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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Press Release . Communiqué de presse
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APPEALS CHAMBER

CHAMBRE D'APPEL

The Hague, 25 February 2004
IT/P.I.S./825c

**APPEALS CHAMBER JUDGEMENT IN THE CASE
THE PROSECUTOR V. MITAR VASILJEVIĆ**

• **MITAR VASILJEVIĆ SENTENCED TO 15 YEARS' IMPRISONMENT**

Please find below the summary of the Judgement delivered by the Appeals Chamber, composed of Judges Theodor Meron (Presiding), Wolfgang Schomburg, Mohamed Shahabuddeen, Mehmet Güney and Inés Mónica Weinberg de Roca, as read out by the Presiding Judge.

Summary of the Judgement

The Appeals Chamber today will deliver its judgement on appeal in the case of the Prosecutor against Mr. Mitar Vasiljević. Mr. Vasiljević has appealed against the judgement issued by Trial Chamber II of this Tribunal on the 29th of November, 2002. This case relates to events which took place in June 1992 in the region of Višegrad. After the Yugoslav National Army withdrew from the region, various Serb para-military units took control. One such group, with a reputation for being particularly violent, was led by a certain Milan Lukić.

The Trial Chamber found that sometime in May 1992 Mitar Vasiljević was present when Milan Lukić and his men searched the village of Musići. It also found that on 7 June 1992, he was present at the Vilina Vlas Hotel, Lukić's headquarters, when Lukić and two unidentified men brought in seven forcibly detained Muslim men. When the Appellant left the Hotel with Lukić and two unidentified men, he was armed with an automatic weapon. The seven Muslim men were forcibly transported to the eastern bank of the Drina River, where they were shot. Five of the men died as a result of the shooting and two survived by falling into the river and pretending to be dead.

The Trial Chamber convicted Mr. Vasiljević on two of the ten counts charged by the Prosecution: First, on Count 3 of the indictment, for persecution as a crime against humanity based on the underlying murder of five Muslim men and inhumane acts inflicted on the two other Muslim men. This conviction was entered under Article 5 of the Tribunal's Statute. Second, the Trial Chamber convicted Mr. Vasiljević on Count 5, for murder as a violation of the laws or customs of war for the murder of five Muslim men during the Drina River incident. This conviction is pursuant to Article 3 of the Statute. The Trial Chamber acquitted Mitar Vasiljević of the remaining charges. Mr. Vasiljević was sentenced to a single 20-year term of imprisonment. On 30 December 2002, Mr. Vasiljević appealed both the conviction and the sentence, raising eight grounds of appeal. The Prosecution did not appeal.

The appeals procedure provided for under Article 25 of the Statute is corrective and does not give rise to a *de novo* review of the case on appeal. The review is limited to legal errors invalidating the decision and factual errors which would result in a miscarriage of justice. The Appeals Chamber may affirm, reverse, or revise the decisions taken by the Trial Chamber. The Appeals Chamber may correct errors of law which invalidate the Trial Chamber's Judgement for reasons advanced by the Appellant or for other reasons. As regards errors of fact, the Appeals Chamber will reject the Trial Chamber's finding only when the evidence on which the Trial Chamber relied could not have been accepted by any reasonable tribunal and the resulting error led to a miscarriage of justice, that is to say to a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of a crime. Where an appellant challenges only the Trial Chamber's factual findings and suggests an alternative assessment of the evidence, without demonstrating why the Trial Chamber's assessment was unreasonable, the appellant will have failed to discharge the burden incumbent upon him. As to the appeal from the sentencing decision, the sentence will be revised only if the Trial Chamber committed a discernible error in the exercise of its discretion. An appellant is also required to provide the Appeals Chamber with exact references to the parts of the record, transcript, judgement and exhibits supporting his arguments. The Appeals Chamber will not consider a party's submissions in detail if they are obscure, contradictory or vague. In such circumstances, the Appeals Chamber may dismiss

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the arguments without a reasoned discussion. The Appellant was reminded of these requirements during the appeal hearing.

