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l'ex-Yougoslavie

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TRIAL CHAMBER
CHAMBRE DE 1ÈRE
INSTANCE

The Hague, 9 October 2001
P.I.S./628e

SENTENCING JUDGEMENT IN THE "ČELEBIĆI CASE":

HAZIM DELIĆ SENTENCED TO 18 YEARS IMPRISONMENT
ESAD LANDŽO TO 15 YEARS IMPRISONMENT
ZDRAVKO MUCIĆ TO 9 YEARS IMPRISONMENT

Please find below a summary of the Sentencing Judgement read out in court by Judge May, the presiding Judge of Trial Chamber III, on Tuesday 9 October 2001.

"This hearing is for the Trial Chamber to pass adjusted sentences in this case. What follows is a summary of the written Judgement and forms no part of it.

The accused were originally sentenced by Trial Chamber II at the conclusion of the trial in November 1998. The Appeals Chamber subsequently allowed appeals against convictions and sentence and remitted to a Trial Chamber the question of what adjustment, if any, should be made to the sentences of these three accused.

Background

The three accused were tried together with a fourth man, Zejnil Delalić, who was acquitted. All four were charged with numerous counts of grave breaches of the Geneva Conventions of 1949 under Article 2 of the Statute of the International Tribunal and of violations of the laws or customs of war under Article 3. The charges arose from events which took place in the Čelebići prison-camp in central Bosnia and Herzegovina. The roles of the three accused were found to be as follows:

- (a) Mucić was commander of the camp and was found guilty, as a superior, for crimes committed by his subordinates including murder, torture and inhuman treatment and as personally responsible for the unlawful confinement of civilians. (He was sentenced to a total of seven years' imprisonment.)
- (b) Delić was the deputy commander of the camp and was found guilty as being personally responsible for crimes including murder, torture and inhuman treatment. (He was sentenced to 20 years' imprisonment.)
- (c) Landžo was a guard at the camp and was found guilty as being personally responsible for crimes including murder, torture and cruel treatment. (He was sentenced to 15 years' imprisonment.)

The Appeals Chamber upheld the convictions of all three accused under Article 2 but held that where, as in the instant case, the evidence establishes the guilt of an accused based upon the same conduct under both Articles 2 and 3, a conviction should be entered under Article 2 alone and the charges under Article 3 should be dismissed. As a result the Appeals Chamber dismissed the cumulative convictions against all three accused under Article 3. The Chamber acknowledged that "if the Trial Chamber had not imposed double convictions, a different outcome in terms of the length and manner of sentencing might have resulted" and remitted the issue of sentencing to a Trial Chamber to consider what adjustment, if any, should be made to the original sentence imposed on the accused to take account of the dismissal of

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the cumulative counts. The Appeals Chamber stressed that this would involve not a complete rehearing on the matter of sentence but for the Trial Chamber to consider any adjustment after the parties have had the opportunity to make relevant submissions.

The Appeals Chamber also quashed the convictions of Delić on two counts relating to the killing of one detainee, but upheld the convictions of the same accused on other counts relating to other incidents. The Chamber said that it would be convenient, when the matter is remitted, for the new Trial Chamber to consider what adjustments should be made to the sentence of the accused as a result of the reversal of his conviction on the two counts.

The Appeals Chamber allowed the Prosecution appeal against the sentence of seven years' imprisonment concurrently passed on Mucić on the grounds that the sentence did not have sufficient regard to the gravity of the offences and did not adequately reflect the totality of Mucić's criminal conduct. The Chamber also held that the Trial Chamber was in error in its sentencing remarks in referring to Mucić's failure to testify in such a way that the real possibility was left open that it was treated as an aggravating circumstance. The matter of an appropriate, revised sentence was referred to the new Trial Chamber with a direction to consider the effect, if any, of the error of the Trial Chamber on sentence and with an indication that the Appeals Chamber would have considered a sentence of around 10 years' imprisonment appropriate had it not been for the adjustment of sentence necessary due to the dismissal of the cumulative counts.

Sentence

The Trial Chamber now turns to the issue of appropriate sentences for these three accused, beginning with the case of Mucić. In considering an appropriate revised sentence in his case the Trial Chamber is bound by the decision of the Appeals Chamber that the sentence was inadequate and cannot now go behind it. Although the Trial Chamber is not bound by the indication of the Appeals Chamber as to a proper sentence, it is plainly appropriate to take that indication into account. In these circumstances the Trial Chamber asks itself this question: has any reason been submitted by the parties as to why it should depart from that indication? The Trial Chamber finds that no such reason has been submitted.

As to the original Trial Chamber's adverse comment on Mucić's failure to testify during his trial, it is not possible for this Trial Chamber to ascertain the precise effect, if any, which the comment may have had on his sentencing. However, the Trial Chamber is not in a position to say that it had no effect. Under those circumstances, the Trial Chamber is of the view that, since it may have had an effect, the original sentence should be reduced accordingly. However, this can be given proper effect by a small reduction, and the Trial Chamber considers that a single sentence of nine years imprisonment is appropriate.

Next, the case of Delić. The Trial Chamber is directed to consider what adjustment, if any, should be made to the sentence imposed on him as a result of the quashing of his conviction on counts 1 and 2. The counts related to the wilful killing/murder of a detainee as a result of a beating. On the other hand, the accused remains convicted of one offence involving wilful killing (by beating), an offence of wilfully causing great suffering (again by beating), two offences of torture by way of rape and an offence of inhumane treatment of detainees involving the use of an electric device on prisoners. The total sentence imposed was 20 years imprisonment.

Having considered all these factors, the Trial Chamber finds that, following his appeal, there has been some reduction in the totality of criminality of the accused. Nonetheless, that reduction is slight given the very serious offences for which the accused remains convicted. Accordingly, the Trial Chamber considers that a reduction of two years in the sentence would correctly reflect the total criminality of the accused, and that a single sentence of 18 years is therefore appropriate.

Finally, the Trial Chamber has considered what, if any adjustment should be made to the sentences in the light of the dismissal of the cumulative convictions. Prior to the instant case, the practice of the International Tribunal had been to allow accused to be convicted of cumulative offences but to impose concurrent sentences in order to avoid unfairness to the accused. The original Trial Chamber followed this practice of entering cumulative convictions but ordering that any resulting sentences be served concurrently.

In remitting this case the Appeals Chamber noted that the final sentence should reflect the totality of the culpable conduct and overall culpability of the offender which can be achieved either by the imposition of one sentence or several sentences (to run consecutively or concurrently), this being a matter for the discretion of the Trial Chamber.

The Trial Chamber finds that the argument that the number of convictions is reduced and, therefore, the sentence should be reduced, is not, in the Trial Chamber's view, realistic. In the case of these accused the totality of their criminal conduct has not been reduced by reason of the quashing of the cumulative convictions. The original Trial Chamber specifically had this factor in mind in passing the sentences which clearly would have been the same without the cumulative convictions. Accordingly, no adjustment to the original sentences will be made on this account.

Disposition

The Trial Chamber considers that the present case is best resolved by way of a single and global sentence in the case of each accused, thereby reflecting, in each case, the total criminality and culpability of the accused.

The Trial Chamber therefore sentences:

Zdravko Mucić to nine years' imprisonment;

Hazim Delić to eighteen years' imprisonment;

and Esad Landžo to fifteen years' imprisonment.

The period of time the accused have spent in the custody of the Tribunal shall be deducted from the sentences."
