UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-95-10/1-S

Date: 11 March 2004

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IN THE TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Liu Daqun
Judge Amin El Mahdi

Registrar: **Hans Holthuis**

Judgement of: **11 March 2004**

PROSECUTOR

v.

RANKO ČEŠIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

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CONTENTS

I. INTRODUCTION

1. An indictment against Goran Jelisić and Ranko Češić was submitted on 30 June 1995 and confirmed on 21 July 1995 by Judge Lal Chand Vohrah. The indictment initially consisted of 77 counts, 27 of which concerned Ranko Češić. A first amendment to this indictment, withdrawing all charges based on Article 2 of the Statute, was authorised by Judge Jorda, then presiding judge of Trial Chamber I, on 12 May 1998. A second Motion for Leave to Amend the Indictment was filed by the Prosecution on 28 September 1998 and granted by Judge Lal Chand Vohrah on 19 October 1998.[1] A third amended indictment, pertaining only to Ranko Češić, was filed on 26 November 2002 after leave was granted by the Trial Chamber on 22 November 2002.[2]

2. Ranko Češić was arrested in Belgrade by the authorities of the Federal Republic of Yugoslavia on 25 May 2002 and was transferred to the United Nations Detention Unit at The Hague on 17 June 2002.

3. The third amended indictment ("the Indictment") is comprised of 12 counts. The Accused is charged with six counts of crimes against humanity, five of which charge murder and one of which charges rape, and six counts of violations of the laws or customs of war (which concern the same events), five of which charge murder and one of which charges humiliating and degrading treatment. It is alleged that all acts or omissions charged occurred between May 1992 and June 1992, and that the Accused is responsible, under Article 7(1) of the Statute, for having committed those crimes.[3]

4. Ranko Češić pleaded not guilty at his initial appearance on 20 June 2002. On 7 October 2003, pursuant to Rule 62 *bis* of the Rules of Procedure and Evidence ("the Rules"), a plea agreement ("the Plea Agreement") was jointly filed, to which a factual basis was attached ("the Factual Basis"). At a hearing on 8 October 2003, Ranko Češić pleaded guilty to all twelve counts with which he was charged. The Trial Chamber, being satisfied that the plea was voluntary, informed, unequivocal and that there was a sufficient factual basis for the crime and for Ranko Češić's participation in it, entered a finding of guilt on the same day.

[1] An "Order Granting Leave to File a Second Amended Indictment and Confirming the Second Amended Indictment" was filed on 19 October 1998.
[2] "Decision on Defence Preliminary Motion Concerning Jurisdiction and the Form of the Indictment and on Prosecution's Motion for Leave to Amend the Indictment", 22 November 2002.
[3] Indictment, para. 9.

5. The parties filed their sentencing briefs on 12 November 2003 ("the Prosecution's Brief" and "the Defence's Brief"). The Prosecution also submitted, at the Chamber's request, unredacted statements on 18 November 2003, and filed "Supplementary Information Relating to Sentencing" on 21 November 2003 ("Supplementary Information"), as well as "Further Supplementary Information Relating to Sentencing" on 26 November 2003 ("Further Supplementary Information I"). A sentencing hearing was held on 27 November 2003. At the end of the hearing, the Trial Chamber adjourned the case to consider the sentence. Further to the request made by the Trial Chamber at the hearing, the Prosecution submitted "Further Supplementary Information Relating to Sentencing" on 8 December 2003 ("Further Supplementary Information II") and the Defence filed a "Response to Prosecutor's Further Supplementary Information Relating to Sentencing" ("Defence's Response") on 9 December 2003.[4]

II. THE FACTS

A. Ranko Češić

6. Ranko Češić was born on 5 September 1964, in Drvar municipality, Bosnia-Herzegovina.[5] He lived in Brčko before the war[6] and moved to Belgrade towards the end of 1996.[7]

7. He became a member of the Bosnian Serb Territorial Defence in Grčića, Brčko municipality, in May 1992. He then became a member of the intervention platoon of the Bosnian-Serb Police Reserve Corps in Brčko. A certificate from the Ministry of Interior Affairs of Republika Sprska, adduced by the Defence as an Annex to its Brief, indicates that he became a member of the Bosnian Serb Police Reserve unit at the Brčko police station on 15 May 1992.[8] In this capacity, one of his tasks was to arrest specified non-Serbs and bring them to the Brčko police station and/or the Luka detention facility for interrogation.[9]

B. The Criminal Acts Committed by Ranko Češić

8. Six acts form the basis of the counts charged against Ranko Češić. According to the Indictment and the Plea Agreement, all these acts were committed between 5 May and 14 May, except for one act, referred to in this Judgement as Incident 6, which was committed between 14

[4] This document was re-filed confidentially upon the order of the Trial Chamber ("Order for Re-Submission of Defence Response to Prosecutor's Further Supplementary Information Regarding Sentence", 19 December 2003).
[5] Factual Basis, para. 2; Defence's Brief, Annex D1.
[6] Indictment, para. 6, corroborated by the statements adduced by the Defence as annexes to its Sentencing Brief.
[7] T. 144.
[8] Defence's Brief, Annex D2.
[9] Factual Basis, para. 3.

May and 6 June, 1992.[10] The Trial Chamber will describe below the information presented with respect to each of those acts.

1. Killing of Sakib Becirević and four other men ("Incident 1")

9. Ranko Češić admitted that, on approximately 5 May 1992, he took Sakib Becirević, a man called "Pepa", a man called "Sale" and two sons of a man called "Avdo", out of the Brčko Partizan Sports Hall where they were detained, made them line up and shot and killed them.[11]

2. Killing of "Sejdo" ("Incident 2")

10. Ranko Češić admitted that, on approximately 9 May 1992, at Luka Camp, he intentionally shot dead a Muslim detainee named "Sejdo".[12] While the Indictment alleges that Ranko Češić beat the victim before he killed him, no such beating is mentioned in the Factual Basis.

3. Killing of a Muslim policeman named Mirsad ("Incident 3")

11. Ranko Češić admitted that, on approximately 11 May 1992, at Luka Camp, he and others intentionally took a Muslim policeman outside the hangar building where he was detained with others, after ordering him to say goodbye and shake hands with the other detainees. They then beat and intentionally killed him.[13]

12. Whilst the Indictment and the Plea Agreement, including the Factual Basis, refer to the victim as being named Mirsad Glagović, the Prosecution's Brief indicates that his actual name was Mirsad Mujagić.[14] Ranko Češić indicated at the sentencing hearing of 27 November 2003 that he only knew that his victim's first name was Mirsad, his nickname was "Mirso" and that he was a policeman. He clearly stated in court that, if a mistake was made with respect to the family name of the victim, no mistake was made with respect to the particular person concerned in this incident when he pleaded guilty and that he would have pleaded the same way if the family name then given to him had been different.[15] The Trial Chamber decided that, while a mistake had been made with respect to the family name of the victim, such information was not a material element of the Prosecution's case and had no bearing on the *actus reus* or the *mens rea* of the crimes Ranko Češić was convicted of. As a result, the Trial Chamber ruled that the guilty plea entered by the Accused and the conviction entered by the Trial Chamber on 8 October 2003, which do not actually name

[10] Factual Basis, paras. 8 through 18.
[11] Factual Basis, paras. 8 and 9.
[12] Factual Basis, paras. 10 and 11.
[13] Factual Basis, paras. 12, 13.
[14] Prosecution's Brief, paras. 28-30, footnote 22.
[15] T. 104-105.

the victim, remained unaffected, although the Factual Basis on which the conviction was entered was not correct in all its details and should be altered to show only the first name of the victim.[16]

4. Sexual Assault of Two Muslim Detainees ("Incident 4")

13. Ranko Češić admitted that, on approximately 11 May 1992, he intentionally forced, at gunpoint, two Muslim brothers detained at Luka Camp to perform fellatio on each other in the presence of others. Ranko Češić acknowledged that he was fully aware that this was taking place without the consent of the victims.[17]

14. Excerpts from two statements of one of the victims, dated 25 February 1995 and 7 November 2003, were annexed to the Prosecution's Brief[18] and the full statements were confidentially filed on 18 November 2003.[19] In the first statement, the victim relates that Ranko Češić first forced, at gunpoint, the brothers to hit each other.[20] One of the guards considered that they were not hitting each other hard enough, so he started beating the witness himself with such strength that he was knocked over a desk. Ranko Češić fired approximately in the direction of his brother as he was moving towards the witness to help him. The bullet impacted on the wall, about 10 to 15 centimetres from his brother. Ranko Češić then forced both brothers to perform fellatio on each other and left the office after he told a guard to make sure that they would not stop until he returned. He left the door open when he went out and several guards could watch and laugh. The witness stated that the situation lasted for about 45 minutes, until Ranko Češić returned with another guard. The witness specified in both statements that Ranko Češić was his neighbour before the war[21] and knew both brothers since before the war.[22] He indicated in the second statement that Ranko Češić was 17 years younger than him. He described that his brother and himself were covered with bruises when they were released, on 13 and 14 May 1992 respectively. The witness still has spinal problems, which he thinks may stem from the beatings he received at Luka Camp.

