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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 1ère INSTANCE

The Hague, 22 February 2001

JL/P.I.S./566-e

JUDGEMENT OF TRIAL CHAMBER II
IN THE KUNARAC, KOVAČ AND VUKOVIĆ CASE

DRAGOLJUB KUNARAC SENTENCED TO 28 YEARS
RADOMIR KOVAČ SENTENCED TO 20 YEARS
ZORAN VUKOVIĆ SENTENCED TO 12 YEARS

- **First convictions by the ICTY of rape as a crime against humanity**
- **Trial Chamber II found that rape was “used by members of the Bosnian Serb armed forces as an instrument of terror”**
 - **First convictions of enslavement as a crime against humanity**
- **Trial Chamber also states that “lawless opportunists should expect no mercy, no matter how low their position in the chain of command may be”**

Please find below the full text of the summary of the Judgement of Trial Chamber II, read out by presiding Judge Florence Mumba at today’s Judgement hearing

Today the Trial Chamber delivers its Judgement in the proceedings against the accused. The full text will be distributed to the parties. I shall read out only a summary and the disposition.

The three accused, who are ethnic Serbs, have been charged by the Prosecution with violations of the laws or customs of war and with crimes against humanity – rape, torture, enslavement and outrages upon personal dignity.

They participated in a Serb campaign in the wider area of the municipality of Foča from early 1992 up to about mid-1993. The campaign was part of an armed conflict between the Serb and Muslim forces in the wider region of Foča, which existed at all times material to the indictments against the accused.

One *purpose* of the campaign was, among others, to cleanse the Foča area of Muslims; to that end the campaign was successful. Even the town’s name was cleansed.

Foča was renamed Srbinje and now lies in the territory of the Republika Srpska. There are hardly any Muslims left in Srbinje today.

One *target* of that campaign, apart from the Muslim armed forces, were Muslim civilians. In the present case, especially Muslim women.

The *method employed* was mostly expulsion through terror.

On a *general level*, the terror expressed itself in the violent destruction of the religious symbols of the Muslims. All mosques in Foča were blown up and the ruins razed to the ground.

Civilian Muslim men and women were rounded up in the villages surrounding Foča, and even as far as the neighbouring municipalities of Kalinovik and Gacko. The men were separated from the women and children.

The *men* often had to suffer long periods of detention in the Foča KP Dom prison. Detention without justification. Some were severely mistreated when they were captured. Some were killed on the spot, often in the presence or within earshot of their families.

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The *women and children* from the Foča region were taken to collection points, such as Buk Bijela, a settlement south of Foča. From there, they were transferred by bus to Foča High School, where they were detained. Some of them were later taken to other places in and around Foča, such as Partizan Sports Hall, which was about a stone's throw away from the police station, and to private houses in Miljevina and Trnovace. There they would meet women and girls from the other two municipalities.

In the above-mentioned places, the terror took on another, very *personal* dimension.

The trial against the three accused has sometimes been called the “rape camp case”, an example of the systematic rape of women of another ethnicity being used as a “weapon of war”.

It is to some extent misleading to say that systematic rape was employed as a “weapon of war”. This could be understood to mean a kind of concerted approach or an order given to the Bosnian Serb armed forces to rape Muslim women as part of their combat activities in the wider meaning. There is no sufficient evidence for such a finding before the Trial Chamber.

What the evidence shows, is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished.

What the evidence shows, is that it was possible for the Serb forces to set up and maintain a detention centre for scores of Muslim women such as Partizan Sports Hall, next to the municipal police building in Foča, from which women and young girls were taken away on a regular basis to other locations to be raped.

What the evidence shows, is that the authorities who were meant to protect the victims, such as the local police which had been taken over by the Serbs, turned a blind eye to their suffering. Instead, they helped guard the women, and even joined in their maltreatment when approached by them for help against their oppressors.

What the evidence shows, are Muslim women and girls, mothers and daughters together, robbed of the last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces, and more specifically, at the beck and call of the three accused.

