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TRIAL CHAMBER

**CHAMBRE DE 1ÈRE
INSTANCE**

The Hague, 29 June 2004
CT/P.I.S./861e

JUDGEMENT IN THE CASE
THE PROSECUTOR V. MILAN BABIĆ

• **MILAN BABIĆ SENTENCED TO 13 YEARS' IMPRISONMENT**

Please find below the summary of the Judgement delivered by Trial Chamber I, composed of Judges Orić (Presiding), El Mahdi and Martín Canivell, as read out by the Presiding Judge.

Summary of the Judgement

The Trial Chamber is sitting today to deliver the sentencing Judgement in the case of Milan Babić. What follows is a summary of the written Judgement and does not form part of it. The written Judgement will be made available to the parties and to the public at the end of this session.

I will now briefly set out the context and facts of the case, as well as the factors which the Trial Chamber considered in imposing the sentence.

Procedural Background

Milan Babić was born in 1956 in Kukar, in Croatia. He is married with two children, and is a dentist by profession.

In October 2001 Babić initiated contact with this Tribunal after learning that he had been named as a co-perpetrator in the Croatia Indictment issued in the case of Slobodan Milošević in September 2001. Babić agreed to be interviewed by the Prosecution and to testify in the *Milošević* case.

An indictment against Babić was confirmed in November 2003. The indictment charged him with persecution, murder, cruel treatment, wanton destruction of villages or devastation not justified by military necessity, and destruction or wilful damage to institutions dedicated to education or religion. The charges were based on events which took place in Croatian Krajina from August 1991 to February 1992.

In November 2003 Babić surrendered to the Tribunal. Two months later he filed a plea agreement jointly with the Prosecution. According to this agreement, Babić would admit to having aided and abetted the crime of persecutions, committed by a joint criminal enterprise, as charged in count 1 of the indictment. The goal of the joint criminal enterprise was the forcible permanent removal of Croat and other non-Serb populations from approximately one-third of Croatia, in order to transform the acquired territory into a Serb-dominated state through the commission of crimes within the jurisdiction of the Tribunal.

In exchange for Babić's guilty plea, and his ongoing cooperation, the Prosecution would recommend that he be given a sentence of no more than 11 years of imprisonment.

The plea agreement was modified a few days later, when Babić agreed to revise his plea of guilty to that of a *co-perpetrator* in the aforementioned joint criminal enterprise (instead of an aider and abettor). The Prosecution's recommendation of a sentence of no more than 11 years' imprisonment did not change.

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Babić's plea of guilty to count 1 of the indictment was accepted by the Trial Chamber on 28 January 2004. The remaining counts of the indictment were withdrawn with the consent of the Chamber.

Facts Underlying the Guilty Plea

In the period August 1991 to February 1992, Serb forces attacked and took control of towns, villages, and settlements in the Krajina region of Croatia. After the take-over, the Serb forces, in cooperation with the local Serb authorities, commenced persecutions to drive the Croat and other non-Serb populations from the region. The persecutions caused the murder or extermination of hundreds of Croat and other non-Serb civilians in Dubića, Cerovljanji, Baćin, Saborsko, Poljanak, Lipovača, and in other places. They also caused the routine and prolonged imprisonment of hundreds of Croat and other non-Serb civilians in inhumane conditions in the old hospital and the JNA army barracks in Knin, and the deportation or forcible transfer of thousands of Croat and other non-Serb civilians from the Krajina region. There was as well deliberate destruction of homes and other public and private property, including objects of cultural value to Croat and other non-Serb populations.

In December 1991, the Serb authorities proclaimed the territory that had thus come under their control as the "Republic of Serbian Krajina".

As for Babić, in February 1990, he had become a prominent political figure in the Serbian Democratic Party (SDS) in Croatia. He held a senior position in the SDS municipal committee in Knin. In July 1990, he became President of the Serbian National Council. In February 1991, he began to advocate the creation of an independent Serbian state in the so-called Serb Autonomous Region of Krajina. Then, in April 1991, Babić was elected President of the Executive Council of that self-declared region, and in May 1991 became President of its administration or government.

That summer, Babić became commander-in-chief of the self-declared region's armed forces. Finally, in December 1991, he became President of the so-called Republic of Serbian Krajina. During the relevant period he was, in other words, one of the highest-ranking and most influential political Serb leaders in the region.

Babić has admitted that from August 1991 to February 1992, he contributed to the persecution of Croat and other non-Serb populations in the following ways:

- He formulated, promoted, participated in, and encouraged the development and implementation of policies which advanced the objective of the joint criminal enterprise, which was to forcibly and permanently remove the majority of Croat and other non-Serb populations from approximately one-third of Croatia;
- He was instrumental in the establishment, support, and maintenance of the bodies that ruled the so-called Serb Autonomous Region of Krajina and that implemented the objective of the joint criminal enterprise;
- He assisted in the re-organization and recruitment of the Territorial Defence (TO) forces that participated in the crimes;
- He cooperated with the commander of the so-called "Martić Police", who according to Babić was involved in the commission of crimes;
- He participated in the provision of financial, material, logistical, and political support for the military take-over of territories;
- He requested the assistance or facilitated the participation of JNA army forces in establishing and maintaining control of the territories;
- He made ethnically inflammatory speeches at public events and in the media – propaganda which helped the unleashing of violence against the Croat population and other non-Serbs;
- Finally, he encouraged and assisted in the acquisition of arms and their distribution to Serbs to further the campaign of persecutions.

Babić admitted that he knowingly and intentionally participated in the campaign of persecutions. He was aware that crimes such as mistreatment in prisons, deportations, forcible transfer, and the destruction of property, as described in the indictment, were being committed.