Before considering the arguments of the Appellant on the merits, the Appeals Chamber determines whether the Appellant's submissions met these requirements. There are three categories of formal or procedural deficiencies in the Appellant's submission relating to alleged errors of fact: The first category concerns arguments in relation to which the Appellant did not identify a particular error by the Trial Chamber and merely offered an alternative reading of the evidence. The second category concerns arguments where the Appellant failed to submit that the Trial Chamber's findings could not have been made by any reasonable trier of fact. The third category concerns arguments in relation to which the Appellant failed to state how the alleged error led to a miscarriage of justice. The Appeals Chamber dismisses these arguments without considering their merits. I will not list all the arguments falling within the above-mentioned categories, as they can be easily found in the written version of the Judgement distributed today.

Furthermore, the Appeals Chamber dismissed without considering on the merits several of the Appellant's arguments with respect to sentencing, in which he failed to identify any alleged error or raised these arguments for the first time only in the Reply Brief.

I will now turn to the Appellant's arguments which have been found to meet the formal requirements.

The Appeals Chamber restructured these arguments into four groups. The first group consists of the alleged factual errors relating to the general requirements of Articles 3 and 5 of the Statute. The second—of alleged factual errors relating to the Drina River incident and the Appellant's relationship with the Lukić paramilitary group. The third group relates to the Appellant's participation in a joint criminal enterprise and his related criminal responsibility, and the fourth to sentencing. These issues form Parts Three through Six of the Appeals Judgement.

In Part III of the Judgement, the Appeals Chamber considers the merits of two of the Appellant's arguments related to the chapeau requirements of Articles 3 and 5 of the Statute, which are set out in the Appellant's third ground of appeal. The Chamber concludes that the Appellant has not demonstrated that no reasonable trier of fact could find that his acts were closely related to the armed conflict. The Appeals Chamber also dismisses the Appellant's allegation that the Trial Chamber erred in finding that his acts were part of a widespread or systematic attack of which he had knowledge, and concludes instead that a reasonable Trial Chamber could have found that the Appellant knew about the on-going attack against the Muslim civilian population in Višegrad.

In Part IV of the Judgement, the Appeals Chamber considers seven alleged errors of fact relating to the Drina River incident and the Appellant's relationship with the Lukić paramilitary group, which are mainly set out in the Appellant's first and second grounds of appeal.

The Appeals Chamber dismisses four of these alleged errors of fact:

The Appeals Chamber first dismisses the Appellant's allegation that the Trial Chamber erred in finding that he was armed on 7 June 1992. The arguments of the Appellant do not establish that no reasonable Trial Chamber could have found, based on the testimony of two witnesses that the Appellant was armed at the Vilina Vlas Hotel, and that at the Drina River he pointed his gun at the seven Muslim men and prevented them from fleeing.

The Appeals Chamber also dismisses the argument that the Trial Chamber erred in rejecting the Appellant's assertion that he had attempted to dissuade Milan Lukić from carrying out the killings. The Appellant has failed to demonstrate how the fact that none of the other persons present during the incident could have influenced Milan Lukić, would be relevant to the assessment as to whether or not he attempted to dissuade Lukić. The Appellant has failed to show that no reasonable tribunal could have reached the Trial Chamber's conclusion.

Third, the Appeals Chamber dismisses the Appellant's allegation that the Trial Chamber erred in rejecting his argument that he remained at a distance from the scene of the crime. Even if the testimony of a witness confirms the Appellant's version that he was several metres away from Milan Lukić and the two other armed men during the shooting, the Appellant has not established that the Trial Chamber erred in finding that he stood behind the seven Muslim men with his weapon, together with the three other men, shortly before the shooting. The Appeals Chamber cannot find any error committed by the Trial Chamber in its treatment of the

testimony of the witness or its assessment of the evidence presented at trial. In any event, the Appellant has not established that the alleged error would lead to a miscarriage of justice.

