

**UNITED  
NATIONS**

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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-98-29/1-A  
Date: 30 January 2008

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**IN THE APPEALS CHAMBER**

**Before:** A Bench of the Appeals Chamber

**Registrar:** Mr. Hans Holthuis

**THE PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

**PUBLIC**

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**PROSECUTION APPEAL BRIEF**

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**The Office of the Prosecutor:**  
Ms. Shelagh McCall

**Counsel for Dragomir Milošević:**  
Mr. Branislav Tapušković  
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1. On 12 December 2007, Trial Chamber III<sup>1</sup> convicted Dragomir Milošević of planning and ordering the crimes of terror, murder and other inhumane acts, and sentenced him to 33 years imprisonment. The Prosecution has appealed this sentence as manifestly inadequate.<sup>2</sup>

## **I. GROUND OF APPEAL:**

### **THE TRIAL CHAMBER ERRED IN LAW IN IMPOSING A SENTENCE WHICH WAS MANIFESTLY INADEQUATE<sup>3</sup>**

2. A sentence of 33 years imprisonment for the crimes of Dragomir Milošević is plainly unjust. It underestimates the gravity of his criminal conduct and leads to the inexorable conclusion that the Trial Chamber failed to exercise its discretion properly.<sup>4</sup> The only sentence which accurately reflects Milošević's responsibility is one of life imprisonment.

3. Throughout his tenure as commander of the SRK in 1994 and 1995, General Dragomir Milošević directed an appalling battery of attacks against the civilians of Sarajevo, until "death was the most common thing".<sup>5</sup> Issuing orders to snipe and shell countless civilians, he intended to cause death and injury and to terrorize the Bosnian Muslim population. For 15 months, Milošević kept the citizens of Sarajevo trapped in the horror of incessant sniping and shelling, leaving deep and irremovable mental scars on the population as a whole.<sup>6</sup> The terrorization of the civilians in Sarajevo by the SRK was not new to Milošević. Having been General Stanislav Galić's Deputy Commander and Chief of Staff,<sup>7</sup> Milošević knew of the ongoing campaign of sniping, shelling and terror to which the besieged population was being subjected.<sup>8</sup> When he replaced Galić as Commander, he knew that by continuing that campaign, he would further increase the suffering and despair of the people of Sarajevo.<sup>9</sup> Nevertheless, not only did he continue the campaign, he intensified the victimization and

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<sup>1</sup> Judge Robinson (Presiding), Judge Mindua, Judge Harhoff, Case No. IT-98-29/1-T.

<sup>2</sup> Prosecution Notice of Appeal, 31 December 2007.

<sup>3</sup> Prosecution Notice of Appeal, paras.2-3.

<sup>4</sup> *Galić* AJ, para.455.

<sup>5</sup> TJ, para.745, quoting Hadžić, T.3234.

<sup>6</sup> TJ, para.910.

<sup>7</sup> TJ, para.2.

<sup>8</sup> TJ, para.967.

<sup>9</sup> TJ, para.967.

terrorization of Sarajevo's civilians by introducing a new and more dangerous weapon that was indiscriminately directed against them, namely, the modified air bomb.<sup>10</sup>

4. The Appeals Chamber found that the crimes committed during the first part of the campaign under General Galić's command warranted a life sentence.<sup>11</sup> Under General Milošević, the activities of the SRK were described as "more subtle", "more precise" and "more dangerous" than during General Galić's time.<sup>12</sup> No individual circumstances exist to justify a lesser sentence for Milošević. 33 years does not reflect the gravity of his crimes, which were exceptionally brutal and cruel. It does not reflect Milošević's systematic,<sup>13</sup> prolonged<sup>14</sup> and premeditated<sup>15</sup> involvement in planning and ordering the crimes. It does not properly reflect the infliction of terror on his victims. Milošević deserved a life sentence. No mitigation exists which would allow for the imposition of a lower sentence. In the end, the Trial Chamber ventured outside the range available to it and rendered a sentence which was "taken from the wrong shelf."<sup>16</sup>

#### A. Gravity of the crimes<sup>17</sup>

5. The Trial Chamber's description of the gravity of the crimes confirms that it should have imposed a life sentence. Its findings describe extensive victimization and the repeated targeting of an already vulnerable and debilitated population; exceptional cruelty and brutality, with consequences that will be felt for a lifetime; and the infliction of terror on an entire population. The sentence selected by the Trial Chamber disregards its findings on gravity.

