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APPEALS CHAMBER

CHAMBRE D'APPEL

The Hague, 17 December 2004
CT/P.I.S./926e

APPEALS CHAMBER JUDGEMENT IN THE CASE
THE PROSECUTOR v. DARIO KORDIĆ AND MARIO ČERKEZ

Dario Kordić: Sentence of 25 years' of Imprisonment Is Affirmed

- Appeals Chamber allows some of the appeals grounds with regard only to “limited locations”
- Appeals Chamber confirms that Dario Kordić, “as the responsible regional politician planned and instigated the crimes which occurred in Ahmići on 16 April 1993 and its associated hamlet Šantići, Pirići and Nadioci” and which were “aimed at ethnically cleansing the area (...)”
- Appeals Chamber says that “Kordić’s involvement in the persecutory campaign” included also the crimes committed in the Kiseljak municipality
- Appeals Chamber considers that on the basis of his “political activities and inclinations, his strong nationalist and ethnic stance, and his desire to attain the sovereign Croatian state within the territory of Bosnia and Herzegovina at any cost”, Kordić “possessed the specific intent to discriminate which is required for the crime of persecutions”

Mario Čerkez: New Sentence of Six Years' of Imprisonment Is Imposed

- Appeal Chamber allows most of the grounds of appeal
- However, Appeals Chamber confirms that “Čerkez bears criminal responsibility for the imprisonment and unlawful confinement of Bosnian Muslims civilians” in Vitez until the end of April 1993. This unlawful detention “amounts to persecutions: (...) the detainees were “solely Bosnian Muslims” and Čerkez had the “intent to systemically discriminate against them.”

Furthermore, the Appeals Chamber is satisfied that “Croatia exercised overall control over the HVO” and “provided leadership, coordination and organisation of the HVO and that there was an international armed conflict between Croatia and Bosnia and Herzegovina.”

Please find below the summary of the Judgement delivered by the Appeals Chamber, composed of Judges Schomburg (Presiding), Pocar, Mumba, Güney and Weinberg de Roca, as read out by the Presiding Judge.

Summary of Judgement

The Appeals Chamber of this International Tribunal has come together today to deliver its Judgement on appeal in the case Prosecutor v. Dario Kordić and Mario Čerkez.

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The following is a summary of the Appeals Chamber's Judgement which is based on the final deliberations of 2 December 2004. It will be made available in English, French and B/C/S at the end of this session, in particular to the Accused in a language he understands. Copies of the Judgement will be made available to the parties towards the end of this session. It has to be emphasized that the only authoritative account of the Appeals Chamber's conclusions is to be found in the English version of the written Judgement.

The events giving rise to this appeal took place during the conflict between the Croatian Defense Council – the HVO – and the Bosnian Muslim Army – the ABiH – in Central Bosnia from 1992 until 1993, in particular in the Lašva Valley region. This region, situated at the heart of Central Bosnia, consists of the municipalities of Vitez, Novi Travnik and Busovača. The municipality of Kiseljak lies to the south of the Lašva Valley. The military significance of the area lay in its position in the middle of Bosnia and Herzegovina and the fact that it contained a number of armament factories. It is a mountainous area with important roads running along the valleys, going from Herzegovina to Eastern Bosnia and from Sarajevo to the north. Novi Travnik and Kiseljak, about 30 kilometres apart, and connected by a road, mark the area at the centre of the events in this case. The village of Ahmići, in which the most serious massacre of this case was undisputedly committed in mid-April 1993, is situated along this road.

Let me now turn to the Accused:

Dario Kordić was born on 14 December 1960 in Busovača in Bosnia and Herzegovina. He is married and has three children. He is a former journalist and was gainfully employed at the *Vatrostalna* company in Busovača from 1985 onwards. In 1991, Kordić became the President of the Croatian Democratic Union of Bosnia and Herzegovina in the Municipality of Busovača. In the same year, he became the Vice-President of the Presidency of the Croatian Community of Herceg-Bosna after its foundation on 18 November 1991. When the Croatian Community of Herceg-Bosna turned itself into the Croatian Republic of Herceg-Bosna in August 1993, Kordić continued to serve as Vice-President.

Mario Čerkez was born on 27 March 1959 in Vitez in Bosnia and Herzegovina. He is married and also has three children. Before the outbreak of the armed conflict in the Lašva Valley, he was employed in the *Slobodan Princip Seljo* factory near Vitez. Čerkez was one of the founders of the HVO in Vitez, his first duty being Assistant Commander of the Vitez Staff, followed by Commander of the Vitez Brigade. When the Vitez and Novi Travnik Brigades were united, Čerkez became Assistant Commander of that Brigade. Finally, in March 1993, Čerkez became the Commander of the Viteška Brigade.