Fourth, the Appeals Chamber dismisses the Appellant's allegation that the Trial Chamber's findings based on the testimony of two witnesses, related to his role during the search in Musići, are erroneous. The contradictions alleged by the Appellant are non-existent, minor or immaterial, and the Appellant has failed to show that no reasonable trier of fact could have found, on the basis of this evidence, that the Appellant stood guard at the entrance to the house of the witness's father, thereby participating in the search of the house.

I turn now to the three remaining alleged factual errors made by the Trial Chamber on which the Appeals Chamber agrees with the Appellant:

The first error relates to the Trial Chamber's finding that the Appellant was an informant to the Milan Lukić group. The Appeals Chamber notes that the only evidence cited by the Trial Chamber to suggest this conclusion is the testimony of witness VG-14 that, while he was in the hands of the Appellant and Milan Lukić in the red VW Passat, the Appellant pointed out a nearby house and told Milan Lukić that it belonged to a Muslim family. The Trial Chamber expressly rejected as not sufficiently reliable or credible the evidence of two other witnesses, relied upon by the Prosecution to show that the Appellant acted as an informant to the group. Moreover, the Trial Chamber's findings with respect to the Musići search do not support the inference that the Appellant had pointed out the house in question to Milan Lukić and his men. No reasonable tribunal therefore could have found, based solely on the testimony of witness VG-14, that the Appellant was an informant to the Lukić group and that he knew that the information would be used to persecute Muslims.

The Appellant argues that the Trial Chamber's erroneous finding that he was an informant to the Lukić group formed the basis for the Trial Chamber's conclusion that he possessed a discriminatory intent. The Trial Chamber found, however, that the Appellant was associated with the Milan Lukić group and that the acts of the Appellant were closely related to the armed conflict and formed part of the widespread and systematic attack against the non-Serb population of Višegrad. The Trial Chamber did not deduce the Appellant's discriminatory intent from the fact that he was an informant of the group. The Appellant, therefore, fails to establish that the Trial Chamber's erroneous finding that he was an informant led to a miscarriage of justice.

The second error relates to the Trial Chamber's findings that at the time the Appellant was at the Vilina Vlas Hotel he knew that the seven Muslim men were going to be killed and that Milan Lukić had committed serious crimes, including killings, in the area of Višegrad shortly prior to the Drina River incident. The Trial Chamber relied upon the evidence given by the Appellant himself that, during the drive from Višegrad to the Vilina Vlas Hotel on the afternoon of 7 June 1992, the Appellant had been told by the man driving the car—Stanko Pecikoza—that Milan Lukić had, on several occasions, taken out Muslim employees from the Varda Factory to mistreat or kill them. Accordingly, the Trial Chamber rejected the Appellant's evidence that it was only when Milan Lukić stopped the cars near Sase and ordered the seven men to walk towards the bank of the Drina River that he understood these men were not to be exchanged

Having reviewed the relevant excerpts of the Appellant's evidence, the Appeals Chamber concludes that his testimony is unclear and contradictory as to what he was told by Stanko Pecikoza on 7 June 1992 on their way to the Vilina Vlas Hotel. While the testimony supports the Trial Chamber's finding as to mistreatment, it is ambiguous as to killings. The evidence leaves it unclear whether Stanko Pecikoza told the Appellant about the discovery of the body of a young man named Velagić in the car on the way to the hotel, or whether Pecikoza only expressed his suspicion that Milan Lukić had killed Velagić. Furthermore, it must be noted that a certain Velagić was, according to paragraph 15 of the Indictment, killed on 10 June by Milan Lukić at the Varda factory. This fact renders the testimony of the Appellant even more unclear as to which killings he was referring to. There is also a contradiction between the Trial Chamber's Judgement and the Indictment as to the date of the Varda factory incident.

