

**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-95-12-S
Date: 8 May 2006
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IN THE TRIAL CHAMBER I

Before: Judge Christine Van Den Wyngaert
Judge Janet Nosworthy
Judge Frank Höpfel

Registrar: Mr. Hans Hothuis

Date: 8 May 2006

PROSECUTOR

v.

IVICA RAJIĆ, a.k.a. VIKTOR ANDRIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Kenneth Scott
Ms Josée D'Aoust

Counsel for the Accused:

Ms Doris Košta

CONTENTS

I. INTRODUCTION	1
A. PROCEDURAL HISTORY	1
B. PLEA AGREEMENT.....	3
C. SENTENCING PROCEEDINGS.....	4
II. FACTS	5
III. LAW	13
IV. SENTENCING FACTORS	15
A. GRAVITY OF THE CRIME.....	15
1. Arguments of the Parties.....	15
2. Discussion.....	17
(a) Nature of the Crimes	18
(b) Scale and Brutality of the Crimes	18
(c) Role of Ivica Rajić.....	20
(d) Overall Impact of the Crimes upon Victims and their Families	21
3. Conclusion	21
B. AGGRAVATING CIRCUMSTANCES	22
1. Position of Authority and as a Superior.....	22
(a) Arguments of the Parties	22
(b) Discussion	23
2. Vulnerability of Victims	24
(a) Arguments of the Parties	24
(b) Discussion	25
3. Participation in a Cover-Up and Obstructing Justice for Almost eight Years.....	26
(a) Arguments of the Parties	26
(b) Discussion	28
4. Conclusion	29
C. MITIGATING CIRCUMSTANCES	30
1. Guilty Plea	30
(a) Arguments of the Parties	30
(b) Discussion	31
2. Remorse	31
(a) Arguments of the Parties	31
(b) Discussion	32
3. Cooperation with the Prosecution.....	32
(a) Arguments of the Parties	32
(b) Discussion	33
4. Personal Circumstances	33
(a) Arguments of the Parties	33
(b) Discussion	34
5. Conclusion	34
D. THE GENERAL PRACTICE REGARDING PRISON SENTENCES BEFORE THE COURTS OF THE FORMER YUGOSLAVIA	35
1. Arguments of the Parties.....	35
2. Discussion	36
V. DETERMINATION OF THE SENTENCE	37
A. CONCLUSIONS	37

B. CREDIT FOR TIME SERVED 38

VI. DISPOSITION..... 39

VII. GLOSSARY..... 40

I. INTRODUCTION

A. Procedural History

1. On 23 August 1995, the Prosecutor of the International Tribunal indicted Ivica Rajić on six counts of serious violations of international humanitarian law.

2. Ivica Rajić was initially charged with two Grave breaches of the Geneva Conventions of 1949, punishable under Article 2 of the Statute: wilful killing (counts 1¹ and 4²) and destruction of property (counts 2³ and 5⁴). He was also charged with two Violations of the laws or customs of war, punishable under Article 3 of the Statute: deliberate attack on the civilian population and wanton destruction of a village (counts 3⁵ and 6⁶). On 29 August 1995, Judge Sidhwa confirmed the Indictment.

3. On 13 September 1996, pursuant to Rule 61 of the Rules, the Trial Chamber, composed of Judge McDonald (Presiding), Judge Sidhwa and Judge Vohrah decided, on the basis of the evidence produced by the Prosecution and the testimonies heard in open court, to reconfirm the Indictment and to issue an international arrest warrant. On 5 April 2003, Ivica Rajić was arrested in the Republic of Croatia and, on 24 June 2003, was transferred to the UNDU in The Hague.

4. On 27 June 2003, Ivica Rajić appeared before the Tribunal and pleaded not guilty to all six counts of the Indictment.

5. Following the order of the Trial Chamber of 12 January 2004,⁷ the Prosecution filed an Amended Indictment against Ivica Rajić on 14 January 2004. The Amended Indictment charged him with five Grave breaches of the Geneva Conventions of 1949: wilful killing; punishable under Article 2(a) of the Statute (count 1); inhuman treatment, punishable under Article 2(b) of the Statute (count 3); unlawful confinement of a civilian, punishable under Article 2(g) of the Statute (count 5); appropriation of property, punishable under Article 2(d) of the Statute (count 7) and extensive destruction not justified by military necessity and carried out unlawfully and wantonly, punishable under Article 2(d) of the Statute (count 9). It also charged Ivica Rajić with five Violations of the laws or customs of war: murder, as recognized by Common Article 3(1)(a) of the Geneva Conventions and punishable under Article 3 of the Statute (count 2); outrages upon personal

¹ Punishable under Article 2(a) and Article 7(1) of the Statute.

² Punishable under Article 2(a) and Article 7(3) of the Statute.

³ Punishable under Article 2(d) and Article 7(1) of the Statute.

⁴ Punishable under Article 2(d) and Article 7(3) of the Statute.

⁵ Punishable under Article 3 and Article 7(1) of the Statute.

⁶ Punishable under Article 3 and Article 7(3) of the Statute.

dignity; in particular humiliating and degrading treatment, as recognized by Common Article 3(1)(c) of the Geneva Conventions and punishable under Article 3 of the Statute (count 4); cruel treatment, as recognized by Common Article 3(1)(a) of the Geneva Conventions and punishable under Article 3 of the Statute (count 6); plunder of public or private property, punishable under Article 3(e) of the Statute (count 8) and wanton destruction of a city or devastation not justified by military necessity, punishable under Article 3(b) of the Statute (count 10).

6. On 29 January 2004, Ivica Rajić pleaded not guilty to all ten counts of the Amended Indictment.

7. On 28 July 2005, the Prosecution filed before the Referral Bench a motion, pursuant to Rule 11*bis* of the Rules, to refer the Amended Indictment to the authorities of Bosnia and Herzegovina for trial within that State.⁸ On 8 August 2005, the Defence opposed the 11*bis* motion. On 10 November 2005, the Prosecution expressed its intention to withdraw the motion upon completion of the sentencing procedure.⁹ On 27 April 2006, the Prosecution filed a motion before the Referral Bench to withdraw the motion.

8. On 25 October 2005, the Prosecution and Ivica Rajić entered into a Plea Agreement according to which Ivica Rajić agreed to plead guilty to four of the ten charges in the Amended Indictment, pursuant to Article 2 of the Statute (Grave breaches of the Geneva Conventions of 1949), on the basis of his individual criminal responsibility under both Article 7(1) and Article 7(3) of the Statute.

9. At the Plea Hearing on 26 October 2005, Ivica Rajić pleaded guilty to counts 1, 3, 7 and 9 of the Amended Indictment.¹⁰ Ivica Rajić stated that he had not been threatened and that his guilty plea was sincere.¹¹ Being satisfied that the plea was voluntary, informed and unequivocal¹² and that there was a sufficient factual basis for the crimes,¹³ the Trial Chamber then entered a finding of guilt for those four counts.¹⁴

10. On the same date, the Trial Chamber ordered the Parties to file their Sentencing Briefs by 15 November 2005.¹⁵ The Prosecution filed its Brief and a Sentencing Annex on that date, as

⁷ Order concerning the Prosecutor's Motion Seeking Leave to Amend the Indictment, 12 January 2004.

⁸ Request by the Prosecutor under Rule 11*bis* for Referral of the Indictment to Another Court, 28 July 2005

⁹ Prosecutor's Notice Concerning the Plea Agreement, 10 November 2005.

¹⁰ Plea Hearing, p. 164.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*, p. 165.

¹⁴ *Ibid.*, p. 165.

¹⁵ *Ibid.*, p. 166.

ordered. The Defence, however, requested additional time to file its Sentencing Brief. On 16 December, the Defence confidentially filed its Brief and, on 20 December 2005, filed an Annex entitled "Submission of Evidence by the Defence." Pursuant to an order of the Trial Chamber of 14 February 2006, a public version of the Sentencing Brief and Annexes were filed on 6 March 2006.

11. At the Plea Hearing, a discussion on the form of responsibilities occurred.¹⁶ The Parties agreed that, according to the Plea Agreement, there was a sufficient basis for a conviction under Article 7(1) of the Statute for each of the counts. On 16 November 2005, the Trial Chamber issued a decision entitled "Clarifications on Convictions Entered" pursuant to the agreement of the Parties. After having taken into account the circumstances in which Ivica Rajić carried out the crimes, the Trial Chamber explained that it was satisfied that the requisite *mens rea* for all forms of participation under Article 7(1) of the Statute had been met.¹⁷ It also referred to the Tribunal's case-law, which provides that it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute in relation to the same count, therefore clarifying its decision to enter a conviction on the basis of Article 7(1) of the Statute only.¹⁸

12. On 27 April 2006, the Prosecution filed a motion, pursuant to Rules 51 and 73 of the Rules, to withdraw the remaining counts 2, 4, 5, 6, 8 and 10 of the Amended Indictment without prejudice. On 4 May 2006, the Trial Chamber granted the motion.

B. Plea Agreement

13. Ivica Rajić agreed to plead guilty to the following four counts contained in the Plea Agreement:¹⁹

Count 1: wilful killing (Article 2(a) of the Statute);

Count 3: inhuman treatment (Article 2(b) of the Statute);

Count 7: appropriation of property (Article 2(d) of the Statute);

Count 9: extensive destruction not justified by military necessity and carried out unlawfully and wantonly (Article 2(d) of the Statute).

¹⁶ *Ibid.*, pp. 152-156.

¹⁷ Clarifications on Convictions Entered, p. 4.

¹⁸ *Ibid.*, pp. 4-5.

¹⁹ Plea Agreement, para. 4.

14. The Trial Chamber notes that counts 1, 3, 7 and 9 of the Amended Indictment reflect the substance of the original ten charges, with the exception of count 5, the unlawful confinement of a civilian, which has been dropped.

15. A written Factual Basis concerning the crimes charged and supporting Ivica Rajić's conviction for such crimes was attached to the Plea Agreement. On 25 October 2005, Ivica Rajić signed the Factual Basis, which he "fully endorse[d]".²⁰

16. The Plea Agreement states that Ivica Rajić's "guilty pleas to counts 1, 3, 7 and 9 are made voluntarily; [...] are informed, in that he understands his rights, has been informed of the procedures involved, and is fully informed of the nature and consequences of his guilty pleas; [and] are not equivocal."²¹ Furthermore, the Plea Agreement states that "there is a sufficient factual basis for the crimes to which he is pleading guilty and to his participation in them."²²

17. Ivica Rajić also accepted that, by entering into the Plea Agreement, he had given up the rights related to the presumption of innocence and to a full trial.²³

18. In exchange for Ivica Rajić's guilty plea, his complete cooperation with the Prosecution, and the fulfillment of all of his obligations under the Plea Agreement, the Prosecution agreed to recommend to the Trial Chamber the imposition of a "single combined sentence in the range of twelve to fifteen years, with the Accused able to argue for a sentence at the bottom of this range (twelve years) and the Prosecutor able to argue for a sentence at the top of this range (fifteen years)."²⁴ Both Parties also understood that the Trial Chamber was not bound by any agreement reached between them on the preferred sentence.²⁵

C. Sentencing Proceedings

19. In its Sentencing Brief, the Prosecution outlined the factors it considered relevant to determine the gravity of the crimes, and made submissions on aggravating and mitigating circumstances. Appended to its Brief are several attachments, including photographs, UN and national reports and statements from victims of Ivica Rajić's crimes. On 6 March 2006, the Prosecution filed a confidential supplement to its Sentencing Brief, clarifying certain issues relating to the crimes perpetrated and the role played by Ivica Rajić. On 17 March 2006, the Defence responded to these new submissions.

