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TRIAL CHAMBER
CHAMBRE DE 1^{ÈRE}
INSTANCE

The Hague, 17 October 2002
JL/P.I.S./704-e

SENTENCING JUDGEMENT IN THE CASE
“THE PROSECUTOR V. MILAN SIMIĆ”

ACCUSED CONVICTED TO 5 YEARS IMPRISONMENT

Please find below a summary of the Sentencing Judgement rendered today by Trial Chamber II consisting of Judge Mumba (Presiding), Judge Williams and Judge Lindholm. This summary was read out in court by the Presiding Judge.

This summary does not form part of the Judgement. The only authoritative account of the Trial Chamber’s determinations is in the written Judgement.

INTRODUCTION AND PROCEDURAL HISTORY

The accused, Milan Simić, a 42 year-old Bosnian Serb, was first indicted by the Prosecutor of the Tribunal together with Blagoje Simić, Simo Zarić, Miroslav Tadić, Stevan Todorović and Slobodan Miljković for crimes alleged to have occurred in the area of Bosanski Šamac in north-western Bosnia and Herzegovina in 1992.

Milan Simić voluntarily surrendered to the Tribunal on 14 February 1998. At his initial appearance on 17 February 1998, Milan Simić pleaded “not guilty” to the charges against him as contained in the Initial Indictment.

The Initial Indictment against Milan Simić has been amended, and the most recent version, which is the Fourth Amended Indictment, was issued on 9 January 2002. In the Fourth Amended Indictment (“Indictment”), Milan Simić was charged with seven counts: persecutions, a crime against humanity (count 1), and the beatings and torture of six named victims, charged as two counts of torture as crimes against humanity (counts 4 and 7), two counts of inhumane acts as crimes against humanity (counts 5 and 8), and two counts of cruel treatment, as violations of the laws or customs of war (counts 6 and 9). All of the offences charged in the Indictment against Milan Simić were alleged to have been committed in the period from September 1991 to February 1993.

Milan Simić was provisionally released twice pending the start of his trial, the first time from 26 March 1998 until 7 June 1999, and the second time from 7 June 2000 until 13 August 2001. The trial of Milan Simić and his co-accused, namely Blagoje Simić, Miroslav Tadić and Simo Zarić, commenced on 10 September 2001.

On 13 May 2002 a confidential “Joint Motion for Consideration of Plea Agreement between Milan Simić and the Office of the Prosecutor” was filed. At the request of the parties, the Trial Chamber ordered that the proceedings be conducted in closed session pursuant to Rule 62 *ter* (C) of the Rules.

At a hearing held on 15 May 2002 pursuant to Rule 62 *bis* of the Rules, Milan Simić entered a plea of guilty to counts 4 and 7 of the Indictment, namely two counts of torture as crimes

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against humanity. Upon the Trial Chamber's acceptance of the plea, the Prosecution withdrew the remaining counts against Milan Simić, and the Trial Chamber severed Milan Simić from the case of *Prosecutor v. Blagoje Simić et al.* on 28 May 2002.

A detailed factual basis of the allegations agreed to by Milan Simić in relation to the criminal conduct underlying his convictions for torture is contained in the Plea Agreement, attached as Annex A to the Joint Motion filed by the parties. Milan Simić and the Prosecution agreed that certain specific facts and allegations with respect to counts 4 and 7 set out in the Indictment would be proven beyond reasonable doubt were the Prosecution to proceed with further evidence. Milan Simić agreed that the crimes were committed while holding his position as an official, and in an official capacity.

At the sentencing hearing held on 22 July 2002, the Trial Chamber lifted the confidentiality of all filings related to the hearing, including the transcript of the hearing during which the plea was taken, except that of the Plea Agreement. Milan Simić made a statement at the start of the Defence submissions, in which he expressed his "sincere regret and remorse" for what he had done to his "fellow citizens and friends at the elementary school." He took the opportunity to publicly extend apologies to all of them.

The Prosecution requested that the Trial Chamber impose a sentence of five years, while the Defence requested that the Trial Chamber impose a sentence of three years. The Trial Chamber notes that when recommending a range of sentence, the parties rightly acknowledged that the Trial Chamber was not bound by their submissions.

