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ANNEX A

AUTHORITY 37

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 No.: IT-97-25-T

Date: 15 March 2002

Original: English

IN TRIAL CHAMBER II

Before: Judge David Hunt, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Liu Daqun

Registrar: Mr Hans Holthuis

Judgment of: 15 March 2002

PROSECUTOR

v.

MILORAD KRNOJELAC

JUDGMENT

Counsel for the Prosecutor:

Ms Hildegard Uertz-Retzlaff
Ms Peggy Kuo
Mr William Smith

Counsel for the Accused:

Mr Mihajlo Bakrac
Mr Miroslav Vasi}

permitting outsiders access to the detainees.²⁴⁶ The Trial Chamber in the exercise of its discretion considers that, in the light of its own express interpretation that only a basic joint criminal enterprise had been pleaded, it would not be fair to the Accused to allow the Prosecution to rely upon this extended form of joint criminal enterprise liability with respect to any of the crimes alleged in the Indictment in the absence of such an amendment to the Indictment to plead it expressly.

87. Where the Trial Chamber has not been satisfied that the Prosecution has established that the Accused shared the state of mind required for the commission of any of the crimes in which he is alleged to have participated pursuant to a joint criminal enterprise, it has then considered whether it has nevertheless been established that the Accused incurred criminal responsibility for any of those crimes as an aider and abettor to them.

2. Aiding and abetting

88. It must be demonstrated that the aider and abettor carried out an act which consisted of practical assistance, encouragement or moral support to the principal offender.²⁴⁷ The act of assistance need not have actually caused the act of the principal offender,²⁴⁸ but it must have had a substantial effect on the commission of the crime by the principal offender.²⁴⁹ The act of assistance may be either an act or omission, and it may occur before, during or after the act of the principal offender.²⁵⁰

89. Presence alone at the scene of the crime is not conclusive of aiding and abetting unless it is demonstrated to have a significant legitimising or encouraging effect on the principal offender.²⁵¹

90. The *mens rea* of aiding and abetting requires that the aider and abettor knew (in the sense that he was aware) that his own acts assisted in the commission of the specific crime in question by the principal offender.²⁵² The aider and abettor must be aware of the essential elements of the crime committed by the principal offender, including the principal

²⁴⁶ Prosecution Pre-Trial Brief, pars 57-62.

²⁴⁷ *Furund`ija* Trial Judgment, pars 235, 249.

²⁴⁸ *Furund`ija* Trial Judgment, pars 233, 234, 249; *Kunarac* Trial Judgment, par 391.

²⁴⁹ *Aleksovski* Appeal Judgment, par 162.

²⁵⁰ *Aleksovski* Trial Judgment, par 129; *Blaski* Trial Judgment, par 285; *Kunarac* Trial Judgment, par 391.

²⁵¹ *Furund`ija* Trial Judgment, par 232; *Tadi* Trial Judgment, par 689; *Kunarac* Trial Judgment par 393.

²⁵² *Aleksovski* Appeal Judgment, par 162; *Tadi* Appeal Judgment, par 229; *Kunarac* Trial Judgment, par 392.

The discriminatory nature of the imprisonment itself is clear from the evidence given.¹³¹⁸ While some Serbs were also held in the KP Dom, they were held legally, having been convicted by courts of law prior to the outbreak of the conflict or having been detained for military offences during the conflict. By contrast, the non-Serbs were not detained on any legal ground, nor was their continued confinement subject to review.

(b) Inhumane conditions as persecution

439. The Prosecution charges "the establishment and perpetuation of inhumane conditions against Muslim and other non-Serb civilian detainees within the KP Dom detention facility" as persecution.¹³¹⁹ The establishment and perpetuation of inhumane conditions is separately charged as inhumane acts, a crime against humanity pursuant to Article 5(i) of the Statute¹³²⁰, and as cruel treatment, a violation of the law or customs of war pursuant to Article 3 of the Statute, and as such is of sufficient gravity to constitute persecution.¹³²¹

440. The Trial Chamber has already found that the non-Serb detainees were forced to endure brutal and inadequate living conditions while being detained at the KP Dom,¹³²² as a result of which numerous individuals have suffered lasting physical and psychological problems.¹³²³ Non-Serbs were locked in their rooms or in solitary confinement at all times except for meals and work duty, and kept in overcrowded rooms even though the prison had not reached its capacity. Because of the overcrowding, not everyone had a bed or even a mattress, and there were insufficient blankets. Hygienic conditions were poor. Access to baths or showers, with no hot water, was irregular at best. There were insufficient hygienic products and toiletries. The rooms in which the non-Serbs were held did not have sufficient heating during the harsh winter of 1992. Heaters were deliberately not placed in the rooms, windowpanes were left broken and clothes made from blankets to combat the cold were confiscated. Non-Serb detainees were fed starvation rations leading to severe weight loss and other health problems. They were not allowed to receive visits after April 1992 and therefore could not supplement their meagre food rations and hygienic supplies.

