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TRIAL CHAMBER

**CHAMBRE DE 1ÈRE
INSTANCE**

The Hague, 31 March 2004
JH/P.I.S./835e

JUDGEMENT IN THE CASE
THE PROSECUTOR V. DARKO MRDA

DARKO MRDA SENTENCED TO 17 YEARS' IMPRISONMENT

Please find below the summary of the sentencing judgement delivered by Trial Chamber I, composed of Judges Alphons Orie (Presiding), Amin El Mahdi and Joaquín Martín Canivell, as read out by the Presiding Judge.

SUMMARY OF JUDGEMENT

1. We are sitting today to deliver our sentencing judgement of Darko Mrda for his participation in the murder of approximately 200 civilians and the inhumane acts (through attempted murder) of 12 civilians at Koričanske Stijene, in Bosnia and Herzegovina, on 21 August 1992.

2. What follows is only a summary of the written judgement and does not form part of it. The full text of the judgement will be made available to the Prosecution, the Defence Counsel, and the public at the close of this session.

3. We will briefly set out the context and facts of the case before going on to review the factors which we took into consideration in determining the sentence.

Context and facts of the case

4. Darko Mrda was born on 28 June 1967 in Zagreb, Croatia. He grew up in Tukovi, in the municipality of Prijedor, in Bosnia and Herzegovina, and worked at the nearby mine in Omarska. In 1992, during the conflict in Bosnia and Herzegovina, he was a member of a special police unit, known as the "Intervention Squad", serving under the Bosnian Serb authorities in Prijedor.

5. On 26 April 2002, Judge Liu confirmed the indictment issued by the Prosecution against Mrda. Initially it charged three counts:

- (i) extermination as a crime against humanity under count 1;
- (ii) murder as a violation of the laws or customs of war under count 2; and
- (iii) inhumane acts as a crime against humanity under count 3.

6. On 13 June 2002, Mrda was arrested and was subsequently transferred to the Detention Unit of the Tribunal. On 17 June 2002, he appeared before the Tribunal and entered a plea of not guilty.

7. One year later, on 24 July 2003, Darko Mrda entered into a plea agreement with the Prosecution. In accordance with the plea agreement, the Prosecution withdrew with the consent of the Trial Chamber the charges under count 1 of the indictment and Mrda admitted responsibility for murder and inhumane acts (through attempted murder) under counts 2 and 3 of the indictment. He also agreed to cooperate with the Prosecution. Thereafter, at the hearing of 24 July 2003, Mrda pleaded guilty to counts 2 and 3. The Trial Chamber accepted this plea after being satisfied that it had been

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made voluntarily, that it was informed and unequivocal, and that there was sufficient factual basis for the crimes and for Mrda's participation in them.

8. What follows is a summary of the facts which form the basis of Mrda's conviction, as described in the plea agreement.

9. In August 1992 an armed conflict was underway in Bosnia and Herzegovina. The conflict involved a widespread and systematic attack upon the non-Serb civilian population of the municipality of Prijedor. Mrda has acknowledged that the crimes to which he has pleaded guilty were part of this widespread and systematic attack.

10. On 21 August 1992, Mrda was a member of the Prijedor Intervention Squad, which I just referred to. On this day Mrda, in his official capacity as a police officer, participated in escorting an organized convoy of Muslim and other non-Serb civilians from Tukovi and the Trnopolje camp in the Prijedor area in the direction of the municipality of Travnik. The convoy consisted of buses and trucks, loaded with civilians.

11. At a location on the road along the Ilomska River, between Skender Vakuf and Mt. Vlašić, the convoy stopped. Mrda and other members of the Intervention Squad actively implemented orders to separate military-aged men from the rest of the convoy. Mrda personally selected men from the convoy with the awareness and expectation that they would be murdered. A large number of men, estimated in excess of 200, were loaded onto two buses.

12. Mrda and the other members of the Intervention Squad took the separated men in the two buses to Koričanske Stijene. The men from one of the buses were ordered off the bus, escorted to the side of the road above a deep ravine, ordered to kneel, and were then shot and killed. The men from the other bus were taken off in smaller groups of two or three, and were then shot and killed. Together with the other members of the Intervention Squad, Mrda personally and directly participated in the unloading, guarding, escorting, shooting, and killing of the unarmed men at Koričanske Stijene. Except for 12 men who survived the massacre, all of the men taken from the two buses were murdered.

13. We will now give an overview of the factors we have taken into consideration in assessing the seriousness of the crime. We will then briefly discuss the aggravating and mitigating circumstances applicable in the present case.

Seriousness of the crimes

14. In determining the seriousness of the crimes, we have given consideration to the scope and general nature of the offences committed, the role played by Darko Mrda, and the impact of the crime upon the victims and their families.

15. In relation to the scope of the crime, it has not been possible to determine the precise number of civilians killed by Mrda himself. However, his participation in a large-scale massacre, in which about 200 civilians were killed, is uncontested.

16. As for Mrda's role, he was not the "architect" of the massacre. Together with other members of the Intervention Squad, he was acting in furtherance of superior orders. Nevertheless, we conclude that the fact that Mrda personally participated in the selection of the civilians who were going to be killed, and in their subsequent murder and attempted murder of 12 of them, knowing that a widespread and systematic attack against civilians was underway, makes the crimes charged especially serious.

17. Lastly, we evaluated the seriousness of Mrda's crimes in the light of their impact upon the victims and their effects upon the victims' families. In so doing, we examined the statements of some of those who survived the massacres, which were presented by the Prosecution. Further, at the hearing of 22 October 2003, we heard two witnesses: Mr. Mujkanović, a survivor of the crimes, and Ms. Karabasić, the President of the *Izvor* Association of Prijedor Women. The significant effect of the

crimes upon the victims' families adds to the seriousness of the crimes. As to the impact of the crimes on the victims, we were convinced beyond reasonable doubt that most of them were subjected to a level of suffering which significantly exceeded the level of suffering usually suffered by victims of murders and inhumane acts. We have considered the level of suffering inflicted on the victims as an aggravating factor.