SENTENCING FACTORS

In determining the sentence, the Trial Chamber has taken into consideration the factors relevant to the determination of an appropriate sentence: the gravity of the offence, including any aggravating factors, the mitigating circumstances, as well as the general practice regarding prison sentences in the courts of the former Yugoslavia.

The parties, both in the Plea Agreement and in their oral submissions, have made references to the evidence presented at trial in the case against Milan Simić and his former co-accused, up until the time Milan Simić changed his plea. The Trial Chamber has accordingly taken into consideration such relevant evidence where necessary.

The main factors considered by the Chamber are now summarised, starting with the aggravating circumstances.

Criminal conduct forming basis for conviction, gravity of the offence and the manner in which the crimes were committed

Milan Simić has been convicted of two counts of torture, as crimes against humanity. The Trial Chamber emphasises at the outset that the crime of torture is particularly heinous in its nature and constitutes one of the most serious attacks upon a person's mental or physical integrity.

Milan Simić was a member of the Serb Crisis Staff and was serving in the position of President of the Executive Board of the Municipal Assembly of Bosanski Šamać when he committed the offences for which he is convicted. In relation to count 4, Milan Simić has admitted that, one night between about 10 June and 3 July 1992, he, along with several other men, beat Hasan Bičić, Muhamed Bičić, Perica Mišić and Ibrahim Salkić with a variety of weapons. Milan Simić kicked the victims in their genitals and gunshots were fired over their heads. In respect of count 7, Milan Simić admitted that he, along with several other men, repeatedly beat Safet Hadžialjagić with a variety of weapons one night in or about June 1992. The barrel of a handgun was placed in Safet Hadžialjagić's mouth. During the beating, Safet Hadžialjagić was

forced to pull down his pants and one of the other Serb men who accompanied Milan Simić threatened to cut off his penis while brandishing a knife. During the course of the beating, Milan Simić fired gun shots over the victim's head.

There can be no doubt that the acts that comprised the particular acts of torture for which Milan Simić stands convicted are barbaric and shocking. Although the mistreatment inflicted by Milan Simić upon his victims did not happen over a prolonged period of time, the manner and methods used render them despicable. The Trial Chamber considers that the sexual, violent, and humiliating nature of the acts are in aggravation, as these features would certainly have increased the mental suffering and feeling of degradation experienced by the victims. Moreover, the crimes in which Milan Simić took part should be viewed in the context of the horrific conditions which existed at the primary school at the time, and of the inhumane treatment meted out to the detainees in that detention camp. Milan Simić's willing participation in the mistreatment of some of the detainees exacerbated these conditions.

Position of Milan Simić as president of the Executive Board and as a member of the Crisis Staff

This Trial Chamber finds that while he was not charged as a superior *per se*, Milan Simić's position of authority is nonetheless relevant, as an aggravating factor, as he clearly went to the primary school using his official capacity. Considering his position, Milan Simić's participation in the torture of the detainees referred to in counts 4 and 7 must have left the impression on those present with him in the primary school at the time that this type of conduct was permissible, or even, encouraged.

Status of the Victims and Effect of the Offences on Victims

The Trial Chamber finds that there can be no doubt that Milan Simić's victims were in a position of inferiority and of acute vulnerability, being in the custody and control of the Bosanski Šamac authorities: they all had been in detention for several months, during which they had already suffered extensive and brutal beatings at the hands of others; they were defenceless and had no possibility to protect themselves. In addition, Milan Simić knew the victims personally and selected them. As agreed upon in the Plea Agreement, it was common knowledge in Bosanski Šamac that Safet Hadžialjagić, the victim named in count 7, suffered from a heart condition. The Trial Chamber is satisfied that this heart condition qualifies as vulnerability and that in beating the victim, Milan Simić intentionally exploited this by the intentional infliction or threatened infliction of severe physical pain or suffering.

Discriminatory intent

Milan Simić admitted committing the offences of which he stands convicted with a discriminatory intent, in so far as he intentionally chose to beat the victims because they were either Muslims or Croats, and he wished to punish, intimidate and humiliate them. A discriminatory intent in the commission of the particular offences to which Milan Simić pleaded guilty is therefore considered by the Trial Chamber to be an aggravating circumstance in determining his sentence.

