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# JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 27 January 2014

## Appeal Judgement Summary for Vlastimir Đorđević

*Please find below the summary of the Judgement read out today by Judge Agius.*

Pursuant to the Scheduling Order issued on 15 November 2013, the Appeals Chamber today delivers its Judgement in the case of The Prosecutor versus Vlastimir Đorđević. I shall now read out a summary of the central findings of the Appeals Chamber. The summary does not constitute the official and authoritative Judgement of the Appeals Chamber. The official Judgment is rendered in writing and will be distributed to the parties at the close of this hearing.

This case relates to events which took place in Kosovo between 1 January and 20 June 1999. Throughout that time, Mr. Đorđević was the Assistant Minister to the Serbian Minister of the Internal Affairs (the “MUP”) and Chief of the Public Security Department of the MUP (the “RJB”).

The Trial Chamber issued its Judgement on 23 February 2011. It convicted Mr. Đorđević under five counts for the crimes of deportation, other inhumane acts (forcible transfer), and persecutions on racial grounds as crimes against humanity, as well as murder as a crime against humanity and as a violation of the laws or customs of war. The Trial Chamber found that Mr. Đorđević participated in a joint criminal enterprise with the purpose of modifying the ethnic balance in Kosovo to ensure Serbian control over the province. This purpose was achieved through the commission of these crimes. The Trial Chamber also found that Mr. Đorđević aided and abetted the same crimes.

The Trial Chamber sentenced Mr. Đorđević to 27 years of imprisonment.

Mr. Đorđević raises 19 Grounds of Appeal challenging the findings of the Trial Chamber; and the Prosecution raises two Grounds of Appeal.

The Appeals Chamber heard oral submission by the parties on 13 May 2013.

I will now summarise the Appeals Chamber’s main findings on Mr. Đorđević’s appeal, before turning to the Prosecution’s appeal.

### **Mr. Đorđević’s Appeal**

In his First Ground of Appeal and in Grounds Three, Four and Five, Mr. Đorđević raises a number of arguments in relation to the JCE. In particular he challenges the Trial Chamber’s findings concerning the existence of the JCE; the timing and the members of the JCE; the plurality of persons; and the nature of the common plan. The Appeals Chamber finds that Mr. Đorđević has failed to demonstrate that the Trial Chamber erred in its conclusions on these issues.

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The Appeals Chamber therefore dismisses Mr. Đorđević's First, Third, Fourth and Fifth Grounds of Appeal.

In Ground Two, part of Ground Six, and Ground Eight, Mr. Đorđević submits that there are cogent reasons for the Appeals Chamber to depart from its jurisprudence on various aspects of the law on joint criminal enterprise. Specifically, he argues that the Appeals Chamber should depart from its previous decisions finding that JCE, as a form of liability, exists in customary international law, and that convictions for specific intent crimes can be entered on the basis of liability under the third category of JCE.

The Appeals Chamber finds that Mr. Đorđević has failed to demonstrate the existence of cogent reasons for such departure from its jurisprudence, and therefore dismisses Mr. Đorđević's Second Ground of Appeal, the relevant part of the Sixth Ground of Appeal, and the Eighth Ground of Appeal.

In the remainder of his Sixth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber failed to establish the required link between the JCE members and the physical perpetrators of the crimes. In its Judgement, the Appeals Chamber also rejects this argument, which it finds unfounded, and accordingly dismisses ground Six in its entirety.

Under his Seventh Ground of Appeal, Mr. Đorđević submits that the Trial Chamber erred in concluding that the crimes of murder and persecutions fell within the JCE. He argues that the Trial Chamber failed to establish that each member of the JCE shared the requisite *mens rea* for these crimes. The Appeals Chamber finds that the Trial Chamber made all the necessary findings and that Mr. Đorđević has failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. Accordingly, Ground Seven is dismissed.

Under his Ninth Ground of Appeal, Mr. Đorđević makes a number of submissions, divided into eight sub-grounds, concerning his participation in the JCE. He argues that the Trial Chamber committed several errors of law and fact which resulted in a mischaracterisation of his conduct and improperly linked him to the JCE.

For the reasons set out in the Judgement, the Appeals Chamber, Judge Tuzmukhamedov dissenting in part, is not persuaded by Mr. Đorđević's arguments. Therefore, Judge Tuzmukhamedov dissenting in part, the Ninth Ground of Appeal is dismissed in its entirety.

Under his Tenth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber committed several errors of law and fact in assessing his *mens rea* for JCE liability. He advances numerous arguments to the effect that the Trial Chamber erred in finding that he possessed the criminal intent for the JCE.

