UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-02-65/1-S
		Date:	28 October 2003
		Original:	ENGLISH

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Richard May
Judge O-Gon Kwon

Registrar: **Mr. Hans Holthuis**

Decision: **28 October 2003**

PROSECUTOR

v.

PREDRAG BANOVIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Ms. Joanna Korner
Ms. Sureta Chana

Counsel for the Accused:

Mr. Jovan Babić

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I.

I. INTRODUCTION

A. Procedural History

1. Predrag Banović was born on 28 October 1969 in the municipality of Prijedor, located in the north-western region of Bosnia and Herzegovina. Prior to the conflict, he worked as a waiter.

2. Judge Lal Chand Vohrah confirmed the original indictment ("Original Indictment") against Predrag Banović ("the Accused") on 21 July 1995. Predrag Banović was indicted on 25 counts of crimes against humanity and violations of the laws or customs of war, all related to events in the municipality of Prijedor, during the summer of 1992. The Original Indictment against Predrag Banović and others was immediately made public and warrants of arrest were issued the same day.

3. The Accused was transferred into the custody of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("the International Tribunal" or "Tribunal") on 9 November 2001, following his arrest in Serbia (then Federal Republic of Yugoslavia) on 8 November 2001. At his initial appearance on 16 November 2001, the accused pleaded not guilty to all charges against him.

4. The Original Indictment against Predrag Banović has been amended several times and the most recent version (the "Consolidated Indictment") was filed on 5 July 2002.[1]

[1] On 21 July 1995, Judge Vohrah confirmed the original indictment and issued warrants of arrest for the accused, including Dušan Fuštar, Predrag Banović, and Duško Knežević. On 5 May 1998, Judge Vohrah approved the withdrawal of charges against five of the co-accused and in November 1998, Judge Vohrah granted leave for the charges against another co-accused, Zoran Zigić, to be incorporated with others in an amended indictment in another case (IT-98-30). During the period June 1999 and June 2000, three accused were arrested and convicted in September 2001 following the guilty pleas entered by each accused. The Accused Predrag Banović was arrested and transferred to The Hague on 9 November 2001. Between January 2001 and May 2002, the Prosecution made several applications to amend the *Keraterm* Indictment. On 17 September 2002, the Trial Chamber granted a Prosecution's Motion for Joinder of Accused and ordered that the Indictments against Željko Meakić, Momčilo Gruban and Duško Knežević (IT-95-4, "Omarska Indictment"), and the indictment against Dušan Fuštar, Predrag Banović and Duško Knežević (IT-95-8/1, "Keraterm Indictment") be joined and given a common case number. *Prosecutor v. Meakić et al, Prosecutor v. Fuštar et al*, Decision on Prosecution's Motion for Joinder of Accused, Case No. IT-95-4-PT, IT-95-8/1-PT, 17 Sept. 2002. On 21 November 2002, the Trial Chamber ordered that the Consolidated Indictment attached to the Prosecution's Motion for Joinder of Accused, dated 5 July 2002, be the operative indictment in this case. *Prosecutor v Meakić et al.*, Decision on the Consolidated Indictment, 21 Nov. 2002.

5. The Consolidated Indictment ("Indictment") alleges that during the early morning hours of 30 April 1992 Bosnian Serb police and army forces seized physical control of the town of Prijedor.[2] Following the forcible take-over of Prijedor, the Prijedor Bosnian Serb Crisis Staff imposed severe restrictions on all aspects of life for non-Serbs, principally Bosnian Muslims and Bosnian Croats, including their movement and employment.[3] According to the Indictment, between May and August 1992, Bosnian Serb authorities in the Prijedor municipality unlawfully segregated, detained and confined more than 7,000 Bosnian Muslims, Bosnian Croats and other non-Serbs from the Prijedor area in the Omarska, Trnopolje and Keraterm camps.[4] It is alleged 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 the Bosnian Muslim, Bosnian Croats and other non-Serb inhabitants from the Prijedor municipality with the aim of ensuring the creation and control of a separate Serbian territory in Bosnia and Herzegovina.[5]

6. The Prosecution's case against Predrag Banović is that, as a guard at the Keraterm camp, Predrag Banović, together with others, participated in a joint criminal enterprise which operated within the Keraterm camp. The Indictment alleges that between 24 May 1992 and 30 August 1992, the Keraterm 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, non-Serbs.[6] Interrogations, severe beatings, sexual assaults and killings are alleged to have taken place on a daily basis at the Keraterm camp.[7] Living conditions were brutal and inhumane.[8] The participation of Predrag Banović in the joint criminal enterprise was limited to his activities within the Keraterm camp, which included participation in beatings, abuse and murder of detainees.

7. The Indictment alleges in relation to Count 1 (persecution on political, racial or religious grounds, a crime against humanity punishable under Article 5(h) of the Statute of the Tribunal) that between 24 May 1992 and 30 August 1992, Predrag Banović,

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2 *Prosecutor v. Željko Meakić, Momčilo Gruban, Dušan Fuštar, Predrag Banović, Duško Knežević*, Consolidated Indictment (Omarska and Keraterm Camps), Case No. IT-02-65, 5 July 2002 ("Indictment"), para. 10.
3 *Ibid*, para. 11.
4 *Ibid*.
5 *Ibid*, para. 19.
6 *Ibid*.
7 *Ibid*, para. 15.

together with others, participated in the persecution of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Keraterm camp on political, racial or religious grounds. With regard to the Accused Banović, the persecutory acts alleged in the Consolidated Indictment include: (a) the murder of seven prisoners; (b) the beating of numerous non-Serb detainees at the Keraterm camp as referred to in paragraphs 15 and 16 of the Indictment and Schedule D attached to the Indictment;[9] and (c) the confinement in inhumane conditions, harassment, humilation and psychological abuse of Bosnian Muslims, Bosnia Croats and other non-Serbs detained in the Keraterm camp as referred to in paragraphs 15 and 16 of the Indictment.[10] Predrag Banović is also charged with criminal responsibility for the acts and/or omissions of other participants in the joint criminal enterprise.[11]

8. For his alleged involvement in these acts, and on the basis of his individual criminal responsibility under Article 7, paragraph 1, of the Statute of the International Tribunal, the Indictment charges Predrag Banović with individual criminal responsibility in four additional counts: murder, a crime against humanity pursuant to Article 5(a) of the Statute, and a violation of the laws or customs of war pursuant to Article 3 of the Statute (Counts 2 & 3); inhumane acts, a crime against humanity pursuant to Article 5(i) of the Statute (Count 4); and cruel treatment, a violation of the laws or customs of war pursuant to Article 3 of the Statute (Count 5).[12]

B. The Plea Agreement

9. On 18 June 2003, the Office of the Prosecution ("Prosecution") and the accused Predrag Banović, as represented by counsel, filed a confidential "Joint Motion for the Consideration of a Plea Agreement between Predrag Banović and the Office of the Prosecutor" ("Joint Motion") pursuant to Rule 62 *ter* of the Rules of Procedure and Evidence of the International Tribunal ("Rules"). The Joint Motion introduced a "Plea Agreement" between the parties dated 5 June 2003, as to the entry of a guilty plea by the Accused to Count 1 of the Consolidated Indictment, persecution based on political,

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8 *Ibid*, para. 16.
9 *Ibid*, para. 29.
10 *Ibid*.
11 *Ibid*, para. 21(b).
12 *Ibid*, Counts 2 to 5.

racial, or religious grounds, a crime against humanity, punishable under Articles 5(h) and 7(1) of the Statute of the Tribunal.[13]

