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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie



JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 30 November 2005

Please find below the summary of the judgement today read out by Judge Parker:

Summary

This Trial Chamber is sitting today to deliver Judgement in the trial of three Accused persons, Fatmir Limaj, Haradin Bala and Isak Musliu.

For the purposes of this hearing, the Chamber will summarise briefly its findings, emphasising that this is a summary only, and that the only authoritative account of the Chamber's findings, and of its reasons for those findings, is to be found in the written Judgement, copies of which will be made available to the parties at the conclusion of this sitting.

The three Accused, Fatmir Limaj, Haradin Bala, and Isak Musliu, are indicted for crimes allegedly committed by them, and other members of the Kosovo Liberation Army ("KLA"), from May to around the 26th of July 1998 against Serbian civilians, and Kosovo Albanian civilians who were perceived as Serbian collaborators, in central Kosovo. The Indictment alleges that at least thirty-five civilians were abducted by KLA forces, detained in a prison camp in the village of Llapushnik/Lapušnik for prolonged periods of time under inhumane conditions, and routinely subjected to assaults, beatings and torture. Fourteen named prisoners are alleged to have been murdered in the course of their detention. Another ten were allegedly executed in the nearby Berishe/Beriša Mountains on or about the 26th of July 1998 when KLA forces were forced to abandon the village of Llapushnik/Lapušnik, and the prison camp, under attack from advancing Serbian forces. All three Accused are charged with eight counts of imprisonment, cruel treatment, inhumane acts, and murder, for their alleged participation in the crimes at the prison camp. Fatmir Limaj and Haradin Bala are also charged with two further counts of murder for their alleged roles in the execution of detainees in the Berishe/Beriša Mountains.

Counts 1, 3, 5, 7, and 9 are charged as crimes against humanity under Article 5 of the Statute. For the Tribunal to have the power to deal with crimes against humanity, it must first be proved by the Prosecution that the alleged criminal conduct of the Accused was part of a widespread or systematic attack directed against a civilian population. The Chamber heard evidence of individual abductions, detention and mistreatment by KLA soldiers, of both Serbian and Kosovo Albanian civilians between May and July 1998. It was not proved, however, that these acts were on a scale or of a nature necessary to constitute a widespread or systematic attack on a civilian population. It necessarily follows, therefore, that Counts 1, 3, 5, 7, and 9 must be dismissed with respect to all three Accused. The written Judgement sets out more fully the Chamber's reasons for this conclusion. In this summary the Chamber will not discuss Counts, 1, 3, 5, 7, and 9 any further.

Counts 2, 4, 6, 8, and 10 are charged as war crimes under Article 3 of the Statute. This requires that the alleged criminal acts of the Accused are committed in the course of an armed conflict. The Chamber has heard extensive evidence on this issue, including from expert witnesses, and is satisfied that before the end of May 1998 a state of armed conflict existed in Kosovo between Serbian forces and the KLA. Count 2 alleges the offence of cruel treatment based on the unlawful seizure, unlawful detention and interrogation of Serbian and Kosovo Albanian civilians. The Chamber has come to the conclusion that, at least in the particular circumstances of this case, the mere acts of seizure, detention and interrogation, in and of themselves, have not been shown to constitute a serious attack on human dignity within the established meaning of cruel treatment under Article 3 of the Statute. Count 2, therefore, must also be dismissed with respect to all three Accused. There is, however, another charge of cruel treatment—Count 6—which relies on a much broader range of conduct than Count 2. This remains, and the Chamber will indicate its findings in respect of Count 6 shortly.

It is also alleged in the Indictment that in addition to direct personal involvement, the three Accused are criminally responsible for the offences with which they are charged, by virtue of their participation in a

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joint criminal enterprise. In the Chamber's finding, it has not been proved by the Prosecution that there was a joint criminal enterprise involving any of the three Accused.

The central allegation in the Prosecution case is that the KLA established a prison camp in a farm compound in the village of Llapushnik/Lapušnik in central Kosovo, in which it held mainly civilian prisoners, of both Kosovo Albanian and Serbian ethnicity, between May and the end of July 1998. The existence of any such prison camp is denied by all three Accused.

