

## **Presentation of the repeated trial against accused Enes Viteškić for war crime against civilians, K-18/03**

### **Osijek County Court**

**Case No:** K – 18/03; war crime against civilians stated in Article 120, Paragraph 1 of the Penal Code of the Republic of Croatia

**Verdict/decision issued by the Supreme Court of the Republic of Croatia,** No:I Kž 1196/04-5

**The accused:** Enes Viteškić, aka Zijo, or Zizi, *was not kept in custody during the repeated trial.*

**Victims – killed persons:** Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelić, Milan Katić, D Mitar Katić, Draginja Katić, Vukašin Medić, Darinka Vujnović, Anđa Jelić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić, Marija Sudžuković

**Representing the prosecution:** Osijek County Attorney's Office, Željko Krpan, Deputy County Attorney

**Defence counsel:** Davor Krtić

#### **Attorney at law for the injured parties:**

Darko Šuper and Branko Rabar, lawyers from Osijek, attorney at law for injured party Nenad Jelić

#### **War Crime Council:**

Judge Zvonko Vekić – Council President

Judge Nikola Sajter – Council member

Judge Branka Guljaš – Council member

## **Indictment**

On 12 March 2003, the Osijek County Attorney's Office issued the indictment No:K-DO-68/2002 against Nikola Ivanković and Enes Viteškić charging them with the following: that the two of them, in their capacity as members of the Croatian Army 130th Brigade, 1st Battalion, 2nd Infantry Company, together with several unidentified perpetrators, on 11 December 1991, after they had heard of the death of their wounded fellow soldier Ilija Ravnjak, agreed to go to Paulin Dvor and retaliate for Ravnjak's death by killing local villagers of Serb ethnicity, and that they approached the house in Paulin Dvor owned by Andrija Bukvić, and checked if the civilians they were looking for were on the premises, and opened a sustained fire from automatic rifles and threw hand grenades into the premises where the civilians were accommodated, and in that way killed eighteen civilians, thus committing a criminal act against humanity and international law – a war crime against civilians stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia.

*Factual description of the criminal act is clearly presented in the indictment. Relevant facts pertaining to the critical event are precisely stated, specifying the place, time and method of committing the criminal act. Legal characterisation results from the factual description of the*

*criminal act. Although the accused Nikola Ivanković and Enes Viteškić are being charged with committing the stated criminal act in cooperation with several unidentified persons, and despite the fact that there are no direct witnesses to the critical event, the indictment is satisfactory in relation to the accused persons, since the indictment is based on indirect information provided by witnesses or indications that the stated two persons were exactly the perpetrators-accomplices of the criminal act. During the repeated trial, the indictment has not been modified (during the first trial, to be more precise- at the hearing held on 05 April 2004, the indictment was modified in the way that the name of Milka Lapčević was removed from the list of killed civilians).*

## **Review of the previous proceedings**

The first-instance court proceedings commenced on 09 June 2003. Verdict, in which Nikola Ivanković was found guilty and sentenced to a 12-year prison term, and Enes Viteškić was acquitted, was announced on 06 April 2004.

The verdict was based on making connections between the established facts i.e. indications, since material evidence had been destroyed and covered up by state authorities immediately after the crime had been committed (while representatives of the same state authorities were called to appear as witnesses at the court trial against the perpetrator(s)), the survived persons and eyewitnesses to the critical event had no knowledge of perpetrators' identities, and the accused were not admitting their involvement in the crime. In its explanation of the verdict, the War Crime Council emphasized its opinion that the established facts-indications in case of the first-accused Nikola Ivanković were connected in such a manner that they were actually excluding any other possibility except the one that he (along with several unidentified members of the Croatian Army) had participated in killing of civilians by opening a sustained fire from automatic rifle and throwing hand grenades on civilians, while the established facts-indications on actions of the second-accused Enes Viteškić were not connected in such a manner that they could exclude every other option except the one that he had participated himself in the same criminal act.

On 10 May 2005, the Supreme Court of the Republic of Croatia passed the verdict and decision No: I Kž 1196/04-5. The Supreme Court of the Republic of Croatia expressed the opinion that the first-instance court had attached too much significance to the extenuating circumstances in relation to the accused Nikola Ivanković (his participation in the Homeland War – he was also decorated for his merits in the war-, diminished responsibility and intoxication at the time when the crime was committed) without giving a careful consideration to the aggravating circumstances (seriousness and brutality of the crime), therefore, the Supreme Court modified the first-instance court verdict i.e. the part of verdict pertaining to the sentence decision which resulted in alteration of duration of sentence to a 15-year imprisonment for the accused Ivanković.

In relation to the accused Enes Viteškić, the Supreme Court of the Republic of Croatia quashed the first-instance court verdict due to the incorrectly established facts and sent the case back to the first-instance court for retrial. The Supreme Court of the Republic of Croatia had the opinion that the first-instance court had omitted numerous pieces of evidence which had been presented in the evidence procedure, and that it had done the same with the witnesses' depositions which had not been thoroughly and specifically analysed. The first-instance court was instructed that, at the retrial, it should present again all the evidence that had been presented until that time, and to present the new evidence if required, and to decide whether it should stick to its decision on existence of a single indication that the accused Viteškić had been an accomplice in the crime or

if there was a set of strong indications, as in case of the accused Ivanković, which would require the first-instance court to reach a new verdict and provide it with a valid and complete explanation.

## **Defence**

At the hearing held on 22 January 2007, the accused Enes Viteškić stated that he would not change his defence plea which he had presented in the previous proceedings.

During the previous trial, the accused did not confess to the crime. He was defending himself by describing his war history as a member of the 130th Brigade, he was describing events in the area of Vladislavci and Paulin Dvor, his fellow soldiers, and Ilija Ravnjak, too. He argued that he had not participated either in killing of civilians or collecting and transporting of the dead bodies. Viteškić stated that he had never been in the area of Lug military barracks, that he had never spoken with the Military Police or the Security Intelligence Service about the killing of civilians. He also stated that he had met by chance some (Croatian) military policemen in a hotel in Našice and bought them drinks on 13 December, and that he had heard about the case of crime in Paulin Dvor through newspapers.

## **Course of the proceedings; presented evidence**

The repeated first-instance court proceedings commenced on 27 November 2006. The last hearing was held on 25 January 2007. The verdict, which once again acquitted Enes Viteškić of all charges, was announced on 29 January 2007.

### **The following witnesses were heard again:**

Dragutin Lizak, Anto Pranjić, Stana Pokrajac, Josip Smolčić, Ivan Delija, Anton Jelenić, Josip Urban, Dražen Aračić, Petar Pavković, Pejo Čosić, Josip Aračić, Mladen Pavlovsky, Ladislav Bogнар, Boris Dumenčić, Josip Uglik, Zvonimir Valenteković, Vljako Petrović, Vladimir Burić, Ivica Šimičić, Željko Nađ, Živko Katić and Franko Križman.

Although the Osijek County Deputy Attorney requested a direct testimony to be given by the witness Karl Gorinšek, the stated witness was not heard at any court hearings during the repeated trial. He was summoned to appear before the Court Council on several occasions; Gorinšek did not appear in court whatsoever and justified his absence by providing his medical documentation proving that he had medical problems, so the Osijek County Deputy Attorney agreed to have Karl Gorinšek's deposition read in the court. Moreover, the witness Ivica Jelenić was not heard since the Court Council determined that the same person had been present as a part of public at the court hearing held on 27 November 2006.

