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GJILAN DISTRICT COURT

Gjilan District Court in the trial panel with International Judge Vagn Joensen as Presiding Judge and International Judge Hajnalka Karpati and Judge Ilmi Dalipi as members of the panel, assisted by court recorder Christine Klekr in the criminal case against the defendant Milos Jokic according to the amended indictment dated 21 March 2002 by the International District Public Prosecutor Philip Kearney charged with war crimes against the civilian population as per Article 142 of the Yugoslav Criminal Code after holding the main trial (retrial) on 21st, 25th and 27th September, 1st, 2nd and 30th October, 1st and 9th November and 3rd, 7th and 13th December 2001 and 11th, 22nd, 30th and 31st January, 25th and 27th February, 21st March, 2nd and 4th April and 2nd and 3rd May 2002 in the presence of the defendant, his defence attorneys Branko Stanic, Zivojin Jokanovic, Goran Petronijevic and Dragan Palibrk and the International Public Prosecutor for Gjilan District Cecilia Tillada on 3rd May 2002 announced the following

VERDICT**IN THE NAME OF THE PEOPLE**

The defendant Milos Jokic, born on 4th February 1979 in Vitina, of father Velibor and mother Milusa, nee Petrovic, Montenegrin, single, of medium economic status, no criminal record, not charged with other criminal acts, in detention since 26th August 1999, is

ACQUITTED

Of the charge that he during the general time period of the NATO bombing campaign in FRY, specifically during the months of April, May and June of 1999, dressed in camouflage paramilitary uniform and acting in concert with other men dressed in a similar manner, would have participated in the following series of criminal actions in the villages of Verban and Smiraj in the Vitina Municipality, designed to expel the Kosovar Albanian members of those villages of Kosovo:

I.

The murder of Ramadan Berati on 15th April 1999 in the village of Smiraj.

II.

The dislocation of Albanians from the village of Smiraj on 15th April 1999.

III.

The dislocation of Albanians from the village of Verban from the first week of May 1999 into the early part of June 1999.

IV.

The murder of Rexhep Emerllahu on 9th May 1999 in the village of Verban

V.

The rape of Marte Tunaj on 30th May 1999 in the home of Elmaz Selmani in the village of Verban.

VI.

The destruction and theft of property in large scale not justified by military needs on 30th May 1999 in the village of Verban.

VII.

The unlawful detention of Kimete Selmani, Hafize Selmani, Elmaz Selmani, Hajdar Jashari, Fatbarda Emerllahu, Bedri Emerllahu and Marte Tunaj on 30th May 1999 in the home of Elmaz Selmani in the village of Verban.

VIII.

The pillaging of Bedri Emerllahu, Fatbarda Emerllahu, Kimete Selmani, Elmaz Selmani, Marte Tunaj and Hamdi Fetahu on 30th May 1999 in the village of Verban.

IX.

The inhumane treatment of Sultan Berati on 15th April 1999 in the village of Smiraj, of Sabri Fetahu on the 9th May 1999 in the village of Verban and of Fatbarda Emerllahu and Elmaz Selmani on the 30th May 1999 in the village of Verban.

X.

Of subjecting Bedri Emerllahu to forced labor on 30th May 1999 in the village of Verban.

Thus the defendant is acquitted of the criminal act of war crimes against the civilian population as per Article 142 of the Yugoslav Criminal Code.

The defendant shall be released from detention immediately according to a separate decision.

The costs of the criminal proceedings shall be paid by the court according to a calculation which shall be made separately.

The injured parties are advised to pursue property claims by civil litigation.

REASONS

1. The history of the case.

The defendant Milos Jokic was arrested on 26th August 1999 charged with criminal acts in connection with events in the village of Smiraj on 15th April 1999 (Count I, II and part of IX) and with events in the village of Verban on 9th May 1999 (Count IV and part of IX)). An investigation was initiated on 3rd September 1999. On 25th February 2000 the Public Prosecutor in Gjilan District brought an indictment concerning these events charging the defendant with genocide as per Article 141 of the Yugoslav Criminal Code. On 15th May 2000 the main trial commenced before a local panel but was discontinued because of new charges.

The new charges were based on accusations brought by Marte Tunaj to the Public Prosecutor relating to events in the village of Verban during the month of May 1999 (Count III, V, VI, VII, VIII, part of IX and X). The Public Prosecutor on 18th February 2000 examined the witnesses Hajdar Jashari, Hafize Jashari, Marte Tunaj, Kimete Selmani and Elmaz Selmani and on 28th April 2000 requested an investigation. On 19th May 2000 the investigation was initiated. On 8th June 2000 the Public Prosecutor brought an indictment concerning the new charges.

On 20th June 2000 the main trial recommenced before the trial panel, but with the international judge as panel member, and the two indictments were consolidated. On 20th September 2000 the trial panel brought the verdict to convict the defendant on all counts, qualifying the criminal acts as war crimes against the civilian population as per Article 142 of the Yugoslav Criminal Code, and to sentence him to imprisonment in 20 years.

On 26th April 2001 the Supreme Court of Kosovo overruled the verdict of Gjilan District Court and returned the case for retrial.

2. The retrial.

On 21st September 2001 the retrial commenced before a panel with two international judges as presiding judge and panel member and a professional judge as the other panel member and with an international prosecutor, all appointed pursuant to UNMIK Regulation 2000/64.

On 21st March 2002 the International District Public Prosecutor brought the amended indictment charging the defendant with war crimes against the civilian population as per Article 142 of the Yugoslav Criminal Code.

During the trial the court examined 14 Kosovar Albanian witnesses and 1 US KFOR witness and read out the previous statements of 2 Kosovar Albanian witnesses, all supporting the prosecution, and the defendant and 4 Serb witnesses supporting the defence. The court without the presence of the defendant conducted an ocular inspection of the relevant part of the villages of Verban, Gushice, Smiraj and Gromovo. The Presiding Judge together with the International Prosecutor and the defence examined 11 Serb witnesses supporting the defence in the District Court in Belgrade. Further a number of documents submitted by the Prosecutor and by the Defence were read out and photos, sketches and measurements from the ocular inspection examined.

In his closing speech the International Prosecutor pleaded that the defendant be acquitted of count I but otherwise remained with the amended indictment.

The defence in their closing speeches pleaded that the defendant be acquitted pursuant to Article 350/3 of the LCP.

After deliberation the panel on 3rd May 2002 adopted the verdict:

To acquit the defendant of all charges pursuant to Article 350/3 of the LCP.

To order that the defendant be released immediately pursuant to Article 353/3 of the LCP.

To order that the costs of the criminal proceedings be paid by the court according to a calculation to be made separately pursuant to Article 99/1 of the LCP.

To advise the injured parties to pursue property claims by civil litigation pursuant to Article 108/3 of the LCP.

