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l'ex-Yougoslavie

APPEALS JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBER

The Hague, 17 March 2009

Summary of the Appeals Judgement Prosecutor v. Momčilo Krajišnik

Please find below the summary of the appeals judgement read out today by Judge Pocar:

Following the practice of the Tribunal, I will not read out the text of the judgement except for the disposition. Instead, I will summarise the findings of the Appeals Chamber. This summary is not part of the written judgement, which is the only authoritative account of the Appeals Chamber's rulings. Copies of the written judgement will be made available at the conclusion of this hearing.

This case concerns events that have occurred in 35 municipalities in Bosnia and Herzegovina between 1 July 1991 and 30 December 1992. On 27 September 2006, the Trial Chamber found Krajišnik responsible for persecution, extermination, deportation, and inhumane acts, all crimes against humanity under Article 5 of the Statute. The Trial Chamber imposed a single sentence of 27 years of imprisonment.

The Trial Chamber found that Krajišnik participated in a joint criminal enterprise ("JCE") whose objective was to ethnically recompose the territories under the control of the Bosnian-Serb Republic by drastically reducing the proportion of non-Serbs through the commission of various crimes. It held that there was a leadership component of the JCE, based in the Bosnian-Serb capital of Pale, which included Krajišnik, Radovan Karadžić and other Bosnian-Serb leaders; the local component of this JCE was based in the municipalities of the Bosnian-Serb Republic and maintained close links with the Pale-based leadership.

The Prosecution filed its appeal against the sentence on 26 October 2006. Krajišnik filed his appeal on 12 February 2007, and Counsel on the matter of JCE filed a supplemental appeal brief on his behalf on 7 April 2008. *Amicus Curiae* filed his appeal on 8 June 2007. The appeal hearing in the present case was held on 21 August 2008, and three evidentiary hearings took place on 3, 5 and 11 November 2008.

I will start with the grounds of appeal raised by *Amicus Curiae*, followed by Krajišnik's grounds of appeal and JCE Counsel's supplementary challenges. Finally, I will address the appeals on the sentence jointly.

In his first ground of appeal, *Amicus Curiae* argues that Krajišnik's right to a fair trial was infringed and that he was ineffectively assisted by counsel. First, he asserts that Counsel Brashich failed to hand over the case material to Counsel Stewart in a timely and orderly manner, and did not provide a significant work product.

The Appeals Chamber finds, however, that the Trial Chamber adjusted the pace of the trial to allow for numerous non-sitting days. Thus, the Appeals Chamber is not convinced that Counsel Brashich's failure to hand over the case material to Counsel Stewart in a timely and orderly manner resulted in a miscarriage of justice.

Furthermore, while the Appeals Chamber accepts that the work product handed over from Counsel Brashich to Counsel Stewart was not in as good state as it should have been, the new Defence team benefited from some of the work done by the Brashich team, in particular the pre-trial brief. Moreover, the new Defence team was allotted substantial legal-aid and time for pre-trial preparation. Thus, the Appeals Chamber concludes that Krajišnik suffered no prejudice as a result of the failures of Counsel Brashich.

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Turning to the alleged failures of Counsel Stewart, *Amicus Curiae* alleges that Counsel Stewart was manifestly unprepared to commence the trial in February 2004 and committed a grave error in failing to apply for deferral prior to the commencement of the trial. The Appeals Chamber finds, however, that the Stewart Defence team was not grossly unprepared to commence trial in February 2004, and *Amicus Curiae* has not demonstrated that the insufficient preparation of the Defence team at the beginning of the trial resulted in a miscarriage of justice.

Amicus Curiae further submits that Counsel Stewart failed to adequately review the material disclosed to the Defence and that he had read only one to two per cent of the case papers when the trial started, and no more than fifteen per cent of the documents thirteen months into the trial. The Appeals Chamber notes that, as acknowledged by Counsel Stewart, he delegated the review of the documents to his team as appropriate. Therefore, *Amicus Curiae* has not demonstrated that the Defence's review of the disclosure material, imperfect though it may have been, has occasioned a miscarriage of justice.

Furthermore, *Amicus Curiae* contends that Counsel Stewart failed to obtain proper instructions from Krajišnik prior to the commencement of the trial to determine an appropriate defence strategy. Counsel Stewart testified on appeal, however, that he had a specific understanding of the defence strategy prior to trial, based in large part on instructions from Krajišnik. Hence, this argument is dismissed.