5. Killing of Nihad Jašarević ("Incident 5")

15. Ranko Češić admitted that, on 12 or 13 May 1992, at Luka Camp, he and another Serb policeman beat to death a Muslim detainee named Nihad Jašarević, using clubs. He acknowledged

[16] T. 105-106.
[17] Factual Basis, paras. 14, 15.
[18] Annex D.
[19] Submission of Unredacted Statements of Detainee A, 18 November 2003.
[20] First Statement, p. 6.
[21] First Statement, p. 4.
[22] Second Statement.

that he intended to kill the victim at the time of the beating.[23] No specifics were provided with respect to the beatings which caused the death of Nihad Jašarević.

6. Killing of Two Unknown Men ("Incident 6")

16. Ranko Češić admitted that, between 14 May and 6 June 1992, he intentionally took four detainees out of Luka Camp's office building, led them to the paved road in front of the main hangar building and, with the assistance of two guards, shot and killed at least two of them.[24]

17. In total, Ranko Češić has admitted to killing ten detainees, two of whom died as a result of beatings,[25] and to having forced two brothers to perform a sexual act on each other.

C. Context in which the Criminal Acts of Ranko Češić were Committed

18. Ranko Češić admitted that he was aware that, during the time of the violations charged against him, a state of armed conflict existed and that he was required to abide by the laws or customs of war, including the provisions of the Geneva Conventions of 1949.[26] He also acknowledged that all acts or omissions charged were part of a widespread or systematic attack directed against the Muslim and Croat civilian population of Brčko[27] and that he "had knowledge of the wider context in which his conduct occurred."[28] No description of this context is provided in the agreed Factual Basis. While the Trial Chamber only takes into account those facts contained in the Factual Basis in determining the guilt of Ranko Češić, reference is made to the Indictment for the sole purpose of providing a general understanding of the wider context in which Ranko Češić committed the crimes he is convicted of.

19. According to the Indictment, the violations charged against Ranko Češić took place while the Serb forces in Bosnia, from 30 April 1992 onwards, engaged in the take-over of the municipality of Brčko, located in the north-east of Bosnia-Herzegovina. During the operation, the Serb forces forcibly expelled and transferred the Muslim and Croat residents of Brčko to collection centers, including the Luka detention facility and the Brčko Partizan Sports Hall.

[23] Factual Basis, paras. 16, 17.
[24] Factual Basis, paras. 18,19.
[25] Incidents 3 and 5.
[26] Plea Agreement, para. 8; Factual Basis, paras. 4 and 5.
[27] Plea Agreement, para. 8; Factual Basis, para. 6.
[28] Factual Basis, para. 6.

20. The Indictment also states:

1. […]

2. From about 7 May 1992 until early July 1992, Serb forces confined hundreds of Muslim and Croat men, and a few women, at Luka camp in inhumane conditions and under armed guard. From about 7 May 1992 until about 21 May 1992, detainees were systematically killed at Luka.

3. From about 21 May 1992 until early July 1992, the detainees were subjected to beatings and,less frequently than before, killings.

4. In early July 1992, the surviving Luka detainees were transferred to another detention camp at Batković.[29]

III. THE LAW

A. The Statute and the Rules

21. The relevant provisions of the Statute and the Rules of Procedure and Evidence of the International Tribunal ("the Rules ") which relate to sentencing are set forth below.

Article 24 of the Statute

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

[…]

Rule 101 of the Rules

Penalties

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

[29] Indictment, paras. 2 to 4.

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

[…]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

B. General Considerations

22. In the jurisprudence of the Tribunal, retribution, deterrence and rehabilitation have been acknowledged as purposes of sentencing.

23. Retribution expresses society's condemnation of the criminal act and of the person who committed it and imposes a punishment in return for what he or she has done. The International Tribunal's penalty thus conveys the indignation of humanity for the serious violations of international humanitarian law for which an accused was found guilty.[30] Retribution satisfies the need for justice and may reduce the anger caused by the commission of the crime among the victims and the community as a whole.

24. In pursuing retribution as an important purpose of sentencing, the Trial Chamber focuses on the seriousness of the crimes to which Ranko Češić has pleaded guilty, in light of their specific circumstances.

25. The deterrent effect aimed at through sentencing consists in discouraging the commission of similar crimes.[31] The main effect sought is to turn the perpetrator away from future wrongdoing (special deterrence) but it is assumed that sentencing will also have an effect of discouraging others from committing the same kind of crime (general deterrence).[32]

26. In the instant case, the Trial Chamber considers that there is a limited chance that the convicted person will commit the same kind of crime in the future. With regard to general deterrence, imposing a sentence serves to strengthen the legal order, in which the type of conduct involved is defined as criminal, and to reassure society of the effectiveness of its penal provisions. Nonetheless, imposing upon one person a higher sentence merely for the purpose of deterring others

[30] Aleksovski Appeal Judgement, para. 185.
[31] *Todorović* Sentencing Judgement, para. 30.
[32] *Tadić* Sentencing Judgement, paras 7-9.

would be unfair to the convicted person, and would ultimately weaken the respect for the legal order as a whole. Therefore, as cautioned in the *Tadić* Sentencing Appeal Judgment,[33] the Trial Chamber has taken care to ensure that, in determining the appropriate sentence, deterrence is not accorded undue prominence.

27. By rehabilitation, the Trial Chamber understands the need to take into account the rehabilitative potential of a convicted person; this will often go hands in hands with the process of reintegrating the convicted person into the society.[34]

28. The Trial Chamber is of the opinion that, when an accused pleads guilty, he or she takes an important step in the rehabilitation and reintegration processes.[35] This acknowledgement is capable of contributing to the establishment of the truth; it forms an indication of the determination of an accused to face his or her responsibility towards the aggrieved party and society at large; it may contribute to reconciliation.

IV. SENTENCING FACTORS

A. Gravity of the Offence

1. Arguments of the Parties

29. The Prosecution argues that the acts charged against Ranko Češić are "of the most shocking and senseless cruelty"[36] and submits that the Trial Chamber should take into consideration not only the crimes to which Ranko Češić has pleaded guilty, but also the impact those crimes have had on the direct and indirect victims of his acts.[37]

30. The Defence argues that the Trial Chamber, in evaluating the gravity of the crimes, should consider that Ranko Češić is charged with "isolated incidents,"[38] *i.e.* crimes which are unconnected to each other, were not committed under the umbrella of persecution,[39] and are of lesser gravity than the crime of persecution.[40] Whilst it recognises that murder is one of the most serious crimes in all judicial systems,[41] it argues that there are still degrees of gravity in a murder. In particular, it notes that three of the incidents, which form the basis for the conviction, involved instantaneous

[33] *Tadić* Sentencing Appeal Judgment, para. 48.
[34] *Čelebići* Appeal Judgment, para. 806; see also *Banović* Sentencing Judgment, para. 35.
[35] *Momir Nikolić* Sentencing Judgment, para. 93.
[36] Prosecution's Brief, para. 15.
[37] Prosecution's Brief, para. 35.
[38] Defence's Brief, para. 29.
[39] T. 139.
[40] Defence's Brief, para. 33.
[41] T. 117.

death where the victims did not undergo any additional suffering. As regards those incidents where the murders were preceded or caused by beatings, the Defence points out that these beatings involved not only Ranko Češić but implicated several individuals and that the exact responsibility of Ranko Češić in perpetrating them is therefore impossible to appreciate.[42] The Defence also points out that Ranko Češić had no command position or role;[43] on the contrary, it claims that it is established that he was an ordinary member of the Territorial Defence of Grčića from 1 to 15 May 1992 and a member of the Bosnian Serb Police Reserve unit in Brčko from 15 May to 22 June 1992.[44] Finally, the Defence deems that the impact of the crimes on other persons than the direct victims should be considered only if such impact is unusually hard compared to the suffering commonly endured in cases involving the loss of a loved one. The Defence claims that no proof of such unusual suffering has been adduced by the Prosecution.[45]