3. The events in general.

The following was learned during the evidentiary procedure:

Until June 1999 the defendant Milos Jokic had lived all his life in his parents' home in the village of Gushice, a village with Albanian, Serb and Roma residents, in the Jokic mahala inhabited by about 8 Serb families, eight of them surnamed Jokic, and located above the village proper. His father, Velibor, was employee in the civil defence department in Vitina. His mother Miluta was a school teacher, and he had one younger brother and two younger sisters. The family farmed their own land and forest around the mahala. The defendant attended primary school in Gushice and from 1990 – 1997 secondary school in Vitina. From 1997 he attended high school in Ferizaj.

The Albanian villages of Verban and Smiraj are located a few kilometers respectively to the west and to the east of Gushice and the mixed Serb/Albanian/Roma village of Gromovo, the native village of the defendant's mother, further to the east of Smiraj. According to the Serb as well as the Albanian witnesses there had been no tensions between the ethnic groups before the bombing campaign.

During the bombing campaign the regular Yugoslav Army was headquartered in Vitina and units of the regular army were based on a plateau, Velli Dup, about 500 m. uphill from the Jokic mahala, and overlooking the villages of Gushice, Smiraj and Verban. Velli Dup was subjected to heavy bombings by NATO.

After the arrival of KFOR the Serb residents left the villages. The Serb witnesses stated that they had been directly or indirectly forced by the UCK to flee. Concerning the village of Verban Velibor Jokic stated that the Serb villagers had left, leaving a woman or older family member behind in each house in order to return when the situation had calmed down, but that also the family members left behind eventually had been forced to leave their homes.

At the ocular inspection of the villages the court observed that that all houses in the Jokic mahala had been burned down and demolished and the forests cut and that the Orthodox church in Gromovo had been demolished as well. The priest Dragan Kojic stated that he had been wounded by a sniper.

4. The general charge of paramilitary activities.

According to the initial paragraph of the enacting part of the amended indictment the defendant *during the general time of the NATO bombings* would have participated in paramilitary activities designed to expel the Kosovar Albanians from the district.

Apart from the testimonies concerning the concrete events under part 5-7 the following witnesses supported this allegation:

Sinan Metallari, living in the same street in Gushice proper as his cousin Miftar, could not be located at the time of the retrial. His statements to the investigating judge and at the first trial were read out. To the investigating judge the witness stated, that he had seen the defendant wearing a paramilitary uniform both before and during the war, more than 50 times. On the 9th May he had observed the defendant and other residents from the mahala passing the witness's house and heading towards Verban in a police car. At the first trial the witness confirmed this statement and testified that he had been given the task to monitor all movements of soldiers in and around the village. He refused to tell who had given him the task.

Miftar Metallari stated that his house was about 100 m in beeline and about 200 m if going on the road from the defendant's house. He had seen the defendant many times before the war, always wearing civilians clothes, except for 1 time a few months before the bombing campaign when the witness staying in front of his house had seen the defendant passing on the village main road dressed in a paramilitary uniform and armed.

Alexander Deleon Leander from US KFOR stated that Shabri Fetathu had reported the defendant to KFOR. The witness had been in the arresting team going to the apartment of Radovan Jokic. They had searched the apartment and found two riffles and a club. The weapons had been brought together with the defendant to KFOR's office, where the defendant had been charged with illegal arms possession.

In support of the defence the following testimonies were heard:

The defendant stated that he being a student had not done his military service and therefore not been drafted, when the conflict started. He knew nothing about paramilitary activities and had never worn a uniform.

All Serb witnesses stated that they had never come across any Serb paramilitary activities and never seen the defendant wearing a paramilitary or other uniform.

The defendant further stated that when the bombing campaign stopped he had gone to Serbia with his younger brother and sisters, and returned to apply for a job with UNMIK in Vitina. As his parents in the mean time had been expelled from Gushice he had stayed in Vitina in the apartment of his distant relative Radovan Jokic for 2 days before he was arrested. This statement was supported by Velibor Jokic (father), Zarko Jokic (son of Velibor's brother Zivko), Peter Dincic (married to the sister of the defendant's mother) and Radovan Jokic.

The defendant further stated that he knew nothing about the weapons found in the apartment.

Radovan Jokic, a former municipal judge in Vitina, stated that the defendant while staying with him and his wife had left the apartment on several occasions for hours to apply with

UNMIK. Of the two rifles found at the search one rifle belonged to the school and had been brought by the witness's brother, who was the school inspector, before leaving Kosovo, and the other rifle by a neighbor before leaving Kosovo. The rifles had been kept in cupboards out of sight of the defendant. What was described by the KFOR witness as a club had been a toy belonging to Radovan's children.

Zoran Adjelkovic stated that he used to live in the same street as Miftar and Sinan Metallari. When the brother of the witness had been kidnapped by the UCK Sinan Metallari had promised that the brother would be released if the family left the village. When they left Sinan had been engaged in setting up road blocks to catch Serb villagers fleeing.

At the ocular inspection the court established that the distance by road from the Jokic Mahala to the intersection of the village main road and the street where Miftar and Sinan Metallari lived were about 1 km and that the house of Miftar Metallari was located quite far up the street and thus would have been about 1 km in beeline from the house of the defendant. It was further established that when staying outside Miftar Metallari's house it was possible to see persons at the intersection, but impossible to recognize any individual. The direction from the Jokic mahala to Gushice proper where Miftar and Sinan Metallari lived was opposite the direction to the village of Verban.

The International Prosecutor in his closing speech pleaded that the statement of Miftar Metallari be disregarded.

The Panel agreed with the International Prosecutor to disregard the statement of Miftar Metallari that he had seen the defendant wearing a paramilitary uniform.

The Panel also disregarded the statements of Sinan Metallari to the investigating judge and at the first trial for the following reasons: The statement of Zoran Adjelkovic which was supported by Miftar Metallari's own statement about his monitoring task and the findings at the ocular inspection of the destruction of the property of the Serb villagers and the statements that the Serb villagers had been forced to leave indicated that Sinan Metallari might have been involved in retaliations against the Serb villagers collectively. The panel therefore found it impossible to assess the reliability of Sinan Metallari's statements without the possibility to examine him. Further his statement that he had seen the defendant on at least 50 occasions even before the war wearing a paramilitary uniform seemed inconsistent with the statement of Miftar Metallari and his statement that the defendant and other alleged paramilitaries had passed his house on 9th May 1999 on their way to Verban was illogical as that would have meant going in the wrong direction when coming from the Jokic mahala.

