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TRIAL CHAMBER
CHAMBRE DE 1^{ère} INSTANCE

The Hague, 27 February 2003

CC/ P.I.S./ 734e

THE PROSECUTOR V. BILJANA PLAVŠIĆ:

TRIAL CHAMBER SENTENCES THE ACCUSED TO 11 YEARS' IMPRISONMENT AND SAYS THAT "NO SENTENCE CAN FULLY REFLECT THE HORROR OF WHAT OCCURRED OR THE TERRIBLE IMPACT ON THOUSANDS OF VICTIMS"

- *Bijlana Plavšić participated in "a crime of the utmost gravity, involving a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality"*
- *"Her guilty plea (together with remorse and reconciliation), voluntary surrender, post-conflict conduct and age are substantial mitigating circumstances"*
- *Her guilty plea and her acknowledgement of responsibility "should promote reconciliation in Bosnia and Herzegovina and the region as a whole".*

Please find below the text of the summary of the Sentencing Judgement rendered on Thursday 27 February 2003 by Trial Chamber III, consisting of Judge May (presiding), Judge Robinson and Judge Kwon. This text was read out by the Presiding Judge. It does not form part of the Judgement.

1. INTRODUCTION

At a Hearing on 2 October 2002 the accused pleaded guilty to Count 3 of the Indictment, persecutions, a crime against humanity. The accused's plea was entered pursuant to a Plea Agreement made between the parties. In the Agreement the Prosecutor agreed to move to dismiss the remaining counts of the Indictment following the accused's plea of guilty and they were subsequently dismissed. A written Factual Basis for the crime and Mrs. Plavšić's participation in it was filed with the Plea Agreement.

A Sentencing Hearing was held between 16 – 18 December 2002. At the end of the hearing the Trial Chamber adjourned the case to consider sentence.

2. THE FACTS

The facts were as follows. Count 3, to which the accused has pleaded guilty, alleges that between 1 July 1991 and 30 December 1992 the accused, acting individually and in concert with others in a joint criminal enterprise, planned, instigated, ordered and aided and abetted persecutions of the Bosnian Muslim, Bosnian Croat and other non-Serb populations of 37 municipalities in Bosnia and Herzegovina.

Mrs. Plavšić is now aged 72 years, having been born on 7 July 1930 in Tuzla, Bosnia and Herzegovina. She had a distinguished academic career as a Professor of Natural Sciences and Dean of

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Faculty in the University of Sarajevo. She was not involved in politics until she joined the Serbian Democratic Party in July 1990. However, she very soon rose to become a prominent member of the party and she was elected as a Serbian Representative to the Presidency of the Socialist Republic of Bosnia and Herzegovina on 11 November 1990 until December 1992. The accused was also active in the Presidency of the Serbian Republic of Bosnia and Herzegovina, and then became a member of the collective and expanded Presidencies of Republika Srpska.

In commenting on the individual roles of the participants in this offence, the Factual Basis states that numerous individuals participated in devising and executing the persecutions. There were differences both as to their knowledge of the details and their participation in the execution of the objective. For her part, Mrs. Plavšić embraced and supported the objective and contributed to achieving it, but she did not participate in its conception and planning and had a lesser role in its execution than others.

The accused supported the objective in various different ways, by:

- serving as co-President, thereby supporting and maintaining the government and military at local and national levels through which the objective was implemented;
- encouraging participation by making public pronouncements that force was justified because certain territories within Bosnia and Herzegovina were Serbian by right and Serbs should fear genocide being committed against them by Bosnian Muslims and Bosnian Croats; and
- inviting and encouraging paramilitaries from Serbia to assist Bosnian Serb forces in effecting ethnic separation by force.

The Bosnian Serb forces, collaborating with the JNA, the MUP of Serbia and paramilitary units to implement the objective of ethnic separation by force, committed the persecutions in a campaign that included:

- killings during attacks on towns and villages;
- cruel and inhumane treatment during and after the attacks;
- forced transfer and deportation; unlawful detention and killing, forced labour and use of human shields;
- cruel and inhumane treatment and inhumane conditions in detention facilities;
- destruction of cultural and sacred objects; and
- plunder and wanton destruction.

