



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 15 September 2008

Judgement Summary For Rasim Delić

Please find below the summary of the judgement read out today by Judge Moloto:

The Trial Chamber is sitting today to deliver its Judgement in the case of Prosecutor versus Rasim Delić. For the purposes of this hearing, I will read out a summary of the Trial Chamber's findings. I would like to emphasise that this is but a summary and that the only authoritative account of the Chamber's findings is the written Judgement, which will be made available at the end of the session.

Introduction

The proceedings of this trial commenced on 9 July 2007 and concluded on 11 June 2008. The Trial Chamber sat 114 trial days and admitted 1399 exhibits into evidence. It also received evidence from a total of 64 Prosecution witnesses and 13 Defence witnesses.

Rasim Delić is charged with four counts of violations of the laws or customs of war pursuant to Article 3 of the Statute of the Tribunal. It is alleged that Rasim Delić, as Commander of the Main Staff of the Army of the Republic of Bosnia and Herzegovina, or "ABiH" for short, incurs individual criminal responsibility under Article 7(3) of the Statute for having failed to prevent the crimes alleged in the Indictment and/or punish the perpetrators thereof.

Counts 1 and 2 of the Indictment charge Rasim Delić with responsibility for murder and cruel treatment in relation to three separate incidents: (1) Maline-Bikoši in June 1993; (2) Livade and the Kamenica Camp in July and August 1995; and (3) Kesten and the Kamenica Camp in September 1995.

The first incident concerns the killing of approximately 24 captured Bosnian Croat civilians and soldiers of the Croatian Defence Council, called "HVO", by foreign Muslim fighters who are known as Mujahedin. In the same incident, at least another six Bosnian Croat individuals were allegedly injured by gunshot wounds. The crimes allegedly took place in June 1993 in the village of Bikoši located in the Travnik municipality in central Bosnia.

The second incident concerns the killing of three captured soldiers of the Army of the Republika Srpska, called "VRS", and the cruel treatment of VRS captives in July and August 1995 at the hands of Mujahedin from the so-called El Mujahedin Detachment, or "EMD" for short, which the Prosecution contends were incorporated in the ABiH. The crimes are alleged to have been committed in the village of Livade in the municipality of Zavidovići and in a camp run by the EMD, in the Gostović valley in the vicinity of Zavidovići. This camp was also known as the "Kamenica Camp". The alleged perpetrators of these crimes are members of the EMD.

The third incident allegedly took place in September 1995. It concerns the killing of two VRS soldiers nearby the village of Kesten in the municipality of Zavidovići, as well as

Internet address: <http://www.un.org/icty>

Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-5343; 512-5356 Fax: +31-70-512-5355

the cruel treatment and the killing of approximately 52 VRS captured soldiers, the killing of an elderly Serb man and the cruel treatment of 10 VRS captured soldiers in the Kamenica Camp. Again, the alleged perpetrators were soldiers of the EMD.

Under Counts 3 and 4, Rasim Delić is charged with individual criminal responsibility for the crimes of rape and cruel treatment. Those crimes allegedly took place in September 1995, and involved three Bosnian Serb women who were detained at the Kamenica Camp. In its Judgement of Acquittal of 26 February 2008, the Trial Chamber held that Rasim Delić had no case to answer in respect of rape under Count 3. Thus, in relation to the events involving the three women, Rasim Delić remains only charged with cruel treatment under Count 4.

Background

The Trial Chamber will now give a brief summary of the background to the events relevant to this case. The events alleged in the Indictment took place against the background of the break-up of the former Socialist Federal Republic of Yugoslavia. In April 1992, an armed conflict broke out in Bosnia and Herzegovina between Serb forces and forces of the Republic of Bosnia and Herzegovina.

