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TRIAL CHAMBER
CHAMBRE DE 1ÈRE
INSTANCE

The Hague, 13 November 2001
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SENTENCING JUDGEMENT IN THE CASE
THE PROSECUTOR AGAINST DUŠKO SIKIRICA, DAMIR DOŠEN AND DRAGAN
KOLUNDŽIJA

- **Duško Sikirica is sentenced to 15 years' imprisonment**
- **Damir Došen is sentenced to 5 years' imprisonment**
- **Dragan Kolundžija is sentenced to 3 years' imprisonment**

Please find below a summary of the conclusions of Trial Chamber III, read out in court on Tuesday 13 November 2001 by Judge Patrick Robinson, the presiding Judge of Trial Chamber III. The Trial Chamber also consisted of Judge Richard May and Judge Mohamed El Habib Fassi Fihri. This summary forms no part of the Sentencing Judgement. As indicated by Judge Robinson: "The only authoritative account of the Trial Chamber's determinations and of its reasons therefore, is to be found in the written Judgement".

PROCEDURAL BACKGROUND

The three accused were charged with crimes alleged to have been committed against the non-Serb population in the municipality of Prijedor in north-western Bosnia and Herzegovina, and, in particular, at a detention facility known as the Keraterm camp, over a period of three months in the summer of 1992. Their trial began on 19 March 2001.

Duško Sikirica, alleged to have been the commander of the Keraterm camp, was initially charged with genocide, complicity to commit genocide, persecution as a crime against humanity and violations of the laws or customs of war. Damir Došen and Dragan Kolundžija, alleged to have been shift leaders in the Keraterm camp, were both charged with persecution as a crime against humanity and violations of the laws or customs of war. Upon a motion for acquittal at the close of the Prosecution's case, the Chamber dismissed the genocide counts against Duško Sikirica, as well as the counts charging Damir Došen with torture, inhumane acts and cruel treatment.

On 31 August 2001, after the presentation of evidence in Sikirica and Došen's defence cases, Dragan Kolundžija and the Prosecution filed a joint submission notifying the Chamber of the accused's decision to plead guilty to the charge of persecution. Thereafter, at a hearing before the Chamber, Kolundžija entered his plea of guilty to Count 3 of the Indictment, namely persecution as a crime against humanity. Upon the Trial Chamber's acceptance of that plea, the Prosecution withdrew the remaining counts against Dragan Kolundžija.

On 7 September 2001, joint submissions were filed on behalf of the Prosecution and the two accused Sikirica and Došen, respectively, notifying the Chamber of the decision of the accused to plead guilty to the charge of persecution. Thereafter, at a hearing before the Chamber, each accused entered a plea of guilty to Count 3 of the Indictment, namely persecution as a crime against humanity. Upon the Trial Chamber's acceptance of the pleas, the Prosecution withdrew the remaining counts against Duško Sikirica and Damir Došen.

The sentencing hearings were held on 8 and 9 October and, in addition to the closing arguments on behalf of the parties, each of the convicted persons made a statement to the Chamber expressing remorse.

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In this regard, the Trial Chamber held that, although it was free to reject the guilty pleas, once it had accepted the pleas, the sentence should be imposed on the basis of the facts agreed between the parties as set out in the Plea Agreements.

Each of the Plea Agreements concedes that there is ample evidence that the Bosnian Muslims, Bosnian Croats and other non-Serbs were subjected to inhumane conditions during their confinement in the Keraterm camp from about 24 May 1992 to 5 August 1992. These conditions included: insufficient food and water; inadequate medical care and treatment; overcrowding and lack of opportunities for fresh air and exercise; and lack of proper hygiene arrangements. The Sentencing Judgement sets out in some detail this evidence, for the reason that each of the Plea Agreements reflects the understanding that the count of persecution, to which each accused has pleaded guilty, encompasses that evidence.

The criminal conduct underlying each of the accuseds' convictions for persecution is contained in the factual basis set out in each of the Plea Agreements.

The Chamber then turns to consider the factors relevant to a consideration of an appropriate sentence. In determining sentence, the Trial Chamber has taken into account the following factors; the gravity of the offence, including any aggravating factors, the mitigating circumstances, as well as the general practice regarding prison sentences in the courts of the former Yugoslavia. As regards mitigating circumstances, the Chamber heard submissions on cooperation with the Office of the Prosecutor, but concluded that they were not of sufficient substance as to affect its decision.

SENTENCING FACTORS

Duško Sikirica has admitted to being the Commander of Security at the Keraterm camp between 14 June and 27 July 1992. While he carried out some administrative acts, he did not have any role in the effective administration of Keraterm, which was conducted from Prijedor II police station by Živko Knežević under the general authority of Simo Drljača of the Crisis Staff. He had very limited authority over his equally ranked reserve police colleagues and did not himself have the power to punish any person subordinate to him. Sikirica was not responsible for ensuring adequate food, clothing, water, medical assistance and satisfactory accommodation for the detainees.

