



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-95-8-S
Date: 13 November 2001
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IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Richard May
Judge Mohamed Fassi Fihri

Registrar: Mr. Hans Holthuis

Judgement of: 13 November 2001

PROSECUTOR

v.
DU[KO SIKIRICA
DAMIR DO[EN
DRAGAN KOLUNDŽIJA

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Dirk Ryneveld
Ms. Julia Baly
Mr. Daryl Mundis

Counsel for the Accused:

Mr. Veselin Londrovi} and Mr. Michael Greaves, for Du{ko Sikirica
Mr. Vladimir Petrovi} and Mr. Goran Rodi}, for Damir Do{en
Mr. Ivan Lawrence and Mr. Jovan Ostoji}, for Dragan Kolundžija

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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction

1. The three co-accused Duško Sikirica, Damir Došen and Dragan Kolundžija were delivered into the custody of the 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 ("the International Tribunal") over a period of more than one year from June 1999 to July 2000. Warrants for the arrest of the accused had been issued on 21 July 1995, following the confirmation of an indictment against the three accused and ten¹ other co-accused by Judge Vohrah on the same day. The indictment related to events alleged to have occurred in the municipality of Prijedor in north-western Bosnia and Herzegovina and, in particular, to events said to have occurred at the Keraterm camp, including the alleged massacre of more than 120 men in a room known in the camp as Room 3 ("the Room 3 massacre"). Duško Sikirica was said to have been the commander of the Keraterm camp and Damir Došen (also known as "Kajin" to many of the detainees) and Dragan Kolundžija (also known as "Kole") were alleged to have been shift commanders in the camp.

2. Dragan Kolundžija was indicted on five charges of violations of the laws or customs of war and crimes against humanity under Articles 3 and 5 respectively of the Statute of the International Tribunal ("Statute"). He was apprehended by the multinational stabilisation force (SFOR) operating in Bosnia and Herzegovina and transferred to the seat of the International Tribunal on 7 June 1999. At his initial appearance on 14 June 1999 counsel for Kolundžija raised issues as to his identity. An evidentiary hearing was held on 24 June 1999, at which the Trial Chamber ruled that it was satisfied that Dragan Kolundžija was the person named in the indictment.² On 13 July 1999, Dragan Kolundžija pleaded not guilty to all charges.

¹ On 5 May 1998 Judge Vohrah approved the withdrawal of charges against five of the co-accused and in November 1998 Judge Vohrah also granted leave for the charges against another co-accused, Zoran Đigi, to be incorporated with others into an amended indictment in another case (IT-98-30).

² Hearing, 24 June 1999, Transcript page ("T.") 51–52.

3. Damir Došen was indicted on seven charges of violations of the laws or customs of war and crimes against humanity under Articles 3 and 5 respectively of the Statute. He was arrested and transferred to the International Tribunal on 25 October 1999 and made his initial appearance on 8 November 1999.³ At his initial appearance Damir Došen pleaded not guilty to all charges.

4. Duško Sikirica was indicted on nine charges of violations of the laws or customs of war, genocide and crimes against humanity under Articles 3, 4 and 5 of the Statute respectively. He was arrested and transferred to the International Tribunal on 25 June 2000, making his initial appearance on 7 July 2000.⁴ At his initial appearance Duško Sikirica pleaded not guilty to all charges.

5. The indictment against the accused was amended in August 1999, again with leave from Judge Vohrah. Following preliminary motions filed by both the Kolund`ija Defence and the Došen Defence objecting to the form of the indictment, the Trial Chamber issued a Decision on Preliminary Motions on 10 February 2000 requiring the Office of the Prosecutor ("Prosecution") to file an amended version of a confidential attachment to the indictment. The attachment was to provide the accused with more detail of the capacity in which each was alleged to have participated in the criminal conduct charged and to specify whether the alleged responsibility was direct responsibility or superior responsibility. The amended attachment was filed on 9 March 2000, following which the Došen Defence raised an argument that the amended attachment went beyond the scope of the counts of the indictment itself. The matter was eventually resolved by agreement between the parties and, on 20 December 2000, the Prosecution was instructed to file a final version of the indictment and of the amended attachment. These were duly filed on 3 January 2001 and together form the Second Amended Indictment (hereinafter "the Indictment").