The Chamber has heard a great deal of evidence about this issue, especially from persons who said they had been detained there, and from former members of the KLA. Having carefully considered all this evidence, the Chamber is entirely satisfied that the KLA did have a prison camp in the farm compound in Llapushnik/Lapušnik, as alleged by the Prosecution, and that in June and July 1998, there were mainly civilian prisoners of both Albanian and Serbian ethnicity held in this prison camp. The evidence proves that the KLA were forced to abandon the prison camp on the 25th or 26th of July 1998, because Serbian armed forces were then advancing on Llapushnik/Lapušnik, which was captured by the Serbian forces on the 26th of July. This evidence is considered in detail in the written Judgement.

The most serious charge concerning conduct at the prison camp is Count 8, which alleges that 14 identified civilian prisoners were murdered at the camp. Most of these 14 prisoners have not been heard of again by their families. Given the nature of the charges it was necessary for the Prosecution to establish that each of these was murdered at the camp or by KLA soldiers connected with the camp. There was no direct evidence as to what happened to most of these prisoners. In the circumstances, for reasons that are set out in the written Judgement, the Prosecution has only been able to prove by the available evidence that 3 prisoners were murdered at the camp.

Count 6 of the Indictment alleges that all the prisoners held in the prison camp were subjected to cruel treatment. Over 30 prisoners are alleged to have been detained. The identities of some of these are not known. The identities of some 27 of them have been established. Almost all of these have been proved to have been detained in either a very small basement storage room, or in another very small room normally used as a cowshed. The evidence establishes that the conditions in each of these rooms were absolutely inhumane. There was, at most times, gross overcrowding. There was no provision for washing or toilet, although after an initial period, one bucket was provided for use as a toilet in the storage room. This bucket was not regularly emptied, so that it would overflow. The prisoners slept on the concrete floors or on some straw. Meals were provided at irregular intervals, at times days would pass without food. The food was eaten in the rooms. There was very little light or ventilation in the two rooms. The atmosphere was absolutely oppressive with heat and stench. On rare occasions prisoners in the storage room were allowed fresh air for a short time at night. Many of the prisoners were tied by the hands, or feet, or both. Some were tied to other prisoners. In the cowshed, most prisoners were chained to the wall and unable to move from their position in the room. They were forced to soil themselves in their clothes. Many of the prisoners had been badly injured, with broken limbs, bones or internal injuries. Others had been shot. No medical treatment of any kind was provided, even though there was a doctor and a medical clinic in the village which was used by KLA personnel.

In the Chamber's finding the detention of a prisoner in these conditions constituted the offence of cruel treatment.

A few prisoners were held in other places in the farm compound. The evidence does not establish that the conditions in these other places were such as to constitute cruel treatment.

In addition, there is a significant body of evidence which details individual acts of severe physical violence committed by various KLA members on individual prisoners. The evidence indicates that it was a regular occurrence for a prisoner to be blindfolded, tied and taken from the room at night by KLA soldiers, who often wore hoods to hide their faces. The prisoners were then severely beaten or subjected to other extreme violence, and later were returned to the detention room, at times unconscious or in severe pain. The Chamber has dealt with this evidence in more detail in its Judgement. From this evidence, the Chamber has identified, in particular, 12 incidents of this nature in which identified prisoners were the victims. In respect each of these 12 incidents, the crime of cruel treatment has also been established by the Prosecution.

The Chamber is also satisfied that 5 prisoners were subjected to severe mental suffering caused when they witnessed other prisoners being beaten, or were threatened with death at gunpoint, or were forced to bury the injured and disfigured corpses of other prisoners. This conduct by KLA members has also been proved to constitute the offence of cruel treatment.

Count 4 of the Indictment charges the offence of torture. To prove the offence of torture, one element which the Prosecution must establish is that the perpetrator mistreated the victim for a particular purpose, in this case the purpose of obtaining a confession, or information, or to punish, the victim. The evidence establishes 4 incidents involving identified victims in which the crime of torture has been established.

