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l'ex-Yougoslavie

SUMMARY OF TRIAL CHAMBER JUDGEMENT

Prosecutor v. Kupreskic et al.

14 January 2000

This morning, the Trial Chamber delivers its Judgement in the case of the Prosecutor versus Zoran Kupreskic and others.

In the course of this trial, the Trial Chamber has had to assess the involvement, if any, of the six accused and their potential culpability within a tragic episode of the armed conflict that raged in Bosnia and Herzegovina between 1992 and 1994. On 16 April 1993, in a matter of a few hours, some 116 inhabitants, including women and children, of Ahmici, a small village in central Bosnia, were killed and about 24 were wounded; 169 houses and two mosques were destroyed. The victims were Muslim civilians. The Trial Chamber is satisfied, on the evidence before it in this case, that this was not a combat operation. Rather, it was a well-planned and well-organised killing of civilian members of an ethnic group, the Muslims, by the military of another ethnic group, the Croats. The primary purpose of the massacre was to expel the Muslims from the village, by killing many of them, by burning their houses, slaughtering their livestock, and by illegally detaining and deporting the survivors to another area. The ultimate goal of these acts was to spread terror among the population so as to deter the members of that particular ethnic group from ever returning to their homes.

This tragedy carried out in a small village reflects in a microcosm the much wider tensions, conflicts and hatreds which have, since 1991, plagued the former Yugoslavia and caused so much suffering and bloodshed. In a matter of a few months, persons belonging to different ethnic groups, who used to enjoy good neighbourly relations, and who previously lived side by side in a peaceful manner and who once respected one another's different religious habits, customs and traditions, were transformed into enemies. Nationalist propaganda gradually fuelled a change in the perception and self-identification of members of the various ethnic groups. Gradually the "others", i.e. the members of other ethnic groups, originally perceived merely as "diverse", came instead to be perceived as "alien" and then as "enemy"; as potential threats to the identity and prosperity of one's group. What was earlier friendly neighbourly coexistence turned into persecution of those "others".

The accused are charged with violations of the laws or customs of war and persecution; in particular, murder and cruel treatment under Article 3 of the Tribunal Statute and murder, inhumane acts and persecution under Article 5 of the Statute.

Persecution is one of the most vicious of all crimes against humanity. It nourishes its roots in the negation of the principle of the equality of human beings. Persecution is grounded in discrimination. It is based upon the notion that people who share ethnic, racial, or religious bonds different to those of a dominant group are to be treated as inferior to the latter. In the crime of persecution, this discriminatory intent is aggressively achieved by grossly and systematically trampling upon the fundamental human rights of the victim group. Persecution is only one step away from genocide – the most abhorrent crime against humanity – for in genocide the persecutory intent is pushed to its uttermost limits through the pursuit of the physical annihilation of the group or of members of the group. In the crime of genocide the criminal intent is to destroy the group or its members; in the crime of persecution the criminal intent is instead to forcibly discriminate against a group or members thereof by grossly and systematically violating their fundamental human rights. In the present case, according to the Prosecution – and this is a point on which the Trial Chamber agrees – the killing of Muslim

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civilians was primarily aimed at expelling the group from the village, not at destroying the Muslim group as such. This is therefore a case of persecution, not of genocide.

The fact that in this area of Bosnia and Herzegovina, the armed conflict frequently took the form of persecution is vividly depicted in the words of one Muslim woman mentioned by one of the witnesses in this trial. "I do not fear the shells and bombs that may fall on my house," she said. "They do not ask for my name. I fear the foot soldiers who break into my house and kill and wound in a very personal way and commit atrocities in front of the children". The main target of these attacks was the very identity – the very humanity – of the victim.

The "personal violence" most feared by this Muslim woman is that which is carried out against other human beings solely upon the basis of their ethnic, religious or political affiliation. It is persecutory violence.

