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Tribunal Pénal
International pour
l'ex-Yugoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 8 May 2006

SUMMARY OF THE SENTENCING JUDGEMENT FOR IVICA RAJIĆ

Please find below the summary of the judgement today read out by Judge Van Den Wyngaert:

The Trial Chamber is sitting today to deliver its sentencing judgement of Ivica Rajić for his involvement, in October 1993, in the attacks against the village of Stupni Do, which caused the death of approximately 31 civilians and the destruction of the village. The sentencing judgement also concerns the rounding up of more than two hundred and fifty Muslim men in Vareš town and their subsequent inhuman treatments.

What follows is only a summary of the written judgement and does not in any way form part of it. The only authoritative account of the findings of the Trial Chamber is in the written judgement which will be available to the Parties and the public, today, at the end of this session.

The Trial Chamber will briefly set out the context and the facts of the case, before going on to review the factors which it took into consideration in determining the sentence.

Context and facts of the case

Ivica Rajić was born on 5 May 1958 in the village of Jehovac in Bosnia and Herzegovina. From May to at least November 1993, he was the Commander of the Second Operational Group of the HVO's Central Bosnia Operative Zone, based in Kiseljak.

On 29 August 1995, Judge Sidhwa confirmed the indictment issued against Ivica Rajić. Initially, he was charged with two Grave breaches of the Geneva Conventions of 1949 (wilful killing and destruction of property) and two Violations of the laws or customs of war (deliberate attack on the civilian population and wanton destruction of a village).

On 5 April 2003, Ivica Rajić was arrested and was subsequently transferred to the Detention Unit of the Tribunal. On 27 June 2003, he appeared before the Tribunal and entered a plea of not guilty.

On 14 January 2004, the Prosecution filed an Amended Indictment against Ivica Rajić. It charged him with five Grave breaches of the Geneva Conventions (wilful killing, inhuman treatment, unlawful confinement of a civilian, appropriation of property and extensive destruction not justified by military necessity and carried out unlawfully and wantonly). It also charged him with five Violations of the laws or customs of war: murder, outrages upon personal dignity, cruel treatment, plunder of public or private property and wanton destruction of a city or devastation not justified by military necessity.

On 29 January 2004, Ivica Rajić pleaded not guilty to all ten counts of the Amended Indictment.

More than a year and half later, on 25 October 2005, Ivica Rajić entered into a plea agreement with the Prosecution. He agreed to plead guilty to four of the ten charges in the Amended Indictment: wilful killing, inhuman treatment, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. All the charges constitute Grave breaches of the Geneva Conventions under Article 2 of the Statute of the Tribunal. In exchange for Ivica Rajić's guilty plea, his complete cooperation with the Prosecution, and the fulfilment of all of his obligations under the Plea Agreement, the

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Prosecution agreed to recommend to the Trial Chamber the imposition of “a single combined sentence in the range of twelve to fifteen years, with the Accused able to argue for a sentence at the bottom of this range (twelve years) and the Prosecutor able to argue for a sentence at the top of this range (fifteen years)”. At the plea hearing on 26 October 2005, Ivica Rajić pleaded guilty to these four counts. The Trial Chamber accepted the plea after being satisfied that it was voluntary, informed and unequivocal and that there was sufficient basis for a conviction.

The Prosecution and the Defence filed their respective sentencing briefs on 15 November and 16 December 2005,

On 16 November 2005, the Trial Chamber issued a decision clarifying that the conviction had been entered on the basis of Article 7(1) of the Statute only, thereby excluding any modes of responsibility under Article 7(3) of the Statute.

The sentencing hearing was held on 7 April 2006. The Prosecution and the Defence made submissions regarding the factors that they recommended to the Trial Chamber’s attention when determining the sentence. In addition, Ivica Rajić made an oral statement, depicting the broader context in which the crimes occurred and apologizing to the victims.

What follows is a summary of the facts which form the basis of Ivica Rajić’s conviction. The facts are described in the factual basis attached to the plea agreement.

