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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 2 April 2007

SUMMARY OF APPEALS CHAMBER JUDGEMENT FOR MIROSLAV BRALO

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

The facts giving rise to the present appeal took place from April to July 1993 in Central Bosnia, in the villages of Ahmići, Nadioći and surrounding areas. Miroslav Bralo was born on 13 October 1967 and was a member of the *Jokeri*, a Croatian Defence Council (HVO) 4th Military Police Battalion anti-terrorist unit. On 16 April 1993, he participated in an attack on Ahmići, the objective of which was to ethnically cleanse the village, to kill the Muslim men of weapons-bearing age, to burn all of the houses belonging to Muslims, and to expel all of the Muslim inhabitants out of the village.

In the Sentencing Judgement of 7 December 2005, the Trial Chamber sentenced Miroslav Bralo to a term of imprisonment of 20 years after accepting his guilty plea of 19 July 2005 regarding eight counts against him, specifically:

- one count of persecution on political, racial and religious grounds pursuant to Articles 5(h) et 7(1) of the Statute;
- four counts of grave breaches of the Geneva Conventions of 1949, including acts of torture or inhuman treatment and unlawful confinement, punishable under Articles 2(b), 2(g) and 7(1) of the Statute;
- three counts of violations of the laws or customs of war punishable under Articles 3 and 7(1) of the Statute, including murder, torture and outrages upon personal dignity including rape.

Mr Bralo appealed the Sentencing Judgement on 5 January 2006 and filed his Appeal Brief on 30 March 2006. I would recall that during the appellate proceedings the Appeals Chamber admitted three additional exhibits in accordance with Rule 115 of the Rules of Procedure and Evidence. We also received two additional briefs from the Appellant in support of his second and third grounds of appeal. Finally, it should be noted that the Prosecution requests that all of the Appellant's grounds of appeal be dismissed.

The Appellant argues in general that the Trial Chamber erred in law and abused its discretion by imposing an excessive sentence. He asserts that the sentence imposed on him resulted in a miscarriage of justice since it fails to appropriately take into account the significant mitigating circumstances of the case. In support of his appeal, he submits in particular that:

- first, the Trial Chamber was wrong to consider that certain factors were "not relevant to sentence" and find that they did not constitute a mitigating circumstance;
- second, the Trial Chamber did not attach sufficient weight to the factors it accepted; and
- finally, the Trial Chamber should have pronounced a lighter sentence, considering the number and significance of the mitigating circumstances.

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The Appeals Chamber has examined each of these claims as separate grounds of appeal. Before addressing them, it is appropriate to recall the applicable criteria for alleged errors of fact and of law in an appeal.

Appeals against sentencing judgements, like those against any judgement, are appeals *stricto sensu*; they are of a “corrective nature” and do not result in trials *de novo*. The Appeals Chamber will in principle take into account only the following factual evidence: evidence referred to by the Trial Chamber; evidence contained in the trial record and referred to by the parties; and additional evidence admitted on appeal. The Appeals Chamber notes that whenever it is seized of an error of fact or of law with respect to mitigating circumstances, the conclusion that a fact represents a mitigating circumstance is arrived at on the balance of probabilities.

Under Article 25 of the Statute, the role of the Appeals Chamber is limited to correcting errors of law invalidating a decision and errors of fact which have occasioned a miscarriage of justice. Trial Chambers are vested with a broad discretion in determining an appropriate sentence. To a large extent, this stems from their obligation to individualise the penalties to fit the individual circumstances of the accused and the gravity of the crime. Accordingly, as a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a discernible error in exercising its discretion or has departed from the applicable law. It is for the Appellant to demonstrate how the Trial Chamber ventured outside its large discretionary framework in imposing the sentence.

We will now examine the first ground of appeal regarding the factors which, according to the Appellant, the Trial Chamber failed to consider as mitigating. More specifically, the Appellant refers to the following:

- 1) the deteriorating military and political situation in the Lašva Valley in 1992 and 1993;
- 2) the attack against the Appellant and his wife in their home in February 1993;
- 3) the fact that the Appellant was released from prison in exchange for his participation in the attack against the village of Ahmići;
- 4) the way in which he was used by his superiors.

