

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“DUBROVNIK” (IT-01-42/1)

MIODRAG JOKIĆ


MIODRAG JOKIĆ
Convicted of murder, cruel treatment, attacks on civilians, devastation, unlawful attacks on civilian objects, destruction or wilful damage done to institutions


Commander of the 9th Military Naval Sector (VPS) of the Yugoslav navy, which was responsible for attacking Dubrovnik, in the south of Croatia and the surrounding areas of the Adriatic Sea, on 6 December 1991

- Sentenced to 7 years' imprisonment

Crimes convicted of (examples):

Murder; cruel treatment; attacks on civilians; devastation not justified by military necessity; unlawful attacks on civilian objects; destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science (violations of the laws or customs of war)

- Soldiers under Miodrag Jokić's command shelled the Old Town of Dubrovnik, listed as a UNESCO World Cultural Heritage site. As a result, two civilians were killed and three were wounded, six buildings were destroyed in their entirety and many more buildings suffered damage. Institutions dedicated to religion, charity, education, and the arts and sciences, and historic monuments and works of art and science were damaged or destroyed.

- As a commander, he failed to take the necessary measures to prevent or stop the shelling or subsequently punish or discipline those responsible.

Born	25 February 1935, Donja Toplica in Valjevo municipality, Serbia
Indictment	Initial: 27 February 2001, made public on 2 October 2001; first amended: 31 March 2003; second amended: 27 August 2003
Surrendered	12 November 2001
Transferred to ICTY	12 November 2001
Initial appearance	14 November 2001, pleaded not guilty to all charges
Guilty plea	27 August 2003, pleaded guilty to all charges
Trial Chamber sentencing judgement	18 March 2004, sentenced to 7 years' imprisonment
Appeals Chamber judgement	30 August 2005, sentence reaffirmed
Sentence served	5 October 2006, transferred to Denmark to serve the remainder of his sentence; credit was given for time served since 12 November 2001; early release granted on 1 September 2008

STATISTICS

As the plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
<i>18 March 2004</i>	
Trial Chamber I	Judge Alphons Orié (presiding), Judge Amin El Mahdi, Judge Joaquín Martín Canivell
Counsel for the Prosecution	Susan Somers
Counsel for the Defence	Žarko Nikolić, Eugene O' Sullivan

APPEALS	
Appeals Chamber	Judge Inés Mónica Weinberg de Roca (presiding), Judge Mohamed Shahabuddeen, Judge Florence Mumba, Judge Mehmet Güney, Judge Wolfgang Schomburg
Counsel for the Prosecution	Norman Farrell, Marie Ursula Kind
Counsel for the Defence	Žarko Nikolić, Eugene O'Sullivan
Judgement	30 August 2005

RELATED CASES <i>by geographical area</i>	
KOVAČEVIĆ (IT-01-42/2) "DUBROVNIK"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA AND BOSNIA"	
STRUGAR (IT-01-42) "DUBROVNIK"	

INDICTMENT AND CHARGES

The initial indictment against Miodrag Jokić, Pavle Strugar, Milan Zec and Vladimir Kovačević was confirmed on 27 February 2001 and made public on 2 October 2001. Miodrag Jokić surrendered voluntarily to the Tribunal on 12 November 2001. The initial indictment charged him with violations of the laws or customs of war, punishable under Article 3, and grave breaches of the Geneva conventions of 1949, punishable under Article 2, for crimes that allegedly occurred between 1 October 1991 and 31 December 1991. At his initial appearance on 14 November 2001, he pleaded not guilty to all sixteen counts of the indictment. On 20 February 2002, he was granted provisional release.

The charges against Milan Zec were withdrawn on 26 July 2002. On 17 September 2003, the Trial Chamber separated the proceedings against Miodrag Jokić from those against Pavle Strugar and Vladimir Kovačević.

On 31 March 2003, the Prosecution filed an amended indictment. In this indictment the charge under Article 2 was deleted as it was considered "unnecessarily duplicative" and the counts under Article 3 were restructured. On 27 August 2003, the second amended indictment was filed.

The operative indictment charged Milorad Jokić on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with:

- Murder; cruel treatment; attacks on civilians; devastation not justified by military necessity; unlawful attacks on civilian objects; destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science (violations of the laws or customs of war, Article 3).

PLEA AGREEMENT/GUILTY PLEA

The Tribunal's Rules of Procedure and Evidence provide for a plea agreement procedure (Rule 62 *ter*). The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 1 April 2003, the Prosecution and the Defence entered into a plea agreement according to which Miodrag Jokić agreed to plead guilty to six counts of the second amended indictment, alleging violations of the laws or customs of war for events related to the shelling of Dubrovnik on 6 December 1991. At the plea hearing the following day, the Prosecution orally applied to amend the amended indictment, on condition that the accused would plead guilty to the six counts of the second amended indictment. Upon application by the Prosecution the second amended indictment was modified. The new indictment contained further clarification on the charges to which Miodrag Jokić pleaded guilty.