##### 1. Victimization and Vulnerability

6. Tens of thousands of civilians in Sarajevo<sup>18</sup> were subjected to the widespread and systematic attack.<sup>19</sup> The residents were continuously exposed to shelling and sniping, killing

<sup>10</sup> TJ, para.107, 491, 495, 618, 622, 822, 833-835, 960, 964, 966, 970, 1001.

<sup>11</sup> *Galić* AJ, para.455 and Disposition.

<sup>12</sup> TJ, para.811 and 968, citing Hadžić, T.3260.

<sup>13</sup> TJ, para.928.

<sup>14</sup> TJ, paras.937, 967.

<sup>15</sup> TJ, paras.968-971.

<sup>16</sup> *Galić* AJ, para.455.

<sup>17</sup> Prosecution Notice of Appeal, paras.2, 3(a) and 3(b).

<sup>18</sup> TJ, paras.895-896.

<sup>19</sup> TJ, para.928.

and injuring them in large numbers.<sup>20</sup> Mortar and artillery explosions were daily events.<sup>21</sup> The civilians were transformed into “clay pigeons”.<sup>22</sup>

7. Milošević made the most basic tasks needed for human survival in Sarajevo virtually impossible. Under his orders, snipers aimed to kill individual civilians, including women and children. Civilians were targeted in the privacy of their own homes. They were targeted when going to work, or using public transportation. Forced into the open in search of food, water and firewood, they came under attack from sniping and shelling.<sup>23</sup>

8. The victims of Milošević’s attack were already vulnerable and debilitated. By the time he took over command of the SRK in August 1994, the population of Sarajevo was “exhausted, both psychologically and physically”, displaying an ambivalent and blunted attitude towards life.<sup>24</sup> They had lost their will to lead a normal life,<sup>25</sup> having been sniped, shelled and terrorized for the preceding two years by General Galić. Sarajevo was under full siege with shortages of water, food, power, gas and electricity.<sup>26</sup> The inhabitants were “constantly hungry and short of food”.<sup>27</sup> The Sarajevo bakery was a favourite shelling target.<sup>28</sup> Hospitals ran short of medical supplies, water, power and heating.<sup>29</sup> In spite of their particular vulnerability, Milošević continued to kill, maim and terrorize the citizens of Sarajevo for another 15 months.<sup>30</sup>

## 2. Cruelty and Brutality of Sniping and Shelling

9. Milošević’s crimes were characterized by exceptional cruelty and brutality, as reflected in the Trial Chamber’s findings.

10. Nermin Divović was returning home with his mother and sister after collecting firewood. It was noon, 18 November 1994, when seven year old Nermin tried to cross the street at the zebra crossing, together with his mother. At that moment they were shot by an

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<sup>20</sup> TJ, paras.734-738.

<sup>21</sup> TJ, para.905.

<sup>22</sup> TJ, para.909.

<sup>23</sup> TJ, paras.908 and 937.

<sup>24</sup> TJ, para.725.

<sup>25</sup> TJ, para.725

<sup>26</sup> TJ, para.726.

<sup>27</sup> TJ, para.729.

<sup>28</sup> TJ, para.729.

<sup>29</sup> TJ, paras.732-733.

SRK sniper. The bullet went through his mother's abdomen and into Nermin's head. His mother survived. Nermin did not. He died on the way to the hospital. Nermin's mother's injury prevented her from attending his funeral. The day her son was killed, there was a ceasefire in place.<sup>31</sup>

11. On the morning of 24 October 1994, Adnan Kasapović, together with two of his friends, went to a department store. In a passageway near the store, he was shot by an SRK sniper. The bullet had entered Adnan's front right shoulder, passed to the left of his lungs and exited near his back left shoulder. He died on the way to hospital. It was his 14<sup>th</sup> birthday. After the shooting, residents put a blanket across the passageway as a protection against snipers. After a few days, the blanket was shot to ribbons.<sup>32</sup>

12. Even at night, in the privacy of their own homes, people were not safe from SRK sniping. Lawyer Jasmina Tabaković was in her bedroom just before midnight on 14 May 1995, when a sniper's bullet hit her in her chest, killing her instantly.<sup>33</sup>

