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APPEALS CHAMBER

The Hague, 27 September 2007
CVO/MOW/1184a

SUMMARY OF THE APPEAL PROSECUTOR V. FATMIR LIMAJ, HARADIN BALA, AND ISAK MUSLIU

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

I. INTRODUCTORY REMARKS

As the Registrar announced, the case on our agenda today is Prosecutor versus Fatmir Limaj, Haradin Bala and Isak Musliu. In accordance with the Order Rescheduling the Hearing issued on 18 September 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 occurred in a prison camp in the village of Lapušnik and in the nearby Beriša Mountains between May and July 1998. The three accused were indicted for crimes committed in this period against Serbian civilians and Kosovo Albanian civilians who were perceived to be Serbian collaborators. The Indictment alleged that these civilians were detained in the Lapušnik prison camp where they were subjected to inhumane conditions and routine assaults, beatings, and torture. Some detainees were alleged to have been murdered in the course of their detention, while others were allegedly executed in the nearby Beriša Mountains on or about the 26th of July 1998.

On 30 November 2005, the Trial Chamber found Haradin Bala guilty of acts of torture, cruel treatment and murder, all violations of the laws or customs of war under Article 3 of the Statute. Haradin Bala was sentenced to a single sentence of thirteen years' imprisonment. Fatmir Limaj and Isak Musliu were acquitted of all charges against them.

Haradin Bala and the Prosecution appealed the Trial Judgement on 30 December 2005. The parties made oral submissions before the Appeals Chamber in the appeal hearing on 5 and 6 June 2007.

III. THE GROUNDS OF APPEAL

I will now address the grounds of appeal in turn, beginning with Mr. Bala who brings five grounds of appeal after having previously withdrawn four grounds of appeal. I will then address the Prosecution appeal against all three accused, beginning with Haradin Bala and followed by the appeals against Fatmir Limaj and Isak Musliu. The Prosecution's

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Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-5343; 512-5356 Fax: +31-70-512-5355

common ground of appeal against all three accused in relation to the existence of a systemic joint criminal enterprise will be addressed in the context of the Prosecution's appeal against Haradin Bala. Finally, at the end of the hearing, I will read out the Disposition of the Judgement.

IV. THE APPEAL OF HARADIN BALA

Ground 1: Identification of Bala as the Guard Known as "Shala"

I now turn to Haradin Bala's appeal.

In his first ground of appeal, Haradin Bala argues that the Trial Chamber erred in law and fact in finding beyond reasonable doubt that he was the guard Shala who committed the crimes for which he was convicted. Haradin Bala submits that the Trial Chamber did not apply - or misapplied - the principle of *in dubio pro reo* when it failed to give any weight to the failure of three eye-witnesses to identify him as the guard known as Shala from a photo spread.

The Appeals Chamber considers that the Trial Chamber reasonably assessed all of the evidence including the failure of the three eye-witnesses to identify Bala in concluding beyond a reasonable doubt that Haradin Bala was the guard known as Shala. Consequently, the Appeals Chamber finds that the Trial Chamber did not misapply the principle of *in dubio pro reo*.

Haradin Bala further submits that the Trial Chamber's failure to attach any weight to the mistaken identifications reversed the burden of proof. The Appeals Chamber finds, however, that the Trial Chamber did not reverse the burden of proof as it was satisfied that the cumulative effect of the other evidence on the identification of Haradin Bala as the guard Shala established this fact beyond reasonable doubt.

Lastly, Haradin Bala argues that the Trial Chamber erroneously relied on in-court identifications of him as the guard known as Shala. The Appeals Chamber finds that the Trial Chamber did err in law when it ascribed, even slight probative weight to the in-court identifications, however, the Appeals Chamber finds, that the error does not invalidate the decision.

The Appeals Chamber recalls that the Trial Chamber reasonably found Ivan Bakrač's identification evidence to be particularly convincing. Therefore, having found that the Trial Chamber reasonably attached significant probative weight to the testimony of Ivan Bakrač and only slight probative weight to the courtroom identification evidence, the Appeals Chamber declines to find that the Trial Chamber would have reached a different conclusion had it not taken account of the courtroom identification evidence.

As a result, Haradin Bala's first ground of appeal is rejected.

Grounds 2 and 4: Participation in Nine Murders in Beriša Mountains and in Cruel Treatment of Witness L12.