Generally, the Appeals Chamber observes that even if the Appellant alleges that the Trial Chamber erred in law by failing to take certain factors into account, the issue before it is not to determine whether the factors mentioned by the Appellant constitute mitigating circumstances in law, but whether the Trial Chamber improperly exercised its discretion by deciding which factors to consider. Moreover, the only mitigating circumstance that Trial Chambers are required to consider by law, in accordance with Rule 101(B)(i) of the Rules of Procedure and Evidence, is cooperation with the Prosecution by the Accused.

As regards the deteriorating military and political situation in Vitez, the Appeals Chamber notes, as the Appellant acknowledges, that the Trial Chamber did in fact take into account the arguments put forward in his sentencing brief and during the sentencing hearing. The Trial Chamber did not therefore disregard the Appellant’s arguments, but rather declined to consider that a chaotic context was a mitigating circumstance. The Appellant simply repeats once again his submissions to the Trial Chamber and fails to demonstrate that the Trial Chamber committed a discernible error. In any case, the Appeals Chamber has already concluded that the chaotic context of a conflict may not be considered as a mitigating circumstance. For these reasons, this part of the first ground of appeal raised by the Appellant is dismissed.

With regard to the attack against the Appellant and his wife in their home in February 1993, the Appeals Chamber notes that the Trial Chamber examined the Appellant’s submissions in light of the military and political situation in Vitez municipality. The Appeals Chamber considers that the Trial Chamber had no need to rely on specific examples. Whether the chaotic context is borne in mind or whether specific examples of attacks against houses are considered, the reasoning is the same: any participants in a

conflict have an obligation to reduce that chaos and respect international humanitarian law. An Accused may not therefore rely solely on the fact that his home was attacked to request a reduction in the sentence imposed on him for crimes he committed subsequently. Consequently, this part of the Appellant's first ground of appeal is dismissed.

Finally, regarding the arguments related to duress and the orders given by his superiors, the Appeals Chamber notes that the Appellant acknowledged that he "always refused to plead duress or that he was acting under superior orders", and from that infers that he does not intend to raise these defences for the first time on appeal. The Appeals Chamber notes that at the time the sentence was determined, the Appellant only indicated that his superiors had used him. The Trial Chamber specifically had these arguments in mind and recognized that the Appellant had been released from prison in exchange for his participation in the attack against Ahmići and that, to a certain extent, he had been pressured to rejoin the ranks of the *Jokeri* and to actively participate in HVO combat operations. The Appeals Chamber stresses the fact that the Appellant, who does not dispute the Trial Chamber's conclusions, does not claim that the pressure exerted on him to join the *Jokeri* was stronger than the Trial Chamber considered it was. The Appeals Chamber considers that the Appellant's arguments relate to his feeling that he was obligated to obey illegal orders. Nevertheless, the Appeals Chamber agrees with the Prosecution and finds that the Appellant has failed to demonstrate that he obeyed illegal orders under "duress". The Trial Chamber rightly concluded that "it is the duty of any person involved in an armed conflict to comply fully with the relevant norms of international humanitarian law and, while Bralo may have been pressured to participate in combat activities, he remained legally and morally obliged to conduct himself in accordance with those norms." Moreover, the Appeals Chamber considers that the Appellant not only failed to oppose the illegal orders, but acted on them enthusiastically and willingly, as shown by the Trial Chamber's conclusions regarding his desire to humiliate his victims. Consequently, the Appeals Chamber concludes that the Appellant has failed to demonstrate that the Trial Chamber committed a discernable error when it found that the pressure exerted on him did not constitute a mitigating circumstance. Accordingly, the first ground of appeal is dismissed in its entirety.

In his second ground of appeal, the Appellant argues that the Trial Chamber erred by failing to give sufficient weight to his personal situation and to the "very positive effect of his cooperation with the Prosecutor, the Tribunal and the residents of Ahmići."