One of his arguments is that the Trial Chamber erred in relying on certain reports by Human Rights Watch in inferring his knowledge of the crimes. The Appeals Chamber agrees with his submission. However, for reasons outlined in the Judgement, the Appeals Chamber considers that this error does not impact the Trial Chamber's conclusion on Mr. Đorđević's knowledge of the crimes and its overall conclusion that he possessed the required intent for JCE liability.

The Appeals Chamber rejects all other arguments advanced by Mr Đorđević in this ground of appeal, as he has failed to show that no reasonable trier of fact could have come to the conclusion that he possessed the requisite intent for the JCE, based on the evidence. Mr. Đorđević's Tenth Ground of Appeal is dismissed.

Under his Twelfth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber misapplied the definition of “civilian“, and therefore erred in convicting him for the crimes of deportation, other inhumane acts (forcible transfer), and murder.

The Appeals Chamber, Judge Tuzmukhamedov dissenting in part, is not persuaded by any of his arguments. As described in the Judgement, the Appeals Chamber considers that the Trial Chamber did not err in its determination of the protected status of victims or in the assessment of the proportionality of the attack. Accordingly, Judge Tuzmukhamedov dissenting in part, Ground Twelve is dismissed.

Under his Thirteenth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber erred in finding that the crime of deportation was committed with respect to Kosovo Albanians who were displaced from Kosovo to Montenegro.

In its Judgement, the Appeals Chamber finds that, consistent with the Tribunal’s jurisprudence, the Trial Chamber correctly observed that the crime of deportation can be established by displacement across a de facto border. However, it failed to articulate the basis in customary international law upon which a de facto border could be established in this instance. This constitutes an error of law. Consequently, the Appeals Chamber has considered whether the finding that a de facto border existed between Kosovo and Montenegro is supported in customary international law. It finds no such support. Therefore, the Trial Chamber erred in concluding that the crimes of deportation and persecutions through the act of deportation were committed with respect to the displacement from Kosovo to Montenegro. For these reasons, the Appeals Chamber overturns the Trial Chamber’s finding in this respect and grants the Thirteenth Ground of Appeal.

Under his Fourteenth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber erred in convicting him for murder in relation to certain crime sites where premeditation was not established.

In its Judgement, the Appeals Chamber holds that the jurisprudence of the Tribunal has not required premeditation as an element of the crime of murder under Articles 3 and 5 of the Statute of the Tribunal. The Appeals Chamber finds that Mr. Đorđević has advanced no cogent reasons to depart from this jurisprudence. Accordingly, his arguments are rejected and his Fourteenth Ground of Appeal is dismissed.

Under his Fifteenth Ground of Appeal, in part, Mr. Đorđević submits that the Trial Chamber committed errors of law and fact in finding that the crime of persecutions was established through the destruction of certain mosques. He also submits that the Trial Chamber erred in the application of the equal gravity test in relation to the underlying act of destruction of religious property.

The Appeals Chamber, Judge Tuzmukhamedov dissenting in part, finds that the Trial Chamber did not err in these respects and therefore dismisses the Fifteenth Ground of Appeal, in part. The remainder of this ground is addressed in the context of the Seventeenth Ground of Appeal.

Under his Sixteenth Ground of Appeal, Mr. Đorđević submits that the Trial Chamber erred in convicting him of the crimes of deportation, other inhumane acts (forcible transfer), murder, and persecutions with respect to several incidents as they were not alleged in the Indictment.

In its Judgement, the Appeals Chamber finds the Trial Chamber erred in finding Đorđević responsible for the crime of deportation in relation to two incidents; the crime of other inhumane acts (forcible transfer) in relation to two incidents; and the crime of murder in relation to the killing of 11 individuals at two locations and the crime of persecutions in relation to all of these incidents. The details will be set out later in this

hearing. With regard to all of the other incidents challenged, the Appeals Chamber finds that Mr. Đorđević has shown no error.

In light of the foregoing, the Appeals Chamber grants the Sixteenth Ground of Appeal, in part.

Under his Seventeenth Ground of Appeal, and part of his Fifteenth Ground of Appeal, Mr. Đorđević challenges the Trial Chamber's findings that the crimes of deportation, other inhumane acts (forcible transfer), murder, and persecutions were established in certain locations.

The Appeals Chamber, Judge Güney and Judge Tuzmukhamedov dissenting in part, finds that Mr. Đorđević has failed to demonstrate an error in this regard. Therefore, Judge Güney and Judge Tuzmukhamedov dissenting in part, the Appeals Chamber dismisses Ground Seventeen in its entirety and, Ground fifteen, in part.