*What the sum of the evidence **manifestly demonstrates***, is the effect a criminal personality will have in times of war on helpless members of the civilian population:

- The actions of the three accused were part of a systematic attack against Muslim civilians. Some of their acts, in peacetime, could doubtlessly be characterised as organised crime.
- They knew of the military conflict in the Foča region, because they participated in it as soldiers in different units.
- They knew that one of the main purposes of that campaign was to drive the Muslims out of the region.
- They knew that one way to achieve this was to terrorise the Muslim civilian population in a manner that would make it impossible for them ever to return.
- They also knew of the general pattern of crimes, especially of detaining women and girls in different locations where they would be raped. The actions of all three accused, as will be described below, show beyond any doubt their knowledge of the detention centres, and of the practice of systematically transferring the women and girls to locations where they would be abused by Serb men.
- The three accused were not just following orders, if there *were* such orders, to rape Muslim women. The evidence shows free will on their part. Of the women and girls so detained, one was a child of only 12 years at the time. She has not been heard of since she was sold by one of the accused. The women and girls were either lent or “rented out” to other soldiers for the sole purpose of being ravaged and abused. Some of the women and girls were kept in servitude for months on end.

The three accused are not ordinary soldiers, whose morals were merely loosened by the hardships of war. These are men with no known criminal past. However, they thrived in the dark atmosphere of the dehumanisation of those believed to be enemies, when one would not even ask, in the words of Eleanor Roosevelt,

“Where, after all, do universal human rights begin? In small places, close to home...”

The three accused are certainly not in the category of the political or military masterminds behind the conflicts and atrocities. However, the Trial Chamber wishes to make it perfectly clear that, although in these cases before this Tribunal it is generally desirable to prosecute and try those in the higher echelons of power, the Trial Chamber will not accept low rank or a subordinate function as an escape from criminal prosecution.

Political leaders and war generals are powerless if the ordinary people refuse to carry out criminal activities in the course of war. Lawless opportunists should expect no mercy, no matter how low their position in the chain of command may be.

Indeed, it is opportune to state that, in time of peace as much as in time of war, men of substance do not abuse women.

The Trial Chamber will now set out its verdict with regard to each accused.

WOULD THE ACCUSED DRAGOLJUB KUNARAC PLEASE STAND:

Dragoljub Kunarac, **under Counts 1 to 4** you were charged with rape and torture, both as a violation of the laws or customs of war and as a crime against humanity.

The Trial Chamber does not accept your defence of alibi with respect to any of these charges, and that applies equally for all other counts that you were charged with in the indictment.

As to the charge that you took Witness FWS-87 to the house at Ulica Osmana Đikica no. 16 at least twice between 13 July and 1 August 1992, where she was allegedly raped by the other soldiers, the Trial Chamber finds that the allegations have not been established beyond reasonable doubt.

As to the charge that on or around 16 July 1992, you took Witnesses FWS-75 and D.B. to Ulica Osmana Đikica no. 16, where they were raped by several soldiers, where you personally raped D.B. and aided and abetted the gang-rape of FWS-75 by several soldiers, the Trial Chamber finds that these charges have been proved beyond reasonable doubt.

As to the charge that on 2 August 1992, you took Witnesses FWS-87, FWS-75, FWS-50 and D.B. to Ulica Osmana Đikica no. 16, and that you, Dragoljub Kunarac, personally raped Witness FWS-87 and aided and abetted the rape of Witnesses FWS-87, FWS-75 and FWS-50 at the hands of other soldiers, the Trial Chamber finds that these charges have been proved beyond reasonable doubt.

As to the charge that at least twice between 13 July and 2 August 1992 you took Witness FWS-95 from Partizan Sports Hall to Ulica Osmana Đikica no. 16, where she was allegedly once raped by you and by three other soldiers, and that the second time she was raped by three soldiers, but not by you, the Trial Chamber finds that it has been proved beyond reasonable doubt that you personally raped Witness FWS-95 on one occasion, but it has not been established that Witness FWS-95 was raped by other soldiers during the two incidents mentioned above.

According to the test set out by the Trial Chamber in its Judgement with respect to cumulative convictions for the same conduct, namely that such convictions are permissible when each offence charged contains at least one distinct element not contained in the other, your conduct can be punished as both rape and torture, both under Article 3 of the Statute as a violation of the laws or customs of war and under Article 5 of the Statute as a crime against humanity. This legal principle applies equally in the indictments against the three accused.

The Trial Chamber therefore finds you GUILTY

- **under Count 1 of torture as a crime against humanity,**
- **under Count 2 of rape as a crime against humanity,**
- **under Count 3 of torture as a violation of the laws or customs of war**
- **and under Count 4 of rape as a violation of the laws or customs of war.**

Under **Counts 5 to 8** you were charged with torture and rape, both as a violation of the laws or customs of war and as a crime against humanity.

