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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

APPEALS CHAMBER

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

The Hague, 4 December 2012

Appeals Judgement Summary for Milan Lukić and Sredoje Lukić

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

The events underlying this appeal took place in the region of Višegrad, in Bosnia Herzegovina, between 1992 and 1993. For a period in 1992, Milan Lukić lived in Višegrad town. Sredoje Lukić, his cousin, was a police officer assigned to the town of Višegrad.

In its Judgement of 20 July 2009, the Trial Chamber found Milan Lukić guilty of committing persecution, murder, extermination and other inhumane acts as crimes against humanity, and murder and cruel treatment as violations of the laws or customs of war in relation to six distinct incidents: in the Drina River Incident, Milan Lukić was found guilty of having shot at seven Muslim civilians, killing five of them; in the Varda Factory Incident, Milan Lukić was convicted for having executed seven Muslim civilians; in the Pionirska Street Incident, he was found guilty of having sequestered at least 66 Muslim civilians in the house of Adem Omeragić on Pionirska Street (hereafter “Omeragić House”) and setting it ablaze, killing 59; in the Bikavac Incident, he was found criminally responsible for having sequestered approximately 60 Muslim civilians in a house in Bikavac and set it ablaze, killing at least 60 people and seriously injuring the sole survivor; he was also found guilty of having shot and killed Hajra Korić, a Bosnian Muslim civilian, and for having regularly beaten detainees at Uzamnica Camp from June 1992 until the beginning of 1993. He was sentenced to life imprisonment.

The Trial Chamber convicted Sredoje Lukić of aiding and abetting the crimes committed during the Pionirska Street Incident, except for extermination, and for having beaten detainees at Uzamnica Camp. He was sentenced to 30 years’ imprisonment.

Milan Lukić sets forth eight grounds of appeal, seeking the reversal of all of his convictions, or alternatively a reduction of his sentence.

Sredoje Lukić presents 15 grounds of appeal, seeking the reversal of all of his convictions, or alternatively a reduction of his sentence.

The Prosecution raises two grounds of appeal in relation to the convictions of Sredoje Lukić and requests that his sentence be increased.

The Appeals Chamber heard oral submissions of the parties on 14 and 15 September 2011.

I start with the appeals of Milan Lukić followed by the appeals of Sredoje Lukić and then the ones of the Prosecution.

In relation to ground seven of Milan Lukić’s appeal regarding alleged fair trial rights violations, the Appeals Chamber finds that Milan Lukić has failed to demonstrate that the

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Trial Chamber erred in concluding that he had adequate time and facilities to prepare his defence before trial and that it unduly restricted his defence. However, the Appeals Chamber finds that the Trial Chamber did not adequately assess any impact of some of the Prosecution witnesses' involvement with the "Women Victims of War Association" (hereafter "Association") on their credibility, and accordingly finds that it failed to provide a reasoned opinion in this respect. The Appeals Chamber has evaluated any impact of the witnesses' involvement with the Association when addressing other challenges related to these witnesses.

In relation to grounds one and two of his appeal, the Appeals Chamber rejects Milan Lukić's challenges to the Trial Chamber's finding that his alleged alibi for the Drina River and Varda Factory Incidents was not reasonably possibly true.

Further, the Appeals Chamber considers that the Trial Chamber did not err in allowing in-court identification per se. However, the Appeals Chamber recalls that little to no weight should be given to this evidence.

With regard to the identification of Milan Lukić at the Drina River and Varda Factory Incidents, the Appeals Chamber notes that the Trial Chamber mainly relied on the witnesses' prior knowledge of Milan Lukić, and that the inconsistencies in their accounts are minor. In relation to Milan Lukić's challenges to the Trial Chamber's finding regarding the victims, the Appeals Chamber finds that Milan Lukić has failed to show that the Trial Chamber erred in finding that the only reasonable inference was that the victims were dead. As for his convictions for committing the murders of five persons at the Drina River, the Appeals Chamber finds that by participating physically in the material elements of the crime of murder, Milan Lukić is criminally responsible for the murders. Milan Lukić's convictions are upheld.

In relation to Milan Lukić's fifth ground of appeal, the Appeals Chamber finds that any inconsistencies in the identification evidence were minor and that the Trial Chamber did not err in identifying Milan Lukić as the perpetrator of the murder of Hajra Korić. This ground of appeal is dismissed.

With respect to Milan Lukić's third ground of appeal on the Pionirska Street Incident, the Appeals Chamber finds that the Trial Chamber correctly held that the alibi was not reasonably possibly true; that the witnesses identified him during the incident; and that Milan Lukić started the fire at the Omeragić House. However, the Appeals Chamber finds that the Trial Chamber erred in concluding that 59 persons died in the fire and finds instead that 53 persons were killed.