The Trial Chamber convicted Kordić for planning, instigating and ordering crimes, including persecutions, unlawful attacks on civilians and civilian objects, murder, inhumane acts, imprisonment, wanton destruction not justified by military necessity, plunder, and destruction or wilful damage to institutions dedicated to religion or education. These crimes were committed in the municipalities of Travnik, Vitez, Busovača, and Kiseljak. The Trial Chamber found that Kordić played an instrumental part in ordering the attack on Ahmići in April 1993, an attack in which more than 100 Bosnian Muslim civilians were massacred. The Trial Chamber sentenced Kordić to 25 years of imprisonment.

For crimes committed in Vitez, Stari Vitez and Večeriska, Čerkez was convicted for committing persecutions, and pursuant to both Article 7(1) and 7(3) of the Statute for unlawful attacks on civilians and civilian objects, murder, inhumane acts, imprisonment, taking civilians as hostages, wanton destruction not justified by military necessity, plunder, and destruction or wilful damage to institutions dedicated to religion or education. For these crimes, the Trial Chamber imposed a sentence of 15 years of imprisonment. The Trial Chamber acquitted Čerkez, however, of the charges in respect to the crimes allegedly committed by him in Ahmići.

The appeals of Kordić and Čerkez are directed against all convictions. Kordić mainly submits

- (i) that he was denied “equality of arms” and did not receive a fair trial;
- (ii) that the Trial Chamber erred in relying on uncorroborated hearsay evidence;
- (iii) that the Trial Chamber erred in finding that the Muslim-Croat conflict in Central Bosnia was a unilateral Bosnian–Croat campaign of persecution;
- (iv) that he did not have responsibility for the events in Ahmići and elsewhere;
- (v) that no armed conflict existed prior to mid-April 1993; and finally
- (vi) that the sentence was excessive.

Čerkez mainly submits

- (i) that no international armed conflict existed at the relevant time;
- (ii) that the Trial Chamber erroneously convicted him on the basis of Article 7(3) of the Statute;
- (iii) that he did not receive a fair trial;
- (iv) that the Trial Chamber erred in the application of material law as a result of erroneous factual findings; and also he claims
- (v) that the sentence was excessive.

Finally, the Prosecution appeals

- (i) Čerkez’s acquittal for crimes in Ahmići, and
- (ii) the sentences of both Kordić and Čerkez as being too lenient.

During the appellate proceedings, various grounds of appeal were withdrawn, not the least due to the further developed jurisprudence of the International Tribunal since February 2001. In relation to some of the locations mentioned in the charges, the Prosecution has conceded that the trial judgement does not contain the necessary factual findings.

Let me pause for a moment for the following more general remarks:

The fact is that, this International Tribunal has never had and will never have the opportunity to hear cases against all the persons allegedly being among the most responsible for the events in Lašva Valley in one procedure. Chambers of this International Tribunal can only hear a case regarding a person against whom an Indictment has been filed and confirmed and who is present in The Hague. The fact that, seen from an objective point of view, a case against an alleged serious offender is – and will – not be heard before this International Tribunal may be due to several reasons, among them primarily that the Prosecution had not enough evidence and/or that there was insufficient co-operation between the International Tribunal and a State, either in the past or still today. As a result, each Chamber can only carefully analyse the question of individual criminal responsibility for the crimes committed in Lašva Valley in relation to each of the accused brought before it.

It has also to be emphasized that each Bench of the International Tribunal decides a case solely on the evidence before it. This evidence, and consequently the disposition, may vary from case to case, as it is mainly the parties who bring evidence in this primarily adversarial legal system. The Appeals Chamber, based on the evidence before it, meticulously determines – as a first step – whether a crime was established or not. Only then does it decide, again based on the evidence before it, whether or not an accused can be held individually criminal responsible for these crimes. With a view to the victims and their relatives, it has to be further emphasized that a decision of acquittal does not necessarily mean that a crime did not occur; it simply means that on the basis of the evidence the accused cannot be held individually responsible for those crimes.

Let me now return to the *summary of the Judgement* and briefly repeat the law governing appellate proceedings:

As regards errors of fact, pursuant to the jurisprudence of the International Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is wholly erroneous, will the Appeals Chamber intervene.

