

**UNITED
NATIONS**



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

Case No. IT-96-21-T *bis*-R117

Date: 9 October 2001

Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge Mohamed Fassi Fihri

Registrar: Mr. Hans Holthuis

Judgement of: 9 October 2001

PROSECUTOR

v.

**ZDRAVKO MUCIC a/k/a "PAVO"
HAZIM DELIC
ESAD LANDŽO a/k/a "ZENGA"**

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Graham Blewitt
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Mr. Ekkehard Withopt

Counsel for the Defence:

Mr. Tomislav Kuzmanovi} and Mr. Howard Morrison, for Zdravko Muci}
Mr. Salih Karabdi} and Mr. Thomas Moran, for Hazim Deli}
Ms. Cynthia Sinatra and Mr. Peter Murphy, for Esad Landžo

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I. BACKGROUND

1. On 11 April 2001 the President of the International Tribunal remitted this case to the Trial Chamber for review of the sentences passed on Hazim Delić, Zdravko Mucić and Esad Landžo.¹ These sentences were passed after their conviction by Trial Chamber II at the conclusion of a trial on 16 November 1998.² The Appeals Chamber allowed appeals against conviction and sentence on some of the counts: it remitted the question of what adjustment, if any, should be made to the original sentences to a Trial Chamber to be nominated by the President.³

2. The background was conveniently summarised by the Appeals Chamber⁴ and this account may be distilled as follows. The 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 1949⁵ under Article 2 of the Statute of the International Tribunal ("Statute") and of violations of the laws or customs of war under Article 3. The charges arose from events which took place in the "elebići" 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.)

¹ Order of the President Remitting the Case to a Trial Chamber, 11 Apr. 2001.

² Trial Judgement, 16 Nov. 1998 ("Trial Judgement").

³ Judgement of Appeals Chamber, 20 Feb. 2001 ("Appeal Judgement"), Disposition.

⁴ Summary and conclusions read out at the Judgement hearing, 20 February 2001.

⁵ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949; Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

(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.)

3. 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 3:⁶ 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"⁷ 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 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.⁸

4. The Appeals Chamber also quashed the convictions of Deli} on two counts relating to the killing of one detainee (counts 1 and 2),⁹ but upheld the convictions of the same accused on other counts relating to other incidents (counts 3, 11, 18, 21, 42, 46).¹⁰ 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 counts 1 and 2.¹¹

5. The Appeals Chamber allowed the appeal by the Office of the Prosecutor ("Prosecution") against the sentence of seven years' imprisonment concurrent passed on Muci} 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 Muci}'s criminal conduct.¹² The Chamber also held that the Trial Chamber was in error in its sentencing remarks in referring

⁶ Appeal Judgement, para. 427.

⁷ *Ibid.*, para. 431, Disposition, para. 2.

⁸ *Ibid.*, paras. 711-12.

⁹ *Ibid.*, para. 460.

¹⁰ *Ibid.*, paras. 487, 499, 507, 527.

¹¹ *Ibid.*, para. 713.

¹² *Ibid.*, paras. 743, 772, 851.

to Muci}’s failure to testify in such a way that the real possibility was left open that it was treated as an aggravating circumstance.¹³ 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.

6. In an order relating to the briefs and hearing of this remitted matter the Trial Chamber directed that the parties should address their arguments to the following issues:

- (i) What adjustment, if any, should be made to the sentence imposed on Deli} as a result of the quashing of his convictions on counts 1 and 2;
- (ii) What adjustment, if any, should be made to the sentences imposed on Muci}, Deli} and Landžo as a result of the Appeals Chamber’s decision on cumulative convictions;
- (iii) What effect, if any, the original Trial Chamber’s error in making adverse reference to the failure of Muci} to give evidence had on the sentence imposed on him; and
- (iv) What should be the appropriate sentence of Muci} in the light of the Appeal’s Chamber’s finding that the sentence imposed on him was manifestly inadequate.¹⁴

7. The Trial Chamber further ordered that the calling of further evidence was unnecessary since the Appeals Chamber had defined the issues for determination as involving an adjustment of sentence and not a re-hearing, the parties having had the opportunity of making relevant submissions.¹⁵

8. The relevant law relating to sentencing by Trial Chambers is to be found in the Statute and in the Rules of Procedure and Evidence of the International Tribunal (“Rules”). The Statute provides that in determining terms of imprisonment a Trial Chamber must take

¹³ *Ibid.*, para. 785.

