vuković had worked as a waiter in a bar in Miljevinja, and that he had visited the bar. The accused Ranko Vuković's details and testimonies of witnesses Lucija Govedarica, Stanojka Govedarica, Kosa Vuković and the Accused himself undoubtedly imply that the Accused lived in Kozja Luka until late April. In addition, testimonies of witnesses Nada Vuković and Lucija Govedarica imply that Nada Stanković's cousin owned a bar in her

house, while the house was in the vicinity of the apartment building where witness A lived. Witness Stanojka Govedarica testified she was related to the accused Ranko through their grandfathers, as well as that she lived in the same apartment building as witness A. Having in mind such witness testimonies given at the main trial, which were accepted by the Court as being mutually consistent, the Court undoubtedly accepted that witness A had known the accused Ranko Vuković prior to the incident relative to the charges.

The Court has also accepted witness A's statement that she did not tell her friends Nada Stanković and Lucija Govedarica aka Ranka about being raped by the accused Ranko Vuković as that statement has been confirmed by the statements of the two witnesses. They are consistent in saying that witness A did not tell them anything about that nor could they notice on her that she had been raped. Having in mind that witness A stated she had not been beaten on that occasion and had no health problems apart from being scared, the Court finds that these witnesses could not have noticed marks on witness A or significant change in her behavior which would indicate she was a rape victim in that case. Witness A testified that only after other persons had afterwards started visiting her in the apartment with the intention to rape her did she find a hiding place in a storage space where she stayed for a couple of days, which implies that there were no notable changes in the behavior of witness A.

During the proceedings, and given that witness A's testimony was very imprecise and changed over time, the Court could not establish beyond reasonable doubt that in the particular case the act of rape did occur and that it was committed by the accused Ranko Vuković. The Court has found it was not convincing to the degree necessary to be used as a ground for a convicting verdict. To wit, the Court finds that the act of rape remains etched on a woman's memory and cannot easily be forgotten, particularly having in mind that, according to witness A, it was the first time she was raped. The Court does not view as convincing witness A's statement that she does not remember the manner of commission of the act, particularly having in mind that, as she stated, she was not beaten, insulted or mistreated on that occasion, the Accused had no pistol and she was afraid of dark. Based on the statement of this witness, the Court could not establish with certainty under which circumstances and how the rape occurred, given that witness A herself, as the victim of the alleged rape, could not explain that. In addition, the Court had in mind that this single defence witness was very insecure and imprecise in giving her testimony when stating the facts important to establishing the essential elements of the referenced criminal offence and the criminal responsibility of the Accused. Therefore, with regard to the circumstances of the rape, this witness gave statement at the main trial which was considerably different from her statement given in the investigation. For that reason, the Prosecutor requested her to explain the inconsistencies but witness A could not remember which one of what she had said was true and whether the Accused first cursed her mother and threw her on the two-seater sofa and then ripped off her clothes as she had claimed previously, in the investigation, or if it was not like that. In addition, the witness could not remember how the Accused was dressed at that moment, whether he was in uniform; she could not remember whether she later told anyone that she had been raped. The witness also could not explain why she had not mentioned the referenced incident or the name of the accused Ranko Vuković as a person who raped her in her first examination concerning the offences of rape, when she requested to remain anonymous. As a consequence of different statements of this witness, the Prosecutor partly changed the factual description of Count 2 of the Indictment

during the main trial, by omitting all the parts therein referring to previously described manner of the commission of rape as the witness had previously claimed in the investigation.

However, in addition, part of the factual description of the act of rape which remained in the amended Indictment that the accused Ranko Vuković had thrown witness A on the two-seater sofa was not established in the evidentiary proceedings because witness A did not mention the fact at the main trial at all.

Having reviewed the anonymous statement given to the National Gendarmerie, Multinational Unit of Military Police Mostar, PGSI Unit Rajlovac on 18 November 2003, translated from French into B/C/S and, based on the Official Note made by the International Prosecutor Halbach in the Prosecutor's Office of BiH case No. KT 405/04 dated 2 August 2004 and summons to witness A to be examined in the investigation in the Prosecutor's Office of BiH case No. Kt 405/04 dated 3 August 2004, as well as the Record on Witness Statement given in the mentioned prosecution case, it was established that it was given by witness A. It follows that, on the occasion of giving her first statement concerning the incidents she had experienced during the conflict, the witness had not mentioned the incident of being raped by the accused Ranko Vuković at all. Given that this witness gave a quite clear and detailed description of other rapes she was subjected to from July through September 1992 in Miljevina, it remains unclear to the Court why she did not mention on that occasion that she had been raped by the Accused as well, particularly since she claimed that it was the first rape to which she was subjected. The Court was even more in a quandary about the credibility of this witness's statement due to the fact that in cross-examination this witness had no answer to the question why she had not mentioned the referenced incident at the time and, instead, when asked about that by the Defence Counsel, she remained silent, failing to provide any explanation.