6. Duško Sikirica was charged with: genocide and complicity to commit genocide (Counts 1 and 2); persecutions on political, racial or religious grounds (Count 3), inhumane acts (Count 4) and murder (Count 8) or, in the alternative, inhumane acts (Count 10) (crimes against humanity); and outrages upon personal dignity (Count 5) and murder (Count 9) or, in the alternative, cruel treatment (Count 11) (violations of the laws or customs of war). All of the offences charged in the Indictment were alleged to have been committed in the period from 24 May 1992 to the end of August 1992.

³ Damir Došen was unable to attend a hearing scheduled for 1 November 1999 due to a sports injury incurred at the United Nations Detention Unit.

⁴ The initial appearance was delayed to permit Duško Sikirica to receive medical treatment.

7. Damir Došen was charged with: persecutions on political, racial or religious grounds (Count 3), inhumane acts (Counts 4 and 14) and torture (Count 12) (crimes against humanity); and outrages upon personal dignity (Count 5), torture (Count 13) and cruel treatment (Count 15) (violations of the laws or customs of war). All of the offences charged in the Indictment were alleged to have been committed in the period from 24 May 1992 to the end of August 1992.

8. Dragan Kolundžija was charged with: persecutions on political, racial or religious grounds (Count 3), inhumane acts (Count 4) and murder (Count 6) (crimes against humanity); and outrages upon personal dignity (Count 5), and murder (Count 7) (violations of the laws or customs of war). All of the offences charged in the Indictment were alleged to have been committed in the period from 24 May 1992 to the end of August 1992.

9. During a status conference in September 2000, it was agreed that the trial would proceed on the basis of the unredacted Indictment, including the names of the four accused who had not been arrested.⁵ The trial commenced on 19 March 2001 and the Prosecution case was completed on 1 June 2001, over a period of 33 sitting days. The Prosecution called 34 witnesses and the transcripts of testimony of a further six witnesses⁶ given in other proceedings before the International Tribunal were admitted pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the International Tribunal ("Rules").

10. All three accused filed motions for acquittal at the close of the Prosecution case and oral argument on the motions was heard on 21 June 2001. An oral decision was pronounced on 27 June 2001, with the Trial Chamber reserving its written reasons until later. The Trial Chamber granted the motion filed on behalf of Duško Sikirica insofar as it related to the charges of genocide and complicity to commit genocide and dismissed Counts 1 and 2 of the Indictment. It also dismissed Counts 12 to 15 of the Indictment (torture, cruel treatment and inhumane acts) against Damir Došen, which relate to an incident in Room 2, confirming the concession by the Prosecution that the only evidence connecting the accused to the alleged events was, in fact, exculpatory in nature.⁷ The remainder of the motions were denied. The written Judgement on Defence Motions to Acquit was issued on 3 September 2001, following the court recess.

⁵ Status Conference, 14 Sept. 2000, T. 419-21.

⁶ Three of these witnesses were recalled for cross-examination.

⁷ Prosecution Response to the Submission of Damir Došen under Rule 98 *bis*, 15 June 2001, para. 3.

11. The Defence for Duško Sikirica presented its case, based on a notice of alibi, over a period of five sitting days, from 27 June to 5 July 2001, with a total of 15 witnesses, including character witnesses. The Defence for Damir Došen then presented its case over a period of eight sitting days from 16 to 30 July 2001, calling 16 witnesses, including two medical experts in mitigation.

