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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Press Release . Communiqué de presse

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TRIAL CHAMBER

CHAMBRE DE 1^{ère} INSTANCE

The Hague, 26 February 2001

JL/P.I.S./567-e

JUDGEMENT OF TRIAL CHAMBER III IN THE KORDIĆ AND ČERKEZ CASE

**DARIO KORDIĆ SENTENCED TO 25 YEARS
MARIO ČERKEZ SENTENCED TO 15 YEARS**

- **Croatia's intervention in the armed conflict in Central Bosnia established**
- **HVO attacks "followed a common design or plan ... to ethnically cleanse the (Lašva) valley of Muslims"**
- **Dario Kordić "was a regional leader and lent himself enthusiastically to the common design of persecution by planning, preparing and ordering those parts of the campaign which fell within his sphere of authority"**
- **Mario Čerkez "as commander of the Viteška Brigade, participated in the attacks on Vitez, Stari Vitez and Večeriska ... and failed to take the necessary measures to prevent those attacks, failed to punish those who were responsible for them"**

Please find below the full text of the summary of the Judgement of Trial Chamber III, read out by presiding Judge Richard May at today's Judgement hearing:

"This hearing is for the Trial Chamber to deliver its Judgement. This is the fifth case to be heard by the International Tribunal concerning events in the Lašva Valley in 1992 and 1993. However, it is the first involving a high ranking politician.

The background is the conflict between the Bosnian Muslims and Bosnian Croats which took place during those years in Central Bosnia. The accused both played prominent parts in that conflict. Dario Kordić was a politician, described as the most important in the area. Mario Čerkez was a military man, Commander of a Brigade in the Bosnian Croat armed forces. The charges against them arise from events during the conflict.

The Indictment contains 44 Counts; and charges each accused with eight grave breaches of the Geneva Conventions, ten violations of the laws or customs of war and four crimes against humanity. The first two Counts charge the accused with persecution, a crime against humanity. The other Counts charge offences relating to murder, inhuman treatment, detention and destruction. The Indictment alleges that the accused participated in a widespread or systematic campaign of persecution of the Bosnian Muslims in that region culminating in a series of attacks over a two year period on towns and villages in the Lašva Valley and surroundings. Many Muslim civilians were killed, seriously wounded or detained. Meanwhile, their homes were burned, their towns, villages and places of worship destroyed, and their property plundered.

The defence case for both accused amounts to a complete denial of the prosecution case. Not only is the responsibility of the accused for the crimes alleged against them disputed, there is an issue whether the crimes were committed at all. The Trial Chamber, therefore, has had to determine whether these crimes were committed; and, if so, whether the accused were guilty of those charged against them.

The result has been an extremely long trial lasting 20 months in which a great deal of evidence was put before the court. In all, 241 witnesses gave evidence and over 4,500 exhibits were produced. The transcript runs to 28,000 pages.

What follows is a summary of the written Judgement and forms no part of it. That Judgement is available today.

First, some matters of law. The Trial Chamber finds that there was a general state of armed conflict in Central Bosnia at the relevant time. It also finds that there is a clear connection between this conflict and the

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alleged crimes set out in the Indictment. The Trial Chamber finds that due to the intervention of the Republic of Croatia, this conflict was international.

The Trial Chamber also finds that persecution may include conduct not specifically listed as a crime against humanity in Article 5 of the Statute of the International Tribunal. However, such conduct must reach the same level of gravity as the other crimes listed in the Article. In this case, the Trial Chamber finds that two alleged acts do not rise to that level of gravity, namely, persecution in the form of encouraging and promoting hatred, by propaganda and otherwise, and persecution in employment.

Turning now to the facts. The relevant history begins with the founding in 1990 of a Bosnian Croat political party, the Croatian Democratic Union of Bosnia and Herzegovina, or "HDZ-BiH". This was an offshoot of its Croatian parent, the nationalist HDZ party. In late 1991 the HDZ-BiH set up a separate Croat community within Bosnia, the HZ H-B, which the Trial Chamber finds was established with the intention that it should, in due course, become part of the Republic of Croatia. The HZ H-B thereafter created another body, the Croatian Defence Council, "the HVO", as the executive and defence authority of the Bosnian Croat community. Local municipal HVOs were then set up as the executive and military power in the municipalities.