The massacre carried out in the village of Ahmici on 16 April 1993 comprises an individual yet appalling episode of that widespread pattern of persecutory violence. The tragedy which unfolded that day carried all the hallmarks of an ancient tragedy. For one thing, it possessed unity of time, space and action. The killing, wounding and burning took place in the same area, within a few hours and was carried out by a relatively small group of members of the Bosnian Croatian military forces: the HVO and the special units of the Croatian Military Police, the so-called Jokers. Over the course of the several months taken up by these trial proceedings, we have seen before our very eyes, through the narration of the victims and the survivors, the unfolding of a great tragedy. And just as in the ancient tragedies where the misdeeds are never shown but are only recounted by the actors, numerous witnesses have told the Trial Chamber of the human tragedies which befell so many of the ordinary inhabitants of that small village.

Indisputably, what happened on 16 April 1993 in Ahmici has gone down in history as comprising one of the most vicious illustrations of man's inhumanity to man. Today, the name of that small village must be added to the long list of previously unknown hamlets and towns that recall abhorrent misdeeds and make us all shudder with horror and shame: Dachau, Oradour sur Glâne, Katijn, Marzabotto, Soweto, My Lai, Sabra and Shatila, and so many others.

To be sure, the primary task of this Trial Chamber was not to construct a historical record of modern human horrors in Bosnia and Herzegovina. The principal duty of the Trial Chamber was simply to decide whether the six defendants standing trial were guilty of partaking in this persecutory violence or whether they were instead extraneous to it and hence, not guilty.

At the end of the trial, we have come to the conclusion that, with the possible exception of one of the accused, this Trial Chamber has not tried the major culprits, those who are most responsible for the massacre of 16 April 1993, those who ordered and planned, and those who carried out the very worst of the atrocities – against innocent civilians.

We thus had to confine ourselves to the six persons accused by the Prosecutor before our Trial Chamber, to determine whether and to what extent they participated in the crimes perpetrated in Ahmici. Our task has not been easy. More than six years after those events – events that occurred far away from The Hague – we have had to shoulder the heavy burden of establishing incredible facts by means of credible evidence.

We have now accomplished our arduous task. The Judgement of the Trial Chamber in this case is some 340 pages in length. Accordingly, instead of presenting the Judgement in its entirety, we will provide a brief summary of the Trial Chamber's findings as to the charges against the accused and deliver the disposition.

Having considered all the evidence and the arguments, the Judgement of the Trial Chamber is as follows.

Zoran Kupreskic, the Trial Chamber finds that you participated in the attack on Ahmici on 16 April 1993 as a soldier in the HVO. We find that you, together with your brother Mirjan, were present as an attacker on that day and that you were actively involved in these events. The Trial Chamber finds also that you attacked your Muslim neighbours solely because of their ethnicity and with the aim of cleansing the village of any Muslim inhabitants. We find that you acted as a co-perpetrator, together with your brother Mirjan, within the meaning of Article 7(1) of the Statute, because you adhered to a common plan for the execution of the cleansing campaign in the village. This by necessity was a highly coordinated effort and required full prior knowledge on your part of the intended activities. We find, in addition, that you played a leading role as a local commander.

Accordingly, the Trial Chamber finds you, Zoran Kupreskic, GUILTY of persecution as a crime against humanity under Article 5(h) of the Statute under count 1 of the indictment.

With regard to the attack on the family of Witness KL, you are charged, Zoran Kupreskic, with murder and inhumane acts as a crime against humanity under Article 5(a) and (i) and cruel treatment under Article 3 of the Statute in connection with Common Article 3(1)(a) of the Geneva Conventions. We are not satisfied beyond reasonable doubt that you were present at the scene of the crime and thus we cannot draw any inference as to your possible participation in the events in question.

Accordingly, the Trial Chamber finds you, Zoran Kupreskic, NOT GUILTY with regard to murder and inhumane acts as a crime against humanity (Article 5(a) and (i) of the Statute) under counts 2-11 of the indictment.

In the light of these findings, we sentence you, Zoran Kupreskic, to 10 years imprisonment.

Mirjan Kupreskic, the Trial Chamber refers to the facts just mentioned with regard to the attack on Ahmici on 16 April 1993. The Trial Chamber finds that these acts were all committed by you, together with your brother Zoran, and thus our findings also apply *mutatis mutandis* to you, although you played a lesser role than your brother.

Accordingly, the Trial Chamber finds you, Mirjan Kupreskic, GUILTY of persecution as a crime against humanity under Article 5(h) of the Statute under count 1 of the indictment.

