

**Declassified to Public
06 September 2012**

ANNEX A

AUTHORITY 49

**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-94-2-S
Date: 18 December 2003
Original: English

IN TRIAL CHAMBER II

Before: Judge Wolfgang Schomburg, Presiding
Judge Carmel A. Agius
Judge Florence Ndepele Mwachande Mumba

Registrar: Mr. Hans Holthuis

Judgement of: 18 December 2003

PROSECUTOR

v.

DRAGAN NIKOLIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Upawansa Yapa
Ms. Patricia Sellers-Visseur
Mr. Bill Smith

Counsel for the Accused:

Mr. Howard Morrison
Ms. Tanja Radosavljević

64. The Accused admitted the veracity of each of the now following facts. The Trial Chamber recalls that it is bound by the assessment contained in the Plea Agreement and the factual basis underlying that agreement, in this instance the hereto attached Indictment.¹⁰⁰

65. The Trial Chamber recognises that the Accused spontaneously admitted his guilt by stating: “*I plead guilty, Your Honour*” to Count 3 and: “*Guilty, Your Honour*” to Count 4 even before the Trial Chamber asked for his plea.¹⁰¹

(a) Count 1 - Persecutions

66. From early June until about 30 September 1992, Dragan Nikolić was a commander in Sušica detention camp. During his tenure as a camp commander, the Accused persecuted detainees on political, racial and religious grounds.¹⁰²

67. The Accused persecuted Muslim and other non-Serb detainees by subjecting them to murders, rapes and torture as charged specifically in the Indictment.¹⁰³ In addition, Dragan Nikolić participated in creating and maintaining an atmosphere of terror in the camp through murders, beatings, sexual violence and other physical and mental abuse.¹⁰⁴

68. The Accused persecuted Muslim and other non-Serb detainees by participating in sexual violence directed at the female detainees in Sušica camp.¹⁰⁵

69. As part of the persecutions, Dragan Nikolić subjected detainees to inhumane living conditions by depriving them of adequate food, water, medical care, sleeping and toilet facilities.¹⁰⁶ As a result of the atmosphere of terror and the conditions in the camp, detainees suffered psychological and physical trauma.¹⁰⁷

70. The Accused persecuted detained Muslims and other non-Serbs by assisting in their forcible transfer from the Vlasenica municipality. At the end of June 1992, large numbers of the male

¹⁰⁰ See *supra* para. 48.

¹⁰¹ Plea Hearing, T. 192 and 196.

¹⁰² Indictment, paras 1 and 3.

¹⁰³ *Ibid.*, para. 4.

¹⁰⁴ *Ibid.*, para. 6.

¹⁰⁵ *Ibid.*, para. 4 (as described in paras 20 and 21 of the Indictment). Certain allegations in paragraphs 20 and 21 of the Indictment underlying the charge of aiding and abetting rape in Count 3 do not appear to fall within the definition of this crime. In the Chamber's view, these acts, which are described in the Indictment as forms of sexual violence, are more appropriately subsumed within the charge of persecutions in Count 1. The term “sexual violence” has not previously been defined before this Tribunal, but the Trial Chamber considers that the criminal behavior outlined in this Judgement should be considered as “sexual violence” in the common usage sense of the term. Therefore, the Trial Chamber adopts for this Judgement only, the term “sexual violence” as used by the Prosecution, but subsumes this conduct under the charge of Persecutions.

¹⁰⁶ Indictment, para. 6.

¹⁰⁷ *Ibid.*, para. 6.

detainees were transferred from Sušica camp to the larger Batković detention camp located near Bijeljina in north-eastern Bosnia and Herzegovina. "Most of the women and children detainees were transferred either to Kladanj or Cerska in Bosnian Muslim controlled territory."¹⁰⁸

(b) Count 2 – Murder

71. In the following paragraphs the Trial Chamber will outline the criminal conduct of the Accused that lead to the deaths of nine non-Serb detainees, which underlies the count of murder.

(i) The murder of Durmo Handžić and Asim Zildžić

72. One evening sometime between 13 – 24 June 1992, the Accused and other camp guards entered the hangar and called out Durmo Handžić and Asim Zildžić. Once outside, the Accused and the guards subjected these two detainees to severe physical abuse, including punching, kicking and beatings with weapons such as lengths of wood. This lasted for at least 45 minutes, during which time the two men repeatedly begged for the beating to stop.¹⁰⁹

73. After the beating, Durmo Handžić and Asim Zildžić were brought back to the hangar. A short time after returning Asim Zildžić died. The next morning the Accused ordered two detainees to bury the body of Asim Zildžić.¹¹⁰

74. Later that morning, the Accused entered the hangar and approached Durmo Handžić. He demanded information regarding Durmo Handžić's son notwithstanding the fact that Durmo Handžić was in severe agony from being beaten the night before. Durmo Handžić died shortly thereafter and was buried that day by other detainees.¹¹¹

(ii) The murder of Rašid Ferhatbegović, Muharem Kolarević, Dževad Sarić and Ismet Zekić

75. During the night of 23 and 24 June 1992, the Accused ordered Muharem Kolarević and Dževad Sarić to be taken out of the hangar. A little while later, other camp guards took out Ismet Zekić as well. For approximately 30 minutes after the men had been taken out of the hangar, detainees inside heard cries of pain and then gunshots that came from a location close to the hangar.¹¹²

¹⁰⁸ *Ibid.*, para. 5.