Meanwhile, Dario Kordić rose rapidly in the HDZ-BiH political party, becoming its President in his home-town, Busovača; President of his Regional Community; and Vice-President of the HZ H-B. Mario Čerkez for his part was one of the founders of the HVO in Vitez and Commander of its local Brigade, known as the Viteška Brigade.

In 1992 the HVO began taking over all power in the municipalities in Central Bosnia, in particular in Busovača, Vitez and Kiseljak. They met little armed resistance except in Novi Travnik and the village of Ahmići. In these incidents Dario Kordić demonstrated both his political and military authority; and the Trial Chamber finds that by the end of 1992, on the eve of the conflict, Dario Kordić combined both forms of authority. His military authority did not involve a formal rank but was a position which he had won for himself. Accordingly, a precise position in the chain of command cannot be ascribed to him; it is not suggested that he had power to discipline or punish troops, and the Trial Chamber finds that he has no liability under Article 7(3) of the Statute concerning command responsibility.

We come now to the most important year in the conflict, 1993. That year began with peace talks and the Vance-Owen Peace Plan. However, the situation soon degenerated into conflict, first in Gornji Vakuf and thereafter in Busovača. The HVO attacked the latter municipality in January 1993, using artillery and infantry on civilian targets, and setting a pattern for subsequent attacks on towns and villages. The evidence shows that Dario Kordić was implicated in this attack.

In April 1993 it was the turn of Vitez and the Muslim villages of the Lašva Valley to come under attack. The Trial Chamber finds that the evidence points to a well-organised and planned HVO attack upon these locations, in particular the village of Ahmići where the attack early in the morning of 16 April resulted in a massacre in which more than 100 people were murdered, including 32 women and 11 children, and the village was destroyed. There were similar attacks on the villages up and down the Lašva Valley and on the town of Vitez. The Trial Chamber finds that these attacks followed a common design or plan conceived and executed by the Bosnian Croat leadership to ethnically cleanse the valley of Muslims.

Dario Kordić, as the local political leader was part of this design or plan, his principal role being that of a planner and instigator. In addition, the Trial Chamber finds that Dario Kordić was present at a meeting of politicians in the headquarters of Colonel Blaškić on the 15 April when the attacks on Ahmići and the other villages were authorised; that Mario Čerkez was present at a subsequent military meeting when plans were drawn up; and also that Dario Kordić was associated with an order given by Colonel Blaškić to kill all the military-aged men, expel the civilians and set fire to the houses in Ahmići.

As for Mario Čerkez's role on 16 April, the Trial Chamber finds that during this period the Viteška Brigade was in the thick of the fighting and that Mario Čerkez was in command of the Brigade. As Commander, he participated in the attacks on Vitez, Stari Vitez and Večeriska. However, in spite of his presence at the military meeting on 15 April, the Trial Chamber is not satisfied beyond reasonable doubt that Mario Čerkez bears any responsibility for the attack on Ahmići. This attack was the responsibility of the 4th Battalion Military Police, which was not under his command.

The fighting around Vitez continued after 16 April. On 18 April a truck bomb exploded near the mosque in Stari Vitez, killing at least 6 people and injuring 50 others. The Trial Chamber finds that this was an act of pure terrorism committed by elements within the HVO in Vitez but that there is no evidence to connect either of the accused with this action.

On 18 April the HVO attacked the villages in the Kiseljak municipality. These attacks were part of the general offensive launched by the HVO against the Muslims in this area and Dario Kordić as the local political leader was associated with them.

On 19 April the market-place in Zenica was shelled, killing 15 people and injuring many others. The Trial Chamber finds that the HVO was responsible but that this was not consistent with the pattern of the other attacks and thus falls outside the common design or plan. No political connection has been demonstrated and consequently the Trial Chamber cannot draw the inference that Dario Kordić was implicated in this unlawful attack.

By the end of April there was a cease-fire in place, but in June further fighting broke out in Central Bosnia. The HVO launched another series of attacks: this time on villages in the Kiseljak municipality, including the village of Tulica where 12 people were killed and the village destroyed. The Trial Chamber finds that these offensives were another manifestation of the HVO design to subjugate the Muslims of Central Bosnia. As with the offensives against the villages in April, the Trial Chamber finds that the attacks would not have been launched without the approval of the local political leadership in the person of Dario Kordić.

