

THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

IN TRIAL CHAMBER III

Before:

Judge Richard May, Presiding
Judge Patrick Lipton Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Date Filed: 2 June 2003

THE PROSECUTOR

v.

ZELJKO MEAKIC

MOMCILO GRUBAN

DUSAN FUSTAR

PREDRAG BANOVIC

DUSKO KNEZEVIC

PLEA AGREEMENT

Confidential

And

Filed Under Seal

(Ex parte to all accused, except the Accused, Predrag Banovic)

The Office of the Prosecutor:

Ms. Carla Del Ponte
Miss Joanna Korner
Ms. Sureta Chana

Counsel for the Accused:

Mr Jovan Babic
Mr. Thomas Rothpfeffer

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PLEA AGREEMENT

I. Introduction

1. This document constitutes the plea agreement (hereinafter "Agreement") between the Accused Predrag Banovic, through his lead counsel Jovan Babic, and Carla Del Ponte the Prosecutor, and Joanna Korner Senior Trial Attorney, both acting on behalf of the Office of the Prosecutor. The purpose of this Agreement is to set forth in its entirety the understanding of the parties as to the nature of the Agreement, the possible consequences of Mr. Banovic's plea of guilty, and to assist the Trial Chamber in ensuring, pursuant to Rule 62 *bis* of the Rules of Procedure and Evidence (hereinafter "Rules" or "Rule"), that the plea is voluntary and informed and to set forth the factual basis for the crime and the Accused's participation in it.

2. The terms of the Agreement are as follows:

II. Plea

3. Predrag Banovic agrees that he will plead guilty to the crime of Persecution, a violation of Article 5(h) of the Statute of the Tribunal (hereinafter "Statute"), based on political, racial or religious grounds, as described in Count 1 of the "Consolidated Indictment (Omarska and Keraterm Camps)", in Case No. IT-

02-65-PT (hereinafter the "Consolidated Indictment").

4. Predrag Banovic is unequivocally pleading guilty to Count 1 of the Consolidated Indictment. He affirms that he understands the nature and extent of his plea. He acknowledges full responsibility for his actions (both individually and in furtherance of the joint criminal enterprise) as set out in Schedule D of the Consolidated Indictment (save as is agreed in paragraph 14 below) and identified in the factual basis attached to this Agreement, Annex 1.

5. Predrag Banovic's guilty plea encompasses killings, beatings and inhumane conditions, including humiliation, harassment and psychological abuse, suffered by Bosnian Muslims, Bosnian Croats and other non-Serbs at "Keraterm camp", during the course of their confinement therein. Predrag Banovic's guilty plea to Count 1 in the Consolidated Indictment, as set out above, is in satisfaction of all criminal responsibility alleged against him in the Consolidated Indictment.

6. Predrag Banovic acknowledges that he has entered this Agreement freely and voluntarily, without threat or inducement so to do.

III. Nature of the Offences

7. Predrag Banovic understands that the Prosecution has to prove each of the following elements beyond a reasonable doubt for him to be found guilty of Count 1 of the Consolidated Indictment:

- (a) That at the material times and places, there existed an armed conflict;
- (b) That at the material times and places, there existed a widespread or systematic attack directed against a civilian population;
- (c) That the Accused's conduct was related to the widespread or systematic attack directed against a civilian population;
- (d) That the Accused had knowledge of the wider context in which his conduct occurred;
- (e) That the Accused committed acts or omissions against a victim or victim population violating a basic or fundamental right;
- (f) That the Accused intended to commit the violation;
- (g) That the Accused's conduct was committed on political, racial, or religious grounds; and,
- (h) That the Accused's conduct was committed with discriminatory or persecutory intent.

IV. Penalty

8. The Prosecution and Predrag Banovic acknowledge that sentencing is a matter solely for the Trial Chamber. Predrag Banovic understands that the maximum sentence which could be imposed by the Trial Chamber for a guilty plea to Count 1 of the Consolidated Indictment is a term of imprisonment up to and including the remainder of the convicted person's life as described in Rule 101(A) of the Rules.