10. The Plea Agreement contains provisions reflecting the understanding of Predrag Banović as to the legal nature of the charge of persecution as a crime against humanity. It is stated that he understands that, for him to be found guilty of persecution as described in Count 1 of the Indictment, the Prosecution had to prove beyond a reasonable doubt that: (1) at the material times and places, there existed an armed conflict; (2) at the material times and places, there existed a widespread or systematic attack directed against a civilian population; (3) the Accused's conduct was related to the widespread or systematic attack directed against a civilian population; (4) the Accused had knowledge of the wider context in which his conduct occurred; (5) the Accused committed acts or omissions against a victim or victim population violating a basic or fundamental right; (6) the Accused intended to commit the violation; (7) the Accused's conduct was committed on political, racial or religious grounds; and, (8) the Accused's conduct was committed with discriminatory or persecutory intent.[14]

11. The Prosecution and the Defence agreed that the Prosecution would recommend to the Trial Chamber a total sentence of eight years.[15] Both parties agreed that Predrag Banović understood that, as described in Rule 101 of the Rules, he could face a term of imprisonment up to and including the remainder of his life; that the Trial Chamber was not bound by this recommendation and was, in fact, free to sentence him as it saw fit; that in determining the appropriate sentence, the Trial Chamber takes into account such factors as the gravity of the offences, the individual circumstances of the convicted person, any aggravating and mitigating circumstances, and the general practice regarding prison sentences in the former Yugoslavia.[16] Predrag Banović also understood that by pleading guilty, he voluntarily waived certain procedural rights guaranteed by the Statute.[17]

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13 Plea Agreement, Case No. IT-02-65-PT, dated 2 June 2003, filed 18 June 2003 ("Plea Agreement"), para. 3.
14 *Ibid*, para. 7.
15 *Ibid*, para. 9.
16 *Ibid*, para. 10.
17 The listed rights include the right to plead not guilty and require the Prosecution to prove charges in the Consolidated Indictment beyond a reasonable doubt at a fair and impartial public trial; the right to prepare and put forward a defence to the charges at such public trial; the right to be tried without undue delay; the right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing; the right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at trial under the

12. In the Plea Agreement, the Prosecution agreed that following the plea of guilty and conviction, it would seek leave to withdraw, with prejudice, all other counts against the Accused and the remaining incidents in Schedule D not set out in the Plea Agreement, as well as criminal responsibility for the acts of others at the Keraterm camp, pleaded in Schedule C and F of the Indictment.[18]

13. At a hearing on the Joint Motion held on 26 June 2003, the Accused pleaded guilty to Count 1 of the Consolidated Indictment. Having reviewed the Plea Agreement, the Trial Chamber noted that it was satisfied that the requirements of Rule 62 *bis* of the Rules had been met. Accordingly, the Trial Chamber entered a finding of guilt.[19]

14. At the same hearing, the Prosecution confirmed its intention to withdraw the remaining counts against the Accused.[20] The Trial Chamber accordingly dismisses, in respect of Predrag Banović, all other counts against the Accused and the remaining incidents in Schedule D not set out in the Plea Agreement, as well as criminal responsibility for the acts of others, pleaded in Schedule C and F of the Indictment.

15. The proceedings against Predrag Banović were formally separated from those against the other accused named in the Consolidated Indictment by oral Order of the same day.[21] The case against Predrag Banović was accordingly severed from the case *Prosecutor v. Meakić et al.* and re-designated as Case No. IT-02-65/1-S.[22] By Order dated 27 June 2003, the Plea Agreement was released as a public document on 4 July 2003.[23]

16. The Trial Chamber received the "Prosecution Sentencing Brief for Predrag Banović" on 17 July 2003 ("Prosecution Sentencing Brief"). The Defence filed a partly confidential "Defence Sentencing Brief for Predrag Banović" on 27 August 2003 ("Defence Sentencing Brief"), as required by the Trial Chamber.[24]

17. The Sentencing Hearing in this matter was held on 3 September 2003. As a preliminary submission, the Prosecution noted that some assertions in the Defence

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same conditions as witnesses against him; and the right not to be compelled to testify against himself or to confess guilt. *See* Plea Agreement, para. 15.

18 *Ibid*, para. 13.

19 Sentencing Hearing, Transcript ("T.") 73.

20 *Ibid*.

21 *Ibid*.

22 Registry Certificate re: assignment of new case number, Case No. IT-02-65/1-S, 30 June 2003.

23 *Prosecutor v. Banović*, Order for Release of Confidential Plea Agreement, Case No. IT-02-65/1-S, 30 June 2003.

24 Sentencing Hearing, T. 74.

Sentencing Brief could be considered inconsistent with the guilty plea, or suggest that the plea was not informed or unequivocal at the time it was made.[25] In particular, the Prosecution submitted that the Defence *inter alia* argues that due to his low rank and subordinated position, the Accused Predrag Banović could not "resist the power of his superiors and others who committed crimes and forced him and other to commit crimes, too".[26] The Prosecution noted that although duress is not a defence for wilfully taking lives,[27] it has not been established yet whether it could be a defence in respect of beating charges.[28] The Defence explained that the submission was never intended to be read "either as a partial or complete defence, but simply as a mitigating circumstance" for the Trial Chamber's consideration.[29] After hearing the parties, the Trial Chamber concluded that the plea was informed and was not equivocal.[30]

18. The Trial Chamber was also called upon to decide whether to admit a number of exhibits and statements attached to the Defence Sentencing Brief.[31] At the sentencing hearing, the Defence submitted an additional document (offer of employment of the Accused) that it sought to have admitted under the same conditions. On 5 September 2003, the Trial Chamber granted the Defence request and admitted all the statements and exhibits attached to the Defence Sentencing Brief, including the offer of employment. The Trial Chamber considered that the exhibits and statements "constitute information that will assist the Trial Chamber in determining an appropriate sentence".[32]

19. During the sentencing hearing, 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 reserved its Judgement for a later date.

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25 *Ibid*, T. 97.
26 Defence Sentencing Brief, para. 46.
27 *Prosecutor v. Erdemović*, Appeal Judgement, Case No. IT-96-22-A, 7 Oct. 1997.
28 Sentencing Hearing, T. 98.
29 *Ibid*, T. 102.
30 *Ibid*.
31 *See* Defence Sentencing Brief, paras 60-61, and Annexes A and B.
32 *Prosecutor v. Banović*, Order Granting Defence Request to Admit Documentary Material in Sentencing, Case No. IT-02-65/1-S, 5 Sept. 2003.

II. THE FACTUAL BASIS

20. A written "Factual Basis of Plea Agreement" ("Factual Basis") for the crime described in the Indictment and for the participation of the Accused was filed with the Plea Agreement.[33] The Factual Basis was agreed by the Accused with his counsel and forms the basis upon which the Trial Chamber now passes sentence. The agreed facts set out in detail in the Factual Basis are summarised below.

21. Following the 30 April 1992 overthrow of the Municipal Government of Prijedor, Bosnian Serb forces carried out a series of attacks on villages and areas in which non-Serbs lived resulting in the displacement and capture of large number of men, women and children.[34] The Prijedor Bosnian Serb Crisis Staff established three major camps to deal with these persons, one of which was the Keraterm camp, located in a ceramic factory on the eastern outskirts of Prijedor town, in Cirkin Polje.[35]

22. The establishment of the Keraterm and Omarska camps, amongst others, was an essential feature of a joint criminal enterprise the purpose of which was the permanent removal of non-Serb inhabitants from the territory of the planned Serbian State within Bosnia and Herzegovina.[36] The Keraterm and Omarska camps were operated in a manner designed to ill-treat and persecute non-Serbs from Prijedor and other areas, with the aim of ridding the territory of non-Serbs or subjugating those who remained.[37] The detention of non-Serbs in the camps was a prelude to killing them or transferring them to non-Serb areas.

23. The Keraterm camp began operating on 23 May 1992 and held as many as 1,500 detainees.[38] Between 20 June and 6 August 1992, Predrag Banović regularly performed his duties as a guard at the Keraterm camp. Duško Sikirica was Commander of the camp. Guards at the Keraterm camp included reserve police personnel and were organised into shifts of between 10-15 guards, supervised by Dragan Kolundžija, Damir Došen and Dušan Fuštar, all shift commanders of the guards. Predrag Banović was a guard in Damir Došen's shift command.[39]

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33 Factual Basis of Plea Agreement, Annex 1 to Plea Agreement ("Factual Basis").
34 *Ibid*, para. 2.
35 *Ibid*.
36 *Ibid*, para. 3.
37 *Ibid*, para. 4.
38 *Ibid*, para. 7.
39 *Ibid*, para. 8.