In October 1993, events moved to Vareš municipality. The village of Stupni Do is located about a kilometre south of the town of Vareš. On 23 October the village was attacked and 38 people lost their lives. It was not disputed that Ivica Rajić and his troops from Kiseljak were responsible for this massacre. Some defence was offered in the village but there can be no justification for what happened. However, the Trial Chamber finds that Dario Kordić's influence and authority which were concentrated in the Lašva Valley did not extend to Stupni Do, which was thus outside his sphere of authority, and the attack on the village was not part of any common plan or design to which he was a party.

During the HVO offensives many hundreds of Bosnian Muslim civilians were rounded up and detained in makeshift camps where conditions varied from camp to camp but were generally inhuman. The Trial Chamber finds that the detainees were subject to arbitrary and unlawful imprisonment (which was part of the common design or plan) and that they were forced without justification to dig trenches and were used as hostages and human shields. The Trial Chamber also finds that as Commander of the Viteška Brigade Mario Čerkez was responsible for the unlawful imprisonment and inhuman treatment of the detainees in the Vitez detention facilities, and that Dario Kordić was responsible for the unlawful imprisonment of detainees in the areas for which he had authority. However, the camps were run by the military and the evidence is not such as to allow an inference to be safely drawn that Dario Kordić was connected with the way in which the detainees were treated or that the treatment was part of the common plan or design.

The Trial Chamber finds that there was a pattern of destruction and plunder in all the places attacked by the HVO and that the HVO deliberately targeted mosques and other religious and educational institutions. All this was part of the common plan and the accused were implicated in the offences where they have been found to be responsible for attacks.

In relation to those Counts alleging persecution the Trial Chamber finds on overwhelming evidence, that there was a campaign of persecution aimed at the Bosnian Muslims throughout the Indictment period in Central Bosnia. It took the form of the most extreme expression of persecution, *i.e.* attacking towns and villages with the concomitant destruction and plunder, killing, injury and detention. The purpose of the campaign was the subjugation of the Bosnian Muslim population. Thus, the Trial Chamber rejects the defence case that these events amounted to a civil war and that the Bosnian Croats were on the defensive and themselves subject to persecution. For these purposes, the fact that individual atrocities were committed against Bosnian Croats is irrelevant although they may be the subject of other criminal proceedings.

The Trial Chamber makes the following findings about the participation of the accused in the campaign of persecution. Whatever positions he may have held, the evidence does not support the contention that Dario Kordić was in the very highest echelons of the Bosnian Croat leadership or that he conceived the campaign of persecution. He was a regional leader and lent himself enthusiastically to the common design of persecution by planning, preparing and ordering those parts of the campaign which fell within his sphere of authority.

As already noted, the Trial Chamber finds that Mario Čerkez, as the Commander of the Viteška Brigade, participated in the attacks on Vitez, Stari Vitez and Večeriska. This was a high point of the campaign of persecution. The accused played his part in that campaign by commanding the troops involved in some of the incidents; as such he was a co-perpetrator.

We turn now to the allegation that the accused are also guilty by reason of their superior responsibility and failure to prevent these crimes and to punish the perpetrators. The Trial Chamber notes that such responsibility may attach to civilians once it is established that the requisite power to prevent and punish exists.

However, as already noted, the Trial Chamber finds that Dario Kordić did not possess the authority either to prevent the crimes or to punish the perpetrators and cannot therefore be liable under Article 7(3) of the Statute. On the other hand, Mario Čerkez knew of the impending attacks on Vitez, Stari Vitez and Večeriska by the troops under his command. He failed to take the necessary measures to prevent those attacks, failed to punish those who were responsible for them, and is therefore liable under Article 7(3) in respect of the offences arising from attacks on those three locations.

Finally, the Trial Chamber applies the practice approved by the Appeals Chamber recently in relation to cumulative convictions. As a result the accused will be acquitted of those Counts for which a cumulative conviction would be inappropriate.

The Trial Chamber's findings on the Counts of the Indictment are as follows.

Counts 1 and 2: crimes against humanity: persecutions

Count 1: Dario Kordić - GUILTY

Count 2: Mario Čerkez - GUILTY

Counts 3 - 6: violations of the laws or customs of war (unlawful attack on civilians).

Counts 3 and 4: Dario Kordić – GUILTY

Counts 5 and 6: Mario Čerkez – GUILTY

Counts 7 - 20: crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war (murder, wilful killing, inhumane acts, wilfully causing great suffering or serious injury, inhuman treatment).