¹³¹⁸ FWS-250 (T 5022); FWS-33 (Ex P 106, p 483); Safet Avdic (Ex P 123, pp 680-681); FWS-249 (Ex P 161, p 2111); FWS-104 (T 2193, 2200); FWS-73 (T 3206-3207).

¹³¹⁹ Par 5.2(e) of the Indictment.

¹³²⁰ Count 15.

¹³²¹ Count 13.

¹³²² See pars 133-143, *supra*.

¹³²³ See par 144, *supra*.

Emergency health cases were not dealt with quickly enough. The camp conditions were psychologically exhausting for the non-Serbs. They were terrified by the sounds of torture and beatings over a period of months. Since they could not identify any criteria for the selection, many non-Serb detainees suffered a continuing fear that they would be taken away next for similar treatment.

441. The Trial Chamber is satisfied that, in contrast, the general conditions for Serb military detainees or convicts were much better.¹³²⁴ Serbs were not locked into their rooms and were free to move around within their building.¹³²⁵ They had access to the compound and were allowed to play sports.¹³²⁶ They were allowed to watch television and to listen to the radio.¹³²⁷ Serbs were mostly housed on the farm.¹³²⁸ They had access to the bathroom and to hot water, and received clean linen and towels.¹³²⁹ Their rooms had stoves to keep them warm during the cold winters.¹³³⁰ They were able to compensate for a shortage of hygienic products by receiving toiletries and clothes from visiting family members.¹³³¹ Serbs were allowed frequent family visits.¹³³²

442. Perhaps the most marked contrast between the treatment of Serbs and non-Serbs was with regard to food, both in quantity and in quality. While the Trial Chamber is satisfied that there were certain restrictions on the quantity and quality of food available during the conflict, it finds that the food available was not distributed equally among the detainees.¹³³³ Serbs received more food and of better quality than that given to non-Serbs. Serbs were allowed second helpings at meals and weight loss was negligible during the period of their detention.¹³³⁴ In addition, while the food was cooked in the same cauldron for all detainees and convicts, nutritious ingredients were added to enrich the meals of the Serbs who ate

¹³²⁴ FWS-138 (T 2062); FWS-159 (T 2467-2469); FWS-73 (T 3219-3221, 3352); Ekrem Zekovic (T 3527); Dr Amir Berberkic (T 3749); FWS-69 (T 4065-4066); FWS-89 (T 4661-4662).

¹³²⁵ FWS-139 (T 330); FWS-162 (T 1360-1361); FWS-109 (T 2369); D'evad S Lojo (T 2557, 2562); Ekrem Zekovic (T 3528, 3621); FWS-69 (T 4066); FWS-89 (T 4662).

¹³²⁶ FWS-215 (T 885); FWS-162 (T 1360-1361); FWS-69 (T 4662).

¹³²⁷ FWS-215 (T 885); FWS-162 (T 1360-1361); FWS-69 (T 4066).

¹³²⁸ FWS-109 (T 2368).

¹³²⁹ D'evad S Lojo (T 2562).

¹³³⁰ D'evad S Lojo (T 2557).

¹³³¹ Zoran Vukovic (T 5783).

¹³³² FWS-215 (T 885); FWS-182 (T 1616); FWS-08 (T 1772); FWS-138 (T 2065); D'evad S Lojo (T 2562); Ekrem Zekovic (T 3528).

¹³³³ See par 139, *supra*.

¹³³⁴ Lazar Stojanovic (T 5717, 5749); Zoran Vukovic (T 5771, 5784-5785).

after the non-Serbs.¹³³⁵ Further, unlike the non-Serb detainees, they were permitted to supplement their diet with supplies brought by relatives.¹³³⁶

443. The Trial Chamber is satisfied that the establishment and perpetuation of inhumane conditions, constituting inhumane acts and cruel treatment of the non-Serb detainees, was carried out with the intent to discriminate against the non-Serbs detainees because of their religious or political affiliations. Accordingly, the Trial Chamber is satisfied that the crime of persecution has been established.