¹⁴ Decision on Motion for Clarification and Joint Motion for Extension of Time, 25 May 2001.

¹⁵ *Ibid.*

into account factors such as the gravity of the offences and the individual circumstances of the convicted person and must have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.¹⁶ The Rules provide that the Trial Chamber must also take into account aggravating and mitigating circumstances.¹⁷ The Rules further provide that a Trial Chamber may impose a single sentence for a number of offences "reflecting the totality of the criminal conduct of the accused".¹⁸

9. The practice of the International Tribunal shows that the most important consideration to which Trial Chambers must have regard in sentencing is the gravity of the offence.¹⁹ They must also have regard to the individual circumstances of the accused and any aggravating or mitigating factors and the significance of retribution and deterrence in sentences imposed by the International Tribunal.²⁰ The fact that an accused held a position of superior responsibility may be among the aggravating factors.²¹

10. The Trial Chamber, in determining appropriate sentences has taken account of these matters of law and practice.

11. The Trial Chamber will now consider the matter under the following headings:

- (a) To impose an appropriate revised sentence on Muci} and consider the effect of the original Trial Chamber's error in its sentencing remarks.
- (b) What adjustment, if any, should be made to the sentence on Deli} as a result of the quashing of his conviction on counts 1 and 2 of the indictment?²²
- (c) What adjustment, if any, should be made to the original sentences on all three accused as a result of the dismissal of the cumulative convictions under Article 3?

¹⁶ Art. 24 of the Statute.

¹⁷ Rule 101 (B) of the Rules of Procedure and Evidence of the International Tribunal ("Rules").

¹⁸ Rule 87 (C) of the Rules.

¹⁹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 Mar. 2000 ("Aleksovski Appeal Judgement"), para. 182.

²⁰ *Ibid.*, para. 185.

²¹ *Ibid.*, para. 183.

²² *Prosecutor v. Zejnil Delali}, Zdravko Muci}, also known as "Pavo", Hazim Deli}, and Esad Landžo, also known as "Zenga"*, Case No. IT-96-21, Indictment, 19 Mar. 1996.

II. IMPOSITION OF REVISED SENTENCE ON MUCI] AND EFFECT OF ERROR IN SENTENCING REMARKS

12. As already noted, Muci}'s sentence was remitted to the Trial Chamber because the original sentence did not adequately reflect the totality of Muci}'s conduct. Muci}, as commander of the camp, was found guilty on five counts as a superior pursuant to Article 7(3) of the Statute (counts 13, 33, 38, 44, 46): he was also found to have been directly responsible for offences on two counts (counts 46 and 48). The Trial Chamber sentenced Muci} to seven years' imprisonment in respect of each count for which he was found guilty and ordered that the sentences be served concurrently: a total of seven years in all. The conduct of the accused is set out in the following paragraphs.

13. **Count 13:** (wilful killing of nine detainees and wilfully causing great suffering or serious injury to another, conviction under Article 7(3)).²³ The detainees died as a result of beatings by guards. In one case the beating was described as savage and continuing for a period of several hours; in another, the victim attempted to run away but was shot and killed; in a third case the victim was already injured on arrival at the camp and was then subjected to further beating.

14. **Count 33:** (torture of six detainees, conviction under Article 7(3)). One victim was found to have been imprisoned "in a manhole for at least a night and a day without food or water", and then to have been "beaten with a number of objects, including shovels and electric wires".²⁴ Three other cases concern tortures inflicted by Landžo and two others inflicted by Deli}, all of which are described in the sections dealing with the conduct of those accused.²⁵

15. **Count 38:** (wilfully causing great suffering or serious injury to three detainees and inhumane treatment of another, conviction under Article 7(3)). The three detainees were subjected to deliberate ill-treatment by the guards: one was forced to do push-ups while being kicked and hit; and another had a burning fuse cord placed against his genital area.²⁶ The finding of inhuman treatment was made in relation to one detainee who was found to

²³ Trial Judgement, paras. 876-77, 889, 893, 902 and 907.