The Trial Chamber also finds that the crimes were premeditated in that Milan Simić had no other reason for being at the primary school and that he specifically selected his victims who were known to him. The Trial Chamber finds that there were two separate incidents of torture for which Milan Simić was indicted and pleaded guilty, as reflected in counts 4 and 7 of the Indictment, and that Milan Simić was involved in two distinct and separate events. The Trial Chamber will impose a sentence for each offence, accordingly.

The Trial Chamber now turns to the mitigating circumstances.

Plea of guilty

This Trial Chamber is of the view that an accused's admission of guilt and acceptance of the facts as related by victims provides a unique and unquestionable fact-finding tool that greatly contributes to peace-building and reconciliation among the affected communities. Milan Simić is the seventh accused before the Tribunal to have been convicted on the basis of a guilty plea. He pleaded guilty more than four years after his initial appearance, and his trial had already commenced at the time he entered the Plea Agreement. The Trial Chamber notes, however, that one named victim in count 4 who was scheduled to testify for the Prosecution had not yet testified before the Tribunal. In light of these factors, Milan Simić's plea of guilty is bound to weigh less in the sentencing process than if it had been made earlier or before the commencement of the trial.

However, the Trial Chamber notes in the Judgement the extensive preparations and modifications that were undertaken at both the Detention Unit and the Tribunal to accommodate the special needs of Milan Simić due to his medical condition, including the daily video-link between the two locations. The Trial Chamber is aware of the expense for such facilities and takes note of the fact that certain of these expenses have ceased to be incurred by the Tribunal, and by extension the international community, due to the plea of guilty by Milan Simić. The Trial Chamber thus finds that, despite the lateness of Milan Simić's plea, he should receive some credit for entering a plea of guilty.

Remorse

The Trial Chamber finds Milan Simić's expression of remorse at the sentencing hearing to be sincere, and also takes note of the fact that he had returned to the primary school at the time of the events and apologised to two of his victims.

Personal circumstances: Milan Simić's medical condition

The Trial Chamber is of the view that issues concerning the ill health of a convicted person should normally be a matter for consideration in the execution of the sentence to be meted out. It is only in exceptional circumstances or "rare" cases where ill health should be considered in mitigation. Although sympathetic with the medical complications that Milan Simić has suffered and his current medical condition, the Trial Chamber is not satisfied that the medical problems are present to such a degree as would justify a reduction of the sentence. Milan Simić's medical condition, therefore, is not to be taken into account as a mitigating factor in the determination of sentence.

Personal circumstances, including age, character and family circumstances

The Trial Chamber finds that at the time he committed the offences, Milan Simić's age and educational background, were such that he was sufficiently mature to know that his actions were not only wrong, but were criminal, and that he knowingly took advantage of a war-time situation to commit horrific violent acts against defenceless persons whom he knew. In addition, the possession of a good character, as related in the affidavits submitted by the Defence, is not regarded by the Trial Chamber as a mitigating factor to the commission of the crime of torture.

Voluntary surrender to the Tribunal

The Trial Chamber finds that the voluntary surrender of Milan Simić constitutes a mitigating factor.

Lack of previous criminal record

The Trial Chamber treats Milan Simić's lack of prior criminal record as a mitigating factor, albeit not a significant one.

Comportment in the Detention Unit and general attitude towards proceedings

The Trial Chamber finds that Milan Simić was co-operative throughout the proceedings, and notes specifically his agreement to follow the proceedings via video-link from the Detention Unit, resulting in greater efficiency in the trial. The Trial Chamber finds Milan Simić's comportment in the Detention Unit and his general co-operation with the Trial Chamber and the Prosecution during the proceedings against him to be a mitigating factor.

TRIAL CHAMBER'S DETERMINATION OF SENTENCE

In the final section of the Judgement, the Trial Chamber considers the relative weight to be accorded to the above-mentioned factors in determining Milan Simić's sentence.