Except for the witness Ante Jelenić, all witnesses stated that they wished to stick to the depositions they had given in the previous proceedings. When they were asked to explain the disparities between the statements given to investigation judge during the investigation procedure and the depositions they gave at the hearing during the previous trial- if such disparities occurred- the witnesses mostly did not provide explanations. Confrontation of witnesses was not applied. New evidence was not supplied.

Josip Urban testified about the event describing the moment when the perpetrators entered the village of Paulin Dvor, while witness Boris Dumenčić gave testimony about his encounter with the perpetrators and the events in Paulin Dvor.

**Witness Josip Urban** (member of the 107th Brigade of the Croatian Army; a guard at the check-point at the entrance of Paulin Dvor) stated that he wished to stick to the depositions he had previously given.

*On the critical evening, he was standing on guard at the check-point at the entrance of Paulin Dvor. Around 20:30 hours, approximately eight Croatian soldiers approached the check-point in a VW Caddy. They were drunk. They were armed with automatic rifles and hand grenades. They told him they were coming from Vladislavci and that they „came to clean things up a bit since the Serbs had killed their colleague“. The vehicle and one young soldier remained at the check-point, while the others went to the house which was approximately 150 meters away from the check-point. Urban heard a burst of automatic rifle fire and grenades detonations. The soldiers returned soon and then left in the direction of Hrastin. The first to arrive to the crime scene were the members of military medical corps who were stationed at the entrance of the village, and then they went to Vladislavci to report on the event. On their way to Vladislavci, when they were passing by the witness, they told him that there were dead people in the house. Two hours later, four Croatian military policemen arrived to the village and went to the mentioned house, and then asked the witness to describe a vehicle which had entered the village. After he described the vehicle, military policemen said that they knew who were the perpetrator. Around 4:00 hours, a heavy truck and a military medical corps vehicle entered the village and they took the dead bodies away.*

**Witness Boris Dumenčić, M.D.** (Medical Corps Commander of the 3rd Battalion of the 107th Brigade of the Croatian Army) stated that the man, whom the perpetrators had spared, told him that he (the spared man) was acquainted with perpetrators, and that the spared man had a son or some other relative serving in the Croatian Army.

*At the hearing held on 05 September 2003, the witness stated that his medical corps was stationed in Paulin Dvor. On 10 December or 11 December 1991, between 20:00 and 22:00 hours, the guard informed them that a group of unidentified masked Croatian soldiers had approached him, threatened to him and held him at gunpoint. At that moment, they heard several explosions, single gunshots and bursts of fire. After that, they noticed three or five unidentified soldiers approaching the witness and medical corps members. The soldiers had masks on their faces. They were intoxicated. The soldiers said that they had come to retaliate for the death of their wounded fellow soldier who died in Osijek hospital, and that they killed the local villagers. After that, the soldiers got in the car and left in the direction of Hrastin. The witness and Ivica Hosi saw fire flames coming through windows of the house where civilians were accommodated. The witness and Ivica Hosi picked up their bags with a first-aid kit, went to the house where Hosi shouted: „We are doctors, we are going to help you!“ Immediately after that, the witness heard his driver calling him and saying: „Doctor, come back, they are coming back!“ The same group of three or five soldiers came out of the car. They said they were on their way to check if all the villagers were dead and that they were going to do it with their knives. The witness could hear the knives being taken out of sheaths. The soldiers entered the house and stayed there for several minutes. Then, the soldiers came out, approached them and said: „It is all over now, we checked.“. Screams from the house could no longer be heard. The witness concluded that there was no need for him to act as a doctor. The witness ordered Smokrović and Hosi to go to Vladislavci, to the Comand Post of the 3rd Battalion of the 107th Brigade, and inform*

*commanding officers about the event. Around 23:00 or 24:00 hours, two or three Croatian military policemen came to the village. Between 4:00 and 5:00 hours, the witness heard a sound of a truck, and soon afterwards a sound which led him to conclude that somebody was vomiting. When daylight broke, the witness and his colleagues approached the house and entered. In the subterranean room, they noticed the pieces of human body tissue, brain particles, scalp particles; the floor and walls were splattered with blood. Traces and direction in which the bodies were pulled out could be seen. In the close vicinity of the house, near a haystack, a herd of pigs was violently chopping a body of a 50-year-old woman. The woman's clothes and her abdomen were chopped off. Some of the colleagues started crying. In order to prevent the pigs from further chopping, the witness and his colleagues took the fence remnants and tractor door and put it around the dead body.*

*A man aged between 50 and 60 got out of the haystack, he was uncontrollably sobbing and begging them not to kill him, the man was falling on his knees and kissed their boots. The witness and his colleagues managed to calm him down. The man told them that he was spared because his relative was serving in the Croatian Army. The man told them that he had recognised the perpetrators and that they were the villagers of Hrastin and Vladislavci. He also told them that the woman who was lying on the ground had crawled to the haystack and called for help. The man did not have enough courage to come down and help her, and the woman had died shortly afterwards. The witness and his colleagues dressed the man in a camouflage shirt, put the helmet on his head and the driver took him to Čepin.*

*Between 10:00 and 11:00 hours, three or four Croatian soldiers arrived to the village by car. They took granulated explosive out of the trunk of the car and completely destroyed the house where the civilians had been killed.*

The witness Stana Pokrajac gave her deposition in which she explained which houses had been inhabited by villagers of Paulin Dvor, while witness Živko Katić gave deposition on his indirect knowledge of the event.

**The witness Stana Pokrajac** stated that she would stick to her previously given depositions. *Inhabitants of Paulin Dvor were located in three houses. The witness was accommodated in the house belonging to Bogdan Krzman. In the house of Andrija Bukvić the following persons were accommodated: Milan Labus, Boško Jelić and Anđa Jelić, Spasoje Milović and Milica Milović, Dara Vujnović, Jovo Gavić, Vuko Medić, Boja Grubišić, Milena Rodić, Marica Sudžuković and Božo Sudžuković, Petar Katić, Bosa Katić, Draginja Katić, Mile Katić and D Mitar Katić, Drago Kečkeš, Milka Lapčević and Veljko Gavrilović. During the night of 11 December 1991, the witness heard the shooting. She saw a truck in front of Bukvić's house. The following day, there was nobody in the house of Andrija Bukvić and she saw red traces all over the house. In the afternoon of the same day, the house of Andrija Bukvić was destroyed in an explosion.*

**The witness Živko Katić** stated that he would stick to his previously given depositions. *On 15 December 1991, the witness was informed about the murder of his parents (the information stated in the explanation of indictment) by his sister Blaženka Vorkapić, and she had heard it from Vida Kulaš. According to the words of Lazo Kulaš, who was located in the house of Bogdan Krzman at the time of critical event, which was in the close vicinity of Andrija Bukvić's house, perpetrators of the crime were persons from Vladislavci, and the persons with nicknames Danguba and Zijo were among them.*

Following the prosecutor's questions, the witness replied that he contacted his parents for the last time after the fall of Ernestinovo, the witness believed it was in December 1991. Before that, the witness had visited the village (of Paulin Dvor) in August 1991, when it was still possible for him

to move freely through the village. In December 1991, the witness was stopped at the check-point by two guards and was kept for one hour or longer, during which time a lot of Croatian soldiers gathered around them. It was a very tense situation for the witness, even the weapons were reloaded. The witness told the guards that he had come to take his parents out of the village. One of the guards allowed him to take his parents and leave, but the other guard told him that nobody was allowed to leave the village. The witness was allowed only to see his parents and talk to them for a couple of minutes. He found his parents in their neighbour's house where they came to take some water. The parents were escorted by two Croatian soldiers. On that occasion, his parents told the witness that they had received death threats. At that time, his parents were not living in the house of Andrija Bukvić but in their own house.