²⁴ *Ibid.*, paras. 1005-07.

²⁵ See counts 15 concerning Landžo, 18 concerning Deli}, 21 concerning Deli}, 24 concerning Landžo and 30 concerning Landžo.

²⁶ Trial Judgement, paras. 1030-34, 1037-40.

have been so seriously injured that he was not able to stand at the time he was taken to the ^elebi}i camp. He was found to have been hit several times upon his arrival.²⁷

16. **Count 44:** (inhuman treatment of six detainees, conviction under Article 7(3)). Four of the detainees were subject to inhuman treatment at the hands of Landžo: two brothers were ordered to perform fellatio on each other in front of other detainees and a father and son were ordered to beat one another.²⁸ Muci} was found responsible in his capacity as a superior for such mistreatment, as well as for the mistreatment inflicted on two detainees as described in relation to count 42 concerning Deli}'s conduct.

17. **Count 46:** (wilfully causing great suffering or serious injury to body or healthy by virtue of the inhumane conditions in the camp, conviction under both Article 7(1) and (3)). The Trial Chamber found that the detainees "were exposed to conditions in which they lived in constant anguish and fear of being subjected to physical abuse. Through the frequent cruel and violent deeds committed in the prison-camp, aggravated by the random nature of these acts and the threats made by guards, the detainees were thus subjected to an immense psychological pressure which may accurately be characterised as 'an atmosphere of terror'".²⁹ The Trial Chamber further found that the detainees were deprived of adequate food, access to water, medical care and sleeping and toilet facilities.³⁰ Muci} was found to have "participated in the maintenance of the inhumane conditions that prevailed" in the camp, and was also found responsible by virtue of his position of *de facto* superior over the camp.³¹

18. **Count 48:** (unlawful confinement of civilians, conviction under Article 7(1)).³² The Trial Chamber found that "the detention of civilians in the ^elebi}i prison-camp was not in conformity with the relevant provisions of Geneva Convention IV" and found that Muci}

²⁷ *Ibid.*, para. 1025-26.

²⁸ *Ibid.*, paras. 1065-66, 1069-70.

²⁹ *Ibid.*, para. 1091.

³⁰ *Ibid.*, paras. 1092-1111.

³¹ *Ibid.*, para. 1123.

³² In relation to the gravity of the offence of unlawful confinement (count 48), the Appeals Chamber rejected the Prosecution's challenge of the sentence imposed and concluded that the sentence of seven years did not fall outside of the sentencing range which is open to the Trial Chamber in the exercise of its discretion. (Appeal Judgement, para. 754.)

had the “primary responsibility for, and had the ability to affect, the continued detention of civilians”.³³

19. In relation to the effect of superior responsibility, the Appeals Chamber pointed out that the active participation of a superior in the criminal acts of subordinates adds to the gravity of a failure to prevent or punish the acts and that an “ongoing failure to exercise the duties to prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, must be regarded as being of significantly greater gravity than isolated incidents of such a failure [and that] consistent failure to act in relation to the conditions and unlawful conduct within the camp must have had such an encouraging effect”.³⁴ The Appeals Chamber said the original Trial Chamber had failed to take this factor into account.³⁵ This was also demonstrated by the fact that the sentences imposed in respect of each count were identical. The Appeals Chamber found that “such an approach fails to take account of the essential consideration that the gravity of the failure to prevent or punish is in part dependant on the gravity of the underlying subordinate crimes”.³⁶

20. Furthermore, the Appeals Chamber found that, in determining sentence, the Trial Chamber did not take into account the dual responsibility of Muci} for the offences encompassed by count 46:

Although the Trial Chamber clearly considered the severity of the conditions which Muci} directly participated in creating, and the violence and humiliation meted out to detainees by the guards, it is not apparent that the Trial Chamber fully recognised in its sentence that this conduct encompassed two types of criminal responsibility which were both individually of considerable gravity. The length of the sentence imposed strongly suggests that it did not do so.³⁷