Moreover the fact that the defendant had left his home and was arrested in Radovan Jokic's apartment in Vitina did not substantiate the allegation that he was fleeing from prosecution, as the panel accepted that the Serb villagers had been forced to leave the villages. On the contrary the fact that the defendant was still in Kosovo would rather suggest that he believed not to be in risk of prosecution as he for 1 ½ months had had ample opportunity to flee to Serbia. Further the fact that he was spotted by the Albanians and reported to KFOR supported the statements of the defendant and Radovan Jokic that the defendant had not been hiding in the apartment.

The mere fact that weapons were found in Radovan Jokic's apartment did not warrant the conclusion that they had been brought there by the defendant.

Thus the evidence presented did not substantiate the general charge that the defendant had participated in paramilitary activities.

5. The events in the village of Smiraj on 15th April 1999 (Count I, II and part of IX).

According to *the amended indictment* a large group of Serb paramilitaries dressed in paramilitary uniforms would have rounded up the Albanian villagers in large groups. The defendant, Bozidar Stojanovich and Agim Ajeti would have guarded one such group of about 300 villagers. The defendant would have gestured to Stojanovich and Ajeti to separate Ramadan Berati from the group and take him to a house (oda). Here Stojanovich and Ajeti would have brutally maltreated Ramadan who later died from his wounds. Then the other younger men from the group, including Sultan Berati, would have been forced into another house, where they would have been brutally maltreated as well. While the villagers were rounded up other paramilitaries would have looted and ravaged the houses of the villagers. Further the villagers would have been told to go to Macedonia.

Stojanovich and (in absentia) Ajeti were convicted of the same charge by the verdict of Gjilan District Court dated 9th October 2000. The verdict was overturned by the Supreme Court of Kosovo and returned for retrial before an international panel appointed pursuant to UNMIK Regulation 2000/64.

The following two witnesses were summoned to support the charges:

Sultan Berati, who was the son of Ramadan Berati's brother, testified that about 4-500 paramilitaries had surrounded the village, among them the defendant, Zarko Jokic and Zivko Jokic from the Jokic mahala in Gushice, and Milorad Markovic, Bozidar Stojanovich and Agim Ajeti from Vitina, and rounded up the villagers. The defendant, Stojanovich and Ajeti had guarded a group of villagers, including Ramadan Berati, Ramadan's brother Ismet Berati, Sultan Berati and Sultan's brother Vezir Berati. The defendant had gestured to Stojanovich and Ajeti to separate Ramadan and take him to the oda. After the maltreatment Ramadan had been left in the street, while the other younger men had been taken to another house and maltreated. Following the maltreatment all villagers had been forced to wait in the street on their tractors in order to be expelled from the village. After about 7 hours an officer from the regular Yugoslav army had arrived and told the villagers to return to their homes. The same night Ramadan died from his wounds. The witness gave a similar statement at the first trial and at the trial against Stojanovich and Ajeti. The witness further testified that on 26th August 1999 he and Vezir happened to be in Vitina when they heard that a Serb had been arrested by KFOR. They went to KFOR and both identified the defendant as the perpetrator who had gestured to Stojanovich and Ajeti on 15th April 1999.

When the court called the witness *Vezir Berati* a male person responded. After being warned that lying in court is a crime he admitted that he was not Vezir, but *Ismet Berati*. He stated that he appeared for Vezir because Vezir was living in Germany, also during the war. Vezir had therefore not been present in Smiraj on 15th April 1999, However Vezir was in Vitina together with Sultan on 26th August 1999. Ismet had also given statements at the first trial and at the trial against Stojanovich and Ajeti in Vezir's name, because he had not been warned to tell the truth about his personal data and because he and Vezir were related. Ismet Berati was not examined as a witness at the retrial as none of the parties proposed him as a witness.

According to the verdict in the case against Stojanovich and Ajeti a number of witnesses testified in support of the charge, but only Sultan Berati and “Vezir Berati” accused Milos Jokic of being a perpetrator.

The following testimonies were supporting the defence:

The defendant denied the charge stating that he had never been involved in paramilitaries activities, had never met Stojanovich before meeting him in Bondsteel Detention Center after his arrest and never met Ajeti at all and that he had not been to Smiraj during the war and knew nothing about the critical events.

Zarko Jokic, Zivko Jokic, Milorad Markovic, Bozidar Stojanovich and Agim Ajeti, all denied any involvement in paramilitary activities, including the events in Smiraj on 15th April 1999. Stojanovich, born in 1962 and from Vitina, further stated, that he had not met the defendant before they were both detained in Bondsteel Detention Center. Ajeti, a Roma born in 1961 and from Vitina, further stated, that he had never met the defendant.

Aleksandar Zdrale, a captain in the Yugoslav Army, stated that he during the bombing campaign was based part of the time in Vitina and part of the time at Velli Dup. Once when he was visiting the headquarters in Vitina an Albanian villager from Smiraj requested his assistance because a group of Albanians claiming to be the UCK had ordered the villagers to prepare to leave the village in order for the UCK to blame the Serbian authorities for expelling the villagers. The witness went to the scene where the villagers were waiting on their tractors in the street and told them to return to their homes. The villagers showed their gratitude by inviting him for dinner. The army had received no reports about any Serb paramilitary activity or about any physical maltreatment of the villagers.

The International Prosecutor in his closing speech pleaded that the defendant be acquitted of count I (the murder of Ramadan Berati), on the ground that gesturing to the two accomplices did not constitute complicity in the murder, and pleaded that the defendant be convicted on the other charges.

The panel found no reliable evidence for any of the charges. Thus only the statement from one witness, Sultan Berati, supported the charges. Further it had been established that Sultan Berati had given a false testimony at the retrial as well as at the first trial and at the other trial against Stojanovich and Ajeti, had acted in collusion with Ismet Berati when he gave a false statement that he was Vezir at the first trial and in the other trial, and had acted in collusion with Vezir Berati when Vezir had falsely identified the defendant to UNMIK Police. Moreover the statement of Sultan Berati that the defendant, being 20 years old and from Gushice, would have been in command of Stojanovich and Ajeti, both in their forties and from Vitina, was illogical. The defendant was therefore acquitted of the charges.

6. The murder of Rexhep Emerllahu on the 9th May 1999 in the village of Verban (Count IV).

According to *the amended indictment* the defendant in a group of Serb paramilitaries in the village of Verban would have stopped Sabri Fetahu, forced him off his tractor and made him stand against the wall to the property of Selim Emerllahu. When someone from inside the yard had opened the gate door the defendant would have fired a burst from his automatic weapon in the direction of the gate where after the sound of a “thump” was heard as if a body was falling down on the other side of the gate. Later relatives of Rexhep Emerllahu would have found him in the yard with gunshot wounds from which he died.