Witnesses Anto Pranjić, Josip Smolčić and Anton Jelenić partially changed their depositions which they had given to the investigation judge. In its explanation of the verdict, the Court stated that it evaluated the witnesses' depositions given to the investigation judge and held those depositions as credible, since the witnesses either did not give any reasons for change of deposition, or those reasons were evaluated as incredible.

**The witness Anto Pranjić** (*Commander of the 2nd Company of the 1st Battalion of the 130th Brigade of the Croatian Army*) stated that he would stick to the deposition he had given on 10 June 2003. While giving testimony in the repeated trial, following a direct question, the witness stated only that he had provided one room on the first floor of the primary school in Vladislavci to Vladimir Burić (member of the Security Intelligence Service, who, according to statements given by some witnesses, had interrogated the suspects for murder of civilians in Paulin Dvor).

No further questions were addressed to him.

*The witness stated to the investigation judge (information taken from the explanation of the indictment) that the 2nd Platoon of his Company had been on leave on the critical day. On the mentioned day, the witness and Drago Lizak arrived to Vladislavci primary school building around 16:00 hours. There they came across Pejo Ćosić and Ivica Jelenić, members of the 2nd Platoon. Jelenić told the witness that they had killed all Serbs in Paulin Dvor. The witness immediately informed Ivan Delija, Military Police Commander, about it. Delija arrived shortly afterwards, and Ćosić and Jelenić told Delija that Nikola Ivanković had initiated the whole thing, that Ivanković had taken members of the 2nd Platoon into the „Golf Caddy“ vehicle, that they had disarmed a guard at the check-point at entrance of Paulin Dvor and that they had killed Serbs who had been in Andrija Bukvić's house. After that, Delija, Anton Jelenić, Ivica Šimičić, Josip Smolčić and the witness went to Paulin Dvor where they found a number of killed persons. They found Ivanković in Vladislavci and Delija took him to Beketinci for interrogation. One hour later, Delija, Šimičić and Ivanković got back. Šimičić told the witness that Ivanković said during the interrogation that they had gotten drunk, that he had suggested to his colleagues to go to Paulin Dvor and to kill all Serbs, and that Antun Ivanković, Damir Orešković, Ivan Bradarić, Željko Bradarić, Josip Bradarić, Obrad Simić, Zvonko Kečkeš, Pejo Ćosić, Ivica Jelenić, Goran Sekereš and Enes Viteškić also participated in it. Vlado Burić from the Security Intelligence Service interrogated Ivanković in Vladislavci, and Ivanković repeated the stated information and confirmed it to Burić. As a reason for the murder, Ivanković mentioned his revolt over the death of their fellow soldier Ilija Ravnjak. The witness later concluded that not all 12 mentioned soldiers had participated in the killing, and that only a few of them had left to Paulin Dvor along with Ivanković. The witness stated that he did not know exactly who had been shooting. The following day, all persons, who had been with Ivanković on the critical day, were taken to Beketinci for interrogation.*

*At the court hearing held on 10 June 2003, the witness stated that Čosić or Jelenić had told him: "Serbs are killed". The witness stated that he had provided a room in Vladislavci primary school building to Vlado Burić, but the witness did not know what was happening afterwards. The witness did not know what Ivanković had said to Burić. The witness did not know if anybody else except Ivanković had been taken to Beketinci for interrogation.*

**The witness Josip Smolčić** (member of the monitoring and information service) stated that he would stick to the depositions he had given at the court hearing held on 11 June 2003. The witness has been acquainted with a person named Vladimir Burić, the witness states that Burić was acting as the Republic of Croatia Ministry of Defence official but Smolčić cannot remember if Burić had been in Paulin Dvor on the critical night.

No further questions were addressed to the witness.

*The witness gave a statement to the investigation judge (information found in the explanation of the indictment) describing how he got to know about the event; the witness stated that he checked the information on the event by visiting Paulin Dvor by himself; he testified about the arrest of Nikola Ivanković and the meeting which had been held in Vladislavci primary school building and chaired by Mirko Grošelj. The witness stated that Anto Pranjić and himself had gone to Osijek the day after the event. In Osijek Anto Pranjić spoke to Mladen Pavlovski, National Defence Deputy Secretary, and told him names of the persons who had allegedly killed the civilians. Of all the mentioned names, the witness was sure that he had heard the names of Nikola Ivanković and Enes Viteškić. Upon their return from Osijek, the witness entered the staff room in Vladislavci primary school building, where Mirko Grošelj was addressing a group of 7 to 10 members of the Croatian National Guard Corps. Grošelj was making threats against the soldiers since they had committed the crime. On that occasion, the witness got to know that the perpetrators were supposed to be punished by deploying them at the toughest post on the line of defence. On behalf of the present members of the Croatian National Guard Corps, Nikola Ivanković requested an evening off for the whole group to go to Našice for a dinner, prior to their deployment at the new post. Grošelj approved Ivanković's request.*

*At the hearing held on 11 June 2003, the witness stated that, at Pavlovski's office, Anto Pranjić had not read the names of perpetrators, but instead, the names of soldiers who had been absent on leave during the critical event. The witness stated that, on mentioned occasion, Nikola Ivanković had not been addressed as the main perpetrator; and that he (the witness) had not known anything about Enes Viteškić's name being read out. The witness also stated he did not remember that Ivanković had been talking at all in Vladislavci primary school staff room.*

**The witness Anton Jelenić** (member of the Military Police of the 130th Brigade of the Croatian Army) changed a part of the deposition which he had previously given. During this trial, the witness stated that it was not actually the defendant Enes Viteškić who had participated in loading the dead bodies on truck, but instead, the person from the Croatian Army Medical Corps who resembled Viteškić. The witness stated that he could not remember exactly where he had seen that particular person.

No further questions were addressed to the witness.

*The witness gave a deposition to the investigation judge (information found in the explanation of the indictment) stating that, upon obtaining the information on murder of civilians, he went to Vladislavci primary school, along with Croatian military policemen Ivica Šimičić and Miroslav Gici. In Vladislavci primary school, Anto Pranjić and Josip Smolčić informed the witness about*

*the critical event, and they went to Paulin Dvor. They found the dead bodies in the house where the murder had occurred. Smolčić said that it was possible that Ivanković had been one of the perpetrators. They located Ivanković, who was visibly intoxicated, and took him to Beketinci. Shortly afterwards, Petar Pavković, Head of the Security Intelligence Service of the 130th Brigade, arrived to Beketinci. Some time later, the witness and Ivica Šimičić got an order to return to Paulin Dvor. There they saw Nikola Ivanković, Zijo and Zdravko Andrić loading the dead bodies on truck. Andrić was a military policeman, and he allegedly volunteered to load the dead bodies on truck. Delija and Pavković were also present there, and Pavković issued orders for the transport of dead bodies to Lug. Military Medical Corps vehicle was also there. Ivanković was driving the truck up to Lug. In Lug, the same three persons, Ivanković, Zijo and Zdravko Andrić, put the dead bodies into the pit that had been dug up by an excavator. The following day, the witness was driving Ivan Delija to Vladislavci, where a meeting was held that was chaired by Mirko Grošelj. Delija told the witness that the perpetrators had confessed to the murder and that they had agreed to defend the so-called Pump even at the cost of their own lives. In return, they were allowed to go to Našice for a dinner. The perpetrators were escorted by the witness, Delija, Smolčić and Anto Pranjčić.*

**The witness Ivan Delija**, who acted as Commander of the Military Police Platoon of the 130th Brigade of the Croatian Army at the time of critical event, stated that he would stick to the deposition he had given on 10 June 2003 and to his explanation of disparity between the deposition he had given for the investigation judge's records on 05 September 2002, and the deposition he had given at the court hearing on 10 June 2003 - stating that during the interrogation on 05 September 2002 he had not quite understood a question addressed to him by the County Attorney.