In addition, the Court also finds illogical the statement of witness A that it was out of fear that she did not mention anything about being raped by Ranko Vuković to her friends Nada Stanković and Lucija Govedarica aka Ranka, who she claimed had helped her. This is particularly so if one has in mind her second statement in which she said she had told Ranka Govedarica about subsequent visits of others who raped her. The Court can understand this witness being afraid of sharing details with those persons, but it remains unclear as to why she was not afraid when other persons were involved, particularly why, following her departure from the place of residence and the transfer to the territory under the control of BiH army, she did not mention the referenced incident to anyone. Having in mind that in her anonymous statement given in 2003 she did not mention the name of the Accused as the person who had raped her, it follows that witness A did not tell anyone about the incident until twelve years after it had happened. If one takes her assertion as true that she has not seen the accused Ranko Vuković after the rape at all, then it remains unclear why, during such a long period, this witness failed to mention the name of the Accused as the first person who raped her.

In evaluating the credibility of testimony of witnesses Nada Stanković, Lucija Govedarica, Manojka Govedarica and Kosa Vuković, the Court did not accept the testimonies in the part in which they stated the accused Ranko Vuković had not worked as a waiter in Miljevina

because they are in contradiction with the testimonies of witnesses Bajro Hukara and witness A, to which the Court gave full credence in that part.

During the evidentiary proceedings, the prosecution failed to present any other corroborating evidence before the Court to indicate that the accused Ranko Vuković had raped the injured party at the material time.

In evaluating the evidence, the Court was mindful of other pieces of evidence presented at the main trial. However, the Court has not given particular importance to them nor has it deemed necessary to analyze them in detail as they did not have significant impact on the finally established state of facts and conclusions reached by the Court based on the evidence which was previously evaluated.

During the proceedings, some procedural unappealable decisions have been rendered, which can only be contested by the appeal from the Verdict. Therefore, in the main trial of 13 November 2007, by the decision of the Panel and pursuant to Article 273(1) of CPC BiH, the Motion of the Prosecutor's Office of BiH was refused in regard to admitting the Record on Examination of Witness Bajro Hukara, which was given to the Prosecutor's Office of BiH, as it was not presented to the witness during cross-examination. At the trial held on 15 November 2007, when examining the prosecution witness Aljo Hukara, the Panel rendered a decision to grant the motion of the Defence Counsel for the accused Ranko Vuković so as to, during cross examination of this witness, enable the presentation of the record on received criminal report of 19 September 2006, pursuant to Article 273(1) of CPC BiH. In the trial held on 11 January 2008, the Panel refused the motion of the Prosecutor's Office that the second-accused should not be present at the time of testimony of the first-accused as a witness because it believed it would be contrary to the provisions of the CPC BiH pertaining to ban on trial in case of absentia, and that it would also deprive the Accused of the right to pose questions to the witness and comment on all the facts that are in his favor.

In the trial held on 9 January 2008 the Panel refused the motion of Defence Counsel for the Accused to hear Momir Skakavac as a witness due to reasons set forth in Article 263, paragraph 2 of CPC of BiH, because the Court found that the filed motion was unnecessary since the circumstances on which the witness was to be heard were irrelevant to the case.

At the hearing on 11 January 2008, the Panel rendered a decision to refuse the motion of the Defence Counsel for the Accused to present the following material evidence: a publication *Crime over Women in BiH*, Book 1, published by the Centre for Investigation of the Association of Former Prison Camp Inmates of Bosnia-Herzegovina, titled "I Begged Them to Kill Me" containing testimonies of eleven raped women from the territory of the Foča Municipality, given that protected witness A did not tell her story in that publication and considering that the referenced book by no means contains the testimony of all raped women from that area. As a consequence, the Court found the evidence irrelevant to the case. At the same hearing the Court also refused the defence motion to admit into the case file the following documents: the first-instance Verdict of the District Court in Trebinje No. 05/05 rendered in the case against the accused Momir Skakavac dated 27 March 2005 acquitting Momir Skakavac of criminal responsibility and the Verdict of the RS Supreme Court No. 118-0-KZ-06-000151 dated 3 April 2007 confirming the first-instance verdict of the District Court in Trebinje; an article published in a magazine in which witness A told

about the rape-related incidents; the main trial Record on Examination of the protected witness A in the case against Momir Skakavac, as the proposed evidence is irrelevant to the case and, therefore, pursuant to Article 263 (2) of the CPC BiH the Court refused to accept it.