Amicus Curiae further alleges that the inadequacies in the preparation of the Defence case led Co-counsel Ms. Loukas and case manager Ms. Čmerić to withdraw from the case in 2005, which further diminished the effectiveness of Krajišnik's representation. The Appeals Chamber notes that the leaving team members were immediately replaced, and that Lead Counsel Stewart remained on the case until the end of the trial. This argument is thus dismissed.

Amicus Curiae also asserts that the Trial Chamber accorded the Defence a manifestly inadequate amount of time to prepare the final brief by 18 August 2006. However, the Defence was informed as early as 26 April 2005 that the final brief would be due eleven working days after the close of the case. This allegation is thus dismissed.

Amicus Curiae further argues that the Trial Chamber breached the fairness of Krajišnik's trial by impermissibly restricting his right to examine the Prosecution witnesses. However, *Amicus Curiae* fails to detail how the Trial Chamber abused its discretion under Rule 90(F) of the Rules. This contention is thus dismissed.

Amicus Curiae also submits that the Defence was not accorded sufficient time and resources to prepare for cross-examination of the Trial Chamber witnesses. However, the Appeals Chamber notes that the Defence received the material related to these witnesses reasonably in advance of their testimony and that these witnesses were well-known to Krajišnik and his Defence. Similarly, the Appeals Chamber rejects *Amicus Curiae*'s argument that the Defence was accorded insufficient time to cross-examine Trial Chamber witness Ms. Plavšić, as the Defence only used three quarters of the two hours and 40 minutes allotted by the Trial Chamber to cross-examine her.

Amicus Curiae further alleges that the Trial Chamber erred in its decision denying Krajišnik's request for self-representation. He does not show, however, that a request for self-representation must always be honoured in the absence of persistent obstructionist conduct on the part of the accused. This sub-ground of appeal is thus dismissed.

Amicus Curiae further argues that the Judges of the recomposed Trial Chamber erred in law by ordering the resumption of trial although it was obvious that Judge Hanoteau, the substitute Judge, had not acquired the requisite familiarity with the case. *Amicus Curiae*, however, fails to bring forward any evidence that Judge Hanoteau had not sufficiently familiarised himself with the case to be able to properly discharge his functions. This sub-ground is dismissed.

For the foregoing reasons, the Appeals Chamber dismisses *Amicus Curiae*'s assertion that Krajišnik's trial was unfair. That said, the Appeals Chamber notes that certain aspects of the conduct of the trial were not free from defects and may have created an appearance of unfairness. However, based on a holistic assessment of the trial record and the additional evidence on appeal, the Appeals Chamber is not satisfied that *Amicus Curiae* has shown that these defects amount to a miscarriage of

justice which would undermine the fairness of the trial received by Krajišnik. This ground of appeal is therefore dismissed in its entirety.

In the second ground of appeal, *Amicus Curiae* submits that the Trial Chamber erred in law by failing to provide a sufficiently reasoned judgement and to give reasons as to why certain witnesses or exhibits were found credible and others not. The Appeals Chamber notes, however, that the Trial Chamber specifically stated that it had “carefully deliberated” on the evidence presented to it. The impugned passages merely stress the fact that the Trial Chamber could not *present and discuss* “all the evidence” in the judgement, a statement which cannot, by itself, be equated with a failure to *examine* the evidence in question. Hence, the second ground of appeal raised by *Amicus Curiae* is rejected.

In his third ground of appeal, *Amicus Curiae* argues that the Trial Chamber did not correctly identify the participants in the JCE and could thus not conclude beyond reasonable doubt as to the existence of a common objective between them and Krajišnik. The Appeals Chamber finds that the Trial Chamber indeed erred in failing to specify whether all or only some of the local politicians, militaries, police commanders and paramilitary leaders referred to in paragraph 1087 of the Trial Judgement were JCE members. This sub-ground is thus granted.

Amicus Curiae further alleges that the Trial Chamber erroneously failed to make findings as to when the murders formed part of the JCE and could thus be imputed to Krajišnik. In this context, the Appeals Chamber first notes that it is satisfied that the Trial Chamber found that Krajišnik shared the intent to commit the *original* crimes of deportation, forcible transfer and persecution based on these crimes from the beginning of the JCE.

