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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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APPEALS CHAMBER

The Hague, 4 April 2007

SUMMARY OF SENTENCING JUDGEMENT FOR DRAGAN ZELENović

Please find below the summary of the judgement today read out by Judge Moloto:

This Trial Chamber is sitting today to deliver its Sentencing Judgement in the case of the Prosecution versus Dragan Zelenović.

For the purposes of this hearing, the Trial Chamber will summarize briefly its findings. We emphasize that this is a summary only, and that the authoritative account of the Trial Chamber's findings is to be found in the written Sentencing Judgement, which will be made available at the end of this session.

Mr. Zelenović was charged with seven counts of torture and rape as crimes against humanity and seven counts of torture and rape as violations of the laws or customs of war. He is charged as individually responsible pursuant to Article 7(1) of the Statute. The crimes charged took place in Foča municipality, in Bosnia-Herzegovina, from July to October 1992.

Some years after an indictment against Mr. Zelenović had been issued by this Tribunal, Mr. Zelenović left his home and travelled to Russia under a false name in order to avoid detection and arrest. He was arrested by Russian authorities on 22 August 2005 and on 8 June 2006, he was transferred to Bosnia-Herzegovina. From there, he was transferred to the Tribunal and detained at the UNDU. The Referral Bench was at this time already seized of a Prosecution motion pursuant to Rule 11 *bis* to transfer the case of Mr. Zelenović to Bosnia-Herzegovina for trial there. However, on 14 December 2006, the Prosecution and the Defence in this case filed a joint motion for consideration of a plea agreement between Mr. Zelenović and the Office of the Prosecutor, according to which Mr. Zelenović agreed to plead guilty to three counts of torture and four counts of rape as crimes against humanity. During a hearing before this Trial Chamber on 17 January 2007, Mr. Zelenović pleaded guilty to the mentioned seven counts of crimes against humanity. At that same hearing, the Trial Chamber accepted the guilty pleas and found Mr. Zelenović guilty accordingly.

The facts underlying the guilty plea are set out in a Factual Statement attached to the Plea Agreement. The Trial Chamber will now summarize these facts.

Dragan Zelenović was born on 12 February 1961 in Foča, eastern Bosnia-Herzegovina. During the indictment period, Mr. Zelenović was a soldier and, *de facto*, a military policeman in the Bosnian-Serb Territorial Defence, and from the summer 1992 onwards in the Bosnian-Serb army.

The political and military take-over of Foča municipality started with Serb forces shelling the town of Foča, with heavy artillery, in the beginning of April 1992. This attack was part of an armed conflict in Bosnia-Herzegovina between forces of the government of Bosnia-Herzegovina and Serb forces. The attacks on Foča and the surrounding villages, most of which were undefended and had no military targets, lasted until mid-July 1992.

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During and after the take-over of Foča town and its surrounding villages and municipalities, Muslim and other non-Serb inhabitants were subjected to a widespread and systematic pattern of abuses, designed to remove the majority of them from the municipality. Muslim and other non-Serb inhabitants were methodically rounded up, beaten, and sometimes killed. Men and women were separated and transported to various detention facilities where they were subjected to humiliating and degrading treatment. After extended periods of detention, the detainees were deported or forcibly transferred to Montenegro or locations controlled by the government of Bosnia-Herzegovina. As a consequence of the attack on the civilian population of Foča and its surrounding municipalities, Muslim civilians were to a very large extent expelled from the region.

Mr. Zelenović was involved in the attack on Foča town and its surrounding villages and the subsequent arrest of civilians, between mid-April and mid-July 1992. The parties agree that an armed conflict existed in Bosnia-Herzegovina at all times relevant to the Indictment. Furthermore, the parties agree that Mr. Zelenović's criminal acts and omissions were part of a widespread or systematic attack against the civilian population, especially the Muslim population of Foča municipality. Finally, the parties agree that Mr. Zelenović was aware of the existence of the armed conflict and of the widespread and systematic attack on the non-Serb, primarily Muslim, civilian population and of the fact that his conduct occurred within and contributed to that attack.

The crimes to which Mr. Zelenović has pleaded guilty took place in several different detention centres in Foča municipality where Muslim women and girls were held.

On 3 July 1992, Mr. Zelenović, along with other men, arrested a group of about 60 Muslim women, children and elderly men from a village in Foča municipality and took them to a temporary detention facility called Buk Bijela. At the detention centre, Mr. Zelenović and other men separated the women from the children. They started to interrogate the women and in the course of these interrogations the women were threatened with sexual assault and murder.

During one of the first days of detention, Mr. Zelenović and another man interrogated Witness 75 about her village and whether the villagers had weapons. Witness 75 was warned by the other man that she would be raped by soldiers, and killed afterwards, if she did not answer truthfully. When Mr. Zelenović and the other interrogator found that the victim did not answer their questions adequately, she was taken by a soldier to another room where ten soldiers raped her in turn. Mr. Zelenović knew that his action in respect of the interrogation and his failure to act with regard to the threats of rape and death against Witness 75 substantially assisted in the commission of this crime against her.

Around the same time in July 1992, Mr. Zelenović and three unidentified soldiers interrogated Witness 87, a 15-year-old Muslim girl, in a room at Buk Bijela. During the interrogation, Mr. Zelenović and the three soldiers accused the girl of not telling the truth and raped her. During the rape one of the soldiers threatened the victim by putting a gun to her head.

Within ten days of being detained at Buk Bijela, the group of women, children and elderly were transferred and detained together with other persons in two classrooms at Foča high school. On one occasion, Mr. Zelenović, together with other men, selected four women and girls from the classrooms, among them Witness 75 and Witness 87. Mr. Zelenović led them to another classroom where soldiers were waiting. He then decided which woman should go with which soldier. Mr. Zelenović raped Witness 75, while the other soldiers raped the other women and girls.