24. Detainees at the Keraterm camp suffered brutal, inhumane and degrading conditions during their confinement, in addition to humiliation, harassment, physical and psychological abuse.[40] The camp was operated in a manner that resulted in the physical debilitation and death of the non-Serb detainees.[41] Detainees were searched upon arrival at the Keraterm camp and any personal valuables confiscated. Many of them were beaten before being taken into one of four storage rooms behind metal doors during the hot summer months of 1992.[42]

25. The Factual Basis describes the deplorable living conditions at the camp. Living conditions at the camp were very poor. 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.[43] They were fed grossly insufficient portions of food and had limited access to water.[44] Toilets and personal hygiene facilities were inadequate and in extremely poor hygienic conditions. The detainees had no opportunity to exercise and were not regularly permitted to go in the open area for fresh air.[45]

26. During their incarceration, most detainees at the Keraterm camp were called for interrogation usually conducted by "inspectors" coming from Banja Luka and Prijedor. Beatings regularly accompanied the detainees' journey to and from the interrogation. Detainees were thus classified either for transfer to the Omarska camp nearby or for placement in a specific room at Keraterm.[46]

27. Keraterm authorities, as well as "visitors", regularly subjected the detainees to severe beatings and cruel and humiliating treatment, and many were killed. All types of weapons and tools were used for the beatings, including police truncheons and baseball bats.[47] The beatings often took place in full view of the other detainees and were accompanied by humiliating and derogating comments. Non-Serb political and civic leaders and those known to have resisted the Serbs were especially targeted for beatings and killings. The beatings caused serious physical and mental harm. Insufficient or no medical care was available after the beatings.[48] Many detainees did not survive the

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40 *Ibid*, para. 9.
41 *Ibid*.
42 *Ibid*, para. 10.
43 *Ibid*, paras 10-11.
44 *Ibid*.
45 *Ibid*.
46 *Ibid*, para. 12.
47 *Ibid*, paras 12-13.
48 *Ibid*.

camp.[49] Bodies were frequently loaded on to vehicles, taken away and later buried in Pašinac Cemetery in Prijedor. Other detainees were taken out of detention rooms to perform tasks and were never seen again.[50]

28. According to the Factual Basis, Predrag Banović and his co-accused in the Indictment significantly participated in the joint criminal enterprise.[51] While performing his duties at the Keraterm camp, Predrag Banović did not hold any rank and he had no control over other guards at the camp.[52] However, as a guard at the Keraterm Camp between 20 June and 6 August 1992, Predrag Banović knew of the system of ill treatment in the camp, participated in the mistreatment, beating and killing of detainees in the camp, and intended to further this common concerted system of ill-treatment.[53] At all times, the Accused had the necessary state of mind for the commission of each of the crimes listed in the Plea Agreement.[54]

29. Predrag Banović, amongst others, took part in the beating of detainees at the Keraterm camp, resulting in their deaths. Predrag Banović acknowledges being responsible for participating in five murders.[55] The five murders, also set out in Schedule D of the Consolidated Indictment, to which the Accused has pleaded guilty, are listed in the Factual Basis.[56] The names of the victims were read out in a public session at the Sentencing Hearing, namely Jovo Radočaj, Drago Tokmadžić, Jasmin a/k/a "Zvjezdaš", Dževad Karabegović, and Džemal Mešić.

30. In addition, Predrag Banović acknowledges being responsible for the beating of twenty-five detainees and the shooting of two others, namely the beating of Ramadan Bahonjić, Meho Kapetanović, Faruk Hrnčić, Enver Modronja, Adib Bajrić, Uzeir Čaušević a/k/a Zejro, Šaban Elezović, Edin Ganić;[57] the beating of three Ališić brothers, Armin, Edo and a third brother whose first name is unknown; the beating of Ismet Garibović, Vasif Mujkanović, Mujo Sivac, Sulejman Sivac, Misrad Karagić, Esad Islamović, a prisoner with the family name Mešić, Jasmin Ramadanović a/k/a "Sengin", Suad Halvadžić, Besim Fazlić, Mehmed Avdić, Muharem Sivac, Mirsad Crljenković, Ismet Bajić; the shooting of a detainee called "Smail" and another unidentified detainee.

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49 *Ibid*, para. 14.
50 *Ibid*, para. 13.
51 *Ibid*, para. 5.
52 *Ibid*, para. 18.
53 *Ibid*, para. 6.
54 *See also* Plea Agreement, para. 17.
55 *Ibid*, para. 15.
56 *Ibid*. The Accused was initially charged with seven counts of murder.
57 *Ibid*, para. 16.

III. APPLICABLE LAW

A. The Statute and the Rules

31. In determining the appropriate sentence, the Trial Chamber is guided by the Statute of the International Tribunal and the Rules. The relevant provisions of the Statute and the Rules which relate to sentencing provide as follows:

> Article 24
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> Penalties
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> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
>
> 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
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> […]

> Rule 100
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> Sentencing Procedure on a Guilty Plea
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> (A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
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> […]

> Rule 101
>
> Penalties
>
> (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

[…]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

32. Thus, in determining the appropriate sentence, the factors of which the Trial Chamber is bound to take into account include: the gravity of the offence, any aggravating circumstances, any mitigating circumstances, and the general practice regarding prison sentences in the courts of the former Yugoslavia.

B. General Considerations

33. The objectives of punishment provide an additional guidance in determining sentence. In this regard, Trial Chambers and the Appeals Chamber of the International Tribunal have repeatedly stressed the retributive and the deterrence principles.[58]

34. The principle of retribution is not aimed at fulfilling a desire for revenge but to express the outrage of the international community at these crimes.[59] It means that the punishment of an offender must be proportionate to the specific criminal conduct.[60] On the other hand, the principle of deterrence is a legitimate consideration in sentencing.[61] Indeed, the Appeals Chamber has recognised that one of the purposes of the Tribunal in bringing to justice individuals responsible for serious violations of international

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[58] *Prosecutor v. Aleksovski*, Appeal Judgement, Case No. IT-95-14/1-A, 24 Mar. 2000, ("*Aleksovski* Appeal Judgement"), para. 185; *Prosecutor v. Delalić et al.,* Appeal Judgement, Case No. IT-96-21-A, 20 Feb. 2001 ("*Čelebići* Appeal Judgement"), para. 806; *see* also *Prosecutor v. Todorović*, Sentencing Judgement, Case No. IT-95-9/1-S, 31 July 2001 ("*Todorović* Sentencing Judgement"), paras 28-30; *Prosecutor v. Krnojelac*, Trial Judgment, Case No. IT-97-25-T, 15 Mar. 2002 ("*Krnojelac* Trial Judgment"), para. 508.

[59] *Aleksovski* Appeal Judgement, para. 185.

[60] *Todorović* Sentencing Judgement, para. 29.

[61] *Prosecutor v. Tadić,* Judgement in Sentencing Appeals, Case No. IT-94-1-A and IT-94-1-A*bis*, 26 Jan. 2000 ("*Tadić* Sentencing Appeal Judgement"), para. 48.

humanitarian law is to deter future violations.[62] It has thus recognised the "general importance of deterrence as a consideration in sentencing for international crimes".[63] The Trial Chamber understands the principle of deterrence to mean that any penalty imposed must have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from so doing.[64] Accordingly, this Trial Chamber has applied the principle of deterrence in determining the sentence to be imposed. However, in so doing, the Chamber, as stressed in *Tadić*,[65] has taken care to ensure that the deterrence principle is not accorded undue prominence.