With respect to the *expanded* crimes of murder, extermination and persecution based on crimes other than deportation and forcible transfer, the Trial Chamber generally found that they were added to the JCE after leading members of the JCE were informed of them, took no effective measures to prevent their recurrence, and persisted in the implementation of the common objective, thereby coming to intend these expanded crimes. The Appeals Chamber notes, however, that the Trial Chamber made only scarce findings, if at all, on these requirements.

Therefore, the Appeals Chamber is not able to conclude with the necessary preciseness how and at which point in time the common objective of the JCE included the expanded crimes, and, consequently, on what basis the Trial Chamber imputed those expanded crimes to Krajišnik. Neither the Appeals Chamber nor an accused can be required to engage in speculation on the meaning of the Trial Chamber’s findings - or lack thereof - in relation to such a central element of Krajišnik’s individual criminal responsibility as the scope of the common objective of the JCE.

Thus, the Appeals Chamber finds that the Trial Chamber committed a legal error in failing to make the findings necessary for Krajišnik’s conviction in relation to the following expanded crimes, which were not included in the original common objective of the JCE:

persecution (Count 3), with the exception of the underlying acts of deportation and forcible transfer;

extermination (Count 4); and

murder (Count 5).

Consequently, the Appeals Chamber grants this sub-ground of appeal in part and dismisses its remainder. Krajišnik’s convictions for expanded crimes under Counts 3, 4 and 5 are thus quashed.

Amicus Curiae further argues that the Trial Chamber erred in law by holding that a JCE member can be criminally responsible for the acts of persons who were not members of the JCE and who potentially did not even know of the existence or purpose of the JCE. *Amicus Curiae* avers that the Trial Chamber erred in departing from the *Brđanin* Appeal Judgement, and that it failed to find the existence of a link between Krajišnik and the crimes.

The Trial Chamber held that a JCE member could incur liability for crimes committed by principal perpetrators “procured” by a JCE member to commit crimes which further the common objective. The Appeals Chamber is satisfied that this standard corresponds in substance to the standard outlined in the *Brđanin* Appeal Judgement which was rendered after the Trial Judgement in the present case. *Amicus Curiae* therefore fails to show an error by the Trial Chamber in this respect.

The Appeals Chamber observes, however, that on many occasions the Trial Chamber erred in failing to reach any finding on the link between the principal perpetrators of the original crimes of deportation, forcible transfer and persecution based on these crimes, and the JCE members. As a result, the Appeals Chamber concludes that the Trial Chamber made only findings that the following original crimes were committed by JCE members by using principal perpetrators, in furtherance of the common purpose:

Persecution by way of deportation, Count 3, in Bratunac; Zvornik; Sanski Most; Banja Luka; Bijeljina; and Prnjavor;

Persecution by way of forcible transfer, Count 3, in Bijeljina; Bratunac; Zvornik; Bosanska Krupa; Sanski Most; Trnovo; and Sokolac;

Deportation, Count 7, in Bratunac; Zvornik; Sanski Most; Banja Luka; Bijeljina; and Prnjavor; and

Inhumane acts by way of forcible transfer, Count 8, in Bijeljina; Bratunac; Zvornik; Bosanska Krupa; Sanski Most; Trnovo; and Sokolac.

Krajišnik's convictions for the remainder of the original crimes under Counts 3, 7 and 8 are thus quashed.

Furthermore, *Amicus Curiae* alleges that the Trial Chamber erred in law by failing to make the relevant findings on deportation with regard to each municipality. The Appeals Chamber finds that the Trial Chamber indeed failed to always perform the required analysis of whether a sufficient *de facto* or *de jure* border was crossed, and that the findings on deportation from Bijeljina, Bratunac and Sanski Most must fall. Consequently, Krajišnik's convictions for these crimes are quashed. However, the Appeals Chamber is of the view that the Trial Chamber found that forced displacements of persons across *de jure* state borders occurred in the municipalities of Zvornik, Banja Luka, and Prnjavor, amounting to deportation. This ground of appeal is thus granted in part.