21. The final matter relating to Muci} concerns remarks made by the Trial Chamber when imposing sentence on him, when it said that the accused had “made concerted and sustained efforts where he could intimate witnesses and to suborn favourable evidence from them. His demeanour throughout the proceedings suggests that he appears to have regarded

³³ Trial Judgement, paras. 1142 and 1145. The Appeals Chamber upheld the Trial Chamber’s factual findings in relation to the unlawful nature of the confinement of civilians in the ^elebi}i camp (Appeal Judgement, para. 330). The Appeals Chamber rejected Muci}’s challenge to his conviction on count 48. (Appeal Judgement, para. 386.)

³⁴ Appeal Judgement, paras. 736, 739.

³⁵ *Ibid.*, para. 740.

³⁶ *Ibid.*, para. 741.

³⁷ *Ibid.*, para. 746.

this trial as a farce and an expensive joke. [He] has declined to give any oral evidence, notwithstanding the dominant position he played in the facts giving rise to the prosecution of the accused persons".³⁸ The Appeals Chamber held that the Trial Chamber erred in making this remark. Since, in the context, it indicated that the Trial Chamber regarded the failure in an adverse light and, while not clear that the Trial Chamber treated Muci}'s failure to testify as an aggravating circumstance, the remark left open the real possibility that it did so.³⁹ This Trial Chamber is directed to "consider the effect, if any, of that error on the sentence to be imposed on Muci}".

22. Finally, the Appeals Chamber indicated a "revised sentence that it would have considered appropriate for Muci}, had there not been the intervening factor that certain of his convictions are to be quashed". The Chamber said:

Taking into account the various considerations relating to the gravity of Muci}'s offences and the aggravating circumstances already referred to, as well as the mitigating circumstances referred to by the Trial Chamber and the "double jeopardy" element involved in subjecting Muci} to a revised sentence, the Appeals Chamber would have imposed on Muci} a heavier sentence of a total of around ten years imprisonment.⁴⁰

The Trial Chamber to which sentencing is remitted "may have reference to this indication in its own determination".⁴¹

23. The Prosecution submits that in relation to Muci} the sentence should reflect the totality of his criminal conduct; that there is no reason to depart from the Appeals Chamber's indication; and that, accordingly, the sentence should be not less than 10 years; and the Trial Chamber's error in making an adverse comment should have no effect, given all the other factors affecting his sentence.⁴² The Prosecution further submits that (in relation to all three accused) the imposition of a single aggregate sentence is appropriate since, as the Appeals Chamber noted, the over-arching goal in sentencing is to ensure that

³⁸ Trial Judgement, para. 1251.

³⁹ Appeal Judgement, para. 785.

⁴⁰ *Ibid.*, para. 853.

⁴¹ *Ibid.*, para. 854.

⁴² Prosecutor's Submissions on Issues as to Sentence Remitted to the Trial Chamber by the Appeals Chamber in the Appeals Judgement of 20 February 2001, 18 June 2001 ("Prosecutor's Submissions"), paras. 1, 18, 25. Also see the transcript of the hearing held on 21 September 2001, Transcript Page ("T") 17, T. 18, and T. 19-21.

the final sentence reflects the totality of the criminal conduct and the overall culpability of the offender.⁴³

24. The Defence submits that the original Trial Chamber's adverse reference should have a substantial effect on sentence since the sentence was tainted by an inappropriate consideration of his refusal to testify.⁴⁴ Muci} relies on cases decided under the Fifth Amendment to the United States Constitution, in particular a case in which the United States Court of Appeals for the Eleventh Circuit ordered sentences to be vacated and defendants remanded for sentence.⁴⁵

25. The Defence further seeks to impugn the Appeals Chamber's decision that the sentence on Muci} was inadequate; and submits that its indication of a sentence of around 10 years' imprisonment was inappropriate⁴⁶ and that a sentence of five years' imprisonment should be imposed. At the hearing of 21 September 2001, the Defence submitted that the indication by the Appeals Chamber in paragraph 853 of the Appeal Judgement to a sentence of "around 10 years imprisonment" was imprecise, and that this could "only sensibly and practically mean a sentence of between 9 and 11 years".⁴⁷ Further, the Defence argued that where there was an ambiguity in law, it should be resolved in favour of those who would otherwise be in jeopardy as a result of the ambiguity, and that an around 10 years imprisonment should mean "the lower end of that ambiguity, nine years".⁴⁸

26. However, 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 the 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. Further, the Trial Chamber considers that the word "around" used in paragraph 853 of the Appeal Judgement was simply meant to leave the matter to the

⁴³ Prosecutor's Submissions, paras. 14, 26, quoting Appeal Judgement, para. 430. Also see T. 19 and T. 22.