In the summer of 1992, the first foreign Mujahedin arrived in the areas of Travnik and Zenica in central Bosnia, mainly with the view to supporting the military struggle against the Bosnian Muslims' adversaries. They settled in various locations without forming a homogeneous entity. A number of different groups comprising foreign and/or Bosnian Mujahedin were active in central Bosnia between 1993 and 1995. In particular, as of late 1992 or early 1993, a group of foreign Mujahedin established a camp in a location called Poljanice, a few hundred metres from the village of Mehurići in the Travnik municipality. Notwithstanding instances of participation in combat alongside each other, it appears that the different groups of Mujahedin were anxious to maintain their distinct identities.

The presence of foreign fighters in central Bosnia and their participation in the war effort did not go unnoticed by the ABiH 3rd Corps and the ABiH Main Staff in Sarajevo. According to a report from mid-1993, those foreigners displayed "conduct that was not befitting that of members of the Army of Bosnia and Herzegovina". On 18 June 1993, the issue of "soldiers from foreign countries" was discussed at a meeting within the ABiH Main Staff. The attendants of the meeting proposed to Rasim Delić, who had been appointed Commander of the Main Staff on 8 June 1993, that those "foreign citizens" should either be sent back to where they had come from, or organised into a unit within the ABiH. On 23 July 1993, Rasim Delić issued a written authorisation to Sakib Mahmuljin, then a member of the 3rd Corps Command, to enter into negotiations with representatives of the "Mujahedin unit from Zenica" on the issues of: (1) including the Mujahedin unit in the ABiH, (2) their use "in joint struggle against the Chetniks" and (3) the manner of their resubordination to the 3rd Corps Command. On 12 August 1993, the Commander of the 3rd Corps, Enver Hadžihanović, submitted a written proposal to the Main Staff in Sarajevo which provided for the organisation of all foreign volunteers in the 3rd Corps' area of responsibility into a detachment within the ABiH. On the following day, 13 August 1993, Rasim Delić signed an order authorising the formation of a detachment named "El Mujahedin". Following its establishment, the EMD significantly grew in size and by 1995 it comprised approximately 1,000 fighters.

Throughout 1993, the ABiH fought on several fronts against both the VRS and the HVO. As a result, central Bosnia remained effectively isolated from the outside world with serious humanitarian consequences for the local civilian population. The hostilities between the ABiH and the HVO came to an end with the so-called Washington Agreement of 18 March 1994. In the summer of 1995, the ABiH intensified military activities in the so-called "Vožuća pocket" in central Bosnia, which was held by Serb forces. In September 1995, the ABiH launched two successful operations called "Uragan" and "Farz", which resulted in VRS forces being driven out of the Vožuća pocket. The EMD played an important role in the

success of these operations. The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the “Dayton Agreement”, was signed on 14 December 1995 and finally brought an end to the conflict.

Crimes Charged in the Indictment

The Trial Chamber will now turn to the crimes alleged in the Indictment.

Maline-Bikoši in June 1993

The events of 8 June 1993 in Maline-Bikoši unfolded in the context of an offensive launched by ABiH forces in the Bila Valley against the HVO. The evidence shows that on and around that day, different groups of Mujahedin, including the one from the Poljanice Camp near Mehurići, and “Abu Hamza’s group” based in Guča Gora or the “Turkish Guerrilla” from Zenica, were also engaged in the fighting at various locations in the Bila Valley.

After taking control of the village of Maline in the morning of 8 June 1993, ABiH soldiers escorted captured Bosnian Croat civilians and HVO soldiers from Maline towards Mehurići in separate groups. Before reaching Mehurići, on their way through Poljanice, these groups were intercepted by armed foreign and Bosnian Mujahedin. The Mujahedin forcibly seized approximately 30 individuals from these groups, including some wounded soldiers, and ordered them to walk back in the direction of Bikoši.