13. On the morning of 7 April 1995, following Milošević's direct order to select the most profitable target where the greatest casualties would be inflicted,<sup>34</sup> the SRK launched a modified air bomb at the residential centre of Hrasnica.<sup>35</sup> Ziba Šubo was at home. Her sons and grandson were asleep upstairs. She had invited her cousin over for coffee. As the bomb exploded, the first floor of her house collapsed and she was buried in rubble. She could hear the children crying for help. Crawling out of her house, she found her grandson wounded and her cousin dead in the street with half of her head blown away.<sup>36</sup>

14. When Ismet Alić went out to play football with his friends near the school playground in Livanjska Street on 8 November 1994, there was a ceasefire in place.<sup>37</sup> The explosion of the shell fired by the SRK blew Ismet over a fence, lodging shrapnel permanently in his

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<sup>30</sup> TJ, para.967.

<sup>31</sup> TJ, paras.325, 327, 328, 340-341.

<sup>32</sup> TJ, paras.380, 383-384, 387, 393.

<sup>33</sup> TJ, paras.247 and 250.

<sup>34</sup> TJ, paras.491 and 495.

<sup>35</sup> TJ, paras.491 and 495.

<sup>36</sup> TJ, paras.477-478 and 481.

<sup>37</sup> TJ, para.444.

face.<sup>38</sup> Two other children, Lejla Hodžić and Dino Blekić were killed.<sup>39</sup> That afternoon, a total of three shells exploded in Livanjska Street, killing at least four civilians and seriously injuring another six.<sup>40</sup>

15. Life in the besieged city of Sarajevo was dominated by death – witnessing it, fearing it, experiencing it. Many children were shot – often the youngest in the family. The effect was devastating, “literally disemboweling the whole family.”<sup>41</sup> The infliction of grievous injury became ordinary, with hospitals admitting civilians killed and injured by sniping and shelling constantly.<sup>42</sup> Snipers targeted those attempting to aid the wounded.<sup>43</sup> Emergency services were prevented from responding to incidents because of the amount of sniping.<sup>44</sup> Injured victims were left stranded because of ongoing sniping.<sup>45</sup> Even when hospitalized, citizens could not escape the danger, as the SRK repeatedly shelled the hospitals.<sup>46</sup> People lived and suffered with the knowledge that they might be killed or wounded any day.<sup>47</sup>

### 3. The Infliction of Terror

16. The crime of terror affected the entire population. The continuous terrorization scarred its citizens. Twelve years later, these scars are still deep in the minds and hearts of the civilians of Sarajevo. It is unlikely they will ever disappear.<sup>48</sup>

17. The terror extended across the whole population of Sarajevo. The Trial Chamber found that people were affected by the knowledge that one might be killed or wounded any day and by living in a city under siege for such a long time.<sup>49</sup> The random and indiscriminate nature of the sniping or shelling meant that they lived under the constant threat of death.<sup>50</sup> The

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<sup>38</sup> TJ, paras.446-447.

<sup>39</sup> TJ, paras.447 and 465.

<sup>40</sup> TJ, para.465.

<sup>41</sup> TJ, para.741.

<sup>42</sup> TJ, para.735.

<sup>43</sup> *E.g.* TJ, para.371.

<sup>44</sup> TJ, para.210.

<sup>45</sup> TJ, paras.370-371.

<sup>46</sup> TJ, paras.152, 425, 427-428.

<sup>47</sup> TJ, para.740.

<sup>48</sup> TJ, para.993.

<sup>49</sup> TJ, para.740.

<sup>50</sup> TJ, paras.742 and 993.

fear instilled was so great that children would soil their clothes when leaving their home to collect water or firewood.<sup>51</sup>

18. Fear and insecurity stalked the besieged population everywhere and all the time. Not even at home did civilians feel safe from sniping and shelling. Fear governed their daily lives. As Alma Mulaosmanović recalled:

Wherever you were, moving out or sitting in your home, we could hear the shots passing by throughout the war, including the shells. You could never know where they were going to land. They just whizzed by, and as soon as it passed it was a kind of relief. [...] <sup>52</sup>

But it wasn't safe inside the flat either. You had to go out eventually to fetch things. [...] It was dangerous all over the place. One of my friends died on her balcony which had a concrete wall just in front. [...] Nowhere was safe.<sup>53</sup>

19. Individuals considered it purely a matter of day-to-day luck that they were not killed or injured by a sniper or a landing shell.<sup>54</sup> One of the only safe places was underground. As W-35 said, “[M]ost of our lives during the four years were spent in cellars.”<sup>55</sup>

20. The people of Sarajevo still carry the psychological scars of Milošević’s campaign of terror, sniping and shelling and may do so for the rest of their lives:

[N]eeding medication to remain calm, being unable to work, experiencing anxiety, difficulty sleeping, waking during the night because of thunder and believing it is an attack by the Bosnian Serbs, and being frightened by loud noise. Elderly people were not able to get on with life and many still suffer psychologically from the effects of the war.<sup>56</sup>

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<sup>51</sup> TJ, paras.742 and 993.