Next, *Amicus Curiae* submits that the Trial Chamber erred in law when finding Krajišnik guilty of forcible transfer as other inhumane acts, without finding that the displacements were of sufficient gravity to constitute other inhumane acts. The Appeals Chamber finds that the Trial Chamber indeed erroneously failed to find that the instances of forcible transfer were sufficiently serious to amount to "other inhumane acts" under Article 5(i) of the Statute. This error does not, however, invalidate the judgement, as the acts of forcible transfer were of similar seriousness to the instances of deportation. Thus, this ground of appeal is dismissed.

Amicus Curiae further submits that the Trial Chamber erred in fact when making findings with respect to Krajišnik's hierarchical position in the Bosnian-Serb leadership. The Appeals Chamber is satisfied, however, that the Trial Chamber exercised caution in assessing the relevant witness evidence, and it is not convinced that the additional evidence provided by Radovan Karadžić is sufficient to undermine the extensive evidence supporting the Trial Chamber's findings.

Amicus Curiae further argues that the Trial Chamber's findings regarding Krajišnik's powers and authority are at odds with its conclusion that he lacked effective control. The Appeals Chamber disagrees, as the Trial Chamber correctly held that effective control is not a required element of JCE liability, the only form of responsibility found applicable to Krajišnik.

Next, *Amicus Curiae* submits that the Prosecution breached Rule 90(H)(ii) of the Rules when it failed to put to Krajišnik, during his testimony, material matters on which it relied to prove his guilt and which were in contradiction with his evidence. The Appeals Chamber finds, however, that Rule 90(H)(ii) of the Rules was not intended to apply to an accused testifying as a witness in his own case. Furthermore, the Appeals Chamber is satisfied that Krajišnik was well aware of the Prosecution's case against him. Thus, this ground of appeal is dismissed.

Amicus Curiae further alleges that the Trial Chamber erroneously applied the law on cumulative convictions and requests the Appeals Chamber to quash the convictions on Count 3, persecution, or alternatively, on Counts 5, murder, Count 7, deportation, and Count 8, inhumane acts. The Appeals Chamber recalls, however, that the Tribunal's jurisprudence on intra-Article 5 cumulative convictions is well-established. Therefore, the Appeals Chamber, by majority, Judge Güney dissenting, finds that the Trial Chamber did not err in cumulating the convictions for

persecution with the convictions for other crimes against humanity based on the same facts. This ground of appeal is dismissed.

I will now turn to Mom-ilo Krajišnik's appeal.

In relation to Krajišnik's submissions that the Trial Chamber violated his fair trial rights, the Appeals Chamber recalls that some of these arguments were already dismissed under the grounds of appeal submitted by *Amicus Curiae*. Similarly, Krajišnik does not show any error by the Trial Chamber in relation to the remainder of his submissions.

Krajišnik further argues that the Trial Chamber erred in law and in fact in finding that he was a JCE member, as he and the other alleged members of the JCE were simply individuals carrying out tasks within their lawful competencies, as part of the functioning of the state administration and in accordance with the Constitution. The Appeals Chamber dismisses his arguments as irrelevant to determine whether the actions of the concerned persons resulted in statutory criminal liability.

Furthermore, Krajišnik's challenges to the Trial Chamber's findings on the creation of Serb autonomous regions and districts; on the creation of the Bosnian-Serb Assembly; on the SDS Instructions of 19 December 1991; on the proclamation of the Bosnian-Serb Republic; on the consolidation of Bosnian-Serb legal authority; and on the support for arming activities are dismissed. His arguments, however, are irrelevant, undeveloped, unsupported, fail to address the remaining evidence the Trial Chamber relied on, or challenge factual findings on which the conviction does not rely.

For similar reasons, the Appeals Chamber dismisses Krajišnik's challenges relating to the Trial Chamber's findings on the Bosnian-Serb Government and judiciary; the Bosnian-Serb Presidency; the armed forces; the MUP, crisis staffs, war presidencies and war commissions; and Krajišnik's style of leadership.

I will now turn to the supplementary challenges related to the issue of JCE made by JCE Counsel on behalf of Krajišnik.

First, JCE Counsel challenge the legitimacy of JCE liability and contest the finding in the *Tadić* Appeal Judgement that JCE existed under customary international law. The Appeals Chamber considers, however, that JCE Counsel advance no cogent reason why it should depart from its holding that the Statute provides, albeit not explicitly, for JCE as a form of criminal liability. This sub-ground is thus dismissed.