(c) Torture, inhumane acts and cruel treatment as persecution

444. The Prosecution charges "the repeated torture and beatings of Muslim and other non-Serb male civilian detainees at KP Dom" as persecution.¹³³⁷ These acts are separately charged as torture (a crime against humanity pursuant to Article 5(f) and a violation of the laws or customs of war pursuant to Article 3 of the Statute),¹³³⁸ inhumane acts (a crime against humanity pursuant to Article 5(i) of the Statute)¹³³⁹ and cruel treatment (a violation of the laws or customs of war pursuant to Article 3 of the Statute),¹³⁴⁰ all of which have been dealt with above.

445. The Trial Chamber has already found that a number of acts of torture and beatings did occur as charged under Articles 3 and 5 of the Statute.¹³⁴¹ Those acts amounting to torture or inhumane treatment under Article 5 of the Statute are as such of sufficient gravity to constitute persecution. The acts of torture and cruel treatment under Article 3 have also been found to amount to torture and inhumane acts under Article 5 and may therefore be considered to be of equal gravity. Those acts which took place but which the Chamber found above were not sufficiently serious to amount to cruel treatment, inhumane acts or torture, will be examined to determine whether they may nonetheless amount to persecution. For these acts to amount to persecution they must be of the same gravity as other crimes against humanity enumerated under Article 5 of the Statute.¹³⁴²

¹³³⁵ See par 139, *supra*.

¹³³⁶ FWS-111 (T 1229); FWS-08 (T 1772); FWS-142 (T 1840-1841); FWS-138 (T 2063-2066); FWS-71 (T 2945, 2952); FWS-162 (T 1361); FWS-66 (T 1083-1084); Lazar Stojanovic (T 5738).

¹³³⁷ Par 5.2(b) of the Indictment.

¹³³⁸ Counts 2 and 4 respectively.

¹³³⁹ Count 5.

¹³⁴⁰ Count 7.

¹³⁴¹ See pars 189-306, *supra*.

¹³⁴² See pars 433-434, *supra*.

446. The jurisprudence of the Second World War cases establishes that acts which, on their own, are insufficiently serious to be characterised as crimes against humanity can nevertheless still reach the required threshold of gravity by virtue of the context in which those acts occurred. In the Second World War cases, that context was one in which discrimination against and the extermination of the Jewish people on grounds of race was the official State policy of the Nazi Government.¹³⁴³ An act which infringed upon an individuals fundamental rights which was not in and of itself inhumane was nevertheless considered to be inhumane in that context, and as such to be a crime against humanity

447. The Trial Chamber does not accept that the discriminatory imprisonment established is sufficient to characterise acts, which in and of themselves do not amount to inhumane acts or cruel treatment, as sufficiently serious as to amount to crimes against humanity. Such a context is not in the present case sufficient to establish the required degree of gravity implied in Article 5 of the Statute. Further, and related to this issue, the Trial Chamber does not accept the Prosecution's argument that the confinement of men on the discriminatory basis that they were non-Serb is sufficient grounds for establishing that all of those acts established as crimes against humanity, or of equal gravity to, were perpetrated on the ground that the victims were non-Serbs.¹³⁴⁴ For reasons already set out,¹³⁴⁵ each of these acts must be considered on its merits to determine whether it amounts to persecution.

448. The Trial Chamber has already found that detainees were beaten on their way to or from the canteen, by guards of the KP Dom and soldiers from outside the camp (par 5.7).¹³⁴⁶ The Trial Chamber is satisfied that Dr Amir Berberkic and Dževad S Lojo were assaulted by soldiers on religious grounds after the two detainees had left the canteen (par 5.12).¹³⁴⁷ When the soldiers approached them, they shouted "Balijas", the derogatory term for Muslims carrying religious connotations.¹³⁴⁸ The Trial Chamber has already determined, however, that the beating of Dr Amir Berberkic and Dževad S Lojo did not reach the required level of severity to establish the underlying offences of cruel treatment or

¹³⁴³ The jurisprudence of the World War II cases is considered in the *Tadic* Trial Judgment, pars 699-710.

¹³⁴⁴ Prosecution Pre-Trial Brief, par 356.

