



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-01-42/1-S  
Date: 18 March 2004  
Original: English

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**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Amin El Mahdi  
Judge Joaquín Martín Canivell

**Registrar:** Mr. Hans Holthuis

**Date:** 18 March 2004

**PROSECUTOR**

v.

**MIODRAG JOKIĆ**

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**SENTENCING JUDGEMENT**

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**The Office of the Prosecutor:**

Ms. Susan L. Somers

**Counsel for the Accused:**

Mr. Žarko Nikolić  
Mr. Eugene O'Sullivan

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## I. PROCEDURAL HISTORY AND PLEA

1. Miodrag Jokić was charged, together with Pavle Strugar, Milan Zec and Vladimir Kovačević, by the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (respectively, “Prosecution” and “Tribunal”) in an indictment confirmed on 27 February 2001<sup>1</sup> and unsealed on 2 October 2001.
2. Miodrag Jokić surrendered voluntarily to the Tribunal on 12 November 2001. At his initial appearance on 14 November 2001, he pleaded not guilty to all sixteen counts of the Indictment.<sup>2</sup>
3. On 20 February 2002, Miodrag Jokić was granted provisional release.<sup>3</sup>
4. On 31 March 2003, the Prosecution, in compliance with an order of Trial Chamber I (the “Trial Chamber”) of the Tribunal,<sup>4</sup> filed an Amended Indictment.
5. On 24 August 2003, Miodrag Jokić returned to The Hague and was remanded in custody at the United Nations Detention Unit. On 25 August 2003, the Prosecution and Miodrag Jokić entered into a Plea Agreement, filed jointly on 27 August 2003, according to which Miodrag Jokić agreed to plead guilty to Counts 1 to 6 of the annexed proposed Second Amended Indictment, alleging violations of the laws or customs of war punishable pursuant to Article 3 of the Statute of the Tribunal (the “Statute”), as well as to Article 7(1) – aiding and abetting – and Article 7(3) of the Statute, for events related to the shelling of the Old Town of Dubrovnik on 6 December 1991.<sup>5</sup>
6. On 26 August 2003, the Defence filed a “Request for Continued Provisional Release of Miodrag Jokić” on the same terms and conditions as before.

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<sup>1</sup> The charges against Milan Zec were withdrawn on 26 July 2001.

<sup>2</sup> The original indictment charged violations of the laws or customs of war, punishable under Article 3 of the Statute: murder (counts 1, 4 and 7); cruel treatment (counts 2, 5 and 8); attacks on civilians (counts 3, 6 and 9); devastation not justified by military necessity (count 10); unlawful attacks on civilian objects (count 11); destruction or wilful damage done to institutions dedicated to religion and to historic monuments (count 12); wanton destruction of villages, or devastation not justified by military necessity (count 14); destruction or wilful damage done to institutions dedicated to education or religion (count 15); and plunder of public or private property (count 16). It also charged grave breaches of the Geneva Conventions of 1949, punishable under Article 2 of the Statute: extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (count 13). All these crimes allegedly occurred between 1 October 1991 and 31 December 1991.

<sup>3</sup> *Prosecutor v. Pavle Strugar et al.*, “Order on Miodrag Jokić’s Motion for Provisional Release” of 20 February 2002; for temporary variation of that order, see also “Order on Miodrag Jokić’s Application for Variation of Conditions of Provisional Release for Medical Treatment” of 27 November 2002.

<sup>4</sup> *Prosecutor v. Pavle Strugar et al.*, “Decision on Prosecutor’s Amended Indictment and Application for Leave to Amend” of 17 March 2003.

<sup>5</sup> See *infra*, para. 8.

7. At the Plea Hearing of 27 August 2003, the Prosecution orally applied, pursuant to Rule 62*ter* of the Rules of Procedure and Evidence (the “Rules”), to amend the Amended Indictment, on condition that the Accused would plead guilty to the six counts in the proposed Second Amended Indictment. Upon application by the Prosecution, the Amended Indictment was amended.<sup>6</sup> This Second Amended Indictment (the “Indictment”)<sup>7</sup> serves as the basis for the guilty plea and for the present Sentencing Judgement.

8. The six Counts contained in the Plea Agreement (identical to the counts in the Indictment) relate to violations of the laws or customs of war perpetrated on 6 December 1991, namely:<sup>8</sup>

Count 1: murder

Count 2: cruel treatment

Count 3: unlawful attack on civilians

Count 4: devastation not justified by military necessity

Count 5: unlawful attack on civilian objects

Count 6: 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.

9. The Plea Agreement states that “Miodrag Jokić intends to enter a plea of guilty and admit his guilt as to each and every count” referred to above;<sup>9</sup> it also states that his decision to accept responsibility is “informed, competent and voluntary.”<sup>10</sup> Miodrag Jokić “agrees that he is pleading guilty to the Indictment because he is in fact guilty and acknowledges full responsibility for his actions” under Article 7(1) – aiding and abetting – and Article 7(3) of the Statute.<sup>11</sup> The undertakings contained in the Plea Agreement include Miodrag Jokić’s cooperation with the Prosecution.<sup>12</sup>

10. Moreover, Miodrag Jokić acknowledges in the Plea Agreement that he agreed to it “freely and voluntarily,” and that no threats were made to induce him to enter a guilty plea.<sup>13</sup> He also

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<sup>6</sup> Plea Hearing, T. 141-5.

<sup>7</sup> *Ibid.*, T. 145-7.

<sup>8</sup> Plea Agreement, para. 3.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, para. 15.

<sup>11</sup> *Ibid.*, paras 4-5.

<sup>12</sup> *Ibid.*, para. 16.

<sup>13</sup> *Ibid.*, para. 26. See also Plea Hearing, T. 141.

claims to understand that, by entering into the Plea Agreement, he has given up the rights related to the presumption of innocence and to a full trial.<sup>14</sup>

11. In exchange for Miodrag Jokić's guilty plea, his complete cooperation with the Prosecution, and the fulfilment of all his obligations under the Plea Agreement, the Prosecution agreed to recommend to the Trial Chamber the imposition of a single sentence of 10 years' imprisonment. Miodrag Jokić is however entitled, according to the Plea Agreement, to argue for a lesser sentence based on any mitigating circumstances raised by him.<sup>15</sup> The Trial Chamber is not bound by any agreement reached between the parties on the preferred sentence.<sup>16</sup>

12. All the counts contained in the Indictment refer to crimes punishable under Article 3 of the Statute. The common elements of Article 3 crimes are that, first, there was an armed conflict, whether international or non-international in character, at the time the offences were committed. Second, there was a close nexus between the armed conflict and the offence, meaning that the acts in question were "closely related" to the hostilities. The Trial Chamber is satisfied, from the material provided to it, that these prerequisites are met in the present case.

13. With regard to the crimes admitted to by Miodrag Jokić, it is not an element of any count in the Indictment that the conflict was international in character.<sup>17</sup> At the Plea Hearing of 27 August 2003, the Trial Chamber confirmed that the conduct recounted in the Plea Agreement satisfied the elements of the crimes charged in the Indictment, as already agreed to by the parties.<sup>18</sup> The parties further agreed that, if the Prosecution were to proceed with adducing evidence at trial on the facts set forth in the Plea Agreement, the facts thus proven would support a finding of guilt as to all the Counts contained in the Indictment.<sup>19</sup>

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<sup>14</sup> These rights include: the right to plead not guilty and require the Prosecution to prove charges in the Indictment beyond a reasonable doubt at a fair and impartial public trial; the right to prepare and put forward a defence to the charges at a public trial; the right to be tried without undue delay; the right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing; the right to examine at trial, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf at trial under the same conditions as witnesses against him; the right not to be compelled to testify against himself or to confess guilt; the right to testify or to remain silent at trial; and the right to appeal a finding of guilt or to appeal any pre-trial rulings. Plea Agreement, para. 24.

<sup>15</sup> *Ibid.*, para. 7. At the Sentencing Hearing, T. 296, the Defence indeed suggested that "any sentence imposed on Admiral Jokić should be less than two years of imprisonment."

<sup>16</sup> Rule 62*ter* (B) of the Rules.

<sup>17</sup> *Prosecutor v. Pavle Strugar et al.*, "Decision on Defence Preliminary Motion Challenging Jurisdiction" of 7 June 2002, paras 17-24, and the Appeals Chamber's "Decision on Interlocutory Appeal" of 22 November 2002 (Case No. IT-01-42-AR72), paras 9-10, stating, *inter alia*, that "the Trial Chamber made no error in its finding that, as the Appeals Chamber understood it, the principles prohibiting attacks on civilians and unlawful attacks on civilian objects stated in Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II are principles of customary international law. Customary international law establishes that a violation of these principles entails individual criminal responsibility."