12. Counsel for Dragan Kolund`ija sought and was granted a postponement of the presentation of his case, pending review of the detailed findings of the Trial Chamber in the written Judgement on Defence Motions to Acquit. On 31 August 2001 a joint submission was filed on behalf of Dragan Kolund`ija in which the Prosecution informed the Trial Chamber of an agreement reached between them as to the entry of a guilty plea by the accused to Count 3 of the Indictment (persecution).⁸

13. Dragan Kolund`ija appeared before the Trial Chamber on 4 September 2001 and entered a plea of guilty to Count 3 of the Indictment. After an adjournment to permit the parties to file a further document setting out the admitted facts relevant to the plea, the Trial Chamber accepted the plea and entered a finding of guilt on that date. At the same hearing the Prosecution confirmed that it formally withdrew the remaining counts against Dragan Kolund`ija.

14. On 7 September 2001, joint submissions were filed on behalf of both Duško Sikirica and Damir Došen with the Prosecution informing the Trial Chamber of agreements reached between them as to the entry of a guilty plea by each accused to Count 3 of the Indictment (persecution) and, contingent upon the Chamber's acceptance of those pleas, the withdrawal of all other counts against them.

15. Duško Sikirica and Damir Došen both appeared before the Trial Chamber on 19 September 2001 and each entered a plea of guilty to Count 3 of the Indictment. The Trial Chamber accepted the pleas and entered findings of guilt on that date. At the same hearing the Prosecution confirmed that it formally withdrew the remaining counts against Duško Sikirica and Damir Došen.

16. The Trial Chamber received written submissions on sentencing from the Prosecution on 28 September 2001 and three separate Defence submissions on 3 and 4 October 2001. Written statements of fact and character witnesses were submitted on behalf of Dragan Kolund`ija and oral argument was heard on 8 and 9 October 2001.

⁸ Article 5 of the Statute provides as follows: "The International Tribunal shall have the power to prosecute persons responsible for the following crimes ... (h) persecutions on political, racial and religious grounds."

B. The Plea Agreements

17. The terms of the agreement between each accused and the Prosecution are set out in separate documents: "Joint Submission of the Prosecution and the Accused Duško Sikirica Concerning a Plea Agreement and Admitted Facts" filed on 7 September 2001 ("the Sikirica Plea Agreement"); "Joint Submission of the Prosecution and the Accused Damir Došen Concerning a Plea Agreement and Admitted Facts" also filed on 7 September 2001 ("the Došen Plea Agreement"); and a "Joint Submission of the Prosecution and the Accused Dragan Kolundžija of a Plea Agreement" ("Kolundžija Joint Submission") filed on 31 August 2001, together with a further document "Admitted Facts Relevant to the Plea Agreement for Dragan Kolundžija" ("Agreed Facts") filed on 4 September 2001 (together "the Kolundžija Plea Agreement"). Each of these documents sets out the factual basis for the participation of each accused in the events charged. Furthermore, each accused acknowledged in the respective Plea Agreement that by entering a plea of guilty he voluntarily waived certain procedural rights.⁹

1. The Sikirica Plea Agreement

18. In the Sikirica Plea Agreement the Prosecution and Duško Sikirica agree on certain facts as being true and constituting the factual basis for the guilty plea to the charge of persecution, a crime against humanity, as set forth in paragraph 36 (a) to (e) of the Indictment. It is agreed that the count of persecution encompasses the evidence led by the Prosecution in respect of the Keraterm camp¹⁰ as to the specific allegations in the Indictment of: (a) the murder of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; (b) the torture and beating of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; (c) the sexual assault and rape of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; (d) the harassment, humiliation and psychological abuse of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; and (e) the confinement of Bosnian Muslims, Bosnian Croats and other non-Serbs in inhumane conditions in the Keraterm camp.

⁹ These include the right to plead not guilty, the right to be presumed innocent until guilt has been established at trial beyond a reasonable doubt, the right to testify or to remain silent at trial and the right to appeal a finding of guilty or to appeal any pre-trial rulings or any rulings rendered during the course of the trial. See Sikirica and Došen Plea Agreements, para. 4, Kolundžija Joint Submission, para. D.