In the trial held on 16 January 2008 the Panel refused the motion of the defence to hear Ranko Sušić as the additional witness who was supposed to testify about the murder of Luka Vuković, brother of the Accused, since those circumstances that the Defence Counsel sought to prove through this witness were irrelevant to the case pursuant to Article 263 (2) of the CPC BiH.

In the trial held on 23 January 2008 the Panel decided to refuse the motion of the Defence Counsel to conduct polygraph testing of the Accused, witness Bajro Hukara and the protected witness A. The Court found that polygraph testing was not a reliable method to establish credibility of someone's testimony in an undisputable and scientifically verified manner.

The application of the substantive law:

As for the substantive law to be applied, considering the time of the commission of the criminal offence, the Court accepted the legal definition of the Prosecution and it therefore sentenced the accused for the criminal offence of Crime against Humanity in violation of Article 172 (1)(h) in conjunction with subparagraph (a) of the CC BiH.

Considering the time of the perpetration of the criminal offence and the substantive law which was applicable at that time, the Court finds that two legal principles are relevant: the principle of legality and the principle of time constraints regarding applicability of the criminal code:

Article 3 of the Criminal Code of BiH foresees the principle of legality under which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. Article 4 of the Criminal Code of BiH (time constraints regarding applicability) foresees that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence and, if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

The principle of legality is established in Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) which has primacy over all other legislation in BiH (Article 2.2. of the Constitution of BiH). According to the stated Article of ECHR, "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed." Imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed, is accordingly prescribed. Therefore, this provision establishes a ban on imposing a heavier

penalty without defining the mandatory application of a more lenient law to the perpetrator relative to the penalty applicable at the time of the perpetration of the criminal offence. Article 7, paragraph 2 of the ECHR specifies that "this Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations."

Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) states: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".

Article 15 (2) of ICCPR specifies that "nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

Finally, Article 4a) of the CC BiH, which is in accordance with Article 7(2) ECHR², states that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law. This article provides the possibility to depart from the principles laid down in Articles 3 and 4 of the CC of BiH and deviate from an application of a more lenient law as prescribed by Article 4(2) of the CC of BiH in proceedings constituting criminal offences under international law. The current proceedings against the accused fall within the scope of Article 4a because the crimes committed by the accused constitute egregious violation of international law. Such position was taken in the Verdict of the Section 1 of the Appellate Division of the Court of BiH, No. KPŽ 32/05 of 4 April 2006, which was handed down against Abduladhim Maktouf.

Article 172 of CC BiH foresees the criminal offence of Crimes against Humanity, as also regulated by Article 5 of the ICTY Statute (Article 5 of the ICTY Statute defines the Crime against Humanity as specific separate crimes "when committed in armed conflict, whether international or internal in character, and directed against any civilian population"). In the period relevant to the crime, Crime against Humanity was not explicitly established in the criminal legislation of Bosnia and Herzegovina.

The customary status of punishment for the crimes against humanity and the imputation of the criminal responsibility for the commission thereof in 1992 has been confirmed by the UN General Secretary³, International Law Commission⁴, and jurisprudence of ICTY and the

² Article 7(2) of the ECHR states that the article shall not prejudice the trial and punishment of any person of any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

³ UN GS Report on the paragraph 2 of the Security Council Resolution No. 808, 3 May 1993, paragraphs 34-35 and 47-48

⁴ The International Law Commission, Comment of the Draft Code on Crimes against the Peace and Security of Mankind (1996), Article 18

International Criminal Tribunal for Ruanda (ICTR)⁵. These institutions found that punishment for the crimes against humanity constitutes an imperative norm of international law or *jus cogens*⁶, and it is indisputable that, in 1992, the crime against humanity was a part of customary international law.

