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INSTANCE

The Hague, 28 October 2003
JL/P.I.S/ 795^c

JUDGEMENT IN THE CASE THE PROSECUTOR V. PREDRAG BANOVIĆ

• **PREDRAG BANOVIĆ SENTENCED TO 8 YEARS' IMPRISONMENT**

Please find below the summary of the Judgement delivered by Trial Chamber III composed of Judge Patrick Robinson (Presiding), Judge Richard May and Judge O-Gon Kwon, read out by the Presiding Judge.

This hearing is for the Trial Chamber to deliver Judgement in this case. What follows is a summary of the written Judgement and forms no part of it. The written Judgement will be made available to the parties and to the public at the end of this hearing.

At a hearing held on June 26, 2003, the Accused pleaded guilty to Count 1 of the Consolidated Indictment, persecutions, a crime against humanity, punishable under Articles 5(h) and 7(1) of the Statute of the Tribunal. The Accused's plea was made pursuant to a Plea Agreement between the parties dated 5 June 2003. In the Agreement, the Prosecutor agreed that following the plea of guilty and conviction, it would seek leave to withdraw, with prejudice, all other counts, criminal responsibility and allegations against the Accused not set out in the Plea Agreement. The Trial Chamber has accordingly dismissed all other counts against the Accused as well as criminal responsibility for the acts of others as pleaded in the Indictment.

A Sentencing Hearing in this matter was held on 3 September 2003 during which the parties expanded on the arguments set out in their respective briefs regarding factors to be considered in determining sentence. Both the Prosecution and the Defence requested that the Trial Chamber impose a sentence of eight years. The Trial Chamber adjourned the case to consider sentence.

A written Factual Basis for the crime and for Mr. Banović's participation in it was filed with the Plea Agreement. The Factual Basis was agreed by the Accused with his counsel and forms the basis upon which the Trial Chamber will determine sentence. The facts described therein are as follows.

The case against the Accused covers events which occurred in the Municipality of Prijedor, located in the north-western region of Bosnia and Herzegovina. Following the overthrow of the Municipal Government of Prijedor during the summer of 1992, Bosnian Serb authorities in the Prijedor municipality unlawfully segregated, detained and confined large number of men, women and children in three major camps, one of which was the Keraterm camp, located in a ceramic factory on the eastern outskirts of Prijedor town.

It is said that these events were organised and directed by Bosnian Serb authorities in order to carry out a part of the overall objective of the joint criminal enterprise of the Bosnian Serb leadership, namely the permanent forcible removal of non-Serb inhabitants from the

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Prijedor municipality with the aim of ensuring the creation and control of a separate Serbian territory within Bosnia and Herzegovina.

The Keraterm camp began operating on 23 May 1992 and held as many as 1,500 detainees. This camp, amongst others, was operated in a manner designed to ill-treat and persecute non-Serbs from Prijedor and other areas as a means to rid the territory of or to subjugate those who remained. Interrogations, severe beatings, sexual assaults and killings are said to have taken place on a daily basis at the Keraterm camp. Living conditions were brutal and inhumane.

Predrag Banović was a guard at the Keraterm camp between 20 June 1992 and 6 August 1992. The participation of the Accused in the joint criminal enterprise was limited to his activities within the Keraterm camp, which included participation in beatings and abuse of detainees. Detainees at the camp suffered brutal, inhumane and degrading conditions during their confinement, in addition to humiliation, harassment, physical and psychological abuse.

The Factual Basis also describes the deplorable living conditions at the Keraterm camp. The rooms were overcrowded, detainees often lacking space to lie down or move about. Detainees had no change of clothing or bedding and limited medical care. They were fed grossly insufficient portions of food and had limited access to water. Toilets and personal hygiene facilities were inadequate and in extremely poor condition. The detainees had no opportunity to exercise and were not permitted to go in the open area for fresh air on a regular basis.

Keraterm authorities, as well as “visitors” regularly subjected the detainees to severe beatings, interrogations, cruel and humiliating treatment; many were killed. The beatings often took place in full view of the other detainees and were accompanied by humiliating and derogating comments. The beatings caused serious physical and mental harm. Insufficient or no medical care was available after the beatings. Many detainees did not survive the camp.

The Accused was a guard and he did not hold any rank at the Keraterm camp. However, the Accused knew of the system of ill treatment in the camp, participated in the mistreatment and beating of detainees in the camp, and intended to further this common concerted system of ill-treatment. The Accused, amongst others, took part in the beating of detainees at the Keraterm camp, resulting in their death. Specifically, the Accused has acknowledged being responsible for participating in five murders listed in the Factual Basis and the written Judgement. In addition, the Accused acknowledges his participation in the beating of twenty-seven others.

Turning to sentencing factors, the Trial Chamber first considered the gravity of the offence, bearing in mind that this requires taking account of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime.