On the evidence before it, the Trial Chamber finds that the charges have not been proved beyond reasonable doubt.

The Trial Chamber therefore finds you NOT GUILTY under Counts 5, 6, 7 and 8.

Under **Counts 9 and 10** you were charged with rape as a violation of the laws or customs of war and as a crime against humanity.

As to the charge that sometime in September or October 1992, you went to a place called “Karaman’s house” in Miljevina, took Witness FWS-87 to the upper floor and raped her, the Trial Chamber finds that the charges have been proved beyond reasonable doubt.

The Trial Chamber therefore finds you GUILTY

- **under Count 9 of rape as a crime against humanity and**
- **under Count 10 as a violation of the laws or customs of war .**

Under **Counts 11 and 12** you were charged with torture and rape as a violation of the laws or customs of war.

The Trial Chamber finds that these charges have been fully established. One evening in mid-July 1992, you and two other soldiers took Witness FWS-183 from her home to the banks of the Cehotina River in Foča, where the three of you raped her. You personally raped Witness FWS-183 and aided and abetted her rape by the two other soldiers by encouraging the other men while they were raping her. You further mocked the victim by telling the other soldiers to wait for their turn while you were raping her, by laughing at her while she was raped by the other soldiers, and finally by saying that she would carry Serb babies and that she would not know the father.

Accordingly, the Trial Chamber finds you GUILTY

- **under Count 11 of torture as a violation of the laws or customs of war and**
- **under Count 12 of rape as a violation of the laws or customs of war .**

Under **Counts 18 to 21** you are charged with enslavement and outrages upon personal dignity as crimes against humanity, and with rape both as a violation of the laws or customs of war and as a crime against humanity.

The Trial Chamber finds that on the evidence before it the facts underlying these charges have partly been proved beyond reasonable doubt.

The Trial Chamber finds that you, Dragoljub Kunarac, on 2 August 1992, personally raped Witness FWS-191 in the house in Trnovace and, by taking the girls to the house, aided and abetted the rape of Witness FWS-186 at the hands of the soldier with the pseudonym DP6.

However, the Trial Chamber is not satisfied that Witness J.G., whom you had also brought to the house, was raped by the soldier with the nickname “Gaga” on that night.

Furthermore, the Trial Chamber finds that from 2 August 1992 onwards, you, Dragoljub Kunarac, raped Witness FWS-191 whenever you visited the house in Trnovace, while DP6 raped Witness FWS-186 during that period. It has, however, not been established that you aided and abetted the rape of Witness FWS-186 by DP6 during the same period as it has not been shown, apart from the incident when you brought the women to the house, that you were present while DP6 raped Witness FWS-186 or supported him in any other way. It has not been shown that your presence or actions assisted or provided encouragement to DP6 in raping Witness FWS-186. The loose connection between the events at the house and your sporadic presence there would stretch the concept of aiding and abetting with respect to the actual rapes beyond its limits, while it is still close enough for the count of enslavement.

The Trial Chamber also finds that Witness FWS-186 and Witness FWS-191 were kept for several months in the house in Trnovace, where they were treated as private property by both you and DP6.

The Trial Chamber considers the following elements to be of particular relevance for the crime of enslavement:

- (i) The fact that the girls were detained;
- (ii) the fact that they had to do everything they were ordered to do, including the cooking and household chores;
- (iii) the fact that you asserted exclusivity over FWS-191 by reserving her for yourself;
- (iv) that they were at the constant disposal of you and DP6;
- (v) other degrading treatment such as offering one soldier the permission to rape her for DM 100 in the presence of Witness FWS-191; and
- (vi) that they were effectively denied any control about their lives.

The Trial Chamber is of the view that you and DP6 acted in combination and aided and abetted each other regarding the enslavement of these women.

The Trial Chamber is, however, of the view that the evidence is not sufficient to support the charge of outrages upon personal dignity in relation to both Witnesses FWS-186 and FWS-191.

The Trial Chamber therefore finds you GUILTY

- **under Count 18 of enslavement as a crime against humanity,**
- **under Count 19 of rape as a crime against humanity,**
- **under Count 20 of rape as a violation of the laws or customs of war,**
- **but NOT GUILTY under Count 21 of outrages upon personal dignity as a violation of the laws or customs of war.**

By the totality of these acts you have shown the most glaring disrespect for the women's dignity and their fundamental human right to sexual self-determination, on a scale that far surpasses even what one might call, for want of a better expression, the "average seriousness of rapes during wartime". You abused and ravaged Muslim women because of their ethnicity, and from among their number, you picked whomsoever you fancied on a given occasion.