¹⁰ "Joint Submission of the Prosecution and the Accused Duško Sikirica Concerning a Plea Agreement and Admitted Facts" filed 7 Sept. 2001 ("the Sikirica Plea Agreement"), p. 4.

19. Duško Sikirica admits to having been the Commander of Security at the Keraterm camp.¹¹ While he had authority to report incidents or people to his superior, Željko Knežević, he did not himself have power to punish subordinates.¹² As Commander of Security, Duško Sikirica was not responsible for ensuring that detainees had adequate food, clothing, water, medical assistance and accommodation, although he did have certain discretionary powers, for example, to permit a friend or relative to give additional food to a detainee.¹³

20. It is also recorded that it was impossible for Duško Sikirica to prevent other persons, not on the staff, from entering the Keraterm camp at will and mistreating the detainees.¹⁴

21. It is accepted that a number of persons were murdered at the Keraterm camp, and that among them is a detainee who was shot and killed by Duško Sikirica near to the toilets.¹⁵ It is acknowledged by the Prosecution that there is no evidence that Duško Sikirica was present at the Keraterm camp during the events leading up to the Room 3 massacre or that he participated in this incident in any way, although it is acknowledged that he had a technical duty to prevent the entry of persons from outside the camp.¹⁶

22. Beatings and rapes were carried out, often by persons who were not part of the camp staff, and certain detainees were forced to engage in sexual activities against their will.¹⁷ It is acknowledged by the Prosecution that there is no evidence that Duško Sikirica knew of the incidents of rape or was in a position to know of them after the event.¹⁸

23. It is acknowledged that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp in the period from 24 May to 5 August 1992 and that there was an atmosphere of terror, arising from humiliation, harassment and psychological abuse, that caused serious physical and mental harm to those who witnessed these events.¹⁹

24. The Prosecution affirms that it would not have accepted a plea of this nature prior to the commencement of the case or while the charges of genocide were still pending against Duško Sikirica.²⁰

¹¹ *Ibid.*, p. 8.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. 5.

¹⁶ *Ibid.*, p. 7.

¹⁷ *Ibid.*, pp. 5–6.

¹⁸ *Ibid.*, p. 6.

¹⁹ *Ibid.*, pp. 4–5.

²⁰ *Ibid.*, p. 4.

25. Finally, the Prosecution and the Defence agreed that the Prosecution would recommend to the Trial Chamber a sentence of not less than 10 years' and not more than 17 years' imprisonment, and that neither party would appeal any sentence imposed by the Trial Chamber within that range.²¹ The Prosecution indicates in the Sikirica Plea Agreement that it will be seeking a sentence at the upper end of this range.²²

2. The Do{en Plea Agreement

26. In the Do{en Plea Agreement the Prosecution and Damir Do{en agree on certain facts as being true and constituting the factual basis for the guilty plea to the charge of persecution, a crime against humanity, as set forth in paragraph 36 (b), (d) and (e) of the Indictment.²³ It is agreed that the count of persecution encompasses the evidence led by the Prosecution in respect of Keraterm²⁴ as to the specific allegations in the Indictment of: (b) the torture and beating of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; (d) the harassment, humiliation and psychological abuse of Bosnian Muslims, Bosnian Croats and other non-Serbs in the Prijedor municipality, including those detained in the Keraterm camp; and (e) the confinement of Bosnian Muslims, Bosnian Croats and other non-Serbs in inhumane conditions in the Keraterm camp.

27. Damir Do{en admits to having been a shift leader at the Keraterm camp.²⁵ He had only limited control over other equally ranked guards on his shift and did not have the power to punish them.²⁶ As a shift leader, Damir Do{en was not responsible for ensuring that detainees had adequate food, clothing, water, medical assistance and accommodation, and it is agreed that there is evidence that he did at times exert his influence to improve conditions and that he assisted a number of detainees to receive food and medical treatment.²⁷

28. It is also accepted that it was not always possible for Damir Do{en to prevent other persons, not on the staff, from entering the Keraterm camp at will and mistreating the detainees.²⁸

29. It is agreed that many detainees were beaten, often by persons who were not part of the camp staff, and that these beatings contributed to an atmosphere of terror in Keraterm.²⁹ It is

²¹ *Ibid.*, p. 9.