Fatmir Limaj and Haradin Bala are also charged in Count 10 for their alleged participation in the execution of detainees from the prison camp in the Berishe/Beriša Mountains. On the 25th or 26th of July, the remaining detainees of the prison camp, over 20 of them, were marched into the Berishe/Beriša Mountains under armed KLA escort. In the mountains about half of them were set free and allowed to leave. The others remained under KLA guard. The remains of 9 bodies were later exhumed from graves located in this area of the Berishe/Beriša Mountains. DNA examination confirmed the identity of 8 of these bodies. The identity of the ninth victim was established by identification of the clothes by family members. It has been proved that all 9 victims had been held prisoners by the KLA in the prison camp and that they were in the group that remained under KLA guard in the Berishe/Beriša Mountains on the 25th or 26th of July, 1998, after about half of the prisoners were set free. Forensic examination discloses that 6 of the 9 victims died from bullet wounds fired from Kalashnikov rifles, which was the type of weapon used by the KLA guards. The precise cause of death of the other 3 bodies was not identified by the forensic examination. These three bodies, however, had fractures of bones caused at about the time of death. Some bodies had been shot more than once. The Chamber is satisfied, from this compelling body of evidence, that 9 of the prisoners from the Llapushnik/Lapušnik prison camp were executed that day in the Berishe/Beriša Mountains by KLA guards. The written Judgement details the evidence, and the identity of these victims. The Prosecution has, therefore, established that 9 identified detainees from the Llapushnik/Lapušnik prison camp were murdered in the Berishe/Beriša Mountains, as alleged in Count 10 of the Indictment.

From what has been said so far, it will be apparent that the Prosecution has proved that civilians were detained by the KLA in a prison camp in a farm compound in Llapushnik/Lapušnik in June and July 1998, and that 3 of these prisoners were murdered by KLA soldiers at the camp. Most of these prisoners were subjected to cruel treatment, and 4 were tortured, while they were imprisoned by the KLA. Further, it has been proved by the Prosecution that 9 identified prisoners from the camp were murdered in the nearby Berishe/Beriša Mountains by KLA guards on the day the KLA were forced to abandon the prison camp.

There remains the further critical issue whether the three Accused Fatmir Limaj, Haradin Bala and Isak Musliu, or any of them, have been proved to have been criminally responsible for any of the offences which have been established by the Prosecution.

In this respect, in addition to direct personal involvement, it is also alleged in the Indictment that two of the Accused, Fatmir Limaj and Isak Musliu, are guilty of the offences charged for their failure to prevent or punish the criminal conduct of their subordinates in the KLA. While it is clear that these two Accused were at times after those relevant to the Indictment in positions of command in the KLA, and that Fatmir Limaj later became a member of the General Staff, the present issue is whether in May to July 1998, they had positions of command in respect of the Llapushnik/Lapušnik prison camp. For the reasons set out in the written Judgement, the Chamber finds that the Prosecution has not proved that either of these two Accused was in a position of command, or had effective control, over the KLA soldiers involved in the Llapushnik/Lapušnik prison camp.

Therefore, in this case, the issue of criminal responsibility of the three Accused, essentially, though not solely, turns on the question of identification. This has been one to which the Chamber has given a great deal of very close attention.

A few witnesses purported to have seen Fatmir Limaj in the Llapushnik/Lapušnik prison camp at various times, and one witness purported to have seen him in the Berishe/Beriša Mountains speaking to one of the KLA guards some time before the execution of the 9 prisoners. There was also evidence that Fatmir Limaj had not been in the prison camp and was never in the Berishe/Beriša Mountains on

the day of the executions. While the Chamber was not persuaded of the honesty of one of the witnesses who purported to identify Fatmir Limaj, and has had to consider with care the reliability of the others, the balance of the evidence on this issue did indicate the strong possibility that Fatmir Limaj was the KLA member who was known in the camp to some prisoners as Commander Çeliku. Nevertheless, for reasons fully set out in the written Judgement, on a final review of the evidence, the Chamber finds that it has not been proved beyond reasonable doubt by the Prosecution that the Accused Fatmir Limaj had any role in the prison camp, or in the executions in the Berishe/Beriša Mountains, or that he has any criminal responsibility for any of the offences with which he is charged.

With respect to the Accused Haradin Bala the evidence relevant to his identification is more extensive and more varied. A number of witnesses have purported to identify him as the KLA guard, known as Shala, who was active in the prison camp in June and July 1998. In that role, Shala had relatively frequent contacts with prisoners. Generally, he had the keys and often he brought food and water to the prisoners. A number of witnesses also purported to identify the Accused Haradin Bala as one of the two, or perhaps three, armed KLA guards, who escorted the remaining prisoners from the prison camp to the nearby Berishe/Beriša Mountains when the KLA had to abandon the prison camp on the 25th or 26th of July, 1998. The Chamber is not able to be satisfied about the honesty of all of these witnesses. With respect to the other witnesses the Chamber has had to closely consider the reliability of each of these identifications of the Accused Haradin Bala, as the guard they knew as Shala in the prison camp and in the Berishe/Beriša Mountains on the last day. There are many factors relevant to this which the Chamber has set out in its written Judgement. The Chamber has also had to consider other relevant evidence, especially evidence that suggested that Haradin Bala was not in Llapushnik/Lapušnik during the relevant period, and evidence which suggested that, because of poor health, he could not have done some of the things described by the witnesses and alleged in the Indictment.

