Number: X-KRŽ-05/217
Sarajevo, 13 August 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, on the Panel of the Appellate Division comprised of Judge Azra Miletić as the Presiding Judge, and Judges Robert Carolan and Dragomir Vukoje, as members of the Panel, with the participation of legal advisor Dženana Deljkić Blagojević as the record-keeper, in the criminal case against the accused Radmilo Vuković for the criminal offence of War Crimes against Civilians in violation of Article 173, (1), c) and e) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), in respect of the Indictment of the Prosecutor's Office of BOSNIA AND HERZEGOVINA number KT-RZ-131/06 dated 12 October 2006, confirmed on 13 October 2006, after the main and public hearing held in the presence of the Prosecutor of the Prosecutor's Office of BiH, Behaija Krnjić, the accused Radmilo Vuković and his Defence Attorney, lawyer Kemo Kapur, on 13 August 2008 rendered and publicly announced the following:

V E R D I C T

The accused **RADMILO VUKOVIĆ,** aka *Rade*, son of Aleksa and Stana (maiden name Skakavac), born on 28 July 1952 in Rataja, Foča Municipality, with residence in Foča at 34 Svetosavska Street, of Serb ethnicity, citizen of BiH, Personal Identity Number 2807952131530, clerk, literate, secondary school qualifications, married, indigent, served the army, no prior convictions,

Pursuant to Article 284 Subparagraph 3) of the BiH CPC

IS HEREBY ACQUITTED OF CHARGES

that he:

During the armed conflict between the armed forces of the Republic of Bosnia and Herzegovina and the armed forces of the so-called Serb Republic of Bosnia and Herzegovina, in the territory of the Foča Municipality, as a member of the military forces of the so-called Serb Republic of Bosnia and Herzegovina, acted in contravention of the rules of international humanitarian law and violated Article 3(1) a) and c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in as much as he:

On 10 June 1992 in Miljevina, Foča Municipality, came armed to an apartment in Miljevina from where he took out the injured party "A" to be allegedly brought into the military headquarters in Miljevina; thereupon, instead of taking her to the headquarters, he took her to a building located in the newly-built settlement in Miljevina and used force to bring her into an apartment in which he physically abused her by hitting her in various parts of her body, threatening to kill her, placing a pistol against her temple and holding a knife to her throat; at one point, he used force to tear her clothes to pieces while the injured party was screaming and begging him to let her go; thereupon, he used one hand to shut her up and the other one to punch her in the head whereupon she lost consciousness, so he used the fact that the injured party was unconscious and raped her, and when the injured party regained consciousness he threatened to kill her if she told anyone what he had done to her; he also threatened her to come to the same apartment whenever he called her which the injured party had to do up until 24 or 27 August 1992; during this period, she had to go to that apartment on at least five or six occasions in which he would force her to have sexual intercourse with him, which directly resulted in the injured party becoming pregnant and after she had been expelled from Miljevina, she gave birth to a male child in the Goražde Hospital on 20 February 1993,

consequently, during the armed conflict, as a member of the military forces of the so-called Serb Republic of Bosnia and Herzegovina, he acted in contravention of the rules of international humanitarian law and violated Article 3(1) a) and c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949,

whereby he committed the criminal offense of War Crimes against Civilians under Article 173(1) c) and e) of the Criminal Code of Bosnia and Herzegovina.

Pursuant to Article 189 (1) of the BiH CPC, the accused is relieved from the obligation to reimburse the costs of the criminal proceedings, which shall be paid from within the budget appropriations of the Court of BiH.

R e a s o n i n g

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-131/06 dated 12 October 2006, confirmed on 13 October 2006, Radmilo Vuković aka *Rade* was accused that he had committed the criminal offence of War Crimes against Civilians under Article 173(1) c) and e) of the Criminal Code of Bosnia and Herzegovina as described in the enacting clause of the Indictment.

By the Verdict of the Court of Bosnia and Herzegovina number X-KR-06/217 dated 16 April 2007, the accused Radmilo Vuković was found guilty that he had committed the criminal offense of War Crimes against Civilians under Article 173(1) c) and e) of the BiH Criminal Code by his actions as described in the Indictment, and was sentenced to 5 /five/ years and 6 /six/ months of imprisonment by applying the

provisions under Articles 42, 48, 49 and 50 of the Criminal Procedure Code of Bosnia and Herzegovina.