JCE Counsel further submit that the Trial Chamber erred in finding that JCE is a form of "commission" under Article 7(1) of the Statute, rendering nugatory the other modes of liability. However, since the other forms of liability are distinguishable from JCE, the latter does not render the other forms of liability under the Article 7(1) nugatory. This sub-ground is also dismissed.

Next, JCE Counsel submit that Krajišnik lacked proper notice that he faced JCE liability, a concept that allegedly did not arise until 1999 and has expanded since then to include high-level officials with only tenuous connections to the crimes. The Appeals Chamber recalls, however, that when it interprets the JCE doctrine, it does not create new law. Instead, it merely identifies what the proper interpretation of that doctrine has always been, even though not previously expressed that way. This does not contravene the *nullum crimen sine lege* principle, and this sub-ground is thus dismissed.

JCE Counsel further assert that Krajišnik's political speeches cannot, as a matter of law, constitute a contribution to the JCE, because they were protected under his right to freedom of speech. The Appeals Chamber disagrees. What matters in terms of law is that an accused lends a significant contribution to the commission of the crimes involved in the JCE. Beyond that, the law does not foresee specific types of conduct which *per se* could not be considered a contribution to the common purpose. Hence, this part of the appeal is dismissed.

Similarly, the Appeals Chamber rejects JCE counsel's submission that the groups of 1,008 and 1,001 detainees from Manja-a camp were not moved by JCE members, but rather under the supervision of the UNHCR. The fact that the displaced persons were accompanied by international forces did not render their displacement lawful.

The Appeals Chamber accepts in part, however, JCE Counsel's supplementary arguments with respect to the identity of the "rank and file" JCE members, Krajišnik's responsibility for the expanded crimes, and the lack of findings on a link between the physical perpetrators and the JCE members for some of the original crimes. The remainder of the grounds of appeal raised by JCE Counsel is dismissed.

The Appeals Chamber will now turn to the appeals of the sentence by *Amicus Curiae*, Krajišnik and the Prosecution.

Amicus Curiae argues that the penalty is excessive given that Krajišnik did not directly perpetrate or order any of the crimes. He adds that the Trial Chamber wrongly considered the acts of others in calculating Krajišnik's sentence. The Appeals Chamber finds, however, that the fact that Krajišnik did not directly perpetrate or order any of the crimes, does not necessarily entail that Krajišnik should be entitled to a lesser sentence. As to the allegation that the Trial Chamber referred to acts of others in calculating Krajišnik's sentence, his argument clearly fails. This ground of appeal is thus rejected.

Krajišnik submits that the Trial Chamber did not consider the general practice on sentencing in the former Yugoslavia; erred by not analysing the gravity of the crimes and the aggravating circumstances separately; and imposed a penalty that seemed to be a reprisal. The Appeals Chamber recalls that reference to the general practice regarding prison sentences in the courts of the former Yugoslavia is not binding. In the instant case, the Trial Chamber complied with its obligation to consider this issue. This argument is thus rejected.

With regard to Krajišnik's argument that the Trial Chamber failed to assess the gravity of the crimes and the aggravating circumstances separately, the Appeals Chamber notes that Trial Chamber indeed distinguished between aggravating circumstances on the one hand and the gravity of the crimes on the other, albeit considering them under the same heading. This argument is therefore rejected.

Krajišnik further contends that the Trial Chamber should have considered his efforts and his involvement in peace negotiations, as well as the fact that he acted within his legal authority in mitigation of his sentence. However, Krajišnik fails to demonstrate that these factors would have been accorded sufficient weight to have any impact on the sentence, especially considering the fact that the Trial Chamber granted only very limited weight in mitigation to the factors explicitly considered. Therefore, this challenge is also rejected, and Krajišnik's appeal with respect to the sentence is dismissed in its entirety.

The Prosecution raises a single ground of appeal, arguing that a life sentence is the only sentence proportionate to the overall magnitude of Krajišnik's crimes. The Prosecution does not point, however, to any element which would have been omitted by the Trial Chamber in determining the sentence. It merely argues that the sentence does not properly reflect the gravity of Krajišnik's criminal conduct and fails to ensure sufficient retribution and deterrence. The Appeals Chamber cannot conclude that the sentence imposed completely fails to reflect the seriousness of Krajišnik's criminal conduct or that it does not express the outrage of the international community and that it is grossly insufficient to ensure deterrence. The Prosecution's first sub-ground is therefore dismissed.