9. In respect of the sentence to be imposed, the Prosecution and Predrag Banovic agree that the Prosecutor will recommend to the Trial Chamber that it impose a sentence of eight years. Predrag Banovic understands that this recommendation cannot bind the Trial Chamber and that the Trial Chamber is free to sentence him within its discretion.

10. Predrag Banovic understands that in determining sentence, the Trial Chamber shall, pursuant to Article 24 of the Statute, and Rule 101 of the Rules, take into consideration such factors as the gravity of the

offence and the individual circumstances of the convicted person. In addition, the Trial Chamber shall take account of such factors as 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.

V. Factual Basis

11. Annex 1 sets out the factual basis establishing the crimes described in Count 1 of the Consolidated Indictment and Predrag Banovic's participation in them. Predrag Banovic has reviewed with his lead counsel, Mr. Babic, the factual basis and unequivocally agrees with the assertions set forth therein.

VI. Confidential Annex 2

12. *Confidential Annex 2* to this agreement forms an integral part of this Agreement.

VII. Withdrawal of Scheduled Incidents

13. Following Predrag Banovic's plea of guilty and conviction on Count 1 of the Consolidated Indictment, the Prosecution shall move to withdraw, with prejudice, the remaining Counts 2 – 5 of the Consolidated Indictment and the remaining incidents in Schedule D not set out in Annex 1 and criminal responsibility alleged in Schedules C and F.

14. No other promises or representations have been made by the Office of the Prosecutor to induce Predrag Banovic to enter into this Agreement.

VIII. Waiver of Rights

15. By pleading guilty, Predrag Banovic understands that 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 Consolidated Indictment beyond a reasonable doubt at a fair and impartial 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;
- (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, and,
- (f) The right not to be compelled to testify against himself or to confess guilt.

It is understood by Predrag Banovic and the Prosecution that by pleading guilty, he does not waive his right to be represented by counsel at all stages of the proceedings until their conclusion.

IX. Declaration of Predrag Banovic

16. I, Predrag Banovic, have had this Agreement and Annexes 1 and 2 read to me in their entirety by a certified Serbian language speaking interpreter, which sets forth in its entirety the understanding of the parties, and have carefully reviewed every part of it with my lead counsel, Jovan Babic. My counsel, Mr. Babic, has advised me of the following:

- (a) my rights under international law;
- (b) the elements of the offences to which I am pleading guilty;
- (c) the possible defences that I could raise in respect of the charges; and,
- (d) the maximum sentence which I may receive by pleading guilty to Count 1 of the Consolidated Indictment and the consequences of entering into this Agreement.

17. No 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 and 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 the terms.

Dated this second day of June 2003.

Predrag Banovic

X. Declaration of Counsel

18. I, Jovan Babic, am lead counsel for Predrag Banovic. I have carefully reviewed every part of this Agreement and Annexes 1 and 2 with my client. Further, I have fully advised my client of the following:

- (a) his rights under international law;
- (b) the elements of the offences to which he is pleading guilty;
- (c) the possible defences he could raise in respect of the charges; and,
- (d) the maximum sentence he could receive by pleading guilty to Count 1 of the Consolidated Indictment and the consequences of entering into this Agreement.

19. To my knowledge, my client is of sound mind and his decision is an informed and voluntary one.

Dated this second day of June 2003

Jovan Babic

XI. Other Agreements

20. Except as expressly set forth in this Agreement, there are no additional promises, understanding or agreements between the Office of the Prosecutor and Predrag Banovic or his lead counsel, Jovan Babic.

Predrag Banovic

Carla Del Ponte
Prosecutor

Jovan Babic

Joanna Korner
Senior Trial Attorney

Lead counsel for Predrag Banovic

Dated: _____ Dated: _____

In The Hague

The Netherlands