¹³⁴⁵ See par 436, *supra*. The Trial Chamber considers that the same reasons for which it is not safe to rely on the discriminatory nature of the attack to reach conclusions as to the discriminatory nature of individual acts which form part of that attack, also prevent it from deriving conclusions as to the discriminatory nature of acts subsequent to imprisonment from the discriminatory nature of the initial imprisonment.

¹³⁴⁶ See pars 193-209, *supra*.

¹³⁴⁷ See pars 203-204, *supra*.

¹³⁴⁸ Dževad S Lojo (T 2565).

inhumane acts.¹³⁴⁹ The Trial Chamber is not satisfied that the particular context in which these beatings occurred is sufficient to increase the severity of the acts so as to become crimes against humanity. Accordingly, the Trial Chamber finds that these acts are of insufficient severity to support a finding of persecution.

449. The Trial Chamber is not satisfied that other incidents concerned with the canteen (which do not amount to inhumane acts and cruel treatment)¹³⁵⁰ have been established as having been carried out on discriminatory grounds. In October 1992, detainees lined up for lunch were beaten by five armed soldiers from Trebinje over a period of half an hour (**par 5.8 and 5.13**).¹³⁵¹ A detainee nicknamed "Pace" was slapped and kicked because he carried his lunch tray in one hand (**par 5.10**).¹³⁵² FWS-137 was beaten for unknown reasons by soldiers in the compound when returning from breakfast (**par 5.11**).¹³⁵³ There is no safe basis in the evidence which establishes that these acts were discriminatory in nature or done with discriminatory intent.¹³⁵⁴ There is therefore no need to consider whether any of these acts were of sufficient gravity as to amount to persecution.

450. The Trial Chamber is not satisfied that the incident concerning Edhem Gradisic has been established as being carried out on discriminatory grounds¹³⁵⁵ Edhem Gradisic, a disabled detainee who suffered from epilepsy, was beaten and taken to an isolation cell after complaining about the small portions of food (**par 5.9**).¹³⁵⁶ There is nothing in the evidence to establish that this act was carried out with a relevant discriminatory intent.

451. A number of arbitrary beatings were also established, as set out above (**par 5.14**).¹³⁵⁷ The Chamber is satisfied that, in one of these incidents, the beating was conducted on political grounds and amounted to persecution. D'emo Balic was severely beaten and locked in solitary confinement, which resulted in him becoming deaf in one ear (**par 5.15**).¹³⁵⁸ Balic told another detainee after the beating that the principal offender said to

¹³⁴⁹ See pars 203-204, *supra*.

¹³⁵⁰ Pars 5.8/5.13, 5.10, 5.11 were found not to be serious enough to establish the underlying offences of inhumane acts and cruel treatment; see pars 195-196, 199-204, *supra*.

¹³⁵¹ See pars 195-196, *supra*.

¹³⁵² See pars 199-200, *supra*.

¹³⁵³ See par 201-202, *supra*.

¹³⁵⁴ See par 445, *supra*.

¹³⁵⁵ See par 197, *supra*.

¹³⁵⁶ See pars 197-198, *supra*.

¹³⁵⁷ See par 205, *supra*.

¹³⁵⁸ See pars 206-207, *supra*.

him "You are the one who had promised to Alija eight kilos worth of Serbian eyes".¹³⁵⁹ With respect to the other arbitrary beatings, it has not been established that these took place on any discriminatory grounds, and the Trial Chamber is not satisfied that they amounted to persecution. On different occasions, several detainees were beaten inside, in front of, or after they had been taken from their rooms or isolation cell, including FWS-71 (**par 5.16**),¹³⁶⁰ Muharem Caušević (**A 2**),¹³⁶¹ and Ahmet Duric (**A 7**),¹³⁶² Kemo Kajgana (**A 10**) and Fikret Kovacevic (**A 12**) were taken out of an isolation cell and beaten as well as forced to beat each other.¹³⁶³ None of these acts has been established to have been discriminatory in fact.

452. With respect to the beatings of Smajo Bacvic (**A 1**), Halim Corovic (**A 4**) and FWS-111 (**A 11**), incidents found earlier not to be of sufficient gravity to constitute inhumane acts or cruel treatment,¹³⁶⁴ there is no evidence to establish that these acts were discriminatory in nature or done with discriminatory intent and, accordingly, there is no need to consider whether any of these acts were of sufficient gravity to amount to persecution.