As regards the argument whereby the Trial Chamber only took into account evidence of the Appellant's "prior good character" and "family situation" in its assessment of his personal situation, the Appeals Chamber recalls that the Trial Chamber is not required to examine the arguments of the Appellant in any given part of the Judgement. In this case, the Trial Chamber took into account all of the circumstances of the case and did not attach any weight to them.

With regard to the Trial Chamber's alleged failure to attach sufficient weight to the fact that the Appellant had lost his job as a result of the war, the Appeals Chamber considers that the Appellant has failed to demonstrate how the loss of his job, in the difficult economic conditions which prevailed after the disintegration of Yugoslavia, could have placed him in a more difficult situation compared to that of other inhabitants in the region.

With regard to the Appellant's argument that the home in which he was born and raised was located on the front-line, the Appeals Chamber notes that it was not put forth at the time the sentence was determined and, as such, the Appeals Chamber has no information to assess it. Consequently, the Appeals Chamber will not entertain that argument.

Regarding the objection that the Trial Chamber failed to take into account the fact that the HVO detained the Appellant for nearly two years after his attempted surrender in

1997, the Appeals Chamber notes that it is in fact not certain whether the Trial Chamber specifically took this factor into account. That being the case, even if that factor was not taken into account, the Appeals Chamber considers that the Appellant has failed to establish what impact it could have had on his sentence, especially since he failed to explain why he remained in HVO custody. The Appeals Chamber concludes that the Appellant has failed to establish that the Trial Chamber committed a discernable error in exercising its discretion by failing to take this factor into account.

As regards the balance between the seriousness of the crimes committed by the Appellant and his personal situation, the Appeals Chamber recalls its established case-law whereby a Trial Chamber is open “to weigh the mitigating circumstances against other factors, such as, the gravity of the crime, the particular circumstances of the case and the form and degree of the participation of the accused in the crime.” The Appeals Chamber notes that in this case, when the Trial Chamber assessed the factors to take into account in sentencing, it considered that the crimes committed by the Appellant were “extremely serious”. Beyond the “inherently shocking nature of these crimes”, the Trial Chamber particularly took into account the manner in which they were committed and the impact they had on the victims. The Appeals Chamber considers therefore that by assessing the specific circumstances of the Appellant, the Trial Chamber also rightly took into account the seriousness of the crimes. This part of the second ground of appeal raised by the Appellant is therefore dismissed.

I will now move on to the next part of this ground of appeal regarding the Appellant’s cooperation.

Regarding the argument whereby the Trial Chamber failed to take into account his conciliatory attitude prior to the guilty plea, the Appeals Chamber considers that by failing to explain how the Trial Chamber made a discernable error, the Appellant failed to discharge the applicable burden in his appeal. His arguments are therefore dismissed because they are evidently unfounded.

As regards the importance of the guilty plea and the summary of facts, the Appeals Chamber recalls that, pursuant to Rule 62 *bis* (iv) of the Rules, the plea agreement must only be founded on a “sufficient factual basis” agreed by the Parties, which is assessed during the evaluation of the guilty plea. Nevertheless, this does not preclude the Trial Chamber from considering any other additional information provided by the Accused, going beyond the “sufficient factual basis” necessary for the acceptance of the plea. The Appeals Chamber concludes that by taking into account the fact that the Appellant had provided information about other crimes when it assessed the value of his guilty plea and considered that it constituted a “significant factor in mitigation”, the Trial Chamber committed no discernable error by not attaching any particular weight to that factor, beyond the significant weight already given to his guilty plea.

With respect to the Appellant’s argument that he helped to “establish a record of the past”, the Appeals Chamber considers that while the Trial Chamber did not specifically mention this contribution, it is by its very nature taken into account in the weight attached to the guilty plea. The contribution of an Accused to the establishment of the truth is indeed one of the reasons given in the case-law of this Tribunal and the Tribunal for Rwanda for considering guilty pleas as mitigating factors. As such, that contribution had an influence on the Trial Chamber’s decision to attach significant weight to the Appellant’s guilty plea.