35. These considerations constitute the backdrop against which the Accused's sentence has been determined. The other "sentencing purposes" submitted by the Defence as relevant to the determination of the sentence imposed – moral admonition and rehabilitation[66] - were considered of limited relevance in this case.[67]

36. The overriding obligation in sentencing remains, however, the consideration of the inherent gravity of the crime. This factor has been described as the "primary consideration"[68] and the "cardinal feature" in sentencing.[69] It has been said that "consideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence".[70] This Trial Chamber cannot but agree. Indeed, the overriding obligation in determining sentence is that of fitting the penalty to the gravity of the criminal conduct.[71]

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62 *Čelebići* Appeal Judgement, para. 801.
63 *Aleksovski* Appeal Judgement, para. 185; *see also Čelebići* Appeal Judgement, para. 803.
64 *Todorović* Sentencing Judgement, para. 30.
65 *Tadić* Sentencing Appeal Judgement, para. 48.
66 Defence Sentencing Brief, para. 18.
67 *See* also *Čelebići* Appeal Judgement, para. 806.
68 *Čelebići* Appeal Judgement, para. 731, citing *Prosecutor v. Kupreškić et al.*, Trial Judgement, Case No. IT-95-16-T, 14 Jan. 2000 ("*Kupreškić* Trial Judgement"), para. 852; and *Aleksovski* Appeal Judgement, para. 182.
69 *Prosecutor v. Plavšič*, Sentencing Judgement, Case No IT-00-39&40/1-S, 27 Feb. 2003 ("*Plavšič* Sentencing Judgement"), para. 25.
70 *Aleksovski* Appeal Judgement, para. 182.
71 *Čelebići* Appeal Judgement, para. 717; *Prosecutor v. Kupreškić et al*, Appeal Judgement, Case No. IT-95-16-A, 23 Oct. 2001 ("*Kupreškić* Appeal Judgement"), para. 442. *See* also *Krnojelac* Trial Judgment, para. 507; *Prosecutor v. Vasiljević*, Trial Judgment, Case No. IT-98-32-T, 29 Nov. 2002 ("*Vasiljević* Trial Judgment"), para. 272.

IV. SENTENCING FACTORS

37. The Trial Chamber will, therefore, begin its consideration of these various factors by first considering the gravity of the offence. In this regard, the Trial Chamber's obligation has been formulated in *Kupreškić*[72] and subsequently endorsed in several decisions by the Appeals Chamber:[73]

> The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.

A. Gravity of the Crime

38. The Prosecution notes that persecution is an "umbrella" crime that covers various forms of criminal conduct.[74] In the present case, the underlying offences of the crime of persecution, to which the Accused has pleaded guilty, are five murders and the beating of twenty-seven prisoners incarcerated at the Keraterm camp.[75] The Prosecution submits that these crimes are inherently grave:[76] murder is one of the most serious crimes known in every national jurisdiction; a conviction for multiple murders is seen as exceptionally serious.[77]

39. The circumstances in which the crimes were committed are described in the Factual Basis. According to this document, the Keraterm camp was established and operated as part of a joint criminal enterprise, the purpose of which was to imprison non-Serbs in humiliating and dehumanising conditions in order to rid the territory of non-Serbs, because of their ethnicity.[78] The crimes committed by Predrag Banović occurred as part of a widespread and systematic attack on a civilian population, with a discriminatory intent.[79]

40. The conditions of detention at the Keraterm camp are described as brutal, inhumane and degrading for all prisoners. Detainees were kept in a state of constant

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72 *Kupreškić* Trial Judgement, para. 852.
73 *Prosecutor v Jelisić*, Appeal Judgement, Case No. IT-95-10-A, 5 July 2001 ("*Jelisić* Appeal Judgement"), para. 101; *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182.
74 Prosecution Sentencing Brief, para. 18, relying on the Appeals Chamber Judgement in *Prosecutor v. Kupreškić*, Appeal Judgement, Case No. IT-95-16-T, 23 Oct. 2001 (*Kupreškić* Appeal Judgement), paras 97-98,105.
75 Prosecution Sentencing Brief, para. 19.
76 Sentencing Hearing, T. 109.
77 Prosecution Sentencing Brief, para. 19.
78 *Ibid*, para. 21

physical and psychological terror, at the mercy of the camp authorities.[80] Humiliation, harassment and psychological abuse of prisoners were common place. Predrag Banović is said to have abused his position as a guard at the Keraterm camp to subject prisoners to gratuitous and constant humiliation, harassment and violence.[81] The Accused has admitted to have participated directly in the beating of prisoners resulting in the death of five and causing grievous bodily harm to twenty-seven others.

41. As noted by the Trial Chamber in *Todorović*, the crime of persecution is "inherently a very serious crime".[82] Its unique character is derived from a requirement of a specific discriminatory intent.[83] On that account, the offence is regarded as a particularly serious offence. In this case, the Accused has admitted his participation in the following persecutory acts:

(a) the murder of five prisoners;

(b) the beating of twenty-seven detainees; and

(c) the confinement in inhumane conditions, harassment, humilation and psychological abuse of Bosnian Muslims, Bosnia Croats and other non-Serbs detained at the Keraterm camp.

42. 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 Keraterm camp was carried out with the intent to discriminate against non-Serb detainees. During detention, the prisoners were forced to endure the most brutal and inadequate living conditions. The prisoners were regularly beaten and mistreated by the Keraterm camp guards as well as "visitors".

43. The Accused has admitted to participating in the beating of prisoners with various tools, including baseball bats, truncheons, cables, and iron balls, thus inflicting severe physical suffering on the victims and mental harm to those who witnessed those events.[84] These crimes were part of the overall abuse directed against the non-Serb

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79 *Ibid.*
80 *Ibid*, para. 22.
81 *Ibid*, para. 23.
82 *Todorović* Sentencing Judgement, para. 32.
83 *Ibid*; see also *Krnojelac* Trial Judgment, paras 431-432.
84 Factual Basis, paras 13, 16.

population of which the Accused has admitted his knowledge.[85] The direct participation of Predrag Banović 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.[86]

44. 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 Defence submits that the Accused had the lowest rank in the overall structure of authority at the Keraterm camp. He was not in charge of the guards in the same shift, nor did he have any power over the "visitors" who committed crimes at the camp.[87] As guard at the Keraterm camp, the Accused was not in a position to improve the conditions of the detainees.[88] Secondly, it is argued that, although he participated in the beatings which caused the death of five detainees, the Accused never *intended* to kill anyone.[89] Thirdly, the Defence claims that his participation in these crimes should be put into the broader context of the aggressive wartime propaganda that was prevalent in the whole territory, particularly in the Prijedor area and the Keraterm camp. As a young, uneducated and immature person, the Accused succumbed to the propaganda.[90]

45. The first of these matters is not in dispute. The Accused did not hold any rank and was a guard at the Keraterm camp.[91] Nor can it be said that he played a significant role in the broader context of the Prijedor Serb leadership's criminal plan. Furthermore, the participation of the Accused in the perpetration of the crimes was geographically limited to his activities while on duty at the Keraterm camp. However, 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. In any event, the relative significance of the role of the Accused is not ultimately decisive of

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85 Prosecution Sentencing Brief, para. 26.

86 *See* also *Prosecutor v Simić*, Sentencing Judgement, Case No. IT-95-9/2, 17 Oct. 2002 ("*Simić* Sentencing Judgement"), para. 55.

87 Defence Sentencing Brief, para. 33.

88 *Ibid*, para. 35.

89 This argument is inferred from the following submission in the Defence Sentencing Brief: "Although [the Accused] is of the opinion that he did not kill anyone while beating him, he admitted that he had reason to believe that the injuries that the participants in the crimes inflicted to prisoners resulted in death of a victim, so he admitted 'he was capable of committing a crime'" (footnote omitted). Defence Sentencing Brief, para. 33.

90 *Ibid*, para. 36; Sentencing Hearing, T. 118-122.