<sup>18</sup> Plea Hearing, T. 148-50.

<sup>19</sup> Plea Agreement, para. 10.

14. The Trial Chamber, having satisfied itself that the guilty plea conformed with Rule 62*bis* of the Rules,<sup>20</sup> entered a finding of guilt for each count to which Miodrag Jokić pleaded guilty.<sup>21</sup>

15. On 29 August 2003, the Trial Chamber granted the request for continued provisional release under the same conditions provided for in the Order of 20 February 2002.

16. On 17 September 2003, the Trial Chamber issued an “Order for Separation”, according to which the proceedings involving Miodrag Jokić were, in the interests of justice, separated from those involving Pavle Strugar and Vladimir Kovačević.

17. The Trial Chamber received the “Prosecution’s Brief on the Sentencing of Miodrag Jokić” (the “Prosecution Sentencing Brief”) and “Miodrag Jokić’s Sentencing Brief” (the “Defence Sentencing Brief”) on 14 November 2003.

18. On 26 November 2003, the Trial Chamber scheduled a Sentencing Hearing and ordered Miodrag Jokić’s return to the United Nations Detention Unit. At the Sentencing Hearing on 4 December 2003, the Prosecution and the Defence addressed the Trial Chamber and called two witnesses each. Miodrag Jokić delivered a brief statement in accordance with Rule 84*bis* of the Rules. At the end of the hearing, the Trial Chamber adjourned to consider the sentence. On the same day, it also granted Miodrag Jokić’s further request for provisional release.

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<sup>20</sup> Rule 62*bis* of the Rules provides that: “If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that: (i) the guilty plea has been made voluntarily; (ii) the guilty plea is informed; (iii) the guilty plea is not equivocal; and (iv) there is a sufficient factual basis for the crime and the accused’s participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case, the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.”

<sup>21</sup> Plea Hearing, T. 146-7; 155.

## II. FACTS

19. Miodrag Jokić was born in Donja Toplica, Valjevo Municipality (Serbia) on 25 February 1935. He enrolled at the Military-Naval Academy in Divulje (Croatia) in 1954, and subsequently received military training and education in fields related to maritime warfare. Over the years, he was assigned to various military duties within the Yugoslav Navy. In October 1991, he was appointed commander of the Ninth Naval Sector (VPS) Boka, Montenegro. He retired from this position on 8 May 1992.<sup>22</sup>

20. The Trial Chamber recounts the events which occurred on and around 6 December 1991 as agreed to by the parties in the Plea Agreement and as set forth during the Sentencing Hearing on 4 December 2003. At the Sentencing Hearing, the Defence clearly accepted that the Prosecution had “set out for us the context” of the case.<sup>23</sup> It should be borne in mind that the events under consideration have not been litigated at trial. Having accepted Miodrag Jokić’s guilty plea on the basis of the Plea Agreement, the Trial Chamber limits itself to the submissions on the facts made by the parties.<sup>24</sup>

21. According to the parties, from 8 October 1991 through 31 December 1991, Miodrag Jokić, acting individually or in concert with others, conducted a military campaign, launched on 1 October 1991 and directed at the territory of the then Municipality of Dubrovnik (“Dubrovnik”).<sup>25</sup>

22. In the same period, during military operations directed at Srd Hill and the wider Dubrovnik Region, Yugoslav forces (JNA) under the command of Miodrag Jokić fired hundreds of shells which struck the Old Town of Dubrovnik (the “Old Town”).<sup>26</sup>

23. Miodrag Jokić was aware of the Old Town’s status, in its entirety, as a United Nations Educational, Scientific and Cultural Organization (“UNESCO”) World Cultural Heritage site pursuant to the 1972 Convention for the Protection of the World Cultural and Natural Heritage (“UNESCO World Heritage Convention”). He was further aware that a number of buildings in the Old Town and the towers of the Old Town’s Walls were marked with the symbols mandated by the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict

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<sup>22</sup> Defence Sentencing Brief, paras 1-3.

<sup>23</sup> Sentencing Hearing, T. 206.

<sup>24</sup> *Dragan Nikolić* Sentencing Judgement, para. 48.

<sup>25</sup> Plea Agreement, para. 11.

<sup>26</sup> *Ibid.*, para. 12.

(“1954 Hague Convention”). He was also aware of the presence of a substantial number of civilians in the Old Town on 6 December 1991.<sup>27</sup>

24. The shelling of 6 December 1991 was preceded by military operations around the Old Town of Dubrovnik which had led to approximately three months of occupation of the areas surrounding the city.<sup>28</sup> There was no investigation initiated by the JNA following the shelling of the Old Town in October and November 1991, nor were any disciplinary measures taken, to punish the violation of the standing JNA order to protect the Old Town of Dubrovnik.<sup>29</sup>

25. At the beginning of December, the JNA and the Croatian forces were about to reach a comprehensive ceasefire agreement which included the restoration of basic supplies to the population of Dubrovnik. The negotiators were Miodrag Jokić, on the one side, and three high-level Croatian cabinet ministers, on the other, including Davorin Rudolf, who was the Croatian Minister for Maritime Affairs and, for a while, acting Croatia’s Minister of Foreign Affairs.<sup>30</sup> On 5 December 1991, after a high-level meeting between the two sides in Cavtat, the only remaining detail of the ceasefire agreement was the signing of the part related to the inspection of vessels blockading Dubrovnik’s port.<sup>31</sup>

26. On 6 December 1991, JNA forces under the command of, among others, Miodrag Jokić unlawfully shelled the Old Town. Notwithstanding the fact that the forces shelling the Old Town were under the *de jure* control of Miodrag Jokić, the Prosecution’s expressed position is that the unlawful attack was “not ordered by Admiral Jokić”.<sup>32</sup> Miodrag Jokić told the Trial Chamber: “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.”<sup>33</sup>

27. As a result of the shelling, two civilians were killed (Tonči Skočko, aged 18, and Pavo Urban, aged 23) and three civilians were wounded (Nikola Jović, Mato Valjalo, and Ivo Vlašica) within the Old Town. Six buildings in the Old Town were destroyed in their entirety and many more buildings suffered damage.<sup>34</sup> Institutions dedicated to religion, charity, education, and the arts and sciences, and historic monuments and works of art and science were damaged or destroyed. The

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<sup>27</sup> *Ibid.*, para. 13.

<sup>28</sup> Sentencing Hearing, T. 194; 206.

<sup>29</sup> *Ibid.*, T. 197-8; 206.

<sup>30</sup> *Ibid.*, T. 194-5; 199; 206; 288.

<sup>31</sup> *Ibid.*, T. 195; 206; 288.

<sup>32</sup> *Ibid.*, T. 195. This is corroborated in Sentencing Hearing, T. 220-1 (closed session).

<sup>33</sup> *Ibid.*, T. 279.

<sup>34</sup> The Trial Chamber heard that more than 100 buildings suffered damage to various degrees. Sentencing Hearing, T. 243-4



shelling continued “until late in the day of 6 December 1991.”<sup>35</sup> The witness statements provided by the parties show that the Old Town was in chaos, that there was debris from the damaged buildings and that people were crying and in shock.<sup>36</sup>

28. At 2 pm on 6 December 1991, Miodrag Jokić sent a radiogram to the Crisis Committee of Dubrovnik, and specifically to Minister Davorin Rudolf, expressing his regret “for the difficult and unfortunate situation” and stating that he had not ordered the shelling. However, notwithstanding the fact that the shelling of the city was so intense, there was, according to the submissions heard by the Trial Chamber, “no introduction of any immediate order to protect, to preserve the Old Town.”<sup>37</sup> The parties agree 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 and reasonable measures to prevent, mitigate, stop or punish those under his command directly responsible for the shelling.”<sup>38</sup> Miodrag Jokić stated, in his message to the Croat side in the afternoon of 6 December 1991, that he would undertake an “energetic investigation on our responsibility and the guilty ones for this event,” at the same time expecting “to find the responsibilities on your side.”<sup>39</sup> Nonetheless, no-one on the JNA side was punished or disciplined for the shelling; insufficient efforts, if any, were put into investigations.<sup>40</sup>

29. On 7 December 1991, Miodrag Jokić met again with Minister Davorin Rudolf in Cavtat. After further negotiations, a comprehensive ceasefire agreement was concluded. During this meeting, Miodrag Jokić apologized for the events of the day before.<sup>41</sup>

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<sup>35</sup> Plea Agreement, para. 14.

<sup>36</sup> See Witness Statement 1(b), provided in Annex B (confidential) to the Prosecution Sentencing Brief, p. 5; Witness Statement 2(b), provided in Annex B (confidential) to the Prosecution Sentencing Brief, p. 3.