Having weighed carefully the effect of all of this evidence, for reasons which the Chamber has set out in its written Judgement, the Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Haradin Bala is the KLA guard, known as Shala, who was involved in the running of the prison camp in Llapushnik/Lapušnik and who escorted the remaining prisoners to the Berishe/Beriša Mountains on the 25th or 26th of July 1998.

The Chamber has gone on to consider, therefore, whether it has been proved that the Accused Haradin Bala is personally, or otherwise, criminally responsible for any of the charged offences which have been proved to have occurred. Having weighed the evidence dealing with these issues, the Chamber has found that the Prosecution has not proved that Haradin Bala is criminally responsible for any of the 3 murders of prisoners at the camp. (i.e. Count 8); but the Prosecution has proved that Haradin Bala is guilty of cruel treatment (i.e. Count 6) for having himself mistreated 3 individual prisoners and aided in another episode of mistreatment of one of those prisoners, and for his personal role in the maintenance and enforcement of the inhumane conditions of detention in the prison camp; and has proved that Haradin Bala aided the torture of one prisoner (i.e. Count 4); and has proved that Haradin Bala, jointly with one or perhaps two other KLA guards, murdered 9 prisoners from the prison camp in the Berishe/Beriša Mountains on the 25th or 26th of July 1998 (i.e. Count 10).

There was little evidence to identify the Accused Isak Musliu as having any kind of involvement in the prison camp. The evidence relied on by the Prosecution has been set out and considered by the Chamber in the written Judgment. In the Chamber's finding, the evidence presented fails to establish that Isak Musliu had any involvement in the events charged, or in the running of the prison camp, or that on any other basis he is criminally responsible for any of the offences with which he is charged in the Indictment.

Fatmir Limaj: Will you please stand.

The Chamber finds you NOT GUILTY on all counts in the Indictment. The Chamber orders that you be immediately released from the United Nations Detention Unit, subject to the completion of the necessary modalities.

You may be seated.

Haradin Bala: Will you please stand.

The Chamber finds you GUILTY, pursuant to Article 7(1) of the Statute, of the following offences:

- Count 4: Torture, a violation of the laws or customs of war, under Article 3 of the Statute, for having aided the torture of a prisoner named in the written Disposition;
- Count 6: Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute, for having personally mistreated 3 prisoners, and aided another episode of mistreatment of one of those prisoners, and for your personal role in the maintenance and enforcement of inhumane conditions of detention in the Llapushnik/Lapušnik prison camp;
- Count 10: Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having personally participated in the murder of nine detainees, who are named in the written Disposition, in the Berishe/Beriša Mountains on the 25th or 26th of July 1998.

The Chamber finds you NOT GUILTY on all other counts in the Indictment.

With respect to sentence, the Chamber has set out in the written Judgement the many factors that have been taken into account in assessing the appropriate sentence. In particular, the Chamber has taken into account the sentencing structure in the former Yugoslavia, and sentences imposed in this Tribunal, for offences in some ways similar to those of which you have been convicted.

The Chamber would emphasize that, in its findings, your role in the prison camp was that of a guard. You were not in a position of command or authority. In particular, in connection with the murders in the Berishe/Beriša Mountains, in the Chamber's finding, you were acting as a soldier under orders, in releasing some prisoners and executing 9 of them. You did not do this on your own initiative or decision. While that does not excuse your conduct, it affects the degree of the seriousness of your conduct.

You are sentenced to a single sentence of 13 years imprisonment. Full credit will be given for the time you have spent in custody. You will remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the State where you will serve your sentence.

You may sit down.

Isak Musliu: Will you please stand.

The Chamber finds you NOT GUILTY on all counts in the Indictment. The Chamber orders that you be immediately released from the United Nations Detention Unit, subject to the completion of the necessary modalities.

You may sit down.

That concludes this Trial.

The Chamber will now adjourn.