When considering alleged factual errors raised by the Defence, the Appeals Chamber will only intervene if no reasonable trier of fact could have reached a conclusion of guilt beyond reasonable doubt. When considering alleged factual errors raised by the Prosecution, the Appeals Chamber will determine whether no reasonable trier of fact could have come to the conclusion of acquittal.

Where a party contends that a Trial Chamber has made an error of law, the Appeals Chamber is empowered only to reverse or revise a Trial Chamber's decision when there is an error of law invalidating the decision.

I will now briefly turn to the law applicable in relation to the modes of responsibility of the Accused. The Trial Chamber convicted Kordić of planning, instigating, and ordering crimes pursuant to Article 7(1) of the Statute. The *mens rea* for these modes of responsibility is established if the perpetrator acted with direct intent in relation to his own planning, instigating, or ordering.

A lower form of intent is established when a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing responsibility under Article 7(1) of the Statute pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime. The Appeals Chamber finds that this correspondingly applies in relation to the modes of responsibility of planning and instigating.

In this context, I want to mention that the Appeals Chamber made findings on several other legal issues in the Judgement, such as the question of a result requirement in the crime of unlawful attack on civilians or civilian objects and the question of cumulative convictions. These legal issues, however, will not be further discussed in this summary.

I will now address Kordić's first ground of appeal and Čerkez's third ground of appeal, namely the alleged denial of the right to a fair trial under Article 21 of the Statute.

Kordić submits that the Prosecution's frequent and substantive changes to its stated case against the Accused were unfair, in that the Prosecution failed to inform them promptly and in detail of the nature of the charges against them, as required by Article 21(4)(a) of the Statute. As such, the Prosecution allegedly confronted them with a "moving target".

The Appeals Chamber finds that Counts 1 and 2 (Persecutions for Kordić and Čerkez, respectively) are too broad to be acceptable as to the geographic and temporal scope of the charges, and could, on their own, materially impair the Accused's ability to defend themselves. However, the Appeals Chamber considers that Counts 1 and 2 have to be read as umbrella counts encompassing Counts 3 to 44 which further inform the Accused in greater detail of the charges against them. With these specifications, the Appeals Chamber is satisfied that the Accused were informed of the charges against them and were able – as they did – to defend themselves before the Trial Chamber against the charges contained in the umbrella counts.

In this context, the Appeals Chamber notes that the expulsion and "forcible removal" of Bosnian Muslim civilians is mentioned in several paragraphs of the Trial Judgement, however not in the part on the responsibility of the Accused. The Appeals Chamber finds that the reason for this is that the Indictment did not sufficiently inform the Accused that they had

to defend themselves against the charge of expulsion and/or forcible transfer. This vagueness of the Indictment had not been cured in the trial proceedings.

The Accused argue that the Prosecution violated its Rule 68 disclosure obligations during the pre-trial, the trial and the post-trial phase in various ways, and in relation to a variety of evidence. The Appeals Chamber notes that the Prosecution has accounted for the presentation of the evidence in this trial *in extenso*, and is satisfied that it fulfilled its obligations to assist the Trial Chamber in good faith, in view of the complex nature of the case, and of the difficulties encountered in accessing large amounts of evidence not immediately accessible for the Prosecution. Kordić and Čerkez failed to establish that the Trial Chamber erred in permitting any such alleged Rule 68-violation. The arguments are finally dismissed.

Both Kordić and Čerkez submit that the Trial Chamber erroneously held that an international armed conflict existed during the Indictment period and consequently found them guilty of grave breaches of the Geneva Conventions of 1949 pursuant to Article 2 of the Statute. In addition, Kordić claims that no armed conflict existed before 15 April 1993, thus barring a conviction under Articles 3 and 5 of the Statute.

Contrary to the submissions of Kordić and Čerkez, the Appeals Chamber finds that the Trial Chamber did not err in relying on the *overall control* test according to which an armed conflict becomes international when a foreign state exercises overall control over the military forces of one of the belligerents. In addition, the Trial Chamber did not err by taking into account the situation in other areas within Bosnia and Herzegovina linked to the armed conflict in Central Bosnia when examining the international character of the armed conflict. Once an armed conflict has become international, the Geneva Conventions apply throughout the respective territories of the warring parties.