On 21 October 1993, following an attack of the army of Bosnia and Herzegovina in Vareš municipality, the deputy head of the HVO armed forces ordered Ivica Rajić to seize control with the HVO forces of the situation in Vareš town and the surrounding area.

On the same day, Ivica Rajić left the town of Kiseljak with approximately two hundred HVO soldiers. He reached Vareš the following day. On 23 October 1993, the head of the HVO Main Staff ordered Ivica Rajić “to sort out the situation in Vareš showing no mercy towards anyone”. On the same day, Ivica Rajić ordered HVO forces under his command to round up military-aged Muslim men in Vareš town and to detain them. As a result, based on Ivica Rajić’s order, HVO forces rounded up more than two hundred and fifty Bosnian Muslim men and detained them in two schools, the “Ivan Goran Kovačić” and “Vladimir Nazor” schools. During the process of rounding up these men, the HVO commanders and soldiers entered houses, abused their inhabitants and robbed them of their valuables. HVO soldiers also beat and abused male Bosnian Muslim detainees.

Still on the same day, HVO soldiers under Ivica Rajić’s command attacked the village of Stupni Do. They also forced the civilians out of their homes and hiding places, robbed them of their valuables, sexually assaulted Muslim women, and wilfully killed at least thirty-seven Bosnian men, woman, elderly persons and children. Among the men, there were approximately six combatants. On 23-24 October 1993, most of the village was destroyed.

The Trial Chamber will now give an overview of the factors that it took into account in assessing the gravity of the crimes committed in order to determine the sentence to be imposed on Ivica Rajić. It will then briefly discuss the aggravating and mitigating circumstances applicable in the present case.

Gravity of the crimes

In determining the gravity of the crimes, the Trial Chamber took into consideration the scale and brutality of the crimes, the role of Ivica Rajić as well as the impact of the crimes upon the victims and their families.

In relation to the scale and brutality of the crimes, the Trial Chamber found that the sentence should reflect the fact that the crimes were committed on a large scale, were of particularly violent nature and caused severe pain to the victims and their relatives. For instance, the Trial

Chamber noted that two elderly women, one of whom was an invalid, were found burned inside a house and that seven members of the same Muslim family (two men, three women and two children aged 2 and 3 years old) were found burned inside their shelter.

However, in determining the gravity of these crimes, the Trial Chamber also took into account the general context in which they occurred. Indeed, according to the agreed facts between the Parties, approximately 35 “defenders” of the Army of Bosnia and Herzegovina, who had dug trenches in and around parts of Stupni Do, were present in the village during the attack.

In this regard, the Trial Chamber rejected the submission of the Prosecution according to which the crimes were serious because they were widely broadcasted and received immediate attention from the UN Security Council. Indeed, the seriousness of a crime is not related to such coverage or attention. Were this the case, the gravity of two identical crimes would differ depending on their media coverage or international attention.

As for Ivica Rajić’s role, he was the commander of the HVO’s Second Operational Group in the Central Bosnia Operative Zone based in Kiseljak. In this capacity, he played a significant role in ordering HVO soldiers and commanders to attack Stupni Do and to round up more than two hundred and fifty Muslim men in Vareš town. He did so, knowing the substantial likelihood that criminal acts would ensue following his orders. According to the agreed facts between the Parties, Ivica Rajić was indeed aware that these soldiers had previously committed serious crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and physical assault.

Lastly, the Trial Chamber evaluated the seriousness of Ivica Rajić’s crimes in the light of their impact upon the victims and their effect upon the victims’ families. In so doing, the Trial Chamber examined the evidence submitted by the Prosecution and found that the victims and their families suffered severe pain as a direct result of the crimes. It concluded that this factor should therefore be taken into consideration when determining the seriousness of the crimes.

Aggravating and mitigating circumstances

The Trial Chamber examined the four aggravating circumstances put forward by the Prosecution, namely Ivica Rajić’s position of authority and as a superior, the impact of his crimes on particularly vulnerable victims, Ivica Rajić’s participation in a cover-up and the fact that he absconded and obstructed justice for almost eight years.