91 Factual Basis, para. 17.

the determination of the sentence. The Appeals Chamber in *Čelebići* has interpreted this consideration as follows: [92]

> Establishing a graduation does not entail a low sentence for all those in a low level of the overall command structure. On the contrary, a sentence must always reflect the inherent level of gravity of crime which "requires consideration of the particular circumstances of the cases, as well as the form and degree of participation of the accused in the crimes." In certain circumstances, the gravity of the crime may be so great that even following consideration of any mitigating factors, and despite the fact that the accused was not senior in the so-called overall command structure, a very severe penalty is nevertheless justified.

46. Despite his low rank in the hierarchy at the Keraterm camp, the Accused has accepted responsibility for particularly serious crimes. He has admitted to participating in the killing, beating, humiliation, harassment and psychological abuse of powerless detainees during the course of their confinement in inhumane conditions at the Keraterm camp. The Trial Chamber has taken these factors into account in the consideration of the gravity of the offence.

47. The second issue, the state of mind of the Accused, even if established, cannot be said to alter the seriousness of the offence.[93] In this case, the Accused has been convicted of the crime of persecution, including participating in beatings that caused the death of five detainees. The Trial Chamber is satisfied that the Accused participated in those beatings with the intention to inflict serious bodily harm or the death of the victims.

48. 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.

49. 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.[94] The

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92 *Čelebići* Appeal Judgement, para. 847; *Prosecutor v Kunarac,* Trial Judgement, Case No. IT-96-23 & IT-96-23/6, 22 Feb. 2001 ("*Kunarac* Trial Judgement") para. 858; *Vasiljević* Trial Judgement, para. 301.

93 It goes without saying that a specific intention to kill is not a requirement for a conviction for murder as a crime against humanity under customary international law. *See*, e.g., *Vasiljević* Trial Judgement, para. 205; *Krnojelac* Trial Judgement, para. 324; *Prosecutor v Kvočka et al.*, Trial Judgement, Case No. IT-98-30/1-T, 2 Nov. 2001, para. 132; *Prosecutor v. Krstić*, Trial Judgement, Case No. IT-98-33-T, 2 Aug. 2001, para. 485; *Prosecutor v Kordić and Čerkez,* Trial Judgement, Case No. IT-95-14/2-T, 26 Feb. 2001, paras 235-236; *Kupreškić* Trial Judgement, paras 560-561; *Prosecutor v Blaškić* Trial Judgement, Case No. IT-95-14-T, 3 Mar. 2000, para. 217; *Prosecutor v Jelisić* Trial Judgement, Case No. IT-95-10-T, 14 Dec. 1999, para. 35; *Čelebići* Trial Judgement, paras 422, 439.

94 Prosecution Sentencing Brief, para. 20.

Prosecution submits that 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.[95] The Trial Chamber accepts that this element affects the seriousness of the offence. However, the status of the victims as civilians does not necessarily aggravate the offence since the crime of persecution in Article 5(h) of the Statute for which the Accused is convicted includes the civilian character of the victims as an indispensable legal ingredient.[96]

50. The Prosecution further submits that the prisoners were particularly vulnerable, frightened and isolated individuals, deliberately chosen by the Accused to be the victims of beatings and humiliation while detained in inhumane conditions.[97] The Trial Chamber 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.[98]

B. Aggravating Factors

51. The Defence submits that all circumstances capable of amounting to aggravating factors are subsumed in the overall gravity of the offence.[99] The criminal responsibility of the Accused encompasses his participation in killings, beatings and inhumane conditions, including humiliation, harassment and psychological abuse, suffered by Bosnian Muslims, Bosnian Croats and other non-Serbs at the Keraterm camp.

52. The Prosecution submits that the vulnerability of the victims is an aggravating factor in this case.[100] The victims, it is argued, were deprived of their fundamental rights, gathered together with thousands of others in detention facilities;[101] subjected to inhumane conditions and repeated attacks, and lived in an atmosphere of terror.[102] Detainees were subjected to constant humiliation and psychological mistreatment which certainly increased their mental suffering and feeling of degradation.

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95 *Ibid*, para. 26.
96 *See* also *Simić* Sentencing Judgement, para. 70; *Todorović* Sentencing Judgement, para. 57.
97 Prosecution Sentencing Brief, para. 26.
98 *See* also *Simić* Sentencing Judgement, para. 70; *Prosecutor v Kunarac et al.*, Appeal Judgement, Case No. IT-96-23 & IT-96-23/1-A, 12 June 2002 ("*Kunarac* Appeal Judgement"), para. 352.
99 Defence Sentencing Brief, para. 37.
100 The Prosecution notes, however, that the vulnerability of the victims might be relevant to determining the gravity of the offence, rather than as an aggravating factor. Prosecution Sentencing Brief, fn 21.
101 Prosecution Sentencing Brief, para. 29.
102 *Ibid.*

53. The Trial Chamber considers that these circumstances, all directly related to the offence and the participation of the Accused,[103] may be considered an aggravation of the crime. However, in the view of the Trial Chamber, these matters have already been taken into account when assessing the gravity of the offence.

54. The Prosecution further submits that, as a guard at the Keraterm camp, the crimes were committed by the Accused in deliberate disregard of his duty as a guard in the camp to protect the detainees in it.[104] The Prosecution argued that, as guard at the Keraterm camp, the Accused had the ability to make the conditions of detention as comfortable as possible, under the circumstances; the Accused chose, however, to make them worse.[105]

55. The Trial Chamber is satisfied 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.[106] The Trial Chamber considers this an aggravating factor.

C. Mitigating Circumstances

56. As required under Rule 101 (B)(ii) of the Rules, the Trial Chamber now turns to an examination of "any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction".

57. The Prosecution submits that the guilty plea and the acceptance of responsibility may be considered in mitigation of sentence.[107] The Defence argues that the Trial Chamber should consider the following factors in mitigation of sentence: (i) guilty plea; (ii) remorse; (iii) Predrag Banović's rank and subordinated position in the police authority; (iv) personal circumstances and character of the Accused; and (v) the Accused's behaviour in the United Nations Detention Unit ("UNDU").[108]

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[103] In *Kunarac*, the Trial Chamber correctly emphasized that "only those circumstances directly related to the commission of the offence charged and to the offender himself when he committed the offence, such as the manner in which the offence was committed, may be considered in aggravation". *Kunarac* Trial Judgment, para. 850.

[104] Prosecution Sentencing Brief, para. 30.

[105] Sentencing Hearing, T. 109-110.

[106] In *Čelebići,* the Trial Chamber found that "[t]he manners in which these crimes were committed are indicative of a sadistic individual who, at times, displayed a total disregard for the sanctity of human life and dignity". *Čelebići* Trial Judgement, para. 1268.

[107] Prosecution Sentencing Brief, para. 32.

[108] Defence Sentencing Brief, paras 10-17.

58. Before considering these factors, it is necessary to consider the law as it applies to mitigating circumstances.[109] An accused's "substantial" co-operation with the Prosecutor is the only mitigating circumstance that is expressly mentioned in the Rules.[110] 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.[111]

59. 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".[112] 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.[113] An outline of the content of the interviews with the Prosecution is set out in a confidential attachment.[114]

60. The Defence observes that, given his low rank in the police authority, the Accused had necessarily limited access to sensitive information that may be of interest to the Prosecution. However, the Defence argues, there is no reason why the information that the Accused has provided, on the basis of his knowledge, however limited, of events in Prijedor and at the Keraterm camp, should not qualify as "substantial" co-operation.[115] In the circumstances, the Trial Chamber is satisfied that the co-operation is substantial.