The Trial Chamber has taken into account and weighed the totality of Milan Simić's culpability and all the particular circumstances of the case. Having considered the written and oral submissions of the Prosecution and the Defence, the Trial Chamber finds that the following circumstances have been proven beyond reasonable doubt to be aggravating: the circumstances in which the offences were committed, Milan Simić's official position, the vulnerability of the victims, and Milan Simić's discriminatory intent. The Trial Chamber is satisfied that Milan Simić's admission of guilt and expression of remorse, his voluntary surrender, lack of prior criminal record, and his comportment in the Detention Unit and attitude towards the proceedings are circumstances proven to be mitigating on the balance of probabilities. In the determination of Milan Simić's sentence, the Trial Chamber has considered the general practice regarding prison sentences in the former Yugoslavia. The Trial Chamber has also considered the need for the sentence to reflect the relative significance of Milan Simić's role in the broader context of the conflict in the former Yugoslavia.

The Trial Chamber notes that at the present time a range or pattern of sentences in relation to persons with generally similar circumstances as that of Milan Simić and having committed acts of torture as a crime against humanity in substantially similar circumstances does not exist.

Milan Simić was a senior public official in Bosanski Šamac and he committed acts of torture in the primary school of Bosanski Šamac while serving as President of the Executive Board of the municipality. Although Milan Simić held a senior position in Bosanski Šamac, the Trial Chamber is not satisfied that he played any particularly significant role in the broader context of the conflict in the former Yugoslavia. However, Milan Simić is responsible for particularly serious offences against vulnerable persons. His behaviour and consequent infliction of severe pain and suffering through violent beatings and other barbaric acts can only be condemned in the highest degree. Under ordinary circumstances a long custodial sentence, even up to the remainder of his life, would have been appropriate.

In relation to Milan Simić's medical condition, the Trial Chamber, as mentioned before, noted that as a paraplegic, Milan Simić, who is wheelchair bound, requires full time medical attention including daily assistance with the most basic activities crucial for day to day subsistence. Although the Trial Chamber found that such condition does not qualify as a factor in mitigation of Milan Simić's sentence, Milan Simić's physical circumstances cannot be ignored. The Trial Chamber notes that in the history of the Tribunal there has not been an accused in similar medical circumstances. Such a condition poses an exceptional circumstance that obliges this Trial Chamber, for reasons of humanity, to accept that Milan Simić's medical condition ought

to be a consideration in sentencing, as a special circumstance. Accordingly a lesser sentence than Milan Simić would have otherwise received will be imposed. This is not to say that a long custodial sentence cannot be imposed on any accused in a similar state. Rather, each case must be treated according to its own circumstances.

The Trial Chamber does not find that the conditions of Milan Simić's provisional release amounted to "house arrest" but rather, allowed him to return to his family and his community, pending the start of his trial. Milan Simić was allowed to leave his house, albeit with certain limitations. Provisional release in these conditions cannot be considered as amounting to "detention in custody". Therefore, no credit will be given to Milan Simić for the time he spent provisionally released from the Detention Unit, pending the start of his trial.

DISPOSITION

The operative paragraph of the Sentencing Judgement reads as follows:

For the foregoing reasons, having considered the arguments of the parties, the evidence presented at the sentencing hearing, and the Statute and the Rules, having weighed the aggravating and mitigating circumstances, and taken note of the general practice regarding prison sentences in the former Yugoslavia, the **TRIAL CHAMBER SENTENCES** Milan Simić to **5 years** imprisonment for count 4 and **5 years** imprisonment for count 7, and **ORDERS** that the sentences shall be served concurrently. The Trial Chamber **FINDS** that he is entitled to credit for 835 days in relation to the sentence imposed by the Trial Chamber, as of the date of this Sentencing Judgement.

1. Pursuant to Rule 103(C) of the Rules, Milan Simić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.
2. Pursuant to Rule 104, the Trial Chamber requests that the Registry of the Tribunal ensures, as far as possible, that the custodial institution where Milan Simić is to serve his sentence should adequately accommodate his medical needs.

The full text of the Judgement is available in English upon request from the Public Information Services of the ICTY. It is also available on the ICTY Internet site: www.un.org/icty. The French and BCS versions will be available in due course.