2. Discussion

31. The main feature in sentencing is the gravity of the crime. The Appeals Chamber has described it as the "primary consideration" and stated that the "sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused."[46]

32. The jurisprudence of the Tribunal does not establish a distinction as regards the seriousness of crimes based solely on their characterization as crimes against humanity as opposed to violations of the laws or customs of war.[47] Likewise, the seriousness of crimes within each category is not exclusively measured by their characterization within that category. Rather, the Tribunal's case law has consistently asserted that gravity should be assessed in view of the particular circumstances of each individual case. Thus, the *Kupreškić* Trial Judgement specified that "the determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crimes."[48] The number of victims[49] and the suffering of the victims[50] are among those particular circumstances to be considered in a given case. Regarding the form and degree of a convicted person's participation, while the sentence imposed should reflect the relative significance of the role of an accused in the context of the

[42] T. 118.
[43] Defence's Brief, para. 34.
[44] Defence's Brief, para. 37.
[45] Defence's Response, paras. 8 to 11.
[46] *Čelebići* Appeals Judgement, para. 731, citing *The Prosecutor v. Kupreškić et al*, Case No. IT-95-16-T, Trial Judgement, 14 January 2000 ("*Kupreškić* Trial Judgement"), para. 852, and *Aleksovski* Appeals Judgement, para. 182.
[47] *Tadić* Sentencing Appeals Judgement, para. 69, which held that "there is in law no distinction between the seriousness of a crime against humanity and that of a war crime" and that, to the contrary, "the authorized penalties are […] the same, the level in any particular case being fixed by reference to the circumstances of the case."
[48] *Kupreškić* Trial Judgement, para. 852.
[49] *The Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgement, 02 August 2001 ("*Krstić* Trial Judgement"), para. 701.
[50] *Čelebići* Trial Judgement, para. 1260; *Krstić* Trial Judgement, para. 701.

conflict in the former Yugoslavia,[51] it does not follow that, in case of a lesser significant role of an accused, the sentence would be necessarily low, as "a sentence must always reflect the inherent level of gravity of a crime."[52]

33. Ranko Češić pleaded guilty to ten murders charged under five counts of crimes against humanity and five counts of violations of the laws or customs of war, and to one sexual assault, charged under one count of crime against humanity (rape) and one count of a violation of the laws or customs of war (humiliating and degrading treatment).

34. Murder has been consistently defined by the ICTY and the ICTR as the death of the victim resulting from an act or omission committed with the intention to kill or to cause serious bodily harm which the perpetrator should reasonably have known might cause death.[53] The level of intent should however be distinguished at the stage of sentencing. A murder committed with intent to kill is ordinarily regarded as more serious than a murder committed with intent to cause serious bodily harm which the perpetrator should reasonably have known might cause death. Ranko Češić admitted that he committed the murders of which he is convicted with the intent to kill. This is an inherently grave offence and heavy penalties are provided for and imposed in all national legal systems when murder, committed with intent to kill, is concerned. A conviction for multiple murders further adds to the seriousness of the crime if brought under one count. The specific circumstances surrounding the commission of the murders will be dealt with while considering aggravating or mitigating circumstances.

35. Regarding the sexual assault, the factual basis indicates that the victims were brothers, were forced to act at gunpoint and were watched by others.[54] This is supported by statements of one of the victims adduced by the Prosecution, which specify that the assault was preceded by threats and that several guards were watching and laughing while the act was performed. The family relationship and the fact that they were watched by others make the offence of humiliating and degrading treatment particularly serious. The violation of the moral and physical integrity of the victims justifies that the rape be considered particularly serious as well. The Trial Chamber disregards the spine injury referred to in one of the victims' statement, as the evidence fails to establish that this injury was caused by the specific incident charged in the Indictment.

[51] *Tadić* Sentencing Appeals Judgement, para. 55.
[52] *Čelebići* Appeals Judgement, para. 847.
[53] *The Prosecutor v. Akayesu,* Case No. ICTR-96-4-T, Judgement, 2 September 1998, ("*Akayesu* Trial Judgement"), para. 589, the *Čelebići* Trial Judgement, para. 439, *the Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), paras. 153, 181, 217.
[54] Factual Basis, para. 14.

36. In assessing the gravity of the conduct of Ranko Češić in the commission of these crimes, the Trial Chamber notes that he personally participated in all the crimes. He himself committed the four murders referred to under Incident 1 and the murder referred to under Incident 2. He committed with others the murders referred to in Incidents 3 and 5[55] and committed, with the assistance of two other guards, the murders referred to under Incident 6. Regarding the sexual assault, Ranko Češić actively participated in the violence inflicted upon the victims before the assault and initiated the assault by ordering it. Ranko Češić hence is a perpetrator of all the crimes he is convicted of in the present case.

37. The evidence presented regarding Ranko Češić's exact position in the hierarchy is fragmented and inconclusive, although his enlisting in the territorial defence few days before he committed the crimes and the lack of any military career prior to May 1992, would indicate that he was in a rather low-ranking position. Nevertheless, this position has no direct bearing in determining the nature of his responsibility since he is convicted for having personally committed the crimes.

38. The Trial Chambers of the Tribunal have generally found that the impact of an offence on the victims' relatives or friends should not be considered in determining the sentence.[56] However, the Appeals Chamber has recently qualified this position. While emphasizing the well-known distinction between reparation and punishment, it noted that "the case-law of some domestic courts shows that a trial chamber may still take into account the impact of a crime on a victim's relatives when determining the appropriate punishment."[57] The Appeals Chamber concluded that "even where no blood relationships have been established, a trier of fact would be right to presume that the accused knew that his victim did not live cut off from the world but had established bonds with others."[58]

39. The Trial Chamber finds that the impact on the victims' relatives and friends is among the factors that are considered when evaluating the inherent gravity of a crime. In particular, it is undoubtedly among the factors taken into account to conclude that murder is a particularly serious crime. The question is hence whether the statements adduced by the Prosecution show a level of suffering which significantly exceeds that usually suffered by indirect victims of murder and already included in the general appreciation of the gravity of murder as a very serious crime. The evidence presented in this case to assess the impact the crimes have had on indirect victims is not

[55] Ranko Češić's exact participation in these murders has not been further specified.
[56] See for instance *the Prosecution v. Kunarac*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac* Trial Judgement"), para. 852; *The Prosecutor v. Milorad Krnolejac*, Case No. IT-97-25-A, 17 September 2003 (the "*Krnojelac* Appeals Judgement"), para. 512.
[57] *Krnojelac* Appeals Judgement, para. 260.

part of the facts admitted in the Factual Basis and the Trial Chamber deems that, being unfavourable to the Accused, the evidence adduced needs to meet a high standard of proof, that is beyond reasonable doubt.[59]

40. With respect to Incident 1, the Prosecution adduced a statement of Sakib Becirević's sister[60] where the latter indicates that, after she learned about her brother's death, she lost 20 kilos within a period of three months, could not eat nor sleep and was constantly crying. She is still dependent on sedatives, has high blood pressure and a disordered immune system. However, she also stated that she learned at the same time that her son had also been killed and explained that "all this, combined with the general living conditions at the time" caused the degradation of her health condition. The Defence adds that, during the same period of time, her husband lost the sight of an eye as a result of beatings in which Ranko Češić was not involved.[61] It is therefore not established beyond reasonable doubt, whether, and if so to what extent, the impact described was specifically caused by Ranko Češić's offence.

41. Regarding Incident 2, the Prosecution adduced the statement of Sejdo's sister in evidence.[62] The statement indicates that, while the family was informed by several former detainees at Luka Camp that Sejdo was killed, they never saw his body nor did they receive any other tangible confirmation that he was dead. The statement also describes the mental suffering caused to the victim's mother, who was constantly crying and continued to seek her son until the day she died. The sister thinks that the murder of Sejdo caused her death. The Trial Chamber accepts that the killing of Sejdo exposed his relatives to intense suffering. However, the evidence presented would not justify to accept the specific and extraordinary suffering to be attributed to Ranko Češić. Although the Trial Chamber accepts the murder to be a *conditio sine qua non* for this suffering, it is unable to establish Ranko Češić's role in the disappearance of the body of the deceased and thus cannot hold him responsible for the suffering it additionally caused.