²² *Ibid.*

²³ "Joint Submission of the Prosecution and the Accused Damir Do{en Concerning a Plea Agreement and Admitted Facts" filed 7 Sept. 2001 ("the Do{en Plea Agreement"), p. 4.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 6.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 4.

accepted that there is evidence that beatings occurred during periods of time when Damir Došen was on duty and that he was aware of some of these beatings.³⁰ However, there is also evidence that Došen, when aware that beatings were about to take place, attempted to prevent mistreatment of the detainees.³¹

30. It is acknowledged that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp in the period from 24 May to 5 August 1992 and that the atmosphere of terror, arising from humiliation, harassment and psychological abuse, caused serious physical and mental harm to those who witnessed these events.³²

31. Finally, the Prosecution and the Defence agreed that the Prosecution would recommend to the Trial Chamber a sentence of not less than five years' and not more than seven years' imprisonment, and that neither party would appeal any sentence imposed by the Trial Chamber within that range.³³ The Prosecution indicates in the Došen Plea Agreement that it will be seeking a sentence of seven years' imprisonment.³⁴

3. The Kolund`ija Plea Agreement

32. In the Kolund`ija Plea Agreement the Prosecution and Dragan Kolund`ija agree on certain facts as being true and constituting the factual basis for the guilty plea to the charge of persecution, a crime against humanity, as set forth in paragraph 36 (e) of the Indictment.³⁵ It is agreed that the acts upon which the guilty plea to the count of persecution was entered encompass the evidence led by the Prosecution concerning the inhumane conditions to which the Bosnian Muslims, Bosnian Croats and other non-Serbs were subjected at the Keraterm camp.³⁶

33. Dragan Kolund`ija admits to having been a shift leader at the Keraterm camp.³⁷ As such he exercised some control and authority over other guards on his shift.³⁸ As a shift leader, Dragan Kolund`ija was in a position to influence the day-to-day running of the Keraterm camp while he

³⁰ *Ibid.*, p. 6.

³¹ *Ibid.*

³² *Ibid.*, p. 4.

³³ *Ibid.*, p. 7.

³⁴ *Ibid.*

³⁵ "Joint Submission of the Prosecution and the Accused Dragan Kolund`ija of a Plea Agreement" filed 31 Aug. 2001 ("Joint Submission") and "Admitted Facts Relevant to the Plea Agreement for Dragan Kolund`ija" filed 4 Sept. 2001 ("Agreed Facts") (together "the Kolund`ija Plea Agreement"), Agreed Facts p. 4.

³⁶ Joint Submission, p. 1.

³⁷ Agreed Facts, p. 2.

³⁸ *Ibid.*, pp. 2-3.

was on duty.³⁹ It is agreed that there is evidence that he did at times assert his authority to improve conditions and that he assisted a number of detainees by allowing them privileges.⁴⁰

34. It is also accepted that Dragan Kolund`ija prevented visitors to the Keraterm camp from abusing the detainees, with varying degrees of success.⁴¹

35. It is agreed that many detainees were beaten, often by persons who were not part of the camp staff, that some detainees died as a result of this mistreatment,⁴² and that these beatings contributed to an atmosphere of terror in Keraterm.⁴³ It is accepted by the Prosecution that Dragan Kolund`ija did not personally mistreat or condone the mistreatment of detainees and that he frequently prevented guards on his shift from mistreating detainees.⁴⁴

36. It is acknowledged that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp in the period from 24 May to 5 August 1992.⁴⁵

37. Finally, the Prosecution and the Defence agreed that the Prosecution would recommend to the Trial Chamber a sentence of not less than three years' and not more than five years' imprisonment, and that neither party would appeal any sentence imposed by the Trial Chamber within that range.⁴⁶ The Prosecution indicates in the Kolund`ija Plea Agreement that it will be seeking a sentence of five years' imprisonment.⁴⁷