On the way to Bikoši, a lady named Ana Pranješ, who had been joined to the group of captives at one point, was harassed by two foreign Mujahedin and was eventually killed by a volley of gunfire. Ana Pranješ wore a Red Cross armband. When the group reached Bikoši, another captive was shot dead when he attempted to flee. Shortly thereafter, one of the captives started screaming in an epileptic fit. The Mujahedin reacted by opening fire at the entire group. Eventually, 24 individuals were killed, and at a minimum five individuals were seriously injured by gunfire. The Trial Chamber found that the Prosecution had established beyond reasonable doubt the elements of murder and cruel treatment, as violations of the laws or customs of war, under Counts 1 and 2.

With respect to the identification of the Mujahedin perpetrators, the evidence is not clear as to which particular unit or group they belonged. The Trial Chamber took into account several factors to determine the identity of the perpetrators and, for reasons detailed in the written Judgement, reached the conclusion that it was not established beyond reasonable doubt that the perpetrators were Mujahedin from the Poljanice Camp.

Livade and the Kamenica Camp in July 1995

The Trial Chamber will now turn to the events in Livade and the Kamenica Camp in July and August 1995. On 21 July 1995, following a military operation in the “Vozuća pocket” called “Operation Proljeće II”, Mujahedin captured 12 VRS members, including a doctor and a paramedic, and detained them in a two-storey house in Livade for the next two days. For the reasons set out in the written Judgement, the Trial Chamber was satisfied that the 12 detainees had been held in the custody of the EMD.

On two occasions on 21 July 1995, one of the Mujahedin brought to the detainees’ room a severed head from which fresh blood was gushing. These two severed heads belonged to Momir Mitrović and Predrag Knežević. While the detainees did not witness the killing of Momir Mitrović and Predrag Knežević, the Trial Chamber was satisfied, for the reasons set out in the Judgement, that these men had been intentionally killed by the EMD members. The Trial Chamber found that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1.

Between 21 and 23 July 1995, members of the EMD restrained the 12 VRS detainees in uncomfortable positions, and subjected them to various kinds of maltreatment, including

beatings and the display of the freshly severed heads of Momir Mitrović and Predrag Knežević. The Trial Chamber found that this treatment had caused the detainees serious mental and physical suffering, as well as injury, and also amounts to serious attacks on human dignity. The Trial Chamber therefore found that the Prosecution had established beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

On 23 July 1995, the Mujahedin transferred the 12 VRS detainees from Livade to the Kamenica Camp, where they were detained in a derelict house. On the night of that day, a Mujahedin fired a shot in cold blood at one of the detainees, Gojko Vujičić. The head of Gojko Vujičić was subsequently severed and placed on his stomach. Later on, the detainees were forced to kiss the severed head. While at the Kamenica Camp, the VRS detainees were subjected to various other forms of maltreatment and humiliation, including severe beatings and the infliction of electric shocks. On 24 August 1995, they were transferred to the Zenica KP Dom facility. The Trial Chamber was satisfied that in relation to the killing of Gojko Vujičić, the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. In relation to the 12 VRS detainees, the Trial Chamber was satisfied that the Prosecution had established elements of cruel treatment as a violation of the laws or customs of war under Count 2.

Kesten and the Kamenica Camp in September 1995

The Trial Chamber will now turn to the events in Kesten and the Kamenica Camp in September 1995.

In the afternoon of 11 September 1995, a day after Operations Uragan and Farz were launched, soldiers from the 5th Battalion of the ABiH 328th Brigade and Mujahedin captured approximately 60 Bosnian Serb soldiers and civilians, including three women —DRW-1, DRW-2 and DRW-3—, in the vicinity of the village of Kesten. The captives were ordered to walk in a column towards Kesten. On the way, two captives, Milenko Stanić and Živinko Todorović were shot. The Trial Chamber found that an EMD member had killed Milenko Stanić, and that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. However, the Trial Chamber found that the Prosecution had not proved beyond reasonable doubt that Živinko Todorović had been killed by a soldier of the EMD, as alleged in the Indictment.