On 17 September 2003, following Miodrag Jokić's guilty plea, the Trial Chamber separated the proceedings against him from those involving Pavle Strugar and Vladimir Kovačević. On 26 November 2003, the Trial Chamber scheduled a sentencing hearing and ordered Miodrag Jokić's return to the United Nations Detention Unit. The sentencing hearing was held on 4 December 2003. On the same day, the Trial Chamber granted Miodrag Jokić's further request for provisional release.

The plea agreement stated that Miodrag Jokić admitted his guilt because he acknowledged full responsibility for his actions under article 7(1) and article 7(3). In exchange for his guilty plea, the Prosecution agreed to recommend to the Trial Chamber the imposition of a sentence of 10 years' imprisonment. Miodrag Jokić was however entitled to argue for a lesser sentence based on any mitigating circumstances raised by him.

STATEMENT OF MIODRAG JOKIĆ

"Mr. President, Your Honours, Madam Prosecutor, I would like to thank you for giving me this opportunity to address you.

Two years ago, immediately after the indictment was made public, I surrendered to the organs of the Tribunal in order to face the allegations and for the truth to come out. At that time, in my state, there

was no legal framework for the cooperation with the Tribunal. None of the officers against whom indictments had been issued had surrendered, and the public opinion was against such an act. Together with my Defence team and with the minimal assistance provided by the organs of the state and of the military, I thoroughly investigated and examined the allegations in the indictment and my individual and objective responsibility. I was aware of my command responsibility for the acts of my subordinates in combat and for the failings and mistakes in the exercise of command over troops.

At the same time, I felt the need for us as a responsible society to openly and sincerely face the war crimes that have been committed. I believed that it was important to start cooperating with the Tribunal and that despite all the opposition and lack of understanding in the public somebody should definitely start the process of accepting the responsibility of asking forgiveness of the victims and, as the final goal, of achieving reconciliation with the environment.

Your Honour, there are two reasons why I'm here today: The first is my personal conviction that as a commander I have a moral and personal obligation to accept responsibility and to ask forgiveness for the acts of my subordinates, even though I did not order them; the second reason is the awareness of the fact that my admission of guilt and repentance and remorse are more important than my personal fate.

On the 6th of December, 1991, two people were killed, three people were wounded and substantial damage was caused to civilian structures and to cultural and historical monuments in the old town of Dubrovnik. The fact that these lives were lost in the area for which I was responsible will remain etched in my consciousness for the rest of my life. I am ready to bow before all the victims of this conflict, regardless of the side they were on, with the dignity of a soldier. Furthermore, although I had already done that in the course of the shelling itself over the radio, and afterwards I did it again in person, I feel the obligation to express my deepest sympathy to the families of those who were killed and wounded and the citizens of Dubrovnik for the pain and all the damage that was caused to them by the unit under my command. I see my regret as a prerequisite for reconciliation and the coexistence of various peoples in this area.

Your Honour, I have been a professional soldier my whole life. As such, I have abided by the officers code trying to serve my profession and my country honourably. That is why I stand here before you, in hope that my act will contribute to the final reconciliation and that it will enable the people in this area to live together and that it will also create a possibility for my people not to bear the burden of guilt now and in the future." (Miodrag Jokić, sentencing hearing, 4 December 2003)

TRIAL CHAMBER SENTENCING JUDGEMENT

Miodrag Jokić was born in Serbia and was educated at the Yugoslav military-naval academy. In 1991, after serving as an officer in the Yugoslav navy for a number of years, he was promoted to Vice Admiral. Later in the year, he was named Commander of the 9th VPS of the Yugoslav navy, which was responsible for attacking the city of Dubrovnik and the surrounding areas of the Adriatic Sea.

The Trial Chamber judgement stated that the events of 6 December 1991, which took place in and around Dubrovnik, were preceded by a military campaign, which started on 8 October 1991 and which was conducted by Miodrag Jokić, who was acting individually and in concert with others. Dubrovnik was encircled by the Yugoslav People's Army (JNA) for approximately three months, and the Old Town of Dubrovnik was shelled on a number of occasions. At the beginning of December 1991, JNA and Croatian forces were about to reach a comprehensive ceasefire. Miodrag Jokić was the negotiator on the Yugoslav side. However, on 6 December, JNA forces under the command of, among others, Miodrag Jokić, unlawfully shelled the Old Town. As a result of the shelling on that day, two civilians were killed and three were wounded. Six buildings were destroyed in their entirety and many more buildings suffered damage. Institutions dedicated to religion, charity, education, and the arts and sciences, and historic monuments and works of art and science were damaged or destroyed.