The following witnesses supported the charges:

Muhadin Emerllahu, a cousin and neighbor of Rexhep and Xhevat Emerllahu, stated that he together with Rexhep and two other cousins went from the mountains where the villagers had sought shelter to the village to fetch flour. When arriving to the village they parted and went to their respective houses. From behind his barn Muhadin saw a Serb paramilitary maltreating Rexhep behind Xhevat Emerllahu's property. Muhadin fled from the scene heading back towards the mountains. About 5 minutes (statement at investigation) or 10-15 minutes (statement at retrial) he heard shots.

Sabri Fetahu gave a statement in accordance with the amended indictment. He further stated that he, who lived in a neighboring village and was unemployed, had gone to Verban on a one man mission on his tractor with a trailer full of sacks with flour in order to distribute the flour to the villagers. When asked while farmers would need flour he changed his statement saying, that he was going to store the flour in the village. On 26th August 1999 he happened to be in Vitina and happened to spot on a balcony the Serb paramilitary who had shot at Selim's gate. He reported the Serb to KFOR and was present when KFOR arrested the defendant.

Xhevat Emerllahu, the brother of Rexhep, stated that he was in the mountains and was told what had happened. He went looking for Rexhep and was later told by his cousin Ali that Rexhep had been found behind the barn on Selim Emerllahu's property. Xhevat went to the scene with Ali. Rexhep was dead. He had 3 bullet wounds in his chest, a broken leg and bruises in his face. The next day Rexhep was buried.

Hamdi Fetahu stated at the first trial and at retrial that he met Rexhep's cousins coming from the village. They told him that Rexhep was being maltreated by Serb paramilitaries. Hamdi approached the village and from a distance through his binoculars saw Serb paramilitaries, including "the accused" at Hamdi's house. However at the investigation Hamdi first stated that he didn't know Milos Jokic at all, then that he had met him when going hunting and then that he if confronted with the accused would be able to tell if he was the person he was referring to. Hamdi further testified at the investigation about an incident on the 8th of May when he through binoculars saw 3 other named Serb paramilitaries at his house. He didn't mention anything about the 9th of May and didn't implicate Milos Jokic at all in any of the events he testified about.

Hajdar Jashari stated at the retrial, that he went to the village together with Rexhep, Muhadin and another cousin. When Hajdar exited his yard to look for the others he met Muhadin and the other cousin in the street. They told him that Rexhep had been caught and was being maltreated. A short while later shots were heard. Later the same night Hajdar went with Ali and Xhevat to take Rexhep's body and noticed wounds on his leg and hand, adding that Rexhep had probably incurred the wounds when opening the gate. Neither at the investigation nor at the first trial did Hajdar testify anything concerning the 9th of May.

The following statements were given in support of the defence:

The defendant denied the charge stating that he had never been involved in any paramilitary activities, had never been to Verban and had no knowledge about the events.

All Serb witnesses stated that they knew nothing about Serb paramilitary activities in the region and had never seen the defendant wearing a uniform.

Aleksandar Zdrave stated that the village of Verban was not within the area of responsibility of the units based on Velli Dup and refused to tell, which unit had been responsible for Verban. The witness had not heard about paramilitary activities in Verban or that anyone there had been killed. Had the army been informed it would have been the duty of the army to intervene in order to secure the crime scene and inform the civilian investigating authorities.

At the ocular inspection Muhadin Emerllahu showed the positions of himself and Rexhep Emerllahu when the maltreatment took place. Shabri Fetahu showed the positions of himself and the paramilitary at the time of the shooting and Xhevat Emerllahu showed where the body of Rexhep was found. The main gate to Selim Emerllahu's property was inspected. Gjilan Forensic Unit took measurements. The inspection of the gate showed that shots had been fired from different angles and that two shots had penetrated through the door, one at the handle and one at the bottom.

The defence in their closing speeches i.a. refuted that the traces from gunshots on and next to the gate to Selim Emerllahu's property were consistent with Shabri Fetahu's statement as the shots had been fired from different angles, as none of the shots could have been fired from the position that Sabri indicated, as some of the shot must have been fired recently since there were no traces of corrosion on the metal plate at the bottom of the door or on the wall and as the wood in the holes was fresh.

The Panel accepted as convincing Muhadin Emerllahu's statement supported by the statements of Hajdar Jashari and Hamdi Fetahu that Rexhep Emerllahu was maltreated behind Xhevat Emerllahu's property and that shotgun fire was heard 5-15 minutes later. The Panel further accepted as convincing Xhevat Emerllahu's statement that the body of Rexhep was found with 3 bullet wounds in the chest behind Selim Emerllahu's barn.

The Panel did not accept Shabri Fetahu's statement for the following reasons:

It was not logical that Shabri would have gone to the Jashara mahala to distribute flour to the villagers as he had no reason to believe that the farmers there would need flour. (In the verdict against Stojanovic and Ajeti, which was studied by the court in relation to part 5, another Albanian witness presented a similar story). And when confronted with the lack of logic Shabri changed his statement saying that he was going to store the flour in the mahala, but gave no reason why he didn't store it in his own village.

Shabri's story was not consistent with the statements of Muhadin Emerllahu and Hajdar Jashari as it seemed unlikely that there would have been time for Rexhep to escape from his tormentor into Selim's yard and for Shabri to appear on the scene within the timeframe mentioned by Muhadin and Hajdar.

It was illogical that Rexhep having escaped his Serb tormentor into Selim's yard would have opened the gate when hearing Serbs shouting at Shabri.

The traces from gunshots on and beside the main door to Selim's yard had been fired from different angles. The two shot holes, one at the handle and one at the bottom, which had penetrated through the door did not match the gun wounds in Rexhep's chest according to Xhevat Emerllahu's testimony, and the Panel did not accept Hajdar Jashari's statement about gun wounds on Rexhep's hand and leg which was not consistent with Xhevat's statement and taking into account that Hajdar Jashari had not given any statement concerning the event prior to the retrial.

Nor did the Panel find Shabri Fetahu's statement concerning the arrest of the defendant on 26th of August 1999 credible. The defendant would have been spotted by a number of persons on the occasions he was in the street in Vitina. The scenario that Shabri "happened" to see the defendant on a balcony and recognized and reported him where after Sultan Berati and Vezir Berati, "happened" to be in the vicinity and identified the defendant at the KFOR office, thus involving 3 witnesses whose testimonies the panel also for other reasons set aside, was too unlikely.

Hence as the Panel found no reliable evidence against the defendant he was acquitted of the charge.

7. The other events in the village of Verban (Count III, V, VI, VII, VIII, part of IX and X).

7.1 The dislocation in general.

According to *the amended indictment* during the first week of May a group of Serb paramilitaries including the defendant would have entered the village shooting bullets in the air from their automatic weapons, banging on many of the doors and setting fire to one house, thus forcing most of the villagers, about 2000 residents, to flee into the surrounding forest.