In his second ground of appeal, Haradin Bala submits that the Trial Chamber erred in fact in finding that he participated in nine murders in the Beriša Mountains on 25 or 26 July 1998, because he was incapable of walking the prisoners into the Beriša Mountains. Alternatively, Haradin Bala argues that the Trial Chamber erred in law by shifting the burden of proof and requiring him to demonstrate that he was physically incapable of engaging in the nine murders.

The Appeals Chamber is satisfied that the Trial Chamber reasonably held that Haradin Bala was physically capable of walking the prisoners into the Beriša Mountains, because he had already shown that his medical condition did not prevent him from partaking in certain physical duties in service to the KLA. As to Haradin Bala's alternative

submission, the Appeals Chamber is not satisfied that the Trial Chamber improperly shifted the burden of proof and required him to demonstrate that he was physically incapable of engaging in the nine murders. The Appeals Chamber notes that the Trial Chamber was reasonably satisfied that the Prosecution had fulfilled its burden of negating any reasonable doubt that he was physically capable of engaging in these acts.

For similar reasons, the Appeals Chamber also rejects Haradin Bala's claim under his fourth ground of appeal that the Trial Chamber shifted the burden of proof in relation to his alleged physical incapability of engaging in the cruel treatment of Witness L12.

With respect to his alleged personal participation in the murders the Appeals Chamber finds that the Trial Chamber carefully weighed the evidence when it held that Haradin Bala was "present and directly involved in the shooting". Although the ballistics evidence neither established nor precluded the participation of a third KLA soldier in the murders, there was no evidence to suggest that Bala left the execution site prior to the murders, and thus the Trial Chamber's failure to discuss this issue does not constitute an error of fact. Furthermore, the Appeals Chamber notes that there was evidence demonstrating that "Shala" was seen with an automatic weapon, which was the type of weapon the ballistics evidence determined was used in the murders.

As a result, Haradin Bala's second and fourth grounds of appeal are rejected.

Ground 6: Rejection of Bala's Alibi

In his sixth ground of appeal, Haradin Bala argues that the Trial Chamber erred in law and fact in rejecting his alibi defence. He submits that the Trial Chamber erroneously shifted the burden of proof in requiring him to establish that his alibi was consistent and credible rather than requiring that he simply show a reasonable possibility that the evidence of alibi is true. The Appeals Chamber considers that the Trial Chamber correctly satisfied itself that the Prosecution had eliminated any reasonable possibility that the evidence of alibi was true and thus committed no legal error in its assessment of Haradin Bala's alibi. As to Bala's allegations of factual errors in the assessment of his alibi evidence, the Appeals Chamber finds his submissions to be without merit.

Haradin Bala further argues that the Trial Chamber erred in law by holding his decision not to give sworn evidence against him. The Appeals Chamber notes, however, that the Trial Chamber specifically held that no adverse finding could be drawn on the basis of Haradin Bala's decision not to give sworn evidence and that he has failed to show that his decision not to testify was in fact held against him.

Lastly, Haradin Bala submits that the Trial Chamber erred in failing to provide a reasoned opinion for the rejection of his alibi. The Appeals Chamber notes however, that the Trial Chamber thoroughly considered Haradin Bala's alibi defence in a nine-page section of the Trial Judgement, and finds that the Trial Chamber offered a reasoned opinion for its rejection of Haradin Bala's alibi.

Haradin Bala's sixth ground of appeal is rejected.

Ground 8: Error Finding Witnesses L04 and L06 Credible

In his eighth ground of appeal, Haradin Bala submits that the Trial Chamber erred in fact when it found Witnesses L04 and L06 to be credible despite obvious inconsistencies between their post-testimony interviews given to the Prosecution and their prior statements made to Serbian authorities. The Appeals Chamber notes that the Trial Chamber found the witnesses to be honest and credible after having carefully examined their testimonies and numerous factors touching upon their credibility. The Appeals Chamber concludes that, in light of the fact that the evidence of several other witnesses corroborated much of their respective testimonies, a reasonable trier of fact could have

found these witnesses to be credible despite the identical discrepancy in their testimonies relating to the length of their interviews with Serbian authorities

Haradin Bala's eighth ground of appeal is rejected.

V. THE APPEAL OF THE PROSECUTION REGARDING HARADIN BALA

I will now turn to the appeal of the Prosecution.