With respect to the murders charged in the indictment, Babić admitted that he knew that civilians were killed in the course of the forcible removal of non-Serb civilians, and that such killings were the likely outcome of the campaign of persecutions. However, he maintained that he had no knowledge of the specific murders referred to in the indictment.

Babić further admitted that the crime of persecution was committed within a joint criminal enterprise, and that he substantially participated in that enterprise as a co-perpetrator.

Sentencing Factors

The Trial Chamber has considered the purposes of punishment in light of the mandate of the Tribunal. Retribution, deterrence, and rehabilitation have been considered the most relevant purposes in the context of the Tribunal.

The Trial Chamber has given primary consideration to the gravity of Babić's crime, and has also considered Babić's individual circumstances, including aggravating and mitigating circumstances.

Babić does not deny the seriousness of the crimes committed. Virtually the whole of the Croat and non-Serb population was expelled from the region in question, by forcible removal or by being caused to flee through fear of imminent attack. More than 200 civilians, including women and elderly persons, were murdered, and several hundred civilians were confined or imprisoned in inhumane conditions. The crime was characterized by ruthlessness and savagery and had a severe impact on victims and their relatives. Their suffering is still significant.

The Trial Chamber is convinced of the extreme gravity of the crime to which Babić pleaded guilty. A participant in a crime of this gravity should expect a sentence of commensurate severity.

In relation to aggravating circumstances, the Prosecution notes that "leadership positions which are similar to the accused's position have been found to be an aggravating circumstance." The Defence submits that it would be inappropriate to use Babić's conduct as a political leader to establish both criminal liability and an aggravating circumstance. The Trial Chamber agrees that the same element should not be assessed once as a constitutive element of the crime and a second time as an aggravating circumstance.

However, the criminal liability of Babić does not stem from his position as a superior in the hierarchy. The position of political leader is not required for participation in a joint criminal enterprise, nor is it a precondition for the crime of persecution. Thus it is not an element establishing criminal liability, and the Trial Chamber has not used it as such.

The reasons for holding that Babić's leadership positions should indeed be considered in aggravation of sentence are twofold. First, as a regional political leader he enlisted resources to further the joint criminal enterprise, and by his speeches and media exposure prepared the ground for the Serb population to accept that their goals were achievable through acts of persecution. Second, Babić's involvement through the positions he held gained momentum over time: by allowing the campaign of persecutions to continue he amplified its consequences.

The Trial Chamber thus finds that the fact that Babić held and remained in high political positions throughout the course of the crime of persecutions counts as an aggravating circumstance.

As for mitigating circumstances, the parties submitted that the following mitigating circumstances apply in this case: Babić's substantial and continued cooperation with the Prosecution; his voluntary appearance before the Tribunal to stand trial; his guilty plea and acceptance of responsibility; and his remorse. The Defence submits, in addition, that Babić's conduct subsequent to the crime, and his personal and family circumstances, are mitigating circumstances. The Prosecution proposes as additional mitigating circumstances Babić's limited participation in the acts of violence, his continued contribution to reconciliation, and his prior character.

In relation to Babić's admission of guilt, the Trial Chamber is satisfied, for the diverse reasons given in the Judgement, that it must be considered as an important mitigating factor.

Moreover, the Trial Chamber takes account of Babić's extensive cooperation with the Prosecution, at great risk to his family and his own safety.

The Trial Chamber also takes into account, in mitigation, Babić's voluntary surrender to the Tribunal.

The question of the mitigatory effect of Babić's supposedly limited participation in the crimes charged is moot because the Trial Chamber does not accept that Babić's role in the joint criminal enterprise was as limited as the parties suggest it was. While true that Babić was not the prime mover in the campaign of persecutions, the Trial Chamber recalls that Babić chose to remain in power, and provided significant support for the persecutions against non-Serb civilians by amongst other things participating in the provision of financial, material, logistical, and political support necessary for the military take-over of territories in Croatian Krajina, by making ethnically inflammatory speeches, and by encouraging and assisting in the acquisition of arms and their distribution to forces committing the crimes.

On the question of remorse, the Trial Chamber is satisfied that Babić's expression of remorse is sincere and constitutes a mitigating factor.

For reasons given in the Judgement, Babić's family and personal situations are also given some weight in mitigation.

On the other hand, the Trial Chamber does not accept that Babić's character prior to the events in Croatia warrants any mitigation of sentence. The crimes committed during the armed conflict in the former Yugoslavia were mostly carried out by ordinary citizens. There is nothing exceptional about Babić's prior character that would call for special consideration.

As for Babić's conduct subsequent to the crime, the Trial Chamber is not satisfied that Babić took measures to, for example, alleviate the suffering of victims. He did indeed cooperate with the Prosecution and admit his responsibility, but these are factors that have already been considered.

In conclusion, the Trial Chamber finds that Babić was a regional political leader who sought to promote what he considered the interests of his people to the detriment of Croats and other non-Serbs through the commission of serious violations of international humanitarian law. He didn't just fail to stand against injustice, he participated in a joint criminal enterprise. By admitting his guilt in relation to the armed conflict in Krajina in 1991-92, Babić demonstrated some courage. Yet the Trial Chamber is not convinced that he has at all times recognized the full significance of the role he played in Croatia in the period.

The Trial Chamber finds that the recommendation made by the Prosecution of a sentence of imprisonment of no more than 11 years does not achieve the purposes of punishment, nor does it do justice.

Disposition

Mr. Babić, would you please rise:

Having considered the arguments and the evidence presented by the parties, the Trial Chamber hereby sentences you to 13 years of imprisonment. You are entitled to credit for 211 days served in detention prior to this day. You shall remain in the custody of the Tribunal until such time as arrangements for your transfer to the State in which you will serve your sentence have been finalized.

This brings the session to a close.

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.