<sup>37</sup> Sentencing Hearing, T. 199; 206.

<sup>38</sup> Plea Agreement, para. 14.

<sup>39</sup> Text of the radiogram, Annex 9 to the Defence Sentencing Brief.

<sup>40</sup> Sentencing Hearing, T. 204; 206.

<sup>41</sup> *Ibid.*, T. 289.

### III. LAW

#### A. Considerations on sentencing in the present case

30. Punishments imposed by the Tribunal are limited to sentences of imprisonment.<sup>42</sup> In the jurisprudence of the Tribunal, retribution, deterrence and rehabilitation have been acknowledged as purposes of punishment.<sup>43</sup>

31. As a form of retribution, punishment expresses society's condemnation of the criminal act and of the person who committed it and should be proportional to the seriousness of the crimes. The Tribunal's punishment thus conveys the indignation of humanity for the serious violations of international humanitarian law for which an accused was found guilty.<sup>44</sup> In its retributive aspect, punishment may reduce the anger and sense of injustice caused by the commission of the crime among victims and their wider community.

32. In pursuing retribution as an important purpose of sentencing, the Trial Chamber focuses on the seriousness of the crimes to which Miodrag Jokić has pleaded guilty, in light of the specific circumstances of their commission.

33. The deterrent effect aimed at through punishment consists in discouraging the commission of similar crimes.<sup>45</sup> The main effect sought is to turn the perpetrator away from future wrongdoing (special deterrence) but it is assumed that punishment will also have the effect of discouraging others from committing the same kind of crime that is, for the Tribunal, those described in the Statute (general deterrence).<sup>46</sup>

34. In the instant case, the Trial Chamber considers the chance that the convicted person will commit the same kind of crime in the future to be small, which considerably reduces the relevance of special deterrence. With regard to general deterrence, imposing a punishment serves to strengthen the legal order, in which the type of conduct involved is defined as criminal, and to reassure society of the effectiveness of its penal provisions. Nonetheless, it would be unfair, and would ultimately weaken the respect for the legal order as a whole, to increase the punishment imposed on a person merely for the purpose of deterring others. Therefore, as cautioned in the

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<sup>42</sup> Article 24(1) of the Statute.

<sup>43</sup> *Čelebići* Appeal Judgement, para. 806.

<sup>44</sup> *Aleksovski* Appeal Judgement, para. 185.

<sup>45</sup> *Todorović* Sentencing Judgement, para. 30.

<sup>46</sup> *Tadić* Sentencing Judgment, paras 7-9.

*Tadić* Sentencing Appeal Judgement,<sup>47</sup> the Trial Chamber has taken care to ensure that, in determining the appropriate sentence, deterrence is not accorded undue prominence.

35. Punishment is also understood as having a rehabilitative purpose, for it underscores for the convicted person the seriousness with which society regards his or her criminal acts. The loss of freedom, which is the form of punishment imposed by the Tribunal, provides the impulse and context for the convicted person's reflections on the wrongfulness of his or her acts and on the harm and suffering they have caused to others. This process will often go along with that of reintegrating the convicted person into the society.

36. The Trial Chamber is of the opinion that, when an accused pleads guilty, he or she takes an important step in these processes.<sup>48</sup> This acknowledgement forms, among other things, an indication of the determination of an accused to face his or her responsibility towards the aggrieved party and society at large. The Chamber, taking into consideration all the information provided to it by the parties, considers that Miodrag Jokić has a high rehabilitative potential and that the issue of his reintegration into the society is especially relevant in this case.

## **B. Statute and Rules**

37. The provisions of the Tribunal's Statute and Rules which relate to sentencing are:

### *Article 24 [of the Statute]*

#### *Penalties*

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

[...]

### *Rule 100 [of the Rules]*

#### *Sentencing Procedure on a Guilty Plea*

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

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<sup>47</sup> *Tadić* Sentencing Appeal Judgement, para. 48.

<sup>48</sup> *Momir Nikolić* Sentencing Judgement, para. 93.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

*Rule 101 [of the Rules]*

*Penalties*

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

[...]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

38. Neither the Statute nor the Rules contain a specific range of penalties to be applied by the Tribunal. According to the norms reproduced above, in determining the sentence, the Trial Chamber takes into account the following factors:

(a) the gravity of the crimes;

(b) any aggravating circumstances;

(c) any mitigating circumstances; and

(d) the general practice regarding prison sentences in the courts of the former Yugoslavia.<sup>49</sup>

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<sup>49</sup> The Trial Chamber recalls that it is not bound to follow the general practice regarding prison sentences in the courts of the Former Yugoslavia, but rather should refer to it as an aid in determining the appropriate sentence. *Tadić* Sentencing Appeal Judgement, para. 20-1; *Kupreškić* Appeal Judgement, para. 418; *Jelisić* Appeal Judgement, para. 117; *Čelebići* Appeal Judgement, para. 813.

## IV. SENTENCING FACTORS

### A. Gravity of the Crimes

#### 1. Arguments of the Parties

39. The Prosecution generally recalls that “the Statute, Rules and jurisprudence of this Tribunal do not expressly lay down a range or scale of sentences applicable to the crimes falling under its jurisdiction. The decision has been left to the discretion of the Trial Chamber in each case.”<sup>50</sup> With respect to the crimes to which Miodrag Jokić has pleaded guilty, the Prosecution highlights Miodrag Jokić’s awareness of the circumstances surrounding the crimes committed during the unlawful shelling of the Old Town.<sup>51</sup> In particular, Miodrag Jokić was aware of “JNA orders and directives emphasising the requirement to avoid engaging or damaging the Old Town under any circumstances [which] were disseminated to all military commanders operating in the Dubrovnik region.”<sup>52</sup> In relation to the unlawful attack on the Old City, the Prosecution has submitted that its consequences – deaths, injuries, and widespread destruction – were very serious.<sup>53</sup> The Prosecution has finally suggested that “he who [...] allows a projectile to fire without knowing exactly who will be hit bears perhaps sometimes a heavier responsibility than a one-to-one face-to-face crime. It’s the distance, the sanitisation, that perhaps adds a dimension of horror to the crime.”<sup>54</sup>

40. The Defence refers to the Indictment and to the Plea Agreement (paragraphs 2-5 and 10-14) and acknowledges the gravity of the offences and the form of Miodrag Jokić’s participation in their commission.<sup>55</sup> It even stresses the “senseless, unjustified, and illegal tragedy” which occurred in the Old Town on 6 December 1991.<sup>56</sup>

#### 2. Discussion

41. Article 24(2) of the Statute provides that Trial Chambers should take into account such factors as the gravity of the offence when imposing sentence.<sup>57</sup> The *Kupreškić* Trial Chamber said that “[t]he sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular

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<sup>50</sup> Prosecution Sentencing Brief, para. 16.

<sup>51</sup> *Ibid.*, para. 19.

<sup>52</sup> *Ibid.*, para. 23.

<sup>53</sup> Sentencing Hearing, T. 281.

<sup>54</sup> *Ibid.*, T. 283.

<sup>55</sup> Defence Sentencing Brief, para. 27.

<sup>56</sup> Sentencing Hearing, T. 286.

<sup>57</sup> Article 24 (2) of the Statute.

circumstances of the case, as well as the form and degree of the participation of the accused in the crime.”<sup>58</sup>

42. Three of the crimes to which Miodrag Jokić has pleaded guilty entail violations of the duty incumbent upon soldiers to direct their operations only against military objectives. In order to comply with this duty, the military must distinguish civilians from combatants and refrain from targeting the former. The other three crimes entail violations of the duty to distinguish civilian objects from military objectives and not to attack protected objects.

43. In assessing the gravity of the crimes to which Miodrag Jokić has pleaded guilty, the Trial Chamber also takes into account the fact that it is an established principle in the jurisprudence of the Tribunal that war crimes are not inherently less serious than crimes against humanity.<sup>59</sup>

44. The *Galić* Trial Chamber found that an unlawful attack on civilians giving rise to deaths or injuries is an extremely serious violation “transgressing a core principle of international humanitarian law.”<sup>60</sup> Grave and long-lasting consequences are to be expected from shelling a populated town. Some information was provided on the extent of the physical and psychological suffering of the people injured (two of them fatally) during the 6 December 1991 attack on the Old Town.<sup>61</sup> The Trial Chamber has taken into consideration this information.

