

COURT OF BOSNIA AND HERZEGOVINA

**Number: X-KRŽ-07/405**  
**Sarajevo, 30 June 2009**

**IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel of the Appellate Division composed of Judge Dragomir Vukoje, as the President of the Panel, and Judges Azra Miletić and Marie Tuma as the Panel members, with the participation of Legal Officer Medina Džerahović as the Record-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(1)a) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), in conjunction with Article 29 of the CC of BiH and 180(1), all stipulated in the CC of BiH, deciding upon the amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina NO. KT-RZ-31/06, of 19 March 2009, following the trial, in the presence of the Prosecutor of the Prosecutor's Office of BiH, Behajja Krnjić, the Accused in person, the Defense Counsel for the Accused, Attorney Senad Kreho, on 30 June 2009 delivered and on 1 July 2009 publicly announced the following:

**V E R D I C T**

**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 Bojovića 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 the CC BiH, in conjunction with Article 232(3) of CC BiH, and

**Rajko Vuković**, son of Vlado and Kosa, nee Bodiroga, born on 20 November 1972 in Foča, permanently residing in Foča, at 11 Šantićeva 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

Pursuant to Article 284c) of the CPC of BiH, the Accused

**ARE HEREBY ACQUITTED OF THE CHARGES**

**THAT:**

In the period between April 1992 and February 1993, within a widespread and systematic attack carried out by military, paramilitary and police forces of so-called Serb Republic of BiH and later renamed Republika Srpska, directed against non-Serb civilians of the Foča Municipality, being aware of the attack and that their acts were part thereof, as members of these forces, they knowingly and willingly took part together with other members of these forces in joint criminal enterprise by taking part in the implementation of a common plan with a view to effecting the common purpose by way of deprivation of life (murders) of non-Serbs, in so far as:

on an undetermined day, in late May 1992, together with a group of about twenty members of the armed forces of the Republika Srpska, they came near the place of Podkolun, Foča Municipality, whereupon together with Ranko Golubović and Blagoje Golubović, armed with automatic weapons, they separated from that group and entered the village, while the other members of the group deployed around the village standing guard and then they arrived at the family house of Avdija Hukara (son of Hasan), born in 1909, whom they found in the house and with the intention of depriving him of life, one or several of them from the group fired several bullets from the firearms at the injured party's chest and head inflicting on him perforating injuries which resulted in his death; thereupon they headed their way leaving the village and going along the road, in a tilled field by the road, they found Mejra Bekrija (daughter of Hasan) born in 1927 hilling up potatoes and with the intention of depriving her of life they fired several bullets into the injured party's chest inflicting on her perforating injuries which resulted in her death; thereupon they met again with the rest of the group and then they all left in an unknown direction,

**Therefore,**

Within a widespread and systematic attack carried out by military, paramilitary and police forces of the so-called Serb Republic of BiH, directed against non-Serb civilians of the Foča Municipality, being aware of the attack and that their acts were part thereof, as members of these forces, acting together with other members of these forces, in particular with Ranko Golubović and Blagoje Golubović, they knowingly and willingly participated in the basic form, that is, the first category of the joint criminal enterprise which had a common purpose, in particular the deprivation of life (murders) of non-Serb civilians, by knowingly participating in the enforcement of the common plan which included the commission of murders of non-Serb civilians,

**Whereby** they would have committed the criminal offence of Crimes against Humanity referred to in Article 172(1)(a) of the CC BiH, in conjunction with Article 29 and 180(1) of the CC BiH.

Pursuant to Article 198(3) of the CPC BiH, the injured parties Aljo Hukara and Munib Bekrija are instructed that they may pursue their claims under property law in a civil action.

Pursuant to Article 189(1) of the CPC of BiH, the costs of the criminal proceedings stipulated in Article 185(2)a) through f) of this Code, as well as necessary expenses of the Accused, necessary expenses and remuneration of the Defense Counsel, shall be paid from within budget appropriations.

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

### **1. Charges**

(1) By the Indictment of the Prosecutor's Office of BiH number: KT-RZ-31/06 of 28 August 2007, which was confirmed on 31 August 2007, Ranko Vuković and Rajko Vuković were charged with the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs a) and g), in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of CC BiH. On 17 January 2008, during the first instance proceedings, the Prosecutor's Office of BiH filed the amended Indictment. On 19 March 2009, after the Appellate Panel had revoked the first instance Verdict in its convicting part and upon opening the trial before it, the Prosecutor's Office of BiH filed the second amended Indictment which was accepted by the Panel upon completion of the evidentiary procedure. The factual description and legal qualification were changed by the relevant Indictment in the manner that the Accused are now charged with the commission of the criminal offence of Crimes against Humanity in violation of Article 172(1)a) of the CC of BiH, in conjunction with Articles 29 and 180(1) of the same Code.

### **2. History of the proceedings**

(2) By the Verdict of the Court of Bosnia and Herzegovina (the Court of BiH), No. X-KR-07/405, of 4 February 2008, the Accused Ranko and Rajko Vuković were found guilty of committing, by the actions described in the operative part of the Verdict, the criminal offence of Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraph a) of the CC of BiH (*Section 1 of the operative part*), as read with Article 29 of the CC BiH, all in conjunction with Article 180(1) of the CC of BiH. The First Instance Court sentenced the Accused to the punishment of imprisonment for a term of twelve (12) years each, and pursuant to Article 56 of the CC of BiH, the time they spent in custody was credited towards the pronounced sentence of imprisonment, specifically the period from 18 September 2007 onwards for the Accused Ranko Vuković, and the period from 12 July 2007 until 19 September 2007 as well as the period from 26 September 2007 onwards for the Accused Rajko Vuković. Therefore, pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC of BiH), they were relieved of the duty to reimburse the costs of criminal proceedings, while the injured parties Aljo Hukara and Munib Bekrija were instructed pursuant to Article 198(1) and (2) of the CPC of BiH that they may pursue their claim under property law in a civil action.

(3) By the same Verdict, the Accused Ranko Vuković was acquitted of the charges that he committed, in the manner as described in Section 2 of the operative part of the Verdict, the criminal offence of Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraph g) of the CC of BiH, all in conjunction with Article 180(1) of the CC of BiH, and pursuant to Article 198(3) of the CPC of BiH, the injured party was instructed that she may pursue her claim under property law in a civil action.

(4) By the Verdict of the Appellate Panel No. X-KRŽ-07/405, of 2 September 2008, the Appeal filed by the Defense Counsel for the Accused was granted, and the Verdict of the Court of BiH, No. X-KR-07/405, of 4 February 2008 was revoked in its convicting part and the hearing was ordered to be held before the Panel of the Appellate Division, while the Appeal of the Prosecutor's Office was refused as unfounded, and the relevant Verdict was upheld in its acquitting part.

### **3. Evidentiary procedure before the Panel of the Appellate Division**

#### ***Procedural decisions***

(5) Pursuant to Article 317 of the CPC of BiH, the hearing was held before the Appellate Panel of the Court of BiH, and during the evidentiary procedure, the Appellate Panel, once again, presented the evidence that had been presented in the first instance proceedings, apart from the evidence related to the acquitting part of the first instance Verdict, for the reason that it became final in that part (X-KRŽ-07/405, of 2 September 2008), specifically:

#### **a) Prosecution Evidence**

(6) As proposed by the Prosecutor's Office of BiH, the following persons were examined as witnesses: Bajro Hukara, Zahida Hukara, Aljo Hukara, Fadil Mekić, Munib Bekrija, Neđo Todorović and Dragiša Milutinović

(7) Furthermore, during the main trial, the Court examined the following evidence submitted by the Prosecutor's Office of BiH: Record of Exhumations in the territory of the Foča-Srbinje Municipality, made by the Cantonal Court in Goražde, No. Kri-10/01, dated 28 September 2001, Report on forensic examination, made by the Cantonal Court in Goražde, No. Kri-9/01, mass grave site in the area of the village of Potkolun, the Foča Municipality, dated 28 September 2001, case number 385, Report on forensic examination made by the Cantonal Court in Goražde, No. Kri-9/01, mass grave site in the area of the village of Potkolun, the Foča Municipality, dated 28 September 2001, case number 386, Certificate of the Foča Municipality General Administration Department, No. 04-835-1-280, dated 7 August 2007, pertaining to the participation of Ranko Vuković in the war, Certificate of the Foča Municipality General Administration Department, No. 04-835-1-281, dated 7 August 2007, pertaining to the participation of Rajko Vuković in the war, State Investigation and Protection Agency Record on deprivation of liberty for Rajko Vuković, No. 17-04/02-04-2-7/07, dated 11 July 2007,

Excerpt from the criminal records for Ranko Vuković and Rajko Vuković, issued by the Public Security Station Foča, No. 13-1-8/02-248-2-340/07, of 19 July 2007.

### **b) Defense Evidence**

(8) The Defense of the Accused presented the following evidence: the following persons were heard as witnesses: Pašana Sejfić, Ramiz Rahman, Hilmo Hukara, Ramiz Hadžimusić, Miladin Stanić, Cvijeta Stanić, Dragomir Đerić, Kosa Vuković, and the Accused Ranko Vuković and Rajko Vuković.