<sup>52</sup> T.1659.

<sup>53</sup> TJ, paras.743 and 993; T.1666.

<sup>54</sup> TJ, para.744.

<sup>55</sup> TJ, para.744; T.849.

<sup>56</sup> TJ, para.746.

21. The crime of terror was committed through the campaign of sniping and shelling. In the course of the sniping and shelling, specific individuals were, of course, killed, and injured physically and psychologically. These individuals were the victims of murder and other inhumane acts.<sup>57</sup> However, the victims of the crime of terror were a far wider group – namely the entire population of Sarajevo. The fact that Milošević succeeded in inflicting terror amounts to an aggravation of that crime. Because the Trial Chamber considered the infliction of terror as an element of the crime of other inhumane acts,<sup>58</sup> it erroneously restricted the victim group<sup>59</sup> to those who were injured directly by a specific incident of sniping or shelling (whether scheduled or unscheduled). This erroneous approach had the effect that those who were not direct victims of a specific incident, but who were nevertheless terrorized by the campaign, were not considered for the purposes of the sentence. This error contributed to the imposition of a manifestly inadequate sentence.

#### **B. Milošević's role mandates a life sentence<sup>60</sup>**

22. Milošević planned and ordered the deliberate and indiscriminate targeting of civilians by sniping, shelling and terrorization.<sup>61</sup> His role was central and instrumental and deserved a life sentence.

23. As commander of the SRK, he was free to implement the greater strategy for Sarajevo in whatever manner he saw fit.<sup>62</sup> The entire sniping campaign was under his control.<sup>63</sup> Running a tight chain of command,<sup>64</sup> he was personally engaged with his subordinates, determining the levels of ammunition as well as the selection of individual members of the SRK for sniper training.<sup>65</sup> It was Milošević who decided on the deployment of weapons, on the placement of artillery and the movement of modified air bombs.<sup>66</sup> He was the one who ordered the construction of launchers for modified air bombs.<sup>67</sup>

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<sup>57</sup> Indictment, para.23.

<sup>58</sup> TJ, para.993.

<sup>59</sup> Prosecution Notice of Appeal, para.3(b).

<sup>60</sup> Prosecution Notice of Appeal, paras.2, 3(a) and 3(c).

<sup>61</sup> TJ, paras.962-964.

<sup>62</sup> TJ, para.960.

<sup>63</sup> TJ, para.962.

<sup>64</sup> TJ, paras.802 and 959.

<sup>65</sup> TJ, para.959.

<sup>66</sup> TJ, para.960.

24. By orchestrating the trap of horror through his orders to snipe and shell, Milošević controlled the destiny of the civilians. He planned and ordered the end of life for hundreds and injury for thousands of others. He manipulated the souls of the civilians of Sarajevo, terrorizing them daily and leaving them with lasting psychological scars.

25. Milošević showed determination in his intention to continue with the campaign. For example, according to an agreement of 9 February 1994 (signed during General Galić's command), a Total Exclusion Zone (TEZ) was to be created and all heavy weapons would be withdrawn to weapons collection points monitored by UNPROFOR.<sup>68</sup> Just one week after taking over command from Galić, Milošević ordered his troops to camouflage heavy weapons inside the TEZ to hide them from UNPROFOR, moving them only under his direct orders:<sup>69</sup>

all heavy weapons in the 20-kilometre zone around Sarajevo be camouflaged and hidden in solid buildings (garages, cellars). Move heavy weapons through the 20-kilometre zone only in accordance with the orders of the corps commander during the night and take all police and other security measures so that if the need arises for such movements they would be concealed from UNPROFOR forces.<sup>70</sup>

26. Once he took command, Milošević immediately planned to increase the brutality of the campaign. Within a few days, he ordered that the air bomb launchers be made ready for firing.<sup>71</sup>

27. His order of 6 April 1995 evinces his clear intent to maximise the casualties inflicted:<sup>72</sup>

[I]mmediately prepare a launcher with an aerial bomb and transport the bomb for launching.