The Appeals Chamber is satisfied that on the basis of the evidence before it a reasonable trier of fact could have found that Croatia exercised overall control over the HVO at the relevant time. Likewise, the Trial Chamber reasonably based its finding on reliable evidence that Croatia provided leadership in the planning, coordination and organisation of the HVO and that there was an international armed conflict between Croatia and Bosnia and Herzegovina.

I will now turn to an examination of the crimes for which Kordić and Čerkez had been convicted by the Trial Chamber.

The Appeals Chamber considers, however, that the Trial Chamber in most cases did not make specific and explicit factual findings with regard to each element of the crimes, but expressly concluded that the crimes were established. The Appeals Chamber considers that by explicitly finding that the crimes were established, the Trial Chamber implicitly found all the relevant factual findings required to cover the elements of the crimes. The Appeals Chamber considers that such an approach falls short of what is required by the Statute of the International Tribunal. However, this does not automatically lead to a dismissal of the charges. The Appeals Chamber agrees with the submission of the Prosecution that, in this particular circumstance, the issue before it is to establish whether the Trial Chamber's findings that the crimes were established, are sustained on the record. Therefore, the Appeals Chamber had to consider the crimes location by location and element by element, determining whether the Trial Chamber's finding that that particular element was factually established is a finding that a reasonable trier of fact could have made. I will not discuss each of these crimes in great detail now; for the purposes of this summary it suffices to state that a number of crimes have not been established and that the corresponding findings of the Trial Chamber had to be reversed. The disposition, however, will explicitly identify, location by location, each crime for which the Accused finally are convicted.

Before I now turn to the grounds of appeal dealing with the individual criminal responsibility of Kordić and Čerkez, I would like to note that the Appeals Chamber particularly examined the Trial Chamber's analysis of those orders and plans that were lawful and others that included the commission of crimes. In this context, it was important to

consider the participation of Kordić and Čerkez at the various meetings with different groups of people that were held on 15 April 1993 in the Hotel Vitez, as this leads to a different knowledge and awareness on the part of the Accused of the crimes committed thereafter.

Kordić argues in his third ground of appeal that the Trial Chamber erred in finding that the Bosnian Croats were engaged in a campaign of persecution in Central Bosnia, and in finding him guilty on this charge.

In particular in relation to the massacre in Ahmići, the Appeals Chamber considers that a reasonable trier of fact could have concluded that there was a meeting of the Bosnian Croat political leadership on 15 April 1993 at the Hotel Vitez, and that Kordić was present at this meeting. It was also reasonable to conclude that at this meeting, a decision to launch an attack against the Muslims was made. Based on the entirety of direct and circumstantial evidence, a reasonable trier of fact could have concluded that for Kordić this attack on Ahmići and other Lašva Valley villages was aimed at ethnically cleansing the area for strategic reasons. The Appeals Chamber also holds that it was reasonable to find that Kordić, as the responsible regional politician, planned and instigated the crimes which occurred in Ahmići on 16 April 1993 and its associated hamlets Šantići, Pirići, and Nadioci.

In light of the Appeals Chamber's finding that it was indeed reasonable to conclude that an order was given to kill all Muslim men of military age, to expel civilians, and to set houses on fire, and that this order was approved at the meeting of the political leadership, the Appeals Chamber considers that a reasonable trier of fact could have concluded that Kordić's involvement in the persecutory campaign was not limited to certain areas of Lašva Valley, in particular Ahmići; instead, it included in general the then following crimes, *inter alia*, the crimes which occurred in Kiseljak municipality in April and June 1993.

In relation to the crime of unlawful imprisonment of civilians in Kaonik, the Dubravica Elementary School, the SDK building, the Vitez Cinema, the village of Rotilj, the Kiseljak barracks, and the Kiseljak municipal buildings, the Appeals Chamber considers that the Trial Chamber did not err in inferring that Kordić bears responsibility for the ordering of the establishment of these detention facilities and the detention itself.

Kordić submits that the Trial Chamber committed an error of fact occasioning a miscarriage of justice when it concluded that he had the requisite *mens rea* for any of the crimes of persecutions with which he was charged.

The Appeals Chamber agrees with the Trial Chamber's findings that Kordić knew that there were attacks on the civilian population which were widespread and systematic, and that his acts comprised part of these attacks.

I will now turn to the specific intent to discriminate on political, racial, or religious grounds, and I want to stress first that such a specific intent in general can only be inferred from objective facts and the general conduct of an accused seen in its entirety. Only on rare occasions it will be possible to establish such an intent on documents or intercepts laying down a perpetrator's own *mens rea*.