(9) The Court examined the following physical evidence presented by the Defense of the Accused at the main trial: Statement of the witness Pašana Sejfić given to Defense Attorney Veljko Čivša on 29 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, Certificate issued by Department for General Administration of the Foča Municipality No. 04-835-2 of 8 January 2008 on military service of Rajko Vuković, Secondary School Graduation Certificate for the 1991/92 school year No. 257-9/92 of 25 August 1992 for Rajko Vuković, Certificate on completed school grade of 22 May 1992, Statement of Bajro Hukara given to the Center of Security Services, Department of State Security Service No. 689 of 3 December 1993, Record on statement of the Witness Bajro Hukara No. KT-RZ-30/06 and KT-RZ-31/06 made in the Prosecutor's Office of BiH on 19 September 2006, Record on statement of the Witness Munib Bekrija No. KT-RZ-30/06 and KT-RZ-31/06, made in the Prosecutor's Office of BiH on 5 October 2006, Record on statement of the Witness Fadil Mekić No. KT-RZ-30/06 and 31/06 made in the Prosecutor's Office of BiH on 5 October 2006, Record on statement of the Witness Aljo Hukara No. KT-RZ-30/06 and 31/06 made in the Prosecutor's Office of BiH on 19 September 2006, Record on receipt of a criminal report by Aljo Hukara made on 24 January 2006 on the premises of the Prosecutor's Office of BiH, Record on statement of the witness Zahida Hukara No. KT-RZ-30/06 and 31/06 made in the Prosecutor's Office of BiH on 24 July 2007, a tourist map of BiH.

### **c) New evidence presented before the Panel of the Appellate Division**

(10) At the hearing held on 24 April 2009, the Prosecutor's Office proposed that new evidence be presented before the Panel of the Appellate Division as follows: review of the Sarajevo Cantonal Prosecutor's Office case file No. KTA-2402/08 of 17 December 2008 and the letter of the Ministry of Security of the State Investigation and Protection Agency No. 17-04/2-04-2-407-2/08 BF of 29 December 2008 with the enclosed Record on statement of the witness Bajro Hukara of 24 December 2008, and all that in respect of the circumstances regarding the pressure and influence exerted on this witness. Finally, the Prosecutor's Office also proposed the reconstruction of events at the crime scene.

(11) In response to the motions of the Prosecutor's Office, the Defense agreed with the reconstruction of events under the condition that the witness Pašana Sejfić be present on that occasion. With regard to the new evidence proposal, the Defense proposed for the

following witnesses to be heard: Hajra Sejfić, Radomir Stanić, Vlado Šupeta and Milivoje Stanić, Ruža Todorović, Zdravko Sušić, Srećko Davidović, Miladin Drakul, Ranko Trivun, Savo Elez, Srđan Stanković and Miladinka Todorović. All witnesses were supposed to be examined about the circumstances related to the entry of the Serb soldiers in the village of Potkolun at the relevant time, the perpetration of the criminal offence and identification and status of the Accused at the relevant period of time for the purpose of their alibi.

(12) The Prosecutor's Office objected to all the above mentioned proposals of the Defense.

(13) The Panel accepted the agreed proposal of the parties and the Defense Council of the Accused to carry out the partial reconstruction of events with a view of examining the presented evidence and establishing the facts important for the clarification of this criminal matter, which requires direct observation as stipulated in Article 93 of the CPC of BiH. The partial reconstruction took place on 18 May 2009 on the spot, in the village of Potkolun, in the presence of the eye witnesses Bajro Hukara, Zahida Hukara and Pašana Sejfić, the Accused personally and their Defense Attorney, and the Prosecutor of the Prosecutor's Office of BiH. Physical evidence from the reconstruction in the form of a DVD and the photo documentation, as well as the report on the activities taken was formally tendered into the case file during the first next hearing. The part of the documentation (photographs No. 5, 6, 11, 12, 13, 16, 39, 40, 41, 42) which the reasoning of the Indictment specifically refers to is attached to this Verdict and makes its integral part.

(14) With regard to the presentation of other proposed evidence by both the Prosecution and the Defense, evaluating the already presented pieces of evidence individually and in their mutual correlation, and applying Article 263(2) of the CPC of BiH, the Panel has concluded that the proposed evidence is unnecessary and irrelevant and that it does not contribute to the essential clarification of the criminal matter in the sense that it is relevant for the Court to make a different decision regarding the important established facts.

(15) Specifically, the Panel argues that the Motion of the Prosecutor's Office for the presentation of evidence in support of the influence and pressure exerted on the injured party and the witness in these proceedings, Bajro Hukara, is not relevant to establishing the criminal responsibility of the Accused in the proceedings pending before this Court. The investigation into possible criminal actions of exerting pressure and influence is being conducted by the relevant Prosecutor's Office (specifically the Cantonal Prosecutor's Office in Sarajevo), which clearly points out that *in concreto* it is the lower court, and not the Court of BiH, that has jurisdiction over establishing the responsibility.

(16) With regard to the motion of the Defense to examine the above mentioned witnesses regarding the passing and return of the uniformed persons through the village, the identification of the Accused for the purpose of their alibi and their status at the time when the criminal offence was committed, the Panel found that their hearing was

unnecessary as a significant amount of evidence was offered during the first instance proceedings, which the Panel assessed and drew clear conclusions regarding these important factual circumstances. The Defense could have tendered all the presented evidence in the earlier phases of the proceedings and there was no objective inability for their presentation. Specifically, those are not new pieces of evidence or new facts.

(17) In the course of the first instance proceedings, the Defense had enough time and possibility for a comprehensive collection of relevant evidence in favor of its case, as well as for building an adequate strategy of the Defense, so, given all the above mentioned and the fact that with only one count of the Indictment this can not be considered a complex case, and also taking into account that the proposed evidence does not contribute significantly to the clarification of this criminal matter, the Panel found that there were no necessary grounds and arguments for such a motion, and thus refused it as unfounded.

(18) Finally, when making this decision the Court took into account the application of the principles of judicial economy and efficiency of the criminal proceedings, and with a view of their enforcement it decided as stated above.

(19) At the hearing of 26 June 2009 it was concluded that the main trial delay exceeded 30 days as the latest hearing was held on 18 May 2009, so pursuant to Article 251(2) of the CPC of BiH the main trial recommenced from the beginning. With the consent of the parties and the Defense Attorney, and taking into account that its composition did not change, the Panel used the option from the cited Article not to adduce again the already tendered evidence.

(20) During the proceedings, in accordance with the Motion of the Prosecutor's Office of BiH for accepting as established the adjudicated facts from the ICTY Judgments in the cases against Dragoljub Kunarac (No. IT-96-23-T and IT-96-23/1-T of 22 February 2000) and Milorad Krnojelac (No. IT-97-25-T of 15 March 2002), filed at the main hearing of 1 April 2009, the Panel issued the decision to accept the established facts. Based on those facts, it was undoubtedly found that the armed conflict in Foča between the Serb and Muslim forces started on 8 April 1992, that starting from April 1992 the Serb forces started launching continuous attacks against the civilian non-Serb population and the civilian Bosniak population in particular, which resulted in the killing and expulsion of a number of civilians from the town of Foča itself, the burning and looting of their houses and property, which was also the case in the surrounding villages inhabited by the Bosniak population, the detaining and keeping of a large number of non Serb men, especially of Bosniak ethnicity, in the KPD Foča, which served as a camp for non-Serb civilians, from which many were taken away and killed, while many of them went missing without a trace, that a number of non Serb women, especially of Bosniak ethnicity, were detained in the camps or other facilities where they were raped systematically.

#### 4. Closing arguments

##### *a) Prosecutor's Office*

(21) In his address to the Court, during the presentation of his closing argument, the Prosecutor offered a detailed review and analysis of the presented evidence, both the physical evidence and witness statements, particularly explaining the existence of general elements of the criminal offence the Accused were charged with, as well as their criminal responsibility for the perpetration of the crime they were charged with.

(22) In favor of his claims the Prosecutor emphasized that since Bajro Hukara was the only eyewitness of the relevant events, his evidence should be given special attention and it should be checked against other evidence with a view of examining its credibility. That was proved through the evidence of Zahida Hukara, Fadil Mekić, Aljo Hukara and Munib Bekrija, all of them witnesses for the Prosecution, but also through the evidence given by Pašana Sejfić, herself a Defense witness, which according to the Prosecutor fully supports the evidence given by Bajro Hukan as well as the presented physical evidence. Based on all the presented facts, it undoubtedly followed that the Accused Ranko Vuković and Rajko Vuković together with Ranko Golubović and Blagoje Golubović, in the manner as described in the operative part of the amended Indictment, directly participated and to a large extent contributed to the actions which resulted in the killings of innocent civilians, Avdija Hukara and Mejra Bekrija. Analyzing the matter related to the type of criminal responsibility, the Prosecution argued that the most appropriate type with which the Accused might be charged was their participation in the joint criminal enterprise together with two other persons, in which they jointly acted towards the realization of a joint goal, specifically the killing of persons of non Serb ethnicity.

(23) Elaborating on this type of criminal responsibility, the Prosecutor argues that a joint criminal enterprise, as a type of personal responsibility, may apply in the proceedings and cases tried before the Court of BiH, although it is not explicitly included in Article 180(1) of the CC of BiH, which is supported by the facts which clearly point out that the concept of JCE is deeply integrated in customary international law, which is a constituent part of various national laws, including the CC of BiH.

(24) Given all the above mentioned, the important elements of the criminal offence of Crimes against Humanity under Article 172(1)a) of the CC of BiH are fully materialized in the presented evidence as well as all the elements of the joint criminal enterprise which, as a type of responsibility, was charged against the Accused pursuant to Articles 29 and 180(1) of the CC of BiH. Finally, the closing argument points out that when deciding about the type and length of sentence the Panel may not take into account any mitigating circumstance on the part of the Accused as it does not exist, and that on the other hand it should assess a number of aggravating circumstances, especially the facts which indicate that the Accused, especially Ranko Vuković, were initiators of the plan for the enforcement of the committed killings.