²⁰ *Ibid.*, para. 5.

²¹ *Ibid.*, para. 19.

²² *Ibid.*

²³ *Ibid.*, para. 3.

20. In its Sentencing Brief, the Prosecution did not provide any case-law to support two of the aggravating factors it submitted for consideration, namely obstructing justice for almost eight years and participation in a cover-up. On 8 March 2006, the Trial Chamber requested the Prosecution, through the Legal Officer, to submit information on any international or national case-law which could substantiate these two points raised. On 20 March 2006, the Prosecution responded to the request of the Trial Chamber and, also, put forward additional evidence concerning the physical suffering caused to the civilians by Ivica Rajić.

21. In its Sentencing Brief, the Defence outlined the circumstances of the crimes committed, and the aggravating and mitigating factors that it wished to be considered by the Trial Chamber. The Defence also appended documents intended to assist the Trial Chamber in determining the sentence.

22. The Sentencing Hearing, originally scheduled for 23 March 2006, was held on 7 April 2006. The Prosecution and the Defence made submissions regarding the factors that they recommended to the Trial Chamber's attention when determining the sentence. In addition, Ivica Rajić made an oral statement, depicting the broader context in which the crimes were committed and apologizing to victims.²⁶ During his statement, he stressed that he did not intend to challenge the Factual Basis signed by the Parties on 25 October 2005.²⁷ At the end of the Sentencing Hearing, the Trial Chamber reserved judgement on sentence.

II. FACTS

23. The Factual Basis supporting Ivica Rajić's conviction for the crimes to which he pleaded guilty was agreed to by the Parties and endorsed by the Trial Chamber at the Plea Hearing. The Factual Basis, which will henceforth be referred to as the Facts,²⁸ reads as follows:

24. Ivica RAJIĆ was born on 5 May 1958 in the village of Jehovac, Kiseljak Municipality, in Bosnia and Herzegovina.

25. Ivica RAJIĆ graduated from the military academy of the former Yugoslavia. He was a captain (first class) in the former Yugoslav People's Army.

²⁴ *Ibid.*, para. 18.

²⁵ *Ibid.*, para. 14.

²⁶ Sentencing Hearing, pp. 241-251.

²⁷ *Ibid.*, p. 251.

²⁸ In order to be consistent with the "Clarifications on Convictions Entered" according to which Ivica Rajić has been convicted on the basis of Article 7(1) of the Statute only, all references in the Factual Basis to Article 7(3) of the Statute have been omitted in the Facts.

26. At all times relevant to the Amended Indictment, Ivica RAJIĆ was required to abide by the laws and customs of war and governing the conduct of armed conflict, including the Geneva Conventions of 1949 and the additional protocols thereto.

27. At all times relevant to the Amended Indictment, Tihomir Blaškić was Commander of the HVO's Central Bosnia Operative Zone ("CBOZ"). The CBOZ and Tihomir Blaškić were under the command of, and subordinate to, the HVO Main Staff. From about April 1992 to approximately 24 July 1993, Milivoj Petković was head of the HVO Main Staff. From approximately 24 July 1993 to 9 November 1993, Slobodan Praljak was head of the HVO Main Staff. During the time that Slobodan Praljak was head of the HVO Main Staff, Milivoj Petković was deputy head of the HVO armed forces.

28. On 1 November 1992, Tihomir Blaškić organized the CBOZ into three operational groups, including the Second Operational Group. The Second Operational Group's area of responsibility included the municipalities of Kiseljak, Kreševo, Vareš and Kakanj.

29. At all times relevant to the Amended Indictment, including from 12 May 1993 to at least 22 November 1993, Ivica RAJIĆ, on his appointment by Tihomir Blaškić, was Commander of the Second Operational Group, based in Kiseljak.

30. As Commander of the Second Operational Group, Ivica RAJIĆ's command included the Bobovac Brigade in Vareš, the Kostromanić Brigade in Kakanj and the Ban Josip Jelačić Brigade in Kiseljak. At all times relevant to the Amended Indictment, all of the commanders and members of these brigades were under the command of, and subordinate to, Ivica RAJIĆ.

31. The "Maturice" was an HVO special purposes unit ("PPN"), which was part of the Ban Josip Jelačić Brigade, based in Kiseljak. The immediate commander of the Ban Josip Jelačić Brigade, including the Maturice special unit, was Mario Bradara, who was in turn under the command of, and subordinate to, Ivica RAJIĆ. The "Apostoli" was another HVO special purposes unit, which was originally based in Travnik. In June 1993, part of the HVO Travnik Brigade and the Apostoli special unit moved to Kiseljak and were placed under the command of, and were subordinate to Mario Bradara, who was in turn under the command of, and subordinate to Ivica RAJIĆ.

32. At all times relevant to the Amended Indictment, the commanders and members of the Maturice and Apostoli special units included Dominik Ilijašević also known as ("aka") "Como," Miroslav Anić aka "Firga," Marinko Kepić, Marinko Ljoljo, Marinko Šunjić, Marinko Jurišić aka "Špiro," Zdravko Mihaljević aka "Pijuk," and Želko Bosnjak aka "Pajkan." All of these persons

were under the command of, and subordinate to Mario Bradara, and in turn under the command of, and subordinate to Ivica RAJIĆ.

33. At all times relevant to the Amended Indictment, Ivica RAJIĆ [...] had command or superior responsibility for all commanders and members of the Bobovac Brigade, Kostromanić Brigade and Ban Josip Jelačić Brigade, and the Maturice and Apostoli special units. At all times relevant to the indictment, Ivica RAJIĆ exercised operational and effective command and control over the commander and members of these units.

34. In June 1993, following a military action, the Army of Bosnia and Hercegovina (“ABiH”) took over part of Kakanj municipality. Following and because of this military action, around 13,000 Bosnian Croats (including HVO soldiers from the Kostromanić Brigade) left Kakanj municipality involuntarily and moved to the Vareš municipality.

35. In June 1993, the Vareš HVO issued an ultimatum to Bosnian Muslims in the villages of Daštansko and Stupni Do to surrender their weapons. The Daštansko villagers surrendered their weapons. In Stupni Do, before the expiration of the ultimatum, most of the villagers, fearing an attack, took refuge in neighbouring villages but returned home after several days. Knowing that the ABiH would retaliate if the HVO attacked Stupni Do to disarm the village, the HVO withdrew the ultimatum and the villagers were allowed to keep their weapons.

36. On 21 October 1993, while Ivica RAJIĆ and Milivoj Petković were in Kiseljak, the commander of the Bobovac Brigade, based in Vareš, asked for assistance in responding to an ABiH attack on HVO military positions in Vareš municipality. Milivoj Petković ordered Ivica RAJIĆ to take HVO forces and seize control of the situation in Vareš town and the surrounding area.

37. On 21 October 1993, Ivica RAJIĆ left Kiseljak town with approximately two hundred HVO soldiers, including commanders and soldiers of the Maturice and Apostoli units and HVO soldiers from Kiseljak and Kakanj. These forces passed through Bosnian Serb-controlled territory and reached Vareš town on 22 October 1993. The HVO commanders and members who travelled from Kiseljak to Vareš included Dominik Ilijašević aka “Como,” Miroslav Anić aka “Firga,” Marinko Kepić, Marinko Ljoljo, Marinko Šunjić and Marinko Jurišić aka “Špiro.”

38. At all times relevant to the Amended Indictment, including on 21 October 1993 and following, Ivica RAJIĆ knew that HVO units under his command, including the Maturice and Ban Josip Jelačić Brigade, had participated in several earlier operations against Bosnian Muslims villages in Kiseljak municipality and committed crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and physical assault. These units included,

among their commanders and soldiers, Dominik Ilijašević aka “Como,” Miroslav Anić aka “Firga,” and Marinko Ljoljo. Ivica RAJIĆ knew, for example, that commanders and members of Maturice, including Miroslav Anić aka “Firga,” mutilated Bosnian Muslims and hung their heads in the “open market” in Kiseljak town. During the same time, Dominik Ilijašević aka “Como” drove around Kiseljak with a cut off Muslim ear attached to the antenna of his car.

39. On 23 October 1993, the head of the HVO Main Staff, Slobodan Praljak, ordered Ivica RAJIĆ and others to “sort out the situation in Vareš showing no mercy towards anyone. Find people who are up to both the times and the tasks.” Slobodan Praljak’s order was known by local HVO commanders and soldiers and further escalated the highly-charged and aggressive attitude against Bosnian Muslims in the Vareš area.

40. At all times relevant to the Amended Indictment, including on 21 October 1993 and following, Ivica RAJIĆ knew what the commanders and members of the Maturice and Apostoli units were capable of, in terms of the conduct and crimes against Bosnian Muslims, and ordered these units, including Dominik Ilijašević 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.

41. At all times relevant to the Amended Indictment, including on 21 October 1993 and following, Ivica RAJIĆ 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 including the Kakanj soldiers to attack Stupni Do and Bogos Hill and to arrest and detain military-aged Muslim men in Vareš town.

42. Ivica RAJIĆ was aware that by ordering HVO commanders and soldiers under his command and subordinate to him to attack Stupni Do and Bogos Hill and to round up and detain military-aged Muslim men in Vareš town there was a substantial likelihood that the crimes charged in the Amended Indictment would be committed and nonetheless gave such orders, in violation of ICTY Statute Article 7(1).

43. Stupni Do was a village of about 60 houses, located approximately four kilometres southeast of Vareš, inhabited by about 250 persons who were almost exclusively Muslim. On 22 October 1993, the local Territorial Defence or ABiH defenders in Stupni Do consisted of approximately 35 persons, most of whom were residents of Stupni Do. They were armed with hunting rifles, some automatic weapons and hand grenades, a rocket launcher, one mortar and a limited amount of ammunition. Some trenches had been prepared in and around parts of the village during previous

months. The Stupni Do defenders were in radio communication with ABiH commanders in Dabravine and used codes in their communications.

44. On 22-23 October 1993, Ivica RAJIĆ planned and ordered HVO forces under his command and control to attack the village of Stupni Do and Bogos Hill. The HVO commanders and members involved in the attack on Stupni Do and Bogos Hill, all of whom were under the command of, and subordinate to Ivica RAJIĆ, included Marinko Ljoljo, Dominik Ilijašević aka “Como,” Miroslav Anić aka “Firga,” Marinko Kepić and Marinko Jurišić aka “Špiro.”

45. On 23 October 1993, Ivica RAJIĆ ordered HVO forces under his command and control to search Muslims houses and round up military-aged Muslim men in Vareš town and detain them. Based on Ivica RAJIĆ’s order, HVO forces rounded up and detained a large number of Muslim men in Vareš town.

46. On 23 October 1993, with the authorisation of his HVO superiors, Ivica RAJIĆ ordered that several local Bosnian Croat officials in Vareš who were interfering with his operations be detained, and, on such order, HVO forces detained several officials.

47. On 23 October 1993, Ivica RAJIĆ reported to Dario Kordić, Milivoj Petković, Tihomir Blaškić and Mario Bradara (commander of the Ban Josip Jelačić Brigade):

... I made an assessment and in the morning hours I carried out an attack on Stupni Do and Bogoš. The Bogoš feature was taken by our forces, and about twenty armed members of MOS and some civilians remained in the village of Stupni Do, which was completely surrounded. A large number of MOS and some civilians were killed, while our losses were two killed and seven wounded, all of them in stable condition.

The town of Vareš has been mopped up and all Muslims of military age placed under surveillance.