C. The Guilty Pleas

38. At the hearings on 4 and 19 September 2001, each of the accused confirmed individually that the terms of the relevant Plea Agreement had been explained to him and discussed with his counsel, and that he understood the consequences of any plea that would be made by him. Each accused also confirmed that he understood that sentence was ultimately a matter for the Trial Chamber to determine, irrespective of the terms of the Plea Agreement. Each confirmed that he had not been threatened or coerced in any way to enter into the Plea Agreement, and that he was entering his plea voluntarily. Medical reports were submitted in respect of both Damir Do{en and

³⁹ *Ibid.*, p. 3.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*, p. 3.

⁴⁴ *Ibid.*; Kolund`ija Plea Agreement, p. 1.

⁴⁵ Agreed Facts, p. 2.

⁴⁶ Kolund`ija Plea Agreement, p. 2.

⁴⁷ *Ibid.*

Dragan Kolund`ija to confirm that each was capable of understanding the consequences of the change of plea.⁴⁸

39. On each occasion, the Trial Chamber considered whether the plea of guilty to Count 3 of the Indictment, namely persecution, was valid and acceptable pursuant to Rule 62 *bis* of the Rules. Having satisfied itself as to the factual basis of the allegations and having considered the circumstances surrounding the entry of the plea, the Trial Chamber accepted the guilty pleas and entered a finding of guilt in respect of each accused. On each occasion the Trial Chamber accepted the withdrawal by the Prosecution of the relevant Counts of the Indictment, namely Counts 4, 5, 8, 9, 10 and 11 for Du{ko Sikirica, Counts 4 and 5 for Damir Do{en and Counts 4, 5, 6 and 7 for Dragan Kolund`ija.

D. The Sentencing Proceedings

40. The Prosecution's Brief on Sentencing ("Prosecution Sentencing Brief") was filed on 28 September 2001, the Sentencing Brief of Du{ko Sikirica and the Defence Brief on Sentencing on behalf of Damir Do{en were both filed on 3 October 2001, and the Sentencing Brief on behalf of Dragan Kolund`ija was filed on 4 October 2001 (respectively "Sikirica Sentencing Brief", "Do{en Sentencing Brief" and "Kolund`ija Sentencing Brief").

41. A report from the Commanding Officer of the United Nations Detention Unit was submitted as to the behaviour of each accused while in custody. The Do{en Defence submitted a psychiatric examination report from Dr. Nikola Kmetec,⁴⁹ in addition to relying upon the evidence of the two medical experts who had already testified. The Kolund`ija Defence submitted 31 statements and exhibits in support of the Kolund`ija Sentencing Brief, including two medical reports, certificates to show that Dragan Kolund`ija had no prior criminal record, letters confirming offers of future employment and statements from 24 fact and character witnesses.⁵⁰

42. The sentencing hearing was held on 8 and 9 October 2001, at which time the Kolund`ija Defence confirmed that it did not intend to call any witnesses and intended to rely on the written documents submitted. Closing arguments were heard on behalf of all parties and each accused made a statement expressing remorse. The Prosecution requested the Trial Chamber to impose

⁴⁸ "Psychiatric Examination Report" by Dr. Nikola Kmetec, filed 4 Oct. 2001 ("Kmetec Report"); "Report on Dragan Kolund`ija" by Dr. Vera Petrovi}, filed 3 Sept. 2001 ("Petrovi} Report").

⁴⁹ Kmetec Report.

⁵⁰ "Amended Supplemental and Complete List of Affidavits and Exhibits in support of the Sentencing Brief on behalf of Dragan Kolundzija", filed 8 Oct. 2001.

sentences of 17 years' imprisonment for Duško Sikirica, 7 years for Damir Došen and 5 years for Dragan Kolund`ija. The Defence for Duško Sikirica suggested a sentence of 10 years and the Defence for Damir Došen 5 years, while the Defence for Dragan Kolund`ija requested his immediate release.⁵¹

43. The Trial Chamber reserved its Judgement to a later date.

⁵¹ Sentencing Hearing, 8 – 9 Oct. 2001 (“Sentencing Hearing”), T. 5674, 5681, 5687, 5720, 5739 and 5773.