(25) In its closing argument, the Defense disputed all allegations of the Indictment, first and foremost referring to the concept of the joint criminal enterprise, which is unacceptable as a type of responsibility, and the Prosecution did not, even in the amended Indictment, make specific the actions of each of the Accused as co-perpetrators, and thus it did not correct the omissions which, *inter alia*, influenced the revoking of the first instance Verdict. Specifically, the Prosecution, due to the lack of any evidence involving the Accused, offered again an undefined perpetrator or perpetrators, deliberately avoiding to precisely differentiate the action of each of the allegedly present Accused and other persons as co-perpetrators, in a repeated attempt to unlawfully present a thesis about “joint intent”

(26) Furthermore, by a detailed analysis of both the Prosecution and the Defense witnesses, the Defense contests the Prosecution’s thesis about the presence of the Accused in the village of Potkolun on the relevant occasion, particularly pointing out the contradictions in the testimonies of the Prosecution witnesses, Bajro Hukara and Zahida Hukara, with respect to important factual circumstances, specifically the statements given during the investigation and at the main trial.

(27) The relevant contradictions are not pulled out of the context of certain witnesses testimony, but they are contradictions in the most essential part of their memories, and it is clear that the Prosecution witnesses discussed the relevant event among themselves, which “contaminated” their memories.

(28) In support of its assertions, the Defence particularly points to the testimony of the witness Pašana Sejfić who, unquestionably, was present together with Zahida Hukara in the same place and at the same time on the day when the soldiers came to the village, which was confirmed by the witness Hukara. The testimony of the witness Sejfić is additionally corroborated with the observations of the partial reconstruction of events. It was established on that occasion that the position of the tree, the measured distance to the house of the victims, the incline and the network of branches, which is the situation identical to the time of perpetration, speak in support of the acceptance of the testimony of this witness and reveal that the testimonies of the Prosecution witnesses were false and staged.

(29) The Defence is of the opinion that none of the presented pieces of evidence proved that the Accused were members of military, paramilitary and police forces of the Serb Republic at the time of perpetration of the criminal offence, however, although the factual description of the Indictment places them in all possible formations.

(30) Finally, the Defence points out that this kind of serious and severe criminal offence requires an unquestionable establishing of guilt beyond a reasonable doubt, instead of one based on the conjectures used as a base for contradictory testimonies of the Prosecution witnesses. The case is based on indications or numerous, different circumstances, which when combined, point to the existence of a certain particular fact that the guilt of the Accused depends upon, because the combination of those circumstances exists only

because the particular fact actually existed. The conclusion that there exists a particular fact as grounds for the guilt of the Accused must be presented beyond a reasonable doubt.

(31) Due to the aforementioned reasons, and since the Prosecution did not prove beyond a reasonable doubt that the Accused committed this criminal offence, it was proposed to acquit them of the charges.

## 5. Findings of the Court

(32) The Panel will not go into a detailed examination of the existence of the general (*chapeau*) elements of the criminal offence of Crimes against Humanity for the reasons that it would be legally indifferent due to presented factual findings concerning the presence of the Accused at the time and in the place of the perpetration of the criminal offence they are charged with. Specifically, as it will be analyzed in detail below, this Panel did not, beyond a reasonable doubt, establish that Ranko Vuković and Rajko Vuković, on the relevant occasion, were part of an armed group that entered the village of Potkolun and committed the relevant crimes. Therefore, it would be needless/inappropriate to undertake a more detailed analysis of both the existence of a widespread or systematic attack and the subjective element *mens rea* on the part of the Accused concerning the existence of the attack with the aforementioned characteristics, given the lack of an affirmative finding concerning their identification, as well as the provability of *actus reus*, in other words the acts of the perpetration of the relevant criminal offences at the root of the Crimes against Humanity. The same conclusions of the Court relates to the applicability and the need to consider the concept of the *joint criminal enterprise* (JCE) in this case.

### 5.1 Provability of individual incriminations

(33) Pursuant to the factual allegations of the Indictment, the Accused were charged that together with a group of about 20 members of the armed forces of Republika Srpska, by knowingly and willingly taking part in the joint criminal enterprise with an aim of implementing a common plan of deprivation of life of non-Serbs, they came within the vicinity of the village of Podkolun, the Foča municipality, and they, together with Ranko Golubović and Blagoje Golubović, armed with automatic weapons, left the group and entered the village, while the other members of the group deployed around the village standing guard, and then arrived at the family house of Avdija Hukara, whom they found in the house and shot at, thus depriving him of his life, whereupon they headed their way out of the village, following which they came across Mejra Bekrija in a tilled field near the road. She was hilling up potato, and they fired at her, depriving her of life.

(34) The Panel rendering the final decision, *in concreto* the Appellate Panel has a discretion to “admit any relevant evidence which it deems to have probative value”<sup>1</sup> as well as to exclude evidence “if its probative value is substantially outweighed by the need

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<sup>1</sup> *Krupeskić*, Appeal Judgment, No. IT-95-16-A, of 23 October 2001, paragraph 31; Rule 89(C) and (D)

to ensure a fair trial”<sup>2</sup> As a primary trier of facts, the Panel resolves possible discrepancies within the testimonies and/or among witness testimonies. The Panel is definitely authorized to, at its own discretion, assess if any discrepancies exist, how important they are, is the evidence reliable and credible as a whole, and whether the “core” of evidence should be accepted or refused. The discrepancies appearing in witness testimonies do not mean by themselves that the Court Panel acting reasonably should refuse that testimony as unreliable. Similarly, the elements such as the lapse of time between the events and testifying, possible influence of third persons, discrepancy or stressful circumstances at the time of the event do not automatically exclude the possibility for the Panel to rely upon such testimony. However, the Panel will, in each particular case, consider the reliability and credibility of the relevant testimonies, and the space of that discretion is reinforced by the obligation to reason its decision.

(35) The analysis of the provability of the relevant incriminations has to start from specific undisputed findings related to the essential facts, which will determine the fulfillment of the underlying crime at the root of the Crimes against Humanity. Specifically, based on all the evidence presented by the Prosecution and Defense, including the subjective as well as the objective evidence, and having in mind that it was not disputed by the Defense, this Panel found the following essential facts proved on the basis of such evidence:

1. That on the relevant occasion, on an unidentified day in May 1992, Serb soldiers arrived in the village and deployed on the *Vranj stijene* (Vranj Rocks), that four persons left the group and entered the village;
2. On that occasion, in the village of Potkolun, after the above mentioned four soldiers had entered the village, civilians Avdija Hukara (1909) and Mejra Bekrija (1927) were killed, and subsequently the perpetrators of that crime set off towards the village of Utulovići.

(36) However, what was disputable for the Defense involving the direct responsibility of the Accused Vukovićs, concerns their identification on the relevant occasion.

(37) Specifically, according to the case theory presented by the Prosecution, the four persons that entered the village and committed the relevant murders were identified in the Indictment as: Ranko Vuković, Rajko Vuković, Blagoje Golubović and Ranko Golubović. The Prosecution based this thesis first of all on the testimony of the sole eyewitness of this event, the witness Bajro Hukara, who identified the Accused Vuković and Golubović brothers as the persons who entered the village, and after one of them had committed the murder of Mejra Bekrija, they left the village.

(38) The following Prosecution witnesses also testified about the relevant factual circumstance: Zahida Hukara, Aljo Hukara, Fadil Mekić, Munib Bekrija, Neđo Todorović and Dragiša Milutinović, and the Defense witnesses: Pašana Sejfić, Ramiz

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<sup>2</sup> Krupeškić, Appeal Judgment, No. IT-95-16-A, of 23 October 2001, paragraph 31, taken over from the second instance Verdict in the case of *Čelebići*, paragraphs 485 and 496-498

Rahman, Hilmo Hukara, Ramiz Hadžimusić, Dragomir Đerić, Miladin Stanić, Cvijeta Stanić, Kosa Vuković and the Accused in their capacities as witnesses.

(39) Therefore, as alleged by the Prosecution, the Accused committed the relevant criminal acts by knowingly and willingly taking part, together with other members of those forces, in the *joint criminal enterprise* (JCE), by taking part in the implementation of a common plan with a view to effecting the common purpose by way of deprivation of life (murders) of non-Serbs, as described in the Indictment.

(40) The Appellate Panel will not analyze these issues in more detail as they are beyond the scope of the purpose of this Verdict, but it will be satisfied with the conclusion that these issues are not of little account having in mind the allegations of the amended Indictment pursuant to which a widespread and systematic attack “of military, paramilitary and police forces” of the then Serb Republic of BiH was launched, that the Accused, as members of these forces, took part in the implementation of a common plan with a view to effecting the common purpose – deprivation of life of non-Serbs.

(41) Obviously, the Prosecution itself, instead of getting out of major factual dilemmas, establishes them anew by accepting Bajro’s assertion that the four persons who entered the village wore civilian clothes, although the Indictment initially ascribes them the attribute of members of some armed forces, and we did not learn which ones by the end of the trial (the Prosecution did not offer any piece of evidence about that) – whether military, paramilitary or police forces. Therefore, an essential fact is at stake here, and we possess sharply opposed testimony of the witness Bajro Hukara on the one hand and the testimonies of the witnesses who testified concerning that circumstance, on the other hand. The fact is relevant because it establishes the capacity of the persons that entered the village of Potkolun (whether they were civilians or soldiers) which has a repercussion with respect to proving general elements of the offense and with respect to the fact essential for the identification of these persons.