Concerning the 7th or 8th May 1999:

At the investigation all the witnesses from the village (except Kimete Selmani who didn't testify about this event) stated that they and their co- villagers fled to the surrounding forest/mountains when paramilitaries arrived to the village shooting in the air and setting fire to a house in a neighboring mahala with the following exception: Marte Tunaj stated that she as the only villager stayed behind to guard her house for another 2 days before she joined the others. *At the first trial* and *the retrial* the witnesses either confirmed their previous statements or testified the same about the event in general.

Concerning the following events:

At the investigation the same witnesses, including Marte Tunaj, stated that the villagers stayed in the mountains for *about 2 weeks* and then returned to their homes in the village. The younger villagers had either left for Macedonia directly from the forest/mountains or left within a few days after returning to the village. Bedri and Fatbarda Emerllahu returned again to the village after about 8 days because they had been delayed due to illness and couldn't get a passage to Macedonia. The same witnesses, except Marte Tunaj, further stated that the older villagers, stayed in the village until the paramilitaries returned on the 30th of May. Marte Tunaj stated that the paramilitaries returned to the village after a few days and that everybody again fled to the forest/mountains and stayed there until the 13th June. However on the 30th of May she went to the village together with Kimete and Elmaz Selmani and Hafize and Hajdar Jashari for the women to bake bread.

At the first trial the witnesses confirmed their previous statement or stated the same with the following exception: Kimete Selmani now testified about the event, giving the same statement as Marte Tunaj. Hafize Jashari now also seemingly testified as Marte Tunaj stating that she together with Elmaz and Kimete on the 30th May went to bake bread to take to the woods.

At the retrial the witnesses stated as before with the following exceptions: Kimete Selmani now testified that she and her husband returned from the forest/mountains after about 2 weeks

and stayed in their house until the 30th May. Hafize Jashari first stated that after 15 days in the forest/mountains she and some older people on a Sunday went back to the village to bake bread. Then she stated that they went back after 15 days and stayed in the village until the 30th May.

The defendant and the other Serb witnesses denied any knowledge of paramilitary activities in the region, including Verban.

At the ocular inspection the court observed one burned down house in a neighboring mahala.

The Panel accepted as convincing the consistent statements of all the witnesses that about the 7th or 8th May 1999 they had been forced to flee to the mountains by Serb paramilitaries scaring them by shooting in the air and setting fire to one house and that those of the villagers who had not already fled from the region returned to the village after about 2 weeks. Further the panel accepted as convincing the consistent statements of the majority of those witnesses, that didn't flee, that the older villagers stayed in the village until the 30th May and the statements of Fatbarda and Bedri Emerllahu that they returned to the village again after about 8 days and stayed until the 30th May. The panel thus disregarded the statement of Marte Tunaj that the villagers after returning to the village fled again to the mountains.

7.2 The looting prior to 30th May in general.

According to *the amended indictment* during May and into the early part of June 1999 groups of Serb paramilitaries, would on several occasions have looted the deserted houses, on 3-4 occasions the defendant would have participated.

At the investigation none of the witnesses from the village, except Marte Tunaj and maybe Hamdi Fetahu, testified about looting taking place prior to the 30th May.

Marte Tunaj stated, that a group of 8 paramilitaries, including the defendant and Aca, 2 days after the other villagers had fled arrived and tried to break open her gate. She fled to the forest and observed through binoculars that the paramilitaries entered her yard and that 3 of them broke into her house and left with 2 suitcases each. Including the 30th May she lost stuff to a value of 80.000 DM explaining that her family from Gjakova, when the war started there, had brought valuable things to her house.

Hamdi Fetahu stated that on the 8th May, before the villagers fled, Vuka, Nenad and another person from Drobesh had come to his house and requested his hunting riffle. "After 8th of May 1999 as a replacement for Nenad from Klokot came Milos that works as a policeman at the Police Station in Vitina."

At the 1. trial none of the witnesses from the village except Marte Tunaj and maybe Hamdi Fetahu testified about looting taking place prior to the 30th May.

Marte Tunaj stated that "they" tried to break open her gate. She fled to the forest and observed through binoculars that "they" broke into her house and left with 3 bags, each carrying one bag. Until the 22nd or 23rd May she observed from the forest through binoculars that "the same person" came back every day and took whatever "he" could. She had computers and other things worth 80.000 DM and more. On 2 or 3 occasions Aca had been in the group of paramilitaries. She had reported Aca to KFOR in March 2000.

Hamdi Fetahu stated that one day after the villagers had fled he observed from the mountains through binoculars 3 paramilitaries, including the defendant, breaking into his house. Hamdi didn't mention whether the paramilitaries took or carried anything.

At the retrial the following witnesses testified about looting prior to the 30th May:

Marte Tunaj stated that 3 or 4 days after she had fled to the forest/mountains she returned to her house and discovered that her tv and other items had been stolen. A few days later she again returned. Paramilitaries, including the defendant, tried to break open the gate so she fled to the forest and observed through binoculars paramilitaries climbing the wall from her brother-in-law's yard, breaking into her house and stealing items from her house. On 3 or 4 occasions she saw the defendant looting her house. On one occasion by the end of May she saw Aca participating. Also on 5th June she saw Aca and the defendant in the village. Including what was stolen on the 30th May valuables for more than 80.000 DM had been stolen being items brought from Germany by her two daughters and her sister and from Austria by her father. In another context Marte Tunaj stated that she from her balcony through binoculars had seen bunkers in the Jokic mahala.

Bedri Emerllahu stated concerning the 30th May that the paramilitaries had stolen a lot of items from Marte Tunaj's house. He did not see what they took from her upper floors, but Marte Tunaj told him that they had stolen items from her coffee bar.

Elmaz Selmani stated that the day after the villagers had fled to the forest/mountains he hidden in a bush had observed more than 5 paramilitaries, who came from the Jokic mahala, entering Marte Tunaj's yard.

Hajdar Jashari stated that from 3 days after the villagers fled to the forest/mountains and onwards he observed through binoculars that paramilitaries broke into the houses and left carrying bags.

Hamdi Fetahu stated about the 9th of May as before adding that the 3 paramilitaries carried 3 bags. Until his and his wife's return to the village he observed the village every day through binoculars. On 75% of the occasions he saw paramilitaries looting the houses.

The defendant and the Serb witnesses denied any knowledge of the looting.

Alexander Jacovic (Aca) stated that he was drafted by the army in March 1998 to do his regular military service and was posted in Jagovac on the border to Bulgaria until 17th June 1999 and returned to his home in Vitina on 21st June 1999. During his military service he only had one leave from 1st to 22nd February 1999. After returning home he met Marte Tunaj and her husband, who had returned to their coffee bar in the same building, where his mother lived. From 22nd May 2000 he has been a KPS officer. The witness presented his original military book showing that he served in the army from 19th March 1998 until 17th June 1999 at duty station "5390", which according to the witness was the military postal code for Zajecar.