Article 4a) of the CC BiH references the "general principles of international law". Even though neither international law nor ECHR recognizes this identical phrase, this phrase is actually a combination of the "international law principle" as recognized by the UN General Assembly and the International Law Commission on one hand, and the "general principles of law as recognized by the community of nations" as recognized by the Statute of the International Court of Justice and Article 7(2) of ECHR.

The international law principles, as recognized by the General Assembly Resolution 95(I) (1946) and the International Law Commission (1950) pertain to the "Nurnberg Charter and the Tribunal Judgment", therefore, they also pertain to the crimes against humanity. By the Principles of International Law Recognized in the Nurnberg Tribunal Charter and the Judgement of the Nurnberg Tribunal", which the International Law Commission adopted in 1950 and filed to the General Assembly, under Principle VI.c., it is foreseen that the Crime against Humanity is punishable as a crime under international law. The Principle I specifies that: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II specifies that "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law".

The jurisprudence of the European Court for Human Rights emphasizes the application of Article 7(2) instead of the application of Article 7 (1) of the ECHR in several cases⁷ where the subject matter of the cases was the existence and punishability of Crimes against Humanity as a criminal offence. In *Kolk and Kislyiy versus Estonia*, the European Court stated that "the interpretation and the application of domestic law falls within the jurisdiction of national courts..."⁸ This also applies when a national law pertains to the rule of general international law or international agreements.

Therefore, the criminal offence of Crimes Against Humanity is included within the "general principles of international law" as referred to in Article 4a) of the CC BiH. Therefore, regardless of whether this is viewed from the aspect of customary international law or from the aspect of the "principles of international law", it is indisputable that the Crime against Humanity constituted a criminal offence in the period relevant to the crime, and therefore, the principle of legality has been satisfied.

⁵ ICTY, Appeals Chamber, *Tadić*, Decision on the defence motion for interlocutory objection to jurisdiction, 2 October 1995, paragraph 141; ICTY, Trial Chamber, *Judgment re Tadić* of 7 May 1997, paragraph 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraph 563-577.

⁶ International Law Commission, Comment on Draft Text of Articles on Responsibility of States for Internationally Wrongful Acts (2000), Article 26

⁷ For exp. The judgement of the ECHR in the case *Nuletlić versus Croatia*, 51891/99 and the judgement *Rapon versus France* No. 54210/00, ECHR 2001-XII and *Touvier versus France*, No. 29420/95, Commission decision of 13 January 1997

The fact that the criminal actions listed under Article 172 of CC BiH may also be found in the law which was applicable at the relevant time – at the time of the perpetration of the offence, that is, in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC SFRY, that is, the fact that the indicted actions were also punishable under the then applicable criminal code, additionally corroborates the conclusion of the Court on the principle of legality. Finally, in regard to Article 7(1) of the ECHR, the Court observes that the application of Article 4a) additionally justifies the fact that the imposed sentence is more lenient than capital punishment which was applicable at the time of the perpetration of the offence, by which the application of the principle of time constraints regarding applicability, that is the application of the “law that is more lenient to the perpetrator”, has also been satisfied.

The Court found that the criminal actions of the accused persons satisfied the elements necessary for the existence of the criminal offence of persecution being the crime against humanity:

1. that the perpetrators committed a discriminatory action or omission;
2. that by that action or omission a fundamental right defined by customary international or treaty law has been deprived or violated;
3. that the perpetrators committed the offence or omission with the intent of discrimination on racial, religious or political grounds;
4. that all general conditions for the crime against humanity as stipulated by Article 172 of CPC BiH have been satisfied.

The accused persons committed the stated criminal offence with direct intent, as it stems from the evidence presented in the proceedings that the accused, at the time of the perpetration of the criminal offence, were aware that they violated the rules of international law by their actions and it is evident that, by their actions, they wanted to cause the banned consequence and, regardless of the fact that the accused committed several actions of the same kind (multiple killings), the Court finds that, in this particular case, there is only one criminal offence, the Crime against Humanity under Article 172(1)(h) of the CC BiH – persecution, as this is about a compound criminal offence regardless of the number of the committed actions, that is, in this particular case, the criminal offence of persecution includes the elements of the criminal offence of murder (Article 172(1)(a) and (h)). Such was the interpretation of the ICTY as well and, according to its jurisprudence, in case that the criminal offence of persecution had been committed in relation to the act of murder and other inhumane acts, the elements of the criminal offence of murder and other inhumane acts have been included in the criminal act of persecution⁹.