(42) Specifically, the fact that the four men who entered the village on the relevant occasion belonged to the Serb Army is not disputable for the Panel. That is to say, in the statement given during the Defense investigation, on 27 September 2007 in the Attorney’s Office, the witness Pašana stated that the relevant four Serb soldiers wore olive-drab uniforms with the hats of the same color on their heads, which she repeated at the main trial, and the other witnesses testifying about that circumstance gave their statements in accordance with her testimony, except for the witness Bajro Hukara. Also, neither the Court nor the Prosecution finds it disputable that these persons committed the killings of two Bosniak civilians, i.e.: Avdija Hukara and Mejra Bekrija, whose deaths are described in the relevant documentation of the objective importance, as well as the testimonies of Bajro Hukara, Zahida Hukara, Fadil Mekić, Aljo Hukara and Munib Bekrija. Specifically, the existence of causality between the actions undertaken by the persons that entered the village and the effects thereof is not disputable for the Court. However, the key dilemma that the Panel had to resolve was - whether brothers Ranko Vuković and Rajko Vuković were in that group of four persons.

### ***Analysis of the testimony of the witness Bajro Hukara***

(43) The Panel will provide here a detailed and comprehensive analysis of the testimony of the main Prosecution witness Bajro Hukara. The charges are entirely based on his testimony. The relevant testimony will be examined (related to other pieces of evidence) in light of other evidence, both of the Prosecution and the Defense.

(44) In other words, this witness, in its testimony at the main trial held before this Court, stated that on the relevant occasion he was sitting under the walnut tree standing guard, while his wife Zahida and neighbor Pašana were hilling up potato. At a certain point, he observed a group of people in the direction of *Vranje stijene* (Vranje Rocks) and called his wife and neighbor Pašana warning them to flee. The witness further stated that this group deployed, and then four men, whom he did not recognize at that time, separated from the group and set off towards the village, that he heard Pašana saying “There the Chetniks coming”, that Pašana and Zahida fled to the village while he hid in the nearby lime-pit.

(45) This witness, in his statement given to the police in 1993 (Prosecution Exhibit 0-8) stated that he saw 10 Chetniks on *Vranje stijene* (Vranje Rocks) on that day, and that four of them set off towards the village, marching Hana Hukara in front of them. However in his statement given to the Prosecutor’s Office of BiH, of 19 September 2006 (Prosecutor’s Exhibit 0-9), he stated that on the relevant occasion, while sitting under the walnut tree, he observed a group of Serb soldiers consisting of perhaps 20-25 people.

(46) Witness Zahida Hukara stated that she neither saw nor heard the arrival of these persons, although her husband Bajro stated that he shouted warning her to flee (Prosecutor’s Exhibit 0-9). Consistently with the statement of the witness Zahida, the witness Pašana testified that she did not hear Bajro’s warning. Although she did not hear Bajro’s warning to flee, Zahida categorically claimed that she heard Pašana with whom she was hilling up potato, telling her: “Zahida, there they are. They are coming. Let’s beat it, Zahida”, that she and Pašana fled to the village when she heard that someone from the group of those persons asked them not to flee. The Prosecution witness who also eye-witnessed the arrival of the Serb soldiers in the village, Pašana Sejfić, pointed out that on the relevant day in May 1992, while hilling up potato, she pulled herself up for a moment and saw four persons heading towards the village of Potkolun, two of them leading the way, a third one pointing a rifle at them as if to shoot, while the fourth waved them to run away. She pointed out that that she told Zahida then “There they come”, and Zahida responded “They are our people,” but the witness insisted they were not. She did not recognize anybody, however she only saw a rifle in the hands of the third one as he pointed it at their direction.

(47) Summarizing the aforementioned, the Court infers that the presented testimonies are essential for the following reasons: Firstly, establishing the factual circumstance as to whether the witnesses Pašana and Zahida heard Bajro’s warning to flee, which they both negated, is important from the point of view of evaluation of the credibility of the testimony of Bajro Hukara in the part where he asserted that on the relevant occasion

when the soldiers appeared on the *Vranje stijene* (Vranje Rocks), he was sitting under the walnut tree, in view of the claim of the witness Pašana that she was not sure if she saw him there, in other words, it is important with respect to establishing the fact about Bajro's being present on the spot. Secondly, the relevant testimonies of Bajro Hukara, Pašana Sefić and Zahida Hukara, related to the arrival of soldiers in the village of Potkolun, and whether they wore military uniforms or not, are also, as above mentioned, important for the evaluation of the credibility of Bajro Hukara's testimony, as well as from the point of view of verification of the factual allegations of the Prosecution, which will be the subject of further consideration.

(48) However, according to the testimony of witness Sejfić, and based on partial reconstruction of events, it follows that these two witnesses, during their flight, after they had observed the Serb soldiers, had to pass by the place where Bajro was allegedly sitting under the walnut tree, standing guard.

(49) Now, having in mind the direction of movement of Pašana and Zahida, which they consistently showed during the partial reconstruction, the Panel observes on this occasion that the witnesses had to directly come across the place where according to Bajro's account he was located at the moment when he observed the soldiers on *Vranje stijene* (Vranje Rocks), in case that he was indeed located there (the mentioned place at which Bajro allegedly was present at the moment when he observed the soldiers is closely depicted on photographs 5 and 6 of the photo board, and marked with number 1.), although Pašana persistently claimed that she was not sure (which she ascribed to her fear) that she saw him at that place at all.

(50) If we ignore the details related to the arrival of the soldiers in the village since the testimonies of all the three witnesses regarding that circumstance are more or less consistent, this is the first one of the key discrepancies of Bajro's testimony.

(51) Comparing the testimonies of direct witnesses with regard to the entrance of the Serb soldiers in the village, the only thing from Bajro's testimony that appears as a common thing in the testimonies of Pašana, Zahida, Bajro's wife, is that on the relevant occasion, a group of four persons entered the village of Potkolun, while the other soldiers deployed outside the village, making this factual establishment unquestionable.

(52) However, certain differences in the testimonies given by Bajro Hukara before and at the main trial can be observed regarding this factual circumstance, specifically concerning the number of persons that came to the *Vranje stijene* (Vranje Rocks), (once he said 10 and the next time he said 20-25), as well as whether those persons wore military uniforms or civilian clothes. These are the dilemmas that the Prosecution tried to resolve by subsequently specifying the Indictment, as it itself noticed the potential shortfalls of the testimony of this witness.

(53) In order to create a complete picture of the events that occurred that day, one should follow the chronology of further events. After Bajro had allegedly warned Zahida and Pašana about the arrival of the Serb soldiers, the two of them set off towards the village,

specifically to Pašana's house. There were other elderly people whom they informed about the events, and then they ran away towards the nearby woods. These are the facts that the Panel established on the basis of consistent testimonies of these two witnesses.

(54) According to Bajro's testimony, he hid in the nearby lime-pit that was about 20 meters away from the road where the soldiers passed. According to his testimony, from that place he observed the relevant group of four persons upon their return from the village, and he recognized the Vuković brothers and the Golubović brothers among them.

(55) If the theory presented by the witness Bajro Hukara were accepted, from that moment he was the only eyewitness who saw these four persons upon their return from the village and the only one who could provide details regarding their identification.

(56) To tell the truth, a somewhat different conclusion might be drawn from the testimony of Munib Bekrija (transcript of the main trial of 15 November 2007), who stated that the late Huso Sefić told him that six persons entered the village, mentioning that the Vuković and Golubović brothers were among them, while he did not know about the other two persons, that they killed the witness' mother, that Huso was in the lime-pit when these persons came by. The lime-pit was previously used to make lime and a rather thick pear tree was in front of the lime-pit. Being asked by the Prosecutor to clarify the discrepancy in his statement since he stated for the record of 5 October 2006 during the investigation that he saw a group and not six men, the witness Munib answered: "And the group of men, I, how, how many, and he precisely counted up the men, that's why I said, well, six men, the group of men." Also, during the investigation, Bekrija stated that Huso mentioned only Ranko Vuković out of the Vuković brothers, while at the main trial he mentioned Rajko Vuković as well and both of the Golubović brothers. He explained that with the fact that his summons for the examination by the Prosecutor's Office stated that he would be examined in the Ranko Vuković case. Consequently, this witness, instead of explaining the discrepancy in his testimony, explained what he thought. It is clear, by the opinion of this Panel, that a convicting verdict cannot be based on the testimony of the witness Munib who is confused, to say the very least, having therefore the need to adjust his later statements, even more so because his testimony belongs to the category of "hearsay". That such opinion of the Court is correct is clear from the fact resulting from closely relating his testimony to Bajro's statement regarding these circumstances. Specifically, Bajro did not at all mention that Huso Sefić was present together with him in the lime-pit, and, according to oral tradition, it was not mentioned either by Huso with respect to Bajro's presence there. Also, Bajro spoke about four persons and Munib about six ones. In addition, the results of the partial reconstruction of events show that the existence of the lime-pit is extremely questionable, while they completely exclude the existence of a (thick) pear tree mentioned by Munib.

(57) All other Prosecution witnesses supporting the testimony of Bajro Hukara, such as his wife Zahida and brother Aljo, are among his closest relatives, including Fadil Mekić. They disclosed their indirect information, what they heard from Bajro after the events. As they are derivative witnesses or hearsay witnesses, the focus of proof by the Prosecution

regarding the incriminated event again comes down to the testimony of Bajro Hukara and thus on trying to figure out how much, if at all, this witness could be trusted.