The most profitable target must be selected...where the greatest casualties

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<sup>67</sup> TJ, para.964.

<sup>68</sup> TJ, para.49.

<sup>69</sup> TJ, para.52.

<sup>70</sup> P667, p.2.

<sup>71</sup> TJ, para.822.

<sup>72</sup> See para.13 above.

and material damage would be inflicted.<sup>73</sup>

28. Not content with the mortars Galić had used against the civilian population, Milošević introduced a new weapon - the modified air bomb - into the Sarajevo theatre.<sup>74</sup> This new weapon increased the brutality of the campaign compared with the 1992-1994 period. Milošević planned and ordered the use of this weapon which, the Trial Chamber accepted<sup>75</sup>, had no military purpose. Rather, in a densely populated city such as Sarajevo, the forces around the city would have known it would cause extensive destruction and damage to the civilian population and infrastructure. Aside from the devastation, the modified air bombs were “designed to create fear”.<sup>76</sup> Milošević ordered and deployed these bombs. He had no regard for the lives of Sarajevo civilians.

29. The air bombs, designed to be dropped from planes, had to be modified to meet Milošević’s needs. The SRK attached rockets to them and launched them from the ground.<sup>77</sup> Once in the air, there was no way to control them and they could deviate from their intended target by as much as one kilometre.<sup>78</sup> These weapons caused the most appalling suffering:

Those in the vicinity of the explosion suffer injuries to internal organs in which there is air – the lungs, the stomach, the middle ear. There is increased air pressure and there can be rupture to certain tissue in those cavities [...] very often this is not easy to spot externally. It is not necessarily accompanied by shrapnel wounds bleeding or anything like that.<sup>79</sup>

30. Milošević intended the crimes of murder, other inhumane acts, and the terrorization of the whole population. His integral role in crimes of such gravity warranted imposition of a life sentence and the Trial Chamber committed a discernible error by not doing so. This is reinforced by the Appeals Chamber’s decision to impose a life sentence on General Galić.<sup>80</sup> Both SRK commanders were convicted of the crimes of terror, murder and other inhumane acts directed against the civilian population of Sarajevo. Both intentionally instilled extreme

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<sup>73</sup> P226; TJ, para.854.

<sup>74</sup> TJ, para.1001.

<sup>75</sup> See TJ, paras.540, 553, 562, 1001.

<sup>76</sup> TJ, para.98.

<sup>77</sup> TJ, paras.92 and 107.

<sup>78</sup> TJ, para.97.

<sup>79</sup> Nakaš, T.1107.

<sup>80</sup> TJ, para.988.

fear among the population at large. Both presided over the siege of Sarajevo for an extended period, tightly binding the entire civilian population in a trap of fear and horror on a daily basis. Like Galić, Milošević deserved a life sentence.

31. The Appeals Chamber has held that “a previous decision on sentence may indeed provide guidance if it relates to the same offence and was committed in substantially similar circumstances.”<sup>81</sup> The Trial Chamber justified its decision to impose a different sentence from that imposed by the *Galić* Appeals Chamber by citing the need to individualise the sentence to the particular accused.<sup>82</sup> While trial chambers have the discretion to impose different sentences, the Appeals Chamber has stated that “[I]n cases involving similar factual circumstances and similar convictions, particularly where the sentences imposed in those other cases have been the subject of consideration in the Appeals Chamber, there should be no substantial disparity in sentence unless justified by the circumstances of the particular accused.”<sup>83</sup> No justification existed here. The individual circumstances of Milošević do not justify a substantially different sentence from that imposed on Galić. 33 years is a substantially different sentence. It is not in the same sentencing range<sup>84</sup> and by imposing it, the Trial Chamber abused its discretion.

### **C. Milošević’s guilt requires a life sentence whether or not there was mitigation**

32. “Proof of mitigating circumstances does not automatically entitle the Appellant to ‘credit’ in the determination of sentence.”<sup>85</sup> A trial chamber should impose a life sentence when the gravity of the crimes requires it.<sup>86</sup>

33. No mitigating factors existed to justify a lower sentence than Galić received or to allow the life sentence that Milošević’s crimes warranted to be reduced to one of 33 years.<sup>87</sup>

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<sup>81</sup> *Furundzija*, AJ, para.250.