Following his inspection into a copy of the report prepared by the Military Police of the 130th Brigade on 11 December 1991, the witness stated that he had not written that report, and that he had not signed it, that he did not remember that he had prepared it, and that the Security Intelligence Service Head, Mirko Grošelj, had stated at the meeting in Vladislavci that no reports would be made about the event.

No further questions were addressed to the witness.

***The witness gave a statement to the investigation judge (information found in the explanation of the indictment)*** stating that, at the time of critical event, he heard at the Military Police Command Post in Beketinci that around 21:00 or 22:00 hours two Military Police units had gone to Vladislavci since something had happened there. Around 02:00 hours, the witness himself went to Vladislavci. There was a meeting in progress at the Vladislavci primary school building which was chaired by Mirko Grošelj. The witness saw Anto Pranjčić, Josip Smolčić and Petar Pavković. Grošelj told the witness that something had happened in Paulin Dvor, and ordered him to send a Military Police patrol to secure the Lug warehouse and to provide an ambulance vehicle and an excavator. The witness remained in Vladislavci, while Grošelj and Pavković went to Lug. After Grošelj's return from Lug, Anto Pranjčić, following Grošelj's order, arrested 8 to 10 soldiers from his unit and took them to the school building. Of all the mentioned soldiers, the witness knew Nikola Ivanković and the person nick-named Zijo. Grošelj said to the soldiers that they were supposed to be deployed on the first line of defence (the so-called Pump in Paulin Dvor), but instead of it, they would be assigned duties of reconnaissance unit of the 130th Brigade, and Grošelj forbade the present persons from mentioning the critical event to anyone and writing any reports on the event. Only afterwards, did Pavković, Pranjčić and Smolčić describe him the details of events in Paulin Dvor - the events when Pranjčić's soldiers, who had been on leave on the critical day, revolted against the death of their fellow soldier and went to



*Paulin Dvor where they massacred Serb civilians. Much later on, the witness got to know the details on burial of the dead bodies in Lug from the military policeman Andrić.*

*At the hearing held on 10 June 2003, the witness stated that he did not have any knowledge on the event in Paulin Dvor. The witness said that he knew only the information which had been published in the media and that he got to know some information during his interrogation in the police and at the investigation judge's office, i.e. that the military policeman Zdravko Andrić asked the witness several years earlier for a certificate confirming Andrić's disabling condition resulting from his service in the Military Police and, on that occasion, Andrić told the witness that he had been burying more than 20 persons who had been killed in Paulin Dvor. The witness stated that his Military Police Platoon had never made criminal procedures and investigations of the cases.*

**The witness Dragutin Lizak** (Deputy Commander of the 1st Battalion of the 130th Brigade of the Croatian Army) has decided not to change the depositions he had given to the investigation judge and the Council during the pre-investigation procedure. The witness did not know the person named Vladimir Burić, the witness forgot the name because of a lapse of time.

No further questions were addressed to the witness.

*The witness stated to the investigation judge (information found in the explanation of the indictment) that he had been in Vladislavci primary school, together with Anto Pranjić, in the moment when two Pranjić's soldiers had told Pranjić that they had killed all Serbs in Paulin Dvor. Pranjić had called the Military Police. The talks about the event were held in Vladislavci primary school building. The witness was informed by Pranjić that the perpetrators of the crime were Pranjić's soldiers, 5 or 6 of them, and of all mentioned names, the witness could only recall the name of Nikola Ivanković.*

**The witness Petar Pavković** (Head of the Security Intelligence Service of the 130th Brigade of the Croatian Army) has stated that he would stick to his previously given depositions in which he stated that, concerning the critical event, he had participated only in the very night of 11 December 1991 and that he had submitted a report about the event to the Security Intelligence Service Central Office but he had been excluded from the further procedure.

*The witness stated to the investigation judge (information found in the explanation of the indictment) that in the middle of December 1991, Head of Monitoring and Information Group from Vladislavci had informed the witness about the killing of civilians in Paulin Dvor. After that, the witness went to the Brigade Command Post (in Vladislavci), where the present persons had already been informed about the event. The Military Police was sent to investigate the crime scene. Ivan Delija, Military Police Commander, informed the present persons that approximately 15 civilians had been killed. General Gorinšek decided that the dead bodies should be buried far from the first line of defence. On the following day, Grošelj talked to a group of 5 or 7 Croatian soldiers in Vladislavci. The witness stated that he knew that at that meeting the very group of soldiers was assigned new duties in a newly formed reconnaissance group.*

**The witness Vladimir Burić** has stated that he would stick to the depositions he had previously given.

At the time of critical event, the witness held a position of Commander of the 68th Battalion of the Military Police. Considering the military duties, his superior officer was the Commander of the Military Area, and in view of the expert duties, his superior was the Head of the Security Intelligence Service Central Office. The witness stated that investigation procedure was supposed

to be carried out by a military police unit of the respective brigade in which area of responsibility the village of Paulin Dvor belonged to. Paulin Dvor was in the area of responsibility of the 101th Brigade. The witness did not receive any reports from Ivan Delija. The witness cannot remember if he mentioned anything about the events in Paulin Dvor in his written objection sent in relation to the military promotion.

*The witness stated to the investigation judge (information found in the explanation of verdict) that, in the night of 11-12 December 1991, he received a call by Mirko Grošelj who ordered the witness to go to Vladislavci along with Dr. Ropac, Operative Zone Medical Corps Assistant Commander, and to make sure that the Medical Corps of the 101st Brigade carried out the burial in Lug. The witness followed the order and submitted a written report about it to Grošelj. The witness did not get to know the names of perpetrators; the witness did not go to Lug himself, he did not speak about it to Ivan Delija. Later on, the witness heard the information from Grošelj that the perpetrators of crime were transferred to another military post at the „Pump“ which they were supposed to defend at the cost of their own life.*

*At the hearing held on 11 June 2003, the witness stated that he was ordered by Mirko Grošelj to go to Vladislavci along with Dr. Ropac, since Ropac's men were supposed to sanitise the area, but Ropac did not know the area. The witness drove a car and took Ropac to the house where Medical Corps was stationed; they stayed in the house for approximately 15 minutes. The witness stated that he did not contact Anto Pranjić either on that day or the following day; the witness did not participate in any talks or gathering information in Vladislavci.*

**The witness Mladen Pavlovsky** (Osijek National Defence Secretariat Deputy Secretary, and Osijek Office Security and Intelligence Service Centre Official) stated that he would stick to his previously given depositions.