At the ocular inspection the court observed that there was a clear view from the forest where Marte Tunaj stated that she had made observations through binoculars to her yard. However it would not have been possible to see anyone climbing the wall from her brother-in-law's yard. Confronted with this fact Marte Tunaj changed her statement saying that the paramilitaries had climbed the wall from Bedri Emerllahu's yard. The court further noted that it was

impossible to see from Marte Tunaj's balconies or from any other place in the village the Jokic mahala, as the view was blocked by hills.

The Panel was not convinced by Marte Tunaj's statements. Her appraisal of the value of the stolen goods, more than 80.000 DM, was exorbitant and her statements at the investigation, the first trial and the retrial about the origin of the valuables were not consistent and inconsistent with what she had told Bedri Emerllahu. Also her statements at the investigation, at the first trial and at the retrial about her observations through binoculars were not consistent and inconsistent with what the panel could observe at the ocular inspection. Further Aleksandar Jacovic's statement supported by his military book disproved her statements about seeing him at the scene.

The Panel was not convinced by Hamdi Fetahu's statements either as his statements changed dramatically from the investigation to the first trial to the retrial. Nor was the Panel convinced by Elmaz Selmanis and Hajdar Jasharis statements at the retrial as these witness at the investigation and the first trial had not testified at all about looting prior to the 30th May 1999.

Thus the Panel did not find convincing evidence that looting had taken place prior to the 30th may.

7.3 The events on 30th May in general.

According to *the amended indictment* on 30th May 3 Serb paramilitaries, including the defendant, all dressed in paramilitary uniforms would have entered the property of Fatbarda and Bedri Emerllahu, shooting after Bedri's father who fled, kicking in the door to Fatbarda's and Bedri's bedroom, pillaged Fatbarda's jewelry and taken her and Bedri with them to the yard of Kimete and Elmaz Selmani. While the other Serbs took Bedri with them to loot and ravage the deserted houses of the village the defendant would have ordered Fatbarda, Kimete, Elmaz, Hafize and Hajdar Jashari into the kitchen. When Marte Tunaj came to the yard he would have pillaged her jewelry and ordered her to enter the kitchen as well. From the kitchen he would have forced Marte Tunaj to another room and raped her. Then he would have pillaged valuables from the house and from the victims and would have gone with the two other Serbs to Marte Tunaj's house and pillaged valuables and later taken Elmaz to the Oda and maltreated him and have left the village with the other 2 Serbs in a car pillaged from Hamdi Fetahu after having detained the victims from about noon until about 18.00 hours.

The witnesses Marte Tunaj, Kimete and Elmaz Selmani, Hafize and Hajdar Jashari, Hamdi Fetahu and Fatbarda and Bedri Emerllahu at the investigation, at the first trial and at the retrial testified in general about the events as described in the amended indictment.

The defendant and the Serb witnesses denied any knowledge of these events.

The Panel found discrepancies in the witnesses' statements concerning details in the chain of events, but not to a degree that made the Panel disbelieve that the events in general had taken place. Thus the Panel was convinced that three Serb paramilitaries had subjected the witnesses to the criminal acts described in the amended indictment.

7.4 The identification of the defendant.

Marte Tunaj testified at the investigation that she knew many Serbs who had spent their free time in the coffee bar, she and her husband had in Vitina until 1992-93, including "Milos Jokic" whom she knew very well. She had also seen him at the post office in Vitina 2 years

before, when he came to visit his aunt who worked there. When the paramilitaries arrived on 7th or 8th May she recognized Serbs from 7 villages, including Gushice, although they were masked, as customers in her coffee bar. She didn't mention the defendant explicitly. A few days later she saw a group of paramilitaries, including the defendant and Aca, and fled to the forest from where she observed them through binoculars looting her house. On the 30th May when the 3 paramilitaries arrived she recognized the defendant as one of them. Initially in the yard she had told him that she knew him from the post office.

At the first trial she stated that on 7th May when the paramilitaries arrived she had recognized most of them as Serbs from 3 villages incl. Gushice because she had worked in the coffee bar in Vitina adding that she had known the defendant for 2 years then. Once she had seen him at the post office in Vitina where he stayed for 20 minutes asking for his aunt. On 8th May she saw him through binoculars from her yard on the other side of a 2 m high wall trying to break open the gate and she saw him from the forest through binoculars every day looting her house until 22nd or 23rd May. She again recognized him on 30th May and told him that she knew him.

At the retrial she stated that she had never seen the defendant in her bar, but had seen him at the post office in Vitina about 6 months before the bombing started, and quite often when he visited his friend Aca, who lived next to her bar. On 8th May when paramilitaries arrived she saw a glimpse of him through an opening in the gate and later through binoculars looting her house. Also on about 3 other occasions she through binoculars from the forest saw him looting her house. On 30th May when initially being alone with the defendant in the yard she told him that she knew him from the post office. Later during the event she told all three paramilitaries that she knew them by sight because she had worked in Vitina. After returning to the village on the 13th of June she went to Vitina to make inquiries about the Serb from the post office and was told that he was the son of Bora (Velibor Jokic) and that his mother was still in Vitina. She went to see the defendant's mother who told her that her son, Milos, had been detained. She asked to see a photo of Milos, but to no avail. She then went to the police, maybe by the end of June 1999, to report Milos. The police advised her to go to the prosecutor. She went to the courthouse in Gjilan and told the prosecutor what had happened.

Elmaz Selmani stated *at the investigation* that he had known the defendant since he was a child. *At the first trial* he confirmed this statement. *At the retrial* he stated that he had known the defendant for 5-6 years because they met once a year when going hunting. He knew his surname, because most of the residents in the Jokic mahala were called Jokic, but not his first name. When asked whether he was member of a hunting society the witness replied that he was a member of the Morava hunting club. He didn't learn about the arrest of the defendant or about his first name, before he was summoned by the investigating judge.

Hamdi Fetahu testified *at the investigation* initially that he didn't know Milos Jokic at all, but knew his father and mother. Then he stated that he had gone hunting before the war and used to meet Milos Jokic who was also a hunter. Finally he said that if he was confronted with the suspect he would be able to tell if he was the Milos Jokic he had met while hunting. Hamdi didn't implicate Milos Jokic at all in the criminal events, but named 3-4 other Serbs as the perpetrators. *At the first trial and at the retrial* he testified that he had seen the defendant on 9th May through binoculars and on the 30th May. He had known him since 1996 from hunting. He had not implicated him in his testimony at the investigation because he didn't want to accuse him behind his back. At the retrial Hamdi further stated that he and Elmaz Selmani had been members of the hunting society "Drene". When confronted with Elmaz's statement that he was a member of a hunting society called "Morava", Hamdi replied, that "Morava" was a trading company. The witness learned about the arrest of the defendant maybe 2-3 months or longer after the arrival of KFOR.