Because they attempted to obstruct the planned activities, I have placed into isolation Messrs. Anto Pejčinović, Zvonko Dužnović and Ivica Gavran. The [Bobovac] brigade commander is seriously depressed and unable to perform his duties. I enclose a letter I received two days ago from Commander Emil Harah.

As of today, Vareš is Croatian and we shall fight to keep it that way - you must help me.

48. By at least 25 October 1993, Ivica RAJIĆ was aware, based on his personal visits to the areas, that HVO commanders and soldiers under his command and subordinate to him had committed serious crimes in connection with these operations, by using excessive force, murdering Muslim civilians, engaging in inhuman treatment and causing extensive property destruction.

49. In Stupni Do, HVO commanders and soldiers under Ivica RAJIĆ’s command forced Bosnian Muslim civilians out of their homes and hiding places, robbed them of their valuables, wilfully killed Muslim men, women and children and sexually assaulted Muslim women. Twelve

Muslim villagers were forced into a shed which HVO soldiers then set on fire (but from which the villagers were able to escape). The HVO attack on Stupni Do commanded by Ivica RAJIĆ resulted in the deaths of at least thirty-seven Bosnian Muslim men, women, elderly and children (approximately six of whom were combatants). On 23-24 October 1993, most of the village was either wholly or partially destroyed.

50. In terms of the Bosnian Muslims who died in the attack, at least the following were murdered:

- a. Three Muslim men and one woman were executed by being shot or having their throats cut.
- b. One woman was taken into a house by an HVO soldier where she was executed.
- c. Two elderly women, one of whom was an invalid, were found burned inside a house.
- d. One Muslim man was shot several times at close range after he refused to give an HVO soldier his money.
- e. When a group of Muslims (one man, nine women and three children) attempted to flee, the man was shot and killed (his half burned body was later found at the same location where he was shot), and two of the women and all three children were murdered in front of their house. Three of the young Muslim women who escaped the initial encounter with the HVO soldiers were then found hiding in a small cellar and murdered.
- f. In the same area where the events described in subparagraph e. occurred, seven members of the same Muslim family (two men, three women and two children aged 2 and 3 years old) were found burned inside their shelter.
- g. One Muslim man, who had been severely wounded in both legs, was carried into a house which was later set on fire by HVO soldiers. (The man's burned body, together with another burned body, was later found inside the house.)
- h. One Muslim woman was taken into a room and shot, and the house then set on fire.

51. In Vareš town, HVO commanders and soldiers under Ivica RAJIĆ's command and control, including members of the Apostoli and military police units, rounded up more than two hundred and fifty Bosnian Muslim men (most, but not all of whom were of military age) and detained them

in the “Ivan Goran Kovačić” and “Vladimir Nazor” schools. During the process of rounding up the above-mentioned Muslim men, the HVO commanders and soldiers entered houses and physically and mentally abused the inhabitants and persons present and robbed them of their valuables. Detained Bosnian Muslim men were beaten and abused by HVO soldiers.

52. Between the evening of 23 October 1993 and 26 October 1993, Ivica RAJIĆ refused several requests by the United Nations Protection Force (“UNPROFOR”) to enter Stupni Do and the two local schools in Vareš town in order to investigate what had happened at these locations. On 24 October 1993, Ivica RAJIĆ asked his HVO superiors, including Slobodan Praljak, to warn UNPROFOR units to withdraw from the area or he would not be responsible for the consequences. (Ivica RAJIĆ contends that the reason that he blocked UNPROFOR from going into Stupni Do was his belief that the ABiH would attempt to use UNPROFOR’s presence to gain a military advantage.) On 24 October 1993, a senior member of the HVO Main Staff ordered Ivica RAJIĆ to “Deploy anti-armored artillery pieces around the UN (Nordic forces), warn them that, in case they prevent our operations against the MOS in any way, our forces shall destroy them.” On the night of 24 October 1993, HVO forces under the command of, and subordinate to Ivica Rajić, fired at two UNPROFOR armored personnel carriers serving as observation posts in and around Vareš town and at the UNPROFOR headquarters in Vareš municipality.

53. Ivica RAJIĆ left Vareš town on 26 October 1993, leaving Boro Malbašić and Krešimir Božić in command. During the time from approximately 23 October to 3 November 1993, in Vareš town, HVO commanders and soldiers under Ivica RAJIĆ’s command and control looted and appropriated Muslim property, robbed Muslims of their valuables and sexually assaulted Muslim women.

54. None of the acts or omissions charged as crimes in the Amended Indictment were justified by military necessity.

55. On 26 October 1993, in response to media reports about HVO atrocities in Vareš and Stupni Do, Milivoj Petković issued a written order directing Ivica Rajić and Emil Harah, who Ivica RAJIĆ had previously removed from command, to investigate what had happened. By at least the morning of 24 October 1993, Ivica RAJIĆ, with the approval or confirmation of his superior, Tihomir Blaškić, had relieved Emil Harah from command of the Bobovac Brigade. Harah was replaced by Krešimir Božić.

56. On the same day, HVO authorities, including Milivoj Petkovic, informed Ivica RAJIĆ that the written order was meant to appease the international community and that Ivica RAJIĆ was not,

in fact, to conduct an investigation. Milivoj Petković told Ivica RAJIĆ that the HVO Security and Information Service would conduct an investigation and that Ivan Bandić would be in charge of the investigation.

57. On the instructions of his HVO superiors, including Milivoj Petković, Ivica RAJIĆ participated in a cover-up concerning the crimes committed in and around Vareš town and Stupni Do. The cover-up included a false investigation which was intended to conceal the true nature and extent of the crimes committed. Ivica RAJIĆ signed investigation reports prepared by SIS knowing that they included false information. As part of this cover-up, Milivoj Petković ordered Ivica RAJIĆ to change his name to “Viktor Andrić.”

58. In fact, the HVO never conducted a *bona fide* investigation of what happened in Vareš town or at Stupni Do, and no HVO commander or soldier, including Ivica RAJIĆ, was ever punished, disciplined or removed for what happened at these locations.

59. At all times relevant to the Amended Indictment, including on 21 October 1993 and following, Ivica RAJIĆ knew and had reason to know that HVO commanders and soldiers who were subordinate to him and under his effective control were about to commit crimes charged in the Amended Indictment and failed to take necessary and reasonable measures to prevent such crimes [...].

60. At all times relevant to the Amended Indictment, including on 23 October 1993 and following, Ivica RAJIĆ knew and had reason to know that HVO commanders and soldiers who were subordinate to him and under his effective control had committed crimes charged in the Amended Indictment and failed to take necessary and reasonable measures to punish them [...].

61. On 1 November 1993, the HVO promoted Ivica RAJIĆ to the rank of active Colonel.

62. On 22 November 1993, following organisational changes in the Vitez Military District, the HVO Second Operational Group was renamed the Kiseljak Forward Command Post/IZM-1 of the Vitez Military District. On the same day, Tihomir Blaškić appointed Ivica RAJIĆ Commander of the Kiseljak Forward Command Post/IZM-1.

63. On 27 December 1993, Ivica RAJIĆ informed HVO authorities, including Milivoj Petković, that, as ordered, he was changing his name to “Viktor Andrić.”

64. On 30 December 1993, in an action meant to indicate to the international community that Ivica RAJIĆ had been punished and removed from command because of what had happened in Vareš and Stupni Do, the HVO removed “Ivica RAJIĆ” from command and “Viktor Andrić” was appointed to replace him.

65. In fact, Ivica RAJIĆ (using the name “Viktor Andrić”) at all relevant times remained the HVO commander and superior of the same subordinate HVO commanders and soldiers who committed the crimes in Vareš and Stupni Do, who were never punished or disciplined for the crimes committed.

66. As a further part of this factual basis, Ivica RAJIĆ agrees that the Prosecution evidence would prove beyond a reasonable doubt:

a. According to the 1991 census, the ethnic composition of the municipality of Vareš before the outbreak of the war was as follows: out of a population of 22,203 inhabitants, 40.60% declared themselves Croat (9,015), 30.23% declared themselves Muslim (6,712), 16.41% declared themselves Serb and 12.73% as other.

b. At all times relevant to the Amended Indictment, a state of international armed conflict existed in Bosnia and Herzegovina involving the independent State of the Republic of Croatia and its government, armed forces and representatives in an armed conflict against Bosnian Muslims on the territory of the independent State of Bosnia and Herzegovina. The crimes charged in the Amended Indictment were committed in the context of and with a connection to this conflict.

c. All acts and omissions alleged in the Amended Indictment were committed against or involved persons protected under the Geneva Conventions of 1949 (and the additional protocols thereto) and the laws and customs of war.

d. All acts and omissions alleged in the Amended Indictment were committed against or involved property protected under the Geneva Conventions of 1949 (and the additional protocols thereto) and the laws and customs of war.

III. LAW

67. The provisions in the Statute and the Rules which relate to sentencing are set forth below. The relevant Articles of the Statute are the following:

Article 24
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.

[...]

Article 27
Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

68. The relevant provisions of the Rules read:

Rule 100
Sentencing Procedure on a Guilty Plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

Rule 101
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;

(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.

69. In the context of the Tribunal, the punishment aims at reinforcing the validity and the effectiveness of the breached rules of international humanitarian law vis-à-vis the perpetrator, the victims and the public. In order to achieve this purpose, the punishment should be proportional to the seriousness of the crimes. In light of this, Article 24 of the Statute requires the Trial Chamber to

consider the gravity of the offence(s) while taking into account the individual circumstances of the individual. The Rules further specify that aggravating and mitigating factors and the practice regarding prison sentences in the courts of the former Yugoslavia should be considered.

70. Thus, in determining the sentence, the Trial Chamber must take into account the following factors:

- the gravity of the crime;
- the individual circumstances of the convicted person;
- any aggravating circumstances;
- any mitigating circumstances; and
- the general practice regarding prison sentences in the courts of the former Yugoslavia.

71. When determining the sentence, the existence of a guilty plea has a dual impact. While being an important step in the offender's process of rehabilitation, it may also, in connection with an appropriate sentence, have a healing effect on the community.

IV. SENTENCING FACTORS

A. Gravity of the Crime

1. Arguments of the Parties

72. In its Sentencing Brief, the Prosecution, citing relevant jurisprudence of the Tribunal, asserts that the gravity of the offence is the primary consideration when imposing a sentence.²⁹ According to the Prosecution, the Trial Chamber should consider not only the nature of the crime, but also the particular circumstances of the case. In doing so, the Trial Chamber should weigh quantitatively the number of victims and qualitatively the suffering inflicted upon these victims. Furthermore, the Prosecution contends that the seriousness of the crime is a factor which should be considered apart from the criminal participation of the individual.³⁰

73. The Prosecution submits that the crimes to which Ivica Rajić pleaded guilty are “among the most horrific crimes that one human being can commit against another.”³¹ The Prosecution also states that the crimes committed on and just after 23 October 1993 were immediately reported and

²⁹ Prosecution Sentencing Brief, para. 11.