Under his Eighteenth Ground of Appeal, Mr. Đorđević presents two sub-grounds.

First, Mr. Đorđević submits that the Trial Chamber erred in law by convicting him twice for the same crimes: once for committing the crimes through participation in a JCE; and again for aiding and abetting these crimes. The Appeals Chamber is satisfied that the Trial Chamber only convicted him once for the crimes, but on the basis of two modes of liability. The Appeals Chamber also finds that it was within its discretion to enter convictions on the basis of more than one mode of liability. However, the Appeals Chamber finds that the Trial Chamber failed to articulate why both modes of liability were necessary to reflect the totality of Mr. Đorđević's criminal conduct. This amounted to an error of law. The Appeals Chamber considered that in this case, the criminal conduct of Mr. Đorđević is fully reflected in a conviction based solely on his participation in the JCE. The Appeals Chamber therefore grants this sub-ground, in part, and reverses the Trial Chamber's findings concerning Counts 1 to 5 with respect to aiding and abetting.

In light of this finding, Mr. Đorđević's Eleventh Ground of Appeal, which raised arguments in relation to aiding and abetting is therefore moot.

His second sub-ground asserts that the Trial Chamber erred in entering convictions pursuant to Article 5 of the Statute for the crimes of deportation, other inhumane acts (forcible transfer), and murder in addition to a conviction for the crime of persecutions through those same acts. The Appeals Chamber finds no error. This sub-ground is therefore dismissed.

### **Prosecution's Appeal**

I will now set out the Appeals Chamber's findings on the Prosecution's Appeal.

In its First Ground of Appeal, the Prosecution submits that the Trial Chamber erred in law and fact by finding that the crime of persecutions through sexual assault was not established.

The Prosecution argues that the Trial Chamber erred in failing to find that underlying act of sexual assault was established in relation to a Kosovo Albanian girl in a convoy in Priština/Prishtinë municipality and two young Kosovo Albanian women in Beleg. It further argues that the Trial Chamber erred in failing to find that the crime of persecutions was established through the sexual assaults of five women, namely the three aforementioned women and Witnesses K14 and K20. Finally, the Prosecution argues that the Trial Chamber erred in failing to find that Mr. Đorđević was liable for persecutions through these sexual assaults under the third category of JCE.

The Appeals Chamber finds that the Trial Chamber erred in failing to find that the three women were sexually assaulted. It further finds that the Trial Chamber committed an error of law in its assessment of the discriminatory intent of the perpetrators of the sexual assaults. For reasons set out in the Judgement, the Appeals Chamber, Judge Tuzmukhamedov dissenting, is satisfied that the sexual assaults of a Kosovo Albanian girl in a convoy in Priština/Prishtinë municipality, two young Kosovo Albanian women in Beleg, and Witnesses K14 and K20 were carried out with discriminatory intent and amount to persecutions. Furthermore, the Appeals Chamber, Judge Tuzmukhamedov dissenting, finds that it was foreseeable to Mr. Đorđević that persecutions through sexual assaults might be committed, and that he willingly took that risk when he participated in the JCE. It therefore finds Mr. Đorđević responsible for the crime of persecutions under the third category of JCE.

In light of these findings, the Appeals Chamber, Judge Tuzmukhamedov dissenting, grants the Prosecution's First Ground of Appeal, and, Judge Güney dissenting, enters a conviction under Count 5 for persecutions through sexual assault as a crime against humanity pursuant to the third category of JCE.

### **Sentencing**

I will now turn to Sentencing.

Mr. Đorđević, in his nineteenth ground of appeal, and the Prosecution, in its second ground of appeal, challenge the sentence of 27 years' imprisonment imposed by the Trial Chamber.

The Appeals Chamber finds that it was within the discretion of the Trial Chamber to consider Đorđević's role and position as an aggravating factor. However, the Trial Chamber committed a discernable error by failing to assess whether Mr. Đorđević abused his position of authority. The Appeals Chamber therefore grants Mr. Đorđević's Nineteenth Ground of Appeal, in part. However, it finds his other arguments unpersuasive and dismisses them. The Appeals Chamber is also not persuaded by the Prosecution's arguments and therefore dismisses its Second Ground of Appeal.