Hajdar Jashari stated *at the investigation* that he knew the defendant from he was a child, because the witness worked as a janitor at the school in Gushice. *At the first trial* the witness confirmed this statement. *At the retrial* he testified that he had left his job at the school in Gushice before the defendant started attending the school and therefore didn't know him from before, but knew his mother. The witness learned from Sabri Fetahu after it happened, that Milute's son had been arrested.

Kimete Selmani stated *at the investigation* that Milos Jokic had come to her house together with two friends (30th May). She learned his name when Marte Tunaj told him: "I know you. You are Milos". *At the frist trial* she confirmed this statement. *At the retrial* she stated that Marte Tunaj told the defendant that she knew him and his family, but not his name.

Hafize Jashari stated *at the investigation* that the defendant was among the paramilitaries who scared the villagers to flee from the village. He came again on 30th May together with two other paramilitaries. She didn't know him, but learned from the men that he was from Gushice. *At the first trial* she confirmed this statement. *At the retrial* she stated that Marte Tunaj, Bedri, Elmaz, Hajdar and Hamdi knew him, but she didn't learn his name before she came to the court room in Gjilan for the first time. The men had told her, that the defendant had been arrested, but she couldn't say, when she was told.

Bedri Emerllahu stated *at the investigation* initially that he knew the defendant because he was from Gushice. When the 3 paramilitaries arrived on 30th May he recognized two of them, the defendant and Zika. Later in his statement he said that his co-villagers told him that he was Milos Jokic from Gushice. *At the first trial* he confirmed his previous statement and then retold the event of 30th May without mentioning any names of the 3 paramilitaries. *At the retrial* he stated concerning 30th May that he didn't know any of the 3 paramilitaries from before. He recognized the defendant as the one who stayed in Elmaz's house. Marte Tunaj told one of the men: "You are Zika from Vitina". She also said that she knew the two other Serbs, but didn't mention their names. 2 or 3 months later he learned that the defendant's name was Milos Jokic, because Hajdar and Hamdi knew him. He didn't learn about the arrest of the defendant until he was summoned the first time for the investigation, maybe in October-November 1999.

Fatbarda Emerllahu testified *at the investigation* that the 3 paramilitaries of 30th May had been wearing masks. She didn't mention any names. *At the first trial* she stated that the defendant was one of the perpetrators. She didn't mention any masks. *At the retrial* she stated that the defendant was one of the three perpetrators. At the first trial she had got a glimpse of him in the corridor outside the court room, but had her back to him in the court room, and recognized him although he had lost weight. Asked if Marte Tunaj during the event had told him that she knew him, the witness replied that Marte Tunaj had said something like that in the yard. The witness was 2-3 months pregnant at the time. When she was 4-5 months pregnant she learned that the defendant had been arrested.

The defendant stated that he had never met Marte Tunaj before the trial and never been to her coffee bar, as it was a bar for adults, and he was only 12-13 years when it closed, that he had never visited Aca in his home, but only met him in school and occasionally in coffee bars for younger people in Vitina and that he had never gone hunting. On 30th May which was Pentecost that was celebrated as a special festivity in his mother's native village of Gromovo, he went with his family to Gromovo and stayed there until in the evening. His uncle, Zoran Petrovic, was home on leave.

Aleksandar Jacovic stated that he and the defendant had never been to Marte Tunaj's coffee bar, which was a bar for adults and that the defendant had not visited him in his home.

Sasa Popovic stated that he used to live in Gushice proper and went to school in Vitina with the defendant. He was his best friend. They didn't go to Marte Tunaj's coffee bar, which was for adults and the defendant had not spent much time with Aleksandar Jacovic.

Velibor Jokic, Zoran Petrovic, Sladjana Dajic and Petar Dincic all testified that the defendant on 30th May had participated in the festivities in Gromovo from the morning until the evening and Sasa Popovic that he had met the defendant in the afternoon at the festivities.

The priest Dragan Kojic stated that he had performed the religious Pentecost service in Gromovo on 30th May and stayed for the traditional meal until about 11.30 hours which was cut short due to the bombing campaign. He spoke to Zoran Petrovic and also noticed the defendant who was together with Zoran.

The defence submitted documentation that the defendant had not been a member of a hunting society, that the hunting laws of Serbia would not have permitted a minor going hunting and that Morava was a trading company. The defence further submitted a church calendar showing that 30th May 1999 was the day of Pentecost.

The Public Prosecutor in his final speech accepted the testimony of the priest Dragan Kojic and thus that the defendant on 30th May would have been in Gromovo until 11.30 hours but argued that the defendant after the priest had left would have gone with other paramilitaries to Verban.

The Panel was not convinced by the testimonies of the Albanian witnesses concerning the recognition of the defendant as one of the perpetrator for the following reasons:

The late reporting of the crime.

The defendant was arrested on 26th August 1999 and an investigation was initiated against him on 3rd September i.a. for the murder of Rexhep Emerllahu, the neighbor of all the Albanian witnesses. It appeared from the statements of Marte Tunaj, Hamdi Fetahu, Hajdar Jashari and Fatbarda Emerllahu, that they – as could be expected in such a small community - learnt about the arrest very soon after it happened (Marte Tunaj stated: In June and Fatbarda Emerllahu stated: About 2 months after 30th May). It is unlikely that the other Albanian witnesses were not told as well. Bedri Emerllahu's statement that he didn't learn about the arrest until he was summoned by the investigating judge the first time in October-November 1999 could be correct. He was not summoned by the investigating judge until May 2000, but he may have been summoned by the Public Prosecutor in February 2000. Rexhep Emerllahu was his cousin and his neighbor and his wife knew about the arrest, so he must have been told as well. Nor could Elmaz Selmani's statement that he didn't learn about the arrest until he testified at the investigation (in May 2000) be correct, as he had already testified before the Public Prosecutor in February 2000.

The events that the witnesses testified about were not reported until February 2000, about 5 months after the arrest of the defendant. So Marte Tunaj's statement that she reported the events to the Public Prosecutor already in June 1999 (after she learned about the arrest of the defendant) could not be correct. Apart from Marte Tunaj and Bedri and Fatbarda Emerllahu the witnesses were illiterate and elderly persons which might explain why they didn't react. As for Marte Tunaj the fact that she was reporting a rape might have made some hesitation on

her part understandable, but this was not her statement. She testified that she had reacted as soon as possible. Bedri and Fatbarda Emerllahu did not react at all and didn't respond when being summoned by the Public Prosecutor claiming that they had been ill. This reticence to report the crime didn't support the contention of the witnesses that they were certain about Milos Jokic being the perpetrator.