Here, the circumstantial evidence is clear: At a meeting on 27 December 1991 in Zagreb, Kordić said that the Croatian people of the Travnik region were ready to accede to the Croatian State, and I quote: "at all costs ... any other option would be considered treason, save the clear demarcation of Croatian soil in the territory of Herceg Bosna".

Further, at a January 1992 rally in Busovača, Kordić was to be seen speaking to a cheering, flag-waving crowd and he said that the rally was proof that the Croatian people in Busovača are part of the united Croatian nation and that the Croatian Community of Herceg-Bosna, including Busovača, is, I quote again, "Croatian land and that is how it will be".

The Appeals Chamber considers that, *inter alia*, on the basis of the evidence outlined above concerning Kordić's political activities and inclinations, his strong nationalist and ethnic stance, and his desire to attain the sovereign Croatian state within the territory of Bosnia and Herzegovina at any

cost, Kordić possessed the specific intent to discriminate which is required for the crime of persecutions.

On the basis of the foregoing, the Appeals Chamber affirms the conviction under Count 1, persecutions, a crime against humanity, in relation to Kordić.

In relation to Kordić's fourth ground of appeal dealing with his criminal responsibility, the Appeals Chamber considers that the Trial Chamber's finding that Kordić intended the crimes associated with the attack in Novi Travnik as early as in October 1992 was a finding no reasonable trier of fact could have made. The Appeals Chamber therefore reverses the Trial Chamber's finding that Kordić was guilty for wanton destruction not justified by military necessity and plunder in Novi Travnik in October 1992.

With respect to the crimes committed in Busovača in January 1993, the Appeals Chamber, however, has found that a reasonable trier of fact could have concluded that numerous civilians were targeted and killed in the town, and that murder a crime against humanity, as well as the crime of unlawful attacks on civilian objects, were committed in this town in January 1993. The Appeals Chamber refers further to the Trial Chamber's findings as to the role of Kordić in the campaign of persecution, including his role in the HVO takeover of municipalities, including Busovača, and his role in the events leading to the conflict, and on the eve of the conflict.

The attack on Busovača was directed against Muslim civilians and civilian objects and aimed at the civilian population: Muslim civilians were killed, expelled, and their property destroyed. It was the Trial Chamber's finding that Kordić as a political leader with substantial military influence was involved in the planning and ordering of these crimes. The Appeals Chamber concludes that the Trial Chamber's finding that Kordić had the requisite *mens rea* for these crimes is reasonable.

With respect to the crimes committed between April and June 1993 in the Lašva Valley, the Appeals Chamber considers that following the meeting of politicians at which Kordić was present on 15 April 1993, a general plan existed to expel the Muslim civilians and to destroy civilian houses. Kordić participated as the senior regional politician in the planning of the military operation and attack against Ahmići, an operation which was aimed at "cleansing" these areas of Muslims.

The Appeals Chamber considers that this general plan included the whole of the Lašva Valley and that the crimes explicitly discussed were to kill military aged men, expel civilians, and destroy houses. For these crimes Kordić had direct intent. Kordić approved the general plan knowing that these crimes would be committed, and with the awareness of the substantial likelihood that other crimes such as plunder and unlawful detention of civilians would be committed in the execution of this general plan. Planning with such awareness has to be regarded as accepting these crimes.

In conclusion, the Appeals Chamber notes that some of the appeals of Kordić have been granted, however never in relation to counts in their entirety, but limited to certain locations.

I will now turn to the Prosecution's grounds of appeal. At the outset, it shall be noted that the Prosecution withdrew its first ground of appeal relating to the applicable law of persecutions, due to the fact that the underlying legal issue had been settled in the meantime by the jurisprudence of the Appeals Chamber.

The Prosecution's second and third ground of appeal relate to the Trial Chamber's acquittal of Čerkez for the crimes committed in Ahmići.

The Prosecution submits that the Trial Chamber erred both in law and in fact, due to a misapplication of Article 7(1) of the Statute to the facts of the case and the alleged failure to consider all relevant evidence on the Trial Record.

While the Trial Chamber held that the Viteška Brigade participated in operations in Vitez, Večeriska and Ahmići during 16 April 1993, it found that the Viteška Brigade took part in the operation in Ahmići on 16 April 1993 only later in the day and not during the initial assault.