In light of the above, and in its overall assessment of the circumstances of the case, the Appeals Chamber finds that a reduction in Đorđević's sentence is appropriate. In particular, the Appeals Chamber considers that the convictions entered by the Trial Chamber which have now been overturned on appeal, outweigh the new convictions entered by the Appeals Chamber - not only in terms of number of victims but also by way of Đorđević's level of responsibility. By this, however, the Appeals Chamber by no means intends to suggest that the crimes for which Đorđević has been convicted on appeal are not grave. Considering the foregoing, and in the circumstances of this case, including Đorđević's age, the Appeals Chamber reduces his sentence.

### **DISPOSITION**

I will now read out the Disposition of the Appeal Judgement. Mr. Đorđević will you please rise.

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

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

**NOTING** the written submissions of the parties and their oral arguments presented at the appeal hearing on 13 May 2013;

**SITTING** in open session;

**WITH RESPECT TO ĐORĐEVIĆ'S APPEAL:**

**GRANTS** Đorđević's Thirteenth Ground of Appeal, and **REVERSES** his convictions for deportation (Count 1) and persecutions through deportation (Count 5) with respect to the displacements of individuals to Montenegro from Peć/Pejë on 27 and 28 March 1999, and from Kosovska Mitrovica/Mitrovicë on 4 April 1999;

**GRANTS**, in part, Đorđević's Sixteenth Ground of Appeal, and **REVERSES** his convictions, in so far as they relate to:

Deportation (Count 1) and persecutions committed through deportation (Count 5) at Kladernica/Klladërnice, in Srbica/Skënderaj municipality, between 12 and 15 April 1999 and Suva Reka/Suharekë town, between 7 and 21 May 1999;

Other inhumane acts (forcible transfer) (Count 2) and persecutions committed through forcible transfer (Count 5) at Brocna/Burojë and Tušilje/Tushilë, in Srbica/Skënderaj municipality between 25 and 26 March and on 29 March 1999, respectively and Čuska/Qyushk, in Peć/Pejë municipality, on 14 May 1999;

Murder, as a crime against humanity and as a violation of the laws or customs of war (Counts 3 and 4), and persecutions committed through murder (Count 5) of two elderly men at Podujevo/Podujevë town, in Podujevo/Podujevë municipality, on 28 March 1999 and of nine men at Mala Kruša/Krusë e Vogël, in Orahovac/Rahovec municipality, on 25 March 1999;

**GRANTS**, in part, Đorđević's Eighteenth Ground of Appeal, **REVERSES** his convictions for Counts 1 to 5 on the basis of aiding and abetting, and consequently **DECLARES MOOT** Đorđević's Eleventh Ground of Appeal;

**GRANTS**, in part, Đorđević's Nineteenth Ground of Appeal and finds that the Trial Chamber erred in considering Đorđević's position of authority as an aggravating factor;

**DISMISSES** the remainder of Đorđević's appeal, Judge Güney dissenting with respect to Đorđević's Seventeenth Ground of Appeal, in part, and Judge Tuzmukhamedov dissenting with respect to Đorđević's Sub-Grounds 9(E), (F), and (G), and, in part, Twelfth, Fifteenth, and Seventeenth Grounds of Appeal;

**AFFIRMS** all other convictions pursuant to Counts 1 to 5;

**WITH RESPECT TO THE PROSECUTION'S APPEAL:**

**GRANTS**, Judge Güney and Judge Tuzmukhamedov dissenting in part, the Prosecution's First Ground of Appeal, and **FINDS** Đorđević guilty, pursuant to Articles 5 and 7(1) of the Statute, of the crime of persecutions through sexual assaults as a crime against humanity (Count 5), pursuant to the third category of joint criminal enterprise, in relation to the sexual assaults of Witness K20 and the other two young women in Beleg, Witness K14, and the Kosovo Albanian girl in a convoy, and **REVISES** Đorđević's conviction with respect to Count 5 accordingly;

**DISMISSES** the Prosecution's Second Ground of Appeal;

**SETS ASIDE** the sentence of 27 years of imprisonment and **IMPOSES** a sentence of 18 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention;

**ORDERS**, in accordance with Rules 103(C) and 107 of the Rules, that Vlastimir Đorđević is to remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where his sentence will be served.

Judge Güney appends a Partially Dissenting and Separate Opinion.

Judge Tuzmukhamedov appends a Dissenting Opinion.

Mr. Đorđević, you may be seated.

Registrar, would you please distribute copies of the Judgement to the parties.

Before concluding the hearing, I would like to briefly thank everyone in this courtroom and outside this courtroom who helped us throughout these proceedings and in this case, which has now reached its conclusion. I will now conclude this hearing. The Appeals Chamber stands adjourned.

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