(58) The issue of identification of the Accused by the witnesses of the relevant event or placing trust in their statements is always a complex issue which should be addressed with great consideration by court panels. In the Case of *Krupeškić et al.*, the jurisprudence of various panels was considered with regard to the above mentioned issue, and it was concluded that due to the sensitivity of the relevant issue “*where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances, the Trial Chamber must rigorously implement its duty to provide a “reasoned opinion”*”<sup>3</sup> Also, the Trial Chamber in the same case<sup>4</sup> concluded that courts have identified the following factors as relevant to an appellate court’s determination of whether a fact finder’s decision to rely upon identification evidence was unreasonable :

- a) Identifications of defendants by witnesses who had only a fleeting glance or an obstructed view of the defendant;
- b) Identifications occurring in the dark and as a result of a traumatic event experienced by the witness;
- c) Inconsistent or inaccurate testimony about the defendant’s physical characteristics at the time of the event;
- d) Misidentification or denial of the ability to identify followed by later identification of the defendant by a witness;
- e) The existence of irreconcilable witness testimonies;
- f) Witness delayed assertion of memory regarding the defendant coupled with “the clear possibility” from the circumstances that the witness had been influenced by suggestions from others.

(59) The aforementioned factors can be treated as standards of assessment as to which degree it is allowed to place trust in the witness testimonies regarding the identification of the Accused.

(60) Therefore, this Panel will, in the reasoning below, analyze each of the above mentioned factors individually as the factors applicable in the light of factual findings of this case. In other words, a reasonable Trial Chamber must take into consideration the difficulties associated with identification evidence in a particular, and must carefully evaluate any such evidence, before accepting it as the sole basis for sustaining a conviction. Paragraph 34 of the quoted Judgment stated that “ *a miscarriage of justice*

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<sup>3</sup> *Krupeškić*, Appeal Judgment, No. IT-95-16-A, of 23 October 2001, paragraph 39

<sup>4</sup> ICTY Judgment No. IT-95-16-A, *Krupeškić et al.*, paragraph 39



*might result from reliance upon even the most confident witnesses who purport to identify an accused without and adequate opportunity to verify their observations.”*<sup>5</sup>

Equally, the Supreme Court of Austria, has emphasized that, where the identification of the accused depends upon a single witness (which is the case with the testimony of Bajro Hukara in this case, Court’s note) a fact finder must be extremely careful in addressing specific arguments raised by the defendant about the credibility of the witness.<sup>6</sup>

(61) Having evaluated the testimony of Bajro Hukara in detail by collating it with other evidence, the Appellate Panel concluded that no reasonable trier of facts could be convinced, beyond a reasonable doubt, that the Accused took part in criminal acts in the manner as they are charged in the amended Indictment. Following the finding that the testimony of this witness is not reliable, the Appellate Panel reviewed its contents by applying the above mentioned criteria and made the following conclusions:

a) *Identifications of defendants by witnesses who had only a fleeting glance or an obstructed view of the defendant*

(62) During the cross examination about the appearance of the Serb soldiers on *Vranj stijene* (Vranj Rocks), the witness Bajro Hukara stated that he saw one of them standing on those rocks and that he could not see the others (page 37 of the main trial transcript of 13 November 2007), although he contradicted himself when, during the direct examination, he precisely described the deployment of the soldiers on *Vranj stijene* by stating that one of them went up to Vrtine, one stayed on *Vranj stijene*, one stayed on Stoci, one went to Pljusak, and the rest of them were positioned on the slope (page 12 of the same transcript)

(63) Furthermore, Bajro claims that he lay down in the lime-pit when the Serb soldiers came across the road leading towards the village. So it remains extremely questionably how he could from that position (even if he was there indeed), from his lying posture and especially from the depression which a lime-pit is (it is regularly a niche in the ground, Court’s note) in relation to the surrounding terrain, and alongside with a felled walnut tree (page 28 of the record transcript), toll grass and two or three taller, grown up plum trees, which he also testified about (page 35 of the transcript), have an unobstructed view enabling him to observe both the passing of those soldiers about 20 meters away from him and the encounter of those soldiers with the late Mejra.

(64) Consequently, having in mind the obstacles that definitely existed between the observer – the witness and the persons passing by at a certain distance, the Panel concludes that those were essential circumstances that influenced the visual perception of this witness at the relevant moment. Specifically, one should have in mind his lying posture in the alleged lime-pit where he kept his head bowed down from fear of being observed, the existence of rich vegetation during that season, the grass and the surrounding trees in particular, all of which points to a high probability that this witness could not very clearly observe which persons were particularly involved.

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<sup>5</sup> Ibidem, page 12-13

<sup>6</sup> Ibidem, paragraph 38, page 14

(65) This is additionally corroborated with the fact concerning his subjective status on the relevant occasion, as it follows from the testimonies of at least two witnesses – Fadil Mekić and Pašana Sejfić, that Bajro was under the influence of alcohol, combined with the fear he felt according to his own confession. The witness Bajro himself, at the main trial, stated that he liked to drink. In addition, the Appellate Panel did not fail to notice the observation of the President of the First Instance Panel during the playing of the recording of the main trial of 13 November 2007 (page 25 of transcript) that witness Bajro Hukara obviously could not see well, as he was not even able to read his oath.

(66) As a controlling piece of evidence regarding Bajro's testimony, with respect to recognizing the Accused, the Appellate Panel took into regard the attached photo documentation and audio-video recording of the reconstructed event. By reviewing this evidence, no reliable conclusion can be made, with due appreciation of the fact related to the considerable lapse of time and the changed environment, that the lime-pit was indeed located at the incriminated time in the place shown by the witness Bajro, nor could it be concluded that he indeed was able to clearly identify the above mentioned four men on the relevant occasion from that place as they were passing by the place where he allegedly was hiding, as well as at the moment when Mejra was killed.

(67) Thus, describing the place in which he was hiding and from where he was allegedly observing the incident when Mejra was killed, Bajro literally stated: "The lime-pit is not deep, the lime-pit as any lime-pit, how should I put it, it looks like a niche, rather an old lime-pit, and it has, a pit is a pit, it is not deep, perhaps." Whether the lime-pit was deep or not, and if one add the existence of tall grass, two-three grown up plum trees and a felled walnut tree ("its branches fell down", as stated by the witness) as the vision obstructors because of which, as explained by him, those persons could not see him (but reciprocally, he could not have seen them either, Court's notice), then, contrary to what he stated at the main trial, his assertions in the investigation examination record (19 September 2006) prove to be true when stating: "At that moment, all of a sudden I heard a fire in a rapid succession coming from that group, but because of the place in which I was, I could not see who fired. Also, I did not see what happened with Mejra then." If the meaning of this statement of his is thoroughly analyzed, then it logically leads to the conclusion that if he did not see who fired in a rapid succession (but he only heard it), and did not see Mejra either, then he could neither see from that place in which he was hiding either the soldiers or the one who shot Mejra by opening fire in a rapid succession.

(68) The Court additionally finds the correctness of this sort of interpretation in the following: Asked by the Defense Counsel during the cross examination whether the terrain on the mentioned location was rolling, the witness Bajro gave a contrary answer that the terrain was flat, even more so, he stated that it was as flat "as this table". However, describing the movement of four men upon their leaving the village, Bajro stated that they passed by him at the distance of about 20 meters, and as he said: "Down the pond, down there towards Mejra" (page 40 of the main trial transcript of 13 November 2007) by which he denied his own statement regarding the terrain configuration, which is of decisive importance for establishing the fact whether the

Accused could without any obstruction see the incident related to Mejra's killing, which is equally important for the identification of the men passing by him.

(69) Analyzing carefully his testimony in its entirety, the Court could get only a negative answer regarding the identification of the Accused. Indeed, if this witness was, according to his testimony, lying in the pit (page 11 of the quoted transcript), how could he observe from that pit, even if it was not deep as he stated, what was happening at the foot of the terrain with a brook down which they walked away firing in a rapid succession after Mejra's killing. In any case, the witness is explicit regarding the same circumstance when on page 11 of the quoted transcript he stated concerning the arrival of four men in the village: "Then, you see, I could not see down there..." or when asked by the Prosecutor whether he was cable to see the moment when the shooting started and who did it, he answered that he could not see that, but he assumed that it could have been Ranko.

(70) Asked by the Prosecutor, the witness Bajro explicitly stated that all the time upon the arrival of those four men, which might have lasted for about one hour, he did not move out of the lime-pit where he had found a shelter, because he was afraid, and that he got out of the lime-pit only after they had walked away. Based on this story, the Court made a logical conclusion that Bajro Hukara, just as he testified, during these events was all the time lying hidden in the lime-pit, and thereby, due to such a position, he could not have seen the men who allegedly passed by him, nor could he have seen Mejra's killing. Contrary to what he stated at the main trail, the witness Bajro Hukara did not state for the record during the investigation, of 19 September 2006 (Prosecutor's Exhibit 0-9) that he had peered out of the lime-pit, which would be logical if he said that he was afraid.

(71) Anyway, the Appellate Panel itself was convinced during the partial reconstruction of the event that no niche existed in the place marked as a lime-pit by the witness Bajro, which, despite the lapse of time, would at least evoke that some lime-pit once existed in that place.

