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TRIAL CHAMBER
CHAMBRE DE 1^{ÈRE}
INSTANCE

The Hague, 10 December 2003
JM/P.I.S/ 809e

JUDGEMENT IN THE CASE
THE PROSECUTOR V. DRAGAN OBRENOVIĆ

• **DRAGAN OBRENOVIĆ SENTENCED TO 17 YEARS' IMPRISONMENT**

Please find below the summary of the Judgement delivered by Trial Chamber I Section A, composed of Judges Liu (Presiding), Vassylenko and Argibay, as read out by the Presiding Judge.

Summary of Judgement

This hearing is for the Trial Chamber to deliver Judgement in this case. What follows is a summary of the written Judgement and forms no part of it. The written Judgement will be made available to the parties and to the public at the end of this hearing.

We are here today to sentence Dragan Obrenović for his participation in the crime of persecutions committed following the fall of the Srebrenica enclave in July 1995.

Procedural Background and Plea Agreement

Mr. Obrenović, a 40 year-old Bosnian Serb, was indicted by the Office of the Prosecutor on 9 April 2001 for crimes including complicity in genocide, persecutions and extermination. He was arrested by SFOR on 15 April 2001, and transferred to the Tribunal, where he has remained in detention at the United Nations Detention Unit.

Dragan Obrenović was jointly charged with three other accused and his trial commenced on 14 May 2003. Upon the examination-in-chief of the first Prosecution witness, the Trial Chamber was seised with a joint motion for consideration of a plea agreement between Dragan Obrenović and the Prosecution. A hearing was held to address the joint motion on 21 May 2003, at the conclusion of which the Trial Chamber accepted Dragan Obrenović's plea of guilt to one count of crimes against humanity, namely persecutions, punishable under Article 5(h) and Articles 7(1) and 7(3) of the Statute, and entered a conviction thereupon.

Pursuant to the Plea Agreement, the Prosecution moved to dismiss the remaining counts and they were subsequently dismissed. Additionally, under the Plea Agreement, Dragan Obrenović agreed to testify in other proceedings before the Tribunal, including those trials related to Srebrenica. In October 2003, Mr. Obrenović testified in the trial of his two former co-accused for seven days.

A sentencing hearing was held on 30 October 2003, at which four live witnesses were heard on behalf of the Defence. The testimony of an additional nine witnesses was admitted on behalf of the Defence and five witnesses on behalf of the Prosecution, pursuant to Rule 92 *bis*.

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The Facts

A written Factual Basis for the crime and for Mr. Obrenović's participation in it was filed with the Plea Agreement. The Factual Basis and the Indictment, which Mr. Obrenović acknowledged to be true, forms the factual basis upon which the Trial Chamber will determine sentence. The facts described therein are as follows.

The crime of persecutions, as charged in Count 5 of the Indictment, was carried out by the following means:

- the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons;
- the cruel and inhuman treatment of Muslim civilians, including beatings of civilians in schools and other detention centres in the Zvornik area on 13 through to 16 July 1995;
- the terrorisation of Muslim civilians from Srebrenica and Potočari from 13 to 16 July 1995; and
- the destruction of personal property and effects of Muslim civilians from Srebrenica who were detained and murdered in the Zvornik area.

The detained men were moved out of Potočari for execution. Similarly, the men who had escaped from Srebrenica in "the column" were captured and detained, pending execution. Along the route between Bratunac and Zvornik, the names previously used to mark settlements and communities or places of learning, culture and work or geographic features are now used to identify killings fields: Jadar River, Cerska Valley, Kravica Warehouse, Petkovci School, Pilica Cultural Centre, and the villages of Tišća and Orahovac. At one location, Branjevo Military Farm, approximately 1,200 Bosnian Muslim men who had been captured from the column were executed by automatic weapon fire. In total, over 7,000 men were murdered.

Sentencing: Purposes of Punishment

The Trial Chamber has considered the principles and purposes of punishment in light of the mandate of the Tribunal. It finds that principles of sentencing derived from national systems, namely deterrence, retribution and rehabilitation, are applicable on the international level; the application and purpose for each may, however, be different when applied on the international level.

The Trial Chamber recalls that a sentence is based on individual criminal responsibility. No individual should be punished for the criminal liability of others and no case should be viewed as representing the final accounting for a particular crime – especially crimes such as those committed following the fall of Srebrenica for which numerous people may be held criminally liable; each person must only be called to answer, and be punished, for his particular share of the criminal activity.