In relation to ground four of Milan Lukić's Appeal Brief, the Appeals Chamber finds that the Trial Chamber did not err in finding that the fire during the Bikavac Incident occurred; that Milan Lukić was identified during this incident; and that at least 60 victims died in the fire. His ground of appeal is dismissed in its entirety.

In relation to the crime of extermination, the Appeals Chamber is satisfied that the Trial Chamber did not err in finding that the killings at the Pionirska Street Incident and of at least 60 victims at the Bikavac Incidents met the massiveness requirement of extermination. The limited reduction by the Appeals Chamber of the number of victims does not affect this conclusion. Furthermore, the Appeals Chamber finds, Judge Morrison dissenting, that the Trial Chamber did not err in taking into consideration the type of victims and population density of their area of origin when assessing the requirement of massiveness. Consequently, the Appeals Chamber upholds Milan Lukić's convictions of committing extermination as a crime against humanity during the Pionirska Street and Bikavac Incidents.

In his sixth ground of appeal, Milan Lukić argues that the Trial Chamber erred in the assessment of his partial alibi for crimes committed in Uzamnica Camp, claiming that he

was imprisoned in Serbia from April 1993 until late 1994. However, even if the alibi documents show that Milan Lukić was imprisoned in Serbia during that period, they do not undermine his conviction since the time period covered does not overlap with his convictions for beatings of detainees in the Uzamnica Camp between June 1992 and early 1993. Therefore, the Appeals Chamber upholds his conviction for other inhumane acts and persecutions as crimes against humanity and cruel treatment as a violation of the laws or customs of war in relation to the events that occurred at the Uzamnica Camp.

Finally, the Appeals Chamber dismisses Milan Lukić's submissions relating to sentencing.

I will now address Sredoje Lukić's and the Prosecution's appeals.

The Trial Chamber found Sredoje Lukić guilty in relation to crimes committed at the Uzamnica Camp and the Pionirska Street Incident. With regard to the Pionirska Street Incident, it specifically found that on or about 14 June 1992, Sredoje Lukić was among a group of armed men present at the house of Jusuf Memić (hereafter "Memić House") where at least 66 civilians from the village of Koritnik were held, robbed at gunpoint and subjected to other criminal acts. Subsequently, Sredoje Lukić came back with a group of armed men and transferred the civilians from the Memić House to the nearby Omeragić House (hereafter "the Transfer"), which was later set on fire by Milan Lukić, killing the large majority of those detained in it. Sredoje Lukić was found to have been armed and present at the Memić House and during the Transfer of the victims. The Trial Chamber found Sredoje Lukić guilty of aiding and abetting persecutions and other inhumane acts as crimes against humanity, and cruel treatment as a violation of the laws or customs of war. It further found him guilty, by majority, of murders both as crimes against humanity and violations of the law or customs of war.

In grounds one through six of his appeal, Sredoje Lukić challenges the Trial Chamber's assessment of the witnesses who testified that he was present at the Memić House and during the Transfer of the victims to the Omeragić House. In relation to Sredoje Lukić's presence at the Memić House, the Appeals Chamber, Judge Morrison dissenting, finds no error and upholds his convictions for aiding and abetting persecutions and other inhumane acts as crimes against humanity, and cruel treatment as a violation of the laws or customs of war.

In relation to his presence at the Transfer to the Omeragić House, the Appeals Chamber, Judges Güney and Morrison dissenting, also finds that the Trial Chamber did not err in finding him present and in holding that by his armed presence at the Memić House and his participation in the Transfer, Sredoje Lukić aided and abetted the murders at the Omeragić House by providing practical assistance. While the Trial Chamber erroneously failed to make a finding as to whether Sredoje Lukić's acts had a substantial effect, on the commission of the crimes, the Appeals Chamber finds that this error does not invalidate the Trial Judgement.

In relation to his eighth ground of appeal regarding Uzamnica Camp, Sredoje Lukić submits that the Trial Chamber erred in finding that witnesses identified him in the camp.

The Appeals Chamber finds, Judges Pocar and Liu dissenting, that in light of the Trial Chamber's own findings and the inconsistencies in Kustura evidence, a reasonable trial chamber could not have based a conviction on his testimony absent corroboration. The Appeals Chamber also concluded, Judges Pocar and Liu dissenting, that the Trial Chamber failed to provide reasons for preferring witness Nurko Dervišević's prior statements over his oral testimony. Consequently, the Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber erred in finding that Sredoje Lukić beat detainees on several occasions.