With respect to the Appellant’s argument that particular weight should be attached to the fact that he was the first accused in a series of cases relating to Lašva Valley to have pleaded guilty prior to the trial, the Appeals Chamber notes that the Trial Chamber specifically took this factor into account when it assessed the value of the guilty plea and the Appellant’s remorse. Consequently, the Appeals Chamber considers that the Appellant has failed to establish that the Trial Chamber erred in exercising its discretion.

Finally, with regard to the Appellant's assertion that his guilty plea "resulted in major savings of time, money, and other resources", the Appeals Chamber notes that this issue was carefully examined by the Trial Chamber which concluded that the avoidance of a lengthy trial was, admittedly, a factor to be taken into account in sentencing, but that it should not be given undue weight. The Appeals Chamber considers that in this case, the Appellant has failed to establish that the Trial Chamber committed a discernable error in assessing the value of his guilty plea.

The Appeals Chamber therefore concludes that the Appellant has failed to establish how these factors, which were given substantial weight in mitigation of the sentence, should have been taken into account separately within the context of "cooperation" and why they deserved extra weight. This part of the second ground of appeal raised by the Appellant is dismissed.

The Appellant then submits that the Trial Chamber should have considered his cooperation with the Prosecution as "substantial" and given it weight as such, while the Trial Chamber considered the cooperation "moderate".

Although cooperation with the Prosecution is the only mitigating factor referred to expressly in the Rules, the Appeals Chamber notes that "substantial cooperation" is not defined, and it is for the Trial Chamber to assess the scope and nature of the cooperation provided by the Appellant. The assessment of whether or not the cooperation is "substantial" for the most part depends on the specific circumstances of the case. That assessment cannot be based on one single act of an Accused, but rather on the overall efforts he has made in this regard. The characterisation of an Accused's cooperation with the Prosecution as "substantial" will hinge in particular on the quantity *and* quality of the information provided.

The Appeals Chamber considers that this quality is measured essentially by the "precise content" of that information. In this connection, the disclosure of new information, presented for the first time to the Tribunal, must be considered as a particularly significant factor. Accordingly, the content of the information provided is not the only factor to be taken into account to assess the quality of that information, since quality also depends, as the Prosecution noted, on the seriousness with which the Accused provided the information. Finally, the Appeals Chamber considers that the Prosecution's effective use of this information in other cases before the Tribunal is not, contrary to the Appellant's assertion, sufficient to prove its quality.

In view of these conclusions, the Appeals Chamber first determined whether the Trial Chamber correctly took into account all the evidence that had been put before it in assessing the Appellant's cooperation with the Prosecution. With regard to the documents provided by the Appellant in 1997, the Appeals Chamber notes that the Trial Chamber took into account that they were used in other cases, and therefore bore in mind that the Appellant had provided them when assessing his cooperation with the Prosecution. As regards the Trial Chamber's assessment of the value of the factual basis upon which the guilty plea rests, the Appeals Chamber, while concurring with the Trial Chamber that the use of that information is not sufficient to prove its quality, notes that the Appellant's references to the proceedings in the request for review in the *Blaškić* case do suggest that the information is helpful to the Prosecution. Nevertheless, the Appeals Chamber notes that cooperation must be considered as a whole.

In the context of this analysis, the Appeals Chamber notes that particular attention should be paid to the willingness of an Accused to cooperate, which motivates his efforts and is exemplified in particular by the seriousness with which he discloses the information to the Prosecution. In this case, the Appeals Chamber notes that the Trial Chamber, while taking into account the fact that the Appellant was willing to testify in other cases, noted that he refused to meet with the Prosecution for questioning. The Appeals Chamber also

notes that the Plea Agreement presented to the Trial Chamber did not specify, unlike others, that the Appellant had pledged his cooperation.