Dario Kordić:

Counts 7, 8, 10 and 12: - GUILTY

Counts 9, 11, 13: – NOT GUILTY

Mario Čerkez:

Counts 14, 15, 17 and 19: - GUILTY

Counts 16, 18 and 20: - NOT GUILTY

Counts 21 and 22: a crime against humanity and a grave breach of the Geneva Conventions (imprisonment, unlawful confinement).

Dario Kordić – GUILTY

Counts 23 - 28: grave breaches of the Geneva Conventions and violations of the laws or customs of war (inhuman treatment, use of human shields, taking of hostages).

Dario Kordić – NOT GUILTY

Counts 29 - 31: a crime against humanity and grave breaches of the Geneva Conventions (imprisonment, unlawful confinement, inhuman treatment).

Mario Čerkez - GUILTY

Counts 32 - 36: violations of the laws or customs of war and grave breaches of the Geneva Conventions (cruel treatment, taking of hostages, inhuman treatment).

Mario Čerkez:

Counts 32, 34 and 36: – NOT GUILTY

Counts 33 and 35: – GUILTY

Counts 37 - 42: grave breaches of the Geneva Conventions; violations of the laws or customs of war (extensive destruction of property, wanton destruction, plunder).

Count 37: Dario Kordić – NOT GUILTY

Counts 38 and 39: Dario Kordić – GUILTY

Count 40: Mario Čerkez – NOT GUILTY

Counts 41 and 42: Mario Čerkez - GUILTY

Counts 43 and 44: violations of the laws or customs of war (destruction or damage to religious or educational institutions).

Count 43: Dario Kordić – GUILTY

Count 44: Mario Čerkez - GUILTY

Turning now to the question of sentence, the Trial Chamber makes some general points. The Trial Chamber will consider the appropriate sentences in the case of the accused, emphasising that the sentences

reflect the evidence in this case and the role of these accused as found by this Trial Chamber. Both accused have been convicted of numerous offences. They all arise from the same common design which led to the persecution and the “ethnic cleansing” of the Bosnian Muslims of the Lašva Valley and surroundings. The resulting sustained campaign involved a succession of attacks on villages and towns which were characterised by a ruthlessness and savagery and in which no distinction was made as to the age of its victims: young and old were either murdered or expelled and their houses were burned. The total number of dead may never be known, but it runs into hundreds, with thousands expelled. Offences of this level of barbarity could not be more grave and those who participate in them must expect sentences of commensurate severity to mark the outrage of the international community.

Dario Kordić: Your role in the offences was an important one. As a regional political leader in Central Bosnia, with particular authority in the Lašva Valley, you were the effective political commander in the area where the majority of the offences were committed. As already noted, the Trial Chamber has not accepted the full extent of the Prosecution case and has not found that you were in the highest echelons of the leadership of the campaign of persecution. Likewise, you have been acquitted of some of the offences arising from individual acts of terror and the massacre at Stupni Do. Therefore, you are not to be sentenced as an architect of the persecution or the prime mover in it. Nonetheless, you joined the campaign enthusiastically and played an instrumental part in the Lašva Valley offensives in 1993, in particular in ordering the attack of Ahmići and the other villages in April 1993. For your part in that dreadful episode you deserve appropriate punishment. The fact that you were a politician and took no part in the actual execution of the crimes makes no difference; you played your part as surely as the men who fired the guns. Indeed, the fact that you were a leader aggravates the offences. You have offered no mitigation and there is none. The Trial Chamber considers that your overall criminality can be best reflected in a single sentence. Dario Kordić, you are sentenced to **25** years imprisonment.

Mario Čerkez: Your position is different from that of your co-accused. You were a soldier and a middle-ranking HVO commander. The Trial Chamber notes that you have no previous experience of command and that nothing in your earlier life could have prepared you for it. However, you were the Commander of the Viteška Brigade during the time of the terrible events in the Lašva Valley and led it in the assaults which resulted in civilian death and destruction. While the Trial Chamber has found that your troops were not involved in the massacre at Ahmići, you played your part in the campaign of persecution, aggravated because of your role as a commander. While there was positive testimony as to your character and personality, none of the matters submitted as mitigating circumstances amount to mitigation of these international crimes. The Trial Chamber considers that your overall criminality can be best reflected in a single sentence. Mario Čerkez, you are sentenced to **15** years imprisonment.

The period of time the accused have spent in custody of the International Tribunal, that is the period from 6 October 1997 to the date of this Judgement, shall be deducted from the sentences”.
