

**Declassified to Public
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ANNEX A

AUTHORITY 36



UNITED
NATIONS

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

Case: IT-00-39-T
Date: 27 September 2006
Original: English

TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr Hans Holthuis

Judgement of: 27 September 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

JUDGEMENT

Office of the Prosecutor

Mr Mark Harmon
Mr Alan Tieger
Mr Stephen Margetts
Mr Fergal Gaynor
Ms Carolyn Edgerton
Ms Katrina Gustafson

Defence Counsel

Mr Nicholas Stewart, QC
Mr David Josse

710. The Chamber finds that in the present case the attack aimed at forcibly displacing Bosnian Muslim and Bosnian Croats in order to change the ethnic composition of a municipality or smaller area within a municipality. The attack was undertaken throughout the indictment municipalities, and required the involvement of the Bosnian-Serb authorities, on central, regional, and municipal levels. The Chamber therefore finds that the attack was both widespread and systematic. The evidence heard and referred to in part 4, shows that the actions taken, with few exceptions, targeted Bosnian Muslims and Bosnian Croats who were not taking an active part in the hostilities. The Chamber therefore finds that the attack itself was clearly directed against the Bosnian-Muslim and Bosnian-Croat civilian population.

711. The Chamber finds beyond reasonable doubt that the perpetrators knew about the attack and that their acts were part thereof.

712. Having determined the existence of both an armed conflict and a widespread and systematic attack directed against a civilian population at the relevant time and place, the Chamber will now examine the individual acts charged as crimes against humanity.

713. In its discussion on the crimes, in parts 5.2.2, 5.3.2, and 5.4.2, below, the Chamber has made references to incidents, detention centres, and destroyed cultural monuments and sacred sites, listed in schedules A, B, C and D of the indictment. In instances where the Chamber has received no, or insufficient, evidence on a certain item in the schedules, no such reference has been made.

5.2 Murder or extermination as crimes against humanity

5.2.1 Applicable law

714. The indictment charges the Accused with extermination or murder, in the alternative, for killings, including those during and after the attacks on towns and villages listed in Schedule A, and those related to detention facilities listed in Schedule B.¹⁶²³ The Chamber will set out the legal requirements for the crimes of murder (count 5) and extermination (count 4). The general requirements of these crimes, when charged as crimes against humanity, have been discussed in part 5.1, above.

715. *Murder.* The crime of murder consists of the following elements:

- (a) the victim died;
- (b) an act or omission of the perpetrator caused the victim's death; and
- (c) the act or omission was committed with intent to kill or in the reasonable knowledge that it might lead to death.¹⁶²⁴

716. *Extermination.* The crime of extermination subsumes the elements of murder under Article 5 of the Statute. Extermination additionally requires that the killings occur on a mass scale and that the perpetrator intended by his acts this result.¹⁶²⁵ Although "mass scale" refers primarily to the number of killings, it does not suggest a numerical minimum.¹⁶²⁶ The killings constituting the extermination must form part of the same incident, taking into account such factors as the time and place of the killings, the selection of the victims, and the manner in which they were targeted.¹⁶²⁷

5.2.2 Legal findings

717. Based on the evidence received, the Chamber finds that approximately 3,000 Muslims and Croats were killed in 30 municipalities during the indictment period. To avoid any misunderstanding, the Chamber notes that this is not a historical finding, but a legal one. The Chamber is bound to make its findings exclusively on the basis of the evidence received. This finding does not therefore exclude for the possibility that more Muslims and Croats were killed in these municipalities during the relevant time period. For purposes of this judgement, however, the Chamber may only take into account those specific killings which were proven beyond a reasonable doubt. The Chamber further notes that the number of killings mentioned in this paragraph does not include killings in such incidents where, on the basis of the evidence, the Chamber was unable to assess the definite number of victims.

718. *Murder.* The following incidents of killings have been proven:

¹⁶²³ Indictment, para. 24.

¹⁶²⁴ *Kvočka et al.* Appeal Judgement, para. 261.

¹⁶²⁵ *Ntakirutimana and Ntakirutimana* Appeal Judgement, paras 522, 542; *Stakić* Appeal Judgement, para. 260.

¹⁶²⁶ *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516; *Stakić* Appeal Judgement, para. 260.

¹⁶²⁷ *Stakić* Trial Judgement, para. 640; *Blagojević and Jokić* Trial Judgement, para. 573; *Nahimana et al.* Trial Judgement, para. 1061.

8. Disposition

1181. The Chamber finds Momčilo Krajišnik **NOT GUILTY** of the following charges in the indictment:

Count 1: genocide;

Count 2: complicity in genocide;

Count 6: murder as a violation of the laws or customs of war.

1182. The Chamber finds Momčilo Krajišnik **GUILTY** of the following charges in the indictment pursuant to Article 7(1) of the Statute:

Count 3: persecution as a crime against humanity;

Count 4: extermination as a crime against humanity;

Count 5: murder as a crime against humanity;

Count 7: deportation as a crime against humanity;

Count 8: inhumane acts (forced transfer) as a crime against humanity.

1183. The Chamber hereby sentences Momčilo Krajišnik to a single sentence of twenty-seven (27) years of imprisonment.

1184. Momčilo Krajišnik has been detained since his arrest on 3 April 2000. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 2,369 days.

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

Dated this 27th day of September 2006
At The Hague,
The Netherlands

Joaquín Martín Canivell
Judge

Alphons Orie
Presiding Judge

Claude Hanoteau
Judge