The witness stated that, in line with Article 243 of the Penal Proceedings Law, he was supposed to be exempted from giving depositions in order to observe his duty of keeping a secret.

*The witness gave a statement to the investigation judge (information found in the explanation of indictment) stating that he was informed on the critical event by Smolčić. The witness submitted a report on the event to the Zagreb Security and Intelligence Service Administration Centre. In the report, he did not state the names of perpetrators. The witness also heard from Smolčić that the dead bodies were buried in Lug.*

**The witness Ladislav Bogнар** (Osijek Operative Zone Information and Propaganda Service Official) stated that he would stick to his previously given depositions. The witness stated that Karl Gorinšek had informed the persons attending the briefing held on 12 December 1991 about the murder of civilians. Karl Gorinšek had told them that the crime had been committed by a group. No names nor the number of perpetrators had been mentioned at the briefing but the witness understood that the perpetrators had been identified and that they were members of the 130th Brigade. It was decided that the perpetrators would be transferred to another, extremely dangerous and difficult, military post.

The witness added that Josip Uglík approached him after the hearing at which the witness had given a deposition, and Uglík told him that he had some information about the event in Paulin Dvor. The witness instructed Uglík to go to police and the County Attorney's Office but Uglík replied to him that he did not trust the police. After that, the witness instructed the witness to go to the Centre for Peace, Nonviolence and Human Rights. The witness stated that an unidentified person from the County Attorney's Office gave Uglík's deposition to Branimir Glavaš who posted the deposition on the web site. The witness heard about Uglík being brought under pressure,

which was a reason for Ugljik to receive police protection, but, at the end, Ugljik changed his deposition.

Witnesses Pejo Ćosić and Dražen Aračić were giving a statement describing the vehicles which had been used by the 2nd Platoon members to reach Paulin Dvor on the critical day.

**The witness Pejo Ćosić** (member of the 2nd Platoon) stated that he would stick to his previously given depositions.

*The witness gave a statement to the investigation judge (information found in the explanation of indictment) stating that, on the critical day, he had heard that Paulin Dvor was about to fall, so the witness and Ivica Jelenić had loaded a box of ammunition onto the tractor and taken it to Paulin Dvor. The witness was not sure if Josip Aračić and Goran Sekereš had accompanied them. At the check-point at entrance of Paulin Dvor, a guard stopped the witness and Ivica Jelenić and sent them back. A „Zastava 101“ vehicle also approached the check-point in Paulin Dvor but the guard also sent the persons in the vehicle back since it was a false alarm. The witness stated that he did not know who was in the mentioned vehicle. The following morning, the witness went to Vladislavci primary school building where he was informed about the event by his commander Anto Pranjić. After Pranjić finished the briefing in the school building, the witness, Ivica Jelenić, Goran Sekereš, Dražen Aračić and Josip Aračić left the room.*

**The witness Dražen Aračić** (member of the 2nd Platoon) stated that he would stick to his previously given depositions.

*At the hearing held on 7 July 2003, the witness stated that Pejo Ćosić and himself had taken a tractor and left in direction of Paulin Dvor. The witness could not remember if any other vehicle had followed them on the way to Paulin Dvor. The witness could not remember the issue he had been discussing with Mirko Grošelj. The witness could not recall at what time the expression „Dirty dozen“ had been mentioned for the first time but he claimed that at the time of critical event it was popular to give such names to the military units. The witness did not know which military unit the reconnaissance platoon belonged to; he did not know the place where the platoon's headquarters were located. The witness did not know about Andrija Bukvić's house in Paulin Dvor.*

**The witness Josip Ugljik** stated that he would stick to his previously given deposition.

*At the hearing held on 13 October 2003, the witness stated that Anto Pranjić was the commanding officer of the platoon in which the witness had served. One evening in December 1991, the witness was sitting in a cafe in Vladislavci, where Enes Viteškić was also spending the evening. Around 22:30, the witness got up and headed back home. Since the witness was highly intoxicated, Enes Viteškić helped the witness to reach home. The two of them were also accompanied by Miroslav Ćosić. They were sitting in Ugljik's house, drinking coffee and talking. The witness got asleep so he did not notice the moment when Ćosić and Viteškić left his house. The following morning, the witness went back to his unit which was stationed in primary school building in Vladislavci. In the school building, the witness saw Anto Pranjić giving a pencil and a piece of paper to Nikola Ivanković, ordering Ivanković to make a list of persons who had been to Paulin Dvor. Pranjić told the witness to accompany Ivanković to the village in order to make the list. Ivanković and the witness got into two houses in the village but the witness could not remember who were the owners of those houses.*

*The witness heard about the killing of civilians in Paulin Dvor two or three days after the event. The witness could not remember his being questioned by any of his commanders about the event in Paulin Dvor, and he knew nothing about the house of Andrija Bukvić being destroyed in an explosion.*

*The witness stated that he had spoken with the State Attorney of the Republic of Croatia, Mladen Bajić, about the event in Paulin Dvor. The witness stated that he did not receive any threats after the conversation he had with Mladen Bajić and that he felt no fear whatsoever.*

**The witness Vljako Petrović** (Osijek Police Administration Crime Department Official) stated that he would stick to the previously given deposition. The witness stated that, regarding the critical event, he had contacted only the Military Police unit stationed in Beketinci, more specifically, the person named Delija.

*At the hearing held on 10 June 2003, the witness stated that, in his capacity as a Crime Department Official of the Osijek Police Administration, he was on duty on behalf of the investigation team at the time he received an information about the murder of approximately 20 civilians in Paulin Dvor. The witness went to Čepin Police Station which had the authority over Paulin Dvor. The witness spoke with the Police Station Commander, Mato Gedžić, and afterwards they went together to Vladislavci. In Vladislavci, they spoke to a person from the command of the military unit stationed in the school building. The witness concluded that the military unit originated from Donji Miholjac area. The witness and Mato Gedžić were told that the command of the military unit in Vladislavci had no information about the event whatsoever and were referred to the Military Police in Beketinci. The witness and Gedžić left Vladislavci and headed to Osijek. On their way, they stopped in Čepin where another military unit was stationed but they were told that the military unit in Čepin had heard something about the event but had no concrete information about it. The witness and Gedžić returned to Osijek and, in the afternoon, the witness went to Beketinci (note: the Military Police Command was located in Beketinci). In Beketinci, the witness was told that they had no information about the event but they would check it and inform the Osijek Police Administration on their findings. The witness did not have any information if the Military Police had actually forwarded any information about the event to the Osijek Police Administration. The witness himself did not receive any information about the event from Beketinci.*

*The witness had the opinion that the Military Police Crime Department was in its formation phase at the time of the critical event. Civil Police was carrying out criminal investigations of the cases no matter the fact if the perpetrators were civilians or persons actively involved in military service. After the formation of the Military Police Crime Department was completed, the Civil Police and Military Police were carrying out criminal investigations in a joint effort and investigated cases whose perpetrators were the persons serving in the military. His explanation for such practice was that the Civil Police was better equipped in, both, expert and technical sense. The witness could not determine a time period when the Military Police Crime Department had started carrying out independent investigations of cases.*

**The witness Franko Križman** stated that he would stick to his previously given depositions. The witness stated that Anto Pranjić had not told him the name of the leader of a group of 14 persons, but instead, Pranjić had given him the list of names of 14 persons. Pranjić had told the witness only that the perpetrators had gotten drunk. The witness did not know if the persons on the list had been characterised as perpetrators of crime or the suspects. The witness had forwarded the list to the Brigade Commander.