45. Two crimes among those to which Miodrag Jokić has pleaded guilty – devastation not justified by military necessity and unlawful attack on civilian objects – are, in the present case, very serious crimes in view of the destruction that one day of shelling ravaged upon the Old Town and its long-lasting consequences. According to the Plea Agreement, six buildings in the Old Town were destroyed, and many more buildings suffered damage.<sup>62</sup> “Hundreds, perhaps up to a thousand projectiles” hit the Old Town on 6 December 1991. A map was shown to the Trial Chamber indicating their extensive impact.<sup>63</sup>

46. Another crime to which Miodrag Jokić pleaded guilty is the crime of destruction or wilful damage done to institutions dedicated to religion, charity, education, and the arts and sciences, and to historic monuments and works of art and science. This crime represents a violation of values especially protected by the international community.

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<sup>58</sup> *Kupreškić* Trial Judgement, para. 852, cited in the *Aleksovski* Appeal Judgement, para. 182, and endorsed by the *Čelebići* Appeal Judgement, para. 731.

<sup>59</sup> *Furundžija* Appeal Judgement, para. 247; *Tadić* Sentencing Appeal Judgement, para. 69.

<sup>60</sup> *Galić* Trial Judgement, para. 27.

<sup>61</sup> Plea Agreement, paras 13-4; Sentencing Hearing, T. 237-41.

<sup>62</sup> Plea Agreement, para. 14. The Trial Chamber recognizes that Articles 3(b) and 3(c) of the Statute also provide, by logical construction, implicit protection to buildings of special cultural importance.

<sup>63</sup> Sentencing Hearing, T. 194; 200-1.

47. Codification prohibiting the destruction of institutions of this type dates back to the beginning of the last century, with the Regulations annexed to the Hague Convention Respecting the Laws and Customs of War on Land (the “Hague Regulations”)<sup>64</sup> and the Hague Convention Concerning Bombardment by Naval Forces in Time of War of 18 October 1907.<sup>65</sup>

48. The 1954 Hague Convention<sup>66</sup> provides a more stringent protection for “cultural property”, as defined in Article 1 of the Convention. The protection comprises duties of safeguard and respect of cultural property under “general protection.”<sup>67</sup>

49. The preamble to the UNESCO World Heritage Convention provides “that deterioration or disappearance of any item of the cultural or natural heritage *constitutes a harmful impoverishment of the heritage of all the nations of the world.*”<sup>68</sup> The Old Town of Dubrovnik was put on the World Heritage List in 1975.

50. Additional Protocols I (art. 53) and II (art. 16) of 1977 to the Geneva Conventions of 1949 reiterate the obligation to protect cultural property and expand the scope of the prohibition by, *inter alia*, outlawing “any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.” According to the Additional Protocols, therefore, it is prohibited to direct attacks against this kind of protected

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<sup>64</sup> See Art. 27: “In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. [...]”. See also Art. 56: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

<sup>65</sup> See Art. 5: “In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes. [...]”

<sup>66</sup> The 1954 Hague Convention entered into force on 7 August 1956 and was immediately binding on Yugoslavia pursuant to its ratification on 13 February 1956. See Articles 18, 19, 31, and 33 of the 1954 Hague Convention.

<sup>67</sup> See Art. 4: “1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property. 2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver. [...] 4. They shall refrain from any act directed by way of reprisals against cultural property.” It should also be noted that Art. 19 of the 1954 Hague Convention provides that also in non-international armed conflicts “each party [...] shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.” Art. 11 of the 1954 Hague Convention requires “unavoidable military necessity” as a cause for withdrawal of immunity for protected objects placed on the International Register for cultural property under special protection (as opposed to general protection). The Trial Chamber is not aware, however, that the Old Town of Dubrovnik was ever placed on that Register.

<sup>68</sup> Emphasis added. See also Art. 4: “Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.”

property, whether or not the attacks result in actual damage.<sup>69</sup> This immunity is clearly *additional* to the protection attached to civilian objects.<sup>70</sup>

51. The whole of the Old Town of Dubrovnik was considered, at the time of the events contained in the Indictment, an especially important part of the world cultural heritage. It was, among other things, an outstanding architectural ensemble illustrating a significant stage in human history.<sup>71</sup> The shelling attack on the Old Town was an attack not only against the history and heritage of the region, but also against the cultural heritage of humankind.<sup>72</sup> Moreover, the Old Town was a “living city” (as submitted by the Prosecution)<sup>73</sup> and the existence of its population was intimately intertwined with its ancient heritage. Residential buildings within the city also formed part of the World Cultural Heritage site, and were thus protected.

52. Restoration of buildings of this kind, when possible, can never return the buildings to their state prior to the attack because a certain amount of original, historically authentic, material will have been destroyed, thus affecting the inherent value of the buildings.

53. The Trial Chamber finds that, since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town, constituted of civilian buildings and resulting in extensive destruction within the site. Moreover, the attack on the Old Town was particularly destructive. Damage was caused to more than 100 buildings, including various segments of the Old Town’s walls, ranging from complete destruction to damage to non-structural parts.<sup>74</sup> The unlawful attack on the Old Town must therefore be viewed as especially wrongful conduct.

54. In determining an appropriate sentence to reflect the full extent of Miodrag Jokić’s culpability, the Trial Chamber has taken into consideration the fact that some of the crimes to which he pleaded guilty contain identical legal elements, proof of which depends on the same set of facts, and were committed as part of one and the same attack on the Old Town of Dubrovnik.

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<sup>69</sup> ICRC Commentary to Additional Protocol I, paras 2067; 2069-72.

<sup>70</sup> *Ibid.*, para. 2067.

<sup>71</sup> See Criteria for inclusion of cultural properties in the World Heritage List as applied to the Old Town of Dubrovnik at <<http://whc.unesco.org/sites/95.htm>>.

<sup>72</sup> The term “cultural property” is explicitly used by the 1954 Hague Convention (see art. 1). See also Article 53 of Additional Protocol I.

<sup>73</sup> Sentencing Hearing, T. 194.

<sup>74</sup> The Prosecution has proposed four categories to evaluate the damage inflicted to buildings within the Old Town of Dubrovnik: building completely destroyed; building with heavy damage to structural parts; buildings with damaged structural parts; buildings with damage to non-structural parts. See Annex to the Indictment. The Prosecution submitted, for example, that 111 projectiles struck the Old Town’s walls alone; about 70% of roofs in the Old Town suffered direct hits. Sentencing Hearing, T. 243-4.



55. The gravity of the crimes committed by the convicted person also stems from the degree of his participation in the crimes.<sup>75</sup> Both parties have acknowledged Miodrag Jokić's awareness of the circumstances surrounding the offences, as well as his knowledge of the conduct of his subordinates from the early morning of 6 December 1991. The parties have agreed that Miodrag Jokić was aware of the protected status of the whole of the Old Town as a UNESCO World Cultural Heritage site.<sup>76</sup>

56. Individual criminal responsibility attaches to persons who, in the terms of Article 7(1) of the Statute, "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute." Moreover, according to Article 7(3) of the Statute, "The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof" ("superior responsibility").<sup>77</sup>

57. The Plea Agreement and subsequent submissions imply that the parties understand Miodrag Jokić's responsibility for the events of 6 December 1991 to fall partially under Article 7(1) of the Statute (aiding and abetting) and partially under Article 7(3) of the Statute (superior responsibility).<sup>78</sup> The Trial Chamber accepted the agreement after verifying that Miodrag Jokić's choice to accept responsibility under Article 7(1) *and* Article 7(3) was informed and that, as he concedes generally in relation to his guilty plea, evidence exists which, if introduced at trial, would prove both heads of responsibility. According to the Prosecution, Miodrag Jokić's lack of proper disciplinary action to punish perpetrators for similar attacks under his authority on 23 and 24 October, and again on 9 November 1991, had a direct impact on the command environment, and therefore on the commission of the crimes, on 6 December 1991.<sup>79</sup>

58. Part of Miodrag Jokić's behaviour, specifically certain acts and omissions before the shelling by JNA forces on 6 December 1991, in the specific circumstances of this case, is correctly qualified as aiding and abetting, since it had a substantial effect on the commission of the crimes.<sup>80</sup> Other culpable omissions, in particular the lack of prompt and proper response to the crimes that

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<sup>75</sup> *Čelebići* Appeal Judgement, para. 731.

<sup>76</sup> Plea Agreement, para. 13.

<sup>77</sup> "The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates. A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by his subordinates, and a failure by him to do so in a diligent manner is sanctioned by the imposition of individual criminal responsibility in accordance with the doctrine." *Čelebići* Appeal Judgement, para. 197.

<sup>78</sup> Plea Agreement, para. 4; see also *supra*, para. 11.

<sup>79</sup> Prosecution Sentencing Brief, paras 38-40.