⁴⁴ Zdravko Muci}'s Submission on the Issues Remanded by the Appeals Chamber, 22 June 2001 ("Zdravko Muci}'s Submission"), paras. 13 and 15. Also see T. 29-30.

⁴⁵ *U.S. v. Rodrigues*, 959 Fd 2nd 193, 197 (11th Cir.1992).

⁴⁶ Zdravko Muci}'s Submission, paras. 16-24.

⁴⁷ T. 28.

⁴⁸ T. 29.

discretion of this Trial Chamber and does not lead to any ambiguity. The Defence argument is therefore rejected.

27. As to the original Trial Chamber's adverse comment as to Muci'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.

III. ADJUSTMENT TO DELI} 'S SENTENCE

28. The Trial Chamber is directed to consider what adjustment, if any, should be made to the sentence imposed on Deli} as a result of the quashing of his conviction on counts 1 and 2.⁴⁹ These counts related to the wilful killing/murder of a detainee as a result of a severe beating: the sentence imposed was 20 years' imprisonment on each count concurrently.

29. The total sentence imposed on the accused was 20 years' imprisonment. This sentence was made up of concurrent sentences on the following counts:

Count 3: (wilful killing of a detainee). The victim was found to have been severely and viciously beaten on numerous occasions by Hazim Deli}.⁵⁰ The sentence imposed by the Trial Chamber on this count was 20 years' imprisonment.

Count 11: (wilfully causing great suffering or serious injury to body or health of a detainee). The victim was found to have been subjected to prolonged and brutal beatings by Deli} and Landžo. The Trial Chamber however was not able to conclude that the direct cause of the victim's death was the beatings and found the accused guilty of wilfully causing great suffering or serious injury to body or health.⁵¹ The sentence imposed by the Trial Chamber on this count was 7 years' imprisonment.

Count 18: (torture by way of rape). The Trial Chamber found that the victim was raped on several occasions by Hazim Deli}.⁵² The sentence imposed by the Trial Chamber on this count was 15 years' imprisonment.

Count 21: (torture by way of rape). The Trial Chamber found that the victim was raped on several occasions by Hazim Deli}.⁵³ The sentence imposed by the Trial Chamber on this count was 15 years' imprisonment.

Count 42: (inhumane treatment of detainees). The Trial Chamber found that "Hazim Deli} deliberately used an electric shock device on numerous prisoners in the ^elebi}i prison-

⁴⁹ Appeal Judgement, para. 713.

⁵⁰ Trial Judgement, paras. 830-31.

⁵¹ *Ibid.*, paras. 860-66.

⁵² *Ibid.*, paras. 936-43.

⁵³ *Ibid.*, paras. 955-65.

camp during the months of July and August 1992. The use of this device by Mr. Deli} caused pain, burns, convulsions, twitching and scarring. Moreover, it frightened the victims and reduced them to begging for mercy from Mr. Deli}, a man who derived sadistic pleasure from the suffering and humiliation he caused".⁵⁴ The sentence imposed by the Trial Chamber on this count was 10 years' imprisonment.

Count 46: (wilfully causing great suffering or serious injury to body or health by virtue of the inhumane conditions in the camp).⁵⁵ Deli} was found responsible by virtue of his direct participation in the creation and maintenance of an atmosphere of terror in the camp.⁵⁶ The sentence imposed by the Trial Chamber on this count was 7 years' imprisonment.