Consequently, the evidence in question does not support the Trial Chamber's finding that Stanko Pecikoza told the Appellant about any killings of workers from the Varda factory that would have taken place before 7 June 1992. Even if Pecikoza told the Appellant that Velagić had been killed by Milan Lukić, this would be insufficient to infer that the Appellant knew, at the time he left the hotel, that the seven Muslim men were going to be killed and not exchanged. For this reason, and in light of additional factors which are explained in the Appeals Judgement, the Appeals Chamber finds that no reasonable trier of fact could have made this finding, merely on the basis of the evidence.

I turn now to the third factual error, which relates to the finding that the Appellant pointed a gun at the seven Muslim men while at the Vilina Vlas Hotel. As already explained, the Appeals Chamber concluded that it was reasonable for the Trial Chamber to find that the Appellant was armed at the Vilina Vlas Hotel. The Trial Chamber's conclusion that the Appellant pointed his gun at the seven Muslim men at the hotel is, however, not

supported by the Trial Chamber's own finding that one of the unidentified armed men guarded the seven Muslim men, pointing his automatic rifle at them and preventing them from leaving the lobby of the hotel. The Prosecution conceded this point. In conclusion, no reasonable trier of fact could have found that the Appellant pointed a gun at the seven Muslim men at the Vilina Vlas Hotel.

The question of whether the two last above-mentioned errors led to a miscarriage of justice will be discussed later, in the context of the alleged error relating to the Appellant's intent to kill the seven Muslim men.

Part V of the Judgement deals with the Appellant's participation in a joint criminal enterprise and the related issue of his individual criminal responsibility.

The Appellant's fourth, fifth, sixth and seventh grounds of appeal relate, respectively, to murder, inhumane acts, persecution and joint criminal enterprise. They share, as a central issue, the question of whether the Appellant intended to kill the seven Muslim men during the Drina River incident. The Appeals Chamber finds that only the first category of joint criminal enterprise described by the *Tadić* Appeals Judgement—that is, the basic form of joint criminal enterprise—is relevant in the present case. The Appeals Chamber dismisses the Appellant's three sub-grounds of appeal which allege that the Trial Chamber erred in law in relation to the concept of joint criminal enterprise, by failing to explicitly indicate which exact criteria it applied to assess the existence of this enterprise, by finding that the existence of an arrangement or understanding amounting to an agreement between two or more persons need not be express but can also be inferred, and by finding that all of the participants in the joint criminal enterprise were equally guilty of the crime regardless of the part played by each in its commission. The Appeals Chamber also dismisses the Appellant's allegation that the Trial Chamber erred in finding him guilty of persecution solely on the basis of one incident.

I turn now to the Appellant's arguments that the Trial Chamber erred in finding that he shared the intent to kill the seven Muslim men. The Trial Chamber inferred the Appellant's intent from his actions of preventing the seven Muslim men from fleeing by pointing a gun at them while they were detained at the Vilina Vlas Hotel; escorting them to the bank of the Drina River and pointing a gun at them to prevent their escape; and standing behind the Muslim men with his gun alongside the other three offenders shortly before the shooting started. To find the individual criminally responsible as a co-perpetrator, it must be established that an accused voluntarily participated in one aspect of the common purpose even if he did not physically commit the crime; and that an accused, even if not personally carrying out the crime, nevertheless intended its result. The Appeals Chamber agrees with the test adopted by the Trial Chamber, according to which when the Prosecution relies upon proof of the state of mind of an accused by inference, that inference must be the only reasonable inference available on the evidence. The question here is whether no reasonable tribunal could have found that the only reasonable inference from the evidence was that the Appellant by his actions intended to kill the seven Muslim men.