<sup>82</sup> TJ, para.988.

<sup>83</sup> *Čelebići* AJ, para.758.

<sup>84</sup> As illustrated by the increase of a 30 year sentence to life in *Gacumbitsi* AJ, paras.204-207.

<sup>85</sup> *Niyitegeka* AJ, para.267.

<sup>86</sup> *Stakić* AJ, para.407.

<sup>87</sup> Prosecution Notice of Appeal, para.3(c).

34. First, in the context of the evidence as a whole, no reasonable trial chamber could have found that Brigadier General David Fraser's evidence that Milošević was "somewhat troubled by what he was doing" constituted mitigation.<sup>88</sup>

35. A feeling of being "troubled" can only be mitigation if it amounts to an expression of remorse or concern for the victims. Read in its proper context, no reasonable trial chamber could have found on the balance of probabilities<sup>89</sup> that Milošević's "troubled" feeling arose out of concern or remorse. When asked whether Milošević ever elaborated on the consequences of his actions in Sarajevo, Fraser recounted that Milošević expressed concern for his own future, how he would be perceived and whether he would be able to travel abroad to see his daughter.<sup>90</sup>

36. Alternatively, even if the Trial Chamber's finding was open to it on the evidence, no weight should have been given to this factor in mitigation.<sup>91</sup> Milošević's participation in the crimes, his premeditation and persistence, and his efforts to maximise civilian casualties with air bombs negated any mitigatory credit for a moment of feeling "troubled".

37. Second, Milošević planned and ordered a campaign of terror against the entire population over 15 months, resulting in significant death and injury. In these circumstances, it is repugnant to his countless victims and an abuse of discretion for Milošević to enjoy mitigatory credit based on the descriptions of his subordinates at the time that he was an "altruist" and a "man of high moral values".<sup>92</sup> They purport to describe him at the very time he was sniping, shelling and terrorising the people of Sarajevo. The descriptions come from those who were his subordinates in the SRK during his campaign of terror.<sup>93</sup> The Trial Chamber erred in giving their comments any weight in mitigation. If anything, these alleged qualities make Milošević's role more serious. For a man of high moral values, an altruist, to play such an instrumental role in these crimes "requires an even greater evil will on his part than for a lesser man."<sup>94</sup>

<sup>88</sup> Prosecution Notice of Appeal, para.3(c)(i); TJ, para.1003.

<sup>89</sup> *Blaškić* AJ, para.697.

<sup>90</sup> T.1782-1783.

<sup>91</sup> Prosecution Notice of Appeal, para.3(c)(ii).

<sup>92</sup> Prosecution Notice of Appeal, para.3(c)(iii); TJ, para.1003.

<sup>93</sup> *Dragičević*, T.3970; *Veljović*, T.5756.

<sup>94</sup> *Babić* AJ, para.49, citing *Tadić* SJ, para.59.

38. Third, Milošević's signing of the Anti-sniping Agreement and issuing of orders not to shoot civilians and abide by the Geneva Conventions is not mitigatory and deserves no credit. For the Trial Chamber to have found that it was and to have given it any weight, however slight, contradicts its findings about the crimes and Milošević's role in them.<sup>95</sup> As a general proposition, where an accused is engaged in an ongoing course of criminal conduct, he should not be given credit in mitigation for temporarily obeying the laws he is otherwise disobeying on a continuing basis. In any event, Milošević repeatedly failed to abide by agreements to stop sniping, and on at least one occasion, his order to stop shelling civilians was to conserve ammunition, not for humanitarian reasons.<sup>96</sup> Despite its wide discretion in determining mitigating factors, the Trial Chamber erred in exercising it in this instance.