18. We conclude that the sentence should reflect all of the cruelty and inhumanity embodied in Darko Mrda's direct participation in the shooting of more than 200 civilians, of which all but 12 were killed.

Aggravating and mitigating circumstances

19. In addition to the aforementioned ground of aggravation relating to the impact of the crimes upon victims, we have considered the two aggravating circumstances put forth by the Prosecution, namely the vulnerability of the victims and Mrda's position of authority. With regard to the former, we consider that the fact that the victims were civilians cannot as such be taken into account as an aggravating factor, as it is already an element of murder as a violation of the laws or customs of war and of inhumane acts as a crime against humanity. However, we have found that the fact that a considerable number of victims had previously been detained in camps, and were therefore particularly vulnerable, should indeed aggravate the sentence. Moreover we have found that the position of Darko Mrda as a policeman is an aggravating factor, but do not attach much weight to it.

20. The Trial Chamber also examined a total of seven mitigating circumstances pleaded by the Prosecution and the Defence, that is, duress and compliance with superior orders, cooperation with the Prosecution, the guilty plea itself, Mrda's remorse, Mrda's personal circumstances, the length of time which elapsed between the crime and the trial, and the fact that Mrda must serve his sentence in a country outside the area of the former Yugoslavia where he used to live with his family.

21. As to the argument of duress, we have found that the Defence failed to show that Mrda would have been killed or would have, at least, suffered serious consequences, had he not carried out the orders of his superiors. We accept that the difficult circumstances prevailing at the time of the crime may have had some influence on the criminal behaviour of Mrda, although we do not accept that those circumstances were such that Mrda had no alternative but to participate in the massacre of around 200 civilians. The absence of any convincing evidence of any meaningful sign that Darko Mrda wanted to dissociate himself from the massacre at the time of its commission prevented us from accepting duress as a mitigating circumstance. In making this determination, we fully took into account Mrda's age and low rank.

22. With respect to adherence to superior orders, a discretionary mitigating factor provided for in Article 7(4) of the Statute of the Tribunal, we consider that the orders Mrda acted on were so manifestly unlawful that he must have been well aware that they violated the most elementary laws of war and the basic dictates of humanity. The fact that Mrda obeyed such orders, as opposed to acting on his own initiative, does not merit mitigation of punishment.

23. In respect of Mrda's cooperation with the Prosecution, we accept the Prosecution's submissions that it has been significant. This counts as a mitigating circumstance.

24. We also hold that Mrda's guilty plea helps to establish the truth surrounding the crimes committed at Koričanske Stijene and may contribute to promoting reconciliation between the peoples of Bosnia and Herzegovina. We note incidentally that his plea made it possible to obviate the expense of a lengthy trial and the need for a large number of victims and witnesses to come and testify at the Tribunal. We therefore consider the guilty plea to be a mitigating factor.

25. As to remorse, we hold the expression of Mrda's remorse is sincere and should be taken into account in mitigation.

26. We find that Mrda's personal circumstances – in particular, the fact that he was raised under difficult circumstances, his good conduct whilst in detention, and the fact that since the events of

August 1992 he has married and has had two children, one of whom is chronically ill – should be considered, together, in mitigation, but that little weight should be attached to them in this regard.

27. As for the length of time which elapsed between the crimes and the trial, we note that the Defence seems to confuse this issue with that of the right to be tried within a reasonable period of time. A violation of that right cannot be sustained here, since the relevant time runs only from the moment an accused is either formally charged by the Tribunal or is arrested. Mrda was indicted on 26 April 2002 and was arrested on 13 June 2002, that is, less than two years before the hearings commenced. Furthermore, we are of the view that for crimes, such as those charged in the present case, of a seriousness justifying their exclusion from statutory limitation, a lapse of almost twelve years between commission of the crimes and sentencing proceedings is not so long as to be considered a factor in mitigation.

28. Finally, we recognise that the fact that Mrda must serve his sentence in a state different from that which his family resides in, and whose language he does not speak, may constitute an additional hardship for him. This factor is to be taken into account when determining the appropriate sentence, but is not as such a mitigating circumstance.

Mr Mrda, please rise:

29. We have duly examined the evidence relevant to an accurate determination of the seriousness of the murders, constituting war crimes, and inhumane acts (attempted murders), constituting crimes against humanity, of which you have been found guilty. The sentence you receive should be proportional to all the seriousness, cruelty, and inhumanity of the massacre which took the lives of around 200 civilians and inflicted considerable suffering upon the survivors and the victims' families. We consider that the special vulnerability of the victims at the time of the commission of the crime and the particularly high level of suffering you inflicted upon them are aggravating factors. Your position of authority as a policeman was also considered an aggravating factor, but of limited weight. Moreover, we have taken into account most of the mitigating circumstances you raised: you cooperated in a substantial manner with the Prosecution, you pleaded guilty, and you have expressed remorse. Your personal and family situation have also been considered. We dismissed, however, your submissions with respect to duress, superior orders and the time which elapsed since the commission of the crimes.

30. The Trial Chamber hereby sentences you, Darko Mrda, to 17 years' imprisonment. You are entitled to credit for time spent in detention, namely 658 days.

31. The Trial Chamber stands adjourned.

The full text of the Judgement is available upon request at the Public Information Services of the ICTY and is also available on the ICTY Internet site at: www.un.org/icty