As already stated, the Appeals Chamber concluded that the Trial Chamber erred in finding that the Appellant pointed his gun at the seven men while at the Vilina Vlas Hotel. Moreover, the Appeals Chamber concluded that the Trial Chamber erred in finding that the Appellant at that time had knowledge that the seven Muslim men were to be killed and not exchanged. Since the Appellant lacked, at that time, the knowledge that the seven Muslim men were to be killed, the fact that he prevented the Muslim men from fleeing at the hotel is not decisive as to whether or not he shared the intent to kill them.

The Trial Chamber also relied on the Appellant's actions from the moment the Lukić group stopped the cars in Sase to infer that he intended that the seven Muslim men be killed. When Milan Lukić, the two unidentified men and the Appellant escorted the seven Muslim men to the bank of the Drina River, he pointed a gun at them to prevent their escape. Then, the Appellant stood behind the Muslim men with his gun shortly before the shooting occurred. The Trial Chamber did not find, however, that the Appellant acted at the same level of authority or with the same degree of control over the killings as the other three actors. To the contrary, the Trial Chamber stated that it is "is not satisfied that the Prosecution has established beyond reasonable doubt that the Accused fired his weapon at the same time as the other three, or that he personally killed anyone or more of the victims." The Trial Chamber did not even make an explicit finding that the Appellant pointed his gun at the seven Muslim men while they were lined up facing the Drina River.

In addition to these findings, the Appeals Chamber takes into consideration the following: the overall context of the Drina River incident; the previous association of the Appellant with the Milan Lukić group at Musići and at the Vilina Vlas Hotel, as well as his actions at both locations; the fact that the Appellant did not know until the car stopped in Sase that the seven Muslim men were to be killed; that the behaviour of the Serb soldiers changed drastically from the moment Milan Lukić ordered them to leave the car; that throughout the entire Drina River incident the impression of the two survivors was that no one around Lukić could have influenced him or his decisions; and, finally, that the Appellant willingly accompanied Lukić and his group with the seven Muslim men to the Drina River.

When a Chamber is confronted with the task of determining whether it can infer from the acts of an accused that he shared the intent to commit a crime, special attention must be paid to whether these acts are ambiguous and therefore allow for several reasonable inferences. The Appeals Chamber concludes that no reasonable tribunal could have found that the only reasonable inference available on the evidence, as cited above, is that the Appellant had the intent to kill the seven Muslim men. The Trial Chamber found that the Appellant assisted Milan Lukić and his men by preventing the seven Muslim men from fleeing. It did not find, however, that the Appellant shot at the Muslim men himself, nor did it find that he exercised control over the firing. Compared to the involvement of Milan Lukić and, potentially, one or both of the other men, the participation of the Appellant in the overall course of the killings did not reach the same level. The above-mentioned acts of the Appellant were ambiguous as to whether or not the Appellant intended the seven Muslim men be killed. This conclusion is further supported, among other factors, by the relatively short period of time between the change of attitude of Milan Lukić and the shooting and the strong personality of Milan Lukić compared to that of the Appellant. The Trial Chamber erred by finding that the only reasonable inference from the evidence was that the Appellant shared the intent to kill the seven Muslim men. This error led to a miscarriage of justice because without the proof of the Appellant's intent to kill, he could not be found responsible as a co-perpetrator.

The Appeals Chamber now considers whether the Appellant is responsible as an aider and abettor.

The Appellant argued under his fourth ground of appeal that his actions do not amount to aiding and abetting, as he did not facilitate the commission of the crime. The Appeals Chamber has already concluded that the Appellant knew that the seven Muslim men were to be killed; that he walked armed with the Lukić group from the place where they had parked the cars to the Drina River; that he pointed his gun at the seven Muslim men; and that he stood behind the Muslim men with his gun together with the other three offenders shortly before the shooting started. The only reasonable inference available on the totality of evidence is that the Appellant knew that his acts would assist the commission of the murders. In preventing the men from escaping on the way to the river bank and during the shooting, the Appellant's actions were specifically directed to assist the perpetration of the murders and the inhumane acts and his support had a substantial effect upon the perpetration of the crimes. The Appeals Chamber therefore finds the Appellant guilty for aiding and abetting murder pursuant to Article 3 of the Statute (Count 5). Further, the Appeals Chamber finds the Appellant guilty as an aider and abettor with respect to murder as a crime against humanity pursuant to Article 5(a) (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) (Count 6). The Appellant, however, is not convicted of murder as a crime against humanity pursuant to Article 5(a) (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) (Count 6) in accordance with the Tribunal's jurisprudence on cumulative convictions.