30. In relation to Deli}'s sentence, the Appeals Chamber rejected his claim that the sentence imposed by the Trial Chamber was excessive and "disproportionate to the severity of the crimes committed, even when taking into account the mitigating factors". It noted in this context the Trial Chamber's reference to "the brutality and premeditated fashion in which he committed the crimes for which he was convicted [...] in particular [...] the tendency of Deli} to threaten his victims before, during and after the crimes, and the pleasure he derived from the use of an electric shock device on the detainees".⁵⁷

31. The Prosecution submits that any downward adjustment of Deli}'s sentence should be slight given the gravity of the offences and the merciless brutality with which he acted.⁵⁸ The Prosecution also points out that the original sentence was held by the Appeals Chamber to be within the discretionary framework available to the Trial Chamber.⁵⁹

32. The Defence raises a number of issues concerned with parole, commutation of sentence and rehabilitation which the Trial Chamber adjudges to be wholly irrelevant to the issue remitted before it, namely adjustment of sentence in the light of various acquittals.⁶⁰ However, the Defence also submits that the overall sentence should be reduced to reflect the fact that the overall criminality has been reduced,⁶¹ and that such reduction should not be

⁵⁴ *Ibid.*, paras. 1058-59.

⁵⁵ See count 46 concerning Muci} for a summary of the factual findings in relation to this count.

⁵⁶ Trial Judgement, para. 1121.

⁵⁷ Appeal Judgement, para. 825.

⁵⁸ Prosecutor's Submissions, para. 8. Also see T. 14-16.

⁵⁹ Prosecutor's Submissions, para. 7.

⁶⁰ Hazim Deli}'s Brief on Re-Sentencing, 22 June 2001 ("Hazim Deli}'s Brief"), paras. 35 onwards.

⁶¹ *Ibid.*, para. 60. Also see T. 40-41.

“slight” but should reflect the fact that a conviction for murder has been quashed, an appropriate sentence being approximately 15 years’ imprisonment.⁶² At the hearing of 21 September 2001, the Defence pointed out that the accused was the first person before the International Tribunal to be remanded for re-sentencing or an adjustment in sentence based on a reduction in the total amount of his criminality, and it argued that if the totality of his criminal conduct was reduced, the sentence should also be reduced.⁶³

33. 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.

⁶² Hazim Delić’s Brief, paras. 58-63.

⁶³ T. 34.

IV. ADJUSTMENT OF SENTENCES AS A RESULT OF THE DISMISSAL OF CUMULATIVE CONVICTIONS

34. It should be noted at the outset when dealing with this topic that, 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: a practice confirmed by the Appeals Chamber.⁶⁴ The original Trial Chamber, in passing sentence in this case, noted that it had earlier decided that it would permit cumulative charging, however, “[it] is in this context that the Trial Chamber ... orders that each of the sentences ... be served concurrently”.⁶⁵ The Trial Chamber thus followed the practice of entering cumulative convictions but ordering that any resulting sentences be served concurrently.

35. In remitting this case to a Trial Chamber 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.⁶⁶

36. The Prosecution submits that no adjustment of sentence should be made under this heading,⁶⁷ relying on the fact that the convictions which were upheld were based on the same conduct as the convictions which have now been quashed and that the original Trial Chamber passed concurrent sentences on the cumulative convictions.⁶⁸ The Prosecution further points out that the Appeals Chamber, when stating that the sentencing consequences of the dismissal of the cumulative convictions must be considered by a reconstituted Trial Chamber, commented that the latter would “no doubt consider whether the remarks of the original Trial Chamber indicate that there should be no adjustment downwards in the sentence imposed”.⁶⁹ The Prosecution argued at the hearing of 21 September 2001 that the effect of the Appeals Chamber’s decision was to “remove the stigma of the cumulative

⁶⁴ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 Jan. 2000, para. 76; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, Disposition.

⁶⁵ Trial Judgement, para. 1286.

⁶⁶ Appeal Judgement, paras. 429-30.

⁶⁷ Prosecutor’s Submissions, para. 1. Also see T. 10.

⁶⁸ Prosecutor’s Submissions, paras. 11 and 12.