<sup>80</sup> *Blaškić* Trial Judgement, paras 284; *Aleksovski* Appeal Judgement, paras 162-4; *Vasiljević* Appeal Judgement, para. 102.

were being, or had been, committed and the failure to punish the perpetrators, are properly qualified, in the specific circumstances of this case, under “superior responsibility” pursuant to Article 7(3) of the Statute. Thus, at the Plea Hearing, the Trial Chamber entered a finding of guilt under both heads of responsibility.<sup>81</sup>

## **B. Aggravating Circumstances**

### **1. Leadership Position**

#### **(a) Arguments of the Parties**

59. The Prosecution submits that the position of high leadership is an aggravating factor in this case,<sup>82</sup> and that a person’s high-level position, as well as the use of such a position to commit crimes, has been considered an aggravating factor in the jurisprudence of the Tribunal.<sup>83</sup> The Prosecution made submissions on the career of Miodrag Jokić, on his role in the armed forces from October to December 1991, and on his failure to maintain discipline among his troops on 6 December 1991.<sup>84</sup> The Prosecution also submits that Miodrag Jokić’s acts and omissions related to the shelling of the Old Town “were in contravention of the requirements of his high rank and the authority that he held” and constitute, therefore, aggravating factors.<sup>85</sup> The Prosecution notes that Miodrag Jokić was chosen as one of the JNA’s representatives in negotiations with international representatives of the European Community Monitoring Mission and with Croatian Ministers concerning the fate of the Dubrovnik municipality, an indication of his senior position.<sup>86</sup>

60. The Defence disputes that a high rank, as such, should lead to a harsher sentence. However, it acknowledges that a person abusing or wrongly exercising power “deserves a harsher sentence than an individual acting on his or her own.”<sup>87</sup> In particular, “the direct participation of a high level superior in a crime under Article 7(1) – aiding and abetting – is an aggravating circumstance, although to what degree depends on the actual level of authority and the form of participation.”<sup>88</sup>

#### **(b) Discussion**

61. The Trial Chamber agrees with the parties that the position of authority and power of a high ranking officer qualifies as an aggravating circumstance, in accordance with the case law of the

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<sup>81</sup> Plea Hearing, T. 155-6.

<sup>82</sup> Prosecution Sentencing Brief, para. 25.

<sup>83</sup> *Ibid.*, paras 30-3.

<sup>84</sup> *Ibid.*, paras 26; 28.

<sup>85</sup> *Ibid.*, para. 41.

<sup>86</sup> *Ibid.*, para. 27.

<sup>87</sup> Defence Sentencing Brief, para. 31.

<sup>88</sup> *Ibid.*, para. 31.

Tribunal,<sup>89</sup> due to the far-reaching consequences of the officer's improper exercise of his or her authority and power.

62. Therefore, when determining the sentence, the Trial Chamber considers in aggravation the position of Miodrag Jokić and the influence of this position on the overall situation.

## 2. Vulnerability of the Victims

### (a) Arguments of the Parties

63. The Prosecution, citing the *Aleksovski* Trial Judgement,<sup>90</sup> submits that “the commission of violent offences against vulnerable, helpless persons or those placed in situations of inferiority could be considered aggravating factors.”<sup>91</sup> The Defence has not made any submissions on the matter.

### (b) Discussion

64. The Trial Chamber deems that the convictions for murder, cruel treatment, and unlawful attack on civilians in the circumstances of this case entail that the victims of the unlawful attack had no direct role in the hostilities and that, therefore, they were vulnerable, unarmed and unable to defend themselves. The vulnerability of the civilians is, in other words, taken into account by the Trial Chamber as part of the definition of the crimes. The Prosecution's reference to the *Aleksovski* Trial Judgement is misconceived, for the *Aleksovski* Trial Chamber clearly limited the scope of its finding to especially protected categories (such as disabled people)<sup>92</sup> and to crimes “over persons in a situation of inferiority or by a person in a position of authority.”<sup>93</sup> The Trial Chamber agrees that violence against certain groups of people, such as hospital patients, disabled people, people held in confinement (especially children and elderly) may, under certain circumstances, be considered in aggravation of the crimes. However, Miodrag Jokić has not been convicted of targeting civilians falling within a category of especial vulnerability.

65. The Trial Chamber therefore finds that the vulnerability of the victims cannot be considered an aggravating circumstance in the instant case as it has already been taken into account as part of the definition of the crimes.

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<sup>89</sup> See, for example, *Kupreškić* Trial Judgement, paras 826; 852; 862; *Naletilić* Trial Judgement, para. 758; *Galić* Trial Judgement, para. 765; *Momir Nikolić* Sentencing Judgement, para. 135.

<sup>90</sup> *Aleksovski* Trial Judgement (and not, as submitted by the Prosecution, *Appeal* Judgement), para. 227, endorsed by the *Aleksovski* Appeal Judgement, paras 37-8.

<sup>91</sup> Prosecution Sentencing Brief, para. 34 (footnote omitted).

<sup>92</sup> *Aleksovski* Trial Judgement, para. 227 and footnote 458.

<sup>93</sup> *Ibid.*, footnote 459.

### 3. Special status of the Old Town of Dubrovnik

#### (a) Arguments of the Parties

66. With respect to the special status of the Old Town of Dubrovnik, the Prosecution highlights the awareness by Miodrag Jokić that it had been included in the UNESCO Registry of World Cultural heritage in 1979 and that, as such, the area was supposed to be demilitarized;<sup>94</sup> it submits that this constitutes an aggravating factor.<sup>95</sup> The Defence has not made any submissions on the matter.

#### (b) Discussion

67. The Trial Chamber deems that the crime of destruction or wilful damage done to institutions dedicated to religion, charity, education, and the arts and sciences, and to historic monuments and works of art and science subsumes the fact that the Old Town was an undefended and culturally valuable site, thus especially protected under international law. It therefore finds that this special status of the Old Town has already been taken into consideration in the definition and evaluation of the gravity of the crime and should not be considered also in aggravation.

### 4. Conclusions

68. In light of the above, the Trial Chamber finds that only Miodrag Jokić's leadership position is a relevant aggravating circumstance, which has been afforded some weight when considering the sentence.

### C. Mitigating Circumstances

69. The Plea Agreement contains a commitment by the Prosecution to recommend a sentence of no more than ten years' imprisonment;<sup>96</sup> but the Prosecution also highlights the existence of "substantial mitigating factors" which would justify a lesser sentence.<sup>97</sup> The Defence argues that the Trial Chamber should take into consideration as mitigating circumstances: Miodrag Jokić's admission of guilt; his expression of remorse; his voluntary surrender; his conduct while in detention and on provisional release; his advanced age; his conduct at the time of the crimes and after the crimes; his personal and family circumstances; his good character; his acknowledgement

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<sup>94</sup> Prosecution Sentencing Brief, paras 37-8.

<sup>95</sup> *Ibid.*, para. 41.

<sup>96</sup> Plea Agreement, para. 7.

<sup>97</sup> Sentencing Hearing, T. 205.

of the facts.<sup>98</sup> The Prosecution agrees that the voluntary surrender of Miodrag Jokić, his good behaviour during detention and provisional release, his guilty plea and acceptance of responsibility, his remorse, and his substantial cooperation with the Prosecution may be considered in mitigation of sentence.<sup>99</sup> These factors are discussed below.<sup>100</sup>

## 1. Voluntary Surrender of the Accused

### (a) Arguments of the Parties

70. The Defence submits that the voluntary surrender of an accused has been considered by the jurisprudence of the Tribunal as a mitigating factor mainly because it may inspire other indictees to do the same, thus enhancing the effectiveness of the Tribunal.<sup>101</sup>

71. Furthermore, according to the Defence, the sooner an indictee surrenders after learning of the indictment against him, the greater the weight the Trial Chamber should give to his surrender.<sup>102</sup> The Defence notes that Miodrag Jokić, who surrendered to the Tribunal on 12 November 2001, was the first officer of the JNA from Serbia to surrender voluntarily to the Tribunal.<sup>103</sup> According to the Defence, it demonstrates “the character and personal integrity of Miodrag Jokić as a man and as a soldier and his respect for the authority and orders of the Tribunal”.<sup>104</sup>

72. The Prosecution acknowledges that Miodrag Jokić is the most senior JNA officer to have voluntarily surrendered to the Tribunal.<sup>105</sup>

### (b) Discussion

73. The Trial Chamber assigns due weight in mitigation to the fact that Miodrag Jokić, a high-ranking officer, voluntarily surrendered to the Tribunal.<sup>106</sup>

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<sup>98</sup> Defence Sentencing Brief, paras 32-62; Sentencing Hearing, T. 295.

<sup>99</sup> *Ibid.*, paras 19-22.