The Prosecution argues that the factual findings should have led the Trial Chamber to find Čerkez criminally responsible under Article 7(1) of the Statute, based on the following types of participation of Čerkez and the Viteška Brigade:

- (a) participation in the military planning of the attack on Ahmići;
- (b) providing significant assistance to the Military Police units involved in the attack by way of providing means of transportation and preventing UNPROFOR from entering the Ahmići area; and
- (c) performing physical acts of persecution by detaining Muslims in Ahmići.

The Appeals Chamber will first address the Prosecution's submission that the Trial Chamber's finding, that the attack on Ahmići was part of a common design or plan conceived and executed by the Bosnian Croat leadership to ethnically cleanse the Lašva Valley of Muslims, should have led to a finding that Čerkez was criminally responsible for the crimes in Ahmići.

As already discussed in relation to Kordić, the Trial Chamber found that the crimes committed in Ahmići were part of this persecutory campaign. However, and contrary to the case of Kordić, the Appeals Chamber finally concludes that there are neither findings nor sufficient evidence to establish that Čerkez had responsibility for the persecutory campaign that included the crimes committed in Ahmići. Accordingly, the submission of the Prosecution that Čerkez should have been held criminally responsible for these crimes based on his participation in the persecutory campaign fails.

The Appeals Chamber also considered whether the findings of the Trial Chamber, correctly construed, prove Čerkez's criminal responsibility for the crimes committed in Ahmići outside his alleged participation in a persecutory campaign.

The Prosecution submits in particular that the Viteška Brigade was assigned to block the road from Vitez in order to prevent UNPROFOR from entering the Ahmići area.

The Appeals Chamber notes, however, that the Trial Chamber never clearly established – and the Trial Record does not provide sufficient evidence – whether the purpose of the road block was militarily justified or a preparatory or sheltering act for the crimes to be committed in Ahmići. In addition, insufficient evidence has been adduced to show conclusively that Čerkez knew about the allegedly criminal purpose of the road block. Čerkez's submission that the sole task of the Viteška Brigade was to block the direction of a possible ABiH attack from the area of Kruščica and Vraniska is an equally possible one. Apparently, the Trial Chamber correctly applied the principle *in dubio pro reo*; thus the Appeals Chamber cannot identify any error of fact in relation to the question at issue. Therefore, the Trial Chamber correctly held that neither Čerkez nor the Viteška Brigade participated in the crimes committed in Ahmići.

In its third ground of appeal, the Prosecution submits that the Trial Chamber erred in its determination that Čerkez did not bear criminal responsibility under Article 7(1) *and/or* 7(3) of the Statute, because the Trial Chamber failed – I quote – to “accept” the evidence on the active presence of members of the Viteška Brigade during the attack in Ahmići.

The Appeals Chamber has examined, without any affirmative result, witness testimonies and documentary evidence to which the Prosecution referred in order to prove the alleged presence of members of the Viteška Brigade during the initial attack in Ahmići. The Appeals Chamber finds that a reasonable trier of fact could have come to the conclusion that the evidence does not prove that soldiers of the Viteška Brigade under the command of Čerkez participated in the commission of crimes in Ahmići on 16 April 1993. Thus, both the second and the third ground of appeal of the Prosecution are rejected.

Turning now to Čerkez's second and fourth ground of appeal, dealing with his criminal responsibility, the Appeals Chamber notes that

in addition to the inferences that may be drawn from Čerkez's participation in the attacks on Donja Večeriska and Stari Vitez, the Trial Chamber placed emphasis on his participation in the second meeting in the Hotel Vitez on 15 April 1993. Although contested by Čerkez, the Appeals Chamber finds that a reasonable trier of fact could have found that Čerkez was present at this second meeting.

However, the Trial Chamber made no findings as to what was discussed during this second meeting. It was said that "the Muslims would attack in the morning" and the reasonable conclusion is that the reference to Muslims in this context is the Muslim forces and that the HVO were to attack them before they were attacked. Thus, the Appeals Chamber finds that a reasonable trier of fact could have found that Čerkez's presence at the second meeting on 15 April 1993 does not establish any intent in relation to any crime.

In relation to Čerkez's responsibility for detention-related crimes, the Appeals Chamber finds that with respect to the Vitez Veterinary Station and the Chess Club, no reasonable trier of fact could have found that Čerkez incurred criminal responsibility for imprisonment and unlawful confinement of Bosnian Muslim civilians. The Appeals Chamber concludes, however, that it was reasonable to find that Čerkez bears criminal responsibility for the imprisonment and unlawful confinement of Bosnian Muslim civilians in the Vitez Cinema and the Vitez SDK building, before he ordered their release at the end of April 1993.