Sikirica has admitted to killing one of the detainees in the camp, by shooting him in the head. Moreover, he admits that there is considerable evidence concerning the murder of other individuals at Keraterm during the period of his duties, although it is agreed that there is no evidence that he was present during the commission of the massacre of over one hundred people in Room 3, or that he participated in it in any way. In addition to the killings, Sikirica has admitted that there is evidence that beatings, rape and sexual assault were perpetrated in the camp, as well as harassment, humiliation and psychological abuse of the detainees. He further admits that there is ample evidence that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp.

As a component of the overall gravity of his offence, the Chamber has taken into account Duško Sikirica's superior position at Keraterm. As commander of security, Duško Sikirica has admitted to having a technical duty to prevent the entry of persons into the camp. That he failed in his duty to prevent outsiders from coming into the camp to mistreat detainees must aggravate his crime. His superior position also aggravates the murder which he has admitted perpetrating.

As to mitigating circumstances, the Chamber considers that the primary factor to be considered in mitigation of Sikirica's sentence is his decision to enter a guilty plea, although it will also take into account his expression of remorse.

A guilty plea facilitates the work of the Tribunal in two ways. Firstly, by entering a plea of guilt before the commencement of his trial, an accused will save the Tribunal the time and effort of a lengthy investigation and trial. Secondly, notwithstanding the timing of the guilty plea, a benefit accrues to the Trial Chamber, because a guilty plea contributes directly to one of the fundamental objectives of the Tribunal; namely its truth-finding function. As was held in the *Todorović* case, "a guilty plea *is always important* for the purpose of establishing the truth in relation to a crime."

Accordingly, while an accused who pleads guilty to the charges against him prior to the commencement of his trial will usually receive full credit for that plea, one who enters a plea of guilt any

time thereafter will still stand to receive some credit, though not as much as he would have, had the plea been made prior to the commencement of the trial.

Therefore, the Chamber holds that, despite the lateness of his guilty plea, Duško Sikirica should receive some credit for that plea.

To accept remorse as a factor in mitigation, the Trial Chamber must be satisfied as to the sincerity of the expressed remorse. In this regard, the Chamber recalls the statement made by Duško Sikirica during the Sentencing Hearing, in which he expressed remorse for his crimes. It treats his remorse as a mitigating factor in determining sentence.

Damir Došen has admitted that he was a shift leader of 6-12 men at the Keraterm camp from 3 June to early August 1992. As such, he exercised some limited authority, although he did not hold any rank and was of the same seniority as the other guards on his shift. He did not have the power to punish anybody. Došen had no role in the administration of the camp and was not responsible for ensuring adequate supplies of food, clothing, water, medical assistance and satisfactory accommodation.

Damir Došen has admitted that there was evidence that beatings occurred during his shift and that he was aware that such beatings took place. However, there is also evidence that, on several occasions, he attempted to prevent mistreatment of the detainees. He admits that many detainees were beaten during their detention in the Keraterm camp and that beatings caused both serious physical and mental harm to the victims and mental harm to those who witnessed such events. He further admits that there is ample evidence that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp.

The Chamber is of the view that Došen's position as shift leader is an aggravating factor in relation to his crime. He was in a position of trust which he abused: he permitted the persecution of, and condoned violence towards, the very people he should have been protecting. However, the amount of aggravation must be limited in light of the limited nature of his authority.

As to mitigating circumstances, the Chamber considers that, for the same reasons as discussed in relation to Sikirica, Došen, despite the lateness of his guilty plea, should receive some credit for that plea. Moreover, the Chamber recalls the statement made by Damir Došen during the Sentencing Hearing, in which he expressed remorse for his crimes. It treats his remorse as a mitigating factor in determining sentence. The Chamber has also taken into account the evidence that Došen, as shift leader, often acted to ameliorate the terrible conditions that prevailed in the Keraterm camp. The Chamber considers these acts in mitigation of his sentence. The Chamber has concluded that Damir Došen's psychological condition at the time his crimes were committed was not one which could give rise to mitigation of sentence.

Dragan Kolundžija has admitted to being a shift leader at the Keraterm camp from early June to 25 July 1992. As shift leader he had some control over 6-12 guards on his shift and thus exercised some authority in the Keraterm camp. Kolundžija admits that he was in a position to influence the day-to-day running of the camp when he was on duty.

There is no evidence that Kolundžija personally mistreated or condoned the mistreatment of detainees by others. He accepts that there is evidence that mistreatment occurred regularly at the Keraterm camp during the period when he was a shift leader and he accepts responsibility for continuing as a shift leader despite being aware of the inhumane camp conditions. In particular, Kolundžija admits that there is ample evidence that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp.