42. In respect of Incident 3, the Prosecution adduced a written statement of the victim's brother, which describes the impact that the death of Mirsad had on his brother and mother.[63] The statement indicates that the victim's brother lost weight, began to suffer from insomnia after he learned that his brother had been killed and still suffers from a nervous disorder, which manifests itself as a kind of trembling in the whole body. It also states that the victim's mother suffers from mental disturbances, manifested in shaking hands or senseless talking, and has since been dependent on

[58] *Ibid.*
[59] *Čelebići* Appeals Judgement, para. 763.
[60] Prosecution's Brief, Annex A.
[61] Defence's Response, para. 8.
[62] Prosecution's Brief, Annex B.

medication. While fully accepting that relatives have suffered severely from the death of Mirsad, the Trial Chamber holds that more evidence would be needed to verify the specific impact claimed by this victim's relatives. A mere description by a lay person of his/her or others' health problems is not sufficient for the Chamber to assess their seriousness and causation link with the required degree of specificity.

43. Regarding Incident 4, while the statements submitted by the Prosecution refer to the mental suffering endured by the victims' parents, more evidence would be needed to conclude that their suffering is to be attributed solely or mainly to the incident which Ranko Češić is convicted of in this case.

44. In summary, the Trial Chamber finds that the statements fail to establish that the persons affected by the murder and sexual assault of the victims experienced significantly more suffering than that usually incurred by the violent death of, or the inhumane acts suffered by, beloved ones.

B. Aggravating Circumstances

1. Arguments of the Parties

45. The Prosecution invokes as aggravating factors the vulnerability of the victims and their status as civilians, the purposefully cruel conduct of Ranko Češić, the humiliating character and unusual depravity of the sexual assault, the fact that Ranko Češić abused his position of authority, and the recurrence of his criminal conduct over a period extending at least from 6 May until at least 14 May 1992.[64] The Prosecution further argues that these aggravating circumstances are exclusively based on the Factual Basis and meet the standard of proof beyond reasonable doubt.[65]

46. The Defence concurs that the standard of proof does not raise any issue in the present case, since the Prosecution exclusively relies on the Factual Basis.[66] It however contests that Ranko Češić held a position of authority and hence denies that he abused such a position.[67] It also points out that most victims were instantly killed and did not experience any additional suffering, pain, degradation or humiliation.[68] The Defence further argues that the acts were committed over a short period of time (15 days), at the beginning of the conflict in Brčko, in a context of widespread propaganda[69] and hence considers that these were isolated acts. The Defence submits that no factors, except those

[63] Prosecution's Brief, Annex C.
[64] Prosecution's Brief, paras. 42 to 45.
[65] Prosecution's Brief, para. 41.
[66] Defence's Brief, para. 25.
[67] Defence's Brief, para. 36.
[68] Defence's Brief, para. 39.
[69] Defence's Brief, para. 40.

already to be taken into account in evaluating the gravity of the crimes, would constitute aggravating circumstances against Ranko Češić in this case.[70]

2. Discussion

47. The *Čelebići* Appeals Judgement has held that "only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused's sentence or taken into account in aggravation of that sentence."[71] The Appeals Chamber has held that, since the factors to be taken into account for aggravation or mitigation of sentence have not been defined exhaustively by the Statute or the Rules, a Trial Chamber has "a considerable degree of discretion in deciding [these] factors."[72]

48. The crimes were committed by Ranko Češić within a period of 10 to 32 days and the Trial Chamber endorses the Prosecution's view that Ranko Češić's criminal behaviour was recurrent. A large number of crimes were committed within this period and the Defence's allegation that the acts of Ranko Češić were "isolated acts" is unfounded: the question of whether he committed such acts during other periods of time in his life, when he was not working at Luka Camp, is irrelevant. The Trial Chamber would deem acts of this kind to be isolated if committed incidentally over an extended period of time. Such characterisation certainly does not apply when at least ten murders, as Ranko Češić has admitted, are committed within such a short period of time. The recurrence of Ranko Češić's criminal behaviour, which cannot be contested, is nevertheless not considered an aggravating factor in the present case as the number of crimes committed is taken into account in evaluating the gravity of the crimes.

49. All victims of Ranko Češić were detainees placed under the oversight of Bosnian Serb soldiers or policemen, including Ranko Češić. Whilst the status of the victims as civilians cannot be taken into consideration as an aggravating factor since it is already an element of the crimes charged, their vulnerability as detainees in the particular circumstances of the case, is considered an aggravating factor.[73]

50. As previously stated,[74] Ranko Češić's exact position in the military or police hierarchy is unclear. However, he was undoubtedly of low rank. The Prosecution's argument that he abused his position of authority should therefore be rejected. Surely, Ranko Češić took advantage of the

[70] Defence's Brief, para. 44.
[71] *Čelebići* Appeals Judgement, para. 763.
[72] *Čelebići* Appeals Judgement, para. 780.
[73] See *Aleksovski* Trial Judgement, para. 227, which used the vulnerability of the victims *qua* detainees for the purposes of aggravation.
[74] *Supra*, para. 35.

vulnerability of his victims. Furthermore, the Trial Chamber does not exclude that the crimes were perpetrated in a general atmosphere of encouragement, defiance and excitement among soldiers or other persons entrusted with the oversight of the detainees. This, in any event, fails to qualify as abuse of authority.

51. Most murders to which Ranko Češić pleaded guilty were carried out in cold-blood. Two murders were preceded by beatings, and one detainee was forced to say goodbye and shake hands with the other detainees before he was taken out and executed.[75] The cruelty and depravity shown by such behaviour are considered aggravating factors by the Trial Chamber.

52. Ranko Češić further showed his depravity by initiating a sexual assault involving two brothers. Regarding the humiliation suffered by the victims in the context of the sexual assault, the Prosecution accepts that it has already been taken into account when evaluating the gravity of the offence in the context of the count based on Article 3 (humiliating and degrading treatment), but insists that it should also be deemed an aggravating factor under count 8, which is based on Article 5 (crime against humanity, rape), for which humiliation is not a legal element of that crime.[76]

53. The *Čelebići* Trial Judgement found that exacerbated humiliation and degradation, depravity and sadistic behaviour are aggravating factors.[77] In particular, it found that rape committed in the presence of others exacerbated the victim's humiliation.[78] Furthermore, the Appeals Chamber has recently deemed that, when the same criminal conduct is cumulatively charged under two separate counts, a factor taken into account as an element of the crime under one count does not prevent its being considered as an aggravating factor under the other count for the determination of the sentence.[79] In the present case, humiliation is clearly an element of the crime of humiliating and degrading treatment, as a violation of the laws or customs of war, while it is not explicitly an element of the crime of rape. However, it is uncontested that rape is an inherently humiliating offence and that humiliation is always taken into account when appreciating the inherent gravity of this crime. The distinction between the crimes thus lies in the emphasis placed on this particular aspect of the offence. The crime of humiliating and degrading treatment clearly places emphasis on the humiliation caused to the victims. Consequently, the Trial Chamber would not normally treat very serious humiliation as an aggravating circumstance in the context of this particular crime but would rather consider it in appreciating the gravity of the crime. By contrast, the crime of rape, although inherently humiliating, places emphasis on the violation of the physical and moral

[75] Incident 3.
[76] T. 151.
[77] *Čelebići* Trial Judgement, paras. 1262, 1264, 1268.
[78] *Čelebići* Trial Judgement, para. 1262.
[79] *The Prosecutor v. Mitar Vasiljević*, IT-98-32-A, 25 February 2004, para. 172.

integrity of the victim. Under these circumstances, exacerbated humiliation may be considered in aggravation of this crime.

54. Applied to this case, the Trial Chamber finds that the humiliation suffered by the victims was exacerbated both because they were brothers and because guards were present, watching and laughing. This is to be considered an aggravating circumstance in the context of count 8. However, it should be kept in mind that there is no fixed standard in evaluating the totality of an accused's criminal conduct. While determining the appropriate sentence in this particular case, the Trial Chamber will not consider exacerbated humiliation twice, *i.e.* once as an element of a violation of the laws or customs of war and once as an aggravating factor in the context of the conviction for a crime against humanity. Rather, it will only impose one single sentence and eventually consider the degree of humiliation only once in the final evaluation.