Ground 1: Bala's Alleged Participation in a JCE

In its first ground of appeal against Haradin Bala, the Prosecution submits that the Trial Chamber erroneously failed to find that Haradin Bala was a member of a joint criminal enterprise and thus individually responsible for the crimes committed in furtherance of a system of ill-treatment in the Lapušnik prison camp, and for those crimes which were reasonably foreseeable as a possible consequence of this system.

The Prosecution argues that a systemic joint criminal enterprise existed: first, the prison camp was run by the KLA; second, the conditions in the camp amounted to a system of ill-treatment; and third, the KLA soldiers in the camp intended to further this system of ill-treatment.

The Prosecution argues in particular that the identification of the members of a joint criminal enterprise, beyond being members of that enterprise, is not an additional element of joint criminal enterprise liability.

The Appeals Chamber does not consider that the Trial Chamber adopted an erroneously narrow approach to the identification of the participants in a joint criminal enterprise. Rather, it is clear that the Trial Chamber was not satisfied that the Prosecution had adduced sufficient evidence of the identity of the alleged participants in the joint criminal enterprise to establish that a plurality of persons sharing a common plan existed.

The Prosecution alternatively submits that the Trial Chamber erred in fact in failing to draw the only reasonable inference from the evidence, namely, that members of the systemic joint criminal enterprise were sufficiently identified by their category as KLA soldiers in the Lapušnik prison camp, including the three Accused.

The Appeals Chamber finds that the Trial Chamber did not commit a factual error when it found that there was insufficient evidence to identify a plurality of persons who furthered a common plan to commit cruel treatment in the Lapušnik prison camp. While the Trial Chamber's factual findings show that KLA soldiers systematically committed cruel treatment and torture in the camp, the Trial Chamber was not satisfied that these KLA soldiers were participants in a systemic joint criminal enterprise to commit these crimes. The Trial Chamber did not err in this respect, because it reasonably held that it could not be ruled out that rogue KLA soldiers or so-called outsiders to the camp for personal reasons, such as revenge, mistreated or killed civilian detainees, and not in furtherance of any common plan.

The Prosecution further submits that any member of the alleged systemic joint criminal enterprise who contributed to an outsider's crime must be considered as having at the same time committed this crime together with the outsider in a basic joint criminal enterprise. The Appeals Chamber finds, however, that Haradin Bala was not given adequate notice of such an alternative basic joint criminal enterprise charge. Hence, the Appeals Chamber does not consider it appropriate to address the merits of this argument.

Alternatively, the Prosecution submits that Haradin Bala would incur individual criminal responsibility for crimes committed by outsiders as an aider and abettor. The Appeals Chamber is not satisfied, however, that it is the only reasonable inference from

the evidence that, in addition to the convictions for aiding and abetting already entered by the Trial Chamber, Haradin Bala incurs criminal responsibility for having aided and abetted other crimes of cruel treatment and torture. It was open to a trier of fact to conclude that the evidence did not show beyond a reasonable doubt that Haradin Bala knowingly provided substantial assistance as an aider and abettor to each act of cruel treatment or torture in the prison camp.

As a result, the Prosecution's first ground of appeal is rejected.

Ground 2: Bala's Sentence

In its alternative second ground of appeal, the Prosecution submits that the Trial Chamber erred in exercising its sentencing discretion by sentencing Haradin Bala to thirteen years of imprisonment. First, the Prosecution argues that the sentence does not reflect the gravity of Haradin Bala's crimes; second, that the Trial Chamber erred in its assessment of mitigating and aggravating circumstances; and third, that when comparing his sentence to that of others the sentence imposed is manifestly inadequate.

The Appeals Chamber is satisfied that the Trial Chamber did not err in comparing the crimes for which Haradin Bala was convicted with those committed by other KLA members when assessing the gravity of his crimes. Furthermore, the mere submission that the Trial Chamber gave insufficient weight to Haradin Bala's role as a committer or aider and abettor does not show that the Trial Chamber ventured outside its sentencing discretion, and the Prosecution does not establish an error in this respect. As to the Prosecution's arguments in relation to the mitigating effect of his acting under orders and the absence of a sadistic motive, the Appeals Chamber notes that these factors were not considered by the Trial Chamber as mitigating circumstances but were instead taken into account as particular circumstances in the assessment of the gravity of the crimes. The Prosecution does not show that the Trial Chamber committed a discernible error in this respect.

With respect to its argument that Haradin Bala's sentence is manifestly inadequate when compared to the sentences imposed in other similar cases, the Appeals Chamber considers that the Prosecution fails to demonstrate the commission of a discernible error by the Trial Chamber.