(72) Concerning his possibly unobstructed perception as he was lying in the lime-pit, in the position that the witness Bajro took during the reconstruction lying on the ground (marked on photos Nos.10-13 of the photo board of the reconstruction), although no niche was observed in that place, the Appellate Panel was convinced on the spot that it was impossible to clearly recognize the faces (doubles) moving on the route towards the brook, or that the place where the late Mejra was at the moment when the incident occurred could not be seen observing from Bajro's range of sight, due to the existence of physical obstructors such as plants overgrown with vegetation and brushwood (which can be clearly seen on photo 16 of the photo board).

b) *Identifications occurring as a result of a traumatic event experienced by the witness;*

(73) As aforementioned, the witness Hukara stated that he did not move from the alleged lime-pit for some time because he was afraid. Also, in his testimony given at the main

trial, this witness stated that he was not observing at the moment when these soldiers entered the village because of fear, and that he did not identify them at that moment, and he said: "I could not recognize them even when they entered the village, I only recognized them when they returned from the village." There arises a reasonable question how this witness, at the moment when these men were returning from the village, and after he had heard the shots from the direction of the village ("the rifle fired two times...") definitely associating them with the activities of these four men, found strength to lift up his head and observe them passing by, without being afraid for his own life. These are the dilemmas and illogicalities that had direct implications on the conclusion of the Appellate Panel that, based on the testimony of this witness as the only direct witness with regard to the killing of Mejra, as he stated, it cannot be established with certainty that he was indeed in the above mentioned place on the relevant occasion having in mind the manner in which he described the place and that he saw brothers Vuković on that occasion.

*c) Inconsistent or inaccurate testimony about the defendant's physical characteristics at the time of the event;*

(74) The witness Bajro, in his statement given to the police in Sarajevo on 3 December 1993 (Prosecutor's Exhibit 0-8) stated that on that day he saw a dozen of Chetniks on *Vranj stijene*, and that four of them set off towards the village marching Hana Hukara in front of them,<sup>7</sup> and that he recognized among them Ranko Vuković and his younger brother whose name he do not know, while in his statement given to the Prosecutor's Office of BiH of 19 September 2006 (Prosecutor's Exhibit 0-9) he stated that on the relevant occasion, while he was sitting under the walnut tree, he observed a group of Serb soldiers of about 20-25 men. On identification of these men, the witness Bajro Hukara was decisive that they were soldiers, which means that they wore uniforms.

However, during the examination by the Prosecutor at the main trial this witness stated that all four of them were in "civilian uniform", while Ranko Vuković had a head scarf, which Vuković during his testimony, visibly surprised by that question<sup>8</sup>, firmly denied. Also, no other witness who testified about the soldiers' clothes confirmed that any of them wore head scarves.

(75) Specifically, Pašana Sejfić, as well as the witnesses Miladin Stanić and Cvijeta Stanić, who testified about the passing of the Serb soldiers through the village of Utolovići towards the village of Potkolun, were consistent in their testimony that the soldiers were dressed uniformly in olive-drab uniforms with hats on their heads, contrary to Bajro's testimony who claimed that they were in civilian clothes. Also, the witnesses Zahida and Pašana did not state anything which could point to the identities of those persons, although Pašana described in detail what each of them did at the relevant time, and even Pašana did not recognize the Vuković brothers among the soldiers although she

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<sup>7</sup> The witness Bajro Hukara did not state what happened with this person in his testimony at the main trial

<sup>8</sup> Referring to this item, the Panel found that given the cultural and traditional aspect of the ethnic community to which the Accused belong, it is not usual that residents from rural areas wear head scarves, which is characteristic of women's way of dressing.

knew them well from before, and according to Zahida's testimony she only knew Rajko Vuković.

(76) Unlike Bajro Hukara, the witness Pašana did not recognize any of those four soldiers and only for one of them she claimed to have had a rifle in his hands, while Bajro claimed that all of them were armed with automatic weapons. Also, unlike Pašana and other witnesses who testified that the soldiers were in uniforms, Bajro adhered to his statement that they were in civilian clothes. The unreliability of his testimony is also confirmed by the fact that regarding this particular item the Prosecutor himself, obviously in an effort to preserve credibility regarding the consistency of his testimony, omitted from the factual description of the submitted Indictment the description of the uniforms that the soldiers had when they entered the village. During the partial reconstruction of the events on the spot and given the positions of the witnesses hilling up the field and the place at which Pašana noticed the soldiers, the Panel was convinced that the witnesses Pašana and Zahida could recognize those persons if they knew them.

(77) According to this Panel, the identification of a human figure previously known by the observer does not only involve the recognition of his face but also recognition of his body language, his silhouette, characteristic walk etc. Besides, the conclusion that Pašana could recognize those persons in case that they were indeed the Accused Vuković and brothers Golubović is supported by the fact that in her testimony Pašana precisely described the spacing of those soldiers while walking, that the third in a row had a rifle and that the last one invisibly waved to the witnesses to flee, while Zahida stated that she had heard somebody from that group of soldiers telling them not to flee. Hence, despite the fear that they evidently felt, these witnesses by their senses registered sufficient details based on which those persons could be visually identified by their appearance or they could identify them by voice, especially for the reason that they knew them from before, and Zahida claimed to have known Rajko Vuković.

*d)* The existence of irreconcilable witness testimonies;

(78) Here, the Panel will draw a special attention to the inconsistency and contradictions between the evidence of certain witnesses, especially Bajro Hukara and Zahida Hukara on the one side and Pašana Sejfić on the other, with a special emphasis to the credibility of each individual witness, taking into account Article 290(7) of the CPC of BiH.

(79) Thus, in respect to other elements of the testimony relating to the circumstances preceding the incriminated event, in the mentioned statement given in 1993 at the police station, Bajro Hukara did not at all mention the arrival of Ranko Vuković and his younger brother Rajko Vuković in the village, who was allegedly looking for his brother Luka. He did this in his statement taken in the investigation phase and at the main trial, when he stated that he had heard that from his wife Zahida. During the main trial, obviously well instructed, she thoroughly described that event, although mentioning only Rajko who on that occasion allegedly pushed Bajro's father Avdija on the pile of sand, stuck a rifle with a bayonet into her mouth, but unlike Bajro she never mentioned Rajko. When asked by

his Defense Attorney, Bajro stated that they searched for Luka in the period between 15 and 20 April 1992, although the physical evidence presented by the Defense reveals that Luka Vuković went missing no sooner than on 25 April 1992.

(80) On the other hand, acting with a caution, the Panel takes into account the statements of the Accused who were personally interviewed as witnesses, in which they stated that they did not know the Bajro Hukara family and that they were not aware that their younger brother Luka used to spend nights in that house. Their evidence regarding those circumstances was also confirmed by their mother Kosa Vuković. All this, with the control evidence force and brought into connection with the testimony of Bajro Hukara, clearly points to a conclusion that there are many obscurities in respect to this event, primarily in respect to the credibility of Bajro's testimony.

(81) The Appellate Panel is aware that motive is not an element of this criminal offence. But the Panel considered motive in this case for the reason that it was initiated by the testimony of Bajro and Zahida but also because the Panel is aware that in general the cognition of motive presents an important factor which offers a basis for insight of the inner content of physical relation of the perpetrator towards the committed act and the resulting consequence. Why would the Accused Vuković have reason to kill Bajro's father Avdija if he, according to Bajro's claims, if they were accurate, received their brother Luka to spend nights in his own house, which was an act of kindness to the Vuković family. In addition, Bajro testified that he was in good relations with the Vuković family and moreover that earlier he used to stop at the café where Rajko was working (although from the presented material evidence it follows that it was not Rajko but the other deceased brother of the Vuković family called Milorad aka *Mičo*).<sup>9</sup> According to the Panel, the only logical explanation for this contradiction is that Bajro, in collusion with him, his wife, and for reasons known only to them, invented all this issue concerning the Vuković's visit to their home.

(82) The necessity that Bajro's testimony, who was the only direct eye witness of Mejra's murder, must be approached critically and with extreme caution and that it has to be subjected to control of other evidence, in this case the checking of his evidence against the evidence of other witnesses, primarily the Prosecution witnesses, but also the Defense witnesses, is supported by the fact that the witnesses such as Miladin Stanić claimed that Bajro's nickname was "Perda" which means a liar or shuffler, while Pašana Sejfić, who was his neighbor, based on which it could be concluded that she knew him well, said that she did not believe him, that is, that she did not believe anybody but only what she could see with her own eyes.

(83) Besides, assessing Bajro's statement from the psychological point of view, the Court did not missed details when he, from his main course of evidence, in a creeping manner,

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<sup>9</sup> Despite the complex historic context and multi-religious relations in Bosnia and Herzegovina, it is also true that hospitality and benevolence are included in the corps of ethic values being characteristic for all ethnic communities in BiH, and that they have always been respected. None of the evidence presented during the proceedings point to the fact that the Accused Rajko and Ranko would act contrary to that ethic codex, especially having in mind the piety which they had towards their deceased brother.

started telling about episodic and obviously invented events.<sup>10</sup> During the cross examination, the Defense Attorney presented him with his allegations from the statement which Bajro admittedly gave on 3 December 1993 to the police at Dobrinja (0-8), regarding the earlier arrival of his Serb neighbors in the village of Potkolun, in which the first page contains the following allegation: “I took a gun and set off in their direction”, that Spaso Niković and Ranko Ugljenović took their weapons and left, which allegation he afterwards denied with an unconvincing explanation that the Defense Attorney might have added it on his own. If this detail is brought in connection with his claim from the main trial that in respect to the event at issue he hid in a lime-pit because he was afraid, the only reasonable explanation for his claims in respect of his heroism and cowardice (Bajro personally testified that he allegedly protected them, referring to Zahida and Pašana) is Bajro’s tendency for fiction. The accuracy of this matter is supported by his claim that following his father’s and Mejra’s funeral he went to the woods with others and that immediately on the following day he gave a statement to the journalist Šemso Tucaković about the events in the village, although his brother Aljo testified that he had heard about his father’s death from the radio amateur Tucaković no sooner than in July 1993.