You were a soldier with courage in the field, somebody whom your men undisputedly are said to have held in high esteem. By this natural authority you could easily have put an end to the women's suffering. Your active participation in this nightmarish scheme of sexual exploitation is therefore even more repugnant.

You not only mistreated women and girls yourself, but you also organised their transfer to other places, where, as you were fully aware, they would be raped and abused by other soldiers.

This behaviour calls for a severe penalty commensurate with the gravity of your crimes.

The Trial Chamber therefore sentences you, Dragoljub Kunarac, to a single sentence of **28 years imprisonment**.

The sentence shall run from today. The time you have spent in custody shall be credited towards the sentence. You may sit down.

WOULD THE ACCUSED RADOMIR KOVAČ PLEASE STAND:

Radomir Kovač, under **Counts 22 to 25** you are charged with enslavement and rape as crimes against humanity, and rape and outrages upon personal dignity as violations of the laws or customs of war.

On the basis of the evidence received, the Trial Chamber finds that the charges against you have been proved beyond reasonable doubt as follows:

On or about 31 October 1992, four girls, Witnesses FWS-87, FWS-75, A.B. and A.S. were transferred to your apartment in the Lepa Brena Building in Foča. Witnesses FWS-75 and A.B. were kept for about a week in the apartment during which time you treated them as your personal property and frequently sexually assaulted them.

They had to do household chores. The hygienic conditions for all the girls were appalling, and they often had to go hungry, because they did not receive sufficient food from you.

On one occasion you raped Witnesses FWS-75 and FWS-87 at the same time whilst playing music on your stereo.

During their time in your apartment, Witnesses FWS-75 and A.B. were raped by you personally and by other soldiers. In one instance, Witness FWS-75 refused to go with a soldier named Slavo Ivanović, whom you had brought to the apartment. As a result, you slapped her and sent 12-year-old Witness A.B. in her place. After about a week, you handed the two girls over to other Serb soldiers who continued to rape them. You then visited the house in which they were kept for about two weeks and there pretended to feel sorry for them.

They were subsequently handed to yet another group of soldiers who continued to rape them and eventually brought them back to you. The next day, you sold Witness A.B. and handed Witness FWS-75 over to the soldier with the pseudonym DP1.

You thus personally raped Witnesses FWS-75 and A.B. and aided and abetted their rape by other soldiers by allowing these soldiers to visit your apartment and to rape the girls, or by encouraging them to do so and by handing over the girls to other men in the knowledge that they would rape them.

While they were kept in your apartment, Witnesses FWS-87 and A.S. were constantly raped by you and Jagos Kostic. You personally raped Witness FWS-87, while Jagos Kostic raped Witness A.S., and sometimes also Witness FWS-87, whom you had “reserved” for yourself, without your knowledge.

The Trial Chamber therefore notes that it has not been established beyond reasonable doubt that you aided and abetted the rape of Witness FWS-87 by Jagos Kostić, as the evidence indicates that this fact was hidden from you.

On an unknown date between about 31 October 1992 and about 7 November 1992, you forced Witnesses FWS-87, A.S. and A.B. to dance naked on a table whilst watching them. However, it has not been established beyond reasonable doubt that Witness FWS-75 was also present on that occasion.

Finally, on or about 25 February 1993, you sold both Witnesses FWS-87 and A.S. for 500 DM each to some Montenegrin soldiers.

Concerning the count of enslavement with respect to Witnesses FWS-87, FWS-75, A.S. and A.B. the Trial Chamber found the following elements to be of particular relevance:

- (i) the girls were physically and psychologically detained, because even if they had managed to flee from the apartment, they would have had nowhere to go;
- (ii) that you sold Witnesses FWS-87, A.S. and A.B.;
- (iii) that you handed Witnesses FWS-75, A.B. to other soldiers;
- (iv) the mistreatment, such as beating and slapping;
- (v) your claim of exclusivity over Witness FWS-87;
- (vi) the poor living conditions, and the lack of food;
- (vii) the fact that they had to obey every order and do whatever they were told to do, including the cooking and household chores;

Regarding the count of outrages upon personal dignity against Witnesses FWS-87, FWS-75, A.S. and A.B., the Trial Chamber found the following elements to be of particular relevance:

- (i) that you forced the girls to dance naked on a table;
- (ii) beating and slapping them;
- (iii) the fact that the girls were “loaned” and sold to other men;
- (iv) the fact that Witnesses FWS-75 and FWS-87 were once raped by you at the same time while you played music on your stereo;

At all times you were aware that the girls were of Muslim ethnicity, and this was one of the main reasons why you mistreated and abused them.