453. The Trial Chamber has already found that certain acts of torture or beatings were perpetrated as punishment for infringements of orders or the KP Dom rules.¹³⁶⁵ Although the Trial Chamber is satisfied that these rules were discriminatory in nature, being applied to the non-Serb detainees only, the Trial Chamber is not satisfied that these acts amount to persecution with respect to the beatings. These discriminatory rules related to the living conditions only, and the discriminatory intent has not been established with respect to the acts of beatings. FWS-54 was beaten as punishment for giving a detainee an extra slice of bread contrary to orders (**par 5.18**).¹³⁶⁶ FWS-71, FWS-76, FWS-08 and D'evad Cosovic were beaten and placed in isolation cells as punishment for stealing food (**par 5.20**).¹³⁶⁷ Following the failed escape attempt by Ekrem Zekovic, his work colleagues, including FWS-73, FWS-110, FWS-144 and FWS-210, were beaten as punishment (**par 5.21**).¹³⁶⁸ Similarly, the Trial Chamber found above that Avdo Muratovic, Fahrudin Malkic and Sacic

¹³⁵⁹ FWS-69 (T 4082). The Trial Chamber understands that "Alija" is a common Muslim name.

¹³⁶⁰ See pars 208-209, *supra*.

¹³⁶¹ See par 213, *supra*.

¹³⁶² See par 214, *supra*.

¹³⁶³ See par 215, *supra*.

¹³⁶⁴ See par 211, *supra*.

¹³⁶⁵ See pars 216-258, *supra*.

¹³⁶⁶ See pars 218-220, *supra*, stating that the beatings amounted to cruel treatment and inhumane acts.

¹³⁶⁷ See pars 223-225, *supra*.

¹³⁶⁸ See pars 226-236, *supra*.

were slapped as punishment for passing messages to one another contrary to orders, although this did not amount to torture, inhumane acts or cruel treatment (**par 5.19**).¹³⁶⁹ The Trial Chamber is not satisfied in respect of any of these acts of beating that the victims were discriminated against on grounds of race, religion or politics.

454. Other acts of torture or beatings took place during interrogations, often with the purpose of obtaining information or extracting confessions. The Trial Chamber has already found that FWS-03, Halim Dedovic and Hajro Sabanovic were tortured by military policeman at the KP Dom in order to obtain information or confessions (**par 5.23**). In the case of FWS-03, targeted because of his SDA affiliations,¹³⁷⁰ the Trial Chamber is satisfied that he was tortured on the basis of politics and that this amounts to persecution. There is no evidence, however, that Halim Dedovic (also **B 13**) or Hajro Sabanovic were SDA supporters. The Trial Chamber is not satisfied that it is sufficient of itself that a detainee was merely asked about something political in order to establish persecution on political grounds.¹³⁷¹ Therefore the Chamber is not satisfied that either of these men were tortured on any listed discriminatory ground.¹³⁷²

455. The Trial Chamber has already found that Nurko Nisic, Zulfo Veiz and Salem Bico were all severely beaten by guards of the KP Dom or policemen in June or July 1992 (**par 5.27**).¹³⁷³ The Trial Chamber is not satisfied that any of these three detainees were tortured on any of the listed grounds. All three men appear to have been policemen prior to the conflict,¹³⁷⁴ and two of them (Nisic and Veiz) were questioned about weapons or military activities.¹³⁷⁵ There is some evidence that former colleagues selected them for beatings,¹³⁷⁶ and that Nisic was beaten during questioning about what happened to a Serb

¹³⁶⁹ See pars 221-222, *supra*.

¹³⁷⁰ See pars 239-242, *supra*. FWS-03 was questioned whether he was an SDA activist. When he denied this, stating that he was merely a party member, the guards accused him of lying and beat him, later calling on Halim Dedovic to identify FWS-03 as an SDA activist; FWS-03 (T 2237).

¹³⁷¹ See par 432, *supra*, requiring that the act of persecution be discriminatory in fact.

¹³⁷² See par 445, *supra*.

¹³⁷³ See pars 249-253, *supra*.