The Mujahedin and ABiH soldiers then took 52 VRS soldiers to a hall in Kesten. At the hall, ABiH soldiers of the 5th Battalion of the 328th Brigade guarded the detainees. At a certain point, approximately 20 armed Mujahedin barged into the hall, and seized the detainees from the ABiH soldiers at gunpoint. The detainees were transported on two trucks to the Kamenica Camp.

At the Kamenica Camp, some or all of the 52 detainees were incarcerated on two floors of a derelict house. Circumstantial evidence, including exhumation evidence, indicates that those 52 detainees were eventually killed. In light of the evidence as a whole and for the reasons detailed in the written Judgment, the Trial Chamber was satisfied that the 52 Serb men listed in Annex C to the Indictment had been intentionally killed by members of the EMD at the Kamenica Camp between 11 September 1995 and 14 December 1995. The Trial Chamber therefore held that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. However, in light of the insufficient evidence regarding the cruel treatment of the detainees, the Trial Chamber found that in relation to the 52 detainees, the Prosecution had not proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

On or about 17 September 1995, a new group of ten Bosnian Serb captives arrived at the Kamenica Camp and were detained on the ground floor in the derelict house. EMD members subjected them routinely to maltreatment amounting to serious mental and

physical suffering, including beatings and the infliction of electric shocks. Furthermore, Nenad Jović, who had been brought to the Kamenica Camp several days after 17 September, died either as a result of beatings or of drinking unsuitable water, or a combination of both in conjunction with the conditions of detention at the Kamenica Camp. As regards Nenad Jović, the Trial Chamber was satisfied that the Prosecution had proved beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. The Trial Chamber further found that the Prosecution had proved beyond reasonable doubt, in relation to the ten detainees listed in Annex D to the Indictment, the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

In relation to Count 4, the Trial Chamber made the following findings. On 11 September 1995, the three Bosnian Serb women – DRW-1, DRW-2 and DRW-3 – were brought to the Kamenica Camp independently of the 52 VRS soldiers mentioned above. The women were detained at the Kamenica Camp in a wooden shed and routinely subjected by EMD members to acts amounting to serious mental and physical suffering, including beatings, as well as the infliction of electric shocks. The Trial Chamber therefore found that the Prosecution had proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 4.

Individual Criminal Responsibility

The Trial Chamber will now discuss whether Rasim Delić can be held responsible under Article 7(3) for not having prevented the crimes described above and/or punished the perpetrators thereof. The Trial Chamber will thus examine whether (1) there existed a superior-subordinate relationship between Rasim Delić and the said perpetrators; (2) Rasim Delić knew or had reason to know about the commission of these crimes and, if so, (3) whether he took any necessary and reasonable measures to prevent or punish the crimes in question.

Superior-Subordinate Relationship

As regards the existence of a superior-subordinate relationship between Rasim Delić and the perpetrators of the crimes in Bikoši in 1993, the Trial Chamber recalled its earlier finding that it was not proved beyond reasonable doubt that the perpetrators, as alleged by the Prosecution, had been Mujahedin of the Poljanice group. The Trial Chamber, nonetheless, examined the Prosecution's contention that on 8 June 1993, the Poljanice Mujahedin had been de facto subordinated to the 3rd Corps. In this regard, the Trial Chamber noted that there is no specific evidence concerning orders received by the Poljanice Mujahedin from units of the ABiH. In particular, the evidence only shows that on 8 June 1993, Mujahedin from the Poljanice Camp engaged in the fighting against the HVO in the Bila Valley simultaneously as units of the ABiH. Furthermore, while the evidence shows that the Mujahedin from the Poljanice Camp and the ABiH soldiers were aware of each other's presence, the evidence is unclear whether the two groups were acting in concert. Thus, the Trial Chamber was not satisfied that the Poljanice Mujahedin had been de facto subordinated to Rasim Delić.

In relation to the Mujahedin groups in general, the Trial Chamber was also not satisfied that these groups had been de facto subordinated to Rasim Delić. It found that the relationship between any groups of foreign Mujahedin and the ABiH at that time was appropriately characterised as cooperation between separate and independent military entities, rather than subordination of the Mujahedin within a single military structure.