<sup>100</sup> “As a defendant bears the onus of establishing matters in mitigation of sentence [...] he must establish [them] on the balance of probabilities – that more probably than not [they] existed at the relevant time”, *Čelebići* Appeal Judgement, para. 590. In cases of plea agreements, however, the Trial Chamber will primarily rely on the mitigating factors agreed to by the parties, whether in the Plea Agreement or at the Sentencing Hearing.

<sup>101</sup> Defence Sentencing Brief, para. 46.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, para. 47.

<sup>104</sup> *Ibid.*; Sentencing Hearing, T. 290.

<sup>105</sup> Prosecution Sentencing Brief, para. 45.

<sup>106</sup> *Plavšić* Sentencing Judgement, para. 84.

## 2. Guilty Plea and Acceptance of Responsibility

### (a) Arguments of the Parties

74. The Defence submits that Miodrag Jokić's guilty plea prior to the commencement of trial is the primary factor to be considered in mitigation, because it demonstrates honesty, helps establish the truth, contributes to peace-building, saves time and resources for the Tribunal, and obviates the need for victims and witnesses to come to The Hague to testify.<sup>107</sup>

75. The Prosecution acknowledges that Miodrag Jokić's guilty plea is a significant factor in mitigation of his sentence.<sup>108</sup> First, it represents an admission of guilt by one of the highest ranking officers of the former JNA concerning his participation in the highly destructive attack on the Old Town of Dubrovnik.<sup>109</sup> Second, the guilty plea "breaks the code of silence which has hovered over and surrounded this shameful event".<sup>110</sup>

### (b) Discussion

76. The jurisprudence of the Tribunal has accepted that a guilty plea may go to the mitigation of sentence because, according to the circumstances, it may: demonstrate repentance, honesty, and readiness to take responsibility;<sup>111</sup> help establish the truth;<sup>112</sup> contribute to peace and reconciliation;<sup>113</sup> set an example to other persons guilty of committing crimes;<sup>114</sup> relieve witnesses from giving evidence in court;<sup>115</sup> and save the Tribunal's time and resources.<sup>116</sup>

77. The Trial Chamber recognizes that Miodrag Jokić's guilty plea prior to the commencement of the trial contributes to establishing the truth about the events in and around the Old Town of Dubrovnik on 6 December 1991. Mutual understanding and conciliation presuppose, to some extent, a true and acknowledged record of the events which made up the conflict in the former Yugoslavia. The Trial Chamber believes that such mutual appreciation of the events can be only advanced by Miodrag Jokić's guilty plea. His plea has the potential to strengthen the foundations for reconciliation between the peoples of the former Yugoslavia and for the restoration of a lasting

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<sup>107</sup> Defence Sentencing Brief, paras 34-7; Sentencing Hearing, T. 291-2.

<sup>108</sup> Prosecution Sentencing Brief, para. 49.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Plavšić* Sentencing Judgement, para. 70; *Dragan Nikolić* Sentencing Judgement, para. 237.

<sup>112</sup> *Todorović* Sentencing Judgement, para. 81; *Momir Nikolić* Sentencing Judgement, para. 149; *Dragan Nikolić* Sentencing Judgement, para. 233.

<sup>113</sup> *Plavšić* Sentencing Judgement, para. 80; *Dragan Obrenović* Sentencing Judgement, para. 111; *Dragan Nikolić* Sentencing Judgement, para. 233.

<sup>114</sup> *Erdemović* Second Sentencing Judgement, para. 16 (ii); *Milan Simić* Sentencing Judgement, para. 83.

<sup>115</sup> *Momir Nikolić* Sentencing Judgement, para. 150; *Todorović* Sentencing Judgement, para. 80.

<sup>116</sup> *Sikirica* Sentencing Judgement, para. 149; *Erdemović* Second Sentencing Judgement, para. 16(ii); *Todorović* Sentencing Judgement, para. 81; *Plavšić* Sentencing Judgement, para. 73; *Banović* Sentencing Judgement, para. 67.

peace in the region. The Trial Chamber finally notes that Miodrag Jokić's plea saves considerable time and resources for the Tribunal.

78. The Trial Chamber concludes that Miodrag Jokić's guilty plea is an important factor going to the mitigation of the sentence to be imposed.

### 3. Remorse

#### (a) Arguments of the Parties on remorse

79. The Defence submits that Miodrag Jokić's sincere remorse is, according to the jurisprudence of the Tribunal, a mitigating factor.<sup>117</sup> In this regard, the Defence relies mainly upon the *Plavšić* Judgement according to which the acknowledgement and acceptance of responsibility for wrongs promotes reconciliation.<sup>118</sup>

80. At the Sentencing Hearing, Miodrag Jokić declared that:

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 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 people in this area.<sup>119</sup>

81. He later stated:

I have been a professional soldier my whole life. As such, I have abided by the officer code trying to serve my profession and my country honourably. That is why I stand 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.<sup>120</sup>

82. The Defence submits that Miodrag Jokić's remorse is sincere and should be taken into consideration when determining his sentence.<sup>121</sup>

83. The Prosecution submits that the words in relation to the attacks spoken by Miodrag Jokić at the time of the attacks, reinforced by the guilty plea, constitute genuine remorse. According to the Prosecution, on 6 December 1991 Miodrag Jokić had already expressed regret for the attack on the

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<sup>117</sup> Defence Sentencing Brief, para. 43.

<sup>118</sup> *Ibid.*, paras 44-5.

<sup>119</sup> Sentencing Hearing, T. 280.

<sup>120</sup> *Ibid.*, T. 280-1.

<sup>121</sup> *Ibid.*, T. 292.

Old Town both to Croatian Government officials and to international personnel present in the Dubrovnik region; this appears to have been done spontaneously and genuinely.<sup>122</sup>

84. The Defence also submits that the conduct of an accused posterior to the crimes may be considered in mitigation of sentence, if the accused has taken steps toward reparation to victims. It also takes the view that, in this instance, consideration should be given to conduct concomitant to the crimes.<sup>123</sup>

85. The Defence considers that the conduct of Miodrag Jokić during the negotiations on 5 to 7 December 1991 with Minister Davorin Rudolf should be considered as “benevolent acts, which were Miodrag Jokić’s attempts to change and improve the course of events”.<sup>124</sup>

86. According to the Defence, on 5 December 1991, Minister Rudolf – who was mandated by the Croatian Government to negotiate the peaceful withdrawal of the JNA from Croatian territory – agreed with Miodrag Jokić on an immediate ceasefire and on a mechanism to improve the lives of the citizens of Dubrovnik.<sup>125</sup> As mentioned earlier in this judgement, on 6 December 1991, Minister Rudolf received a radiogram from Miodrag Jokić. The radiogram contained an expression of regret for the shelling of the Old Town, which was taking place that day. Miodrag Jokić’s radiogram stated that he did not order the attack and that he promised to investigate. Minister Rudolf read out the full text by Miodrag Jokić on the radio.<sup>126</sup> On 7 December 1991, Minister Rudolf met again with Miodrag Jokić and concluded “a final agreement and cease fire”.<sup>127</sup> The Minister acknowledged that at this meeting Miodrag Jokić apologised for the events of 6 December 1991. He considered Miodrag Jokić a willing, sincere and genuine negotiator.<sup>128</sup> The Defence submits that “Admiral Jokić’s good faith negotiations with Mr. Rudolf, which resulted in the final agreement and ceasefire, saved lives, misery, and the destruction of property.”<sup>129</sup>

87. The Defence moreover submits that in 1993 Miodrag Jokić became the President of the Defence and Safety Commission of the “New Democracy” party of Serbia and was actively involved in the planning of reforms and reorganisation of the Yugoslav Armed Forces. This is

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<sup>122</sup> Prosecution Sentencing Brief, paras 52-3.

<sup>123</sup> Defence Sentencing Brief, para. 55.

<sup>124</sup> *Ibid.*, para. 60; Sentencing Hearing, T. 289.

<sup>125</sup> Defence Sentencing Brief, para. 58.

<sup>126</sup> *Ibid.*, para. 56.

<sup>127</sup> *Ibid.*, paras 59-60.

<sup>128</sup> *Ibid.*

<sup>129</sup> Sentencing Hearing, T. 289.



supported by witness Miroslav Stefanović, one of the founding members of the New Democracy party, who testified at the Sentencing Hearing.<sup>130</sup>

88. At the Sentencing Hearing, the Defence stated that “as the Prosecution acknowledges, the radiogram sent by Admiral Jokić to Mr. Rudolf on the 6<sup>th</sup> of December demonstrates his sincere remorse.”<sup>131</sup> The Prosecution indeed refers to Miodrag Jokić’s regret expressed on 6 December 1991.<sup>132</sup> Further, the Prosecution recognizes Miodrag Jokić’s role in implementing the comprehensive ceasefire after the unlawful attack of 6 December 1991.<sup>133</sup> Moreover, the Prosecution accepts that Miodrag Jokić was an active member of the New Democracy party and President for the Board for Defence and Security.<sup>134</sup> The Prosecution recognizes that, in this capacity, Miodrag Jokić contributed significantly to the initiative for having the Federal Republic of Yugoslavia join the Partnership for Peace, and worked on proposals for the reform of the military and the police.<sup>135</sup>

(b) Discussion

89. A convicted person’s remorse may be treated as a mitigating circumstance, provided that it is sincere.<sup>136</sup> The Trial Chamber notes that it was already on 6 December 1991, the day of the shelling of the Old Town of Dubrovnik, that Miodrag Jokić demonstrated in the radiogram to Minister Rudolf his regret for the events.

