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INSTANCE

The Hague, 29 November 2002

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JUDGMENT IN THE CASE “THE PROSECUTOR V. MITAR VASILJEVIĆ”

ACCUSED SENTENCED TO 20 YEARS IMPRISONMENT

Please find below a summary of the judgment rendered today by Trial Chamber II consisting of Judge Hunt (Presiding), Judge Janu and Judge Taya. This summary was read out in court by the Presiding Judge.

Trial Chamber II is sitting today to deliver judgment in the trial of Mitar Vasiljević. For the purposes of this hearing, I propose to summarise briefly the issues which arose during the trial and the findings of the Trial Chamber in relation to those issues. I emphasise that this is a summary only, and that it forms no part of the judgment which is delivered. The only authoritative account of the Trial Chamber's findings, and of its reasons for those findings, is to be found in the written judgment, copies of which will be made available to the parties and to the public at the conclusion of this hearing.

The trial arose out of events which took place in 1992 in the town of Višegrad, located on the bank of the Drina River in the Višegrad Municipality in south-eastern Bosnia and Herzegovina, close to the border with the Republic of Serbia. Prior to the armed conflict, the majority of the people who lived in the Municipality were of Muslim ethnicity, which outnumbered the Serb minority by almost two to one. Ethnic tensions flared up after the multi-party elections in November 1990 returned a municipal council which closely matched the ethnic composition of the municipality.

Members of the Serb and Muslim ethnicities armed themselves, and early in 1992 violence between them followed. The attack upon the non-Serb civilian population took many forms, starting with the Serb take-over of the town and the systematic and large-scale criminal campaign of murders, rapes and mistreatment of the non-Serb population of the municipality, particularly the Muslims, which eventually culminated in one of the most comprehensive and ruthless campaigns of ethnic cleansing in the Bosnian conflict. Hundreds of mostly Muslim men and women, children and elderly people, were killed. One of the most violent of the paramilitary groups operating in the area was led by Milan Lukić (a former resident of Višegrad). This paramilitary group entered the town of Višegrad and committed many very serious crimes there with the complicity, or at least with the acquiescence, of the Serb authorities who had taken over control of the area.

The trial was concerned principally with two incidents which took place in Višegrad during the month of June 1992.

The first took place on 7 June. Milan Lukić, and a number of other men, led seven Bosnian Muslim men to the bank of the Drina River, where they forced the Muslim men to line up on the bank of the river, and to face the river. Despite pleas by the Muslims for their lives, they were shot from behind. When it appeared that someone was still alive, the men lying in the water were shot at again, at close range. Five of the Muslim men were killed, but the other two men escaped by pretending to be dead as they lay in the water. This has been referred to as the Drina River incident.

The second incident took place on 14 June 1992. About seventy Bosnian Muslim women, children and elderly men were directed to enter a house in Pionirska Street, in the Mahala neighbourhood of the Višegrad municipality. An inflammable substance had been spread in the area in which the Muslims were locked beforehand. When this large group had been forced inside that house,

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it was set on fire with an incendiary device. Most of the group died in the fire, some escaped before the fire, and others were successful in escaping during the fire. This has been referred to as the Pionirska Street incident.

The accused, Mitar Vasiljević, was charged separately in relation to each of the two incidents with a number of crimes, alleging that he acted in concert with Milan Lukić and others to commit murder (both as a crime against humanity and as a violation of the laws or customs of war), inhumane acts (as a crime against humanity) and violence to life and person (as a violation of the laws or customs of war). In relation to the Pionirska Street incident, the accused was also charged with extermination in concert with Milan Lukić and others (as a crime against humanity).

Finally, in relation to both incidents, taken cumulatively, the accused has been charged with persecution on political, racial or religious grounds as a crime against humanity, by participating in the murder of Bosnian Muslim and other non-Serb civilians, the harassment, terrorisation and psychological abuse of such civilians, and the theft and destruction of personal property of such civilians.

Mitar Vasiljević was a member of the Serb minority in Višegrad. He had worked as a waiter in various establishments around town. The prosecution claimed that he was also a member of, or was associated with, the Serb paramilitary group led by Milan Lukić. Such an association was put forward by the prosecution as establishing that the accused shared the homicidal intent of that paramilitary group. There was a close family association between the two men. Evidence was also led from a number of witnesses that they had seen the accused with Milan Lukić and others when serious crimes were committed by them. In almost every case, evidence of the participation of the accused in the activities of the paramilitary group was given by one witness only, and the evidence of identification by that witness was poor.

The Trial Chamber has concluded that the only association of the accused with the Milan Lukić group which was established, other than in relation to the two incidents with which the trial was concerned, was that he participated in the search of a Muslim family's home in the village of Musići, and that he was a ready source of local information for the group about the location of Muslims in the area. The Trial Chamber is satisfied that he gave that information to the group with the full realisation that it would be used by the group to persecute Muslims.

In relation to the first incident, the accused admitted that he had been present at the shooting of the men on the bank of the Drina River. He claimed that his presence there was accidental, and that he had not realised that the men were to be killed until they were approaching the river, when he tried to persuade Milan Lukić to spare the lives of these men. The Trial Chamber is satisfied that the accused did not try to persuade Milan Lukić to spare their lives, that he willingly accompanied Milan Lukić and his group with the seven Muslim men to the Drina River, and that he was participating with that group in a joint criminal enterprise that all seven of the men be killed. As only five died, he has been found to have incurred individual criminal responsibility for the murder of those five men, both as a crime against humanity and as a violation of the laws or customs of war. In relation to the two men who escaped being killed in that shooting, the Trial Chamber is satisfied that the attempted killing amounted to a serious attack on the human dignity of these two men, and that it caused them immeasurable mental suffering. The accused has thus been found to have incurred individual criminal responsibility for inhumane acts as a crime against humanity.

The Trial Chamber is not satisfied that the charge of a violation to life and person as a violation of the laws or customs of war constitutes an offence under customary law giving rise to individual criminal responsibility, and the accused has been acquitted of this charge.

In relation to the second incident, the accused admitted that he had been present in Pionirska Street during the course of the afternoon of 14 June 1992, but he denied participating in any way in relation to the Pionirska Street incident. The prosecution alleged that the accused took part in looting from the Muslim group late in the afternoon, but the Trial Chamber is not satisfied that the evidence of identification is sufficiently reliable as to warrant the conclusion that the accused was present at that time.

The Trial Chamber is satisfied that the forcing of the Muslims into the house which was then burnt down did not take place before 9.30 pm that day. The accused accepts that earlier that day he did

speak with a group of people there, but he says that, after he had done so (and well before the Muslims were forced to enter that house) he was riding a horse bareback through Višegrad when the horse slipped, he fell to the ground and the horse fell on top of him, breaking his leg. He was taken first to the Višegrad Health Centre and then to the Užice Hospital, a trip which would have taken at least an hour. In other words, the accused relies upon an alibi. There was a considerable amount of evidence led in relation to this alibi.

It should be clearly understood that, when an issue of alibi arises upon the evidence, the accused bears no onus of proof in relation to it. An alibi means only that the accused denies being where the prosecution alleges he was at the time the crime was committed. As part of its case of proving beyond reasonable doubt that the accused *was* at Piornirska Street when the Muslims were forced into the house which was then burnt down, the prosecution must eliminate any reasonable possibility that the alibi upon which the accused relies is true. In this case, the prosecution had to eliminate any reasonable possibility that the accused was in, or on the way to, the Užice Hospital at 9.30 pm, the earliest time when the Muslims were forced into that house.

The Trial Chamber does not accept a great deal of the evidence which was led on behalf of the accused in support of the alibi. There was, however, some pivotal pieces of evidence tendered, the admission ledgers of the Užice Hospital and the case history of a man by the name of Mitar Vasijević who was admitted to that hospital on 14 June 1992 at 9.35 pm. These records were subjected by the prosecution to extensive and repeated forensic analysis, and it was conceded by the prosecution that they showed no sign of forgery. The prosecution therefore had to eliminate any reasonable possibility that the accused was the man who was admitted under the name of Mitar Vasiljević to the Užice Hospital on the date and at the time recorded in those hospital records.

Dr Moljević was a doctor at the orthopaedic ward of the Užice Hospital and a member of the triage team at its admissions centre at the relevant time. He knew the accused well, and he was notified of the imminent arrival of the accused because of his friendship with him. He had a clear recollection of the events of that day, although he did rely upon the admission ledgers (the authenticity of which the prosecution was unable to challenge) for the date and precise time of admission. The Trial Chamber accepts the evidence of Dr Moljević that the accused was in the Užice Hospital by 9.35 pm on the day of the fire, as corroboration of the admission ledgers. The prosecution has thus failed to establish beyond reasonable doubt that the accused was in Pionirska Street at the time the Muslims were forced into the house and when it was burnt down.

This places a substantial degree of importance upon the activities of the accused at the time when he admits that he was in Piornirska Street earlier in the afternoon. The prosecution argued that the accused had sought to persuade the group of Muslims in Pionirska Street to stay together so that he could inform Milan Lukić of their whereabouts, who would then commit the crimes which were in fact subsequently committed (including looting). The Trial Chamber is satisfied that the accused did seek to ensure that the group stayed together because he knew that some evil was to befall them. This would have made him a participant in a joint criminal enterprise to commit whatever crime he knew was to befall them, or at least to have incurred an individual criminal responsibility by aiding and abetting in that crime. The prosecution, however, failed to establish beyond reasonable doubt just what the evil was which the accused knew was to befall the group of Muslims in Pionirska Street.

In those circumstances, the prosecution failed to establish any of the three crimes charged separately in relation to the Pionirska Street incident – murder (as both a crime against humanity and as a violation of the laws or customs of war) and inhumane acts (as a crime against humanity). The Trial Chamber has therefore acquitted the accused of those charges. The charge of violence to life and person has failed for the same reason as it failed in relation to the Drina River incident. The additional charge in relation to the Pionirska Street incident, that of extermination, has also failed because of the failure of the prosecution to establish beyond reasonable doubt that the accused was in Pionirska Street at the relevant time or that he was aware that these people were to be killed.

This leaves the charge of persecution on political, racial or religious grounds as a crime against humanity, which has to be considered in relation to all of the relevant acts of the accused in their context and their cumulative effect. As a result of the findings already made, these acts were effectively only those giving rise to the accused's individual criminal responsibility for murder (as both a crime against humanity and as a violation of the laws or customs of war) and inhumane acts (as a crime against humanity) in relation to the Drina River incident. The Trial Chamber is satisfied that the

five Muslim men were killed, and that the inhumane acts were committed against the other two Muslim men, only because they were Muslims, and that they had been singled out for religious or political reasons. The acts were thus discriminatory both in fact and in intent. The accused has therefore been found to have incurred individual criminal responsibility for the crime of persecution as a crime against humanity in relation to the murder of the five men and the inhumane acts committed against the two survivors.

The question of cumulative convictions then arises. It is permissible to record a conviction for the crime of murder as a violation of the laws or customs of war (pursuant to Article 5 of the Tribunal's Statute) together with a conviction for a crime against humanity (pursuant to Article 3), despite the fact that both convictions arise out of the same set of facts. The real issue in relation to cumulative convictions in the present case arises in relation to the three crimes against humanity in relation to which the accused has been found to have incurred individual criminal responsibility. As persecution incorporates the ingredients of both murder (as a crime against humanity) and inhumane acts, and as it is more specific than either of those crimes, a conviction for persecution must be entered in lieu of convictions for murder (as a crime against humanity) and inhumane acts.

Accordingly, the accused has been convicted for the crimes of persecution (as a crime against humanity) under Count 3 – which conviction incorporates his individual criminal responsibility for the murder of the five men (as a crime against humanity) and the inhumane acts in relation to the two survivors – and of murder (as a violation of the laws or customs of war) in relation to the five men, charged in Count 5. He has been acquitted in relation to Counts 1, 4, 6, 7, 10, 11, 12 and 13.

In sentencing the accused for these two convictions, it is important to emphasise that the accused is to be punished for the totality of his criminal conduct and his overall culpability, and any prejudice which he will or may suffer because cumulative convictions have been based upon the same criminal conduct must be taken into account. He is not to be punished for either the number of crimes for which he has incurred individual criminal responsibility or the number of convictions entered in relation to his conduct.

The principal issue raised in relation to sentencing is the claim by the accused that, at the time of the Drina River incident, his mental responsibility for his actions was diminished. Considerable psychiatric evidence was given by both parties on this issue, but the Trial Chamber is not satisfied that the accused's claim has been made out. The Trial Chamber has, however, taken into account in mitigation the general spirit of co-operation very properly shown by lead counsel for the accused, who trod a careful path in assisting the Trial Chamber without in any way compromising his obligations to the accused, conduct for which the accused himself should be given credit. The personal circumstances of the accused, in particular the fact that he is married and has two children, have also been taken into account by the Trial Chamber as a mitigating factor.

The Trial Chamber accepts that the accused was not a commander, that his crimes were geographically very limited, and that there is no evidence that his acts encouraged other offenders (other than as found in relation to the Drina River incident) or affected other victims of such crimes within the broader context of the conflict. The Trial Chamber has taken into account the fact that the position of the accused in the hierarchy was a low one. It does not accept that the accused played any particularly significant role in the broader context of this conflict, but it notes that an accused's level in the overall hierarchy in the conflict is not ultimately decisive of the sentence given. The fact that he was a low-level offender in terms of the overall conflict in the former Yugoslavia cannot alter the seriousness of the offences for which he has been convicted or the circumstances in which he committed them. His crimes were particularly serious in terms of the protected interests which he violated – the life as well as the physical and mental integrity of the victims, the consequences for the victims (death for five of them and great suffering for the other two), and the reasons for which these crimes were committed (that is, no reason other than sheer ethnic hatred).

Relevant to sentencing is the discriminatory intent with which the crimes were carried out. Such an intent is an ingredient of the crime of persecution, and it is relevant as such to the seriousness of that crime. It may also be an aggravating feature in relation to the crime of murder as a violation of the laws or customs of war. It is an aggravating feature of that crime in this case. During the Bosnian conflict, ethnicity was exploited variously to gain political prominence or to retain power, to justify criminal deeds, or for the purpose of obtaining moral absolution for any act coloured by the ethnic

cause. No such absolution is to be expected from this Tribunal. The Trial Chamber considers that crimes based upon ethnic grounds are particularly reprehensible. The Trial Chamber also considers as aggravation the fact that the pleas by the men for their lives were completely ignored by the accused, the cold-blooded nature of the execution and, to perhaps a lesser extent, the fact that one of the victims was well known to the accused.

Mitar Vasiljević, you are sentenced to a single sentence of imprisonment for 20 years. You are entitled to credit for the period of two years, ten months and four days you have been in custody towards service of the sentence imposed, together with the period you will serve in custody pending a determination by the President of the Tribunal as to the State where the sentence is to be served. You are to remain in custody until such determination is made.

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