¹³⁷⁴ Concerning Nurko Nisic, see FWS-111 (T 1238); FWS-54 (T 767); FWS-85 (T645); FWS-119 (T1953). Some witnesses also testified that Nisic had a job connected with the municipal authorities: FWS-215 (T 889); FWS-71 (T 2830); FWS-250 (T 5042); FWS-65 (T516). Concerning Zulfo Veiz, see FWS-66 (T 1097-1098); FWS-86 (T 1518); FWS-113 (Dzevad Lojo) (T 2581); FWS-71 (T 2862); FWS-73 (T 3275); Dr Amir Berberkic (T 3810); FWS-69 (T 4123). Concerning Salem Bico, see FWS-54 (T 769); FWS-71 (T 2864); FWS-73 (T 3269); FWS-69 (T 4122); D'evad S Lojo (T 2583); Slobodan Jovancevic (T 6172).

¹³⁷⁵ For Nurko Nisic: see par 250, *supra*. For Zulfo Veiz: see par 251, *supra*.

¹³⁷⁶ For Nurko Nisic: FWS-119 (T 1953). For Zulfo Veiz: FWS-182 (T 1616).

soldier named or nicknamed "Bota".¹³⁷⁷ There is no satisfactory evidence with respect to the reasons why Salem Bico (also **B 5**) was selected to be beaten.

456. On an unknown date in the summer of 1992, Salko Mand'ò (aka Kelta) was mistaken for another detainee and tortured by guards of the KP Dom (**par 5.28, B 36**).¹³⁷⁸ The Trial Chamber is not satisfied that this act of torture amounts to persecution. The intended victim was Salko's brother Fuad,¹³⁷⁹ an SDA member who had protected SDA leaders in Donje Polje.¹³⁸⁰ There is no evidence that Salko Mand'ò was an SDA supporter and, therefore, no safe basis which establishes that this act was in fact discriminatory against Salko Mand'ò on the ground of politics.

457. Vahida D'emal, Enes Uzunovic, Aziz Šahinovic and Elvedin Cedec were beaten and kept in solitary confinement on at least two occasions (**par 5.29**).¹³⁸¹ There is no evidence that the treatment of these detainees was carried out on any discriminatory ground, and therefore it does not amount to persecution. Enes Uzunovic was president of the Foca youth (a youth activist body) before the war,¹³⁸² and then joined the SDA,¹³⁸³ but there is no evidence that he was beaten on these grounds. There is some evidence that Aziz Šahinovic was tortured for information about DM 36,000 which had gone missing from the bank where he worked.¹³⁸⁴ One of the Defence witnesses asserted that Šahinovic was a Muslim soldier.¹³⁸⁵ D'emal Vahida was a policeman.¹³⁸⁶ There is nothing in the evidence which establishes any of the requisite discriminatory grounds.

458. The Trial Chamber found that D'emo Balic was repeatedly and severely beaten and mistreated while being interrogated about SDA membership and Muslims who might have

¹³⁷⁷ See par 250, *supra*; FWS-250 heard a guard yell "Get up Nurko, this is no way to defend Bosnia" (T 5049). Without some greater detail, the Chamber is not satisfied that this can be said to establish beyond reasonable doubt an intent to discriminate on political grounds, because it is reasonably open to an innocent interpretation as a jocular but inappropriate remark.

¹³⁷⁸ See par 254-255, *supra*.

¹³⁷⁹ FWS-138 (T 2080); FWS-142 (T 1830); FWS-66 (T 1104).

¹³⁸⁰ FWS-66 (T 1104).

¹³⁸¹ See pars 256-258, *supra*.

¹³⁸² FWS-86 (T 1514); FWS-66 (T 1109); FWS-215 (T 888).

¹³⁸³ FWS-86 (T 1514).

¹³⁸⁴ FWS-71 (T 2826); Dr Amir Berberkic (T 3925).

¹³⁸⁵ Slobodan Jovancevic (T 5598).

¹³⁸⁶ FWS-66 (T 1110); FWS-111 (T 1258); FWS-139 (T 367); FWS-71 (T 2866); FWS-73 (T 3259); FWS-58 (T 2704); FWS-137 (T 4758).

weapons **(B 4)**.¹³⁸⁷ The Chamber is not satisfied that these beatings did in fact discriminate on the ground of politics or any other listed ground. There is some evidence that Balic was forced to sign a statement that he had established some kind of "units" and that his brother was the principal of the military school in Vranica, and that this is why he was beaten.¹³⁸⁸ The evidence is not sufficiently clear, however, to allow the Chamber to establish whether D'emo Balic was in fact an SDA supporter.