Finally, the Prosecution submits that the Trial Chamber erred in disregarding the vulnerability of the victims as an aggravating factor and in double-counting Haradin Bala's subordinate role in mitigation of the sentence. The Appeals Chamber notes, that the defencelessness of the victims was accounted for by the Trial Chamber in its assessment of the gravity of the crimes and that no error was committed as a result. The Appeals Chamber finds however, that the Trial Chamber did err in double-counting Haradin Bala's subordinate role in mitigation of the sentence but that this error was so slight as to be harmless. The Appeals Chamber believes that even if it had not fallen into error, the Trial Chamber would have arrived at the same sentence.

The Prosecution's second ground of appeal against Haradin Bala is rejected.

VI. THE APPEAL OF THE PROSECUTION REGARDING FATMIR LIMAJ

Ground 1: Limaj's Alleged Participation in Lapušnik Prison Camp

I will now turn to the Prosecution's appeal regarding Fatmir Limaj's acquittal.

Under its first ground of appeal, the Prosecution argues that the Trial Chamber erred in law and in fact by taking a piecemeal approach to the evaluation of evidence that did not have to be "proven beyond a reasonable doubt" and by applying a standard of proof beyond any doubt instead of a standard of proof beyond reasonable doubt. It

submits that, as a result, the Trial Chamber erred in not finding that Fatmir Limaj personally participated in the operation of the Lapušnik prison camp.

The Appeals Chamber finds that it was on the basis of the totality of the evidence that the Trial Chamber found that the Prosecution had failed to establish Fatmir Limaj's personal participation in the prison camp rather than on the basis of a piecemeal evaluation of the evidence as argued by the Prosecution. The Appeals Chamber further dismisses the Prosecution's arguments that the Trial Chamber erred in applying a higher standard of proof than the standard of proof beyond a reasonable doubt.

The Prosecution's first ground of appeal is dismissed. The Prosecution's allegations that the Trial Chamber erred in failing to consider Fatmir Limaj's alleged command position and his ability to make release decisions in examining whether he personally participated in the prison camp will be addressed under the second ground of appeal.

Ground 2: Limaj's Alleged Position of Command and Control

Under its second ground of appeal, the Prosecution argues that the Trial Chamber erred in law by misapplying the standard of proof beyond reasonable doubt and erred in fact by failing to consider and erroneously evaluating all the evidence pertaining to Fatmir Limaj's alleged command position over the KLA in the Lapušnik prison camp.

With respect to the Trial Chamber's alleged failure to consider the evidence of eyewitnesses in the camp as relevant to Fatmir Limaj's command functions rather than solely to the question of identification, the Appeals Chamber notes that the Trial Chamber did in fact refer to the identification evidence when addressing Fatmir Limaj's position of command and control. With regard to the Trial Chamber's alleged failure to *properly* evaluate the relevant evidence, for the reasons given in the Judgement, the Appeals Chamber finds that the Prosecution's submissions are insufficient to call into question the reasonableness of the Trial Chamber's findings

Lastly, the Prosecution's further submission that the Trial Chamber erred in its evaluation of evidence that Fatmir Limaj disarmed soldiers and consequently erred by unreasonably concluding that this did not demonstrate an exercise of his command authority is also dismissed. The Appeals Chamber is satisfied that the Trial Chamber reasonably found that Fatmir Limaj did not have powers of discipline in the sense of effective control when disarming subordinates, as required for criminal responsibility pursuant to Article 7(3) of the Statute.

The Appeals Chamber is satisfied that the Trial Chamber did not err in applying the standard of proof beyond a reasonable doubt to the totality of the evidence and finds that Trial Chamber reasonably found that Fatmir Limaj does not incur criminal responsibility for any of the offences charged in the Indictment whether under Article 7(1) or 7(3) of the Statute. As a result, the Appeals Chamber dismisses the remainder of the Prosecution's first ground of appeal and its second ground of appeal.

Finally, the Appeals Chamber recalls that the Prosecution's submissions under the third ground of appeal pertaining to Fatmir Limaj's alleged participation in a systemic joint criminal enterprise have already been addressed together with the Prosecution's first ground of appeal in relation to Haradin Bala. As a result, the Prosecution's allegations under the third ground of appeal in relation to Fatmir Limaj have already been disposed of.