By the Decision of the Appellate Panel of the Court of BiH, the Appeals filed by the accused Radmilo Vuković and his Defence Attorney were granted, the first-instance Verdict was revoked and the hearing was scheduled before the Panel of Section I for War Crimes of the Appellate Division of the Court of Bosnia and Herzegovina.

Pursuant to Article 317 of the BiH CPC, the hearing was held before the Appellate Panel of the Court of BiH. Moreover, during the evidentiary proceedings the following testimonies of the protected witnesses were replayed: the witness-injured party „A“ and the witness „B“ as the prosecution witnesses, and the testimonies of the witnesses with the code names C“ and „D“, and the testimonies of the expert witness Senadin Ljubović as the Defense evidence. In addition to the above, Dr. Fadil Jahić was directly examined as the witness of the Court.

Furthermore, at the hearing held on 7 July 2008, the Panel accepted all the following documentary evidence presented and accepted during the first instance proceedings: Statement of the protected witness „A“ given before the Prosecutor's Office of BiH on 16 August 2006; Statement of the protected witness „B“ given before the Prosecutor's Office of BiH on 17 July 2006; Referral slip to a hospital for the injured party „A“ issued by the Goražde Health Centre dated 20 February 1993; Case history for the injured party „A“ made by the Goražde Health Centre, No. 207/93; Medical history and Findings for the injured party „A“ made by Dr. Fadil Jahić for 20 February 1993 and 26 February 1993; Bodily temperature record for the injured party „A“ dated 20 February 1993; Release form for the injured party „A“ issued by the Goražde Health Centre MB. No. 207/93 dated 26 February 1993; Copy of the first entry into the Register of Births; Certificate issued by the Goražde Municipality Registry Office, Ref. number 06-11-851/06 dated 30 June 2006; Procedural decision of the Public Institution Social Welfare Centre Goražde; Social anamnesis; New entry; Order of the Prosecutor's Office of BiH to perform a DNA analysis; DNA expert evaluation finding; Certificate issued by the Bellevue Hospital Centre, New York, USA, dated 31 July 2006; Certificate on deprivation of liberty issued by the Republika Srpska Ministry of the Interior – Foča Support Unit, Istočno Sarajevo Public Security Centre, Ref. number 13-01/2-01/06 dated 18 April 2006; Official letter of the ICTY on giving the standard marking „A“ to the Radmilo Vuković case, Ref. number 00-04209/GB/AmdV/RR516 dated 9 August 2000; Criminal records certificate for Radmilo Vuković issued by the Istočno Sarajevo Public Security Center – Foča Public Security Station, Ref. number 13-1-8/02-248-2-290/06 dated 11 July 2006; Report made by the expert witness Dr. Senadin Ljubović, head doctor of the Clinical Centre of the Sarajevo University; Statement of the protected witness „A“ given before the authorised officer of the PSC Sarajevo on 13 April 1994; Statements given by the protected witness „B“ before the Cantonal Court in Sarajevo on 4 April 2001 and 30 November 2001; 3 photographs of the settlement where the protected witness „A“ and the accused lived.
On 19 June 2008, verbally and in their submission, the Defence proposed the presentation of new evidence by examining the witnesses, who could not be

examined during the first instance proceedings on circumstances relating to the behaviour of the accused at the time concerned, in particular towards the members of the Bosniak population. However, the Panel refused this evidentiary motion, considering that the examination of the witnesses on the circumstances for which they were proposed to be examined is irrelevant to adjudicating in this criminal matter.

In their closing argument, the Prosecution stood by the charges in the Indictment and requested the Appellate Panel to reach a verdict based on which the accused Vuković would be found guilty and punished according to the law.

The Defence stood by its opinion that the Prosecution did not prove beyond reasonable doubt that the accused had committed the criminal offence as described in the Indictment, and requested that the Verdict be reached based on which the accused would be acquitted of charges for this criminal offense.

Having considered all the evidence presented, individually and collectively, the Panel rendered the decision as stated in the enacting clause for the following reasons.

Article 173 of the BiH CC reads as follows:

Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:

c) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;

e) coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps or other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of the enemy's army or in its intelligence service or administration;

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

As far as the general elements of the criminal offense of War Crimes are concerned, it is indisputable that there was an armed conflict at the time of the incriminating event between the armed forces of the Republic of Bosnia and Herzegovina and the armed forces of the so-called Serb Republic of Bosnia and Herzegovina in the territory of the Foča Municipality.

It is also indisputable that the accused was a member of the military forces of the so-called Serb Republic of Bosnia and Herzegovina.