*The witness gave a statement to the investigation judge (information found in the explanation of indictment) stating that at the end of 1991 he had been performing the duties of a commander of the 101st Brigade 3rd Battalion. Some time after 18 December 1991, the witness got to know about the critical event, which was in relation to the decision prescribing one Company of the 130th Brigade to be put under his command. The witness was informed by Anto Pranjić, Commander of the mentioned Company, that ten members of the Company, along with four*

*soldiers who were not members of the Company, had killed a group of civilians in Paulin Dvor. Upon learning that information, the witness submitted a request to the Commander of the Croatian Army 101st Brigade requesting that mentioned persons should not be put under his command. In his request, the witness also stated the names of persons he got to know from Anto Pranjić. The witness did not receive any written answers to his written request, but Pranjić informed the witness that the persons mentioned in his request had been transferred to another military post.*

*The witness confirmed to the War Crime Council that he personally had written and signed a document addressed to „the Command of the 101st Brigade in Beketinci“, bearing a signature of its Commander Franko Križman, i.e. his own signature.*

## **Reading the witnesses' depositions**

With concurrence of the parties, depositions of the following witnesses were read: Zdravko Andrić, Željko Petrovicki, Nikola Huđin, Ivan Čolina, Ivan Švabelj, Zdravko Vinogradac, Stjepan Čango, Josip Pavlinušić, Franjo Kovačević, Radoslav Milović, Savka Katić, Dragomir Lapčević, Dario Horvat, Stjepan Husnjak, Darko Bobeta, Slavko Kit, Davor Dobutović, Ivica Jelenić, Zvonimir Kečkeš, Pavo Kečkeš, Franjo Pranjić, Goran Sekereš, Antun Ivanković, Damir Orešković, Željko Bradarić, Ivica Bradarić, Obrad Simić, Josip Maleš, Nevenka Čanadić, Mirjana Tepšić, Đurđica Ratković, Ivan Babić, Josip Sić, Mato Gedžić, Darko Ropac, Miroslav Gici, Živko Mijić, Velimir Gavrilović, Vida Kulaš and Karl Gorinšek.

## **Inspection into material evidence**

Inspection was carried out into the following documents:

- Report on arrest and apprehension dated on 13 September 2002,
- Report on arrest and apprehension dated on 13 September 2002,
- Decision No: Kir-1162/02 dated on 14 September 2002,
- „Report“ dated on 11 December 1991,
- „Work order“,
- Daily report describing events on 11/12 December 1991,
- Memo by Franko Križman addressed to the „Command of the 101st Brigade in Beketinci“,
- Memo to the Ministry of Defence of the Republic of Croatia dated on 07 December 1991,
- Photo documentation of the crime scene investigation No: OU 97/2002,
- Photo documentation No: OU1/2002,
- Photo documentation No: OU70/2002,
- Photos and reports made by the Institute for Medical Jurisprudence and Criminalistics with autopsies of the mortal remains,
- Decisions No: Kio-289/02-5 by the Osijek County Court dated on 16 September 2002,
- Certificate showing the amount of salary for the person named Enes Viteškić dated on 23 September 2002,
- Decision No: Kv-299/02-3 by the Osijek County Court dated on 10 October 2002,
- Records No: Kio-289/02-79 on exhumation of the dead body of **Darinka Vujnović** dated on 15 October 2002,
- Photo documentation of the crime scene investigation No: OU 754/2002,
- Records of the section No: 409/2002 made by the Osijek Clinic and Hospital,

- Photos and reports made by the Institute for Medical Jurisprudence and Criminalistics on autopsies of the mortal remains,
- Records No: Kio-289/02-108 of the Osijek County Court dated on 6 November 2002,
- Photo documentation of the crime scene investigation No: OU 167/2002,
- Decision No: Kv-355/02-3 by the Osijek County Court dated on 11 December 2002,
- Decision No: Kv-28/03-3 by the Osijek County Court dated on 11 February 2003,
- Report made by the DNA Laboratory of the Institute for Medical Jurisprudence and Criminalistics dated on 10 February 2003,
- Records on exhumation No: Kv-66/03-5 dated on 13 May 2002,
- Decision No: Kv-66/03-5 dated on 13 March 2003,
- Decision No: Kv-154/03-5 made by the Osijek County Court on 20 May 2003,
- Decision No: Kv-226/03-5 made by the Osijek County Court on 22 July 2003,
- Records on expert investigation carried out by the „Ivan Vučetić“ Centre for Criminalistics Expert Investigations dated on 6 August 2003,
- Decision No: Kv-277/03-5 made by the Osijek County Court on 25 September 2003,
- Decision No: Kv-334/03-5 made by the Osijek County Court on 28 November 2003,
- Photo documentation of the expert investigation,
- Decision No: Kv-40/04-5 by the Osijek County Court dated on 20 February 2004,
- Copy of the report prepared by the Military Police of the 130th Brigade in Beketinci dated on 11 December 1991,
- Death certificate from the Osijek Registrar's Office for the person named Ilija Ravnjak dated on 15 July 1996,
- Excerpt from the Criminal records for the person named Enes Viteškić.

### **Hearing of court experts**

Court expert in ballistics, Vedran Nuić; court expert in neuropsychiatry, Professor Dr. Nikola Mandić; and court expert in medical jurisprudence, Professor Dr. Davor Strinović, were directly heard in the court.

**Court expert in ballistics, Vedran Nuić**, stated that he would stick to his findings he had previously submitted in a written form and to his opinion given at the hearing held on *03 February 2004* - stating that there was indeed a certain number of individual characteristics that were established on a few pieces of evidence recovered and delivered for expert investigation, and if the weapons were delivered for expert investigation, it would be possible to determine which respective type of weapons the bullets (pieces of evidence) had been fired from. The disputed tiny steel balls came from the casing of the hand grenade. A copper-jacketed bullet with a sharp peak was suitable for expert ballistics investigation i.e. for identification of the weapon it had been fired from.

**Court expert Professor Dr. Davor Strinović** stated that he would stick to his findings and opinion he had previously submitted in a written form and to his opinion given at the hearing held on 10 March 2004 which had been entered in court records on the mentioned day – stating that in that particular case it was impossible to determine with certainty a cause of death since it was impossible to ascertain a presence of bleeding on victims' bodies due to a lapse of time and postmortem changes, as the blood outflow pattern enables a person performing autopsy to determine with certainty a cause of death. In the mentioned case, a cause of death might have been established only with a higher or a lesser degree of certainty – some of the victims had

suffered gunshot wounds, some had suffered wounds inflicted by an explosive device. The bodies and body parts that were delivered for expert investigation were partially mixed. Some body parts remained unidentified.

The court expert believed that the „Medical report on cause of death“, signed by lieutenant Dr. Predrag Delibašić, dated on 20 December 1991, pointed to the fact that the body of Dara Vujnović, who had died on 11 December 1991, had been medically examined in the area of Paulin Dvor. The medical report stated that, during the examination, it was established that there were cutting wounds on the victim's face, neck and both hands, and the victim's head had been scalped. The mentioned wounds were described as a cause of death. The stated wounds might be characterised as serious and life-threatening wounds and they could have led to total loss of blood and death. The court expert gave his opinion on case of Darinka Vujnović, who had been exhumed on 15 October 2002 and the person performing autopsy had found an injury to the right shin bone, but he also stated that the victim's body was reduced to a skeleton and there was no soft tissue whatsoever. The medical findings dated on 15 October 2002 did not exclude the existence of injuries that had been described on 20 December 1991.