The Trial Chamber also found that the evidence did not establish beyond reasonable doubt that Rasim Delić was already the Commander of the ABiH Main Staff when the killings in Bikoši occurred. In this regard, the evidence shows that the incident took place at some time in the afternoon of 8 June 1993, while the RBiH Presidency elected Rasim Delić as Main

Staff Commander some time after 14:00 hours. Rasim Delić did not assume this position until between 19:00 and 21:00.

In conclusion, the Trial Chamber found that no superior-subordinate relationship had existed between Rasim Delić and the perpetrators of the killings in Bikoši on 8 June 1993. Consequently, Rasim Delić, does not incur individual criminal responsibility pursuant to Article 7(3) of the Statute for the crimes committed in Bikoši on 8 June 1993.

Turning to the issue of whether a superior-subordinate relationship existed between Rasim Delić and the EMD members who committed the crimes between July and September 1995, the Trial Chamber recalled that the EMD had come into existence as unit of the ABiH 3rd Corps by virtue of an order of 13 August 1993 signed by Rasim Delić. The Trial Chamber was satisfied that from the time of its establishment in August 1993 until its disbandment in December 1995, the EMD had been a unit *de jure* subordinated to the ABiH 3rd Corps or to one of the units that had been subordinated in turn to the ABiH 3rd Corps. Since Rasim Delić was the *de jure* superior of the 3rd Corps, it follows that the EMD was *de jure* subordinated to Rasim Delić.

The Trial Chamber was then confronted with one of the salient questions in this case, namely, whether the EMD had been “under the command and effective control” of Rasim Delić, as alleged in the Indictment. In this regard, the Chamber examined a number of different indicators which it considered suitable to determine whether effective control in this particular case existed. These indicators are spelled out in the written judgement and include, *inter alia*, EMD compliance with different ABiH orders, the participation of the EMD in ABiH combat operations, the mutual assistance and relationship between ABiH and EMD, the procedure of reporting followed by the EMD, the EMD’s relationship with authorities outside the ABiH, the ability to investigate and punish EMD members, appointments and promotions of, and awards to EMD members by the ABiH and finally, the disbandment of the EMD.

Based on these indicators, the Majority of the Trial Chamber, Judge Moloto dissenting, found that the structure, organisation and command and control within the ABiH had improved significantly from the time when Rasim Delić had been appointed as Commander of the Main Staff on 8 June 1993 until the EMD had been disbanded in December 1995 at the end of the armed conflict in Bosnia and Herzegovina. In the Majority’s view, when the crimes were committed in Livade and Kamenica in July and September 1995, Rasim Delić was in a consolidated position which enabled him to enforce his decisions upon his subordinates, including the EMD and its members.

During Operation Farz, which was conducted under the overall command and control of Rasim Delić, the EMD breached combat orders by failing to hand over enemy captives. These captives ended up being subjected to the crimes committed by members of the EMD in July, August and September 1995. ABiH officers were denied access to these detainees during their detention at the Kamenica Camp. Several witnesses testified that, in their view, nothing could be done to discipline the EMD since coercive measures would have entailed a violent conflict with the EMD, but this position is not borne out by facts adduced in the evidence. However, rather than saying that nothing could be done to oppose undisciplined behavior of EMD members, the Majority found that in fact nothing was done or even attempted to be done, in particular in connection with the alleged violations of international humanitarian law during the detention of enemy soldiers and civilians by the EMD. In this regard, the Majority recalled that foreign members of the EMD had been subject to criminal proceedings in some instances of illegal behaviour, although not for violations of international humanitarian law. In the Majority’s view, this confirms that the superior commanders did have the material ability to prevent and/or punish crimes committed by the EMD.