The Prosecution has submitted that, in the present case, the underlying offences of the crime of persecution to which the Accused has pleaded guilty, namely, five murders and twenty-seven beatings of prisoners incarcerated at the Keraterm camp, are inherently grave. Conditions of detention at the camp were described as brutal, inhumane and degrading for all prisoners. The Accused is said to have abused his position as a guard at the camp by subjecting prisoners to gratuitous and constant humiliation, harassment and violence.

The Trial Chamber observes that the crime of persecution is inherently very serious. Its unique character is derived from a requirement of a specific discriminatory intent, on account of which the crime is regarded as a particularly serious offence. In this case, the gravity of the

offence is demonstrated by the persecutory acts for which the Accused has been convicted, namely:

- (a) the murder of five prisoners;
- (b) the beating of twenty-seven detainees; and
- (c) the confinement in inhumane conditions, harassment, humiliation and psychological abuse of non-Serbs detained at the Keraterm camp.

The Trial Chamber accepts that these acts considered either separately or in combination, and examined in their context, are of the utmost gravity. The parties have agreed, and the Trial Chamber is satisfied, that the imprisonment and confinement of non-Serbs in inhumane conditions at the Kertaterm camp was carried out with the intent to discriminate against non-Serbs detainees. The direct participation of the Accused in the perpetration of these crimes, as well as his presence when others committed the crimes, with his knowledge, are factors that the Trial Chamber has considered in determining sentence.

The Defence has submitted that in assessing the gravity of the crime and the role of the Accused, the Trial Chamber should take account of a number of other factors. First, the low rank of the Accused; secondly, the state of mind of the Accused who, it was submitted, never intended to kill anyone; and, thirdly, the effect of the aggressive wartime propaganda on the Accused.

The Trial Chamber is unable to accept the submission that the low rank of the Accused is relevant in assessing the gravity of the offence in this case. The fact that the Accused was a low-level offender in terms of the overall structure of authority at the Keraterm camp or in Prijedor cannot alter the seriousness of the offences for which the Accused has been convicted, or the circumstances in which he committed them.

As to the state of mind of the Accused, it cannot be said to alter the gravity of the offence. The Trial Chamber is further satisfied that the Accused participated in those beatings with the intention to inflict serious bodily harm or the death of the victims.

The third issue, the role of the war propaganda, clearly does not affect the gravity of the criminal conduct of the Accused and is more appropriately considered in relation to mitigating factors.

The Prosecution has argued that, in assessing the gravity of the crime, the Trial Chamber should also consider the status of the victims, including their health. The Trial Chamber accepts that this element affects the seriousness of the offence. The fact that the detainees were civilians who had been in detention for up to three months is relevant to the consideration of the gravity of the crime. However, the status of the victims as civilians does not necessarily aggravate the offence since the crime of persecution for which the Accused is convicted includes the civilian character of the victims as an indispensable legal ingredient.

The Trial Chamber also accepts that the position of inferiority and the vulnerability of the victims as well as the context in which the offences were committed are relevant factors in assessing the gravity of the offence.

Dealing next with aggravating factors, the Prosecution submitted that the vulnerability of the victims and the fact that the Accused abused his position while on duty should be considered in aggravation.

While the Trial Chamber accepts that the vulnerability of the victims and the circumstances related to the offence may be considered in aggravation, it considers that these factors have already been taken into account when assessing the gravity of the offence. However, the fact that the Accused abused his position of authority over the detainees while on duty, mistreating and beating them in total disregard for human life and dignity is an aggravating factor in this case.

Turning next to mitigating circumstances, both the Prosecution and the Defence submitted that the guilty plea and acceptance of responsibility should be considered in mitigation of sentence. The Defence additionally submitted that the Accused's rank and subordinated position in the police authority, his character, personal circumstances and behaviour in the Detention Unit should be considered in mitigation.

The Trial Chamber observes that an accused's "substantial" co-operation with the Prosecutor is the only mitigating circumstance that is expressly mentioned in the Rules. In turn, the determination as to whether an accused's co-operation has been substantial depends on the extent and quality of the information he or she provides.

In the present case, the Prosecution accepts that there has been some co-operation and promise of future co-operation. However, the Prosecution argues that the level of co-operation may not be qualified as "substantial". On the other hand, the Defence submits that the accused has provided substantial co-operation by his plea of guilty, interviews with the Prosecution, and a promise of future co-operation.

The Trial Chamber observes that co-operation with the Prosecutor is generally considered in mitigation of sentence. However, it does not follow that failure to cooperate is an aggravating circumstance. In this case, the Trial Chamber notes that the Accused agreed to be interviewed by the Prosecution thus demonstrating his willingness to co-operate. The information given during the interviews, and his commitment to co-operate with the Prosecution in the future, under the conditions stipulated in the Plea Agreement, are factors that the Trial Chamber has taken into account in concluding that his co-operation was substantial, and thus qualifies as a mitigating factor.