Gravity of the Offence

Turning to sentencing factors, the Trial Chamber first considered the gravity of the offence, bearing in mind that this requires taking account of the particular circumstances of the case, as well as the form and degree of participation of Dragan Obrenović in the crime.

The Trial Chamber finds that the crime of persecution is inherently serious. Its unique character is derived from a requirement of a specific discriminatory intent, on account of which the crime is regarded as a particularly serious offence. In this case, the gravity of the offence is demonstrated by the persecutory acts for which Dragan Obrenović has been convicted.

The crimes committed following the fall of Srebrenica are, unfortunately, well-known. The mass-murder or forcible transfer of the Muslim population from this part of eastern Bosnia

in slightly over one week was committed with a level of brutality and depravity not seen previously in the conflict in the former Yugoslavia which had already cost too many lives.

Dragan Obrenović was deputy commander and chief of staff of the Zvornik Brigade – the brigade responsible for the municipality in which the vast majority of the executions took place. During the two days when many of these executions took place, he was the acting commander of the Zvornik Brigade. Dragan Obrenović, as he has admitted, took actions which furthered the killing operation: he released seven of his men to “assist” with the prisoners – prisoners that he knew were brought to Zvornik to be shot. He approved the release of two military operators from the line, knowing that their task was the burial of executed prisoners. For these actions, Dragan Obrenović bears criminal responsibility.

The Trial Chamber has heard that Dragan Obrenović was a man of exceptional character and a soldier – an officer – whose subordinates “would have followed him down the barrel of a cannon.” Although there are few direct actions that Dragan Obrenović took to further the murder operations, his *inaction* during these critical, devastating days itself had an impact on those working with, and under, him. Dragan Obrenović spent most of these fateful days in the battlefield, but he was *aware* of the larger murder operation taking place. Through his failure to prevent his subordinates from participating in the detention, murder and burial of Bosnian Muslim men, Dragan Obrenović bears criminal responsibility. Through his failure to punish his subordinates after they committed crimes which he knew or had reason to know about, Dragan Obrenović bears criminal responsibility.

Recognising the various forms of criminal liability for which Dragan Obrenović has accepted responsibility, the Trial Chamber finds that Dragan Obrenović’s liability stems primarily, though not exclusively, from his responsibilities as a commander..

Aggravating Circumstances

The Prosecution submits that three aggravating factors in this case should be considered by the Trial Chamber: (i) the position of leadership of Dragan Obrenović; (ii) the role of Obrenović as Deputy Commander; and (iii) the vulnerability of the victims and the depravity of the crimes.

The Trial Chamber finds that Dragan Obrenović was in a position of authority as Acting Commander and Deputy Commander of the Zvornik Brigade. As Dragan Obrenović’s criminal liability arises in large measure from this responsibility as a commander pursuant to Article 7(3) of the Statute, the Trial Chamber finds it would be inappropriate to use the same conduct to establish both liability and an aggravating circumstance in this case.

The Trial Chamber finds that the depravity of the crimes is subsumed in the overall gravity of the offence.

The Trial Chamber takes particular note of the vulnerability of the victims. They were all in a position of helplessness and were subject to cruel treatment at the hands of their captors. In this situation, the Trial Chamber finds this to be an aggravating factor in the commission of the crimes.

Mitigating Circumstances

The Prosecution submits that the mitigating circumstances are the guilty plea, acceptance of responsibility, remorse, co-operation with the Office of the Prosecutor and previous good character. In addition to the factors listed by the Prosecution, the Defence submits that the fostering of reconciliation and Dragan Obrenović’s offer to voluntarily surrender should be considered mitigating factors in this case.

The Trial Chamber finds that Dragan Obrenović’s guilty plea and acceptance of responsibility is a significant factor in mitigation of the sentence due to its contribution to

establishing the truth, promoting reconciliation and because of Dragan Obrenović's *unreserved* and *unqualified* acceptance of his individual criminal responsibility for his role in the crime of persecutions. The Trial Chamber also considers Dragan Obrenović's guilty plea as a mitigating factor because it spared witnesses from being required to come and testify about painful and traumatic events. This is particularly appreciated in the case of Srebrenica where there are numerous indictments brought by the Prosecution, and future trials will likely require the presence of these witnesses.