With regard to the criminal action of the criminal offence by itself, the Prosecution based its opinion, as it is almost always the case in such a type of the case, on the testimony of the injured party, that is, the witness „A“, and to certain extent on the testimony of the witness „B“. The Prosecution was supposed to prove that the accused had undertaken the actions of the sexual violence over the injured party of such an intensity that they constitute torture, that he had done that well aware that the injured party did not give consent, and that such an action had been taken within the war conflict, thus violating the international law.

Undeniable are the facts that there was a sexual intercourse between the accused and the injured party during or around the critical period covered by the Indictment. Similarly, undeniable are the facts pertaining to the pregnancy and giving birth to the child by the injured party.

Hence, the Prosecution aimed its actions at obtaining evidence to proving the facts confirming an intent, and that the undertaken sexual activities constitute an intolerant act from the aspect of the non-consent on the part of the injured party, and that these actions also constitute the violation of international humanitarian law, indicating the connection between the actions of the accused and the armed conflict being an additional element of forcing the injured to a sexual intercourse.

Taking into account that the testimony of the injured party is a key piece of evidence in the case, it is absolutely necessary to consider that testimony very carefully starting from her first giving the information about the event itself and the perpetrator up to the completion of the main hearing in the case. The testimony of the injured party must not raise any suspicion as to its exactness and truthfulness, credibility and integrity of the witness exactly because the act of rape, as a rule, is never attended by a witness who might decisively support the testimony of the injured party.

This was particularly required in the instant case, since this was not a typical rape, characteristic for that period of time and the territory where the women were brought to the collection centres, repeatedly raped by a number of unknown persons, frequently detained and without any contact with the outside world, when, as a rule, there were witnesses to their apprehension or the act of rape itself, and where an incomplete or wrong perception of the victim might have occurred, caused by such specific circumstances, circumstances of long-term detention and multiple rapes by unknown persons.

However, having carefully analysed the injured party's testimony, the Panel noted a whole range of unacceptable inconsistencies and lack of logic in her description of the event.

During the main hearing of the first-instant proceedings, the injured party „A“ testified that her neighbour came to her apartment in 1992, that is, on 10 June 1992 at around 10 a.m., because she received a telephone call from the witness „A“. She states that it was a male person who told her that the injured party was supposed to

be ready in 10 minutes to go and give a statement at the Headquarters. About thirty minutes later, the accused appeared at the door of the witness „A“. She stated that she knew the accused by sight since they worked in the same place and that they did not date earlier. However, instead of going to the headquarters, she stated that he had taken her to his apartment. When they came to the apartment, she further stated that the accused locked the door, pointed at the table on which there were a knife, pistol and bullets, threatening to kill her if she did not accept what he wanted from her. She states that she tried to defend herself but he punched her in her temple, whereupon she lost consciousness. When she regained consciousness, she had pains in the lower part of her stomach, back and face. Seeing that she was bleeding and feeling pain in the lower part of her body, at that moment the witness concluded that she had been raped. He told her that she had to go back in two days at the exact time and that he would be waiting for her behind the building. She stated that he threatened her that he would kill her and her family if she told anyone what had happened to her. Afterwards, witness „A“ went home to her parents. However, her mother and her sister did not ask her what had happened to her. Two days afterwards, witness „A“ went to the same apartment with the accused under threat stating that the same happened to her on that occasion. She also stated that she had been in the above apartment 5 or 6 times. Last time when she was there, on 26 or 27 August 1992, the accused informed the injured party that he had to go to Montenegro to visit his wife and child. He told her that nobody would attack her in his absence and that they would continue seeing each other when he came back.

According to the witness “A”, on 3 September 1992, she and her family were transported to Goražde together with the remaining Muslims. She states that she became pregnant. Upon her arrival in Goražde in February 1993, she gave birth to a male child at the Goražde Hospital whom she never saw nor wanted to see.

Evaluating her testimony and the testimony of the witness “B”, the Appellate Panel found a whole range of inconsistencies in her testimony and the testimony of the witness „B“. The witness „B“ is the sister of the injured party. She testified about the circumstances of the events which occurred during that period of time and the rape of the injured party by the accused. She was not an eye-witness to the event which happened in the apartment of the accused, but during her testimony she confirmed the allegations of the injured party „A“ given during the main hearing, taking into consideration that their testimonies were considerably contradictory regarding certain facts. The inconsistencies in the testimonies of these two witnesses pertain to very essential circumstances where there should be an almost complete agreement, starting from the description of the manner of her departure towards the apartment of the accused and the description of the appearance of the injured party when she came back home.