With regard to Ivica Rajić’s abuse of position of authority (under Article 7(1) of the Statute) and his position as a superior (under Article 7(3) of the Statute), the Trial Chamber first noted that it was not bound to consider these elements as aggravating factors, pursuant to the Stakić, Momir Nikolić and Naletilić’s Appeals Judgements. Furthermore, in the light of the same jurisprudence, the Trial Chamber found that, in this case, Ivica Rajić’s abuse of his position of authority and his position as a superior could not be taken into account as aggravating factors, since these factors had already been taken into consideration when examining the gravity of the crimes.

As to the vulnerability of victims, the Trial Chamber considered that certain victims - five children and two elderly women, one of whom was an invalid - were in a situation of special vulnerability during the attack on Stupni Do. The Trial Chamber found this element to be an aggravating factor.

The Trial Chamber was not convinced by the arguments of the Prosecution according to which absconding from justice and participation in cover-up activities should aggravate the sentence. The Prosecution did not prove that these elements were aggravating circumstances pursuant to customary international law or general principles of law. However, the Trial Chamber accepted that these factors could be taken into account when appraising the weight to be attributed to certain mitigating circumstances, especially when evaluating Ivica Rajić’s good character.

The Trial Chamber also reviewed four mitigating circumstances submitted by the Defence and the Prosecution, that is, the guilty plea, Ivica Rajić's remorse, his cooperation with the Prosecution and his personal circumstances.

The Trial Chamber held that Ivica Rajić's guilty plea helped to establish the truth surrounding the crimes committed in Stupni Do and Vareš. This may contribute to the reconciliation of the peoples of the former SFRY and to the restoration of a lasting peace in the region. Such recognition of responsibility also saved valuable court time and resources. The Trial Chamber therefore found that Ivica Rajić's guilty plea was a mitigating factor.

As to remorse, the Trial Chamber, after listening Ivica Rajić's statement at the hearing, felt that Ivica Rajić's expression of remorse was real and sincere and must be taken into account in mitigation.

In respect of Ivica Rajić's cooperation, in the light of the assessment made by the Prosecution in its Brief and during the Sentencing Hearing, the Trial Chamber considered it to be a mitigating factor.

In relation to Ivica Rajić's personal circumstances, the Trial Chamber observed that the Defence did not submit any evidence regarding the fact that Ivica Rajić had neither been convicted prior to the events nor driven by racial or religious hatred. The Trial Chamber also noted that the Defence' submission according to which Ivica Rajić enabled 2,000 Jews to flee Sarajevo had not been proven. Moreover, the Trial Chamber considered that, where an accused has been convicted of extremely serious crimes, his family circumstances can only have limited bearing on the sentence to be imposed.

Finally, in accordance with the Statute and the Rules, the Trial Chamber took account of the general sentence practice of the courts of the former Yugoslavia.

Mr Rajić, can you please rise:

The Trial Chamber has duly examined the evidence relevant to an adequate determination of the seriousness of the four Grave Breaches of the Geneva Conventions of 1949 of which you have been found guilty: wilful killing, inhumane treatment, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The sentence should reflect the fact that these crimes were committed on a large scale, were of a particularly violent nature and caused severe pain to the victims and their relatives. The sentence should also reflect the importance of the role you played in these events when, following orders of your own superiors, you planned and ordered the attacks and further ordered the rounding up of Muslim civilians, knowing the substantial likelihood that criminal acts would ensue following your orders. The Trial Chamber considered that the special vulnerability of certain victims is an aggravating factor. However, the Trial Chamber found that your positions of authority and as a superior were not aggravating factors in the present case, but inherent in the gravity of the crimes. Finally, the Trial Chamber rejected the Prosecution's submissions that the participation in a cover-up and obstructing justice for almost eight years constituted aggravating factors. Furthermore, the Trial Chamber gave consideration to a number of mitigating circumstances: your guilty plea before the trial, your remorse and your cooperation with the Prosecution. Finally, the Trial Chamber accorded some additional weight in mitigation of sentence to your personal circumstances.

The Trial Chamber hereby sentences you, Ivica Rajić, to 12 years' imprisonment. You are entitled to credit for time spent in detention, namely 1130 days.
The Trial Chamber stands adjourned.