The Bosnian Serb leadership, including Mrs. Plavšić, ignored the allegations of crimes committed by their forces: Mrs. Plavšić disregarded reports of widespread ethnic cleansing and publicly rationalised and justified it. She was aware that the key leaders of the Serbian Republic of Bosnia and Herzegovina ignored these crimes despite the power to prevent and punish them.

3. SENTENCING FACTORS

a) Gravity of the Crime

The Trial Chamber first considers the gravity of the offence, bearing in mind that this requires a consideration of the particular circumstances of the case, as well as the form and the degree of the participation of the accused in the crime.

The Prosecution submitted that the scale of the campaign, in which the accused participated, was massive and over a vast area, with hundreds and thousands expelled and many killed: the campaign was conducted with particular brutality and cruelty including torture and sexual violence.

The Trial Chamber accepts that this is a crime of utmost gravity, involving as it does a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality. The gravity is illustrated by:

- the massive scope and extent of the persecutions;
- the numbers killed, deported and forcibly expelled;
- the grossly inhumane treatment of detainees; and
- the scope of the wanton destruction of property and religious buildings.

b) Aggravating factors

Dealing next with any aggravating factors, the Prosecution identifies three:

- (i) the leadership position of the accused;
- (ii) the vulnerability of the victims; and
- (iii) the depravity of the crimes to which the victims were subjected.

The Trial Chamber accepts that the superior position of the accused is an aggravating factor in the case. The accused was not in the very first rank of the leadership: others occupied that position. She did not conceive the plan which led to this crime and had a lesser role in its execution than others. Nonetheless, Mrs. Plavšić was in the Presidency, the highest civilian body, during the campaign and encouraged and supported it by her participation in the Presidency and her pronouncements.

While the Trial Chamber accepts that the other factors identified by the Prosecutor are capable of amounting to aggravating factors, it considers that in the circumstances of this case, these factors are essentially subsumed in the overall gravity of the offence. Accordingly, the Trial Chamber will not treat them as aggravating factors separately.

The Prosecution submitted that the leadership role in such a campaign is clearly the sort of crime where a sentence of life imprisonment is fitting and at the Sentencing Hearing the Prosecutor said that, in the absence of a guilty plea, a sentence of imprisonment for the remainder of the life of an accused would have been appropriate.

The Trial Chamber, therefore, has to determine an appropriate sentence for an accused who was in the high leadership position described; and was involved in crimes of the utmost gravity. The Trial Chamber is unable to accept the submission of the Prosecution that the severest sentence which this International Tribunal is capable of passing would be appropriate in the absence of a plea of guilty. On the other hand, the Trial Chamber does accept that misplaced leniency would not be fitting and that a substantial sentence of imprisonment is called for.

c) Mitigating circumstances

Turning next to the mitigating circumstances, there is in this case substantial mitigation. Indeed, the Prosecution acknowledges that Mrs. Plavšić has undertaken unprecedented steps to mitigate the crime against humanity for which she is responsible. The parties submitted that the relevant mitigating circumstances include:

- entry of a guilty plea and acceptance of responsibility;
- remorse;
- voluntary surrender;
- post-conflict conduct;
- previous good character; and
- age.

It has not been disputed that these circumstances together with reconciliation are the relevant mitigating circumstances for the Trial Chamber to consider. Before considering them, it is necessary to consider the law as it applies to mitigating circumstances.

An accused's substantial co-operation with the Prosecutor is the only mitigating circumstance that is expressly mentioned in the Rules. The determination as to whether an accused's co-operation has been substantial depends on the extent and quality of the information he or she provides. However, in the present case the Prosecution asserted that there has been no such co-operation. On the other hand, the Defence submitted that the accused has provided substantial co-operation by her plea of guilty.