Furthermore, the Appeals Chamber finds that it was reasonable to conclude that this unlawful detention amounts to persecutions. The civilian detainees in the SDK building and the Vitez Cinema were solely Bosnian Muslims. Čerkez knew that the detainees were Muslims and that they were detained because they were Muslims. It is evident that a specific ethnic group is discriminated when all the detainees belong to this group while the guards belong to another ethnic group. By knowingly committing his acts he manifested the intent to systematically discriminate against them.

All other convictions of the Trial Chamber in relation to Čerkez are reversed. The reasons for this are to be found in the Judgement.

I will now turn to the question of sentencing:

All three parties appealed both sentences. Kordić submits that the Trial Chamber erroneously overlooked substantial mitigating evidence, and that he should not receive a higher sentence than four years. However, the Appeals Chamber finds that the Trial Chamber did not venture outside its scope of discretion when it imposed its sentence on Kordić. Similarly, the Appeals Chamber finds that the Prosecution did not demonstrate that the Trial Chamber made a discernible error in sentencing. Therefore, Kordić's sixth and the Prosecution's fourth ground of appeal are rejected.

With respect to Čerkez's sentence, the Appeals Chamber has found him guilty pursuant to Article 7(1) of the Statute for Count 2, persecutions, a crime against humanity, Count 29, imprisonment, a crime against humanity, and Count 30, unlawful confinement of civilians, a grave breach of the Geneva Conventions. The Appeals Chamber has significantly reversed the findings of the Trial Chamber and has granted several of Čerkez's grounds of appeal, overturning most of his convictions. Therefore, the Appeals Chamber is being called upon to mete out a sentence *de novo*.

During its final deliberations on 2 December 2004, the Appeals Chamber arrived at the conclusion that the revised and adequate sentence for Čerkez is lower than the time he had already spent in the United Nations Detention Unit. Thus, the Appeals Chamber had the obligation to order his immediate release, as there was no longer a substantive reason justifying a continued detention. It was irrelevant to decide the question whether he could have only been released on the basis of a final judgement, as neither the Statute nor the Rules contain such a requirement. This release was neither a provisional, nor an early release; instead, it was a final release. Since this order mandatorily had to be made with immediate effect, it did not contain the underlying reasons which are to be found in the Judgement and have been – in part – summarized above.

When determining the sentence, the Appeals Chamber considered the applicable purposes of sentencing, in particular that of affirmative general prevention: This important purpose aims at reassuring the public that the legal system has been upheld, and at influencing the public in general not to violate this legal system. The Appeals Chamber also considered the general practice regarding prison sentences in the courts of the former Yugoslavia.

It further took into account the following aggravating circumstances: the accused's position as a middle-ranking HVO commander, and the fact that among the victims of these offences were both young and elderly people and women, being particularly vulnerable in war times.

The Appeals Chamber also took into account the following mitigating circumstances: the accused's voluntary surrender to the International Tribunal; the fact that he did not have a prior criminal record; his personal and family circumstances; and the fact that his criminal responsibility is limited to a relatively short period of time, namely approximately 14 days.

I will now to read out in full the operative paragraphs of the Appeals Chamber's Judgement, that is the disposition:

Disposition

For the foregoing reasons,

THE APPEALS CHAMBER

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

NOTING the respective written submissions of the parties and the arguments they presented at the hearing of 17, 18, and 19 May 2004;

SITTING in open session;

WITH RESPECT TO THE PROSECUTION'S GROUNDS OF APPEAL:

NOTES that the Prosecution's first ground of appeal has become moot as it has been withdrawn;

REJECTS the Prosecution's remaining four grounds of appeal;

WITH RESPECT TO KORDIĆ'S GROUNDS OF APPEAL:

REJECTS Kordić's first, second, fifth and sixth grounds of appeal;

ALLOWS the ground of appeal concerning his responsibility for crimes committed in Novi Travnik in October 1992, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 38 and 39;

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Busovača in January 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war) and 39 (plunder of public or private property, a violation of the laws or customs of war);

ALLOWS the ground of appeal concerning his responsibility for crimes committed in Vitez and Stari Vitez in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 3, 4, 7, 8, 10, 12, 38, 39 and 43 (Stari Vitez);

ALLOWS the ground of appeal concerning his responsibility for crimes committed in the Vitez Veterinary Station and the Vitez Chess Club, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 21 and 22;

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Večeriska/Donja Večeriska in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 3, 7, 8, 10, 12, and 39, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