With regard to the attack on the family of Witness KL, the Trial Chamber finds, as in the case of your brother Zoran, that it is not satisfied beyond reasonable doubt that you were present at the scene of the crime and thus we cannot draw any inference as to your possible participation in the events in question.

Accordingly, the Trial Chamber finds you, Mirjan Kupreskic, NOT GUILTY with regard to murder and inhumane acts as a crime against humanity (Article 5(a) and (i) of the Statute) under counts 2-11 of the indictment.

In the light of these findings, the Trial Chamber sentences you, Mirjan Kupreskic, to 8 years imprisonment.

Vlatko Kupreskic, the Trial Chamber finds that you were involved in the preparations for the attack on Ahmici in your role as police operations officer and as a resident of the village. The Trial Chamber finds that you were present during the attack and ready to lend assistance to the attacking forces. In particular, we find that you helped prepare for the attack and that you supported the attack carried out by the other accused, the HVO and Military Police. You did so principally by unloading weapons in your store and agreeing to the use of your house as a strategic point and staging area for the attacking troops.

Your role is thus not quite as prominent as that of the other accused. The Trial Chamber finds that you merely supported the actions of the others; conduct which amounts to aiding and abetting and not to co-perpetration. The Trial Chamber finds that you were nevertheless aware that your actions would substantially and effectively assist the attackers in their activities. You also knew that the attack would not be a battle between soldiers, but that the Muslim civilians of your own village would be targeted.

Accordingly, the Trial Chamber finds you, Vlatko Kupreskic, GUILTY of aiding and abetting persecution as a crime against humanity pursuant to Article 5(h) of the Statute under count 1 of the indictment.

With regard to the shooting of the Pezer family, you were charged with murder and inhumane acts as crimes against humanity pursuant to Article 5(a) and (i) of the Statute, and with murder and cruel treatment as a violation of the laws or customs of war pursuant to Article 3 of the Statute in connection with common article 3(1)(a) of the Geneva Conventions.

The Trial Chamber is not satisfied beyond reasonable doubt that you, Vlatko Kupreskic, were among the soldiers standing in front of your house who were responsible for the shooting. Thus we cannot draw any inference as to your involvement in these crimes.

Accordingly, the Trial Chamber finds you, Vlatko Kupreskic, NOT GUILTY with regard to murder and inhumane acts as a crime against humanity (Article 5(a) and (i) of the Statute) and murder and cruel treatment as a violation of the laws or customs of war (Article 3 of the Statute in connection with common article 3(1)(a) of the Geneva Conventions) under counts 12-15 of the indictment.

In the light of these findings, the Trial Chamber sentences you, Vlatko Kupreskic, to 6 years imprisonment.

Drago Josipovic, together with Vladimir Santic, you are charged under Count 1 of the indictment with persecution as a crime against humanity pursuant to Article 5(h) of the Statute. The Trial Chamber finds that you, Drago Josipovic, participated in the murder of Musafir Puscul, that you took part in the attack on the house of Nazif Ahmic and that you were actively involved in the burning of private property.

The Trial Chamber finds that you, together with Vladimir Santic, were part of a group that went to the Ahmic house with the common intent to kill and/or expel its inhabitants and set it on fire and that you were present at the scene of the crime. We find that you did so purely because the victims were Muslims, for the same reason set out above with respect to Zoran and Mirjan Kupreskic. We find, further, that you were aware that you would be attacking unarmed and helpless civilians and that this attack was part of the beginning of a large-scale campaign of ethnic cleansing of Muslims from the Lasva River Valley.

Accordingly, the Trial Chamber finds you, Drago Josipovic, GUILTY of persecution as a crime against humanity pursuant to Article 5(h) of the Statute under count 1 of the indictment.

In relation to the murder of Musafir Puscul, you are charged under counts 16-19 with murder and inhumane acts as crimes against humanity pursuant to Article 5(a) and (i) of the Statute as well as murder and cruel treatment as violations of the laws or customs of war pursuant to Article 3 of the Statute in connection with Common Article 3(1)(a) of the Geneva Conventions. The Trial Chamber finds that even though you may not yourself have killed Musafir Puscul, by your active presence in the group, together with Vladimir Santic, you were a co-perpetrator. The same applies for the suffering caused to the Puscul family by being forced to witness the murder of Musafir Puscul, by being expelled from their family home and by having their home destroyed. These acts clearly constituted inhumane acts.