As noted, co-operation with the Prosecutor is a mitigating circumstance, but it does not follow that failure to do so is an aggravating circumstance. Therefore, the accused's unwillingness to give evidence is not a factor to be taken into account in determining sentence.

A Trial Chamber has the discretion to consider any other factors which it considers to be of mitigating nature.

Dealing, first, with the guilty plea, remorse and reconciliation. The accused entered a guilty plea before the commencement of trial, and this is to be regarded as a circumstance in mitigation of sentence.

The Trial Chamber accepts the statement by the accused during the Sentencing Hearing, together with expressions in her earlier statement in support of the motion to change her plea, as an expression of remorse to be considered as part of the mitigating circumstances connected with a guilty plea. Indeed, it may be argued that by her guilty plea, Mrs. Plavšić had already demonstrated remorse.

This, together with the substantial saving of international time and resources as a result of a plea of guilty before trial, entitle the accused to a discount in the sentence which would otherwise have been appropriate. However, there is a further and significant circumstance to be considered, namely the role of the guilty plea of the accused in establishing the truth in relation to the crimes and furthering reconciliation in the former Yugoslavia.

This theme was first sounded in Mrs. Plavšić's statement in support of her change of plea in which she referred to the need for acknowledgement of the crimes committed during the war in Bosnia and Herzegovina as a necessary step towards peace and reconciliation and her hope that her acceptance of responsibility would enable her people to reconcile with their neighbours. She concluded the statement: To achieve any reconciliation or lasting peace in Bosnia and Herzegovina, "serious violations of humanitarian law during the war must be acknowledged by those who bear responsibility – regardless of their ethnic group. This acknowledgement is an essential first step."

The Trial Chamber accepts that acknowledgement and full disclosure of serious crimes are very important when establishing the truth in relation to such crimes. This, together with acceptance of responsibility for the committed wrongs, will promote reconciliation. In this respect, the Trial Chamber concludes that the guilty plea of Mrs. Plavšić and her acknowledgement of responsibility, particularly in the light of her former position, should promote reconciliation in Bosnia and Herzegovina and the region as a whole.

The Trial Chamber accordingly gives significant weight to the plea of guilty by the accused, as well as her accompanying expressed remorse and the positive impact on the reconciliation.

Next, the Trial Chamber accepts that the voluntary surrender of the accused is a mitigating circumstance for the purpose of sentence.

Turning to the accused's conduct after the conflict. The Prosecution accepted that Mrs. Biljana Plavšić, as President of Republika Srpska, demonstrated considerable support for the Dayton Agreement after the cessation of hostilities in Bosnia and Herzegovina. It also accepted that in that position, the accused also attempted to remove obstructive officials from office, and contributed significantly to the advancement of the Dayton peace process under difficult circumstances in which she manifested courage.

Testimony about the accused's post-conflict conduct was given at the Sentencing Hearing. Thus, Dr. Madeleine Albright described the accused as the vehicle in Republika Srpska for making sure that the Dayton Agreement was carried out: "she stood up for that at times when it was very difficult, when there were those who wanted to destroy the Dayton Accords".

Mr. Robert Frowick said that he thought of the accused as "attacking corruption, injustice and becoming the champion within Republika Srpska of a struggle against criminality".

Likewise, Carl Bildt described the accused as courageous in supporting the peace implementation, a firm supporter of constitutional rule, who "took great personal risk with that".

The fact that these witnesses, all of high international reputation, came forward and gave such evidence adds much weight to the plea in mitigation put forward in this regard. The Trial Chamber is satisfied that Mrs. Plavšić was instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska. As such, she made a considerable contribution to peace in the region and is entitled to pray it in aid in mitigation of sentence. The Trial Chamber gives it significant weight.