Considering the established state of facts, the consequence thereof and the causal connection between them, the Court found the accused persons guilty of the criminal offence of Crimes against Humanity as referred to in Article 172(1)(h) in conjunction with subparagraphs (a) of the Criminal Code of Bosnia and Herzegovina, and it therefore sentenced each of them for the stated criminal offence to the term of imprisonment of 12 (twelve) years, being satisfied that the imposed type and extent of the punishment is proportional to the extent to which the offence threatens the society, the gravity of the offence and the role of the accused thereof, and that the imposed sentence would achieve the general purpose of the punishment as foreseen by Article 39 of the CC BiH.

⁹ Judgement of the Appeals Chamber of ICTY in the *Krstić* case, paragraph 231-232

With regard to Count 2 of the Indictment, the Court finds that the presented evidence could not convince the Court beyond a reasonable doubt that there was the act of rape with which the accused Ranko Vuković has been charged. Based on the results of the evidentiary proceedings, the Court holds that the decisive facts concerning the participation of the Accused in committing the criminal offence of Crime against Humanity in violation of Article 172 (1) (h), in conjunction with item g), as described by the Prosecutor in the amended Indictment, have not been proved with certainty. Therefore, applying the principle *in dubio pro reo* the Court finds that they do not exist at all, and as a result of the absence of convincing evidence, pursuant to Article 284 (1) (c) of the CPC BiH, it acquitted the accused Ranko Vuković of the charges concerning the referenced offence.

In meting out the type and extent of the sentence, the Court took into account the mitigating circumstances in favor of each accused, wherein, at the time of the perpetration of the criminal offence, the accused persons were young, they are now family men, the accused Ranko Vuković has two underage children while the accused Rajko Vuković has three underage children and that they properly conducted and behaved before the Court, while the aggravating circumstances pertained to the fact that both Accused have repeatedly been punished for the commission of the criminal offences as indicated in the excerpts from their criminal records, as well as that they committed the referenced offence against the old and the frail.

As for the custody ordered under the decision of the Court, number X-KR-07/405 of 18 September 2007 and pursuant to Article 56 of the BiH CC, the time spent in custody since 18 September 2007 shall be credited towards the sentence of imprisonment imposed upon the Accused Ranko Vuković.

As for the custody ordered under the decision of the Court, number X-KR-07/405 of 12 July 2007, the time spent in custody from 12 July 2007 until 19 September 2007 as well as the time spent in custody since 26 September shall be credited towards the sentence of imprisonment imposed upon the Accused Rajko Vuković.

Pursuant to Article 188 (4) of the BiH CPC, the Accused are relieved of obligation to pay the costs of the criminal proceedings. The Accused Rajko Vuković is indigent, has family, three underage children and, as judged by the Court, has no funds to pay the costs of the proceedings. The Accused Ranko Vuković is acquitted of the charge that he committed the criminal offence as described under Count 2 of the Amended Indictment of the Prosecutor's Office of BiH, which means that under Article 189, paragraph 1 of the CPC of BiH, the cost of the criminal proceedings in that respect shall be paid from the Court budget funds and since, as judged by the Court, there is no possibility for those costs to be allocated, the Court rendered a decision that the Accused Ranko Vuković be acquitted of all costs of the proceedings, especially having in mind that he also has family, two underage children, that he has been in custody for a longer period of time and that, in the opinion of the Court, he also has insufficient funds to pay the costs of the proceedings.

Deciding upon the claims under property law filed by the injured parties, pursuant to Article (1) and (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the Court protected the injured parties Aljo Hukara, Munib Bekrija and the protected witness A that

they may take civil action to pursue their entire claim under property law since the establishment of the facts regarding the level of property claim would require longer period of time and would thus prolong the proceedings, so for that reason the Court instructed them to take civil action.

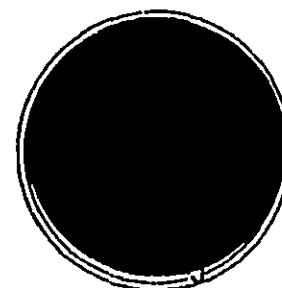
RECORD-TAKER
Šaćir Hadžić

PRESIDING JUDGE
J U D G E
Staniša Gluhajić

LEGAL REMEDY: The appeal from this Verdict may be filed to the Panel of the Appellate Division of the Court of BiH within 15 (fifteen) days as of receipt of a written copy of the Verdict.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serb/Croat.
Sarajevo, 11.06.2008

Certified Court Interpreter for English



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