The Chamber finds that Kolundžija was in a similar position in the camp to that of Došen, i.e. a shift leader with limited authority. By continuing as a shift leader, although aware of the conditions, he was abusing his position of trust. This amounts to an aggravating factor in his case, albeit limited in line with his authority.

The Chamber considers that Dragan Kolundžija's guilty plea and his favourable treatment of the detainees should be considered in mitigation of sentence.

The Chamber observes that Kolundžija's plea was more timely than that of his co-accused, having been entered before the commencement of the defence case. It finds that, although not made at the commencement of the proceedings, Kolundžija should receive close to full credit for his guilty plea.

Moreover, the Chamber has heard ample evidence of Kolundžija's efforts to ease the harsh conditions in the Keraterm camp for many of the detainees. It considers that, on this basis, he should receive a significant reduction in his sentence.

The Chamber has also recalled the statement made by Dragan Kolundžija during the Sentencing Hearing, in which he expressed remorse for his crimes. It treats his remorse as a mitigating factor in determining sentence.

DETERMINATION OF SENTENCES

In the final section of the Judgement, the Chamber considers the relative weight to be accorded to the above-mentioned factors in determining sentence for each of the accused.

At the outset, the Chamber notes that Duško Sikirica, Damir Došen and Dragan Kolundžija have each been convicted of the crime of persecution, a crime against humanity, which is inherently a very serious crime. This crime, like other crimes against humanity, requires that the acts of the accused relate to a widespread and systematic attack on a civilian population of which the accused had knowledge. Moreover, persecution is the only crime enumerated in Article 5 of the Statute which requires a discriminatory intent, and which, by its nature, may incorporate other crimes. The *Blaškić* Trial Chamber and, more recently, this Chamber in the *Todorović* case, held that the crime of persecution, on account of these distinctive features, justifies a more severe penalty.

The gravity of **Duško Sikirica's** crime is distinguished from that of his co-accused on account of the breadth of the underlying criminal conduct and, more significantly, on the basis of the extent of his direct personal involvement in the crimes. He alone has been convicted for committing a murder in the camp, by shooting one of the detainees at close range within view of other detainees and camp guards. As discussed above, that crime is aggravated by his role as Commander of Security within the camp.

The primary factor which the Trial Chamber has considered in mitigation of Duško Sikirica's sentence is his guilty plea. His expression of remorse has also been considered. It is worth noting that, had Sikirica not pleaded guilty in the circumstances of this case, even taking into account the lateness of that plea, he would have received a much longer sentence.

Although **Damir Došen's** offence is a serious one, in light of the fact that he has been convicted of the crime of persecution, the Chamber, in assessing the gravity of the offence, has borne in mind that, while he has admitted to being aware of beatings occurring on his shift, the Plea Agreement does not suggest his direct involvement in any of those beatings.

In relation to those factors which have been taken into account in mitigation of sentence, in the Chamber's view, Došen's guilty plea and the evidence of the consideration that he showed the detainees are of primary importance. His expression of remorse, which the Trial Chamber has found to be sincere, has also been considered.

Although **Dragan Kolundžija** has been convicted of the crime of persecution, in the Chamber's view, the gravity of his crime is considerably diminished by the fact, as set forth in the Plea Agreement, that there was no evidence of his direct, personal involvement in any of the underlying criminal conduct.

The Trial Chamber has considered the following mitigating circumstances in relation to Dragan Kolundžija. Firstly, there is his guilty plea, which, unlike those of his co-accused, was entered before the presentation of evidence had commenced in his case. Secondly, there is the fact that many of the former detainees who testified in the Prosecution case gave evidence that Kolundžija had, on many occasions, acted to alleviate the appalling conditions that prevailed in the camp. These mitigating factors weigh heavily in favour of a substantial reduction in his sentence.

The operative paragraph of the Sentencing Judgement of this Chamber reads as follows:

For the foregoing reasons, having considered the arguments of the parties, the evidence presented at the Sentencing Hearing, and the Statute and the Rules, the TRIAL CHAMBER IMPOSES THE FOLLOWING SENTENCES:

In respect of **Duško Sikirica**, a sentence of 15 years' imprisonment with credit for 1 year, 4 months and 19 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

In respect of **Damir Došen**, a sentence of 5 years' imprisonment with credit for 2 years, and 19 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

In respect of **Dragan Kolundžija**, a sentence of 3 years' imprisonment with credit for 2 years, 5 months and 6 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

Pursuant to Rule 103 (C), each of the convicted persons shall remain in the custody of the International Tribunal pending the finalisation of arrangements for transfer to the State where sentence will be served.

The full text of the Judgement is available upon request at the Public Information Services; it is also available on the Internet site of the Tribunal.