C. Mitigating Circumstances

55. The Prosecution submits that the guilty plea and the co-operation of Ranko Češić should mitigate the punishment.[80] In addition to these factors, the Defence submits that Ranko Češić's remorse, good character, exemplary behaviour at the United Nations Detention Unit, his age and the context in which the crimes were committed, the stress and indoctrination he was under when the crimes were committed and the fact that he was executing orders, are factors which mitigate punishment.[81]

1. Guilty Plea

(a) Arguments of the Parties

56. Both parties agree that the guilty plea prior to the commencement of trial has saved the victims from having to give evidence and it has saved the Tribunal considerable time, effort and resources.[82] The Prosecution accepts that a guilty plea before the commencement of trial attracts more credit than a guilty plea "after the presentation of the evidence against an accused."[83] The Prosecution also noted that full disclosure of the crimes helps to establish the truth and, when taken

[80] Prosecution's Brief, paras. 48-57.
[81] Defence's Brief, paras. 45-70.
[82] Prosecution's Brief, para. 48; Defence's Brief, paras. 45-46.
[83] *Todorović* Sentencing Judgement, para. 81, cited in the Prosecution's Brief, paras. 48 and 49.

together with the admission of guilt, it is likely to assist the process of reconciliation in Brčko and bring some degree of comfort to the victims and their relatives.[84]

57. The Defence submits that Ranko Češić admitted his guilt at a very early stage in the proceedings,[85] in particular before the trial was scheduled and before the parties submitted their pre-trial briefs.[86] In these circumstances, the Defence stresses that the Trial Chamber should regard the guilty plea as an exceptional mitigating circumstance.[87]

(b) Discussion

58. The Trial Chamber accepts that the guilty plea helps to establish the truth and may aid the process of reconciliation in the Brčko municipality. More particularly, a guilty plea, whereby an accused recognises his/her responsibility and specifies the circumstances in which the crimes were committed, is likely to provide a sense of relief to the surviving victims and the victims' relatives and friends. A guilty plea also saves the witnesses from the possible trauma of re-living the events when testifying in court.

59. In this case, the plea was entered some sixteen months after the initial appearance of the Accused, but nevertheless still before the commencement of trial,[88] thereby saving time, effort and resources. The jurisprudence of the Tribunal has accepted that this factor counts in mitigation of punishment.[89]

60. Under these circumstances, the Trial Chamber finds that the guilty plea in the present case is an important mitigating circumstance.

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[84] Prosecution's Brief, paras. 51-54; and see *The Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1-S, Sentencing Judgement, 27 February 2003 ("*Plavšić* Sentencing Judgement"), para. 80.
[85] T. 126.
[86] Defence's Brief, para. 46.
[87] Defence's Brief, para. 46.
[88] By the time Ranko Češić decided to enter a guilty plea, the pre-trial judge had ordered the parties to file their pre-trial briefs by respectively 22 September 2003 and 13 October 2003, and had scheduled a pre-trial conference on 3 November 2003 (see "Scheduling Order for Submission of Pre-Trial Briefs and Holding of a Pre-Trial Conference", 1 September 2003). The Defence however specified that, "as the second Defence counsel for Mr. Češić, he was aware of the fact that the accused was prepared to enter a guilty plea from the very beginning" (T. 126).
[89] *The Prosecutor v. Sikirica et al.*, Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001, ("*Sikirica & al.* Sentencing Judgement"), para. 150; *The Prosecutor v. Todorović*, Sentencing Judgement, para. 81; *Plavšić* Sentencing Judgement, paras. 73 and 80; *The Prosecutor v. Banović*, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003 ("*Banović* Sentencing Judgement"), para. 68.

2. Co-operation with Prosecution

(a) Arguments of the Parties

61. Both parties submit that Ranko Češić's substantial co-operation with the Prosecution should mitigate punishment. The Prosecution notes that Ranko Češić provided a full and complete interview to the Prosecution concerning his knowledge of war crimes and other violations of international humanitarian law in and around Brčko during the armed conflict in Bosnia and Herzegovina.[90] Both parties further mention that Ranko Češić has agreed to testify in future proceedings before the Tribunal if called upon by the Prosecution to do so.[91]

(b) Discussion

62. Rule 101 of the Rules provides that substantial co-operation with the Prosecution shall be taken into account in mitigation of punishment. The extent and quality of the information provided to the Prosecution are factors to take into account when determining whether the co-operation has been substantial.[92] In this regard, the Trial Chamber, in the absence of any information to the contrary, relies on the Prosecution's assessment of Ranko Češić's degree of co-operation as well as on his commitment to testify if called by the Prosecution,[93] to conclude that his co-operation with the Prosecution has been substantial and will be taken into account in determining sentence.

3. Remorse

(a) Arguments of the Parties

63. At the sentencing hearing, Ranko Češić made a statement to the Trial Chamber. An extract of this statement is set out below:

> "Words such as "remorse" are insufficient to express what somebody like me feels...I will do anything to bring back the past and not to do what I have done. Since this is not possible, all that is left for me is to feel the deepest remorse for what I have done…I hope that my sincere remorse, which I feel deeply, will help to prevent similar things from happening in the future, and…I want to say that I hope nobody will ever do the things that I have done and that prison is not the only punishment for me, because it is even harder to go on living with this feeling of guilt." [94]

64. In addition, the Defence argues that Ranko Češić's guilty plea, made at an early stage of the proceedings,[95] to all counts and "without calculation", as well as his readiness to co-operate with

[90] Prosecution's Brief, para. 57.
[91] Prosecution's Brief, para. 57 and Defence's Brief, para. 47, referring to the Plea Agreement, paras. 10-11.
[92] *Todorović* Sentencing Judgement, para. 86.
[93] Plea Agreement, paras. 10-11.
[94] T. 114.
[95] Defence's Brief, para.46.

the Prosecution, constitute a much more reliable manifestation of his remorse than an oral statement of remorse.[96]

65. The Prosecution did not make any submissions about Ranko Češić's declaration, although it did aver that mitigation for remorse is separate to and distinct from mitigation arising from a guilty plea.[97]

(b) Discussion

66. The Trial Chamber, applying the standard required by the jurisprudence of the Tribunal, finds that Ranko Češić's statement of remorse is sincere.[98] This finding is corroborated by the fact that Ranko Češić pleaded guilty on all counts and agreed to co-operate substantially with the Prosecution.

4. Good Character

(a) Arguments of the Parties

67. The Defence submits that there is clear and unequivocal evidence of Ranko Češić's good character and the absence of any discriminatory behaviour on his part, both before and during the war. This submission, in the opinion of the Defence, does not conflict with the fact that the crimes were committed, for they were isolated incidents and no criminal activity can be attributed to Ranko Češić subsequent to the commission of those offences.[99]

68. The Defence refers to statements from ten non-Serb character witnesses who gave the following examples about the character of Ranko Češić prior to and during the war:

(i) Stopping soldiers maltreating some Muslims;[100]

(ii) Supplying food;[101]

(iii) Saving men from being killed at Luka Camp by taking them to their homes;[102]

[96] Defence's Brief, para. 48.
[97] Sentencing Hearing, T. 113.
[98] *Todorović* Sentencing Judgement, para. 89; *The Prosecutor v. Erdemović*, Case No. IT-96-22-T*bis*, 5 March 1998, Sentencing Judgement, ("*Erdemović* Sentencing Judgement II"), p. 16: *Blaškić* Trial Judgement, para. 775; *The Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Judgement, 5 February 1999, paras. 40-41; *The Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement, 1 June 2000, paras. 69-72; *The Prosecutor v. Simić*, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 ("*Simić* Sentencing Judgement"), para. 92.
[99] Defence's Brief, paras. 33, 40, 41 and 50.

(iv) Aiding a man to get a certificate so he could leave the country;[103]

(v) Removing men from a line up, soliciting and ordering the return of identity cards; [104]

(vi) Protecting neighbours[105] by placing a piece of paper at the entrance door certifying, under his name, that their building had been "cleared" and did not need to be searched again;[106]

(vii) Never manifesting any kind of hatred or antagonism towards his landlord, neighbours or friends;[107]

(viii) Warning neighbours to go home or not to go out.[108]

69. The Defence also points to Ranko Češić's exemplary behaviour at the United Nations Detention Unit, which has not been contested by the Prosecution.[109]

70. The Prosecution does not dispute the character-witness evidence adduced by the Defence.[110] It however submits contrary evidence which tends to demonstrate that Ranko Češić has a history of being in conflict with the law prior to and after the commission of the crimes.[111] The Prosecution does not thereby seek to establish that evidence of other criminal conduct or reputation is an aggravating circumstance[112] but rather wishes to dispute that the Defence has established, on the balance of probabilities,[113] the mitigating circumstance of good character.[114]

71. The evidence presented by the Prosecution for this purpose falls into three categories: previous reputation, unproven criminal conduct in 1991 and 1992, and a criminal conviction for an act committed in 1993. Each category is dealt with in turn below.