### **Closing remarks by the prosecution**

In his closing remarks, the Deputy County Attorney pointed to the fact that a considerable lapse of time since the crime was committed had caused a huge impact on this proceedings, yet the competent authorities had not taken any measures at the time when the crime was committed in order to collect evidence. Despite the mentioned facts, the Deputy County Attorney believes that the established evidence and facts may serve enough to ascertain that the accused Viteškić was an accomplice in crime he was charged for, and that there is a complete set of facts - indications which exclude every other possibility except the one which shows that the accused Viteškić is indeed an accomplice in the criminal act, along with the already convicted Nikola Ivanković and several other persons who are still unidentified.

The Deputy County Attorney has analysed a defence of accused Viteškić and witnesses' depositions. In his defence plea, the accused Viteškić claimed that he did not participate in the murder of civilians and was not loading the dead bodies on truck, he claimed that he was not present during the burial of the mortal remains in Lug, that he did not contact the Military Police after the critical event, and that he happened to be in a disco in Našice where he bought drinks to military policemen. The Deputy County Attorney believes that the witnesses in their depositions have presented the complete opposite.

The Deputy County Attorney has said that some of the witnesses were changing their depositions during the proceedings, and he has also pointed out that the witnesses' explanations of such practice (of giving different depositions during the trial) are completely unacceptable, and suggested that the War Crime Council should accept as credible only the depositions the witnesses had given to investigation judge. The Deputy County Attorney has explained the discrepancies between the witnesses' depositions as being a result of psychological pressure of atmosphere at court hearing and a discomfort of witnesses which is being caused by their presence in the courtroom together with the accused, the public, friends and relatives of the accused, and the fact that the witnesses and the accused have lived in the same village. (*note: the prosecutor has not explicitly mentioned either a fear or „cheering“ atmosphere in the courtroom*).

## **Closing remarks of the defence**

The defence lawyer for accused Viteškić has said that there was a statement in the explanation of verdict passed by the Osijek County Court, dated on 06 April 2004, stating that there was not a set of indications which could lead to a definite conclusion that the defendant Viteškić had committed the criminal act he had been charged for. The defence lawyer has analysed the witnesses' depositions given during the repeated trial and said that the witnesses mostly stood by their previous depositions, however, he admitted that some changes did occur in depositions and that such depositions (statement given by the witness Anton Jelenić) actually denied those particular indications which could present a complete set of indications pointing that the accused Viteškić had participated in the criminal act.

## **Verdict**

The Osijek County Court has reached a verdict which acquitted the accused Enes Viteškić of all charges, based on Article 354, Item 3 of the Penal Proceedings Law.

In its explanation of the verdict, the Court has stated that the records on interrogation of the following witnesses are considered as a legally valid evidence: Ivan Delija, Anton Jelenić, Josip Smolčić, Vladimir Burić, Željko Petrovicki, Josip Urban, Nikola Huđin, Anto Pranjić, Dragutin Lizak, Ivan Šimičić, Živko Katić, Stana Pokrajac, Franko Križman and Zdravko Andrić, although the mentioned witnesses were interrogated without a presence of defence lawyers and with no possibility for the accused person to be present at their interrogation, and despite the fact that the particular offence constituted a criminal act which strictly required defence. The mentioned persons were interrogated by investigation judge prior to passing the decision on conducting the investigation, i.e. during the pre-investigation procedure, following the instruction issued by the County Attorney on instituting the investigation actions, based on provisions of Article 185, Paragraph 1 of the Penal Proceedings Law, since the perpetrator of the crime was unidentified. Therefore, the investigation actions were conducted in accordance with the law.

The witnesses, who held specific positions at the time of critical event, and as a result of their positions were present at the crime scene immediately after the crime was committed, and consequently had some information about the event in Paulin Dvor, about the persons who had committed the massacre, or they themselves were actually involved in arrangements for disposal of the dead bodies and concealing traces of the crime, have mostly given depositions with wide discrepancies between the statements given to investigation judge during the pre-investigation procedure and the statements given at the court hearing. Therefore, the Court has evaluated the evidence and held them valid; the Court also evaluated the witnesses' depositions and found credible especially those depositions given by witnesses to the investigation judge during the pre-investigation procedure (the witnesses Ivan Delija, Anto Pranjić, Anton Jelenić and Josip Smolčić).

The Court has stated that it is a notorious fact that the aggression launched by the Yugoslav National Army and its allied paramilitary troops consisting of rebellious factions of local Serb population against the Republic of Croatia was in progress at the time of the critical event (11 December 1991).

The Court has ascertained that the village of Paulin Dvor was on the first line of defence at the beginning of December 1991, that the defensive positions along the front line and in the village were held by members of the Croatian Army and that military activities were undertaken on a



daily basis. All participants of those events were familiar with a fact that the remaining inhabitants of Paulin Dvor were grouped and accommodated in a few houses in the village, and the fact that the majority of civilians were accommodated in the house of Andrija Bukvić. The Court has ascertained that Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelić, Milan Katić, D Mitar Katić, Draginja Katić, Vukašin Medić, Darinka Vujnović, Anđa Jelić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić and Marija Sudžuković were accommodated in the mentioned house. Furthermore, the witnesses' depositions have pointed to the fact that a military attack was launched against the mentioned civilians in the evening of 11 December 1991, causing the death of those civilians. All mentioned civilians were of Serb ethnicity, except for Dragutin Kečkeš who was of Hungarian ethnicity.

It has been ascertained that the mortal remains of a group of persons were found in the area of Rizvanuša near Gospić and at the local cemetery in Trpinja. Mortal remains of the following persons were found in the area of Rizvanuša near Gospić: Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelić, Milan Katić, D Mitar Katić, Draginja Katić, Vukašin Medić, Anđa Jelić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić and Marija Sudžuković, while mortal remains of Darinka Vujnović were found at the local cemetery in Trpinja. The mentioned persons died a violent death. Cause of death were gunshot wounds or wounds to the head and other body parts caused by explosive device.

It has been established that the civilians were shot using various types of weapons (at least one of 17 possible types of weapons of calibre 7.62 x 39 was used, as well as at least one of 5 possible types of weapons of calibre 7,9 x 57, and at least one of two possible semi-automatic or automatic hand guns of „CZ – Crvena zastava“ brand, calibre 7,65 mm) and that also mines and explosive ordnance were used (at least one of two possible types of M 75 hand grenade was used).

The Court has stated that in the process of establishing facts about the attack against civilians, it found credible those depositions given by witnesses Josip Urban and Dr. Boris Dumenčić, since those witnesses were giving testimonies on facts they had directly observed, since other established facts had also sustained a credibility of their depositions, and since there were no circumstances which could have caused suspicion concerning the witnesses' objectivity.