VI. THE APPEAL OF THE PROSECUTION REGARDING ISAK MUSLIU

Ground 1: Musliu's Alleged Participation in the Camp

I will now turn to the Prosecution's appeal against the acquittal of Isak Musliu.

Under its first ground of appeal, the Prosecution submits that the Trial Chamber's piecemeal approach to the evaluation of the evidence on Isak Musliu's participation in the camp was legally erroneous. The Prosecution argues in particular, that the Trial Chamber erroneously restricted its evaluation of his participation in the camp to a limited portion of the evidence, namely direct visual identification evidence. The Appeals Chamber notes, however, that in addition to visual identification evidence, the Trial Chamber took into account witness testimonies that Isak Musliu was at the relevant time known as Qerqiz, that certain prisoners heard this name while they were beaten and that a person called Qerqiz was almost continuously present in the camp between around 28 June and around 23 July 1998. The Appeals Chamber therefore rejects the argument that the Trial Chamber applied a piecemeal approach to the evidence.

The Prosecution further submits that the Trial Chamber erred in law by failing to apply the standard of proof beyond reasonable doubt; and instead, applied a standard that entertained *any* doubt, including doubt not based upon evidence, logic or common sense. Furthermore, the Prosecution argues that the Trial Chamber erred in fact by failing to properly consider relevant evidence on Isak Musliu's participation in the prison camp.

The Appeals Chamber examined whether the Trial Chamber erred in rejecting the evidence of several witnesses which identified a person who went by the pseudonym Qerqiz in the prison camp. With respect to Ruzhdi Karpuzi's testimony on this issue, the Appeals Chamber considers that he *saw* Isak Musliu inside the prison camp and not only *heard* him as held by the Trial Chamber. However, the Appeals Chamber finds, Judge Schomburg dissenting, that even if Isak Musliu had been singing inside the camp, the Prosecution has not shown that this would have made it unreasonable for the Trial Chamber not to find that he was responsible for crimes committed in the camp.

The Prosecution further submits that the Trial Chamber erred in failing to find from the cumulative evidence of Witnesses L10, L04, and L12 that Isak Musliu was identified inside the camp. In relation to Witness L10 the Trial Chamber held that while he stated that he identified Qerqiz in the prison camp as the, I quote, "masked perpetrator", end of quote, who was addressed by Shala as Qerqiz, Witness L10 also, I quote, "acknowledged that he could not distinguish Qerqiz from the other soldiers at the camp because of the mask he wore", end of quote. Thus, the Appeals Chamber finds, Judge Schomburg dissenting, that the Trial Chamber reasonably held that it could not conclude from Witness L10's evidence that Isak Musliu was in fact the man Witness L10 knew as Qerqiz.

With respect to the remaining witnesses, the Appeals Chamber finds that the Trial Chamber reasonably held that Witness L04's testimony did not provide a reliable basis for a finding that Isak Musliu participated in the operation of the prison camp and that it reasonably refrained from finding on the basis of Witness L12's testimony that Isak Musliu was present when he was beaten in the prison camp.

In sum, the Appeals Chamber is not satisfied, Judge Schomburg dissenting with respect to the evidence of Ruzhdi Karpuzi and Witness L10, that the Trial Chamber erred when it did not conclude from the testimonies of the above-mentioned witnesses that they identified Isak Musliu in the prison camp.

With respect to the testimonies of Witnesses L64 and L96 who allegedly saw Qerqiz entering the prison camp and inside the prison camp, respectively, the Appeals Chamber recalls that the Trial Chamber reasonably held that their evidence had to be independently confirmed in some material particular. Since the Trial Chamber reasonably rejected the evidence of Witnesses L10, L04 and L12 on having seen Qerqiz, or Isak Musliu, inside the camp, the relevant evidence of Witnesses L64 and L96 was unsupported and thus reasonably rejected.

Finally, the Prosecution submits that the Trial Chamber unreasonably failed to consider evidence of Isak Musliu's near continuous presence in the village of Lapušnik and

his proximity to the camp. In light of the above findings on the witnesses' testimonies, however, the Appeals Chamber is satisfied that it was open to a reasonable trier of fact to find that the close proximity to the prison camp alone does not support the inference that Isak Musliu was present and personally participated in its operation.

In sum, the Appeals Chamber is satisfied, Judge Schomburg dissenting, that notwithstanding some minor errors in the Trial Chamber's reasoning which do not have an impact on the verdict the Trial Chamber reasonably assessed the totality of the evidence and found that Isak Musliu was not present inside the prison camp and did not participate in the operation of the Lapušnik prison camp.