The circumstances of the witnesses' identification of the defendant.

The witnesses Marte Tunaj, Kimete and Elmaz Selmani, Hafize and Hajdar Jashari, Hamdi Fetahu and Fatbarda and Bedri Emerllahu testified at the first trial and at the retrial that they recognized the defendant as one of the perpetrators. However Kimete and Elmaz Selmani, Marte Tunaj and Hafize and Hajdar Jashari had previously accused the defendant when being examined by the Public Prosecutor and the same witnesses plus Bedri Emerllahu had accused the defendant at the investigation without having been confronted with him, let alone participated in a live or photo identification procedure in accordance with Article 233 of the LCP. Only Fatbarda Emerllahu and Hamdi Fetahu had not accused the defendant by name before, but the confrontation with the defendant at the first trial and the retrial was in itself suggestive as Milos Jokic was presented to the witnesses as the defendant. Further Fatbarda Emerllahu and Hamdi Fetahu knew that their spouse and/or neighbors had already accused the defendant of being the perpetrator. Moreover it was remarkable that Fatbarda Emerllahu's statement concerning her recognition of the defendant was somewhat reserved, as she testified that she had only seen a glimpse of him in the corridor prior to the first trial and that he had lost weight, and that Hamdi Fetahu at the investigation had given a precise statement concerning events naming the perpetrators, but not implicated the defendant, whom he believed to know, at all, and that he added that the defendant had gained weight.

Thus a valid recognition of the defendant could not be based on the alleged recognition of the defendant at the first trial or at the retrial, but only if witnesses based on prior knowledge of the defendant had recognized him during the events.

As to *Hamdi Fetahu's* statement that he had met the defendant in connection with hunting the panel put no emphasis on the statement of the defendant and the documentation of the defence that the defendant had not been a hunter and could not legally have been a hunter, taking into account that the defendant in general denied everything and that the scene was a rural society. Therefore Hamdi Fetahu's statement at the investigation that he might know the defendant from hunting could be true. But the witness did not at the investigation implicate the defendant at all in the criminal events. The panel disregarded the witness's dramatically different statements concerning the defendant at the first trial and at the retrial. The witness's excuse that he at the investigation didn't want to accuse the defendant without him being present was not accepted. The witness had been warned not to withhold anything and had named several perpetrators, who were also not present. Consequently the statement of Hamdi Fetahu rather supported the defence than the prosecution.

Hajdar Jashari testified at the investigation and at the first trial that he had known the defendant from the school in Gushice, but the witness admitted at the retrial that he had not been employed at that school when the defendant was a pupil there and could therefore not know the defendant by sight, let alone that it was many years ago the defendant had attended primary school.

Elmaz Selmani testified at the investigation and at the first trial that he had known the defendant since he was a child without specifying how. At the retrial the witness testified that

he knew the defendant since 1996-1997 from hunting, in which context he had met him once a year. Even though childhood is not a precise term, especially not in this case (the defendant referred to himself as “only a kid” at the age of 20) Elmaz’s statement appeared to be a new statement, rather than a precision of his previous statements and appeared to be a reproduction of Hamdi Fetahu’s statement. Further when asked the seemingly unexpected question concerning the hunting club, Elmaz gave the name of a trading company. Finally Elmaz had not known the defendant’s first name and only assumed that his surname was Jokic and could therefore not be sure, whether he was the Milos Jokic, he accused before seeing him. The panel therefore disregarded Elmaz Selmani’s testimony concerning his recognition of the defendant.

Marte Tunaj at the investigation and at the first trial testified that she knew the defendant from her coffee bar. She retracted this statement at the retrial, but according to several of the witnesses she had told them during or after the event that she knew him from the coffee bar. However she could not have known him from the coffee bar. The panel thus accepted the statements from the defendant and his friends that Marte Tunaj’s bar in the premises of the hunting club had not been for minors, let alone that Marte Tunaj had been evicted from the bar 6-7 years before the critical events, when the defendant was 12-13 years old. At the retrial Marte Tunaj further testified that she knew the defendant from his frequent visits to Aleksandar Jacovic who lived in the same building as her coffee bar. Even if the defendant had paid frequent visits in Aleksandar’s home, the panel was not convinced that Marte Tunaj being busy in her bar would have paid much attentions to minor visitors to her neighbors, let alone be able to remember a 12-13 year old visitor 6-7 years later.

Finally Marte Tunaj at the investigation, at the first trial and at the retrial stated that she recognized the defendant from a visit to the post office in Vitina about 6 months before the critical events. At the retrial she embellished the statement saying that she in June 1999 had made investigations into the identity of the young Serb from the post office and had approached his mother to learn his name and see a picture of him. When the mother told her that her son, Milos, was detained, but didn’t want to show a picture of him, she had reported Milos Jokic to the Prosecutor. This new variant of the statement was illogical as she would not have known that he was the perpetrator without seeing his photo or being confronted with him. Further her statement was inconsistent with the facts: The defendant was not arrested until 26th August 1999 and Marte Tunaj did not report the crimes to the Public Prosecutor until February 2000, when she – as established above – would have learnt about the arrest and the name of the defendant from her neighbors. The panel therefore disregarded Marte Tunaj’s statements concerning her recognition of the defendant during the critical event.

Thus the Panel found no convincing evidence that the defendant was the perpetrator.

The defendant’s alibi for 30th May.

The evidence presented by the defence concerning the celebration of Pentecost in the village of Gromovo was not decisive for the Panel’s acquittal of the defendant.

However if Pentecost as stated by the priest Dragan Kojic, whose statement the Public Prosecutor accepted, and by the defendant and the other Serb witnesses was celebrated in accordance with the special tradition for the village of Gromove, also in 1999 despite the heavy bombing around that time and with Zoran Petrovic, Milute Jokic’s brother, home on leave, the Panel found that it would certainly have been logical for Milute Jokic to participate in the festivities and for her family, including the defendant, to join her.

Further it would have been very illogical if the defendant had gone looting in the village of Verban on that day: Gromovo was as seen from Gushice in the opposite direction of Verban and had he been in Gromovo until 11.30, when the priest left, he would hardly have had time to get to Verban at 12-13.00 hours when the paramilitaries according to the Albanian witnesses arrived to the village. Also why would he choose to go looting in Verban on a day of festivity, when he – if he was so inclined – could have gone on any other day. And why would he go to Gromovo in the first place in order to leave again before the family lunch. Thus the evidence presented by the defence supported the Panel's aforementioned conclusion.

For the aforementioned reasons it was decided as in the enacting clause of this verdict.

CHRISTINE KLEKR
COURT RECORDER

VAGN JOENSEN
PRESIDING JUDGE