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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-96-21-T
Date: 16 November 1998
Original: English

IN THE TRIAL CHAMBER

Before: Judge Adolphus G. Karibi-Whyte, Presiding
Judge Elizabeth Odio Benito
Judge Saad Saood Jan

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 16 November 1998

PROSECUTOR

v.

ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ also known as "PAVO"
HAZIM DELIĆ
ESAD LANDŽO also known as "ZENGA"

JUDGEMENT

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Teresa McHenry

Counsel for the Accused:

Ms. Edina Rešidović, Mr. Eugene O'Sullivan, for Zejnil Delalić
Ms. Nihada Buturović, Mr. Howard Morrison, for Zdravko Mucić
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić
Ms. Cynthia McMurrey, Ms. Nancy Boler, for Esad Landžo



1024. In his testimony, Mirko Kuljanin declared that the most severe beatings he received were administered prior to his arrival at the Čelebići prison-camp. He further testified that, upon his arrival in the Čelebići prison-camp, he was taken to a wall inside the camp, where he and the other newly arrived detainees were beaten. However, Mr. Kuljanin stated that he was not really beaten on this occasion, as he was already unable to stand. He testified: "Maybe they hit me three times. Somebody hit me three times and then some people pulled me inside. I was not really severely beaten there."⁹²¹ Witness F testified to seeing Mr. Kuljanin in Hangar 6 sometime thereafter, in a seriously injured condition. The Trial Chamber finds the testimony of these two witnesses to be credible in relation to this charge.

1025. Accordingly, the Trial Chamber finds that, upon his arrival in the Čelebići prison-camp, Mr. Kuljanin was seriously injured, having previously been subjected to severe beatings. He and the other newly arrived detainees were taken in a van to a wall inside the camp compound. There, they found many other detainees with their hands up against the wall, being beaten. Mr. Kuljanin testified that he could hear moans and cries from outside the van. The van was then opened and he and the other detainees were told to get out. At this point, Mr. Kuljanin's distress was so acute that he tried to commit suicide by attempting to drive a nail through his head. At the wall, Mr. Kuljanin, who was unable to stand on account of his previously inflicted injuries, was hit several times before being pulled away from the scene of the beatings into Tunnel 9.

1026. The Trial Chamber finds that it has not been presented with sufficient evidence to enable it to assess whether the nature of the beatings to which Mr. Kuljanin was subjected inside the Čelebići prison-camp caused him suffering or injury of the character required to constitute the offence of wilfully causing great suffering or serious injury to body or health. However, in the Trial Chamber's view, the act of hitting an individual who is so seriously injured that he is unable to stand, necessarily entails, at a minimum, a serious affront to human dignity. Accordingly, on the basis of the foregoing facts, the Trial Chamber finds that the physical mistreatment of Mirko Kuljanin constitutes the offence of inhuman treatment under Article 2, and cruel treatment under Article 3 of the Statute.

⁹²¹ T. 1178.

many of the former detainees who testified were able to observe the incident from their vantage point inside the Hangar. Further, Esad Landžo, provided a full confession as to his participation in this incident in his testimony before this Trial Chamber. The Trial Chamber has previously stated that it finds the testimony of Esad Landžo to be generally unreliable. However, in relation to the present count, where his testimony is consistent with that of so many additional witnesses, the Trial Chamber accepts Mr. Landžo's admission.

1065. Accordingly, on the basis of the foregoing evidence, the Trial Chamber finds that, on one occasion, Esad Landžo ordered Vaso Đorđić and his brother, Veseljko Đorđić, to remove their trousers in front of the other detainees in Hangar 6. He then forced first one brother and then the other to kneel down and take the other one's penis into his mouth for a period of about two to three minutes. This act of fellatio was performed in full view of the other detainees in the Hangar.

1066. The Trial Chamber finds that the act of forcing Vaso Đorđić and Veseljko Đorđić to perform fellatio on one another constituted, at least, a fundamental attack on their human dignity. Accordingly, the Trial Chamber finds that this act constitutes the offence of inhuman treatment under Article 2 of the Statute, and cruel treatment under Article 3 of the Statute. The Trial Chamber notes that the aforementioned act could constitute rape for which liability could have been found if pleaded in the appropriate manner.

(b) Forcing a Father and Son to Slap Each Other Repeatedly

1067. The Prosecution alleges that, on one occasion, a father and son, Danilo and Miso Kuljanin, were forced to slap each other repeatedly. In order to establish the facts in relation to this count, the Prosecution relies on the testimony of Mirko Đorđić.

1068. The Defence has made no submissions in relation to this factual allegation in the Indictment.

1069. The Trial Chamber finds the testimony of Mirko Đorđić in relation to this count to be trustworthy. Accordingly, it finds that, on one occasion, Esad Landžo came into Hangar 6 and ordered a father and son, Danilo and Miso Kuljanin, to get up and start hitting each other. Esad Landžo then ordered them to hit each other harder and so, for a period of at least ten minutes, Mr. Kuljanin and his son were forced to beat each other.