⁶⁹ Appeal Judgement, para. 769.

convictions and remove any potential prejudice in the timing of ultimate release from prison if such prejudice should, in fact, arise due to multiple convictions", but that "still the underlying criminal conduct remains the same".⁷⁰

37. In relation to the individual accused the Prosecution submits as follows:⁷¹

- (i) Given the gravity of his offences and the nature of his conduct . . . no other adjustment of Deli's sentence is justified.⁷²
- (ii) No downward adjustment of Muci's sentence is justified in the light of its upward revision in accordance with the Judgement of the Appeals Chamber.⁷³
- (iii) Landžo remains convicted on nine counts under Article 2 involving wilful killing, torture and causing great suffering, and was sentenced to a total of 15 years' imprisonment, in which sentence the Appeals Chamber found no error: the convictions were for extremely serious offences, his conduct was described by the Trial Chamber as sadistic and no adjustment is justified.

38. The facts underlying the convictions of Deli and Muci having already been dealt with, it remains to deal with those in relation to Landžo. The facts may be found conveniently set out in the Judgement of the Appeals Chamber⁷⁴ and may be summarised as follows. Landžo was a guard in the ^elebi}i camp and was convicted of nine counts of grave breaches of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949⁷⁵ involving three sets of offences. In each set there were related charges involving violations of the laws or customs of war (now dismissed). In the first set of offences Landžo was sentenced to 15 years' imprisonment on each of three counts involving the wilful killing of three detainees by beating them to death.⁷⁶ These detainees died as a result of brutal and severe beatings, in one case accompanied by the act of pinning a metal badge to the detainee's head. The next set of offences involved the

⁷⁰ T. 12.

⁷¹ See T. 22.

⁷² Prosecutor's Submissions, para. 13.

⁷³ *Ibid.*, para. 14.

⁷⁴ Appeal Judgement, paras. 565-70.

⁷⁵ 75 United Nations Treaty Series, p. 287.

⁷⁶ Counts 1, 5 and 7. The counts dismissed by the Appeals Chamber were counts 2, 6 and 8.

torture of three other detainees, *inter alia*, burning his victims on the hands (in one case in the mouth with heated pincers): for each of these three offences he was sentenced to seven years' imprisonment.⁷⁷ The third set of offences involved the wilful causing of great suffering or serious injury to two other detainees whom he severely beat (pulling out the tongue of one);⁷⁸ and a similar offence in relation to the other detainees in the camp who were living in an atmosphere of terror due to their being exposed to violent mistreatment and the resultant fear of being killed or subjected to physical abuse themselves.⁷⁹ For these three offences Landžo was sentenced to five years' imprisonment. As noted, the sentences were ordered to run concurrently, making a total of 15 years' imprisonment. In sentencing Landžo, the original Trial Chamber referred to his contribution to the atmosphere of terror in the camp, his exhibiting of imaginative cruelty as well as substantial ferocity, his inflicting substantial pain, suffering and injury and the savagery with which he beat to death an elderly and defenceless man.⁸⁰

39. The Defence submissions are as follows. Muci} submits that two years should be subtracted from his seven-year sentence in order to reflect the dismissal of the Article 3 charges.⁸¹ The accused argues that it is incumbent upon the Trial Chamber to 'remove the prejudice of cumulative sentencing from this case'⁸² and that "the only reason for remitting Muci}'s case . . . was the Appeals Chamber's belief that the sentences imposed upon Muci}' for the Article 2 convictions should be reduced".⁸³ [It should be noted that the latter submission is totally misconceived, first, in referring to the 'belief' of the Appeals Chamber when such a 'belief' is not manifest (and if it were it would be irrelevant); and, secondly, if it was the meaning of the Appeals Chamber's Judgement which was referred to, in misrepresenting that meaning.]

40. Deli} submits that his sentence should be reduced on the ground that the sentence for one offence should be less severe than that for two, even if the offences are "multiplicitous", i.e., the same for sentencing purposes.⁸⁴ He also submits that adjustment

⁷⁷ Counts 15, 24 and 30. The counts dismissed by the Appeals Chamber were 16, 25 and 31.

⁷⁸ Counts 11 and 36. The counts dismissed by the Appeals Chamber were 12 and 37.