For the foregoing reasons, which are spelled out more in detail in the written Judgment, the Majority, Judge Moloto dissenting, found beyond reasonable doubt that

Rasim Delić had effective control over the EMD in the period from July to December 1995. Consequently, the Majority was satisfied that a superior-subordinate relationship had existed between Rasim Delić and the EMD perpetrators of the crimes committed in July, August and September 1995, as charged in the Indictment.

Judge Moloto, in his dissenting opinion, held the view that Rasim Delić did not have effective control over the EMD at any time from the time of his assumption of duties as the Commander of the Main Staff of the ABiH on 8 June 1993, until the EMD was disbanded in December 1995. He noted that the EMD throughout 1995 erratically complied with the ABiH orders and made its participation in combat contingent on certain requirements. The EMD carried out the tasks given by the ABiH only when it chose to do so. The evidence shows that the issuing of ABiH orders was preceded by an “agreement” between with the EMD, and, in Judge Moloto’s view, this was inconsistent with the system of command and control.

Judge Moloto also noted that the Majority seemed to draw Rasim Delić’s effective control from the fact that he did not take measures against the EMD, while he could do so. He respectfully held that Rasim Delić’s inaction only confirmed, in light of the totality of the evidence, the absence of his effective control. To this end, he recalled that, despite the fact that the ABiH, on some occasions, took investigative steps against EMD members, all attempts to punish the EMD members for their criminal behaviour inevitably failed. Therefore, Judge Moloto respectfully submitted that the Majority failed to show in practice that Rasim Delić had the material ability to punish members of the EMD.

The Majority will now turn to the issue whether Rasim Delić had knowledge or had reason to know that the crimes of murder and cruel treatment were about to be or had been committed by members of the EMD between July and September 1995.

Knowledge/Reason to Know of the Livade/Kamenica Camp Crimes and Rasim Delić’s Failure to Prevent or Punish

As regards the crimes committed in Livade and the Kamenica Camp in July and August 1995, the evidence shows that information concerning the capture of the VRS soldiers by the EMD in July 1995 was reported to the Main Staff Security Administration. These reports formed the basis for Bulletin 137, which was sent to KM Kakanj on 22 July 1995 with the instruction to forward it to Rasim Delić. The bulletin informed Rasim Delić that VRS detainees were held by the EMD and that they did not allow anyone access to these detainees. However, it did not make any reference to crimes committed by EMD members against the detainees.

The Majority was not satisfied that Rasim Delić had knowledge of the crimes in July and August 1995 as there is no evidence, either direct or circumstantial, from which to infer that Rasim Delić was actually aware that EMD members were about to commit or had committed such crimes. The Majority will therefore turn to the issue whether Rasim Delić “had reason to know”, namely, whether he had information available that was sufficiently alarming to put him on notice of the risk that crimes might be committed by his subordinates.

The Majority recalled that the jurisprudence of the Tribunal requires that, to establish knowledge of a superior, the relevant information only needs to have been provided or available to the superior or in his possession. It is not required that a commander actually acquainted himself with the information. For reasons detailed in the Judgement, the Majority was satisfied that the information contained in Bulletin 137 had been conveyed to Rasim Delić.

The next question is whether Rasim Delić had additional information which would qualify the report on the capture of VRS detainees contained in Bulletin 137 as sufficiently alarming. In this regard, the Majority examined whether Rasim Delić had knowledge of subordinates’ past offences and if he had failed to punish them. It therefore took into

account (1) the crimes in Bikoši in 1993 (2) the killing of a humanitarian worker in 1994 and (3) other instances which show the general propensity of EMD members to commit crimes.

In relation to the crimes in Bikoši, the evidence shows that in October 1993, Rasim Delić initiated an investigation into the alleged execution of a group of Croats by Mujahedin after he was requested to do so by President Izetbegović. As result of the investigation, Rasim Delić was informed that 25 Bosnian Croat civilians died in combat activities around 8 June 1993. The Prosecution contends that the investigation was not “real” and that Rasim Delić was, in any way, personally informed of the crimes by one of his deputies in early summer 1993. The Majority dismissed the Prosecution’s contention and noted that no substantiated claims regarding the killings had been brought to the attention of Rasim Delić after the investigation. In addition, even assuming that the allegations raised by the deputy would have called into question the reliability of the investigation, the information available to Rasim Delić indicated that the perpetrators of the crimes in question were “the Mujahedin” and did not allow for the conclusion that they were the men who later formed the EMD.

It follows that his failure to conduct further enquiry into the allegations raised in 1993 cannot be considered as an indicator that Rasim Delić had sufficiently alarming information that future similar crimes could be committed by the EMD in 1995, more than two years after the Bikoši events.

The Majority then examined whether the alleged killing of Paul Goodall, a British humanitarian worker, by members of the EMD would provide Rasim Delić with sufficiently alarming information. In early 1994, a joint military-civilian force arrested three suspects, two of whom were identified as members of the EMD. The Majority took into account the fact that Rasim Delić had been aware that adequate measures had been taken to punish the perpetrators and that no subsequent incidents of murder by EMD members had been reported to him in the following sixteen months. These circumstances, in the Majority’s view, militate against his reason to know that similar crimes would be committed in July and August 1995 by the same group of subordinates.

The Majority also examined other instances in which Rasim Delić had been informed, via bulletins sent by the Security Administration, of incidents of misconduct involving EMD members, some of which amounted to criminal offences, including physical assaults. The Majority was of the view that these incidents had called for further inquiry on the part of Rasim Delić, in particular with a view to preventing the commission of war crimes by EMD members. The Majority was therefore satisfied that the EMD’s record of misdemeanours and criminal offences had constituted information which would qualify the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to justify his immediate intervention to determine whether the EMD was about to commit or had committed crimes in July and August 1995. In failing to conduct any enquiry, Rasim Delić accepted the risk of the commission of those crimes. In particular, in light of the entire evidence, the Majority was satisfied beyond reasonable doubt that Rasim Delić had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against these detainees. However, as explained in more detail in the Judgement, the Majority found that the information available to Rasim Delić about the propensity of EMD members to commit crimes had not been sufficiently alarming to put him on notice that the crime of murder might be committed by such members.

The Majority also found that Rasim Delić had failed to take the necessary and reasonable measures to prevent the crimes in July and August 1995 and, after the commission of those crimes, to punish the perpetrators thereof. In this regard, the Majority was satisfied that there is no evidence to indicate that Rasim Delić had reacted in any way to the information contained in Bulletin 137 of 22 July 1995 about the capture of VRS soldiers by the EMD. Nor is there any other piece of evidence which would suggest that Rasim Delić attempted to find out more about the fate of the detainees in the custody of the EMD.

Knowledge/Reason to Know of the Kesten/Kamenica Camp Crimes and Rasim Delić's Failure to Prevent or Punish

As regards the crimes committed in Kesten and the Kamenica Camp in September 1995 by EMD members, the evidence shows that the Main Staff Security Administration received a report from the Security Service of the 3rd Corps on 16 September 1995. This report forwarded an intercepted fax of the EMD stating that "the Mujahedin gained ground and entered a group of Serbian villages, and took 60 prisoners after the killing." However, this information was not included in the bulletins sent to Rasim Delić. Rather, the report of 16 September 1995 was eventually deposited with the Counter-Intelligence Department of the Security Administration. There is no evidence that Rasim Delić had information in his possession that the EMD had taken captives, much less that any crimes were committed against them. Contrary to the Prosecution's contention, the Majority was not satisfied that the Security Administration of the Main Staff, or any other source had informed Rasim Delić of the capture and killing of the captives. The Majority noted that, unlike the bulletins which had been provided specifically to Rasim Delić, there is no evidence that information in the possession of the 3rd Corps and two articles published in ABiH gazettes was available to Rasim Delić, or that the information contained therein was brought to his attention.