459. The Trial Chamber has already found that Mehmed Sofradžija was kept in an isolation cell for seven days and subjected to severe beatings **(B 52)**.¹³⁸⁹ It has not been established that these beatings amounted to persecution. While there is evidence that he may have been selected for this treatment because his brother was in the military,¹³⁹⁰ no evidence was put before the Chamber which persuades it that Mehmed Sofradžija was beaten on any of the listed discriminatory grounds.

460. On arrival at the KP Dom in January 1992, FWS-159 was locked in an isolation cell for about three months, during which time he was brutally beaten by Serb soldiers and KP Dom guards on at least ten occasions **(B 57)**.¹³⁹¹ The Trial Chamber is not satisfied that these beatings amounted to persecution. During the beatings, FWS-159 was interrogated about military activity. The Trial Chamber concludes that, as FWS-159 was a soldier, it was reasonably possible that, as he should have some knowledge about military activity, it was on this ground that he was beaten, and not on one of the discriminatory grounds.

461. No evidence was put before the court with regard to the reasons behind the beatings of Emir Frašto **(B 21)**. With respect to Ramo D'endušić **(B 20)**, there was evidence that he worked prior to the conflict in the Secretariat for National Defence.¹³⁹² Following an interrogation, he told one witness that he thought that he probably would not survive, as the interrogators knew quite a few things about him.¹³⁹³ The Trial Chamber concludes that it was a reasonable possibility that he was beaten as a result of his knowledge about military activities and, in those circumstances, it is not satisfied beyond reasonable doubt that he was

¹³⁸⁷ See par 262 and Ex P 334a, *supra*.

¹³⁸⁸ Ekrem Zekovic (T 3474, 3648).

¹³⁸⁹ See par 300, *supra*.

¹³⁹⁰ FWS-73 (T 3282); Ekrem Zekovic (T 3524).

¹³⁹¹ See par 305, *supra*.

¹³⁹² FWS-66 (T 1107); FWS-215 (T 904-905); FWS-138 (T 2076); D'evad S Lojo (T 2582); FWS-71 (T 2884); Ekrem Zekovic (T 3495).

¹³⁹³ Dr Amir Berberkic (T 3809).

discriminated against on the basis of any of the listed grounds. There is therefore no need to consider whether any of these acts were of sufficient gravity as to amount to persecution.

462. The Trial Chamber has already found that several detainees were taken out of their rooms to the administration building where they were beaten by soldiers and guards of the KP Dom, after which they did not return to their rooms.¹³⁹⁴ The Trial Chamber is not satisfied that in any of these cases the beatings took place on one of the listed discriminatory grounds. With respect to the beatings carried out in this manner, no evidence was adduced to show the reasons for which Kemo Dželić (B 19),¹³⁹⁵ Nail Hodžić (B 28), Halim Konjo (B 33), Husein Rikalo (B 46), Mithat and Zaim Rikalo (B 48), or Munib Veiz (B 59) were selected for this treatment. Adnan Granov (B 22) was accused by the interrogators of having been in possession of a radio transmitter,¹³⁹⁶ as well as having travelled abroad before the war in order to obtain weapons, allegedly in Germany.¹³⁹⁷ Mustafa Kuloglija (B 34) told a fellow detainee that he had a fight with a Serb before the war and suspected that revenge was the reason he was beaten so much.¹³⁹⁸ The Trial Chamber concludes that it was a reasonable possibility that Granov was beaten as punishment for having allegedly been involved in military activities, while Kuloglija was beaten for revenge. In those circumstances, it is not satisfied beyond reasonable doubt that the necessary discriminatory intent was present.

463. The Trial Chamber has already found that Emir Mand'o was beaten after being mistaken for his brother Fuad, an SDA supporter, like the incident involving Salko Mand'o (B 37).¹³⁹⁹ There is no evidence that Emir Mand'o was also an SDA supporter, and therefore no safe basis which establishes that Emir Mand'o was in fact discriminated against on political grounds.

464. The Chamber is not satisfied that the beatings of any of the following individuals were carried out on any of the listed discriminatory grounds. Remzija Delić (B 14), Ned'ad Delić (B 15) and Hasan D'ano (B 18) were all beaten by former schoolmates or neighbours.¹⁴⁰⁰ Juso D'amalija (B 17) was beaten because his son was a policeman in Foca

¹³⁹⁴ See pars 274, 277-278, 290-293, 295, 298, 330-339, *supra*.

¹³⁹⁵ Listed as Kemal under C 7.

¹³⁹⁶ FWS-215 (T 905); Muhamed Lisica (T 4963).