61. The Trial Chamber observes that co-operation with the Prosecutor is generally considered in mitigation of sentence. However, as noted in *Plavšić*, it does not follow that failure to do so is an aggravating circumstance.[116] In this case, the Trial Chamber notes, as conceded by the Prosecution itself,[117] that the Accused agreed to be interviewed by the Prosecution thus demonstrating his willingness to co-operate. The fact that he did agree to be interviewed may in itself, in some cases, be a sign of co-operation, however modest.[118] His commitment to co-operate further with the

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109 *See* also *Plavšić* Sentencing Judgement, paras 63-65.
110 Rule 101 (B)(ii) of the Rules.
111 *Todorović* Sentencing Judgement, para. 86; *Prosecutor v. Sikirica* et al, Case No. IT-95-8-S, Sentencing Judgement, 13 Nov. 2001 ("*Sikirica* Sentencing Judgement"), para. 111.
112 Sentencing Hearing , T. 126-128.
113 *Ibid*, T. 124-125.
114 Confidential Attachment to the Defence Sentencing Brief, document dated 27 August 2003, para. 6.
115 Sentencing Hearing, T. 124-126.
116 *Plavšić* Sentencing Judgement, para. 64.
117 Sentencing Hearing, T. 127.
118 *See* also *Vasiljević* Trial Judgement, para. 299.

Prosecution in the future, under the conditions stipulated in the Plea Agreement,[119] is also a factor that the Trial Chamber has taken into account in mitigation of sentence.

62. A Trial Chamber has the discretion to consider any other factors which it considers to be of a mitigating nature.[120] These factors vary according the circumstances of each case. In addition to substantial co-operation with the Prosecutor, Chambers of the International Tribunal have found the following factors relevant to this case to be mitigating: a guilty plea; expression of remorse; good character with no prior criminal conviction.[121] The Trial has also the discretion to consider any other factors considered to be of a mitigating nature.[122]

63. The Trial Chamber has already examined the low rank of the Accused when considering the gravity of the offences. It has not been argued to the satisfaction of the Trial Chamber that the Accused's low rank in the police force is a factor that ought to be considered in mitigation. Moreover, there is no evidence that the Accused acted under duress.[123]

64. 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.[124]

65. Accordingly, the Trial Chamber will consider the following remaining factors in mitigation of sentence: (1) guilty plea, (2) expression of remorse; and (3) the personal circumstances of the Accused.

1. Guilty Plea

66. The Defence submits that, on the basis of the jurisprudence of the Tribunal, a guilty plea gives rise to a reduction in the sentence which the accused would otherwise have received for the following reasons: (1) it demonstrates honesty and encourages

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119 Plea Agreement, Annex 2.

120 *Krstić* Trial Judgement, para. 713.

121 Admission of guilt: *Kupreškić* Appeal Judgement, para. 464; *Jelisić* Appeal Judgement, para. 122; *Sikirica* Sentencing Judgement, paras 148-151, 192-93, 228; *Todorović* Sentencing Judgement, paras 75-82; *Prosecutor v. Erdemović*, Sentencing Judgement, Case No. IT-96-22-T*bis*, 5 Mar. 1998 ("*Erdemovic* Sentencing Judgement II"), p. 15. Remorse: *Sikirica* Sentencing Judgement, paras 152, 194, 230; *Todorović* Sentencing Judgement, paras 89-92; *Erdemović* Sentencing Judgement II, p. 16. Character: *Prosecutor v. Krnojelac,* Case No. IT-97-25, Judgement, 15 Mar. 2002 ("*Krnojelac* Trial Judgement"), para. 519; *Kupreškić* Trial Judgement, para. 478; *Kupreškić* Appeal Judgement, para. 459; *Aleksovski* Trial Judgement, para. 236; *Erdemović* Sentencing Judgement II, para. 14.

122 *Krstić* Trial Judgement, para. 713.

123 Defence Sentencing Brief, para. 46.

124 *Ibid*, para. 57.

accused persons to come forward, whether already indicted or as unknown perpetrators; (2) it contributes to the fundamental mission of the International Tribunal to establish the truth in relation to crimes within its jurisdiction; (3) it contributes to peace-building and reconciliation among the affected communities which is an integral part of the mission of this Tribunal; (4) it saves considerable resources for, amongst others, investigations, counsel fees and the general conduct of the trial; (5) it may relieve some victims and witnesses from the stress of giving evidence. [125]

67. The Defence further argues that Predrag Banović is the first accused person from Prijedor to plead guilty prior to the commencement of the trial and, for this reason, should receive full credit for that plea.[126] In addition, the Defence submits that as early as November 2002, during the course of an interview with the Office of the Prosecutor, the Accused admitted to have participated in the crimes.[127] The Defence notes that, by pleading guilty, the Accused demonstrated "his honesty and moral position with regard to the truth" which, it submits, is of critical importance in the process of reconciliation.[128]

68. It is generally agreed that a guilty plea should, in principle, be considered as a factor in mitigation of sentence. This principle has been endorsed in several cases before the Tribunal. Thus, in *Erdemović*, the Trial Chamber held that "an admission of guilt demonstrates honesty and it is important for the International Tribunal to encourage people to come forth whether already indicted or unknown perpetrators".[129] Similarly, in *Todorović*, the Trial Chamber held that "a guilty plea should, in principle, give rise to a reduction in the sentence that the accused would otherwise have received".[130] Undoubtedly, a plea of guilty critically contributes to the Tribunal's fundamental truth-finding mission.[131] A guilty plea 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.[132] Moreover, victims and witnesses are relieved from the possible stress of testifying at trial.[133]

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125 Defence Sentencing Brief, para. 40.
126 *Ibid*, paras 40, 42.
127 *Ibid*, para. 40.
128 *Ibid*, para. 41.
129 *Erdemović* Sentencing Judgement, para. 16.
130 *Todorović* Sentencing Judgement, para. 80.
131 *Sikirica* Sentencing Judgement, para. 149.
132 *Todorović* Sentencing Judgement, para. 81.
133 *Ibid*, para. 80.

69. The Trial Chamber thus finds that Predrag Banović should receive full credit for his plea as a mitigating factor.

2. Remorse

70. The Defence submits that in several cases before the Tribunal and the International Criminal Tribunal for Rwanda ("ICTR"), remorse has been taken into account as a mitigating factor.[134] The Defence argues that, in his interview with the Prosecution, Predrag Banović expressed a true and sincere remorse and his regret at "not being able to change anything or avoid the mobilization or situation he had found himself in".[135] At the Sentencing Hearing, the Accused made a statement in which he explained that his "guilty plea was an expression of sincere remorse concerning the events in Prijedor, and especially in the Keraterm camp".[136] The Accused stated that he deplored the war period and hatred. He explained that he regrets that he "did not find a way to avoid mobilisation and [his] role in the camp". The Accused added that he felt sorry for all the victims and wished that his plea and expressed remorse will be "understood as a balm for those wounds and as a contribution to the reconciliation of all people in Prijedor and the restoration of the situation that existed before the war".[137]

71. The Prosecution does not dispute the fact that the Accused has expressed remorse.[138] However, the Prosecution submits that, contrary to the assertion made in the Defence Sentencing Brief, the Accused "accepted very little responsibility for the crimes he has now admitted committing".[139] In this regard, the Prosecution points out that, during the interviews with the investigators in November 2002, the Accused did not admit the crimes and made self-justifying statements.[140]

72. It is noted that for remorse to be considered a mitigating factor, the Trial Chamber must be satisfied that the expressed remorse is sincere.[141] The Trial Chamber observes that the Accused signed the Plea Agreement with the Prosecution on 2 June 2003. Prior to his conviction on the basis of his plea of guilty on 26 June 2003, the

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134 Defence Sentencing Brief, para. 43.
135 *Ibid*, paras 44-45.
136 Sentencing Hearing, T. 129.
137 *Ibid*.
138 *Ibid*.
139 *Ibid*, T. 113.
140 *Ibid*, T. 114.
141 *Todorović* Sentencing Judgement, para. 89; *Erdemović* Sentencing Judgement II, p. 16; *Blaškić* Judgement, para. 775; *Prosecutor v. Serushago*, Judgement, Case No. ICTR, 98-39-S, 5 Feb. 1999, paras 40-41; *Prosecutor v. Ruggiu,* Judgement, Case No. ICTR-97-32-I, 1 June 2000, paras 69-72, also *Simić* Sentencing Judgement, para. 92.