72. The Prosecution refers to excerpts from witness statements, which describe Ranko Češić as an individual who had a reputation for violence, who was involved in criminal activities and who

[100] Annex D4 and D 9 to the Defence's Brief.
[101] Annex D4 and D9 to the Defence's Brief.
[102] Annex D4 to the Defence's Brief.
[103] Annex D4 to the Defence's Brief.
[104] Annex D5 and D6 to the Defence's Brief.
[105] Annex D11and to the Defence's Brief.
[106] Annex D to the Defence's Brief.
[107] Annex D7, D10, D12 and D13 to the Defence's Brief.
[108] Annex D8 and D10 to the Defence's Brief.
[109] Defence's Brief, para. 65.
[110] Sentencing Hearing, T. 111.
[111] Prosecution's Brief, paras. 59 and 61.
[112] Supplementary Information, paras 4.
[113] Supplementary Information, paras 5 and 6.
[114] Supplementary Information, para. 6.

was regularly in trouble with the police.[115] The Defence contends that these excerpts amount to no more than rumour and should be disregarded.[116]

73. The Prosecution also presented evidence on the following alleged criminal conduct which has not been proven in a court of law:

- Ranko Češić allegedly raped two women in May and June 1992.[117] Confidential statements from the victims were submitted by the Prosecution to support the allegation. The Prosecution chose not to indict Ranko Češić for these acts, although they were presumably committed during the time period covered in the Indictment.

- A criminal charge for attempted murder by shooting, which injured the victim, was recorded against Ranko Češić in September 1992 by the Brčko District Police.[118] The charge did not lead to a conviction.

- Ranko Češić is suspected of having been involved in an incident that occurred in December 1991. During a fight between a friend of Ranko Češić and another man, Ranko Češić pulled out a revolver to prevent the man's companions from interceding in the fight.[119] A request for investigation into serious bodily injury was made in April 1992.[120] The request was followed by a decision to discontinue the investigation on the grounds that state organs could not locate the suspects.[121]

74. The Defence rejoins that the Trial Chamber should disregard any evidence about allegations of criminal conduct that have not been proven. It argues that some of it amounts to speculation, there is conflicting identity evidence and because an accused is presumed innocent until proven guilty.[122] Moreover, the Defence argues that the factual description of the alleged crime of serious bodily injury (to prevent two persons from interceding in a fight) "does not bring the Accused's

[115] Prosecution's Brief, para. 60.
[116] T. 130.
[117] Two confidential statements annexed to the "Supplementary Information".
[118] draft translated letter from Republika Srpska Ministry of Justice dated 11 September 2001, Confidential annex 3 to the "Supplementary Information."
[119] "Further Supplementary Information I", paras. 3-6.
[120] See the draft translated letter from Republika Sprska Ministry of Justice dated 17 September 2001, Annex 4 to the "Supplementary Information".
[121] Confidential annex 4 to the "Supplementary Information"; "Further Supplementary Information I", paras. 3-6; Sentencing Hearing, T.112.
[122] Sentencing Hearing, T. 129; Defence's Response, paras. 15-19.

good character into question."[123] Instead, it would show that Ranko Češić was protecting a Muslim friend, a fact that should be regarded as an "indisputable mitigating circumstance."[124]

75. Finally, the Prosecution presented evidence to prove that Ranko Češić has been previously convicted for a criminal offence. The Republika Srpska Military Court in Bijeljina found Ranko Češić guilty of involuntary manslaughter on 26 December 1994,[125] a conviction upheld on appeal by the Republika Srpska Military Supreme Court of Sarajevo on 11 August 1995.[126] Ranko Češić was convicted for fatally shooting a man on 6 February 1993, having tried to protect the man's wife when the former was physically attacking her. The man was a friend of Ranko Češić.[127] Ranko Češić first pushed the man. The man then threatened to kill someone while reaching towards a shelf where Ranko Češić knew he usually kept his pistol. Ranko Češić, thinking that his friend was about to shoot him, drew his pistol and fired a bullet that the man received in the head. As a result the man died. Ranko Češić admits the conviction[128] but retorts that the nature of the crime and the circumstances under which it was committed, *ie.* involuntary manslaughter of a Serb friend, does not question his good character.[129] Moreover, the Defence points out that the Judgement of the Republika Srpska Military Court in Bijeljina notes that Ranko Češić had no previous convictions, thereby corroborating the Defence's assertion of his good character.[130]

76. In summary, the Prosecution submits that the evidence referred to above establishes that the crimes were not isolated incidents limited to a short period of time[131] and that the evidence casts considerable doubt on the submission that no criminal activity could be attributed to Ranko Češić after May 1992.[132] In these circumstances, the Prosecution avers that the Defence has failed to establish, on the balance of probabilities, that Ranko Češić was a man of good character but for a brief period in May 1992.[133] The Defence conversely maintains that the evidence adduced by it proves that Ranko Češić was a man of good character, that any contention to the contrary must be proven beyond reasonable doubt and that the conviction for involuntary manslaughter in 1994, after the crimes of the present Indictment were committed, does not cast doubt on the good character of Ranko Češić.[134]

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[123] Defence's Response, para. 21.
[124] Sentencing Hearing, T. 132.
[125] "Further Supplementary Information II", para. 2 (a).
[126] *Ibid*., para. 2 (b).
[127] T. 132.
[128] Defence's Response, para. 23.
[129] *Ibid*., 23.
[130] Sentencing Hearing, T. 132; Defence's Response, para. 22.
[131] "Supplementary Information", para. 5; "Further Supplementary Information I", para. 11.
[132] "Supplementary Information", paras. 4 and 5; "Further Supplementary Information I", para. 11.
[133] "Further Supplementary Information I", para. 12.
[134] Defence's Response, para. 24.

(b) Discussion

77. The Defence is correct in maintaining that an accused is presumed innocent until proven guilty but the Trial Chamber does not agree that it follows that, when considering mitigation, all alleged criminal conduct, which Ranko Češić was not convicted of, should be proven by the Prosecution beyond reasonable doubt. The Prosecution has not raised issues of character to establish that it is an aggravating factor. Instead, the Prosecution seeks to disprove the averment made by the Defence that Ranko Češić is a man of good character. The Trial Chamber finds that it has a discretion to weigh up any relevant and reliable evidence in deciding whether the Defence has established that it is more likely than not that Ranko Češić is a man of good character.

78. The Trial Chamber notes that the jurisprudence of this Tribunal accepts that saving the life or reducing the suffering of victims may mitigate punishment. In the *Sikirica* Judgement, the Trial Chamber found that the alleviation of the appalling conditions of detainees in the Keraterm Camp weighed heavily in favour of a substantial reduction in sentence.[135] In the *Krnojelac* Judgement, the Trial Chamber held that the accused's attempts to secure more food for the detainees, even though it had little practical effect, mitigated his criminality.[136] The Trial Chamber also notes that the *Banović* Judgement held that assisting some individual detainees in the Keraterm camp mitigated criminality.[137]

79. The Trial Chamber is satisfied that the uncontested evidence shows that Ranko Češić assisted detainees and other Muslims. Ranko Češić helped one man flee the country, he helped some men return home from Luka Camp, he saved the lives of others, protected some of his neighbours and took steps to ameliorate the lives of some detainees. These facts demonstrate that he was capable of some benevolence. However, it also shows that Ranko Češić had some influence over other perpetrators and did not use it consistently. On the contrary, Ranko Češić, alone or together with others, directly perpetrated crimes during the same period so that, in the end, the character evidence mainly points to the inconsistency of his behaviour. As a result, the benevolence shown on occasion should not be given undue weight.

80. Regarding the evidence on Ranko Češić's prior reputation, the Prosecution produced only excerpts of statements instead of the statements in their entirety.[138] Given the content of the

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[135] *Sikirica* Sentencing Judgement, para. 242.
[136] *Krnojelac* Trial Judgement, para. 518.
[137] *Banović* Sentencing Judgement, para. 82; see also *Erdemović* Sentencing Judgement II, para. 16; *The Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Sentencing Judgement, para. 38.

[138] Those statements are referred to in the Prosecution's Brief, para. 60.

excerpts and the limited amount of information provided on the way the statements were obtained, the Trial Chamber finds that their reliability is insufficiently established. This evidence is therefore not taken into account.

81. In relation to the alleged incident of assault in December 1991, the parties have interpreted the event in different ways. The Trial Chamber finds that the information presented is not of such clarity as to allow the Trial Chamber to either attribute positive or negative weight to this event, when considering the good character of Ranko Češić as a possible mitigating factor.

82. Turning to the evidence relating to the allegations of rape, the Trial Chamber accepts the submissions of the Defence that there is an issue about the alleged perpetrator's identity. The Trial Chamber also notes that the Prosecution chose not to indict Ranko Češić for this conduct and concludes that the evidence is not reliable enough to be taken into account, be it only for the purpose of rebutting the Defence's submissions on good character.