Between 8 and 13 July 1992, Witness 75 and Witness 87 were taken from Foča high school to various locations on three separate occasions. On the first, the women were taken to an apartment owned by Mr. Zelenović. There, he and three other men raped Witness 75. Mr. Zelenović also raped Witness 87 on that occasion. On the second occasion, the women

were taken to another apartment, where Mr. Zelenović again raped them. On the third occasion, Mr. Zelenović took the women to an abandoned house in Gornje Polje where he raped Witness 87.

On 13 July 1992, the detainees at Foča high school were transferred to Partizan Sports Hall where they were detained for one month, after which most detainees were deported to Montenegro. The detainees were all Muslim civilians from villages in Foča municipality. Living conditions at Partizan Sports Hall were brutal and the detention was characterized by inhumane treatment, starvation, and physical and psychological torture, including sexual assaults.

On one occasion in July 1992, Mr. Zelenović and other men took Witness 87 away from Partizan Sports Hall and raped her. On another occasion, in August, Witness 87 and Witness 75 were taken from Partizan Sports Hall and detained in a house known as Karaman's house. From there, at the end of October the same year, Mr. Zelenović and two co-perpetrators took Witness 87, Witness 75 and two other women to an apartment in Foča. There, Mr. Zelenović raped Witness 87 while the co-perpetrators raped the other women.

Mr. Zelenović pleaded guilty to all the incidents of torture and rape mentioned.

We now come to the sentencing considerations.

The Prosecution has recommended that Mr Zelenović be sentenced to imprisonment within the range of 10 to 15 years while the Defence has recommended a term within the range of 7 to 10 years.

In determining the appropriate sentence, the Chamber has assessed the gravity of Mr Zelenović's crimes, including the nature of the crimes of torture and rape as crimes against humanity, the particular circumstances of the case, and the form and degree of participation of Mr. Zelenović. The crimes to which Mr. Zelenović has pleaded guilty were part of a pattern of sexual assaults that took place over a period of several months, and in many different locations, and involved multiple victims. Mr. Zelenović took direct part in the sexual abuse of victims in a number of detention facilities, including multiple rapes of witness 75 and witness 87.

Mr. Zelenović has been found guilty of personally committing nine rapes, eight of which were qualified as both torture and rape. He has also been found guilty of two instances of rape through co-perpetratorship, one of which was qualified as both torture and rape, and one instance of torture and rape through aiding and abetting. Four of the rapes he took part in were gang rapes, together with three or more other perpetrators. In one of those instances he participated as aider and abettor in the gang rape of Witness 75 by at least ten soldiers, which was so violent that the victim lost consciousness. He participated as co-perpetrator in an incident during which the victim was threatened with a gun to her head while being sexually abused. The Trial Chamber finds that the scale of the crimes committed was large and that Mr. Zelenović's participation in the crimes was substantial.

The victims in this case were in a particularly vulnerable situation at the time of the commission of the crime. They were unarmed and defenceless, and detained under brutal conditions for long periods of time. In addition, witness 87, who was raped by Mr. Zelenović on numerous occasions, was about 15 years old at the time of the commission of the crimes.

The women and girls in the detention centres lived in constant fear of repeated rapes and sexual assaults. Some became suicidal and others became indifferent to what happened to them. The victims at the detention centres in Foča suffered the unspeakable pain, indignity, and humiliation of being repeatedly violated, without knowing whether they would survive the ordeal. The scars left by the sexual assaults were deep and might never heal. This, perhaps more than anything, speaks about the gravity of the crimes in this case.

There are a number of individual circumstances of Mr. Zelenović that have been accorded weight in mitigation. The Trial Chamber emphasizes, however, that such circumstances do not in any way diminish the gravity of the crime.

Mr. Zelenović decided to admit his guilt and plead guilty. There are a number of reasons, applicable in the present case, why a guilty plea should be attached weight in mitigation. The Trial Chamber has considered Mr. Zelenović's admission of guilt and decision to face the consequences of his previous acts. The Trial Chamber has also considered the effect a guilty plea could have on establishing the truth and contributing to reconciliation in the region and the fact that a guilty plea relieves the victims of horrible crimes from reliving their trauma by being forced to give evidence in court. Finally, the Trial Chamber has considered the time and effort saved by the Tribunal through avoidance of a lengthy trial although it has given this aspect limited weight.

The Trial Chamber has also given weight to Mr. Zelenović's commitment to cooperate with the Office of the Prosecutor, including giving evidence in court, and the cooperation he has given so far. The Trial Chamber has also considered the remorse expressed by Mr. Zelenović for the crimes he has committed as a mitigating factor. Finally, the Trial Chamber has given limited weight to the following individual circumstances of Mr. Zelenović: his family and health situation, his lack of prior convictions, and his good conduct during detention.

The Trial Chamber has, in determining the sentence, also considered the general practice regarding prison sentences in the courts of the former Yugoslavia, as well as the case law of this Tribunal.

Mr. Zelenović, would you please stand.

For the reasons summarized above, this Trial Chamber, having considered the facts of the case and the arguments of the parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Sentencing Judgement, hereby sentence you, Mr. Zelenović, to a single sentence of [insert number] years of imprisonment.

You are entitled to credit for the period of time you have been in custody for the purpose of this case. You were arrested by Russian authorities on 22 August 2005, and are therefore entitled to credit of 591 days.

In accordance with Rule 103(C) of the Rules of Procedure and Evidence, you will remain in the custody of the Tribunal pending finalization of arrangements for your transfer to the State where your sentence will be served.

The Trial Chamber stands adjourned.