¹³⁹⁷ Ekrem Zeković (T 3501).

¹³⁹⁸ FWS-66 (T 1103); Ekrem Zeković (T 3505).

¹³⁹⁹ See par 286, *supra*.

¹⁴⁰⁰ See pars 268-269, 272, *supra*. For Hasan D'ano, see also FWS-104 (T 2166).

before the war.¹⁴⁰¹ Ibrahim Kafed'ic (**B 31**) told a witness that a relative of his had joined the Bosnian army and that this was the reason they beat him so badly.¹⁴⁰² There is no evidence as to why Latif Hasanbegovic (**B 25**), Aziz Haskovic (**B 26**) and Halim Seljanci (**B 51**) (an Albanian originally from Kosovo)¹⁴⁰³ were taken out and beaten. Similarly, there is no evidence as to why Kemo Isanovic (**B 30**) was beaten.

465. In summary, the Trial Chamber is satisfied that the following acts of torture, inhumane acts or cruel treatment were carried out on discriminatory grounds: Indictment par 5.15 and 5.23 (FWS-03 only).

(d) Killing as persecution

466. The Prosecution charges "numerous killings of Muslim and other non-Serb male civilian detainees at KP Dom" as persecution.¹⁴⁰⁴ These killings are separately charged as murder (a crime against humanity pursuant to Article 5(a) and a violation of the laws or customs of war pursuant to Article 3 of the Statute).¹⁴⁰⁵ Those acts amounting to murder under Article 5 of the Statute are as such of sufficient gravity as to constitute persecution. The acts of murder under Article 3 have also been found to amount to murder under Article 5 and may therefore be considered to be of equal gravity. The Trial Chamber has already found that twenty-six non-Serbs listed in Schedule C of the Indictment were in fact murdered at the KP Dom.¹⁴⁰⁶

467. For the reasons set out above in the previous section,¹⁴⁰⁷ the Trial Chamber is not satisfied that Hamid "Salem" Bico (**C 2**), Abdurahman Cankušić (**C 3**), Elvedin "Enko" Cedric (**C 5**), Kemal D'elilovic (**C 7**), Ramo D'endusic (**C 8**), Adil Granov (**C 9**), Halim Konjo (**C 13**), Mustafa Kuloglija (**C 15**), Fuad Mand'o (**C 16**), Nurko Nišić (**C 19**), Husein Rikalo (**C 21**), Mithat Rikalo (**C 22**), Zaim Rikalo (**C 23**), Enes Uzunovic (**C 26**), D'emal Vahida (**C 27**), Munib Veiz (**C 28**) or Zulfo Veiz (**C 29**) were selected to be killed on any of the listed discriminatory grounds.¹⁴⁰⁸

¹⁴⁰¹ FWS-66 (T 1106); Dr Amir Berberkic (T 3812-3813) who heard it from Zaim Cedric.

¹⁴⁰² Ekrem Zekovic (T 3517).

¹⁴⁰³ FWS-109 (T 2359); FWS-58 (T 2701); FWS-71 (T 2810).

¹⁴⁰⁴ Par 5.2(c) of the Indictment.

¹⁴⁰⁵ Counts 8 and 10 respectively.

¹⁴⁰⁶ See par 339, *supra*.

¹⁴⁰⁷ On torture, cruel treatment and inhumane acts as persecution.

¹⁴⁰⁸ See par 339, *supra*.

Count 11 - imprisonment as a crime against humanity.¹⁵⁹³

Count 13 – inhumane acts as a crime against humanity (based upon living conditions).¹⁵⁹⁴

Count 16 – enslavement as a crime against humanity.

Count 18 – slavery as a violation of the laws or customs of war.

536. The Trial Chamber sentences Milorad Krnojelac to a single sentence of imprisonment for seven and a half years.

B. Credit for Time Served

537. Milorad Krnojelac was arrested on **15 June 1998**, and he has accordingly been in custody now for three years and nine months. He is entitled to credit for that period towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103(1) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

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

Dated this the 15th day of March 2002,
At The Hague,
The Netherlands.

**Judge David Hunt
Presiding**

Judge Florence Ndepele Mwachande Mumba

Judge Liu Daqun

[Seal of the Tribunal]

¹⁵⁹³ On the basis that a conviction on this charge would be impermissibly cumulative.

¹⁵⁹⁴ On the basis that a conviction on this charge would be impermissibly cumulative.