83. In relation to the attempted murder allegedly committed in September 1992, the Trial Chamber notes that the evidence is limited to the mention of a police report. Furthermore, the circumstances of the incident are not specific enough for the Trial Chamber to reach any conclusion which could impact on its appreciation of the evidence adduced by the Defence in respect of Ranko Češić's character.

84. Finally, in relation to the conviction for involuntary manslaughter, the Judgement of 26 December 1994 states:

> "at around 2200 hours on 6 February 1993, at a house at no 27 in Štrosmajerova Street in Brčko, having tried to protect Nevenka Mašanović from her husband Milorad Mašanović who physically attacked her, he pushed Milorad who was sitting on a nearby sofa, whereupon Milorad, shouting that he had pressure in his head and was going to kill someone, leaned forward and with his right hand reached towards the lower shelf of a small table where he often kept his pistol, and use his pistol, drew his pistol, a CZ 57, no. E57979, and fired a bullet into Milorad's head, inflicting an entry wound on the left side of the face, and as a result of destruction of the cervical part of the spinal cord and haemorrhaging, Milorad Mašanović died."[139]

85. The Trial Chamber finds that this is reliable evidence. Its relevance with respect to the character of Ranko Češić is however limited. While the facts could indicate a tendency to act impulsively and disproportionately, they could also manifest a readiness to help persons in danger. The Trial Chamber finds that it cannot attribute either positive or negative weight to this event, when considering good character of Ranko Češić as a possible mitigating factor.

[139] "Further Supplementary Information II".

86. The Trial Chamber also notes that Ranko Češić has behaved well in the United Nations Detention Unit and that, on occasion, good behaviour has been considered a mitigating circumstance by the Tribunal,[140] although every detainee is expected to comport himself well in the Detention Unit.

87. In sum, the Trial Chamber finds that the evidence submitted by the Prosecution does not successfully rebut the evidence adduced by the Defence in support of its claim of good character. On the other hand, while the evidence presented by the Defence, along with that concerning Ranko Češić's behaviour at the Detention Unit, shows that Ranko Češić is capable of benevolent and good behaviour, the evidence presented also demonstrates the unpredictability of his behaviour. Furthermore, the Trial Chamber agrees that Ranko Češić would have had time to reflect upon his conduct between each crime. As previously indicated, the Trial Chamber is not dealing with one crime committed on one day and, in the circumstances of this case, it is inaccurate to describe these crimes as isolated incidents. The evidence and the Factual Basis show that Ranko Češić was capable of both benevolent and criminal behaviour at the same time. On the balance of probabilities, the Trial Chamber cannot conclude from the evidence presented that Ranko Češić was of a genuine good character, so as to allow this good character to be taken into consideration as a mitigating factor.

5. Personal Circumstances

(a) Argument of the Parties

88. The Defence alleges a number of personal circumstances to mitigate punishment.[141] These include the following.

(i) Ranko Češić was brought up by his mother after his parents divorced;[142]

(ii) He is married with no children;[143]

(iii) The fact that Ranko Češić and his partner's income was low proves that he did not personally gain during the conflict,[144] which the Defence presents as a rare phenomenon;[145]

(iv) At the time of commission of the crimes he was 27 years old;[146] and

[140] *Krnojelac* Trial Judgement, para. 519.
[141] Defence's Brief, para. 70.
[142] Defence's Brief, para. 67.
[143] Defence's Brief, para. 67, T. 145.
[144] Defence's Brief, para. 70, T. 144.
[145] Defence's Brief, para. 70.

(v) The crimes were committed during the first weeks of the war at a time of chaos, confusion and in a context of widespread propaganda,[147] when Ranko Češić's behaviour was affected by an acute stress reaction to the war.[148]

89. The Prosecution refers to Ranko Češić's initial military service in 1983 or 1984 and notes that he was well beyond the age of majority when he committed the crimes in question. In these circumstances, the Prosecution submits that age is not a mitigating circumstance.[149] No other submissions were made by the Prosecution on this point.

(b) Discussion

90. While Ranko Češić's family background may have had an impact on his upbringing, it was not demonstrated that this had such specific impact on Ranko Češić that it could amount to a mitigating factor. Likewise, the fact that he did not personally gain from the conflict cannot be regarded as a mitigating factor.

91. The Trial Chamber does not accept the submission of the Defence that the age of Ranko Češić merits any leniency. The Trial Chamber is not aware of any domestic system where 27 years is treated as a young age and may be considered a mitigating factor. As indicated by the Prosecution, Ranko Češić was well beyond the age of majority and he had undertaken military service several years before the offences were committed.

92. The Trial Chamber is well aware that punishment has an impact on the lives of persons other than the convicted person himself. The relatives of the convicted person, in particular, are likely to suffer from the consequences of the sentence. However, Ranko Češić was married on 30 May 2002 in the central prison of Belgrade whilst awaiting transfer to The Hague and this is not a circumstance that should mitigate punishment.

93. In relation to the alleged acute stress reaction brought on by the war, it is common knowledge that a context of armed conflict inevitably impacts on people's behaviour and state of mind. The Defence however failed to prove that Ranko Češić suffered more than the mental anguish that is to be expected in an armed conflict situation: no evidence, from a lay or expert witness, supporting the assertion of an acute stress reaction, was adduced. The Defence merely

[146] Defence's Brief, para. 66.
[147] Defence's Brief, para. 66.
[148] Defence's Brief, para. 68

claimed that it is a notorious fact that acute stress reactions caused by the outbreak of war are usually manifested either as agitation or as excessive activity.[150] The Trial Chamber finds that this allegation has not been proven on the balance of probabilities. It would be inconsistent with the concept of the crimes under Articles 3 and 5 of the Statute to accept anguish experienced in any armed conflict as a mitigating factor. Under the circumstances of the case and in view of the age of Ranko Češić when he committed the crimes, the Trial Chamber finds that this assertion does not constitute a mitigating circumstance.

94. In conclusion, no personal circumstance amounts to a mitigating circumstance in the present case.

6. Executing Orders

(a) Argument of the Parties

95. The Defence submits that Ranko Češić was at the lowest possible level in the hierarchy and had no superior or public authority.[151] The Defence refers to a statement made by Ranko Češić to the Prosecution on 16 and 17 September 2003 that he "*was pulling the trigger and that others were taking their aims*" with an order that the victims "*be made short work of.*"[152] This quote, according to the Defence, establishes that Ranko Češić acted pursuant to orders and that he would have been killed if he had failed to execute them.[153] In addition, the Defence refers to one of the victims of the sexual assault who said that he could not believe that Ranko Češić could have committed the offence and that he must have been ordered to commit it.[154] The Defence accepts that such a factor would not relieve Ranko Češić of responsibility but nevertheless claims that it is a relevant mitigating circumstance.[155]

96. Conversely, the Prosecution submits that Ranko Češić appears to have given orders to an equal or subordinate soldier,[156] and specifically refers to Incident 4, where Ranko Češić forced two brothers to perform sexual acts and told another soldier not to let them go and to make them continue until he returned.[157]

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[149] Sentencing Hearing, T 149.
[150] Defence's Brief, para. 68.
[151] Defence's Brief, para. 38.
[152] Defence's Brief, para. 42.
[153] Defence's Brief, para. 43.
[154] Sentencing hearing, T. 119.
[155] Defence's Brief, para. 43.
[156] Sentencing Hearing, T. 150.
[157] Sentencing Hearing, T.150.

(b) Discussion

97. The Trial Chamber understands the reference by Ranko Češić to the danger of being killed if he did not obey as going beyond the mitigating circumstance of superior orders and amounting to a defence of duress as a mitigating circumstance in sentencing. However, no evidence supporting the submission of duress, nor of superior orders, was adduced, other than the statement made by Ranko Češić to the Prosecution, which is quoted in the Defence's brief.[158] On the balance of probabilities, the Trial Chamber finds that the statement quoted above does not establish that Ranko Češić was under duress. Article 7(4) of the Statute provides that:

> "The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires"

Ranko Češić states that he was ordered to make "short work" of the victims[159] but the context in which this statement was made is not known. The Defence also relies upon the statement of one of the victims of the sexual assault who said he believed that Ranko Češić must have been ordered to commit the sexual assault. First, this statement should be interpreted in context. Furthermore, there is evidence from the same victim that Ranko Češić told a guard to watch over the brothers whilst they performed the sexual acts and make sure they did not stop. This direct evidence, when weighed against the victim's presumption that Ranko Češić could not possibly have committed such act by his own volition but must have been ordered to commit the offence, is insufficient, on the balance of probabilities, to establish this submission in mitigation.