I now turn to the Appellant's submission that the Trial Chamber erred in finding that he had the requisite discriminatory intent as he did not take part in the singling out of the seven Muslim men, did not know why they were arrested or what Milan Lukić wanted to do with them.

Contrary to what the Appellant argues, the Trial Chamber made it clear that, regardless of whether or not the Appellant was an informant and whether or not he shared the intention of the group to persecute the Muslim population, the Prosecution also had to establish that the Accused participated in the commission of a persecutory act with a discriminatory intention. Consequently, the Trial Chamber assessed whether the acts of the Appellant during the Drina River incident showed that he possessed the requisite *mens rea* for the crime of persecution. The Appeals Chamber recently upheld the approach taken by the Trial Chamber in the *Krnjelac* Appeals Judgement. Furthermore, and again contrary to the submission of the Appellant, the Trial Chamber did not deduce the discriminatory intent of the Appellant from the fact that the seven Muslim men were singled out by him. The Trial Chamber affirmed that "the acts of the Accused were *in fact* discriminatory, in that the men were killed only because they were Muslims." The Appellant's participation in the joint criminal enterprise at the Vilina Vlas Hotel, during the transfer of the victims to the bank of the Drina River, and during the events that took place there, represents the concrete acts from which the Trial Chamber could infer that his actions had discriminatory consequences and that he possessed the requisite discriminatory intent. The Appellant's arguments with respect to the approach taken by the Trial Chamber in assessing whether he had the discriminatory intent to persecute are therefore rejected.

The Appeals Chamber also has to determine whether the Trial Chamber erred in finding the Appellant individually responsible as a co-perpetrator for the crime of persecution based on the underlying crimes of murder and inhumane acts. The Appeals Chamber already concluded that the Trial Chamber erred in finding that the Appellant possessed the intent to kill. The intent to kill the seven Muslim men, including the two survivors, constituted the basis for the Trial Chamber's finding that the Appellant was a co-perpetrator to a joint criminal enterprise. In the absence of this intent, no reasonable trier of fact could have found the Appellant responsible for committing the crime of persecution by murders and inhuman acts as a co-perpetrator to the joint criminal enterprise. This error resulted in a miscarriage of justice.

The Appeals Chamber now considers whether the Appellant incurs individual criminal responsibility under Article 7(1) of the Statute by aiding and abetting the persecution of the Muslim men through his participation in the killings on the bank of the Drina River. The acts committed by Milan Lukić and the two other men unquestionably amount to the crime of persecution: They killed the five Muslim men and committed inhumane acts against the two survivors with the deliberate intent to discriminate on religious or political grounds. Furthermore, the Appeals Chamber agrees with the Trial Chamber that the Appellant participated in the Drina River incident with full awareness that the intent of the Milan Lukić's group was to persecute the local Muslim population of Višegrad through the commission of the underlying crimes. The only reason why the seven Muslim men were arrested and killed was because they belonged to the Muslim population of Višegrad. The Appellant was aware of these facts and he willingly participated in the Drina River massacre by pointing his gun at the victims and preventing them from fleeing. His support had a substantial effect upon the perpetration of the crimes on the bank of the Drina River. He was at that time fully aware that his participation assisted the commission of the crime of persecution by the principal perpetrators. The Appellant is therefore responsible for having aided and abetted the crime of persecution by way of murder of the five Muslim men and of inhumane acts against the two other Muslim men.