³⁰ *Ibid.*, para. 12.

broadcasted around the world, receiving immediate attention from the United Nations Security Council.³² On 28 October 1993, only five days after the crimes in Stupni Do occurred, the President of the Security Council asked the Secretary-General to report on the “massacre” “as soon as possible.”³³

74. The particularly brutal and horrendous nature of the crimes is also emphasized in the Prosecution’s Sentencing Brief. The inhabitants of Vareš were forced out of their homes, sometimes half dressed, and systematically abused.³⁴ During their detention at the “Ivan Goran Kovačić” and “Vladimir Nazor” schools, prisoners (often including family members) were forced to beat each other.³⁵ Furthermore, during the attack on Stupni Do and Bogoš Hill, several civilians were killed by having their throats cut, and Muslim women were sexually assaulted.³⁶ Some men and women were executed in front of their relatives.³⁷ During the Sentencing Hearing, the Prosecution underlined the fact that three young Muslim women who escaped an initial encounter with the HVO soldiers were murdered after having been found hiding in a small cellar.³⁸ Seven members of a Muslim family, including two children, were found burned in their house.³⁹ Moreover, according to the Prosecution’ Sentencing Brief, “one of the victims lost most of his family (parents, spouse and child), while many others mourned the death of their parents, husbands and children.”⁴⁰ After the attack, the village of Stupni Do was almost completely destroyed and most of the villagers lost everything they had worked for all of their lives.⁴¹

75. The Defence submits five arguments in response to the Prosecution’s Brief.

76. First, it considers the role of the Accused in the events under consideration and argues that “[...] an analysis of the facts and of the role of the accused Ivica Rajić, notwithstanding the gravity of the offences, brings [sic] to the conclusion that his personal position - his participation, his behaviour before and after committing the offences, the way in which they were committed, the circumstances that lead to the commission of the offences, the number of victims and other consequences - does not place him among the gravest perpetrators [...]”⁴²

³¹ Prosecution Sentencing Brief, para. 13; Sentencing Hearing, p. 185.

³² Prosecution Sentencing Brief, para. 14; Sentencing Hearing, p. 183.

³³ Prosecution Sentencing Brief, para. 14; Sentencing Hearing, pp. 183-184.

³⁴ Prosecution Sentencing Brief, para. 17; Sentencing Hearing, p. 186.

³⁵ Prosecution Sentencing Brief, para. 17.

³⁶ *Ibid.*, para. 18.

³⁷ *Ibid.*, para. 28.

³⁸ Sentencing Hearing, p. 187.

³⁹ *Ibid.*

⁴⁰ Prosecution Sentencing Brief, para. 28.

⁴¹ *Ibid.*, para. 25.

⁴² Defence Sentencing Brief, para.13.

77. Secondly, the Defence refers to the general gravity of the category of crimes to which the accused pleaded guilty, and contends, referring without further precision to the “Sentence to Duško Tadić”, that the Grave breaches of the Geneva Conventions of 1949, punishable under Article 2 of the Statute, are a less grave offence than Crimes against humanity, included in Article 5 of the Statute.⁴³

78. Thirdly, the Defence submits that the Trial Chamber should also take into account the general context in which the offences were committed.⁴⁴ At the time relevant to the Amended Indictment, all three Parties involved in the conflict were present and were engaged in intensive war operations. “Each and every hill was of strategic importance during this period which saw the attacks on Bogoš Hill, Kopljari and Vareš”.⁴⁵ Stupni Do in particular had a military and strategic importance.⁴⁶ The Defence further contends that a Muslim Brigade was present during the hostilities: “[...] the B-H Army documents show that in this area acted, contrary to the authorities, the 7th Muslim Brigade of the 3rd Corps, that also included mujahedins among its soldiers, and was under the direct command of Mr. Alija Izetbegović, although Vareš and Stupni Do were in the jurisdiction of the 2nd Corps [...]”.⁴⁷

79. Fourthly, the Defence claims that the several eyewitness testimonies and documents submitted to the Trial Chamber show that Stupni Do was not an undefended village, but had on the contrary an organised defence system which mounted a strong armed resistance to the attack.⁴⁸

80. Finally, the Defence argues that Ivica Rajić was not aware of many incidents of verbal and physical abuse during the siege of Vareš.⁴⁹ Moreover, none of the detainees in the schools were killed⁵⁰ or sustained life threatening injuries.⁵¹

2. Discussion

81. The Statute provides that the Trial Chamber should take into account the gravity of the offence when imposing a sentence.⁵² The jurisprudence of the Tribunal further stresses that the gravity of the offence is the most important criterion when determining the appropriate sentence.⁵³

⁴³ *Ibid.*

⁴⁴ Sentencing Hearing, pp. 219-223.

⁴⁵ Defence Sentencing Brief, para 14; Sentencing Hearing, pp. 219-223, 245.

⁴⁶ Defence Sentencing Brief, para. 18.

⁴⁷ *Ibid.*, para. 14.

⁴⁸ Defence Sentencing Brief, para. 14; Sentencing Hearing, pp. 221, 229.

⁴⁹ *Ibid.*, para 17.

⁵⁰ Sentencing Hearing, p. 224.

⁵¹ *Ibid.*, p. 225.

⁵² Article 24(2) of the Statute.

82. In determining the gravity of the crimes, the Trial Chamber shall consider the legal nature of the offences committed, their scale and brutality, their impact upon the victims and their families as well as the accused's involvement in these acts.

(a) Nature of the Crimes

83. In its submission, the Defence argues that war crimes are less serious than crimes against humanity.⁵⁴ However, the case-law of the Tribunal has consistently held that "there is in law no distinction between the seriousness of a crime against humanity and that of a war crime".⁵⁵ The gravity of the crimes should be assessed in view of the particular circumstances of each case.

(b) Scale and Brutality of the Crimes

84. The Trial Chamber considers that the crimes to which Ivica Rajić pleaded guilty are of an extremely serious nature, as illustrated in the Facts, by the following events:

- three Muslim men and one woman were executed by being shot or having their throats cut;⁵⁶
- one woman was taken into a house by an HVO soldier where she was executed;⁵⁷
- two elderly women, one of whom was an invalid, were found burned inside a house;⁵⁸
- one Muslim man was shot several times at close range after he refused to give an HVO soldiers his money;⁵⁹
- when a group of Muslims (one man, nine women and three children) attempted to flee, the man was shot and killed (his half burned body was later found at the same location where he was shot), and two of the women and all three children were murdered in front of their house;⁶⁰
- three of the young Muslim women who escaped the initial encounter with the HVO soldiers were then found hiding in a small cellar and murdered;⁶¹

⁵³ *Čelebići* Trial Judgement, para. 1225 and confirmed by the *Čelebići* Appeals Judgement, para.731.

⁵⁴ See *supra* para. 77.

⁵⁵ *Tadić* Sentencing Appeals Judgement, para. 69; *Furundžija* Appeals Judgement, para. 243; *Kunarac* Trial Judgement, para. 851, *Krnjelac* Trial Judgement, para. 511.

⁵⁶ Facts, *supra* para. 50.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Facts, *supra* para. 50; Sentencing Hearing, p. 192.

- seven members of the same Muslim family, that is two men, three women and two children aged 2 and 3 years old, were found burned inside their shelter;⁶²
- one Muslim man, who had been severely wounded in both legs, was carried out into a house which was later set on fire by HVO soldiers;⁶³
- one Muslim woman was taken into a room and shot, and the house then set on fire;⁶⁴
- most of the village of Stupni Do was destroyed;⁶⁵
- the inhabitants of Vareš were forced out of their homes and systematically abused;⁶⁶ and
- during their detention at the “Ivan Goran Kovačić” and “Vladimir Nazor” schools, prisoners were beaten and abused by HVO soldiers.⁶⁷

85. In total, at least thirty-seven Bosnian Muslim men, women, the elderly and children, approximately six of whom were combatants, were killed during the attack of Stupni Do.⁶⁸

86. As demonstrated by the above mentioned events, the Trial Chamber finds that the crimes were not only committed on a large scale, but were also of a particularly violent nature. However, the Trial Chamber also notes that these events took place in relatively short period of time, within a few days. It also takes into account the general context in which the crimes occurred. According to the Facts, approximately 35 ABiH “defenders” were present in Stupni Do during the attack.⁶⁹ They were armed with “[...] hunting rifles, some automatic weapons and hand grenades, a rocket launcher, one mortar and a limited number of ammunition”.⁷⁰ They had also dug trenches in and around parts of the village. Moreover, the Facts state that approximately six Muslim combatants were killed during the attack.⁷¹ In fact, at the Sentencing Hearing, the Prosecution acknowledged that Stupni Do was not “a completely undefended village”.⁷²

87. Finally, the Trial Chamber considers that the immediate attention these events received from the Security Council and the fact that they were widely broadcasted have no bearing in the

⁶² *Ibid.*, para. 50.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Facts, *supra* para. 49; Sentencing Hearing, p. 191. The destruction of the village was illustrated by a video clip shown during the Sentencing Hearing.

⁶⁶ Facts, *supra* para. 51.

⁶⁷ *Ibid.*, para. 51.

⁶⁸ *Ibid.*, para. 49.

⁶⁹ *Ibid.*, para. 43.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, para. 49.

⁷² Sentencing Hearing, p. 260.

determination of the gravity of the crimes. Indeed, the seriousness of these crimes is not related to such attention or coverage.⁷³ Were this the case, the gravity of two otherwise identical crimes would differ depending on their international attention or media coverage.

(c) Role of Ivica Rajić

88. The Trial Chamber emphasises the particular gravity of Ivica Rajić's conduct in the offences to which he pleaded guilty. According to the Facts, Ivica Rajić, who was the Commander of the HVO's Second Operational Group in the Central Bosnia Operative Zone based in Kiseljak, not only *planned*, but also *ordered* the attacks on Stupni Do and Bogoš Hill⁷⁴ and *ordered* the rounding up of more than two hundred and fifty Bosnian Muslim men in Vareš town,⁷⁵ knowing the substantial likelihood that criminal acts would ensue following his orders.⁷⁶

89. Furthermore, "Ivica Rajić was aware that by ordering HVO commanders and soldiers under his command and subordinate to him to attack Stupni Do and Bogoš Hill and to round up and detain military-aged Muslim men in Vareš town there was a substantial likelihood that the crimes charged in the Amended Indictment would be committed and nonetheless gave such orders, in violation of ICTY Statute Article 7(1)".⁷⁷ In this regard, the Trial Chamber recalls, as stated in the Facts, that Ivica Rajić knew that forces under his command had previously participated in several operations in Kiseljak municipality against Bosnian Muslim villages and had committed crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and physical assault.⁷⁸ Even though these events took place before the crimes to which the Accused pleaded guilty, they support the finding that Ivica Rajić's criminal conduct was extremely serious.

90. Moreover, according to the Facts, "[a]t all times relevant to the amended indictment, including on 21 October 1993 and following, Ivica RAJIĆ knew and had reason to know that HVO commanders and soldiers who were subordinate to him and under his effective control were about to commit crimes charged in the Amended Indictment and failed to take necessary and reasonable measures to prevent such crimes."⁷⁹

⁷³ *Ibid.*, p. 201.

⁷⁴ Facts, *supra* para. 44.

⁷⁵ *Ibid.*, para. 45.

⁷⁶ *Ibid.*, para. 42. In relation to the rounding up of a large number of Muslim men in Vareš town, the Trial Chamber notes that Ivica Rajić has not been convicted of count 5 of the Amended Indictment ("unlawful confinement of a civilian"). He has however been found guilty of count 3 ("inhuman treatment") for the crimes committed when these Muslim men were detained at the "Ivan Goran Kovačić" and "Vladimir Nazor" schools.

⁷⁷ Facts, *supra* para. 42.

⁷⁸ *Ibid.*, para. 38.

⁷⁹ *Ibid.*, para. 59.