At 2 p.m. on 6 December 1991, Miodrag Jokić sent a radiogram to a Croatian government minister in Dubrovnik, expressing his regret "for the difficult and unfortunate situation." He claimed in the radiogram that he had not ordered the shelling. Nevertheless, despite the intensity with which the Old Town was being shelled, there was no immediate order given by him to cease fire. The parties agreed that Miodrag Jokić had knowledge of the unlawful shelling from the early hours of the morning of 6 December 1991, and failed to take the necessary measures to prevent or stop the shelling. Moreover, following the shelling, no one on the JNA side, over which he had responsibility as superior officer, was punished or disciplined for the shelling. On 7 December 1991, a comprehensive ceasefire was finally achieved. During

the meeting at which the ceasefire was finalised, Miodrag Jokić apologised to his Croatian counterpart for the events of the day before.

Miodrag Jokić was convicted for the crimes of unlawful attack on civilians within the Old Town of Dubrovnik, for the murder of two persons in the course of the attack, and for the cruel treatment, by wounding, of three others in the course of the same attack. He was convicted also for devastation not justified by military necessity and for unlawful attack on civilian objects. Finally, he was convicted for destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science. The Old Town of Dubrovnik was an UNESCO World Cultural Heritage site and was also protected under the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. It was an outstanding architectural site illustrating a significant stage in human history and cultural achievement. The shelling attack on the Old Town was an attack against the history and heritage of the region and also against the cultural heritage of the whole of humankind.

Miodrag Jokić's responsibility for the crimes for which he was convicted was described partially by Article 7(1), aiding and abetting, and partially by Article 7(3), superior responsibility. The crimes were committed by soldiers under his command, although, as the Prosecution submitted, the crimes were not ordered by Miodrag Jokić. Part of his behaviour, in particular his acts and omissions before the shelling of the Old Town by JNA forces on 6 December 1991, was qualified as aiding and abetting, since it had a substantial effect on the commission of the crimes on that day. His lack of proper response to the crimes and his failure to punish the perpetrators, who were under his authority, qualified as superior responsibility pursuant to article 7(3).

In regards to aggravating circumstances, the Trial Chamber found that Miodrag Jokić's position as an admiral furnished him with considerable power and authority. However, his involvement was peripheral and mostly effected through omissions.

The Trial Chamber considered in mitigation the fact that Miodrag Jokić, a high ranking officer, voluntarily surrendered to the Tribunal, pleaded guilty to the second amended indictment, and actively cooperated with the Prosecution. Moreover, the Trial Chamber assigned substantial weight in mitigation to the fact that he publicly expressed his dissent and regret in relation to the shelling not merely when he faced charges before a court of law, but already on 6 December 1991. The Chamber further considered in mitigation his good conduct following the attack and his personal circumstances.

On 18 March 2004, the Trial Chamber rendered its judgement, convicting Miodrag Jokić, on the basis of individual criminal responsibility (Article 7(1)) and superior criminal responsibility (Article 7(3)), for murder, cruel treatment, attacks on civilians, devastation not justified by military necessity, unlawful attacks on civilian objects and destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science (violations of the laws or customs of war, Article 3).

Sentence: 7 years' imprisonment.

APPEALS CHAMBER JUDGEMENT

Miodrag Jokić's Defence appealed the Trial Chamber judgement on several grounds. The Prosecution did not appeal.

In its judgement, the Appeals Chamber dismissed all grounds of appeal submitted by the Defence. However, even though it was not raised by the accused, the Appeals Chamber did note that Miodrag Jokić was convicted for his role on 6 December 1991 under article 7(1) and 7(3) based on same facts. It further found that the jurisprudence of the Appeals Chamber shows that concurrent convictions for individual and superior responsibility in relation to the same counts based on the same facts constituted a legal error.

The Appeals Chamber held that, in accordance with settled jurisprudence, only one conviction under each count could be entered pursuant to article 7(1). Thus, the Appeals Chamber vacated the appellant's convictions for counts 1 to 6 in so far as they were based on a finding of the appellant's superior responsibility under article 7(3). This, however, did not necessarily mean that a reduction of the sentence was required because the Trial Chamber fully recognised, as an aggravating factor, that he held a position of authority and the power of a high-ranking officer over others committing the crimes.

The Appeals Chamber rendered its judgement on 30 August 2005 affirming the sentence handed down by the Trial Chamber. Credit was given for time served since his surrender 12 November 2001. On 5 October 2006, Miodrag Jokić was transferred to Denmark to serve his sentence. On 1 September 2008, he was granted early release.