(84) All the facts that relate to Bajro’s character, his motives – to at any cost find the murderer/murderers of his father and his reaction to the events, the Court assessed in the context of the credibility of his testimony. Correct establishment of facts in this case had primarily to be established on the trust or lack of with regard to this witness. Telling lies, which is widespread in criminal proceedings, is a more serious problem for the Court than the wrong evidence. A perjurer always seeks to be persuasive and not hesitant.<sup>11</sup>

(85) There is no doubt that Bajro is an intelligent man because during the proceedings and on the occasion of the partial reconstruction of the event he tried to be consistent<sup>12</sup>, if not convincing in his testimony. That was an additional reason for the Court to make efforts to remove all the manipulative elements from the content of his testimony, specifically the elements which give his testimony a twisted truth, primarily searching for support to his testimony in the contents of other presented evidence, which in this particular case was not found. Specifically, when assessing the evidence of Bajro Hukara, the Appellate Panel concluded that his evidence in the important parts which incriminate the Accused was not corroborated by any of the witnesses who had any cognition about the event.

(86) Therefore, a wrong opinion about this matter inherently carries a series of risks since belief in false evidence may lead to the miscarriage of justice. The Court did not fail to

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<sup>10</sup> Thus, the Witness Bajro states that the Serbs let pigs, although he had previously stated, as well as the other prosecution witnesses, that the village of Potkulun was exclusively inhabited by Muslim population, that on five occasions he found the body of his father dugged up and that he had to bury him again (p. 22 of the transcript), although none of the witnesses talked about that alleged and undoubtedly significant event in their evidence.

<sup>11</sup> V. Marcus Stone, Cross examination in criminal proceedings, second issue, Kemigrafika-Trade d.o.o., Sarajevo, 2008, p 13-444.

<sup>12</sup> On that occasion he corrected the Presiding Judge that earlier he did not talk about soldiers but about civilians.

notice that the entire evidence of Bajro Hukara dogmatically points directly into one direction (he claims that he was 100 and/or 1000 percent sure that he saw the Accused) entirely missing the plasticity in the description of the persons he identifies as the Accused regarding their physical appearance, posture, way of walking etc., which would give the necessary credibility to his testimony. Moreover, as already stated, his allegations that the Accused as well as the Golubović brothers, were in civilian clothes is not corroborated by Zahida's testimony, who could not tell how the unknown persons were dressed, which is contrary to the consistent testimony of Pašana and Miladin Stanić and Cvijeta Stanić, of which the two latter witnesses are categorical in their claims that the persons who went in the direction of the village of Potkolun, allegedly between 10 and 11 hours, and who afterwards returned, were exclusively soldiers dressed in olive-drab uniforms with the matching hats of the former JNA.

(87) Following the chronology of the relevant events, the witness Zahida Hukara, wife of Bajro Hukara, claims that from the tree in the woods where she was hiding together with Pašana Sejfić, she saw four soldiers who came to the house where Avdiija was located, describing the further events. However, after the partial reconstruction, by the objective observation on the spot the Panel did not reach a conclusion by which her testimony would be accepted as accurate, which is undoubtedly visible from the elaborates and a DVD footage of the crime scene. In fact, it is evident that from the high position on the tree she allegedly climbed on that relevant occasion, due to the terrain configuration and tree tops covered with leaves, this Witness could not clearly see even the roof of the house in which Avdiija Hukara was killed on that occasion. This objective observation of the Panel is additionally founded on the evidence of the Defense witness, Pašana Sejfić, who claimed that she climbed at a certain height, specifically that she hid behind a tree trunk, from which, according to her, she could not see anything. Given the relevant spot and all the circumstances of facts (see photographs 39-42 from the photo board), the Court concluded that it was very unlikely that Zahida climbed up the tree given that it was a tall tree with smooth bark, which confirmed the truth of Pašana's evidence that Zahida, who was older than Pašana, did not at all climb the tree on the relevant occasion.

(88) This conclusion of the Panel is corroborated with the allegations of these two witnesses in their mutual confrontation during the partial reconstruction regarding climbing the tree on that particular occasion and the objective possibility to observe what was going on in the village. In that regard, the Witness Sejfić is explicit in her claim that she hid behind the tree trunk, when she climbed up at approximately one meter height, which according to her was the possible height to climb at given the height of the tree, while the Witness Zahida claimed that she climbed much higher, although, unlike Pašana, she did not try to demonstrate that on the spot. It is important to emphasize that direct observations of the Court regarding this factual circumstance are fully supported by the evidence of the witness Sejfić.

(89) Pašana's testimony, according to the Panel, contains all the necessary elements of credible evidence, including authenticity, objectivity, clearness, determination and completeness. This witness presents, in a credible way, what she actually saw, and since she herself feared for her life, she did not have a reason to cover for anybody, including



the Accused. Besides, the principled nature and veracity of this Witness is reflected in the fact that although Pašana was returnee to the village of Potkolun intending to continue living together with her neighbors, the Hukara family, she did not hesitate to testify as she saw that event, which was confirmed during the partial reconstruction when she was explicit in her telling Zahida that she would not lie for anybody.

(90) The Panel approached the testimony of Zahida Hukara with special attention given that she was Bajro Hukara's wife. In fact, from the practical level of observation the status of this witness is very important in terms of the socio-cultural, rural, patriarchal and geographically isolated environment she originates from, her education and, in that regard, possible suggestibility during the testimony, for the very mentioned reasons. In fact, a certain submissiveness of this witness to her husband is visible given his character and role of the "head of the family", which points to a conclusion that Zahida told what she had heard from her husband or what he had told her to say, particularly for the reason that this witness personally stated that after getting married she never left Potkolun.

(91) For those reasons, the Panel did not place trust in the evidence of this witness in the relevant part, as from the objective point of view, even if she did climb the tree, she could not see the village and four soldiers who entered the village on that day, or what was going on there. Such conclusion of the Panel is supported by the fact that if at this stage of consideration her testimony is hypothetically accepted as truthful in the sense that she actually was on the tree and that she could see the village and direction of the soldiers' movement, that the soldiers separated and took out a tape recorder from her house and a knitting machine from Bejdana's house, there is a logical question as to how the witness in the particular circumstances could clearly see the tape recorder from the distance of 300-400 meters, but could not recognize any of the soldiers (Rajko Vuković) for whom she claimed to know well.

(92) This again leads the Panel to an unambiguous conclusion that the witness in fact did not see anything that was going on in the village that day, which is additionally supported by the evidence of Witness Sejfić, who contrary to Bajro's testimony testified that the tape recorder was taken from her house and not from the Hukara's house. Thus, on page 73 of the transcript from the main trial of 13 November 2007, when asked by the Defense Attorney how the witness could see the two soldiers carrying the radio without noticing their uniforms, Zahida answered: "I had to see because when I came home I noticed that it was not there, although I had left it there two hours ago", adding "that nobody else was there except them". This answer leads to a logical conclusion that instead of testifying about what she actually saw or did not see, this witness transferred her subsequent findings at the time when the event took place.

(93) One can get the impression that the witness Bajro Hukara, in creation of his fiction, given that he stated seeing Blagoje Golubović taking away the knitting machine and the tape recorder (page 30 of the main trial transcript of 13 November 2007), needed adequate support for that. Accordingly, his wife, who believed and was convinced that she saw the things which in fact she did not see, but in order to corroborate his evidence, testified according to his instructions. Examining the credibility of her evidence, through

the assessment of the contents of her evidence, the Panel found that her evidence was largely unreliable, divided and unclear, that the witness showed certain degree of nervousness and insecurity when presenting details, which all points to a conclusion that she testified about something she objectively could not see.

(94) Zahida contradicted herself when she testified that one of the soldiers entered the section of the house occupied by the late Avdiija, while the other remained outside (although in the course of investigation she stated that both soldiers entered the house), while the other two soldiers took the tape recorder and the knitting machine from the other house (during the investigation she stated that one of the soldiers was carrying the radio from the house while the other two were carrying the knitting machine). After being presented with the statements given during the investigation, which differed from what she testified at the main trial, she did not have any reasonable explanation.

(95) Irrespective of whether summoned by the Prosecution or Defense, some witnesses who appeared before the Court could be called independent witnesses. That was how this Panel characterized the witness Pašana Sejfić arguing that she did not have obvious interest or connection with the case or the parties thereto (*propria causa*). As already stressed, she did not have a reason to hide the identity of the Accused as her personal life was also jeopardized, as she was scared and ran away together with Zahida. Regarding the identification of persons who entered the village, same as Pašana, Zahida too testified that she could not recognize any of them, although in her testimony Zahida asserted that she knew Rajko from before.

(96) According to this Court, the detail regarding the appropriation of the knitting machine is important for the reason that this item is also mentioned by the Stanić couple regarding the circumstances of what took place after the events in the village of Potkolun, specifically what lies within the scope of additional factual circumstances, involving the facts which structure their evidence important for assessing the credibility of both theirs and Bajro's testimony. Hence, the Prosecution witnesses, Bajro and Zahida, together with Pašana, in their separate testimonies and in agreement with the Stanić couple, mentioned the above items. If Miladin Stanić and his wife Cvijeta told the truth by describing that Slavko Todorović aka "Čiča" was carrying the knitting machine and the other soldiers the tape recorder (not Blagoje Golubović as Bajro Hukara claimed), then there was no reason not to give trust to them in the part of their evidence relating to the details in describing the military uniforms of the persons who entered the village of Potkolun on that relevant occasion, which was also confirmed by Pašana, the final result of which was that they did not see the Vuković or Golubović brothers among the soldiers.