Accused was entitled, in full equality, to his rights under the Statute, including his right to be presumed innocent until proven guilty.[142] If the Accused did not accept responsibility then, he was only exercising a fundamental right recognised by the Statute. The Trial Chamber is thus satisfied that the statements made by the Accused, both during the interviews with the Prosecution and at the Sentencing Hearing, are expressions of sincere remorse.

3. Individual Circumstances of the Accused

73. The Trial Chamber is required to take into account factors pertaining to "the individual circumstances of the convicted person".[143] The Defence has put forward a number of factors, all related to the personal circumstances of the Accused, which, it claims, should mitigate the sentence.

74. The Defence submits that the age and family circumstances of Predrag Banović should be considered in sentencing.[144] Predrag Banović was born on 28 October 1969. His wife, currently unemployed, and his three year old son live in Obrenovac, Republic of Serbia.[145] The Defence argues that, taking into account the principle of rehabilitation, the practice of this Tribunal considers youth as a mitigating circumstance.[146] The Defence further notes that the Accused does not have any prior criminal convictions, nor has he been involved in politics.[147] These factors, it is submitted, should be considered in mitigation.

75. The Trial Chamber observes that, in certain cases, age has been considered a relevant factor in mitigation of sentence.[148] 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.[149] Shortly after the beginning of the conflict in Prijedor, the Accused was mobilised into the police force and subsequently assigned

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142 Article 21(3) of the Statute of the International Tribunal provides: "The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute".
143 Article 24(2) of the Statute.
144 Defence Sentencing Brief, para. 49.
145 *Ibid*.
146 *Ibid*.
147 *Ibid*, para. 52.
148 *Erdemović* Sentencing Judgement, para. 16(1); *Furundžija* Trial Judgement, para. 284; *Blaškić* Trial Judgement, para. 778.
149 Defence Sentencing Brief, Annex B, e.g., Tabs B/6, B/14 and B/15.

as a guard at the Keraterm camp.[150] He was not very experienced and received no training prior to this assignment.[151]

76. The Trial Chamber has considered these factors, together with the lack of any prior criminal conviction, to be relevant in mitigating the penalty.[152] Nevertheless, these factors cannot play any significant part in mitigating international crimes.[153] Indeed, many accused share these personal factors and, in the Trial Chamber's view, the weight to be accorded to them is limited.[154] Furthermore, while recognising the importance of rehabilitation as an objective of punishment, it is not one which should be given undue weight.[155]

77. The Defence has introduced some evidence about the personality of the Accused through a report prepared by Dr. Mikloš Biro, a professor of clinical psychology at the University of Novi Sad.[156] This report is said to be based on "data of the case" as described in the Indictment and obtained from the Defence team, as well as interviews with the Accused and his family.[157] The summary of the "forensic psychological analysis" describes the Accused as a person of normal, below-average intelligence who shows signs of emotional immaturity, especially characterised by 'bad impulse control'.[158] The Accused is said to have incorporated the authoritarian behaviour model of his father: he is submissive to superiors, and strict to subordinates.[159] The report nonetheless concludes that "the Accused was able to understand general social and legal norms, as well as to anticipate the consequences of their disregard".[160]

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150 *Ibid*, para. 31.

151 *See* Letter from the Home Office in Banja Luka, Public Safety Centre, Prijedor, dated 3 October 2002, Defence Sentencing Brief, Annex A, Tab A/7.

152 *Prosecutor v. Blaškić,* Case No. IT-95-14, Judgement, 3 March 2000, para 780; *Prosecutor v. Furundžija,* Case No. IT-95-17/1, 10 Dec. 1998, para. 284; *Prosecutor v. Aleksovski*, Case No.: IT-95-14/1-T, Judgement, 25 June 1999, para. 236; *Prosecutor v. Tadić,* Case No. IT-94-1-T, Judgement, 7 May 1997, para. 73.

153 *Kordić and Cerkez* Trial Judgement, Case No. IT-95-14/2-T, 26 Feb. 2001, para. 848.

154 *Blaškić* Trial Judgement, Case No. IT-95-14, 3 Mar. 2000, para 782; *see* also *Prosecutor v. Erdemović,* (First) Judgement, Case No. IT-96-22, 29 November 1996, holding at paragraph 66: "Without denying any rehabilitative and amendatory function to the punishment, especially given the age of the accused, his physical or mental condition, the extent of his involvement in the concerted plan (or systematic pattern) which led to the perpetration of a crime against humanity, the Trial Chamber considers at this point in the determination of the sentence that the concern for the above mentioned function of the punishment must be subordinate to that of an attempt to stigmatise the most serious violations of international humanitarian law, and in particular an attempt to preclude their reoccurrence".

155 *Čelebići* Appeal Judgement, para. 806.

156 Psychological Expertise for Predrag Banović, Defence Sentencing Brief, Annex B, Tab B/16.

157 *Ibid*, p. 2.

158 *Ibid*, p. 13.

159 *Ibid.*

160 *Ibid.*

78. Dr. Biro explains, however, that the above aspects of the personality of the Accused help in understanding his criminal behaviour. The report observes that with his low education and modest intellectual capabilities, the Accused easily succumbed to the war propaganda which spread collective hatred and rumours about the enemy's brutality.[161] In Dr. Biro's view, the combined effect of the war propaganda and authoritarian behaviour help to explain why, psychologically, the Accused did not understand the criminality of his behaviour.[162] Dr. Biro finally observes that the Accused "is now fully aware of the social, moral, and legal context of his acts" as a result of the proceedings against him and his detention.[163] Furthermore, according to Dr. Biro, by getting married and having a child, the Accused has become more ready for responsible and mature behaviour.[164]

79. The Trial Chamber notes that in advancing the evidence contained in the Dr. Biro's report, the Defence has fallen short of raising a defence of diminished mental responsibility in mitigation.[165] The Trial Chamber rejects the assessment contained in Dr. Biro's report to the effect that the Accused may have been unable to appreciate the unlawfulness of his conduct. The conclusion drawn by Dr. Biro is highly speculative, if only in its phrasing:[166]

> In this context, it becomes *probable*, i.e. psychologically explainable, that Predrag did not understand the criminality and human unacceptability of the torture of prisoners – who were "enemies" in his eyes. In other words, although Predrag was able to understand the general legal and social norms, there are psychological indicators that say *there is the possibility* that his capabilities to make difference of what is not social norm; what is, and what is not criminal behaviour, in a concrete incriminated situation were distorted.

80. The Trial Chamber also notes the contradiction in the conclusions reached by Dr. Biro. Somehow, and without any convincing explanation, Dr. Biro has moved from a conclusion that the Accused "was able to understand his acts and their consequences" to one that – it is probable that - the Accused "did not understand the criminality" of his conduct. The Trial Chamber is not satisfied that the report of Dr. Biro establishes that the Accused suffered from any form of mental disability that could be considered as a mitigating factor.

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[161] *Ibid*.
[162] *Ibid*, p. 14.
[163] *Ibid*, p. 15.
[164] *Ibid*.
[165] *See* Rule 67 (A)(ii)(b) of the Rules.
[166] Psychological Expertise for Predrag Banović, Defence Sentencing Brief, Annex B, Tab B/16, p. 14 (emphasis added).

81. The Trial Chamber does not consider it appropriate in the present case to mitigate the sentence of the Accused on the basis of his immature and impulsive personality or below average intelligence. 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 has committed very serious crimes. The Trial Chamber is also satisfied that the Accused voluntarily participated in the mistreatment, beating and killing of detainees at the Keraterm camp.[167] There can be no question that the Accused was acting under duress,[168] nor was there any evidence to that effect. The Trial Chamber further notes that, in his plea, the Accused accepted full responsibility for his actions.[169]

82. The fact that the Accused is married and has a child has been taken into account by the Trial Chamber as a mitigating factor in accordance with the decision of the Appeals Chamber in *Kunarac*.[170]

83. 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.[171] There are also statements that indicate that the Accused helped some Bosnian Muslims and other non-Serb families during the war.[172] 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.[173]

D. Sentencing practice in the courts of the former Yugoslavia

84. Article 24 of the Statute and Rule 101 of the Rules require the Trial Chamber to take into account the general practice of the courts of the former Yugoslavia.