Dealing, next, with the age of the accused. The Trial Chamber rejects the Defence's contention that any sentence in excess of 8.2 years is tantamount to life imprisonment and would constitute inhumane or degrading punishment. Neither in the Statute nor in international human rights law is there any prohibition against the imposition of a sentence (including a life sentence) on an offender of advanced age. The European Court on Human Rights has held that in certain circumstances the detention of an elderly person over a lengthy period may raise the issue of the prohibition against inhumane and degrading treatment. Any such treatment must attain a minimum level of severity to fall within the scope of Article 3 of the European Convention on Human Rights. However, regard is to be had to the particular circumstances of each specific case. In the instant case, the Trial Chamber can find no such relevant circumstances: the medical report submitted by the accused does not indicate that she is suffering from any condition which would prevent the imposition of a prison sentence.

The Trial Chamber is not persuaded by the Defence submission that a calculation of the accused's life expectancy is a crucial factor in determining sentence. However, the Trial Chamber considers that it should take account of the age of the accused and does so for two reasons: First, physical deterioration associated with advanced years makes serving the same sentence harder for an older than a younger accused. Second, an offender of advanced years may have little worthwhile life left upon release.

The Trial Chamber prefers to determine an appropriate sentence corresponding to the gravity of the offence, taking into account the age and the circumstances of the accused. For these reasons, the Trial Chamber considers as a mitigating factor the advanced age of the accused and in doing so, it takes into account the medical report filed on her behalf.

Consequently, the Trial Chamber finds that the following are the relevant, substantial, mitigating circumstances in this case:

- Guilty plea (together with remorse and reconciliation);
- Voluntary surrender;
- Post-conflict conduct; and
- Age

To each of these circumstances the Trial Chamber attaches weight. In particular, the Trial Chamber attaches great weight to Mrs. Plavšić's guilty plea and post-conflict conduct. Together, these circumstances make a formidable body of mitigation.

4. CONCLUSIONS

During the closing arguments the Prosecution submitted that the Trial Chamber's task was to determine a sentence which addresses the conduct of the accused, not only towards the immediate victims but also towards the whole of mankind, in a campaign of persecution which destroyed countless lives and communities.

While accepting that the breadth of these crimes justifies the submission made by the Prosecution, the Trial Chamber also has in mind that these crimes did not happen to a nameless group but to individual men, women and children who were mistreated, raped, tortured and killed. This consideration and the fact that this appalling conduct was repeated so frequently, calls for a substantial sentence of imprisonment. The Trial Chamber has already found this to be a crime of the utmost gravity. That is the starting point for determination of sentence.

Furthermore, the seriousness of the offence is aggravated, as the Trial Chamber finds, by the senior leadership position of the accused. Instead of generally preventing or mitigating the crimes, she encouraged and supported those responsible. Any sentence must reflect this factor.

The Prosecution submits that an appropriate sentence in this case is a term of imprisonment of not less than 15 years and not more than 25 years.

The Trial Chamber considers that the Prosecution in its submissions as to sentence has given insufficient weight to the age of the accused and the significant mitigating factors connected with her plea of guilty and post-conflict conduct.

The Defence, on the other hand, has made no recommendation as to an appropriate sentence, submitting that since the life expectancy of the accused is eight years any sentence beyond that would amount to life imprisonment and would be inappropriate. The Trial Chamber has already held that the reference to life expectancy is irrelevant. It also considers that a sentence of eight years imprisonment would fail to meet the gravity of this offence.

The Trial Chamber has to pass sentence on a 72-year-old former President for her participation in a crime of the utmost gravity. On the other hand, as the Trial Chamber has found, there are very significant mitigating circumstances, in particular the guilty plea and the post-conflict conduct. Nonetheless, undue leniency would be misplaced. No sentence which the Trial Chamber passes can fully reflect the horror of what occurred or the terrible impact on thousands of victims.

Biljana Plavšić,

having given due weight to the factors set out, the Trial Chamber sentences you to a period of 11 years' imprisonment.

You have been detained in the United Nations Detention Unit for a total of 245 days to date. You are entitled to credit for this period of time served.

The full text of the Judgement is available (in English) on the Tribunal's Internet site.