(97) In order to establish the criminal responsibility for such serious criminal offense the Accused are charged with, based on the evidence of only one witness, specifically Bajro Hukara, it is necessary that that evidence be so clear and crystal pure, specifically that it is not questioned by other witness evidence but rather affirmed by it, which was not the case here.

(98) Previous analyses included all the circumstances, both objective and subjective, which directly influenced the perception of this witness at the moment of identification of the persons who committed the relevant criminal offences. Hence, willingly or accidentally, wishing to make somebody responsible for his father's murder, which obviously was painful and tragic for him, this witness tried to convince himself about something that was not factually corroborated or sustainable. At least, the Panel could not establish beyond a reasonable doubt that it was the Vuković brothers who committed the relevant killings as described in the Indictment.

(99) Besides, as control evidence in respect to Bajro's testimony regarding this circumstance, the Panel took into consideration the attached photo documentation and audio-video recordings from the reconstruction of the events. Specifically, it is necessary to reiterate that, fully respecting the facts regarding the considerable lapse of time and change of the surroundings, these facts cannot serve as a basis for a reliable conclusion that at the relevant time the lime-pit was located at the place which the witness Bajro pointed or that on that relevant occasion and from that place he could clearly identify the mentioned four men when passing by the place he was located at or at the moment of Mejra's murder.

(100) Hence, the evidence of Bajro Hukara remains isolated and also questioned to a large extent by other control and circumstantial evidence.

(101) Particularly, the Panel considered the evidence of the Defense witnesses, Miladin and Cvijeta Stanić, whose statements were not questioned by anybody. In their testimony they confirmed that Bajro asked them – according to Cvijeta some time in autumn 2006 – if they knew who killed his father? Pursuant to that, the witness Dragiša Milutinović, during his testimony at the main trial of 9 January 2008, when directly asked by the Prosecutor when he saw Bajro for the first time after the war, answered: “At that time he was talking around that he would like to know who killed his father.” Why would then Bajro do that if he already knew that the relevant crime was committed by the Accused and the Golubović brothers. Also, the Prosecution witness, Fadil Mekić, who took part in transferring Mejra's dead body together with Bajro after the relevant event, stated that on that occasion Bajro did not tell him who killed Mejra. Witness Aljo Hukara also stated that after the murder of his father he talked with the inhabitants of the village of Potkolun insisting on his question if any of them knew anything about the event in which his father was killed, and that they told him that they heard about the murder of his father from Bajro Hukara (see page 7 of the main trial transcript of 15 November 2007), on the occasion of which Aljo did not state any of their knowledge as to who committed that crime. Hence, both Aljo and Bajro inquired with their neighbors who killed their father, which means that they personally did not have any direct knowledge about that.

(102) When such factually based conclusion is brought in connection with Aljo's allegations that at the family gathering in Sarajevo the brothers discussed who would file the criminal report; that Aljo Hukara filed criminal report only against two and not against four suspects; that Aljo in his description of the act mentioned five and not four soldiers, that those differences in his evidence the witness explains by the fact that he did

not personally know those persons and that for that reason he did not report them all, and that he accidentally mentioned five instead of four soldiers, which according to this Panel does not make his answers credible – it is clear that the results of the Hukara brothers personal investigation have an entirely hypothetical character. Besides, Neđo Todorović at the main trial (of 16 January 2008) stated that before his testimony he was called by some of the Hukara family members suggesting him to testify that his son Slavko aka “Čiča” did not come to Utolovići. At the main trial, Aljo Hukara personally confirmed the fact that he personally called the witness Todorović. Dragiša Milutinović’s testimony was similar to the testimony of the witness Todorović, who at the main trial of 16 January 2008 stated that before the trial he was called by Redžo Hukara who mentioned Bajro or vice versa, that he mentioned the Vukovići and Stanići, and that he would be visited by the Prosecutor. The evidence of witnesses Todorović and Milutinović are directly in favor of the conclusion of this Court that the Hukara brothers, including Bajro, contrary to their testimony, did not have direct knowledge as to who killed their father, as otherwise they would not need to contact these witnesses.

(103) This Court considers the testimonies of the witnesses Miladin and Cvijeta Stanić sincere and convincing. In addition, according to this Panel, they are independent and impartial witnesses, as it follows both from Miladin’s and Bajro’s testimonies that they know each other and are in good relations. Nevertheless, it did not prevent Miladin from refusing to lend his brandy still to Bajro because Bajro falsely spoke about Vukovići, as he said. As the Panel understood, this witness showed his commitment to tell the truth. It is certain that the testimony of Stanić was unfavorable for the case theory that the Prosecutor presented, therefore, in the amended Indictment, he maintained his statement that four Serb soldiers, the Accused Ranko and Rajko together with the Golubović brothers, following the events in the village of Potkolun, went away in an unknown direction, although the Prosecution witnesses Bajro Hukara, Zahida Hukara and Pašana Sejfić testified contrary to that by stating that the soldiers went away towards the village of Utolovići, specifically the village where the Stanići were. After all, Bajro’s brother Aljo stated that the testifying of Miladin Stanić was important due to the fact that the men mentioned in the criminal report went to the village of Utolovići and that Miladin knew who killed the father and Mejra. This statement of the witness Aljo, who in his description of the relevant event testified by presenting what he had heard from his brother Bajro, only corroborates the correctness of the conclusions of this Court that Aljo Hukara as well as his brother Bajro did not have a direct knowledge as to who perpetrated the described crime.

## **5.2 Conclusion**

(104) The Prosecution based the offered factual substratum, first of all, on the testimony of the witness Bajro Hukara to whom the Prosecution ascribes the importance of a direct witness concerning the arrival of the Accused and the Golubović brothers in the village of Potkolun, and concerning the killing of Mejra Hukara. Also, with respect to the testimony of his wife Zahida about the killing of his father Avdija. Other Prosecution witnesses, including also Zahida, who testified about the incident of Mejra’s killing, are important as indirect witnesses. In other words, they testified about what they had heard from Bajro

Hukara. For that reason the probative evaluation of his testimony was crucial for the proper resolution of this criminal matter.

(105) Having in mind the above mentioned, the Appellate Panel emphasizes the importance of evaluating the witness credibility in the context of the case records as a whole. The Appellate Panel emphasizes the importance, pursuant to the ICTY jurisprudence, of such a holistic approach in evaluating the credibility within its own jurisprudence, as well as the application of Article 281 of the CPC of BiH regarding the evaluation of evidence. Specifically, numerous discrepancies and illogicalities in the testimony of the witness Bajro himself as well as the testimonies of other witnesses who, more or less, reproduced what he had told them concerning the essential facts and the details as well, produce, in its wholeness, the conclusion according to which his testimony cannot constitute a reliable factual basis by which the guilt of the Accused Rajko and Ranko Vuković could be established beyond a reasonable doubt.

(106) In respect of the aforementioned, the Panel concluded that, in view of the relevant incriminations, the evidence presented by the Prosecution, concerning its quality, does not have the necessary convincing power that the Accused committed the acts they are charged with in the Indictment. Therefore, in this particular case, it found the application of the principle of “*in dubio pro reo*” or the rule stipulating that the facts being detrimental for the Accused must be established with absolute certainty or “beyond a reasonable doubt”, and that if there exists a doubt with regard to those facts, and since in this particular case this Panel has found that such a doubt exists, they cannot be taken as established. On the other hand, the lower premise of the rule says that the facts being favorable for the Accused will be taken as established even if they are only probable.

(107) In other words, by establishing that the Accused will be acquitted of charges if it is not proved that he committed the criminal offence with which he is charged (Article 284(c) of the BiH CPC), the legislator has implicitly but unmistakably enabled the application of the principle *in dubio pro reo* in favor of the Accused, because if the available evidence points only to certain knowledge in respect of the facts that the Accused committed the criminal offence which is the matter of the charges, then he definitely has to be acquitted and thus the Court may not and must not render the convicting verdict if it is not firmly and without any dilemma convinced of the existence of guilt on the part of the Accused.<sup>13</sup>

(108) Having complied with the quoted principle and due to the fact that the Prosecution, according to the opinion of this Panel, did not prove beyond a reasonable doubt that the Accused Ranko Vuković and Rajko Vuković committed the criminal offence they are

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<sup>13</sup> See Dr. Milan Škulić, Probative Reasoning and Protection of Human Rights in Criminal Proceedings, “Pravna riječ” magazine for legal theory and practice, No. 19/2009, ISSN: 1840-0272, Banja Luka, 2009, pages 455-477

charged with, applying Article 284c) in conjunction with Article 3 of the CPC of BiH, the acquitting verdict had to be rendered.

#### **6. Decision regarding the costs**

(109) Pursuant to Article 189(1) of the CPC of BiH, the costs of the criminal proceedings stipulated in Article 185(2) a) through f) of this Code, as well as the necessary expenses of the Accused and the remuneration for the Defense Counsel, shall be paid from within budget appropriations.

#### **7. Decision about claim under property law**

(110) Pursuant to Article 198(3) of the CPC of BiH, the Court made the decision instructing the representatives of the family of the Accused that they may pursue their claim under property law in a civil action, due to the fact that the acquitting verdict was rendered.

**NOTE-TAKER**

**Medina Džerahović**

**PRESIDENT OF THE PANEL  
JUDGE**

**Dragomir Vukoje**

**NOTE ON LEGAL REMEDY:** No appeal lies from this Verdict.

Attachments: Photo documentation of the partial reconstruction of events in the village of Potkolun (photographs Nos.: 5, 6, 11, 12, 13, 16, 39, 40, 41 and 42), 5 pages in total