91. However, the Trial Chamber also notes that Ivica Rajić was acting upon orders of his own superiors: “[o]n 23 October 1993, the head of the HVO Main Staff, Slobodan Praljak, ordered Ivica RAJIĆ and others to sort out the situation in Vareš showing no mercy towards anyone. Find people who are up to both the times and the tasks.”⁸⁰

(d) Overall Impact of the Crimes upon Victims and their Families

92. The Trial Chamber considers that the impact of the crimes perpetrated by Ivica Rajić upon the victims and their families should be taken into account when evaluating the gravity of the crimes.

93. In this regard, the Trial Chamber notes the Appeals Chamber’s Judgment in *Krnojelac* which held 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”⁸¹ and 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.”⁸²

94. Furthermore, the Judgement in *Čelebići* declared that “[t]he gravity of the offences of the kind charged has always been determined by the effect on the victims or, at the most, on persons associated with the crime and nearest relations.”⁸³

95. The Trial Chamber is convinced that, according to the Facts⁸⁴ and the evidence submitted by the Prosecution,⁸⁵ the victims and their relatives suffered severe pain as a direct result of the crimes. This factor should therefore be taken into consideration when determining the seriousness of the crimes.

3. Conclusion

96. In conclusion, the Trial Chamber finds that the sentence should reflect the fact that the crimes were committed on a large scale, were of a particularly violent nature and caused severe pain to the victims and their relatives. The sentence should also reflect the importance of the role played by Ivica Rajić in these events who, following orders of his own superiors, planned and ordered the

⁸⁰ *Ibid.*, para. 39.

⁸¹ *Krnojelac* Appeals Judgement, para. 260.

⁸² *Ibid.*

⁸³ *Čelebići* Trial Judgement, para 1226.

⁸⁴ Facts, *supra* paras 50, 51, 52.

⁸⁵ Prosecution Sentencing Brief, Confidential Annexes B and H.

attacks and further ordered the rounding up of Muslims, knowing the substantial likelihood that criminal acts would ensue following his orders.

B. Aggravating Circumstances

97. The Trial Chamber will now examine the four aggravating circumstances put forward by the Prosecution, namely: Ivica Rajić's position of authority and as a superior, the particular vulnerable position of certain victims; Ivica Rajić's participation in a cover-up and the fact that he absconded and obstructed justice for almost eight years.⁸⁶ The last two factors will be analysed together.

1. Position of Authority and as a Superior

(a) Arguments of the Parties

98. The Prosecution argues that the position of authority of Ivica Rajić should be considered as an aggravating circumstance, due to the far-reaching consequences of its improper exercise of his authority and power.⁸⁷

99. In this regard, the Prosecution submits that Ivica Rajić held a superior position at all times relevant to the Amended Indictment. Ivica Rajić was the Commander of the HVO's Second Operational Group in the Central Bosnia Operative Zone based in Kiseljak. His immediate superior was the Zone Commander, Tihomir Blaškić, and his only other military superiors were the top HVO commanders, Milivoj Petković and Slobodan Praljak.⁸⁸

100. According to the Prosecution, Ivica Rajić exercised effective command and control over at least four HVO units which were involved in the criminal conduct: the Kiseljak brigade, HVO soldiers from Kakanj and the "Maturice" and "Apostoli" special units.⁸⁹

101. The Prosecution also alleges that Ivica Rajić was aware of previous serious misconduct by persons under his command, but that he failed to punish or prevent similar conduct. Moreover, because Ivica Rajić was considered a hero by many of his subordinates, "[t]he fact that various known prior misconduct had not been punished sent a not so subtle message to his soldiers on 22-24 October 1993, as to what was expected of them or was acceptable conduct."⁹⁰

⁸⁶ *Ibid.*, paras 22-36.

⁸⁷ Sentencing Hearing, pp. 196-197, 259.

⁸⁸ Prosecution Sentencing Brief, para. 23.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, para. 24.

102. Furthermore, the Prosecution underlines the fact that, on 22 and 23 October 1993, Ivica Rajić planned and ordered the attacks on the village of Stupni Do and Bogoš Hill.⁹¹ On 23 October 1993, he also ordered the rounding up of more than 250 Muslim men in Vareš town.⁹²

103. Finally, at the Sentencing Hearing, the Prosecution submitted that Ivica Rajić's failure to punish the crimes committed in Stupni Do and Vareš should be taken into consideration as an aggravating factor.⁹³

104. The Defence agrees that Ivica Rajić was in a position of command at all times relevant to the Amended Indictment.⁹⁴

105. The Defence, however, disputes the claim that Ivica Rajić was aware of offences committed by his subordinates before the attacks on Stupni Do and, as such, failed to punish them.⁹⁵ The Defence submits that Ivica Rajić was not aware of these offences and that, when he had direct evidence about them, he did proceed to punish the perpetrators.⁹⁶ It also argues that Ivica Rajić took all necessary measures in order that the crimes committed in Stupni Do and Vareš be prosecuted.⁹⁷

(b) Discussion

106. The case-law of the Tribunal has consistently considered abuse of position of authority in connection with Article 7(1) of the Statute as an aggravating circumstance.⁹⁸ Moreover, the Appeals Chamber stated in the *Blaškić* Judgement that an accused's superior position under Article 7(3) of the Statute can also be taken into consideration as an aggravating factor in sentencing:

Where both Article 7(1) and Article 7(3) responsibility are alleged under the 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.⁹⁹

107. However, the Trial Chambers notes that, contrary to the submissions of the Prosecution,¹⁰⁰ it has the discretion to decide whether Ivica Rajić's responsibility is aggravated by his position of authority.¹⁰¹ The same discretion applies with regard to his superior position under Article 7(3) of

⁹¹ *Ibid.*, para. 18.

⁹² *Ibid.*, para. 17.

⁹³ Sentencing Hearing, pp. 197, 259-260.

⁹⁴ Defence Sentencing Brief, para. 23.

⁹⁵ Sentencing Hearing, p. 227.

⁹⁶ Defence Sentencing Brief, para. 24; Sentencing Hearing, p. 227.

⁹⁷ Sentencing Hearing, p. 226.

⁹⁸ See *Momir Nikolić* Appeals Sentencing Judgement, para. 61; *Naletilić* Trial Judgement, para. 758; *Galić*, Trial Judgement, para. 765; *Jokić* Trial Judgement, paras 61-62.

⁹⁹ *Blaškić* Appeals Judgement, para. 91.

¹⁰⁰ Sentencing Hearing, p. 259.

¹⁰¹ *Naletilić* Appeals Judgement, para. 613; *Stakić* Appeals Judgement, para. 411.

the Statute.¹⁰² Moreover, the Appeals Chamber made clear in the *Momir Nikolić* Appeals Sentencing Judgement and in the *Stakić* Appeals Judgement that when sentencing an accused, the Trial Chamber cannot take into account twice his position of authority or as a superior – that is both when considering the gravity of the crimes and when examining the aggravating factors.¹⁰³ The Appeals Chamber stressed the fact that “[d]ouble-counting the Appellant’s role in the crimes is impermissible as doing so allows the same factor to detrimentally influence the Appellant’s sentence twice.”¹⁰⁴

108. Pursuant to this jurisprudence, the Trial Chamber notes that Ivica Rajić’s position of authority and as a superior have already been taken into consideration when examining the gravity of the crimes.¹⁰⁵ In order to avoid “double-counting” Ivica Rajić’s positions of authority and as a superior, the Trial Chamber considers therefore that these factors should not, in this case, be treated as separate aggravating circumstances.

109. In addition, the Trial Chamber finds that the illegal acts of Ivica Rajić’s subordinates committed prior to the events of 23 October 1993 mentioned by the Prosecution, are not crimes to which Ivica Rajić pleaded guilty.¹⁰⁶ It only provides the context surrounding Ivica Rajić’s participation in these crimes.¹⁰⁷ In this respect, the Trial Chamber recalls that the gravity of the crimes has been analysed in the light of these events.¹⁰⁸

110. As to the arguments raised by the Defence regarding the fact that the Ivica Rajić was not aware of the illegal acts of his subordinates and, upon finding out their commission, he punished them, the Trial Chamber maintains that these elements are in contradiction with the Factual Basis.¹⁰⁹ It therefore dismisses the Defence’s Submissions in this regard.

2. Vulnerability of Victims

(a) Arguments of the Parties

111. The Prosecution submits that the impact of the crimes on victims and their particular vulnerability is an aggravating factor. It refers to the *Kunarac* Judgement in which the Trial Chamber considered the young age of several rape victims, one of whom was only 20 years old, as

¹⁰² *Blaškić* Appeals Judgement, para. 91.

¹⁰³ *Momir Nikolić* Appeals Sentencing Judgement, para. 61; *Stakić* Appeals Judgement, para. 411.

¹⁰⁴ *Momir Nikolić* Appeals Sentencing Judgement, para. 61.

¹⁰⁵ See *supra* para 90.

¹⁰⁶ See *Jokić* Appeals Sentencing Judgement, paras 16-20.

¹⁰⁷ See *supra* para 89.

¹⁰⁸ *Ibid.*

¹⁰⁹ See *supra* paras 59-60; Sentencing Hearing, p. 236. During the Sentencing Hearing, the Trial Chamber recalled that the Parties were bound by the Facts as described in the Factual Basis.

an aggravating factor.¹¹⁰ The Prosecution also notes that, in the *Aleksovski* Judgement, the Trial Chamber found that the commission of violent offences against vulnerable and helpless persons can be, in certain circumstances, an aggravating factor.¹¹¹

112. In this regard, the Prosecution underlines the damages suffered by the victims in Stupni Do which lasted long after 23 October 1993: the near complete destruction of the village, the long-term impact of trauma inflicted on the survivors and the loss of their loved ones.¹¹² The Prosecution also notes that:

In Vareš town, Muslim men were rounded up and detained in two schools where they were severely beaten and/or forced to beat others, who were often members of their own family. Some of the men were so badly beaten that they suffered continuing, long-term injuries.¹¹³

113. The Prosecution finally submits that the victims in Stupni Do included five children and at least fourteen women.¹¹⁴ Of these victims, men and women were executed in front of relatives, young women were sexually abused and one victim lost most of his family.¹¹⁵

114. The Defence states that among the 38 (in fact 37)¹¹⁶ persons killed in Stupni Do, ten were soldiers who were not inhabitants of this village.¹¹⁷ It also asserts that there was “enough time for civilians to leave the villages but they were not allowed to do this by the B-H Army command.”¹¹⁸

115. Finally, the Defence argues that the Trial Chamber should take into account the fact that, in terms of “numbers, manner of commission and scale,” the crimes of this case are *less aggravating* than those in the *Plavšić* case.¹¹⁹

(b) Discussion

116. The Trial Chamber recalls that the impact of Ivica Rajić’s crimes on victims has already been considered when evaluating their inherent gravity.

117. However, the case-law of the Tribunal has consistently considered the special vulnerability of certain categories of victims, such as disabled people, children or the elderly, as an aggravating factor.¹²⁰

¹¹⁰ Prosecution Sentencing Brief, para. 27.

¹¹¹ *Ibid.*

¹¹² Prosecution Sentencing Brief, para. 25; Sentencing Hearing, p. 198.

¹¹³ Prosecution Sentencing Brief, para. 26; Sentencing Hearing, p. 199.

¹¹⁴ Sentencing Hearing, p. 198.

¹¹⁵ Prosecution Sentencing Brief, para. 27.

¹¹⁶ According to paragraph 49 of the Facts, at least thirty-seven Bosnian Muslim men, women, the elderly and children, approximately six of whom were combatants, were killed during the attack on Stupni Do.

¹¹⁷ Defence Sentencing Brief, para. 25.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

118. In the present case, the Trial Chamber notes that, according to the Facts, five children¹²¹ and two elderly women – one of whom was an invalid –,¹²² were killed during the attack in Stupni Do.