REJECTS the ground of appeal concerning his responsibility for crimes committed in Ahmići in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), 39 (plunder of public or private property, a violation of the laws or customs of war) and 43 (destruction or wilful damage to institutions dedicated to religion or education, a violation of the laws or customs of war);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Nadioci and Pirići in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 4, 10, 12, and 38, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 7 (murder, a crime against humanity) and 8 (wilful killing, a grave breach of the Geneva Conventions of 1949);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Šantići in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Rotilj in April through September 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 4 and 38, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), and 39 (plunder of public or private property, a violation of the laws or customs of war), and 21 (imprisonment, a crime against humanity), 22 (unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Han Ploča-Grahovci in June 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12; **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), 39 (plunder of public or private property,

a violation of the laws or customs of war) and 43 (destruction or wilful damage to institutions dedicated to religion or education, a violation of the laws or customs of war);

REJECTS the ground of appeal concerning his responsibility for crimes committed in Tulica in June 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war) and 39 (plunder of public or private property, a violation of the laws or customs of war);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in the town of Kiseljak in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 38 and 39;

REJECTS the ground of appeal concerning his responsibility for crimes committed in the Kiseljak municipal building, the Kiseljak barracks, Kaonik, Vitez Cinema, SDK building and the Dubravica Elementary School, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 21 (imprisonment, a crime against humanity) and 22 (unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949);

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in Svinjarevo in April 1993, **REVERSES** his conviction pursuant to Article 7(1) of the Statute under Count 39, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

REJECTS the ground of appeal concerning his responsibility for crimes committed in Gomionica in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), and 39 (plunder of public or private property, a violation of the laws or customs of war);

REJECTS the ground of appeal concerning his responsibility for crimes committed in Očehnići, Behrići, Gromiljak, Polje Višnjica, Višnjica and Gačice in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

ALLOWS the ground of appeal concerning his responsibility for crimes committed in Merdani in January 1993, **AND REVERSES** his conviction pursuant to Article 7(1) of the Statute under Count 38;

ALLOWS the ground of appeal concerning his responsibility for crimes committed in Lončari in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Count 39; and

REVERSES all his remaining convictions under Count 1; and

AFFIRMS the sentence of 25 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has spent in detention for the purposes of this case; and

ORDERS, in accordance with Rule 103(C) and Rule 107 of the Rules, that Dario Kordić is to remain in the custody of the International Tribunal pending the finalization of arrangements for his transfer to the State where his sentence will be served;

WITH RESPECT TO ČERKEZ'S GROUNDS OF APPEAL:

REJECTS Čerkez's first, third and fifth ground of appeal;

ALLOWS Čerkez's ground of appeal concerning his responsibility for crimes committed in Večeriska/DonjaVečeriska and Stari Vitez in April 1993, and **REVERSES** his convictions pursuant to Articles 7(1) and 7(3) of the Statute under Counts 5, 6, 14, 15, 17, 19, 41, 42 and 44;

ALLOWS, in part, Čerkez's ground of appeal concerning his responsibility for crimes committed in Vitez in April 1993, and **REVERSES** his convictions pursuant to Article 7(1) and 7(3) of the Statute under Counts 5, 6, 14, 15, 17, 19, 33, 35, 41, 42, and 44;

ALLOWS the ground of appeal concerning his responsibility for crimes committed in the Vitez Chess Club and the Vitez Veterinary Station, and **REVERSES** his convictions pursuant to Articles 7(1) and 7(3) of the Statute under Counts 29, 30 and 31;

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in the Vitez Cinema and the SDK building, and **REVERSES** his conviction pursuant to Articles 7(1) and 7(3) of the Statute under Count 31;

ALLOWS, in part, the ground of appeal concerning his responsibility for crimes committed in the Vitez Cinema and the SDK building in April 1993, **REVERSES** his convictions pursuant to Article 7(3) of the Statute in relation to Counts 29 and 30, and **AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 2 (persecutions, a crime against humanity), Count 29 (imprisonment, a crime against humanity) and Count 30 (unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949);

REVERSES all his remaining convictions under Count 2 and all convictions pursuant to Article 7(3) of the Statute;

IMPOSES a new sentence of 6 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has spent in detention; and finally

RULES that this Judgement shall be enforced immediately pursuant to Rule 118 of the Rules.

The full text of the Judgement is available upon request at the Public Information Services and is also available on the Internet site of the Tribunal at www.un.org/icty.