The Prosecution's first ground of appeal against Isak Musliu is thus rejected.

Ground 2: Musliu's Alleged Command and Control over the KLA Soldiers in the Prison Camp

In its second ground of appeal, the Prosecution submits that the Trial Chamber erroneously failed to find Isak Musliu responsible as a commander pursuant to Article 7(3) of the Statute. The Prosecution argues that since the Trial Chamber found that Isak Musliu exercised command and control over the Çeliku 3 unit, it would have also found that he exercised command and control over the KLA soldiers in the camp had it not failed to find that the Çeliku 3 unit was responsible for operating the prison camp.

With regard to the role of the Çeliku 3 unit and its members in relation to the camp, the Appeals Chamber concludes that the Prosecution does not show that the Trial Chamber found that the Çeliku 3 unit was the only KLA unit that was regularly stationed, during the Indictment period, south of the Peć-Priština main road where the prison camp was situated. The Appeals Chamber notes, in this regard, that the Trial Chamber found that the Pellumbi unit was stationed to the south of the prison camp for a time in July 1998.

The Prosecution further submits that neither the Pellumbi unit nor outsiders to the camp could have operated the Lapušnik prison camp. The Appeals Chamber finds, however, that the Prosecution does not show that the operation of the camp had to be carried out by soldiers of a single, specific KLA unit such as Çeliku 3. Moreover, it could reasonably be inferred from the evidence that soldiers from the Pellumbi unit or from other KLA units in the vicinity of the prison camp participated in operating the camp.

The Appeals Chamber further dismisses the Prosecution's submission that the Trial Chamber neglected to consider circumstantial evidence in assessing whether the Çeliku 3 unit was responsible for operating the prison camp as it is evident from the Trial Judgement that inferential or circumstantial evidence was in fact considered. Moreover, the Appeals Chamber is satisfied that the Trial Chamber did not apply an erroneously piecemeal approach to its assessment of the evidence relating to the proximity of Çeliku 3 to the prison camp as suggested by the Prosecution.

The Prosecution makes the alternative submission that the Trial Chamber erred in failing to find that members of the Çeliku 3 unit participated in the operation of the camp. The Prosecution specifically submits that the Trial Chamber erroneously failed to find that Haradin Bala and two prison guards named Tamuli and Salihi were members of the Çeliku 3 unit and that their involvement in the operation of the prison camp as members of this unit entailed the command responsibility of Isak Musliu. The Appeals Chamber finds, however, that it was reasonable to infer from the evidence, that these three guards were not members of the Çeliku 3 unit throughout the Indictment period. As such, the Appeals Chamber is satisfied that it was a reasonable conclusion for the Trial Chamber not to find that soldiers of the Çeliku 3 unit participated in the operation of the prison camp.

The Appeals Chamber is satisfied that the Trial Chamber did not err when it did not find that Isak Musliu incurred criminal responsibility pursuant to Article 7(3) of the Statute for crimes committed in the Lapušnik prison camp. The Prosecution's second ground of appeal is thus rejected.

Finally, in relation to the Prosecution's third ground of appeal with respect to Isak Musliu's alleged participation in a systemic joint criminal enterprise, the Appeals Chamber recalls its finding, Judge Schomburg dissenting, that it was not the only reasonable inference from the evidence that Isak Musliu participated in the operation of the prison camp. Thus, the Appeals Chamber finds that the Prosecution's allegations under the third ground of appeal have already been disposed of.

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

For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules of Procedure and Evidence;

NOTING the respective written submissions of the Parties and the arguments they presented at the hearing on 5 and 6 June 2007;

SITTING in open session;

DISMISSES Haradin Bala's appeal in its entirety;

DISMISSES, Judge Wolfgang Schomburg dissenting with respect to the Prosecution's first ground of appeal in relation to Isak Musliu, the Prosecution's appeal;

AFFIRMS the sentence imposed by the Trial Chamber against Haradin Bala, subject to credit being given under Rule 101(C) of the Rules for the period Haradin Bala has already spent in detention; and

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that Haradin Bala 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.

Done in English and French, the English text being authoritative.

Judge Mohamed Shahabuddeen appends a declaration.

Judge Wolfgang Schomburg appends a partially dissenting and separate opinion and declaration.

Dated this twenty-seventh day of September 2007

At The Hague, The Netherlands