90. The post-conflict conduct of an accused has been considered an important mitigating factor in the *Plavšić* Sentencing Judgement.<sup>137</sup> In this respect, the Trial Chamber notes that the parties agree that Miodrag Jokić was instrumental in ensuring that a comprehensive ceasefire was agreed upon and implemented. The Trial Chamber also notes that Minister Rudolf considered Miodrag Jokić a “willing, sincere and genuine negotiator”.<sup>138</sup>

91. Furthermore, the Trial Chamber was provided with information that, after the war, Miodrag Jokić participated in political activities programmatically aimed at promoting a peaceful solution to the conflicts in the region.

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<sup>130</sup> Sentencing Hearing, T. 265.

<sup>131</sup> *Ibid.*, T. 289.

<sup>132</sup> Prosecution Sentencing Brief, para. 52.

<sup>133</sup> *Ibid.*

<sup>134</sup> Sentencing Hearing, T. 290.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Banović* Sentencing Judgement, para. 71; *Todorović* Sentencing Judgement, para. 89; *Erdemović* Second Sentencing Judgement, para. 16 (ii).

<sup>137</sup> *Plavšić* Sentencing Judgement, para. 94.

<sup>138</sup> Defence Sentencing Brief, para. 59.

92. The Trial Chamber finds that Miodrag Jokić's public expression of regret to the victims and their families, his conduct following the attack of 6 December 1991 on the Old Town of Dubrovnik, his demeanour during the Sentencing Hearing (when he openly talked about his "regret"), together reflect his sincere remorse. The fact that, at a certain point after voluntarily surrendering to the Tribunal, Miodrag Jokić pleaded guilty and subsequently co-operated in a substantial manner with the Prosecution, as explained below, corroborates this conclusion.

#### 4. Cooperation with the Prosecution

##### (a) Arguments of the Parties

93. The Defence recalls that, according to the jurisprudence of the Tribunal, the determination of whether an accused's cooperation has been substantial depends on the extent and quality of the information he or she provided.<sup>139</sup> The Defence submits that Miodrag Jokić has substantially co-operated with the Prosecution.<sup>140</sup>

94. The Prosecution has confirmed that the cooperation of Miodrag Jokić has been substantial.<sup>141</sup>

##### (b) Discussion

95. The Trial Chamber takes note of the Plea Agreement with the Prosecution, pursuant to which Miodrag Jokić agreed to co-operate with the Prosecution and "to provide truthful and complete information" to the Tribunal whenever requested.<sup>142</sup> The Trial Chamber takes into account also the Prosecution's acknowledgement that Miodrag Jokić has fully co-operated and that his cooperation has been substantial. To this effect, the parties have made specific submissions to the Trial Chamber.<sup>143</sup>

96. The Trial Chamber finds that, when determining the sentence, this factor is to be considered as a mitigating circumstance.

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<sup>139</sup> Defence Sentencing Brief, paras 38-42.

<sup>140</sup> Sentencing Hearing, T. 293-4 (private session).

<sup>141</sup> Prosecution Sentencing Brief, para. 54; Sentencing Hearing, T. 283-4.

<sup>142</sup> Plea Agreement, para. 15-8.

<sup>143</sup> Filings of 14 November 2003 (confidential) and 24 February 2004 (confidential); Sentencing Hearing, T. 229-35 (closed session); 284; 293-4 (private session).

## 5. Personal Circumstances

### (a) Arguments of the Parties

97. The Defence argues that the Trial Chamber should consider the following five personal factors in mitigation of sentence:

- the good conduct of Miodrag Jokić whilst in detention;<sup>144</sup>
- his full compliance with the terms and conditions imposed upon him during his provisional release;<sup>145</sup>
- his family situation: Miodrag Jokić is married with two adult daughters;<sup>146</sup>
- his good character and professionalism;<sup>147</sup> and
- his advanced age.<sup>148</sup>

98. The Defence called a witness Marjan Pogacnik, a retired rear admiral, to testify about the good character and professionalism of Miodrag Jokić. He described Miodrag Jokić as being an exemplary father<sup>149</sup> and a very human and professional officer.<sup>150</sup> According to this witness, Miodrag Jokić “was always for full equality of all nations and ethnic groups. That was his main point, what he really believed in. He never expressed any nationalistic views.”<sup>151</sup> This testimony was not contested by the Prosecution.

99. The Prosecution recognizes that, at all times during his detention, Miodrag Jokić conducted himself in an appropriate manner, and respected the staff and the rules of detention.<sup>152</sup> Moreover, regular reports concerning Miodrag Jokić’s conduct during provisional release indicated that he was observing all rules and regulations.<sup>153</sup>

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<sup>144</sup> Defence Sentencing Brief, para. 48.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*, para. 62.

<sup>147</sup> Sentencing Hearing, T. 286-7.

<sup>148</sup> Defence Sentencing Brief, paras 51-4.

<sup>149</sup> Sentencing Hearing, T. 255.

<sup>150</sup> *Ibid.*, T. 250.

<sup>151</sup> *Ibid.*, T. 251.

<sup>152</sup> Prosecution Sentencing Brief, para. 46.

<sup>153</sup> *Ibid.*

(b) Discussion

100. The jurisprudence of the Tribunal has taken into consideration various personal circumstances as mitigating factors, such as: the advanced age of an accused,<sup>154</sup> his good behaviour whilst at the United Nations Detention Unit,<sup>155</sup> his full compliance with the terms and conditions imposed upon him during provisional release,<sup>156</sup> and his family situation.<sup>157</sup> However, the Tribunal has generally attached only limited importance to these factors.<sup>158</sup> The *Banović* Judgement highlighted that “many accused share these personal factors”.<sup>159</sup>

101. The Trial Chamber notes that Miodrag Jokić has been described as a very human and professional officer;<sup>160</sup> that he is married with two children;<sup>161</sup> that he conducted himself well whilst in detention; that he complied fully with the terms and conditions of his provisional release; and that he is almost 69 years old.

102. The Trial Chamber considers that while each of the above-mentioned factors, by itself, does not amount to a mitigating circumstance, taken together they do amount to personal circumstances of a kind which may be accorded some, although very limited, weight in mitigation.

6. Conclusions

103. In light of the above, the Trial Chamber finds that the following are relevant mitigating circumstances to which appropriate weight has been attached when determining the sentence:

- Voluntary surrender ;
- Guilty plea;
- Remorse, also shown by the conduct concomitant and posterior to the committed crimes;
- Cooperation with the Prosecution; and
- Personal circumstances.

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<sup>154</sup> *Plavšić* Sentencing Judgement, para. 106.

<sup>155</sup> *Dragan Nikolić* Sentencing Judgement, para. 268.

<sup>156</sup> *Plavšić* Sentencing Judgement, para. 109.

<sup>157</sup> *Kunarac* Appeal Judgement, para. 366; *Jelisić* Trial Judgement, para. 124.

<sup>158</sup> *Kordić* Trial Judgement, para. 848; *Blaškić* Trial Judgement, paras 780-2; *Banović* Sentencing Judgement, para. 75.

<sup>159</sup> *Ibid.*

<sup>160</sup> Sentencing Hearing, T. 250.

<sup>161</sup> *Ibid.*, T. 255.

## D. The General Practice Regarding Prison Sentences in the Courts of the Former Yugoslavia

### 1. Arguments of the Parties

104. The Prosecution argues that the Tribunal's jurisprudence regarding recourse to the SFRY's sentencing practice shows that it is "as a useful tool that can guide, but not delimit, a Trial Chamber's determination of appropriate sentence."<sup>162</sup> Thus, a Trial Chamber may not only avail itself of the actual range of penalties that courts in the former Yugoslavia would pass for crimes comparable to those alleged, but also take into consideration the factors enshrined in Article 41(1) of the SFRY Criminal Code,<sup>163</sup> which states:

The court shall determine the sentence for the perpetrator of a given crime within the limits prescribed by the law for this crime, bearing in mind the purpose of the punishment and taking into account all the circumstances that could lead to this sentence being more or less severe, in particular: the degree of criminal responsibility, the motives of the crime, the degree of the threat or damage to protected property, the circumstances under which the crime was committed, the background of the perpetrator, his personal circumstances and behaviour after the commission of the crime as well as other circumstances which relate to the character of the perpetrator.<sup>164</sup>

105. With specific regard to the crimes alleged in the Indictment, the Prosecution only cites Article 151 of the SFRY Criminal Code:

Whoever in time of war or armed conflict destroys cultural or historical monuments, buildings or establishments devoted to science, art, education or humanitarian purposes in violation of the rules of international law, shall be punished by imprisonment for not less than one year.