Both witnesses gave their statements also during the investigation into the case. The injured party „A“ testified at the PSC Sarajevo on 13 April 1994 while the witness „B“ testified before the investigative judge of the Cantonal Court in Sarajevo on 4 April 2001 and 30 November 2001.

Thus, while testifying before the PSC Sarajevo in 1994, the injured party „A“ did not state that the accused was bringing her to his apartment several times after she had been raped, or that she was in the above apartment on 5 or 6 occasions in total. Last time she was in the apartment was on 26 or 27 August 1992. In addition, the injured party did not state that the accused had informed her that he had to go to Montenegro to visit his wife and child, that nobody would attack her in his absence and that they would continue when he came back.

Moreover, in her previous testimonies dated 2001, witness „B“ does not describe the event in the manner in which she did it during the main hearing. In her statement she only stated that her sister was sexually abused several times by the accused, and that she would be coming home in tears. However, she did not state that she was seeing her in a terrible physical condition, in a torn dress and with bruises.

The testimonies of the injured party „A“ and witness „B“ given during the main hearing also contain certain contradictions, which are not negligible for reaching a strong conclusion that would result from a clear and credible testimony of the victim, from whose testimony it would be possible to reach a conclusion that would point to the perpetrator beyond any reasonable doubt.

Thus, for instance, the injured party states that Vuković came for her on 10 June 1992 when she left with him, while witness „B“ states that he came a day before to her house and that she left with him not before the following day. Moreover, witness „A“ stated that she had not told her mother and sister what happened, while witness „B“ states that she did.

All the above considerably affects the quality and credibility of the injured party's testimony and the testimony of witness „B“ whose testimony has a quality of an indirect and subjective piece of evidence by which it was intended to support the testimony of the injured party „A“.

Furthermore, both the first instance and this Panel reliably established that the injured party had a sexual affair with the accused even before the outcome of the war conflict, which was unequivocally and clearly confirmed by the Defence witnesses „C“ i „D“, while testifying about the fact that the injured party and the accused Vuković were cohabiting partners before the war.

Thus, the witness „C“ stated that the accused told him about his relation with the witness „A“, his working colleague, and that he advised him to terminate the relationship, taking into account that she was a Bosniak and that they lived in a small community. The witness „D“ also stated that he had heard about their relation and that he had seen them together several times. The Panel does not find the testimonies of these two witnesses problematic in any segment, taking into account that the witnesses spoke in a convincing way about this important factual circumstance that preceded the event being the subject of charges in the case – the relationship between the injured party and the accused, having no reason or interest not to tell the truth

since they do not have an opportunity to protect the accused from the responsibility for committing the criminal offence itself by testifying about this circumstance.

Apart from other things, establishing this circumstance proved to be relevant also because of the review of credibility of the injured party's testimony taking into consideration that she was denying this relationship with the accused throughout the proceedings. To tell the truth, it can be understandable to a certain extent since the injured party is surely interested in protecting her privacy, which by itself does not mean that the crime could not have been committed, but keeping such an important fact secret in view of her previous statements seriously brings in question the credibility of the witness.

At the moment when the injured party reported the accused, she should have known that this circumstance would be established and she must have evaluated her more predominant interest, which was obviously her reporting of the accused without expecting that any of the facts may not be passed over in silence or neglected but that it would be the subject of the evaluation in view of its importance, not only individually but also in the context of other presented pieces of evidence.

In addition, the behaviur of the injured party concerning her pregnancy was very indicative. In her testimony she states that she did not notice any symptoms of pregnancy but in the medical history given in the hospital when she was received to deliver a child, which is always provided by the patient, she stated that the last date of her menstrual cycle was 16 May 1992.

According to her testimony, it was the accused that was bringing her attention to a possible pregnancy asking her whether she had a regular cycle. Such a behaviour by which the rapist brings the attention to the pregnancy problem is not a usual or logical behaviour of the person charged with the rape committed within the crime in question, raising an additional suspicion whether it was really an involuntary relationship. In addition, the behaviour of the injured party upon her passing to the free territory in Goražde is also very indicative.