¹⁰⁹ *Ibid.*, para. 8.

¹¹⁰ *Ibid.*, para. 9.

¹¹¹ *Ibid.*, para. 10.

¹¹² *Ibid.*, para. 11.

VIII. FACTORS RELATED TO INDIVIDUAL RESPONSIBILITY

175. Considering the principles outlined above, the Trial Chamber will now turn to the factors relating individually to the Accused in order to determine the sentence appropriate to the specific circumstances of this case.²³⁹

A. Gravity of the Offence and Aggravating Circumstances

1. Submissions of the Parties

176. The Prosecution submits that the gravity of the crimes is a primary consideration for the Trial Chamber.²⁴⁰ It further submits that the Trial Chamber should consider as aggravating circumstances (i) the position of Dragan Nikolić as a commander in Sušica detention camp, (ii) the vulnerability of the victims, (iii) the depravity of the crimes, (iv) the fact that there were multiple victims, and (v) that the victims were known by the Accused.

177. The Prosecution submits that

[...] the Trial Chamber must consider the magnitude of [the victims'] suffering of murder, rape and torture victims. The Trial Chamber must consider in their assessment, the despair of men and women who were separated from their loved ones, the terror experienced by those who watched fellow detainees die, and the agony experienced by those who did not perish immediately but died slowly of injuries and exposure. These assaults were conducted against the weak and vulnerable victims, who existed completely at the mercy of Dragan Nikolić.²⁴¹

178. The Defence made no submissions on aggravating circumstances.

2. Discussion

(a) Position of Dragan Nikolić as a Commander in Sušica Detention Camp

179. The Accused admitted having been a commander in Sušica camp. Testimony provided at the sentencing hearing disclosed more detail as to his position of authority and responsibility in the camp. Witness SU-032 and Habiba Hadžić stated that "Jenki" was the main commander in the camp.²⁴² As a commander in Sušica camp, he had an overall responsibility to protect the detainees from abuse and to ensure that the conditions under which they were forced to live were humane. Instead he chose to mistreat the detainees, thereby setting an example for the guards to follow and contributing to an environment of impunity.

²³⁹ In the *Krstić* Trial Judgement the Trial Chamber stated that the Trial Chamber had a duty to decide on the appropriate punishment according to the facts of each case, and, "the Trial Chamber must assess the seriousness of the crimes in the light of their individual circumstances and consequences", paras 700 and 701.

²⁴⁰ Prosecution Closing Statement, T. 466.

180. He was at the camp most of the time, both in the evening and in the afternoons.²⁴³ He was armed with a variety of weapons including machine-guns and knives and was accompanied by two trained Doberman guard-dogs.²⁴⁴ The Accused was in charge of the camp at night, and was heard on one occasion saying "*I am the commander here now*".²⁴⁵ He had everything under his control and issued orders. Eight to twelve guards were guarding the detainees.²⁴⁶ Although the Accused had "the main say" in the camp, he used to "co-operate" with Mičo Kraljević²⁴⁷ and on one occasion he told the detainees words to the effect: "*I have to do what Mičo tells me to do. He is my god and I am yours.*"²⁴⁸

181. The Accused ordered detainees to sleep in locations outside the camp, in the surrounding houses or lorries.²⁴⁹ Those within the camp were not allowed to move around in the compound outside the hangar without his order.²⁵⁰

182. The Accused deliberately and callously committed the crimes in the Indictment. He was not under any orders from his superiors, nor was he under any compulsion or pressure to behave in this manner. When asked about the Accused's position in the camp, Witness SU-032 replied: "All I knew was that Dragan Nikolić was there at the camp and did whatever he wanted to do, whatever he pleased."²⁵¹ When asked if Dragan Nikolić held the survival of the detainees in his hands, Witness SU-032 answered in the affirmative.²⁵² The Trial Chamber has no reasonable doubts as to the veracity of this testimony.

183. Dragan Nikolić used his position of authority to intimidate the detainees and prevent them from resisting. The Accused's abuse of his superior position in the camp in principle aggravates his crimes. The detainees lived and died by the hand and at the whim or will of Dragan Nikolić. Witness Habiba Hadžić stated on the other hand that he on one occasion saved her life,²⁵³ an aspect that as such will later be taken into account as a seriously mitigating factor.

²⁴¹ Prosecution Sentencing Brief, para. 38.

²⁴² Witness SU-032, T. 278; Habiba Hadžić, T. 229.

²⁴³ Habiba Hadžić, T. 230.

²⁴⁴ Witness SU-032, T. 286 and 283.

²⁴⁵ Witness SU-202, T. 269.

²⁴⁶ Habiba Hadžić, T. 230.

²⁴⁷ *Ibid.*, T. 248-249. According to Habiba Hadžić's testimony, Mičo Kraljević had "his own specials from Rogosija". They would occasionally go to Sušica camp, roast a lamb or two and play loud music.

²⁴⁸ *Ibid.*, T. 260.

²⁴⁹ *Ibid.*, T. 231.

²⁵⁰ *Ibid.*, T. 229.

²⁵¹ Witness SU-032, T. 287.

²⁵² *Ibid.*, T. 279.

²⁵³ Habiba Hadžić, T. 251.

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

Judge Wolfgang Schomburg, Presiding

Judge Carmel A. Agius

Judge Florence Ndepele Mwachande Mumba

Dated this eighteenth day of December 2003

At The Hague

The Netherlands

[Seal of the Tribunal]