106. With regard to the form of responsibility of Miodrag Jokić for the crimes to which he pleaded guilty, the Prosecution also refers to paragraph 21 of the Regulations on the Application of International Laws of War in the Armed Forces of SFRY:

An officer shall be answerable as an accomplice or instigator if, by failure to take action against subordinates violating the rules of the law of war, he has contributed to the repeated commission of such acts by units or individuals subordinate to him.

107. The Defence agrees that the Trial Chamber is not bound to follow the sentencing practice of the former Yugoslavia, but must have recourse to it "as an aid in determining the sentence".<sup>165</sup> In addition to Articles 41(1) and 43 relating to mitigating circumstances,<sup>166</sup> the Defence highlights the

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<sup>162</sup> Prosecution Sentencing Brief, para. 56.

<sup>163</sup> *Ibid.*

<sup>164</sup> The SFRY Criminal Code referred to is the one entered into force on 1 July 1977; the text is from the unofficial translation held by the Tribunal's library.

<sup>165</sup> Defence Sentencing Brief, para. 18.

<sup>166</sup> *Ibid.*, para. 19.

provision enshrined in Article 42(2) of the SFRY Criminal Code, according to which the judge may determine whether

there are mitigating circumstances which are such that they indicate that the objective of the sentence may be achieved equally well by a reduced sentence.<sup>167</sup>

## 2. Discussion

108. The Trial Chamber observes that neither party has particularly stressed the relevance of the sentencing practice in the former Yugoslavia for the purposes of determining the appropriate sentence for Miodrag Jokić. The Prosecution, after citing Article 151 of the SRFY Criminal Code in relation to the destruction of cultural property, has limited itself to refer the Trial Chamber “to similar provisions in the SFRY code” for the other crimes. The Defence has only cited provisions referring to circumstances that might be considered in mitigation of punishment. The Trial Chamber therefore has instructed itself on the provisions of the SFRY Criminal Code it deems relevant to determine the appropriate sentence of Miodrag Jokić.

109. According to the provisions of the SFRY Criminal Code, specific and general deterrence, rehabilitation, and the promotion of the rule of law in an environment of public safety and protection are the primary purposes of punishment.<sup>168</sup>

110. The Trial Chamber also considers that the provisions of Article 41(1) of the SFRY Criminal Code, read in its entirety, are of relevance to the instant case.

111. Finally, the Trial Chamber notes Chapter XVI of the SFRY Criminal Code, entitled “Crimes Against Humanity and International Law”, and specifically Articles 142, 148, and 151, dealing, respectively, with: war crimes committed against civilians; the means and modes to wage combat operations; and the protection of cultural property. The Trial Chamber specifically observes that war crimes against the civilian population were punishable by sentences of 5 to 15 years in prison, by the death penalty or by 20 years in prison if a prison sentence was substituted for the death penalty. The Trial Chamber further notes that the provisions relating to the protection of cultural or historical monuments, buildings or establishments devoted to science, art, education or humanitarian purposes require a punishment of not less than 1 year of imprisonment.

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<sup>167</sup> *Ibid.*, para. 20. Emphasis provided in the Defence Sentencing Brief.

<sup>168</sup> As interpreted in *Momir Nikolić* Sentencing Judgement, para. 92.

## V. DETERMINATION OF SENTENCE

### A. Conclusions

112. In order to determine the appropriate sentence, the Trial Chamber assessed those factors relevant to an appraisal of the gravity of the crimes to which Miodrag Jokić has pleaded guilty. It then examined the aggravating and mitigating circumstances. Finally, in accordance with the Statute and the Rules, the Trial Chamber took account of the general sentencing practice of the courts of the former Yugoslavia.

113. Miodrag Jokić is convicted of six war crimes, all of which have been found to be extremely serious in terms of the protected interests violated: life and integrity of the victims; protection of civilian objects; protection of cultural property.

114. Relevant mitigating factors were taken into account; the Trial Chamber deemed that some of them, such as Miodrag Jokić's substantial cooperation with the Prosecution, his sincere regret demonstrated already on 6 December 1991 and his subsequent remorse, were of exceptional importance.

### B. Credit for Time Served

115. Miodrag Jokić surrendered to the Tribunal on 12 November 2001 and was thereby detained in custody until 21 February 2002, the date of his provisional release. He was also detained in custody between 24 August and 30 August 2003, between 2 December and 5 December 2003, and between 16 and 18 March 2004. Pursuant to Rule 101 (C) of the Rules he is entitled to credit for the time spent in detention, namely 116 days in total.<sup>169</sup>

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<sup>169</sup> The first and the last day of detention are always counted as a whole day.

## VI. DISPOSITION

116. For the foregoing reasons, having considered the arguments and the evidence presented by the parties, the **TRIAL CHAMBER**

**PURSUANT TO** the Statute and the Rules,

**SENTENCES** Miodrag Jokić to a single sentence of 7 (seven) years of imprisonment;

**STATES** that, pursuant to Rule 101 (C) of the Rules, he is entitled to credit for 116 days for time spent in custody up to and including the date of this Judgement;

**ORDERS** that, pursuant to Rule 103 (C) of the Rules, Miodrag Jokić remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English text being authoritative.

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Alphons Orie, Presiding

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Amin El Mahdi

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Joaquín Martín Canivell

Dated this 18th day of March 2004

At The Hague

The Netherlands

**[Seal of the Tribunal]**



## GLOSSARY

<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000.
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999.
<i>Banović</i> Sentencing Judgement	<i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003.
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, 3 March 2000.
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001.
Defence	Defence for Miodrag Jokić.
Defence Sentencing Brief	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-S, Miodrag Jokić's Sentencing Brief, 14 November 2003
<i>Dragan Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003.
<i>Dragan Obrenović</i> Sentencing Judgement	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003.
<i>Erdemović</i> Second Sentencing Judgement	<i>Prosecutor v. Drazen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998.
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000.
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003.
Geneva Conventions	Geneva Conventions I through IV of August 12, 1949.
Indictment	<i>The Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-PT, Second Amended Indictment confirmed 27 August 2003.
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001.
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
JNA	Yugoslav People's Army
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001.

<i>Kunarac</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002.
<i>Kupreškić</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Appeal Judgement, 23 October 2001.
<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000.
<i>Milan Simić</i> Sentencing Judgement	<i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002.
<i>Momir Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003.
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-T, Judgement, 31 March 2003.
Para. / paras	Paragraph / paragraphs.
<i>Plavšić</i> Sentencing Judgement	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
Plea Agreement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-PT, Plea Agreement between Miodrag Jokić and the Office of the Prosecutor, 25 August 2003.
Plea Hearing	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-PT, Plea Hearing, 27 August 2003.
Prosecution	The Office of the Prosecutor (OTP)
Prosecution Sentencing Brief	<i>The Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-S, Prosecution's Brief on the Sentencing of Miodrag Jokić, 14 November 2003
Prosecutor v. Pavle Strugar et al.	<i>Prosecutor v. Pavle Strugar, Miodrag Jokić, Vladimir Kovačević</i> , Case No. IT-01-42-PT & IT-01-42/1-S & AR-72
Rules	Rules of Procedure and Evidence of the International Tribunal, IT/32/Rev.28, 17 July 2003.
Sentencing Hearing	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-PT, Sentencing Hearing, 4 December 2003
SFRY	Socialist Federal Republic of Yugoslavia
SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, published in the Official Gazette SFRJ No. 44 of October 8, 1976 and effective since July 1, 1977.
<i>Sikirica</i> Sentencing Judgement	<i>Prosecutor v. Dusko Sikirica et al</i> , Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001.

T.	Transcript of hearing in the present case. All transcript page numbers referred to in the course of this judgement are from the unofficial, uncorrected version of the transcript.
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000.
<i>Tadić</i> Sentencing Judgment	<i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgment, 11 November 1999.
<i>Todorović</i> Sentencing Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001.
Trial Chamber	Trial Chamber I Section B of the Tribunal.
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.
UNDU	United Nations Detention Unit.
UNESCO	United Nations Educational, Scientific and Cultural Organization
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004.