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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBER

The Hague, 31 October 2007
MOW/1195a

SUMMARY OF THE APPEALS JUDGEMENT PROSECUTOR V. DRAGAN ZELENović

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

I. INTRODUCTORY REMARKS

As the Registrar announced, the case on our agenda today is Prosecutor versus Dragan Zelenović. In accordance with the Scheduling Orders issued on 17 and 23 October 2007, the Appeals Chamber will deliver its Judgement today.

Following the practice of the International Tribunal, I will not read out the text of the judgement except for the disposition. Instead, I will summarise the issues on appeal and the findings of the Appeals Chamber. This summary is not part of the written judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons. Copies of the written judgement will be made available to the parties at the conclusion of this hearing.

II. BACKGROUND

This case concerns the events that took place in the Foča municipality and its surrounding villages, from April to October 1992. At the time of the events, Mr. Zelenović was a member of the "Dragan Nikolić Unit", a military unit in Foča which, in the beginning of the war, was part of the Bosnian-Serb Territorial Defence and, from the summer of 1992 onwards, part of the Bosnian-Serb army. Mr. Zelenović was a soldier and, *de facto*, a military policeman. The Trial Chamber held that the crimes which Mr. Zelenović has pleaded guilty to were part of a pattern of sexual assaults that took place over a period of several months, and in four different locations, and involved multiple victims. Mr. Zelenović took direct part in the sexual abuse of victims in a number of detention facilities, including the multiple rape of victims FWS-75 and FWS-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 instances of sexual abuse were gang rapes, committed together with three or more other perpetrators. In one of those instances he participated as aider and abettor in the rape of FWS-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. On 17 January 2007, he pleaded guilty to the crimes he was charged for.

On the same day, the Trial Chamber found Dragan Zelenović guilty on all charges contained in the Plea Agreement, namely seven counts of crimes against humanity, three of which charged torture, as provided for by Article 5(f) of the Statute of the International Tribunal, and four of which charged rape, as provided for by Article 5(g) of the Statute. The Prosecution recommended a term of imprisonment within the range of 10 to 15 years,

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while the Defence recommended a term within the range of 7 to 10 years. The Trial Chamber sentenced Dragan Zelenović to a single sentence of imprisonment of 15 years on 4 April 2007.

Dragan Zelenović appealed the Trial Judgement on 27 April 2007 and filed his Appeal Brief on 25 May 2007. In his Appeal Brief, he brings forward two grounds of appeal, and requests the Appeal Chamber to lower his sentence. The Prosecution requests the Appeals Chamber to dismiss both grounds of appeal. The parties made oral submissions before the Appeals Chamber in the appeal hearing held on 15 October 2007.

III. THE GROUNDS OF APPEAL OF DRAGAN ZELENović

I will now address in turn the two grounds of appeal brought forward by Dragan Zelenović. At the end of the hearing, I will read out the Disposition of the Judgement.

First ground of appeal: Whether the Trial Chamber erred by failing to give proper weight to specific factors in mitigation of sentence

In his **first ground of appeal**, Dragan Zelenović argues that the Trial Chamber erred by not adequately assessing the mitigating circumstances in the Sentencing Judgement namely, first, his admission of guilt, thus allowing psychological benefit for victims who will not be required to give evidence; and second, his cooperation with the Office of the Prosecutor in general.

In his first sub-ground of appeal, the Appellant submits that his guilty plea, being the first one regarding the massive rapes that occurred in Foča, is of extraordinary importance and should have been given more weight by the Trial Chamber. The Appellant also submits that the Trial Chamber failed to properly assess the Expert Report on the psychological benefit for the victims from their non-appearance before the Court and therefore erred in determining the penalty.

The Appeals Chamber considers that the Trial Chamber reasonably assessed the importance of the guilty plea, especially when finding that it constituted one of the main mitigating circumstances. Moreover, the Appeals Chamber finds that the reasoning of the Trial Chamber was consistent with the Expert Report's conclusions, therefore showing that the said Report was duly considered by the Trial Chamber. Consequently, the Appellant fails to show that the Trial Chamber erred by giving insufficient weight to his guilty plea in mitigation of his sentence.

This sub-ground of appeal is therefore dismissed.

In his second sub-ground of appeal, Dragan Zelenović argues that the Trial Chamber erred in its assessment of his cooperation with the Prosecution. The Appellant submits that his actual cooperation with the Prosecution went beyond the scope of what he was obliged to in the Plea Agreement and that the Trial Chamber erred when it considered his cooperation as, "initial", rather than, "substantial". Therefore, the Appellant argues that the Trial Chamber did not give sufficient weight to this mitigating circumstance.

The Appeals Chamber finds that the scope of the Plea Agreement was not restricted in the manner the Appellant suggests. Thus, the Appellant did not show that his cooperation went beyond the scope of his obligations. Moreover, the Appeals Chamber notes that both the Appellant's actual cooperation, as well as his commitment to cooperate, have been considered by the Trial Chamber as one of the main mitigating circumstances in this case. Consequently, the Appeals Chamber finds no error in the Trial Chamber's assessment of the Appellant's cooperation with the Prosecution.

As a result, Dragan Zelenović's first ground of appeal is dismissed.

Second ground of appeal:

In his **second ground of appeal**, Dragan Zelenović argues that the Trial Chamber should have taken into account the Appeal Judgement in the case of the *Prosecutor versus Radovan Stanković* before the State Court of Bosnia and Herzegovina.

The Appeals Chamber notes that the *Stanković* Appeal Judgment was only made public on 17 April 2007, whilst the Sentencing Judgement in the present case was issued on 4 April 2007. The Appellant therefore failed to substantiate his allegation that the Trial Chamber could have learned about the *Stanković* Appeal Judgement prior to rendering the Sentencing Judgement.

As a result, Dragan Zelenović's second ground of appeal is rejected.

I will now read out the disposition of the appeal judgement. Mr. Zelenović, will you please rise.

For the foregoing reasons, **THE APPEALS CHAMBER**, unanimously

PURSUANT to Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the Parties and the oral arguments they presented at the appeal hearing of 15 October 2007;

SITTING in open session;

DISMISSES the Appellant's grounds of appeal;

AFFIRMS the sentence of 15 (fifteen) years' imprisonment as imposed by the Trial Chamber, subject to credit being given under Rule 101(C) of the Rules for the time Dragan Zelenović has already spent in detention since 22 August 2005; and

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that the Appellant is to remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State in which his sentence will be served.