The Trial Chamber accordingly finds you, Radomir Kovač, GUILTY

- **under Count 22 of enslavement as a crime against humanity,**
- **under Count 23 of rape as a crime against humanity,**
- **under Count 24 of rape as a violation of the laws or customs of war,**
- **and under Count 25 of outrages upon personal dignity as a violation of the laws or customs of war.**

Although you have not been convicted of as many counts as the accused Dragoljub Kunarac, the Trial Chamber finds that your guilt is almost as great as his.

Particularly appalling and deplorable is your treatment of 12-year-old Witness A.B., a helpless little child for whom you showed absolutely no compassion whatsoever, but whom you abused sexually in the same way as the other girls. You finally sold her like an object, in the knowledge that this would almost certainly mean further sexual assaults by other men.

You knew that any chance of her being re-united with her mother, whose immense grief the Trial Chamber had to countenance in the hearing, would thus become even more remote than it already was. At the time of trial, some 8 years later, the child had never been seen or heard of again. The treatment of Witness A.B. is the most striking example of your morally depraved and corrupt character.

But what you did to the other girls is no less severe. You kept them as your and Jagos Kostić’s slaves, to be used whenever the desire took you, to be given to whomsoever you wished to show a favour. You relished in the absolute power you exerted over their lives, which you made abundantly clear by making them dance naked on a table while you watched. When they had served their purpose, you sold them, too.

Your conduct merits serious punishment. The Trial Chamber therefore sentences you, Radomir Kovač, to a single sentence of **20 years imprisonment.**

The sentence shall run from today. The time you have spent in custody shall be credited towards the sentence. You may sit down.

WOULD THE ACCUSED ZORAN VUKOVIĆ PLEASE STAND:

Zoran Vuković, under **Counts 21 to 24** you were charged with torture and rape, both as a crime against humanity and as a violation of the laws or customs of war.

On the evidence before it, the Trial Chamber finds that none of the allegations underlying these counts have been proved beyond reasonable doubt.

The Trial Chamber therefore finds you NOT GUILTY under Counts 21, 22, 23 and 24.

Under **Counts 33 to 36** you were charged with torture and rape, both as a crime against humanity and as a violation of the laws or customs of war.

On the evidence before it, the Trial Chamber finds that only one of the incidents underlying those charges has been proved beyond reasonable doubt, namely that on or around 14 July 1992 you personally raped Witness FWS-50. You and another soldier took her out of Partizan after you had threatened her mother that you would kill her if she did not tell you where her daughter was hiding. Her mother then went to find her. You took her to another house where you raped her. She was 15 years old at the time, which you knew, because you told her that had she not been the same age as your daughter – who was about 15 years at the time – you would have done much worse things to her.

The Trial Chamber does not accept the evidence that you were unable to have sexual intercourse because of an injury to the scrotum, which you allegedly suffered.

The Trial Chamber therefore finds you, Zoran Vuković, GUILTY

- **under Count 33 of torture as a crime against humanity,**
- **under Count 34 of rape as a crime against humanity,**
- **under Count 35 of torture as a violation of the laws or customs of war,**
- **and under Count 36 of rape as a violation of the laws or customs of war.**

The prosecution evidence in your case has not sustained most counts in the indictment against you, and as a consequence, your sentence must be lighter than for the other two accused.

However, the Trial Chamber regards it as a serious matter that you showed a total lack of remorse and moral stature by talking about your own daughter after having raped Witness FWS-50, who was in addition only 15 years old at the time, and mocked her in her grief by saying that you could have treated her much worse still.

Your actions call for serious punishment. The Trial Chamber therefore sentences you, Zoran Vuković, to a single sentence of **12 years imprisonment**.

The sentence shall run from today. The time you have spent in custody shall be credited towards the sentence. You may sit down.

This concludes the judgement of the Trial Chamber.

The hearing is closed.

The Court will rise.