The Appeals Chamber finds that Sredoje Lukić beat Nurko Dervišević on one occasion. With respect to this incident, the Appeals Chamber finds, Judges Pocar and Liu dissenting, that

no reasonable trier of fact could have found that it caused serious bodily and mental harm and that Sredoje Lukić thereby aided and abetted persecutions and inhumane acts as a crime against humanity and cruel treatment as a violation of the laws or customs of war. The Appeals Chamber, Judges Pocar and Liu dissenting, therefore overturns all of Sredoje Lukić's convictions related to Uzamnica Camp.

Consequently, the Appeals Chamber, Judges Pocar and Liu dissenting, considers moot the Prosecution's second ground of appeal, in which the Prosecution argues that the Trial Chamber erred in failing to convict Sredoje Lukić for committing persecutions in the Uzamnica Camp.

As to the Prosecution's first ground of appeal, the Trial Chamber found that there was no majority to enter a conviction against Sredoje Lukić for aiding and abetting extermination on Pionirska Street. The Appeals Chamber notes that Rule 87(A) of the Rules states that a majority of judges must be satisfied that the guilt of the accused has been proved beyond reasonable doubt. Since neither Judge Van den Wyngaert nor Judge Robinson was satisfied that Sredoje Lukić should be convicted of this offence, the Prosecution failed to prove any error on the part of the Trial Chamber.

Finally, the Appeals Chamber has dismissed Sredoje Lukić's submissions relating to sentencing.

I will now read out the disposition of the appeal judgement. Mr. Milan Lukić, and Sredoje Lukić 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 respective written submissions of the Parties and the arguments they presented at the appeal hearing on 14 and 15 September 2011;

SITTING in open session;

GRANTS, in part, Milan Lukić's sub-grounds 7(D) and 3(A) and REPLACES the Trial Chamber's finding that 59 victims died at the Pionirska Street Incident with the finding that 53 victims died;

DISMISSES the remainder of Milan Lukić's appeal;

DISMISSES, Judge Morrison dissenting, Sredoje Lukić's first ground of appeal;

DISMISSES, Judge Güney and Judge Morrison dissenting, Sredoje Lukić's second ground of appeal;

DISMISSES, Judge Morrison dissenting, Sredoje Lukić's fifth, sixth, eleventh, and twelfth grounds of appeal insofar as they relate to his convictions for aiding and abetting the crimes of cruel treatment as a violation of the laws or customs of war as well as persecutions and other inhumane acts as crimes against humanity, all committed at the Memic House;

DISMISSES, Judge Güney and Judge Morrison dissenting, Sredoje Lukić's third, fourth, fifth, sixth, eleventh, and twelfth grounds of appeal insofar as they relate to his convictions for aiding and abetting the crimes of murder and cruel treatment as violations of the laws or customs of war, as well as murder, persecutions, and other inhumane acts as crimes against humanity, all committed at the Omeragić House;

GRANTS, in part, Judge Pocar and Judge Liu dissenting, Sredoje Lukić's eighth ground of appeal and REVERSES, Judge Pocar and Judge Liu dissenting, his convictions for the beatings of Kustura, Dervišević, and other detainees;

GRANTS, in part, Judge Pocar and Judge Liu dissenting, Sredoje Lukić's ninth ground of appeal and REVERSES, Judge Pocar and Liu dissenting, his convictions for having aided and abetted the crimes of cruel treatment as a violation of the laws or customs of war, as well as persecutions and other inhumane acts as crimes against humanity, all in relation to beatings in the Uzamnica Camp; and DECLARES MOOT, Judge Pocar and Judge Liu dissenting, the remainder of his ninth ground of appeal and his tenth ground of appeal, as well as his eleventh and twelfth grounds of appeal in as far as they relate to the beatings at the Uzamnica Camp;

DISMISSES Sredoje Lukić's appeal in all other respects;

DISMISSES the Prosecution's first ground of appeal and DECLARES MOOT the Prosecution's second ground of appeal;

AFFIRMS Milan Lukić's sentence of life imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention;

REDUCES, Judge Pocar and Judge Liu dissenting, Sredoje Lukić's sentence of 30 years' imprisonment to a sentence of 27 years' 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 Milan Lukić and Sredoje Lukić are to remain in the custody of the Tribunal pending the finalisation of arrangements for their transfer to the State where their sentences will be served.

Judge Güney appends separate and partially dissenting opinions.

Judge Agius appends a separate opinion.

Judges Pocar and Liu append a joint dissenting opinion.

Judge Morrison appends separate and dissenting opinions.

Mr. Milan Lukić, Mr. Sredoje Lukić, 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 in order for everything to run smoothly in this case that has now reached its conclusion. I will now conclude this hearing. The Appeals Chamber stands adjourned.