In view of these factors, the Appeals Chamber considers that the Trial Chamber did not err in finding that the Appellant, although not obstructive, nevertheless made no genuine commitment to cooperate with the Prosecution. Consequently, the Trial Chamber did not err, based on the evidence before it, in characterizing the Appellant's cooperation as "moderate".

With regard to additional evidence, the Appeals Chamber notes that the evidence provided by the Appellant was used in the *Blaškić* and *Kordić and Čerkez* cases, and as supporting material accompanying the Indictment in the *Ljubičić* case and during the subsequent transfer of that case from the Prosecution to Bosnia and Herzegovina, in accordance with Article 11 *bis* of the Statute. The Appeals Chamber also notes that this evidence was used during the review proceedings in the *Blaškić* case, but only as corroborative evidence. The Appeals Chamber is therefore not convinced that the quality and quantity of the information contained in the additional evidence is of such a character to conclude that the Appellant's cooperation was "substantial".

Considering the additional evidence admitted on appeal, taken in conjunction with the evidence presented to the Trial Chamber, the Appeals Chamber concludes that the Appellant has failed to demonstrate that his cooperation was in fact "substantial". This part of the second ground of appeal raised by the Appellant is dismissed.

As regards the Appellant's argument that the Trial Chamber failed to appropriately consider the particular significance of his cooperation for the inhabitants of Ahmići, the Appeals Chamber observes at the outset that the Appellant acknowledges that the Trial Chamber took into account his conduct after the conflict. The Trial Chamber concluded that the Appellant's efforts to make amends expressed genuine remorse, and agreed that the fact that he acknowledged his wrongdoing was extremely important for the entire community and contributed to healing and reconciliation. The Appeals Chamber observes that the Trial Chamber considered that the genuine remorse expressed by the Appellant constituted a factor in mitigation to which it attached significant weight. The Appellant has failed to demonstrate why the Trial Chamber should have taken these factors into account separately and given them weight as "efforts towards cooperation", even though the Trial Chamber considered them elsewhere as mitigating factors to which it attached significant weight. The Appeals Chamber considers in particular that the Trial Chamber could perfectly consider that the assistance he provided to help locate crime scenes and burial sites, along with his assistance in mine-clearing operations, is evidence of his remorse and of his efforts to make amends for his crimes. The Trial Chamber was not required to take these factors into account to assess his cooperation. This part of the second ground of appeal raised by the Appellant is dismissed.

Finally, as for the Appellant's argument whereby the expression of genuine remorse, going beyond the simple acknowledgment of his crimes by pleading guilty, is one of the most significant and complete mitigating factors, the Appeals Chamber recalls that the Trial Chamber considered the Appellant's genuine remorse to be a mitigating factor to which it attached significant weight. The Appeals Chamber considers that the Appellant has failed to demonstrate that the Trial Chamber committed a discernable error in exercising its discretion. Consequently, this part of the second ground of appeal raised by the Appellant is dismissed.

For the foregoing reasons, the Appellant's second ground of appeal is dismissed in its entirety.

In his third ground of appeal, the Appellant submits that, after considering that the mitigating circumstances - taken as a whole - should substantially mitigate punishment, the

Trial Chamber erred in exercising its discretion when it reduced the overall sentence by only five (5) years.

The Appeals Chamber notes that after determining the weight to attach to the mitigating circumstances, the Trial Chamber concluded that the fact that Miroslav Bralo pleaded guilty on the date he did, that he expressed remorse, tried to make amends, and voluntarily surrendered to the Tribunal are factors which, considered as a whole, weigh in favour of a substantial reduction in what would otherwise be an appropriate sentence.