119. The Trial Chamber accepts that these persons were in a situation of special vulnerability and finds this to be an aggravating factor in sentencing.

3. Participation in a Cover-Up and Obstructing Justice for Almost eight Years

(a) Arguments of the Parties

120. The Prosecution submits that, as set out in the Factual Basis, “Ivica Rajić played an important and deliberate role in a concerted effort to conceal and cover-up the crimes and the roles of various persons in connection with such crimes”.¹²³

121. The elements in this cover-up included, in particular, “burning the bodies, blocking UNPROFOR and other international observers from entering the crime scenes, a false investigation, taking on a false name, and participating in the total fraud of “Ivica Rajić” being removed from command and “Viktor Andrić” being named to replace him”.¹²⁴

122. This conduct, asserts the Prosecution, had both short and long term effects, in “interfering with a prompt and full investigation of the crimes and perpetrators and in protecting various persons from prosecution or disciplinary action, from October 1993 to the present time”.¹²⁵ Furthermore, as clarified in the Second supplement to the Prosecution’s Brief, “it sent a clear message to all his subordinates that no matter what crimes they were committing, even if these crimes were exposed and strongly denounced by the international community, the perpetrators would be protected and would go unpunished, thus promoting impunity”.¹²⁶

123. In support of its arguments, the Prosecution cites the Appeals Chamber’s Judgement in *Čelebići* which states that “[...] an ongoing failure to exercise the duties to prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, must be regarded as having significantly greater gravity than isolated incidents of such a

¹²⁰ *Furundžija* Trial Judgement, para. 283, *Čelebići* Trial Judgement, para. 1268, *Nikolić*, Sentencing Judgement, para. 184; *Banović*, Sentencing Judgement, para. 50; *Mrda* Sentencing Judgement, para. 48; *Jokić* Sentencing Judgement, para. 64, *Aleksovski* Trial Judgement, para. 227 and footnote 459, *Brdanin* trial Judgement, para. 1106, *Blagojević et al.* Trial Judgement, para. 844; *Česić* Sentencing Judgement, para. 49.

¹²¹ Facts, *supra* paras 49-50.

¹²² *Ibid.*, para. 50.

¹²³ Prosecution Sentencing Brief, para. 29.

¹²⁴ Prosecution Sentencing Brief, para. 29; Sentencing Hearing, pp. 194-195.

¹²⁵ Prosecution Sentencing Brief, para. 29.

¹²⁶ Second Supplement to the Prosecution Sentencing Brief, para. 4.

failure”.¹²⁷ The Prosecution also refers to the same Appeals Judgement which finds that “it was not inappropriate for the Trial Chamber to consider [certain] behavior[s] [the fact that the Accused fabricated evidence and threatened certain witnesses] as [...] aggravating factor[s] and in its overall evaluation of the accused’s character”.¹²⁸ As additional evidence, the Prosecution relies on the sentencing guidelines of the United States¹²⁹ and England and Wales¹³⁰ as well as on the case-law of Canada,¹³¹ namely in *R. v. Wristen*,¹³² which all recognize that obstructing justice is an aggravating factor.

124. The Defence submits that UNPROFOR and other international observers were not given access to the area of the crimes because, according to the available information, Ivica Rajić believed that the ABiH army would have attempted to use UNPROFOR’s presence to gain a military advantage.¹³³ The Defence also asserts that Ivica Rajić was compelled by his superiors to change his name.¹³⁴

125. The Defence further submits that the Trial Chamber should also take into account the fact that Ivica Rajić punished the perpetrators once he was able to establish their identity.¹³⁵

126. In addition to participating in a cover-up, the Prosecution submits that “Ivica Rajić knowing that he had been indicted and was wanted by the ICTY and the international community, wilfully avoided arrest and knowingly participated in an obstruction of justice for almost eight years, with the assistance of persons and organizations in the Republic of Croatia”.¹³⁶

127. As a ground for its argument, the Prosecution invokes paragraph 9 (5d) of the Sentencing Guidelines of the United States which provide that the offence is aggravated when the accused avoids or flees from arrest.¹³⁷ It further argues in the alternative that, if the Trial Chamber concludes that Ivica Rajić’s attempt to evade and to live under a false identity do not constitute aggravating factors, it should then impeach Ivica Rajić’s allegation that he has a “good character”.¹³⁸

128. The Prosecution notes that, on 23 August 1995, Ivica Rajić was indicted by the Tribunal. On 8 December 1995, an arrest warrant was provided to the Minister of Justice of Croatia. On

¹²⁷ *Ibid.*, para. 5.

¹²⁸ *Ibid.*, para. 6.

¹²⁹ *Ibid.*, paras 9-10.

¹³⁰ *Ibid.*, para. 8.

¹³¹ *Ibid.*, paras 11-12.

¹³² *R. v. Wristen* (1999), 47 OR (3d) 66 (Ont. CA), para. 73.

¹³³ Defence Sentencing Brief, para. 19.

¹³⁴ Sentencing Hearing, pp. 232-233.

¹³⁵ Defence Sentencing Brief, para. 28.

¹³⁶ Prosecution Sentencing Brief, para. 30.

¹³⁷ Second Supplement to the Prosecution Sentencing Brief, para. 13.

19 January 1996, Ivica Rajić signed a power of attorney authorising Mr Zvonimir Hodak to act as his legal representative in proceedings before the Tribunal.¹³⁹ On 8 February 1996, the Registrar was notified that the indictment had been made public in the Republic of Bosnia and Herzegovina. On 13 September 1996, the Trial Chamber reconfirmed the indictment against Ivica Rajić, and issued an international arrest warrant.¹⁴⁰

129. The Prosecution submits that at least from June 1994 until June 1996, Ivica Rajić, a known fugitive, was financially supported by the Croatian Ministry of Defence and living at least part of the time in Split.¹⁴¹ Ivica Rajić used one or more false identities and false papers, including papers issued by the Republic of Croatia, giving him first the name “Jakov Kovač”. He also used the name of “Viktor Andrić” in 1993.

130. The Prosecution concludes that Ivica Rajić’s active avoidance of the Tribunal’s jurisdiction, including the use of false identification papers, and his participation in an obstruction of justice should be considered aggravating factors.¹⁴²

131. The Defence accepts that Ivica Rajić’s wilful actions to abscond from and obstruct justice constitute aggravating circumstances, which may be considered by the Tribunal. However, the Defence maintains that Ivica Rajić did not willingly avoid justice:¹⁴³ “Had he done it of his own will, would he have been able to start employment with the Ministry of Defence and receive a salary?”¹⁴⁴ According to the Defence, Ivica Rajić was prevented by the Croatian authorities to surrender himself to the Tribunal until the trial of his superior, Tihomir Blaškić, was completed.¹⁴⁵

(b) Discussion

132. The Trial Chamber is not convinced by the arguments of the Prosecution in which it claims that absconding from justice and participation in a cover-up should aggravate the sentence. In its Brief and Second Supplement, the Prosecution has not proven that these elements are aggravating circumstances pursuant to customary international law or general principles of law. Indeed, in support of its position regarding the participation in cover-up activities, the Prosecutor solely relies on the legal systems of the United States and England and Wales as well as on the case-law of the

¹³⁸ *Ibid.*, para. 14.

¹³⁹ Sentencing Hearing, p. 211.

¹⁴⁰ Prosecution Sentencing Brief, paras 33-35.

¹⁴¹ *Ibid.*, para. 32.

¹⁴² *Ibid.*, para. 36.

¹⁴³ Sentencing Hearing, p. 233.

¹⁴⁴ Defence Sentencing Brief, para. 29.

¹⁴⁵ Sentencing Hearing, pp. 233, 253.

Ontario Court of Appeal of Canada. When arguing that absconding from justice is an aggravating factor, the Prosecution solely relies on the Sentencing Guidelines of the United States.

133. Furthermore, the Trial Chamber considers that the Appeals Chamber's Judgement in *Čelebići* does not support the view that participation in a cover-up is an aggravating factor. This Judgement only determined that, in certain circumstances, a superior's failure to prevent or punish crimes should be taken into account when assessing their gravity and that "it was not inappropriate" for the Trial Chamber to consider "fabrication of evidence" and "threats to witnesses" as "aggravating factor[s] and in its overall evaluation of the accused's character."¹⁴⁶

134. The Trial Chamber also observes that aggravating factors are usually intrinsically linked to the crimes or the role of the Accused during their commission. However, absconding from justice relates only to Ivica Rajić's conduct *after* the commission of the crimes. Apart from the burning of bodies which has already been taken into consideration when evaluating the gravity of the crimes,¹⁴⁷ participation in a cover-up includes acts which arose after the perpetration of the offences. Furthermore, these acts relate to conducting a fraudulent investigation, a matter that would have been relevant had Ivica Rajić been convicted under Article 7(3) of the Statute.

135. However, the Trial Chamber finds that these factors may be taken into account when appraising the weight to be attributed to certain mitigating factors, especially when evaluating Ivica Rajić's good character.

4. Conclusion

136. In light of the abovementioned considerations, the Trial Chamber finds that the special vulnerability of victims is a relevant aggravating circumstance, which must be afforded appropriate weight when considering the sentence. The Trial Chamber also finds that Ivica Rajić's position of authority and as a superior are not aggravating factors in the present case, but elements inherent in the gravity of the crimes.

137. The Trial Chamber rejects the Prosecution's proposition that the participation in cover-up activities and obstructing justice for almost eight years constitute aggravating factors. However, it shall take into consideration these elements when assessing the weight to be attributed to the mitigating factors.

¹⁴⁶ *Čelebići* Appeals Judgement, para.790.

¹⁴⁷ See *supra* para. 84.

C. Mitigating Circumstances

138. Rule 101 (B) (ii) of the Rules provides that the Trial Chamber, when determining a sentence, shall take into account “any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction”.

139. The Prosecution accepts that the cooperation of Ivica Rajić, his guilty plea and his acceptance of responsibility may be considered as mitigating factors.¹⁴⁸

140. The Defence argues that the relevant mitigating circumstances should also include the personality of Ivica Rajić.¹⁴⁹

141. The Trial Chamber will now review each of these factors separately.

1. Guilty Plea

(a) Arguments of the Parties

142. The Defence submits that Ivica Rajić’s guilty plea prior to the commencement of the trial is a factor to be considered in mitigation because it helps to establish the truth, contributes to reconciliation, saves time and resources for the Tribunal and obviates the need for victims and witnesses to come to The Hague to testify.¹⁵⁰ The Defence also argues that Ivica Rajić is the only person who has pleaded guilty to the specific crimes referred to in the Facts.¹⁵¹

143. The Prosecution agrees with the Defence that Ivica Rajić’s guilty plea should be considered a mitigating factor.¹⁵² It further acknowledges that Ivica Rajić is the only accused who, to date, has accepted his responsibility for the crimes mentioned in the Facts.¹⁵³

144. During the Sentencing Hearing, both the Prosecution and the Defence agreed that there was no link between Ivica Rajić’s guilty plea on 26 October 2005 and the Prosecution’s motion to refer the Amended Indictment to the authorities of Bosnia and Herzegovina for trial on 28 July 2005 a few weeks before.¹⁵⁴

¹⁴⁸ Prosecution Sentencing Brief, paras 37-40.

¹⁴⁹ Defence Sentencing Brief, para 35.

¹⁵⁰ *Ibid.*, paras 31-32.

¹⁵¹ *Ibid.*, para. 33.