The injured party arrived in Goražde on 3 September 1993. From the aspect of the injured party's averment about the undesired pregnancy, and taking into consideration her averment that the first sexual contact with the accused happened on 10 June 1992, approximately three months before her arrival in Goražde, the termination of pregnancy was possible but she was evidently hiding her pregnancy as was stated by herself. This fact additionally affects the credibility of her entire testimony. A logical question arises here. If the pregnancy is "the result of the criminal act" and in its nature cannot be kept secret, all the more so it cannot be kept secret permanently, why the injured party was hiding her pregnancy from her family and doctors or why she did not explain that she wanted to terminate pregnancy, which she could not accept, at the time when she had an opportunity to do so. Naturally, that may be her personal decision and she was not obliged to have an abortion, in particular if it is in contravention of her moral or religious principles. However, in light of all these circumstances pertaining to the case, she was expected

to announce and explain the reasons for a possible keeping of pregnancy, which would be illogical taking into account her subsequent rejection to see and take in her child.

By the additionally presented evidence, the Appellate Panel also heard the examination of the hospital doctor in Goražde where the injured party delivered a child on 20 February 1993 and who attended her childbirth. His testimony had a character of a controlling piece of evidence in relation to the testimony of the witness "A". Witness Doctor Jahić, to whom the Panel fully believes finding that he does not have any motive not to tell the truth, states very convincingly and unambiguously that he remembers that the injured party came to the hospital because of the childbirth and that she told him that she had been raped by Pero Elez who was keeping her detained until her arrival in Goražde and that she did not want to take in her child.

Any reasonable judgment raises a logical question why the injured party states Pero Elez as the rapist, who was already known at that time as the perpetrator of many misdeeds in the territory of Foča, that is, a completely different perpetrator contrary to the one whom she incriminated only subsequently. Moreover, the question arises as to why she did not immediately report the accused and why she would protect him if he was really the perpetrator of such a heinous crime.

Accordingly, having analysed all evidence presented individually and collectively, the Panel could not reliably conclude, excluding every reasonable doubt, that the accused had committed the criminal offense of War Crimes against Civilians committed by a rape.

Therefore, what the Prosecution takes as a starting point is but a hypothesis, based on which it is not possible to conclude reliably on the existence and non-existence of the criminal offence given that such facts and circumstances are not confirmed by the evidence presented.

To wit, the Court may consider a certain fact as established based on the evaluation of evidence after convincing itself at the main hearing of its existence and when there is no doubt in this respect. Thus, all facts that are *in peius* (to the detriment) of the accused must be established with certainty, that is, proven. However, in case it may not be achieved, they are taken as non-existing. All facts that are *in favorem* (in favour) of the accused are taken as existing also when they are established with probability (which means, not with certainty). If it is not possible to remove doubts even after a lawful evaluation of evidence, individually and in conjunction with other evidence "*a person shall be considered innocent of a crime until guilt has been established by a final verdict"* according to the explicit legal provision under Article 3 (1) of the BiH CPC. This provision is completely harmonized with the relevant international documents (Article 14 (2) of the International Covenant on Civil and Political Rights and Article 6 (2) of the European Convention on Human Rights). The result of the application of the *in dubio pro reo* principle, "a doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a

manner that is the most favorable for the accused, will be pronouncing the verdict "in favour of the accused", which in case of a doubt regarding the legally relevant facts envisaged by the criminal law includes not only a less severe punishment but also an acquitting verdict in cases where the main hearing could not clarify a doubt as to whether the accused has committed the criminal offense as charged. It also refers to the provision set forth in Article 284 sub-paragraph c) of the BiH CPC "*if it is not proved that the accused committed the criminal offense with which he is charged",* which means not only in cases in which there is no evidence for the charges at all, but also in cases where evidence exists, but is insufficient for the Court to draw the conclusion on the existence of facts as stated in the charges based on the evidence and its evaluation at the main hearing .

In view of all the above, having applied the principle of *in dubio pro reo,* obligating the Court to resolve the suspicion regarding a certain fact that constitutes an element of the criminal offence by delivering a Verdict in the manner more favourable for the accused, the Panel decided as stated in the enacting clause pursuant to Article 284 (3) of the BiH CPC.

Article 189 (1) of the BiH CPC stipulates that when a verdict is rendered that acquits the accused, the verdict shall pronounce that the costs of criminal proceedings and the necessary expenditures of the accused and his defence attorney and the remuneration for the defense attorney shall be paid from within budget appropriations. In view of the above, the Panel decided as stated in the enacting clause.

PRESIDING JUDGE
JUDGE:
Azra Miletić

RECORD-TAKER:
Dženana Deljkić Blagojević

LEGAL REMEDY INSTRUCTION
It is not allowed to file an appeal against this Verdict.