However, in its explanation of the verdict, the Court **does not** state which are the specific details, mentioned in the factual description of the criminal act, that are considered definitely established after the conducted procedure. Consequently, except for the above stated description: „...in the evening of 11 December 1991, a military attack was launched against the mentioned civilians, who were accommodated in the house of Andrija Bukvić, causing the death of those civilians“ (page 5), the verdict does not contain explicit words stating a) that the Court deems it indisputable that the presently convicted Nikola Ivanković, as a member of the 2nd Infantry Company of the 1st Battalion of the 130th Brigade of the Croatian Army, together with several unidentified members of the Croatian Army, following the information on the death of their- previously wounded- fellow soldier Ilija Ravnjak, agreed to go to Paulin Dvor and retaliate for Ravnjak's death by killing local villagers of Serb ethnicity, and when they approached the house of Andrija Bukvić in Paulin Dvor, they opened bursts of fire from automatic rifles and threw hand grenades into the premises, thus killing the civilians who were inside the house; and b) that the three or five perpetrators returned to the crime scene and, after they said they would check if all the villagers were dead, they indeed finished them off with knives.

Moreover, the explanation of the verdict does not contain a statement clearly stating which are the facts that the Court has established during the proceedings, regarding a transport of the dead bodies, burial of the mortal remains, removal of traces of the crime by destroying the house in which the civilians were killed, and the order which forbade issuance of any written reports on the event.

The Court has emphasized that the disputable, yet decisive fact, whether accused Enes Viteškić was actually involved in the murder of civilians that he was charged for, is being established using only circumstantial evidence and facts- indications, due to a lack of direct evidence (the accused denied his involvement in committing the criminal act he was charged for, whereas the witnesses who were heard during the evidence procedure had no any direct knowledge on the critical event since they were not eyewitnesses, and the material evidence was destroyed).

The Court has reached a verdict of acquittal for accused Enes Viteškić as it considers that **neither** the repeated trial has succeeded to determine that the facts – indications charging Viteškić were connected in a way which could exclude any other possibility except the one that Viteškić too (along with the presently convicted Ivanković and several other unidentified members of the Croatian Army) was involved in killing of the civilians by opening bursts of fire from automatic rifle and throwing hand grenades.

However, the explanation of the verdict does not clearly state why did the Court reach such a conclusion, i.e. it is not clear what is the Court's opinion on some facts-indications which do sustain charges against the accused Viteškić.

1. Is it about that the Court believes that facts- indications which were already established during the previous trial are not connected in a way that they exclude any other possibility except the possibility that accused Enes Viteškić was also involved in the murder of civilians? (those facts show that accused Enes Viteškić was: a) loading the dead bodies on truck, alongside with the presently convicted Nikola Ivanković; b) attending the meeting in Vladislavci primary school building, chaired by Mirko Grošelj, where the accused was a part of the group of the Croatian Army members whom Grošelj addressed with the words: „You idiots, cretins, you should all be killed and hanged“). Or did the Court reach a verdict of acquittal because this repeated trial denied one of the above mentioned facts- that accused Viteškić himself was participating in loading of the dead bodies?

Namely, the Court explains that „established facts-circumstantial evidence“ show that the accused, alongside with the presently convicted Ivanković, did participate in loading of the dead bodies in Paulin Dvor and that he did attend the meeting in Vladislavci primary school building chaired by Mirko Grošelj, where the accused was a part of the group of the Croatian Army members whom Grošelj addressed with the words: „You idiots, cretins, you should all be killed and hanged“, and lead to a conclusion that there is a greater probability that accused Viteškić was also involved in the murder of civilians in the house of Andrija Bukvić, than the probability that he was not involved in it. However, until the decisive fact remains in a sphere of probability, even at a high degree of probability, the fact cannot be regarded as a definitely established one“ (page 8 of the verdict).

However, the Paragraph 2 and Paragraph 3 on page 7 of the verdict state the following:

„By giving his deposition at the court hearing held on 28 November 2006, witness Anton Jelenić partially departed from the deposition he had given during the pre-investigation procedure since he mentioned at the hearing that he had been thinking a lot about the event and the issue if the person, who had been loading the dead bodies from Andrija Bukvić's house in Paulin Dvor on truck and unloading the bodies in Lug, alongside with Zvonko Andrić and the presently convicted

Nikola Ivanković, was actually Enes Viteškić. According to Jelenić's, newly changed, deposition, the person who was loading the dead bodies only resembled accused Enes Viteškić and that person was actually an unidentified member of the Medical Corps.

Upon the analysis of the changed deposition given by witness Anton Jelenić, the Court has concluded that the same deposition is in accordance with the depositions given by witnesses Darko Bobeta and Dr. Davor Dobutović who stated that they themselves had done the loading, transfer and unloading of the dead bodies, following an order issued by the Commander of the Medical Corps, stating that no other persons beside the members of the Medical Corps had been involved in the mentioned task.

Although the Court does not explicitly state it, such an explanation leads to conclusion that the Court did accept the changed deposition given by witness Anton Jelenić as valid, and that it **does not consider** that the fact -that accused Enes Viteškić participated in loading of the dead bodies- was definitely established. Further on, however, the page 8 of the verdict again contains a statement stating that witness Jelenić did not provide any reasons for his changing of his previous deposition whatsoever, and that the Court regards as credible the deposition given by the witness during the pre-investigation procedure (in which the witness stated that he had seen accused Viteškić, alongside with Ivanković, loading the dead bodies on truck parked in the yard of the Andrija Bukvić's house).

2. In its explanation, the Court did not analyse the depositions of witnesses, and it did not explicitly state its opinion regarding other indications which could actually sustain charges against the accused Viteškić (which was requested by the Supreme Court of the Republic of Croatia), specifically regarding the indication: a) that the accused was in disco in Našice, as a part of the group of soldiers who had been allowed by Grošelj to go to the disco prior to their deployment at a very dangerous military post intended to be a substitute for punishment; b) that the accused was mentioned on some lists of names and in oral statements as being a part of the group which had been transferred to an extremely difficult military post instead of receiving a punishment; c) that the accused was actually engaged in the task of guarding the „Pump“ which had been entrusted to perpetrators of the crime as a substitute for punishment. In his defence plea, the accused did affirm his presence in the disco and at the „Pump“ military post, although he provided another explanation for it.

Moreover, the Court did not analyse either the Request submitted to the Commander of the 101st Brigade, mentioned by witness Franko Križman in his deposition, which contains also the name of Enes Viteškić (*source of information: Appeal No: K-DO-68/02 issued by the Osijek County Attorney's Office on 02 March 2007*).

It is clearly visible that the explanation of verdict in its contents (the same witnesses and the same material evidence are being analysed), in its formulations, and even in the volume of text (less than one page of text of the explanation of verdict is referring to explanation of verdict of acquittal), is no different from the explanation of verdict passed at the previous first-instance court trial. The quoted analysis of the changed section of the deposition given by witness Anton Jelenić is the only part of the explanation of verdict that is new. That particular section was „incorporated“ into a rewritten identical copy – a „copy-paste“ explanation of the verdict passed at the previous first-instance trial which had been prepared by the Council of the Osijek County Court, constituted of judges Dragan Poljak and Dubravka Vučetić, and judges-jurors Zdenka Lubina, Stanislav Karnaša and Karlo Samaržija.

*The court hearings were attended by monitors of the Centre for Peace, Nonviolence and Human Rights Osijek, the OSCE monitors, newsreporters, families of victims, and the family and friends of the accused. Atmosphere in the courtroom was quiet, there was no pressure whatsoever or any comments from the audience. Announcement of the verdict was accompanied by applause of a part of the public but was immediately stopped by the Council's President. There was enough space in the courtroom for the public. Technical conditions were satisfying, except for a poor audio equipment, or lack of it, in the largest courtroom.*