Finally, the Majority examined a number of bulletins received by Rasim Delić during the period from August to September 1995 containing information on criminal behaviour of EMD members. However, the Majority found that, in the absence of evidence that Rasim Delić had known that Bosnian Serb soldiers and civilians were detained by the EMD, the information contained in the bulletins alone was insufficiently alarming to put him on notice of the risk of the crimes committed in Kesten and the Kamenica Camp in September 1995. The Majority found that it could not be concluded beyond reasonable doubt that Rasim Delić had reason to know that the EMD was about to commit or had committed the crimes of murder and cruel treatment against Bosnian Serb soldiers and civilians in Kesten and the Kamenica Camp in September 1995.

To sum up, the Majority only found beyond reasonable doubt that Rasim Delić, as a superior, had reason to know of the crime of cruel treatment committed by EMD members against 12 VRS detainees and had failed to prevent and punish this crime. Rasim Delić, therefore, incurs individual criminal responsibility for the crime of cruel treatment under Article 7(3) of the Statute.

Sentencing

The Majority will now turn to the matter of sentencing.

In relation to the gravity of the crimes, the Majority, *inter alia*, recalled the appallingly brutal nature of the acts of mistreatment against the 12 VRS soldiers, which had lasted more than one month, and the physical and mental suffering that the victims had endured while subjected to such abysmal treatment during their detention in Livade and the Kamenica Camp. The Majority also noted that the victims had been detained under strict guard of the EMD. This situation rendered the victims particularly vulnerable. The Majority was also mindful that it had found Rasim Delić to have had imputed knowledge of these crimes, as opposed to actual knowledge.

The Prosecution submits that the fact that Rasim Delić held "the highest military position" in the ABiH must be considered as an aggravating circumstance. The Majority, however, recalled the Appeals Chamber's holding that "in the context of a conviction under Article 7(3) of the Statute, use of the superior's position of authority as an aggravating circumstance would be inappropriate since it is itself an element of criminal liability." It is the superior's abuse of authority that may be taken into consideration. In this case, there is no evidence suggesting that Rasim Delić abused his authority.

As mitigating circumstances, the Majority took into account the voluntary surrender of Rasim Delić, his family circumstances, the absence of a prior criminal record and his good character as represented by, among others, his efforts to disseminate international humanitarian law within the ABiH and his substantial involvement in the negotiation of peace accords, including the Dayton Agreement. The Majority also took into consideration the fact that Rasim Delić had faced a number of extraordinary challenges and difficulties from the moment he took office as ABiH Main Staff Commander on 8 June 1993, including the lack of organisation and equipment within the ABiH, and a number of senior officers who had not immediately accepted the authority of Rasim Delić.

Disposition

Mr. Delić, would you please rise.

This Trial Chamber, having considered all of the evidence and the arguments of the Parties, and based upon the factual and legal findings as determined in the judgement, unanimously finds you, Rasim Delić, **NOT GUILTY** pursuant to Article 7(3) of the Statute and therefore **ACQUITS** you of the following counts:

Count 1: Murder as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute;

Count 2: Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute, in relation to the events in Bikoši on 8 June 1993, as well as the events in Kesten and the Kamenica Camp in September 1995;

Count 4: Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute.

The Trial Chamber, by majority, Judge Moloto dissenting, finds you, Rasim Delić, **GUILTY** pursuant to Article 7(3) of the Statute of the following count:

Count 2: Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute, in relation to the events in Livade and the Kamenica Camp in July and August 1995.

The Trial Chamber, by majority, hereby sentences you, Rasim Delić, to a single sentence of three years of imprisonment. You have been in custody for 488 days. Pursuant to Rule 101(C) of the Rules, you are entitled to credit for the period of time you have been in custody towards service of the sentence imposed. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

Judge Moloto appends a dissenting opinion. He also places on record that he participated in the deliberations on and agreed with all findings on Rasim Delić's notice and failure to prevent and punish. However, based on his conclusion on effective control, as detailed in his dissenting opinion, he dissented from the sentence that the Majority imposed on Rasim Delić.