The Appellant agrees with this conclusion but asserts that, considering the Tribunal's broader goal to "promote justice, peace, and reconciliation in the region", the Trial Chamber, in assessing the weight to attach to the mitigating circumstances, erred in its excessively restrictive interpretation of the Tribunal's purpose. The Appeals Chamber agrees with the Appellant that the work of the Tribunal is "an element of the process of reconciliation and a factor contributing to the maintenance of peace and security" in the region, which has been an inherent function of the Tribunal since its inception. It considers nonetheless that the Trial Chamber was perfectly aware of this role and had it specifically in mind when it assessed the purposes of punishment. As regards the Appellant's argument that the Trial Chamber did not give sufficient weight to that factor, the Appeals Chamber recalls that "although reconciliation in the region and the restoration and maintenance of peace are important purposes in punishment, they are not the only ones." As the Trial Chamber rightly specified, the purposes of punishment are clearly set out in the Tribunal's case-law. Specifically, the Appeals Chamber recalls that, to determine sentence, the Tribunal attaches special importance to principles of retribution and deterrence.

The Appeals Chamber has already ruled that the Trial Chamber closely examined the mitigating and aggravating circumstances in this case and that it gave them appropriate weight. The Appeals Chamber recalls in particular that the Trial Chamber specifically bore in mind the Appellant's genuine remorse and personal contribution towards reconciliation in the region when it analyzed his guilty plea, and that it attached significant weight to these factors. The Appeals Chamber therefore concludes that the Appellant has failed to demonstrate that the Trial Chamber misapplied the Tribunal's sentencing principles.

Regarding the Appellant's argument whereby the Trial Chamber did not reduce his sentence to fully take into account the substantial reduction which, according to it, was justified, the Appeals Chamber recalls, in view of the relevant mitigating circumstances, that once proven, mitigating circumstances, "do not automatically entitle an appellant to a 'credit' in the determination of the sentence"; they simply require the Trial Chamber to consider such mitigating circumstances in its final determination. In this case, the Appeals Chamber notes that the Trial Chamber did in fact take the relevant mitigating circumstances into account to determine the Appellant's sentence. The Appeals Chamber notes that it is up to the Appellant to show that the Trial Chamber improperly exercised its discretion in imposing his sentence. In this case, the Appeals Chamber considers that the Appellant has failed to demonstrate that the Trial Chamber committed a discernable error of law or of fact in exercising its broad discretionary powers to determine an appropriate sentence. Moreover, the Appeals Chamber is of the opinion that the Appellant has failed to demonstrate that the Trial Chamber exhibited a lack of transparency when reducing the sentence. According to the Appeals Chamber, the Trial Chamber clearly weighed the mitigating and aggravating circumstances and the seriousness of the crimes committed by the Appellant.

Finally, as regards the calculus of the weight to be attached to circumstances in mitigation of sentence, the Appeals Chamber considers that any changes to it must be considered in light of the overall circumstances of the case, and that it is not a matter of simple subtraction. As mentioned above, the Trial Chamber appropriately considered all of the circumstances of the case before determining the sentence. The Appeals Chamber may only impose a new sentence when "that imposed by the Trial Chamber is incompatible with the Tribunal's principles governing the determination of sentence." In this case, and

considering in particular the seriousness of the crimes committed and the aggravating circumstances, not disputed by the Appellant, the Appeals Chamber considers that the Appellant has failed to demonstrate that the sentence imposed on him was so unreasonable as to constitute an error in the exercise of the discretion of the Trial Chamber. He has also failed to establish in what way the sentence imposed is “incompatible with the Tribunal’s principles governing the determination of sentence”.

For the foregoing reasons, the third ground of appeal raised by the Appellant is dismissed in its entirety.

Having reached the end of its analysis and having considered all of the particular circumstances of this case, the Appeals Chamber has arrived at the conclusion that a reduction in the sentence would not be justified. The Appeals Chamber, ruling unanimously, affirms the sentence of twenty years imposed by the Trial Chamber.

Disposition

For the foregoing reasons, THE APPEALS CHAMBER, unanimously

PURSUANT to Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the Parties and the oral arguments they presented at the hearing of 9 February 2007;

SITTING in open session;

DISMISSES the Appellant’s grounds of appeal;

AFFIRMS the sentence of 20 (twenty) years’ imprisonment as imposed by the Trial Chamber;

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that the Appellant is to remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State in which his sentence will be served.