D. Sentencing Practice in the Former Yugolsavia

1. Arguments of the Parties

98. The Prosecution and Defence agree that, in accordance with Article 24 of the Statute and Rule 101 of the Rules, the Trial Chamber should take into account the sentencing practice of the former Yugoslavia in so far as it provides a useful guide and does not delimit the exercise of the Trial Chamber's discretion in determining sentence.[160]

99. The Prosecution submits that Article 41 (1) of the Criminal Code of the Socialist Republic of Yugoslavia ("SFRY Criminal Code") permits the Trial Chamber to take into account the

[158] Defence's Brief, para. 42.
[159] See above, note 155.
[160] Prosecution's Brief, para. 62; Defence's Brief, para. 20.

personal circumstances or behaviour of a perpetrator after the commission of the offence when determining appropriate penalties.[161] Article 142 of the SFRY Criminal Code would also be relevant to the Trial Chamber when considering actual sentencing decisions or the range of penalties that courts of the Former Yugoslavia would have handed down for similar offences.[162] The Prosecution refers to the jurisprudence of the Tribunal, which establishes that life imprisonment is commensurate with the sentencing practice of the courts of the former Yugoslavia for crimes that could have attracted the death penalty under the SFRY Criminal Code.[163]

100. The Defence draws the Trial Chamber's attention to the fact that there is no specific provision in the SFRY Criminal Code for crimes against humanity.[164] Further, it submits that the maximum sentence applicable under the SFRY Criminal Code would have been 20 years.[165]

2. Discussion

101. As previously mentioned,[166] the Trial Chamber, in accordance with Article 24 of the Statute and Rule 101 of the Rules, takes into account the general practice regarding sentencing in the former Yugoslavia, although it is not bound to conform to that practice.[167]

102. Article 41(1) of the SFRY Criminal Code is relevant to the Trial Chambers' appreciations about aggravating and mitigating factors. The provisions of Article 41 of the SFRY Criminal Code in essence correspond to the Trial Chamber taking into account the gravity of the offence as well as any aggravating and mitigating circumstances when determining sentence.[168] The Trial Chamber has considered these factors in detail above.

103. Article 142 of the SFRY Criminal Code deals with "criminal offences against humanity and international law", such as wartime torture, sexual enslavement, outrages upon personal dignity or killing, and provides that a penalty of death or a term of imprisonment of not less than five years

[161] Prosecution's Brief, para. 63.
[162] Prosecution's Brief, paras. 63, 64.
[163] *Čelebići* Trial Judgement, para. 1208 and *Tadić* Sentencing Judgement II, para. 13 referred to in the Prosecution's Brief, para. 65.
[164] Defence's Brief, para. 20.
[165] Sentencing Hearing, T. 134.
[166] See *supra* III, A.
[167] *Čelebići* Appeals Judgement, para. 813.
[168] Article 41(1) of the SFRY Criminal Code states, "The court shall weigh the punishment to be imposed on the perpetrator of a criminal offence within the legal limits of punishment for that offence, keeping in mind the purpose of punishment and taking into consideration all circumstances which influence the severity of punishment (mitigating and aggravating circumstances), and particularly: the degree of criminal responsibility, the motives for the commission of the offence, the intensity of the threat or injury to the protected object, circumstances of the commission of the offence, the perpetrator's past life, the perpetrator's personal circumstances and his behaviour after the commission of the offence, as well as other circumstances relating to the perpetrator."

may be imposed. While there is no provision in the SFRY Criminal Code which specifically deals with crimes against humanity *per se*, Article 142 may assist in determining the range of penalties applicable in this case, for it prohibits criminal conduct analogous to the offences to which Ranko Češić has pleaded guilty, *i.e* wartime killing and rape.

104. Article 38 of the SFRY Criminal Code gave the courts of the former Yugoslavia the power to impose a term of imprisonment not exceeding 15 years but extendable to 20 years for those crimes to which a prison sentence substituted the death penalty.[169] It should be kept in mind that these provisions contain an indication of how the seriousness of such crimes was appreciated in the SFRY and that the Trial Chamber is not bound by this indication. The maximum penalty available to the Tribunal is life imprisonment[170] and the Trial Chamber retains a discretion to impose a term of imprisonment of more than 20 years.[171]

V. DETERMINATION OF SENTENCE

105. The Prosecution recommends a sentence in the range of 13 to 18 years[172] and agrees not to appeal any sentence imposed within this recommended range.[173] The Defence requests that a sentence of 13 years be imposed on Ranko Češić[174] and agrees not to appeal the sentence imposed by the Trial Chamber unless it is above the range recommended by the Prosecution. Both parties recognise that under Rule 62*ter* (B), the Trial Chamber is not bound by any agreement between the parties on the sentence.[175]

[169] Article 38 of the SFRY Criminal Code states, "Imprisonment: (1) the punishments may be not be shorter than 15 days nor longer than 15 years. (2) The court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty. (3) For criminal acts committed with intent for which the punishment of fifteen years imprisonment may be imposed under statute, and which were perpetrated under particularly aggravating circumstances or caused especially grave consequences, a punishment of imprisonment for a term of 20 years may be imposed when so provided by statute."
[170] Article 24 of the Statute.
[171] *Čelebići* Appeals Judgement, para. 813 & 820; *Tadić* Sentencing Appeals Judgement, para. 20; *The Prosecutor v. Kupreškić*, Appeals Judgement, para, 418; *The Prosecutor v. Jelisić*, Case No. IT-95-10-T, Judgement, 5 July 2001 ("*Jelisić* Appeals Judgement"), para. 117; *Kunarac* Appeals Judgement, para. 349; *The Prosecutor v. Momir Nilokić,* Case No. IT-02-60/1-S, 2 December 2003, Sentencing Judgement, para. 100.
[172] Plea Agreement, para. 11.
[173] Plea Agreement, paras. 13 and 14.
[174] Defence's Brief, para. 80.
[175] Plea Agreement, para. 13.

A. Conclusion

106. In order to determine the appropriate sentence, the Trial Chamber assessed those factors relevant to an appraisal of the gravity of the crimes of murder (as a crime against humanity and a violation of the laws or customs of war) and sexual assault (as a crime against humanity and a violation of the laws or customs of war) of which Ranko Češić was convicted further to his plea of guilty. It then examined the aggravating and mitigating circumstances. Finally, in accordance with the Statute and the Rules, the Trial Chamber took account of the general sentencing practice of the courts of the former Yugoslavia.

107. Ranko Česić is convicted of ten murders, constituting five crimes against humanity and five violations of the laws or customs of war, and one sexual assault, constituting a crime against humanity (rape) and a violation of the laws or customs of war (humiliating and degrading treatment). These crimes are particularly serious in terms of the protected interests violated: the life as well as the physical and moral integrity of the victims. Ranko Češić acknowledged his direct, personal involvement in all these crimes and the Trial Chamber concluded that the seriousness of the crimes justify a corresponding penalty.

108. The Trial Chamber further took into account the fact that the victims, being all detainees placed under the oversight of Bosnian Serb soldiers and/or policemen, were particularly vulnerable. Ranko Češić's depravity and cruelty, as fully demonstrated above, were also considered aggravating factors.

109. Ranko Češić's admission of guilt, his substantial co-operation with the Prosecution and his expression of remorse are the factors which the Trial Chamber has taken into consideration in mitigation. The personal circumstances of Ranko Češić have not been found to merit mitigation of punishment. The Trial Chamber rejected as mitigating circumstances the submission that Ranko Češić simply executed orders when committing the crimes and found that the submission of good character was not established.

B. Credit for Time Served

110. Ranko Češić was arrested on 25 May 2002 and was transferred to the United Nations Detention Unit on 17 June 2002. Ranko Češić is entitled to credit for the time he spent in detention, namely 657 days in total.

VI. DISPOSITION

111. For the foregoing reasons, having considered the arguments and the documentary evidence presented by the parties, the **TRIAL CHAMBER**

PURSUANT TO the Statute and the Rules,

SENTENCES Ranko Češić to a single sentence of 18 (eighteen) years of imprisonment;

STATES that, pursuant to Rule 101 (C) of the Rules, he is entitled to credit for 657 days for time served up to and including the date of this Judgement;

ORDERS that, pursuant to Rule 103 (C) of the Rules, Ranko Češić remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where he shall serve his sentence.

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

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Judge Alphons Orie, presiding

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Judge Liu Daqun Judge Amin El Mahdi

Dated this Eleventh of March 2004

At The Hague

The Netherlands

[Seal of the Tribunal]