



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-95-12-S
Date: 16 November 2005
Original: English

IN TRIAL CHAMBER I

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Decision: 16 November 2005

PROSECUTOR

v.

IVICA RAJIĆ
(a.k.a. VIKTOR ANDRIĆ)

CLARIFICATIONS ON CONVICTIONS ENTERED

The Office of the Prosecutor:

Mr. Kenneth Scott

Counsel for the Accused:

Ms. Doris Košta

TRIAL CHAMBER I (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) has before it the “Joint Filing of Documents Relating to Rule 62ter” filed jointly by the Prosecution and the Defence on 25 October 2005, to which are attached the “Plea Agreement” and the “Factual Basis” for the guilty plea of the accused Ivica Rajić (“Accused”);¹

NOTING that at the plea hearing held on 26 October 2005, the Accused pleaded guilty to the following four counts of the amended indictment dated 13 January 2004 (“Amended Indictment”):

count 1, wilful killing, a Grave Breach of the Geneva Conventions of 1949, punishable under Statute Articles 2(a), 7(1) and 7(3),

count 3, inhuman treatment, a Grave Breach of the Geneva Conventions of 1949, punishable under Statute Articles 2(b), 7(1) and 7(3),

count 7, appropriation of property, a Grave Breach of the Geneva Conventions of 1949, punishable under Statute Articles 2(d), 7(1) and 7(3), and

count 9, extensive destruction not justified by military necessity and carried out unlawfully and wantonly, a Grave Breach of the Geneva Conventions of 1949, punishable under Statute Articles 2(d), 7(1) and 7(3).

NOTING that on 26 October 2005, having considered the Plea Agreement and the Factual Basis, the Chamber stated that it was satisfied that the facts therein form a sufficient factual basis for finding the Accused guilty on those counts; that accordingly, the Chamber made a finding of guilt and entered convictions under counts 1, 3, 7 and 9;²

NOTING that the sentencing hearing in this case is scheduled to take place before a recomposed bench of judges; that this Chamber has not specified under which head(s) of liability it entered a finding of guilt;

NOTING that the Accused admitted being responsible for the crimes of wilful killing, inhuman treatment, appropriation of property and extensive destruction not justified by military necessity and carried out unlawfully and wantonly during the attacks on Stupni Do, Bogos Hill and Vareš town on 23 October 1993;

¹ The Joint Filing was made confidentially. The confidentiality of this filing was lifted orally on 26 October 2005.

² T. 165. The Prosecution informed the Chamber that it would request that the remaining counts of the Amended Indictment be dismissed at the time of the sentencing hearing in this case, T. 162.

NOTING that the Accused admitted that he was liable under Article 7(1) and 7(3) of the Statute;³ that both modes of liability are included in the Plea Agreement which deals, in part, with the parties' agreement concerning the burden of proof to be met to convict the Accused under both Article 7(1) and 7(3) of the Statute; that at the plea hearing held on 26 October 2005, the Defence for the Accused explicitly confirmed in court that the Accused agreed to plead guilty under Article 7(1) of the Statute as per paragraph 19 of the Factual Basis;⁴

CONSIDERING that the Chamber verified whether the affirmation by the Accused in paragraph 19(d) of the Plea Agreement that "there is a sufficient factual basis for the crimes to which he is pleading guilty and to his participation in them" is consistent with the Factual Basis and the supporting material attached to the Plea Agreement;

CONSIDERING that in doing so the Chamber specifically considered the following admissions made by the Accused:

(1) the Accused knew that HVO units under his command had participated in several earlier operations against Bosnian-Muslim villages in Kiseljak municipality and committed crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and assault;⁵

(2) the Accused knew that the 23 October 1993 order from the head of the HVO Main Staff, Slobodan Praijak, to "Sort out the situation in Vareš showing no mercy towards anyone" was known by local HVO commanders and soldiers and further escalated the highly-charged and aggressive attitude against Bosnian Muslims in the Vareš area;⁶

(3) the Accused knew what the commanders and members of the Maturice and Apostoli units were capable of, in terms of their criminal conduct and crimes against Bosnian Muslims, and ordered these units, including Dominik Ilijasević aka "Como," Miroslav Anić aka "Firga" and Marinko Ljoljo, to participate in the October 1993 HVO operations in the area of Vareš, including at Stupni Do and Bogos Hill;⁷

³ Factual Basis, paras 9-19.