The Trial Chamber has already examined the low rank of the Accused when considering the gravity of the offences. The Trial Chamber is not satisfied that the Accused's low rank in the police force is a factor that ought to be considered in mitigation. There is further no evidence that the Accused acted under any form of duress.

The Trial Chamber accepts the Defence claim that the Accused has been cooperative and well behaved while in the custody of the Tribunal and has taken this factor into account. A Trial Chamber has the discretion to consider any other factors which it considers to be of a mitigating nature.

Dealing first with the guilty plea, the Trial Chamber accepts the proposition endorsed in several cases before the Tribunal that a guilty plea should, in principle, be considered in mitigation of sentence. Undoubtedly, a plea of guilty contributes significantly to the Tribunal's fundamental truth-finding mission. A guilty plea also results in a public benefit when, as in this case, it is entered before the commencement of the trial as it saves the Tribunal the time and resources of a lengthy trial. The Trial Chamber thus finds that the Accused should receive full credit for his plea as a mitigating factor. The Trial Chamber is also satisfied that the statements made by the Accused both during the interviews with the Prosecution, and at the Sentencing Hearing, reflect sincere remorse.

Next, the Trial Chamber is required to take into account factors pertaining to “the individual circumstances of the convicted person”. The Defence submitted that the age and family circumstances of the Accused and the fact that he does not have any prior criminal convictions should be considered in mitigation.

The Trial Chamber observes that, in certain cases, age has been considered a relevant factor in mitigation of sentence. In this case, the Chamber notes that the Accused was 23 years of age at the time of the offences. Prior to the conflict, Predrag Banović worked as a waiter.

Several statements submitted by the Defence attest to the Accused’s good character before the war. Shortly after the beginning of the conflict in Prijedor, the Accused was mobilised into the police force and subsequently assigned as a guard at the Keraterm camp. He was not very experienced and received no training prior to this assignment. The Trial Chamber has considered these factors, together with the lack of any prior criminal conviction to be relevant in mitigating the penalty. However, the Trial Chamber wishes to emphasise that these factors cannot play any significant part in mitigating the sentence. The Trial Chamber has taken into account as a mitigating factor the fact that the Accused is now married and has a child.

The Trial Chamber does not consider it appropriate in the present case to mitigate the sentence of the Accused on the basis of the submission that he was of below average intelligence and showed signs of emotional immaturity. The Trial Chamber is further not satisfied that the Accused suffered from any form of mental disability that could be considered as a mitigating factor. Nor does the Trial Chamber accept the argument that the Accused did not have the strength of character to resist the war propaganda. As already stated, the Accused committed very serious crimes. There is no evidence that the Accused was acting under duress. The Trial Chamber is satisfied that the Accused participated voluntarily in the mistreatment, beating and killing of detainees at the Keraterm camp.

The Defence has submitted witness statements that indicate that the Accused had assisted some individual detainees when approached with particular requests from relatives and friends. There are also statements that indicate that the Accused helped some Bosnian Muslims and other non-Serb families during the war. Although these acts may not be said to have impacted in any significant way on the welfare of the non-Serb detainees at Keraterm camp in general, they do mitigate the criminality of the Accused.

The Trial Chamber has considered and weighed all the relevant factors for consideration in determining sentence in this case, including the gravity of the offence, any aggravating circumstances and mitigating circumstances. The Trial Chamber has also considered the relevant purposes of punishment, as well as the general practice regarding prison sentences in the courts of the former Yugoslavia.

Under the Plea Agreement, the parties have jointly recommended that a sentence of eight years be imposed. The Trial Chamber is not bound by this agreement.

The offence of persecution is made all the more serious by considering the underlying criminal offences. The Accused has acknowledged his direct, personal involvement in inflicting severe pain and bodily harm through violent beatings of detainees at the Keraterm camp. More significantly, Predrag Banović has been convicted for participating in the beatings that caused the death of five detainees and the beating of twenty-seven others. Any sentence must necessarily reflect this factor.

The Trial Chamber has found that the Accused abused his position while on duty at the camp, mistreating and humiliating detainees in total disregard of human life and dignity. The fact that he was a low-level offender in terms of the overall structure of authority at the Keraterm camp cannot alter the gravity of the offences for which he has been convicted. On the

other hand, the Trial Chamber has taken into account all the relevant circumstances in mitigation of the sentence in this case.

Sentence

Predrag Banović, having given due weight to the various factors set out in this Judgement, the Trial Chamber sentences you to a term of 8 years' imprisonment.

The sentence shall begin to run as of today. You have been detained in the Detention Unit for a total of 716 days to date. You are entitled to credit for this period of time served. You will remain in the custody of the Tribunal pending finalisation of arrangements for your transfer to the State where you will serve your sentence.

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.