¹⁵² Prosecution Sentencing Brief, paras 37-38; Sentencing Hearing, p. 199.

¹⁵³ Prosecution Sentencing Brief, para. 39; Sentencing Hearing, p. 200.

¹⁵⁴ Sentencing Hearing, pp. 206, 254.

(b) Discussion

145. According to the jurisprudence of the Tribunal, a guilty plea may be a mitigating factor because, according to the circumstances, it may: demonstrate repentance, honesty, and readiness to take responsibility,¹⁵⁵ help to establish the truth,¹⁵⁶ contribute to establish peace and reconciliation,¹⁵⁷ set an example for other persons guilty to come forward,¹⁵⁸ relieve witnesses from giving evidence in court¹⁵⁹ and save Tribunal time and resources.¹⁶⁰

146. The Trial Chamber accepts that Ivica Rajić's guilty plea prior to the commencement of the trial contributes to establishing the truth about the events which occurred in Stupni Do and Vareš. His plea may contribute to the reconciliation of the peoples of the former SFRY and the restoration of a lasting peace in the region. Such recognition of responsibility also saves valuable court time and resources.

147. The Trial Chamber therefore accepts Ivica Rajić's plea as a mitigating factor.

2. Remorse

(a) Arguments of the Parties

148. The Defence argues that Ivica Rajić has expressed sincere remorse as soon as he became aware of the indictment brought against him.¹⁶¹ At the Sentencing Hearing, Ivica Rajić expressed his remorse publicly.¹⁶² Accordingly, this factor should be considered in mitigation of his sentence.¹⁶³

149. The Prosecution did not make any submission in this regard.

¹⁵⁵ *Plavšić* Sentencing Judgement, para. 70; *Dragan Nikolić* Sentencing Judgement, para. 237; *Mrda* Sentencing Judgement, para. 78; *Jokić* Sentencing Judgement, para. 76.

¹⁵⁶ *Todorović* Sentencing Judgement, para. 81; *Momir Nikolić* Sentencing Judgement, para. 149; *Dragan Nikolić* Sentencing Judgement, para. 233; *Mrda* Sentencing Judgement, para. 78; *Jokić* Sentencing Judgement, para. 76.

¹⁵⁷ *Plavšić* Sentencing Judgement, para. 80; *Dragan Obrenović* Sentencing Judgement, para. 111; *Dragan Nikolić* Sentencing Judgement, para. 233; *Mrda* Sentencing Judgement, para. 78; *Jokić* Sentencing Judgement, para. 76.

¹⁵⁸ *Erdemović* Second Sentencing Judgement, para. 16 (ii); *Mrda* Sentencing Judgement, para. 78; *Jokić* Sentencing Judgement, para. 76.

¹⁵⁹ *Momir Nikolić* Sentencing Judgement, para. 150; *Todorović* Sentencing Judgement, para. 80; *Mrda* Sentencing Judgement, para. 78; *Jokić* Sentencing Judgement, para. 76.

¹⁶⁰ *Sikirica* Sentencing Judgement, para. 149; *Erdemović* Second Sentencing Judgement, para. 16(ii); *Todorović* Sentencing Judgement, para. 81; *Plavšić* Sentencing Judgement, para. 73; *Banović* Sentencing Judgement, para. 67; *Mrda* Sentencing Judgement, para. 78.

¹⁶¹ Defence Sentencing Brief, para. 34; Sentencing Hearing, p. 239.

¹⁶² Sentencing Hearing, pp. 247-248.

¹⁶³ Defence Sentencing Brief, para. 34.

(b) Discussion

150. The Trial Chamber notes that the case-law of the Tribunal has recognized that remorse should be considered as a mitigating circumstance, provided that it is real and sincere.¹⁶⁴

151. In this respect, the Trial Chamber finds that Ivica Rajić's public apologies to the victims and their families and his demeanour during the Sentencing Hearing reflect his real and sincere remorse. At the Sentencing Hearing, Ivica Rajić expressed his remorse and apologies to the families of the victims in the following manner:

I am very sorry for all the victims and suffering that took place in Stupno Do and Vareš. Those victims were unnecessary, just as the war between two friendly nations was unnecessary.

I should like to apologise to the families of the people who have suffered, expressing my full sympathies for having lost their ... and my regrets for the loss of their nearest and dearest. This comes from the heart, and it is my sincere regret, because I understand the pain and the suffering. I know this because the war brought pain and suffering to my own family, as it did to many other families, regardless of their ethnicity. All those victims deserve the truth and justice, and my cooperation with the Prosecution is a contribution to the establishment of the truth and the acceptance of my responsibility of a man who is responsible but not broken [...].¹⁶⁵

152. The Trial Chamber therefore accepts Ivica Rajić's expression of remorse as a mitigating factor.

3. Cooperation with the Prosecution

(a) Arguments of the Parties

153. The Defence submits that Ivica Rajić has significantly cooperated with the Prosecution.¹⁶⁶

154. At the Sentencing Hearing, the Prosecution confirmed that cooperation with Ivica Rajić was and continues to be substantial.¹⁶⁷ According to the Prosecution, Ivica Rajić has provided and authenticated "various important documents and/or confirmed numerous important facts, and has agreed to continue co-operating with the Prosecution in the future."¹⁶⁸

¹⁶⁴ *Momir Nikolić Appeals Sentencing Judgement*, para. 117; *Banović Sentencing Judgement*, para. 71; *Todorović Sentencing Judgement*, para. 89; *Erdemović Second Sentencing Judgement*, para. 16 (ii); *Mrda Sentencing Judgement*, para. 85; *Jokić Sentencing Judgement*, para. 89.

¹⁶⁵ Sentencing Hearing, pp. 247-248.

¹⁶⁶ Defence Sentencing Brief, para. 36; Sentencing Hearing, p. 243.

¹⁶⁷ Prosecution Sentencing Brief, para. 40; Sentencing Hearing, p. 200.

¹⁶⁸ Prosecution Sentencing Brief, para. 40.

(b) Discussion

155. According to Rule 101(B)(ii) of the Rules, the Trial Chamber is required to consider “the substantial cooperation with the Prosecutor by the convicted person before or after conviction” as a mitigating circumstance.

156. In this regard, the Trial Chamber takes note of the Plea Agreement, in which Ivica Rajić agreed to cooperate with the Prosecution.¹⁶⁹ Moreover, the Prosecution has acknowledged, in its Sentencing Brief¹⁷⁰ and during the Sentencing Hearing,¹⁷¹ that Ivica Rajić has met his obligation of cooperation as specified in the Plea Agreement.

157. The Trial Chamber also takes note of the information provided by the Prosecution during the Sentencing Hearing about the nature, the quality and the depth of such cooperation.¹⁷²

158. In the light of the assessment made by the Prosecution, the Trial Chamber considers Ivica Rajić’s cooperation to be a mitigating factor.

4. Personal Circumstances

(a) Arguments of the Parties

159. In its Sentencing Brief, the Defence submits that the Trial Chamber should consider the following personal circumstances as mitigating circumstances:

- Ivica Rajić was a respected man in his community,¹⁷³ married with three children, two of whom are minors (Ivica Rajić’s wife is expecting her fourth child);
- before the war, he was “an exemplary professional soldier and a respectable member of the community”;
- he has never been previously convicted;¹⁷⁴
- he was never driven by any racial or religious hatred of persons from other ethnic or religious backgrounds, as demonstrated by his attitude during the war towards certain members of the Muslim community in both Kiseljak and Rotilj; and

¹⁶⁹ Plea Agreement, para. 17.

¹⁷⁰ Prosecution Sentencing Brief, para. 40.

¹⁷¹ Sentencing Hearing, pp. 200, 207-208, 210.

¹⁷² Defence Sentencing Brief, para. 35; Sentencing Hearing, pp. 207-210.

¹⁷³ Defence Sentencing Brief, para. 35; Sentencing Hearing, p. 236.

¹⁷⁴ Sentencing Hearing, p. 237.

- he conducted himself well after the events, enabling around 2,000 Jews to flee Sarajevo and refusing to implement illegal orders from superiors.¹⁷⁵

(b) Discussion

160. The Trial Chamber recalls that the jurisprudence of the Tribunal has taken into consideration various personal circumstances as mitigating factors, such as the family situation of an accused,¹⁷⁶ his efforts to be reintegrated into society¹⁷⁷ and the absence of prior criminal record.¹⁷⁸

161. The Trial Chamber also notes that the Tribunal has generally attached only limited importance to these personal factors.¹⁷⁹

162. While prior good character and family circumstances of a convicted person may, in some cases, be taken into account as mitigating factors, the Trial Chamber finds that in the present case they have only limited bearing on the sentence to be imposed. The fact that Ivica Rajić has neither been convicted prior to the events nor driven by racial or religious hatred and that he enabled 2,000 Jews to flee Sarajevo is clearly of relevance to the determination of his sentence. The Defence did not however submit any evidence regarding these matters.

163. Therefore, the Trial Chamber ascribes limited weight to these circumstances in mitigation.

5. Conclusion

164. In light of the abovementioned considerations, the Trial Chamber finds that the following factors are relevant mitigating circumstances, which have been afforded appropriate weight when considering the sentence:

- Ivica Rajić's guilty plea before the trial;
- his remorse; and
- his cooperation with the Prosecution.

165. Moreover, the Trial Chamber attributed limited weight to Ivica Rajić's personal circumstances.

¹⁷⁵ Defence Sentencing Brief, para. 35; Sentencing Hearing, p. 238.

¹⁷⁶ *Jelisić* Judgement, para. 124; *Mrda* Sentencing Judgement, para. 91.

¹⁷⁷ *Krnjelac* Trial Judgement, para. 519; *Mrda* Sentencing Judgement, para. 91.

¹⁷⁸ *Jelisić* Judgement, para. 124; *Mrda* Sentencing Judgement, para. 91.

¹⁷⁹ *Banović* Sentencing Judgement, para. 75; *Mrda* Sentencing Judgement, para. 92.

D. The General Practice Regarding Prison Sentences before the Courts of the Former Yugoslavia

1. Arguments of the Parties

166. The Prosecution submits that the Tribunal should have recourse to the general practice regarding prison sentences in the courts of the SFRY, as set forth in the SFRY Criminal Code.¹⁸⁰ It also notes that the Tribunal's jurisprudence interprets recourse to the Code's sentencing practices as a useful tool that can guide, but not limit, a Trial Chamber's determination of the appropriate sentence in the circumstances of the case.¹⁸¹

167. Moreover, the Prosecution argues that the Trial Chamber can refer to the factors found in Article 41(1) of the Code in determining sentence, such as the perpetrator's personal circumstances or behaviour after the commission of the offence, and that these factors are equivalent to aggravating and mitigating factors.¹⁸² The Prosecution also submits that the Trial Chamber should avail itself of actual sentencing decisions or of a range of penalties that courts of the SFRY would have imposed for comparable crimes.¹⁸³ The Prosecution does not cite any cases from the Former Yugoslavia in this respect. Instead, it refers to Article 142 of the Code which provided for a sentence of imprisonment of not less than five years or a sentence of death for the crimes of torture, rape, enslavement and outrages upon personal dignity committed during wartime.¹⁸⁴

168. Finally, the Prosecution notes that life imprisonment, as prescribed in the Statute, may be imposed in respect of crimes for which the death penalty may have been imposed in the former Yugoslavia.¹⁸⁵

169. The Defence agrees with the Prosecution's submissions that the SFRY court practice should be used as a guideline for the Trial Chamber in determining a sentence.¹⁸⁶ Furthermore, it highlights the fact that, according to the Code, courts of the SFRY were able to impose a prison term of 15 years or, in particular circumstances, of 20 years maximum.¹⁸⁷ Finally, the Defence submits that in 1998, Bosnia and Herzegovina abolished the death penalty for the most serious offences and substituted it with a term of imprisonment of between 20 and 40 years.¹⁸⁸

¹⁸⁰ Prosecution Sentencing Brief, para. 6.