The Appellant argues that he cannot be convicted cumulatively, with respect to the same conduct, of both murder under Article 3 of the Statute (Count 5) and persecution by way of murder under Article 5(a) of the Statute (Count 4). The jurisprudence of the Tribunal on cumulative convictions shows that it is permissible to convict for both of these offenses, as each has an element materially distinct from the other. This sub-ground of appeal therefore fails.

I will now discuss Part VI of the Judgement, which deals with sentencing.

In his eight ground of appeal, the Appellant alleges seven errors of law and fact related to sentencing. He first alleges that the sentence imposed by the Trial Chamber—twenty years of imprisonment for persecution and murder—is excessively high in comparison with sentences imposed in the Tribunal's case-law. Secondly, the Appellant alleges that the Trial Chamber erred in taking into consideration as aggravating factors the method of killing, verbal abuses of the victims, the trauma suffered by the victims and the discriminatory state of mind. Third, he argues that the Trial Chamber erred in failing to consider as a mitigating factor the remorse shown by him after the Drina river incident and his cooperation with the Prosecution. The Appeals Chamber rejects all these arguments, and the reasons are fully explained in the Judgement.

The Appeals Chamber, however, is of the view that the sentence needs to be adjusted due to the fact that the Appellant's conviction as a co-perpetrator in a joint criminal enterprise, for murder as a violation of the laws or customs of war under Article 3 of the Statute and persecution by way of murder and inhumane acts under Article 5(h), is now replaced by a conviction as an aider and abettor. The Appeals Chamber has the power to revise the sentence itself without remitting it to the Trial Chamber. Aiding and abetting is a form of responsibility which generally warrants a lower sentence than is appropriate to responsibility as a co-perpetrator. At the same time, the sentence to be imposed must also reflect the inherent gravity of the criminal conduct of an accused. The Appellant committed serious crimes. Therefore, taking into account the particular circumstances of this case as well as the form and degree of the Appellant's participation in the crimes committed, the Appeals Chamber concludes that a sentence of 15 years is appropriate.

I shall now read the operative paragraph of the Appeals Chamber's Judgement. Mr. Vasiljević, please stand.

The disposition at the end of the Judgement is as follows:

For the foregoing reasons, **THE APPEALS CHAMBER**

PURSUANT to Article 25 of the Statute and Rules 117 and 188 of the Rules of Procedure and Evidence;

NOTING the respective written submissions of the parties and the arguments they presented at the hearing of 18 November 2003;

SITTING in open session;

ALLOWS, Judge Shahabuddeen dissenting, Mitar Vasiljević's appeal in so far as it relates to his convictions as a co-perpetrator of persecution, a crime against humanity (murder and inhumane acts) under Count 3 of the Indictment, and of murder, a violation of the laws or customs of war, under Count 5 of the Indictment;

SETS ASIDE, Judge Shahabuddeen dissenting, these convictions, and **FINDS**, Judge Shahabuddeen dissenting, Mitar Vasiljević guilty of Counts 3 and 5 of the Indictment as an aider and abettor to persecution, a crime against humanity (murder and inhumane acts), and as an aider and abettor to murder, a violation of the laws or customs of war, pursuant to Article 7(1) of the Statute;

DISMISSES Mitar Vasiljević's appeal against convictions in all other respects;

DISMISSES Mitar Vasiljević's appeal against sentence and **IMPOSES**, Judge Shahabuddeen dissenting, a new sentence, taking into account his responsibility established on the basis of the new convictions entered on appeal;

SENTENCES Mitar Vasiljević to fifteen years' imprisonment to run as of this day, subject to credit being given under Rule 101(C) of the Rules for the period Mitar Vasiljević has already spent in detention, that is from 25 January 2000 to the present day;

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

The full text of the Judgement is available upon request at the Public Information Services and is also available on the Internet site of the Tribunal.