⁴ T. 155-56. The Accused admitted that he knew what the HVO members under his command and control were capable of in terms of crimes committed against Bosnian Muslim but nevertheless ordered them to attack Bosnian Muslim areas in October 1993 with the awareness that there was a substantial likelihood that the crimes charged in the Amended Indictment would be committed, see Factual Basis, paras 17-19.

⁵ Factual Basis, para. 15. These units included, among their commanders and soldiers, Dominik Ljašević aka "Como," Miroslav Anić aka "Firga," and Marinko Ljoljo. Ivica RAJIC knew, for example, that commanders and members of the Maturice, including Miroslav Anić aka "Firga," mutilated Bosnian Muslims and hung their heads in the "open market" in Kiseijak town. During this same time, Dominik Ljašević aka "Como" drove around Kiseljak with a cut off Muslim ear attached to the antenna of his car, *Ibid.*

⁶ Factual Basis, para. 16.

⁷ Factual Basis, para. 17.

(4) the Accused knew that various HVO members under his command and control who had come from the area of Kakanj following the ABiH operation in June, had demonstrated extreme aggression toward the Bosnian Muslim population in Vareš and “showed a strong desire to destroy everything that was not Croat”. Ivica Rajić ordered HVO forces to attack Stupni Do and Bogos Hill and to arrest and detain military-aged Muslim men in Vareš town;⁸

(5) between the evening of 23 October 1993 and 26 October 1993, Ivica Rajić refused several requests by the United Nations Protection Force to enter Stupni Do and the two schools in Vareš town in order to investigate what had happened at these locations;⁹ and

(6) on the instructions of his HVO superiors, the Accused participated in a cover-up concerning the crimes committed in and around Vareš town and at Stupni Do; the cover-up included a fake investigation which was intended to conceal the true nature and extent of the crimes committed; the Accused signed investigation reports knowing that they included false information; as part of this cover-up, the Accused was ordered to change his name to “Viktor Andrić”;¹⁰

CONSIDERING that, when accepting the guilty plea on counts 1, 3, 7 and 9 of the Amended Indictment, the Chamber took into consideration the fact that a person may be found responsible under Article 7(1) where such a person is in a position of superior authority and his conduct had an effect in bringing about the commission of crimes by his subordinates, provided the *mens rea* requirements for Article 7(1) of the Statute responsibility are met;¹¹

CONSIDERING the requisite *mens rea* for all forms of participation under Article 7(1) is that the accused “acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct”;¹²

CONSIDERING that therefore, in view of the circumstances in which the Accused ordered the attacks on Stupni Do, Bogoš Hill and Vareš, the Chamber is convinced that such order was indeed made in violation of Article 7(1) of the Statute;

FINDING that the Accused is guilty under Article 7(1) of the Statute;

CONSIDERING furthermore that in accordance with the case-law of the Tribunal, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute in relation to a particular count; that where both Article 7(1) and Article 7(3) responsibility are alleged under the

⁸ Factual Basis, para. 18.

⁹ Factual Basis, para. 28.

¹⁰ Factual Basis, para. 34.

¹¹ *Galić* Trial Judgement, para. 169.

same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing;¹³

CONSIDERING that therefore the Chamber is not required to pronounce on whether the Accused is cumulatively guilty under Article 7(3) of the Statute;

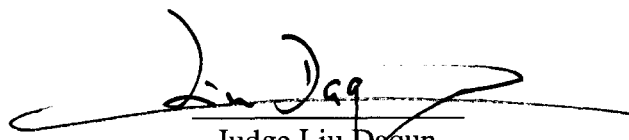
FOR THESE REASONS,

PURSUANT TO Rule 54 of the Rules,

HEREBY SPECIFIES its finding of guilt as pronounced in the public hearing of 26 October 2005 as to be a finding of guilt of the accused Ivica Rajić under Article 7(1) of the Statute.

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

Dated this 16th day of November 2005
At The Hague
The Netherlands



Judge Liu Daqun
Presiding Judge, Trial Chamber I

[Seal of the Tribunal]

¹² *Kvočka* Trial Judgement, para. 251, citing *Tadić* Trial Judgement, para. 688 and *Čelebići* Trial Judgement, para. 327.

¹³ *Blaškić* Appeal Judgement, para. 91 (quoting the Appeals Chamber in *Aleksovski* and *Čelebići* cases in para. 183 and para. 745 respectively).