¹⁸¹ *Ibid.*, para. 6.

¹⁸² *Ibid.*, para. 7.

¹⁸³ *Ibid.*, para. 7.

¹⁸⁴ *Ibid.*, para. 8.

¹⁸⁵ *Ibid.*, para. 9.

¹⁸⁶ Defence Sentencing Brief, para. 8.

¹⁸⁷ *Ibid.*, para. 9.

¹⁸⁸ *Ibid.*, para. 8.

2. Discussion

170. The Trial Chamber, in determining the penalty, should take into account the sentencing practice in the courts of the SFRY at the relevant time, as set forth in the Code.

171. Article 24 of the Statute and Rule 101(B) of the Rules respectively provide that a Trial Chamber should have “recourse to” and should “take into account” the general practice regarding prison sentences in the courts of SFRY. The plain language of the aforementioned applicable law and the consistent jurisprudence of the Tribunal indicate clearly that this is only one of the factors that a Trial Chamber should consider, without at the same time being in any way bound by such practice.¹⁸⁹

172. The Prosecution correctly directs the attention of the Trial Chamber to the factors found in Article 41(1) (“General Principles in Fixing Punishment”) of the Code, which are equivalent to aggravating and mitigating circumstances. Articles 38 (“Imprisonment”) and 48 (“Combination of Criminal Acts”) of the Code should also be taken into account.

173. The Trial Chamber holds that due consideration should be given, in particular, to Article 142 (“War Crime Against the Civilian Population”), which falls within Chapter Sixteen of the Code (“Criminal Acts Against Humanity and International Law”). As held by the Trial Chamber in the *Tadić* case, this Article gives effect to the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.¹⁹⁰

174. The charges to which Ivica Rajić pleaded guilty under Article 2 of the Statute (wilful killing, inhuman treatment, appropriation of property, extensive destruction not justified by military necessity and carried out unlawfully and wantonly) consist in conduct which is included in the aforementioned Article 142. The punishment prescribed by this provision ranged from five to 20 years of imprisonment or the death penalty.

175. Finally, the Trial Chamber notes that Bosnia and Herzegovina abolished the death penalty for the most serious offences and substituted it with a term of imprisonment ranging from 20 to 40 years.

176. The Trial Chamber takes all of these factors relating to sentencing practices in the former Yugoslavia into consideration in making its determination in this case.

¹⁸⁹ *Blaškić* Appeals Judgement, para. 681; *Čelebići* Appeals Judgement, para. 813.

¹⁹⁰ *Tadić* Sentencing Judgement, para. 8.

V. DETERMINATION OF THE SENTENCE

A. Conclusions

177. The Trial Chamber notes the sentences imposed by other Trial Chambers in prior cases before the Tribunal. However, in none of these cases have individuals been convicted of exactly the same crimes as Ivica Rajić, committed in the same manner and with the same aggravating and mitigating factors. As stated by the Appeals Chamber, the Trial Chamber has an overriding obligation to tailor a penalty to fit the gravity of the particular crimes of which the Accused has been convicted, taking into account his individual circumstances, which include the consideration of both aggravating and mitigating circumstances.¹⁹¹ Therefore, while other cases may provide guidance on sentencing ranges, they cannot determine the most appropriate sentence to be imposed on Ivica Rajić.

178. In order to determine the appropriate sentence, the Trial Chamber assessed those factors relevant to an appraisal of the gravity of the four crimes to which Ivica Rajić pleaded guilty: wilful killing, inhuman treatment, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

179. In determining the seriousness of these crimes, the Trial Chamber examined the nature of the offenses committed, their scale and brutality, the role played by Ivica Rajić, and the overall impact of the crimes upon the victims and their families. It concluded that the sentence should reflect the fact that the crimes were committed on a large scale, were of a particularly violent nature and caused severe pain to the victims and their relatives. The sentence should also reflect the importance of the role played by Ivica Rajić in these events who, following orders of his own superiors, planned and ordered the attacks and further ordered the rounding up of more than two hundred and fifty Bosnian Muslim men, knowing the substantial likelihood that criminal acts would ensue following his orders.

180. Moreover, the Trial Chamber found that the special vulnerability of certain victims was a relevant aggravating circumstance to the crimes. However, it considered that Ivica Rajić's positions of authority and as a superior were not aggravating factors in the present case, but elements inherent in the gravity of the crimes. Finally, the Trial Chamber rejected the Prosecution's arguments that the participation in a cover-up and in obstructing justice for almost eight years constitute aggravating factors.

¹⁹¹ *Čelebići Appeals Judgement*, para. 717; *Momir Nikolić Appeals Sentencing Judgement*, para. 38.

181. The Trial Chamber gave consideration to a number of mitigating circumstances which were afforded appropriate weight when considering the sentence: Ivica Rajić's guilty plea before the trial, his remorse and his cooperation with the Prosecution. Moreover, the Trial Chamber accorded limited additional weight in mitigation of sentence to Ivica Rajić's personal circumstances.

182. Finally, in accordance with the Statute and the Rules, the Trial Chamber took account of the general sentence practice of the courts of the former Yugoslavia.

B. Credit for Time Served

183. Ivica Rajić has been detained since his arrest on 5 April 2003 in the Republic of Croatia. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the time spent in detention, which amounts to 1130 days.

VI. DISPOSITION

184. For the foregoing reasons, having considered the arguments and the evidence presented by the Parties, the **TRIAL CHAMBER**

PURSUANT TO the Statute and the Rules,

SENTENCES Ivica Rajić to 12 (twelve) years of imprisonment;

STATES that, pursuant to Rule 101(C) of the Rules, Ivica Rajić is entitled to credit for 1130 days for time spent in custody up to and including the date of this Judgement;

ORDERS that, pursuant to Rule 103(C) of the Rules, Ivica Rajić 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.

Dated this eighth day of May 2006 at The Hague, The Netherlands.

Christine Van Den Wyngaert
Presiding

Janet Nosworthy

Frank Höpfel

[Seal of the Tribunal]

VII. GLOSSARY

ABiH or B-H Army	Army of the Republic of Bosnia-Herzegovina.
Accused	Ivica Rajić.
A.k.a. or aka	Also known as
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlato Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000.
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999.
Amended Indictment	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, Amended Indictment, 14 January 2004.
Apostoli	Croatian Defence Council (HVO) special purposes unit.
<i>Blagojević et al.</i> Trial Judgement	<i>Prosecutor v. Blagojević et al.</i> , Case IT-02-60-T, Judgement, 17 January 2005.
<i>Banović</i> Sentencing Judgement	<i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003.
<i>Blaškić</i> Appeals Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004.
<i>Brđanin</i> Sentencing Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT 99-36-T, Sentencing Judgement, 1 September 2004.
CBOZ	Central Bosnia Operative Zone.
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-A, Judgement, 20 February 2001.
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-T, Judgement, 16 November 1998.
<i>Česić</i> Sentencing Judgement	<i>Prosecutor v. Ranko Česić</i> , Case No. IT-95-10/1-S, Sentencing Judgement, 11 March 2004.
Clarifications on Convictions Entered	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-S, Clarifications on Convictions Entered in the Amended Indictment, 16 November 2005.
Defence	Defence for Ivica Rajić.
Defence Sentencing Brief	<i>Prosecutor v. Ivica Rajić</i> , Case No. IT-95-12-S, Ivica Rajić's Sentencing Brief, 16 December 2005.
<i>Erdemović</i> Second Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Judgement, 5 March 1998.
Factual Basis - Facts	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, agreement on the Factual Basis of the case between Ivica Rajić and the Office of the Prosecutor, 25 October 2005.
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000.
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998.
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement, 5 December 2003.
Geneva Conventions	Geneva Conventions I through IV of August 12, 1949.
HVO	Croatian Defence Council, title of the Herceg-Bosna government and armed forces.
Indictment	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, Indictment dated 23 August 1995 and confirmed 28 August 1995.
International Tribunal or Tribunal or ICTY	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law

	Committed in the Territory of the Former Yugoslavia since 1991.
<i>Jelisić</i> Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999.
JNA	Yugoslav People's Army.
<i>Jokić</i> Sentencing Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-S, Judgement, 18 March 2004.
<i>Jokić</i> Appeals Sentencing Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, Judgement, 30 August 2005.
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003.
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002.
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001.
Maturice	Croatian Defence Council (HVO) special purposes unit.
MOS	Muslim Armed Forces.
<i>Mrđa</i> Sentencing Judgement	<i>Prosecutor v. Darko Mrđa</i> , Case No. IT-02-59-S, Judgement 31 March 2004.
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić, a.k.a "Tuta" and Vinko Martinović, a.k.a "Štela,"</i> Case No. IT-98-34-T, Judgement, 31 March 2003.
<i>Naletilić</i> Appeals Judgement	<i>Prosecutor v. Mladen Naletilić, a.k.a "Tuta" and Vinko Martinović, a.k.a "Štela,"</i> Case No. IT-98-34-A, Judgement, 3 May 2006.
<i>Momir Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003.
<i>Momir Nikolić</i> Appeals Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006.
<i>Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003.
<i>Obrenović</i> Sentencing Judgement	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003.
Para. / paras	Paragraph / paragraphs.
Parties	Defence and Prosecution.
<i>Plavšić</i> Sentencing Judgement	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003.
Plea Agreement	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, Plea Agreement between the Ivica Rajić and the Office of the Prosecutor, 25 October 2005.
Plea Hearing	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, Plea Hearing, 26 October 2005.
PPN	Special purposes unit.
Prosecution	The Office of the Prosecutor (OTP).
Prosecution Sentencing Brief	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-S, Prosecution's Brief on the Sentencing of Ivica Rajić, 15 November 2005.
Rules	Rules of Procedure and Evidence of the International Tribunal, IT/32/Rev.36, 21 July 2005.
Second Operational Group	One of three operational groups of the Central Bosnia Operative Zone.
Second Supplement to the Prosecution Sentencing Brief	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-PT, Second Supplement to the Prosecution Sentencing Brief, 20 March 2006.

Security Council	United Nations Security Council.
Sentencing Hearing	<i>Prosecutor v. Ivica Rajić aka Viktor Andrić</i> , Case No. IT-95-12-S, Sentencing Hearing, 23 March 2005.
SFRY	Socialist Federal Republic of Yugoslavia
SFRY Criminal Code or the Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, published in the Official Gazette SFRJ No. 44 of 8 October 1976 and effective since 1 July 1977.
<i>Sikirica</i> Sentencing Judgement	<i>Prosecutor v. Duško Sikirica</i> , Case No. IT-95-8-S, Judgement, 13 November 2001.
<i>Simić</i> Sentencing Judgement	<i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Judgement, 17 October 2002.
SIS	Security and Information Service of the Croatian Defence Council (HVO)
<i>Milomir Stakić</i> Appeals Sentencing Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, 22 March 2006.
T.	Transcript of hearing in the present case. All transcript page numbers referred to in the course of this judgement are from the unofficial, uncorrected version of the transcript.
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000.
<i>Tadić</i> Sentencing Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999.
<i>Todorović</i> Sentencing Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001.
Trial Chamber	Trial Chamber I.
UN	United Nations.
UNDU	United Nations Detention Unit.
UNPROFOR	United Nations Protection Force.