85. The Prosecution submits that article 41 (1) of the SFRY Criminal Code[174] sets out the various factors for consideration in determining sentence. These include the perpetrator's personal circumstances or his behaviour after the commission of the

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167 Factual Basis, para. 6.
168 Defence Sentencing Brief, para. 46.
169 *See* Plea Agreement, para. 4.
170 *See Kunarac* Appeals Judgement, paras 362, 408.
171 Defence Sentencing Brief, Annex B, Tabs B/1, B/2, B/3, B/4, B/5.
172 *Ibid*, Tabs B/8 & B/9.
173 *See* also *Krnojelac* Trial Judgment, para. 518.
174 Adopted by the SFRY Assembly at the Session of the Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

offence.[175] Article 41 (1) of the SFRY Criminal Code requires that consideration be given to:

> […] the circumstances bearing on the magnitude of the punishment (extenuating and aggravating circumstances), and in particular, the degree of criminal responsibility, the motives from which the act was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender.

86. The Prosecution makes reference to article 142 of the SFRY Penal Code, entitled "Criminal Offences Against Humanity and International Law" which penalises war crimes and crimes against humanity.[176] The Prosecution notes that this provision covers crimes analogous to those referred to in Count 1 of the Indictment and envisages sever punishment.[177] The Prosecution submits that, under the SFRY Criminal Code, courts in the former Yugoslavia could sentence perpetrators for killing, torture, inhumane treatment of the civilian population, causing great suffering or serious injury to body and health, and illegal arrests, to the maximum penalty and a minimum of five years' incarceration.[178]

87. The Defence submits that, in addition to the above mentioned provisions, the Trial Chamber should take into account Article 42 of the SFRY Criminal Code, according to which a Judge may determine whether "there are any mitigating circumstances which are such that they indicate that the objective of the sentence may be achieved equally well by a reduced sentence".[179] The Defence further notes that, following the abolition of capital punishment in the republics of the SFRY, other than Bosnia and Herzegovina, the new maximum sentence for the most serious offences was 20 years' imprisonment.[180]

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175 Prosecution Sentencing Brief, paras 34-35.

176 Article 142(1) provides: "Whoever, in violation of international law in time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture; inhumane treatment [. . .], immense suffering or violation of bodily integrity or health […]; forcible prostitution or rape; application of measure of intimidation and terror, [. . .] other illegal arrests and detention […] forcible labour […] or who commits one of the foregoing acts shall be punished by imprisonment for not less than five years or by the death penalty".

177 Prosecution Sentencing Brief, para. 36.

178 *Ibid*, paras 36-37.

179 Defence Sentencing Brief, para. 26.

180 *Ibid*, para. 28.

88. Both the Prosecution and the Defence agree that, while the sentencing practice in the courts of the former Yugoslavia should be considered, the Trial Chamber is not bound to follow such practice.[181]

89. The Trial Chamber notes that, although account must be taken of the sentencing practice in the courts of the former Yugoslavia,[182] the Trial Chamber's discretion to impose a greater sentence remains untouched.[183] The Trial Chamber considers that both Article 142 and Article 41 (1) of the SFRY Criminal Code offer useful guidance in determining sentence. Article 142 prohibits criminal conduct which corresponds to the crime of persecution for which the Accused has been convicted.[184] The Trial Chamber thus observes that, under the law in effect in the SFRY at the time of the commission of the offences, the Accused could be sentenced for a maximum term of 20 years. Article 41(1) is generally similar to the sentencing provisions of Article 24, paragraph 2 of the Statute and Rule 101 (B) of the Rules,[185] in that it requires that consideration be given to the "personal situation", and the "conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender". The Trial Chamber has taken into account the sentencing practice in the former Yugoslavia in determining sentence.

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[181] Prosecution Sentencing Brief, para. 34; Defence Sentencing Brief, para. 20.
[182] *Čelibići* Appeal Judgement, para. 813.
[183] *Ibid*, paras 813, 820; *Tadić* Sentencing Appeal Judgement, para. 20; *Kupreškić* Appeal Judgement, para. 418; *Jelisić* Appeal Judgement, para. 117; *Kunarac* Appeal Judgement, para. 349.
[184] *See* also *Plavšić* Sentencing Judgement, paras 117, 119.
[185] *Vasiljević* Trial Judgement, para. 271.

V. DETERMINATION OF SENTENCE

90. Keeping in mind its overriding obligation to consider the gravity of the offence, which requires an examination of the particular circumstances of the case as well as the form and degree of participation of the accused in the crime, the Trial Chamber has given consideration to and weighed all the other relevant factors for determining sentence in this case, including 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.

91. The accused Predrag Banović has been convicted of persecution, a crime against humanity which, on account of its distinctive features, has been found to justify a more severe penalty.[186] The offence for which the Accused has been convicted 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. His crimes are particularly serious in terms of the protected interests which he violated: the life as well as the physical and mental integrity of the victims, the consequences for the victims (death for five of them and great suffering for twenty-seven detainees), and the reasons for which the crimes were committed.[187] Any sentence must necessarily reflect this factor.

92. 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.

93. Predrag Banović's admission of guilt and expression of remorse, his lack of prior criminal record, and his comportment in the UNDU are circumstances that the Trial Chamber has taken into consideration in mitigation. The personal circumstances of the Accused have also been considered. While considering his family circumstances in mitigation, the Trial Chamber has rejected the submission that, at the time of the

[186] *See Blaškić* Trial Judgement, para. 785; *Todorović* Sentencing Judgement, para. 113.
[187] *Vasiljević* Trial Judgement, para. 303.

offences, the Accused may have suffered from any form of mental disability that could be considered in mitigation.

94. Under the Plea Agreement and pursuant to Rule 62 *ter* (A)(ii) of the Rules, the parties have jointly recommended that a sentence of eight years be imposed.[188] Although, as already noted, the Trial Chamber is not bound by this agreement, having given due weight to the various factors set out in this judgement, the Trial Chamber has determined that a sentence of eight years' imprisonment is appropriate in this case.

95. Predrag Banović has been detained in the United Nations Detention Unit since his arrest and transfer on 9 November 2001. Pursuant to Rule 101 (C) of the Rules, the Accused is entitled to credit for the time spent in detention, which amounts to 716 days. In accordance with Rule 102 (A), the sentence shall begin to run as of today.

[188] *See* Plea Agreement, para. 9.

VI. DISPOSITION

96. For the foregoing reasons, having considered the arguments of the parties, the evidence presented at the Sentencing Hearing, the provisions of the Statute and the Rules, the **TRIAL CHAMBER SENTENCES** Predrag Banović to eight years' imprisonment and **STATES** that he is entitled to credit for 716 days in relation to the sentence imposed by the Trial Chamber, as of the date of this Sentencing Judgement.

97. Pursuant to Rule 103 (C) of the Rules, Predrag Banović shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English text being authoritative.

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Patrick Robinson, Presiding

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Richard May O-Gon Kwon

Dated this twenty-eighth day of October 2003
At The Hague
The Netherlands

Judge Robinson appends a Separate Opinion to this Judgement.

[Seal of the Tribunal]

SEPARATE OPINION OF JUDGE PATRICK ROBINSON

In all the circumstances of this case, including the aggravating and mitigating factors set out in this Judgement, I hold that the criminality of the Accused, involving as it does, five murders resulting from his participation in the beating of five persons, and the beating of twenty-seven others, warrants a longer term of imprisonment than eight years.

Done in English and French, the English text being authoritative.

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Patrick Robinson

Dated this twenty-eighth day of October 2003
At The Hague
The Netherlands

[Seal of the Tribunal]