⁷⁹ Count 46. Count 47 was dismissed by the Appeals Chamber.

⁸⁰ Trial Judgement, paras. 1272 – 73.

⁸¹ Zdravko Muci}'s Submission, paras. 3 and 6.

⁸² *Ibid.*, para. 9. Also see T. 29.

⁸³ Zdravko Muci}'s Submission, para. 7.

⁸⁴ Hazim Deli}'s Brief, paras. 32-33. Reference is made in the Brief to the decisions of military courts in the United States in support of this argument: *ibid.*

should be made in order to reflect the violation of the rights of the accused due to their improper convictions of separate offences for the same conduct and their thus being placed in ‘double jeopardy’.⁸⁵ In this connection, Deli} relies on *Aleksovski* where the Appeal Chamber, when increasing the sentence on the accused, referred to the element of double jeopardy in the process of appearing twice to be sentenced for the same conduct, suffering the consequent anxiety and distress and being detained for a second time after a period of release.⁸⁶ [However, it must be noted that in *Aleksovski* the Appeals Chamber was making an allowance for the element of double jeopardy when increasing a sentence and was not contemplating a situation such as the present when cumulative convictions have simply been dismissed and no question of an accused being detained for a second time or suffering anxiety or distress arises.]

41. Landžo submits that it would be wrong to increase the sentence and appropriate to reduce it in order to reflect the Appeals Chamber’s decision to dismiss the cumulative convictions.⁸⁷ He argues that since the Prosecution did not appeal against the sentence and no dissatisfaction with it was indicated by the Appeals Chamber, the judgement of the latter should be construed as indicating that to any extent that any adjustment is made, it should be made downwards.⁸⁸ Further, that a reduction in sentence would be appropriate because (a) the accused stands convicted of fewer offences; and (b) the accused was prejudiced by what was, in effect, cumulative sentencing by the original Trial Chamber.⁸⁹ Finally, it is submitted that the Trial Chamber should take into account, in connection with the possibility of rehabilitation, the progress made by the accused since the original sentence was passed.⁹⁰ [In response to this submission the Prosecution submits that Landžo’s personal circumstances have already been sufficiently taken into account by the original Trial Chamber and the Appeals Chamber.]⁹¹

⁸⁵ *Ibid.*, para. 34.

⁸⁶ *Aleksovski* Appeal Judgement, para. 190.

⁸⁷ Brief of Esad Landžo on Adjustment of Sentence, 15 June 2001, (“Esad Landžo’s Brief”), para. 4. Also see T. 45.

⁸⁸ Esad Landžo’s Brief, para. 5.

⁸⁹ *Ibid.*, paras. 7-9.

⁹⁰ *Ibid.*, para. 11. Also see T. 43-45.

⁹¹ Prosecutor’s Response to: Zdravko Muci’s Submission on the Issues Remanded by the Appeals Chamber/Hazim Deli’s Brief on Re-Sentencing/Brief of Esad Landžo on Adjustment of Sentence, 29 June 2001, para. 18.

42. 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 the three 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.

V. DISPOSITION

43. 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.⁹²

44. Having considered the submissions of the parties, following the instructions of the Appeals Chamber, and acting pursuant to the Statute and the Rules, the Trial Chamber therefore sentences Zdravko Muci} to 9 years' imprisonment, Hazim Deli} to 18 years' imprisonment, and Esad Land`o to 15 years' imprisonment.

45. Pursuant to Rule 101 (C) of the Rules, each convicted person is entitled to credit given for "the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal". Thus, the respective periods of time to which the convicted persons in this case may claim credit commenced as follows: from 18 March 1996, for Zdravko Muci}; and from 2 May 1996, for both Hazim Deli} and Esad Land`o.

46. Pursuant to Rule 103 (C) of the Rules, the convicted persons shall remain in the custody of the International Tribunal pending the finalisation of arrangements for their transfer to the State(s) where their sentences will be served.

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

Richard May
Presiding

Patrick Robinson

Mohamed Fassi Fihri

Dated this ninth day of October 2001
At The Hague
Netherlands

[Seal of the Tribunal]

⁹² Rule 87 (C) of the Rules provides that "[i]f the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused."