

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-95-10/1-PT

THE PROSECUTOR

v.

RANKO CESIC

PLEA AGREEMENT

Introduction

1. In accordance with the Pre-Trial Judge's request at the Status Conference of 24 April 2003, for the parties to inform the Trial Chamber at the earliest possible stage if there are any agreements on the facts, the Accused, Ranko Cesic, through his Counsel, Mihajlo Bakrac, and the Office of the Prosecutor ("OTP"), submit this Plea Agreement ("Agreement"), pursuant to Rule 62 *bis* of the Rules of Procedure and Evidence ("the Rules").
2. The purpose of this Agreement is to set forth in its entirety the understanding of the parties as to the nature and consequences of Mr. Cesic's guilty plea, and to assist the parties and the Trial Chamber in ensuring that the plea is voluntary, informed, and unequivocal, and that there is a sufficient factual basis to support it, according to the Rules set forth by this Tribunal. The terms of the Agreement are as follows:

Summary of Intended Pleas

3. Ranko Cesic agrees to plead guilty to all twelve counts of the Third Amended Indictment, that is: to six counts of Crimes Against Humanity, five of which (Counts 2,4, 6, 10 and 12) charge Murder, as recognised by Article 5(a) of the Statute of the Tribunal, ("the Statute"), and one of which (Count 8) charges Sexual Assault, as recognised by Article 5(g) of the Statute; and to six counts of Violation of the Laws or Customs of War, five of which (Counts 1,3, 5, 9, and 11) charge Murder, as recognised by Article 3 of the Statute and Article 3(1)(a) of the Geneva Conventions; and one of which (Count 7) charges Sexual Assault, (Humiliating and Degrading Treatment), as recognised by Article 3 of the Statute and Article 3(1)(c) of the Geneva Conventions.

Nature of the Charges and Factual Basis

4. Crimes Against Humanity, (Murder, as charged in Counts 2, 4, 6, 10, and 12), require proof that (a) the conduct of the Accused caused the death of one or more persons; (b) the Accused intended to kill or to inflict serious injury in reckless disregard of human life; (c) the conduct occurred within the context of an armed conflict and was part of a widespread or systematic attack directed against a civilian population; and (d) the Accused had knowledge of the wider context in which his conduct occurred.

5. Crimes Against Humanity, (Sexual Assault, as charged in Count 8), requires proof that: (a) the Accused caused the victim(s) to be sexually penetrated without their consent; (b) the Accused intended that a sexual penetration occur; (c) the Accused knew that the act was without the consent of the victim(s); (d) the conduct occurred within the context of an armed conflict and was part of a widespread or systematic attack directed against a civilian population; and (e) the Accused had knowledge of the wider context in which his conduct occurred.
6. Violations of the Laws or Customs of War, (Murder, as charged in Counts 1, 3, 5, 9 and 11), require proof that: (a) the conduct of the Accused caused the death of one or more persons; (b) the Accused intended to kill or to inflict serious injury in reckless disregard of human life; (c) the conduct occurred within the context of an armed conflict; (d) there was a nexus between the murder and the armed conflict; and (e) the victim(s) were not actively taking part in hostilities at the time of the killing.
7. Violation of the Laws or Customs of War, (Humiliating and Degrading Treatment, Sexual Assault as charged in Count 7), requires proof that: (a) the Accused intentionally engaged in conduct generally considered to cause serious humiliation or degradation to a victim; (b) the conduct was deliberate and not accidental and the Accused knew the conduct would cause humiliation or degradation; (c) the conduct occurred within the context of an armed conflict; (d) there was a nexus between the Accused's conduct and the armed conflict; and (e) the victims were not taking active part in hostilities at the time.
8. The following is understood and agreed by Ranko Cestic and the OTP:
 - i. At all times relevant to the Third Amended Indictment, a state of armed conflict existed in the Republic of Bosnia and Herzegovina and the Accused was aware of that fact;
 - ii. At all relevant times, Ranko Cestic was required to abide by the laws and customs governing the conduct of war, including the Geneva Conventions of 1949; and
 - iii. All acts and omissions charged as crimes against humanity in the Third Amended Indictment were part of a widespread or systematic attack directed against the Muslim and Croat civilian population of Brcko.

9. The factual basis for the Accused's guilty pleas is attached as "Annex A" and incorporated herein by reference. Ranko Cestic has reviewed the factual basis with his attorney. Ranko Cestic adopts the factual basis and agrees that he is pleading guilty to all twelve (12) counts contained in the Third Amended Indictment because he is in fact guilty and acknowledges full responsibility for his actions that are described therein.

Consideration for Ranko Cestic's Plea and Co-operation

10. This Agreement is based upon Ranko Cestic's agreement to co-operate with the Office of the Prosecutor. That co-operation includes giving a full and complete interview to the OTP concerning his knowledge of war crimes and other violations of international humanitarian law in and around Brcko during the armed conflict in Bosnia and Herzegovina. He further agrees to be candid and truthful and to freely answer all questions put to him by members of the OTP concerning those matters. He also agrees to testify in future proceedings before the Tribunal if called upon by the OTP to do so.
11. In exchange for Ranko Cestic's plea of guilty to Counts 1 through 12, and for his substantial co-operation, the Office of the Prosecutor will recommend to the Trial Chamber that it impose a sentence within the range of thirteen (13) to eighteen (18) years.

Maximum Possible Penalty and Sentencing

12. Ranko Cestic understands that, pursuant to Rule 101 of the Rules, if convicted at trial of any one of the charged counts, he could face a sentence of a term of imprisonment up to and including the remainder of his life.
13. Ranko Cestic understands that pursuant to Rule 62 *ter* (B) the Prosecution's recommendation of a particular sentence is not binding on the Trial Chamber and that the Trial Chamber is free to sentence the Accused to any term it deems appropriate.
14. Ranko Cestic agrees that he will not appeal the sentence imposed by the Trial Chamber unless the sentence imposed is above the range recommended by the Prosecution. The Prosecutor agrees that the OTP will not appeal any sentence imposed within the recommended range of thirteen (13) to eighteen (18) years.
15. Ranko Cestic agrees that he will not move to withdraw his guilty plea.
16. Ranko Cestic understands that, pursuant to Article 24 of the Statute and Rule 101 of the Rules, the factors that the Trial Chamber shall take into account in determining the appropriate sentence include the following: the gravity of the offence, the individual circumstances of the convicted person, any aggravating circumstances, any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction, the general practice regarding prison sentences in the courts of the former Yugoslavia, and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.
17. Pursuant to Rule 101, the accused will be given credit against the sentence imposed for all time served in custody pending his surrender to the Tribunal and pending trial in this matter.

Waiver of Rights

18. By pleading guilty, Ranko Cestic understands he will be giving up the following rights:
 - a. the right to plead not guilty and require the Prosecution to prove the charges in the Indictment beyond a reasonable doubt at a public trial;
 - b. the right to prepare and put forward a defence to the charges at such public trial;
 - c. the right to be tried without undue delay;
 - d. the right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing at trial;
 - e. the right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at a trial under the same conditions as witnesses against him;
 - f. the right not to be compelled to testify against himself or to confess guilt; and
 - g. the right to testify or remain silent at trial.
19. It is understood that by pleading guilty the Accused does not waive his right to be represented by Counsel at all stages of the proceedings.

Voluntariness of the Plea

20. Ranko Cestic acknowledges that he has entered this Agreement freely and voluntarily, that no threats were made to induce him to enter this guilty plea, and that the only promises made to him are those set forth in this Agreement.

Other Agreements

21. Except as expressly set forth herein, there are no additional promises, understandings or agreements between the Office of the Prosecutor and Ranko Cestic or his Counsel.

Declaration of Ranko Cestic

22. I, Ranko Cestic, have read this Plea Agreement in a language which I understand and have carefully reviewed every part of it with my Counsel, Mihajlo Bakrac. Mr. Bakrac has advised me of my rights, or possible defences, and of the consequences of entering into this Agreement. No other promises or inducements have been made to me, other than those contained in this Agreement. Furthermore, no one has threatened me or forced me in any way to enter into this Agreement. I have entered into this Agreement freely and voluntarily, and am of sound mind. I understand the terms of this Agreement, and I voluntarily agree to each of those terms.

Ranko Cestic

Date

Declaration of Counsel

23. I, Mihajlo Bakrac, am Ranko Cestic's Counsel. I have carefully reviewed every part of this Agreement with my client. Further, I have fully advised my client of his rights, and possible defences, of the maximum possible sentence and the consequences of entering into this Agreement. To my knowledge, my client is of sound mind and his decision to enter into this Agreement is an informed and voluntary one.

Mihajlo Bakrac
Counsel for Ranko Cestic

Date

On this ____ day of October 2003 the undersigned parties fully agree to each and every term and condition of this Agreement:

Ranko Cestic

Carla Del Ponte
Prosecutor

Mihajlo Bakrac
Counsel for Ranko Cestic

Mark Harmon
Senior Trial Attorney

Vladimir Tochilovsky
Trial Attorney

Thomas Hannis
Trial Attorney