Finally, the Trial Chamber takes note of the fact that other accused have been given credit for pleading guilty before the start of trial or at an early stage of the trial because of the savings of Tribunal resources. The Trial Chamber appreciates this saving of Tribunal resources. The Trial Chamber finds, however, that in cases of this magnitude, where the Tribunal has been entrusted by the Security Council – and by extension, the international community– to bring justice to the former Yugoslavia through criminal proceedings that are fair, in accordance with international human rights standards, and accord due regard for the rights of the accused and the interests of victims, the saving of resources cannot be given undue consideration or importance.

The Trial Chamber has carefully considered Dragan Obrenović's expression of remorse and his apologies to the victims for his participation in, what he described as, the "horror of Srebrenica".¹ Through his statements and his actions, the Trial Chamber finds that Dragan Obrenović is genuinely remorseful for his role in the crimes for which he has been convicted, and seeks to atone for his criminal conduct. Therefore, the Trial Chamber considers Dragan Obrenović's remorse to be a substantial mitigating factor in his case.

In considering co-operation with the Prosecution, the Trial Chamber notes that the Prosecution acknowledges full co-operation from Dragan Obrenović. The Trial Chamber finds that Dragan Obrenović provided truthful testimony and detailed information in the *Blagojević* Trial regarding his knowledge of the events related to Srebrenica and the VRS military structure. The Trial Chamber agrees with the Prosecution that Dragan Obrenović answered each question as clearly and precisely as he could, regardless of whether it was asked by the Prosecution, defence counsel or the Trial Chamber. The Trial Chamber further notes that he testified in the *Krstić* Appeal Proceedings and has further agreed to testify in other proceedings. In addition, he assisted the Prosecution by providing it with numerous documents relevant for the *Blagojević* case and investigations in other cases. The Trial Chamber also finds that Dragan Obrenović co-operated with the Prosecution during the investigation phase when he permitted the Prosecution to conduct a search of the Zvornik Brigade's property. The Trial Chamber finds substantial co-operation with the Prosecution in this case to be a significant mitigating circumstance.

Based on the evidence presented, the Trial Chamber finds that prior to the war Dragan Obrenović was a highly respected member of his community who did not discriminate against anybody. Furthermore, the Trial Chamber finds based on the testimony, that even during the war Dragan Obrenović provided help on ongoing basis to several Muslims whom he previously had not known. The Trial Chamber finds this to be an important mitigating factor.

The Trial Chamber recognises these mitigating factors to be steps taken towards rehabilitation.

Additionally, the Trial Chamber has established the following mitigating circumstances: offer of voluntary surrender; comportment in the UNDU; and personal circumstances of the accused.

¹ Sentencing Hearing, T. 1556.

Conclusions

The criminal responsibility borne by Dragan Obrenović for the widespread or systematic crimes committed following the fall of Srebrenica must reflect his individual criminal conduct – his actions and his omissions. Without diminishing in any way the criminal conduct of Dragan Obrenović, the Trial Chamber recalls that he is not alone in bearing criminal responsibility for the massive crimes committed against the Bosnian Muslim population. He did not conceive of the murder operation. His punishment must therefore reflect only *his* role and participation in the crime of persecutions. Others, who should one day face judgement before this Tribunal, will accordingly be judged and sentenced for *their* roles.

The Trial Chamber has found that there exist in this case numerous mitigating circumstances upon which the Trial Chamber has placed substantial weight. Through his acceptance of his responsibility and his guilt, his sincere remorse, his substantial co-operation with the Prosecution, and his character, Dragan Obrenović has mitigated his sentence.

The Trial Chamber stresses that the allocation of significant weight to the mitigating circumstances in this case should not be interpreted as dismissal of the gravity of the offence for which Dragan Obrenović has been convicted. The Trial Chamber has considered the scale of the crimes in which Dragan Obrenović participated. The Trial Chamber has further considered the impact of these crimes on the victims and their survivors. Both are enormous.

As the Trial Chamber has stressed to both Parties and to Dragan Obrenović, it is not bound by their recommendations relating to the sentence. The Trial Chamber has carefully considered the submissions, and the recommended sentence, by each party.

Mr. Obrenović, please rise.

Having given due weight to factors set out, the Trial Chamber hereby sentences you to a period of **17** years' imprisonment. You are entitled to 969 days credit for the time you have served in detention as of the date of this Sentencing Judgement.

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