Next, the Prosecution argues that no mitigating factors justified the imposition of anything less than life imprisonment.

The Appeals Chamber notes that the Trial Chamber found that while factors by themselves did not constitute mitigating circumstances, taken together, these factors amounted to personal circumstances of a kind which may be accorded some, although very limited, weight in mitigation. The Appeals Chamber is puzzled by this finding. A factor is either a mitigating circumstance or it is not. If it is not, it cannot be taken in mitigation even when considered with other factors which do not constitute mitigating circumstances. The Trial Chamber should have specified which elements constituted in its view mitigating circumstances. Nevertheless, even if the Appeals Chamber were to find that the Trial Chamber erred in retaining some of the above-mentioned factors in mitigation, it would still not be clear that such error had any impact on the sentence imposed, as the Trial Chamber itself stated that it accorded very limited weight in mitigation to these factors. Thus, the Appeals Chamber cannot conclude that the Prosecution has demonstrated an error which invalidates the decision on the sentence. The Prosecution's ground of appeal on sentencing is thus dismissed in its entirety.

In conclusion, the Appeals Chamber has dismissed the Prosecution's appeal and has granted *Amicus Curiae's* and Krajišnik's appeals in part. While Krajišnik's convictions for three counts of the Indictment - deportation; forcible transfer and persecution based on these crimes - remain intact, the Trial Chamber erroneously imputed criminal liability to Krajišnik for two other counts and most of the crimes mentioned in Parts 4 and 5 of the Trial Judgement.

The Appeals Chamber recalls that in some cases, the circumstances have warranted it to ascertain itself whether the Trial Chamber's findings on their own or in combination with relevant evidence sustain the conviction. Given the factually complex circumstances of this case, an appellate assessment of the crimes for which the Trial Chamber erroneously imputed criminal liability to Krajišnik would require the Appeals Chamber to re-evaluate the entire trial record. However, an appeal is not a trial *de novo* and the Appeals Chamber cannot be expected to act as a primary trier of fact, as it is not, as a general rule, in the best position to assess the reliability and credibility of the evidence.

While Rule 117(C) of the Rules vests the Appeals Chamber with discretion to order a retrial in appropriate circumstances, the Appeals Chamber is not obliged, having identified an error, to remit the case for retrial. An order for retrial is an exceptional measure to which resort must necessarily be limited. The Appeals Chamber notes that the convictions for the majority of crimes, of which Krajišnik had been found guilty, have been quashed. However, convictions for persecution, deportation and forcible transfer have been upheld, and the gravity of these crimes requires a severe and proportionate sentence. Therefore, in the circumstances of this particular case, the Appeals Chamber considers that it is not in the interests of justice to remit the case for further proceedings.

As a result, the Appeals Chamber has determined the adequate sentence for the crimes which were correctly imputed to Krajišnik.

I will now read out the disposition of the appeal judgement. Mr. Krajišnik, will you please rise.

For the foregoing reasons, **THE APPEALS CHAMBER,**

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the parties and *Amicus Curiae* and the arguments they presented at the appeal hearing on 21 August 2008;

SITTING in open session;

GRANTS sub-ground 3(A) submitted by *Amicus Curiae*;

GRANTS, in part, sub-grounds 3(B), 3(E), 3(G) and grounds 4 and 7 submitted by *Amicus Curiae*;

DISMISSES, Judge Güney dissenting in relation to ground 10, the remainder of the grounds of appeal submitted by *Amicus Curiae*;

GRANTS the third ground of appeal of the Dershowitz Brief in part;

DISMISSES the remainder of Krajišnik's appeal;

REVERSES Krajišnik's convictions under Counts 4 and 5;

REVERSES, in part, Krajišnik's convictions under Counts 3, 7 and 8;

DISMISSES the Prosecution's ground of appeal related to the sentence;

SENTENCES Krajišnik to 20 years of imprisonment to run as of this day, subject to credit being given under Rule 101(C) and Rule 107 of the Rules for the period Krajišnik has already spent in detention since his arrest on 3 April 2000;

ORDERS, in accordance with Rule 103(C) and Rule 107 of the Rules, that Momčilo Krajišnik is to remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where his sentence will be served.

Judge Mohamed Shahabuddeen appends a separate opinion.