The Trial Chamber accordingly finds you, Drago Josipovic, GUILTY of murder and inhumane acts as crimes against humanity pursuant to Article 5(a) and (i) of the Statute under counts 16 and 18 of the indictment.

By contrast, the Trial Chamber finds that you were charged cumulatively with counts 17 and 19 in an improper manner. For reasons of law, the Trial Chamber therefore finds you, Drago Josipovic, NOT GUILTY with regard to violations of the laws and customs of war (murder and cruel treatment under Article 3 of the Statute) under counts 17 and 19 of the indictment.

In the light of these findings, the Trial Chamber sentences you, Drago Josipovic, to 10 years imprisonment for persecution as a crime against humanity; to 15 years imprisonment for murder as a crime against humanity and to 10 years imprisonment for inhumane acts as a crime against humanity. The Trial Chamber has determined that these sentences are to be served concurrently. That means, Drago Josipovic, that you are sentenced to a total of 15 years of imprisonment.

Vladimir Santic, together with Drago Josipovic, you are charged with persecution as a crime against humanity pursuant to Article 5(h) of the Statute under count 1 of the indictment.

The Trial Chamber finds that you, Vladimir Santic, were in April 1993 the commander of the 1st company of the 4th battalion of the Military Police. You were also commander of the Jokers. As I have said with respect to the accused Drago Josipovic, you participated in the murder of Musafet Puscul and the burning of his house. In addition, from your position as a company commander of the military police and commander of the Jokers, it can be safely inferred that you passed on the orders of your superiors to your men. Your presence on the scene of the attack also served as an encouragement for your subordinates to abide by the orders they had received. The Trial Chamber finds that the fact that you, Vladimir Santic, were in a position of command during the events in question lends an even greater magnitude to your responsibility.

Accordingly, the Trial Chamber finds you, Vladimir Santic, GUILTY of persecution as a crime against humanity pursuant to Article 5(h) of the Statute under count 1 of the indictment.

Under counts 16-19, you were charged, together with Drago Josipovic, with murder and inhumane acts. As I have explained before with respect to the accused Drago Josipovic, these considerations also apply *mutatis mutandis* to you.

Accordingly, the Trial Chamber finds you, Vladimir Santic, GUILTY of murder and inhumane acts as crimes against humanity pursuant to Article 5(a) and (i) of the Statute under counts 16 and 18 of the indictment.

For the same reasons mentioned before concerning cumulative charging, the Trial Chamber, for reasons of law, finds you, Vladimir Santic, NOT GUILTY of violations of the laws or customs of war (murder and cruel treatment under Article 3 of the Statute) under counts 17 and 19 of the indictment.

In the light of these findings, the Trial Chamber sentences you, Vladimir Santic, to 25 years imprisonment for persecution as a crime against humanity; to 15 years imprisonment for murder as a crime against humanity and to 10 years imprisonment for inhumane acts as a crime against humanity. The Trial Chamber has determined that these sentences are to be served concurrently. That means, Vladimir Santic, that you are sentenced to a total of 25 years of imprisonment.

Dragan Papic, you were charged under count 1 with persecution as a crime against humanity under Article 5(h) of the Statute. The Trial Chamber finds that you were mobilised in the HVO during some part of the period relevant to this indictment, although your precise role is not

clear. The Trial Chamber finds that none of the Prosecution evidence is sufficient to establish that you were an active participant in the attack on Ahmici on 16 April 1993 or in any of the events preceding this attack.

Thus, the Trial Chamber finds that there is reasonable doubt as to whether you participated in the attack on Ahmici. Accordingly, the Trial Chamber finds you, Dragan Papic, NOT GUILTY under count 1 of the indictment.

In the light of these findings, the Trial Chamber acquits you, Dragan Papic. You are therefore to be released. This is, of course, unless the Prosecution is to advise us of its intention to file a notice of appeal under Rules 99(B) and 108 and intends to make an application for an order for the continued detention of Mr Papic.