39. The Anti-sniping Agreement was signed on 14 August 1994. Just eight days later, under Milošević's orders,<sup>97</sup> the SRK had violated it.<sup>98</sup> Sniping by the SRK was a serious problem in the Sarajevo theatre before the signing of the Agreement and remained so afterwards.<sup>99</sup>

40. Not only did Milošević breach the Anti-sniping Agreement, he consistently violated temporary ceasefires. Milošević ordered shelling during a ceasefire.<sup>100</sup> Every incident of sniping in which a tram was targeted occurred during a ceasefire.<sup>101</sup> This was deliberate and calculated by Milošević to have maximum impact:

[T]rams and buses were a particular focus of the sniping activity during the indictment period. Trams and buses only ran during ceasefires. The Accused must have known that the resumption of public transport was an encouraging sign for the civilian population in Sarajevo, and he also knew that targeting of trams and buses would have a particularly devastating psychological effect.<sup>102</sup>

41. Milošević's conviction affirms that throughout the indictment period, he planned and ordered breaches of the Geneva Conventions and had them implemented through sniping and

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<sup>95</sup> Prosecution Notice of Appeal, para.3(c)(iv).

<sup>96</sup> P723.

<sup>97</sup> The Trial Chamber found the entire sniping campaign was under his control: TJ, para.962.

<sup>98</sup> TJ, para.55; *see also* P6.

<sup>99</sup> TJ, para.56.

<sup>100</sup> *See above* para.14.

<sup>101</sup> TJ, para.909.

<sup>102</sup> TJ, para.969; *see also* paras.254, 277, 290, 311, 325, 909.

shelling. Thus, Milošević's signing of the Anti-sniping Agreement and his issuing of occasional orders not to shoot civilians and abide by the Geneva Conventions cannot amount to mitigation. The Trial Chamber erred in the exercise of its discretion, first by finding it to be mitigation and, second, by giving it any weight.

42. Finally, while the Trial Chamber found Milošević's voluntary surrender to be mitigatory,<sup>103</sup> it gave no indication of the weight it attached to it. Milošević delayed his surrender for over three years<sup>104</sup> after the indictment was made public.<sup>105</sup> The Appeals Chamber has previously affirmed that voluntary surrender after such a period of delay should be given little weight.<sup>106</sup> Given those circumstances, the Trial Chamber must have given it only very limited weight and that would not explain the significant difference in Milošević's sentence from that of Galić.

## II. CONCLUSION

43. The Trial Chamber's sentence is manifestly inadequate and fails to properly reflect Milošević's guilt. The Prosecution requests the Appeals Chamber to quash the sentence of 33 years, and impose a sentence of life imprisonment.




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Shelagh McCall  
Appeals Counsel

Dated this 30<sup>th</sup> day of January 2008  
At The Hague, The Netherlands

Word Count: 4141

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<sup>103</sup> TJ, para.1003.

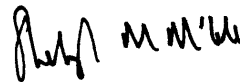
<sup>104</sup> Decision on Defence Motion for Provisional Release, 13 July 2005 (Trial Chamber II), paras.17-19.

<sup>105</sup> Order Vacating Non-Disclosure Order, 2 November 2001, IT-98-29-I.

<sup>106</sup> *Simić* AJ, para.258.

**Declaration Pursuant to Rule 111**

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As at the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the accused all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to him, under Rule 68(ii), collections of relevant material held by the Prosecutor.



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Shelagh McCall  
Appeals Counsel

Dated this 30<sup>th</sup> day of January 2008  
At The Hague, The Netherlands

## Glossary

### Pleadings, Orders, Decisions etc from Prosecutor v. Dragomir Milošević Case No. IT-98-29/1-A

Abbreviation used in Prosecution Appeal	Full citation
Prosecution Notice of Appeal	Prosecution Notice of Appeal, filed 31 December 2007
TJ	Trial Judgement of 12 December 2007

### Other ICTY and ICTR authorities

Abbreviation used in Appeal	Full citation
<i>Babić</i> AJ	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, App.Ch. Judgement on Sentencing Appeal, 18 July 2005
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić and Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Furundžija</i> AJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, App.Ch., Judgement, 21 July 2000
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Gacumbitsi</i> AJ	<i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Niyitegeka</i> AJ	<i>Eliézer Niyitegeka v. Prosecutor</i> , Case No. ICTR-96-14-A, App.Ch., Judgement, 9 July 2004
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch. Judgement, 22 March 2006
<i>Tadić</i> SJ	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-T,

	T.Ch., Judgement, 14 July 1997
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***Other Abbreviations***

<b>Abbreviation used in Appeal</b>	<b>Full citation</b>
Art.	Article
fn.	Footnote
para.	paragraph
paras.	paragraphs
p.	page
pp.	pages
SRK	Sarajevo Romanija Corps
T.	Trial Transcript
TEZ	Total Exclusion Zone
UNPROFOR	United Nations Protection Forces