II. GUILTY PLEA AS BASIS FOR CONVICTION

44. The Statute does not directly address the issue of a guilty plea. Article 20, paragraph 3, of the Statute simply provides:

The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

45. Rule 62 *bis* of the Rules, which governs the taking of a guilty plea, sets out the criteria to be applied⁵² by specifying that a Trial Chamber may only accept a plea of guilty where it is satisfied that:

- (i) the guilty plea has been made voluntarily;
- (ii) the guilty plea is informed;
- (iii) the guilty plea is not equivocal; and
- (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case.

46. This Sentencing Judgement is based upon the Trial Chamber's acceptance of the guilty plea entered by each accused, its satisfaction as to the factual basis for the crimes alleged, and the consequent conviction of the three accused on Count 3 of the Indictment for persecution as a crime against humanity under Article 5 of the Statute.

47. Rule 62 *bis* (iv) requires that, before a Trial Chamber enters a finding of guilt on the basis of a guilty plea, it must be satisfied that "there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case".

48. In arriving at a decision as to whether it is so satisfied, the Chamber is not confined to a consideration of the facts as agreed between the Prosecution and the Defence, because its fundamental obligation is to ensure that there is a sufficient factual basis for the crime and the accused's participation in it. Thus, if the Chamber is dissatisfied or is for any reason uncertain about any of the facts as agreed between the parties, the Chamber may conduct a trial on that particular issue for the purpose of determining those facts.

⁵² These criteria were first established by the Appeals Chamber in *Prosecutor v. Dra`en Erdemovi*, Case No. IT-96-22-A, Judgement, 7 Oct. 1997 ("*Erdemovi* Appeal Judgement").

49. However, once a Trial Chamber enters a finding of guilt, it should, unless there are cogent reasons indicating otherwise, impose a sentence that is based on the agreed facts. This approach is perfectly consistent with the Judgement of the Appeals Chamber in the *Jeli{i}* case where it was held that a Trial Chamber, in considering sentence on a guilty plea, may take into account evidence presented during the trial "insofar as that evidence was presented to demonstrate facts or conduct to which the [accused] had pleaded guilty".⁵³

⁵³ *Prosecutor v. Goran Jelisi}*, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisi}* Appeal Judgement"), para. 87.

III. CAMP CONDITIONS

50. Each accused has pleaded guilty to the crime of persecution, a crime against humanity. While the criminal conduct underlying their respective convictions varies considerably in its breadth and severity, it arises from the same set of events, namely those events that took place at the Keraterm camp over a period of about two months in the summer of 1992. Indeed, each of the Plea Agreements reflects the understanding that the count of persecution encompasses the evidence led by the Prosecution in respect of Keraterm.⁵⁴ For this reason, the Trial Chamber finds it helpful to set out some of the evidence of the conditions that prevailed in the Keraterm camp during the period in question.

A. The camp

51. Most of the Prosecution witnesses heard by the Trial Chamber are former detainees who provided direct testimony as to the conditions in the camp, and its population. Similarly, some of the Defence witnesses testified as to the conditions and population of the camp.

1. Description of the camp

52. The location known as the Keraterm camp, a large building, clearly visible from the main road linking Banja Luka and Prijedor, on the outskirts of Prijedor, was a former ceramics factory.⁵⁵ The Keraterm camp was open to two major roads, and passers-by could see into the main area of the camp, which was surrounded not by barbed wire but by ordinary industrial fencing.⁵⁶ The building had not been designed for the purpose of detaining people but was a ceramics factory.⁵⁷

53. Some of the witnesses produced sketches of the Keraterm camp which they drew from memory or identified the various locations in the camp on photographs presented by the Prosecution.⁵⁸ The building had two floors, of which the rooms on the ground floor were used to house prisoners.⁵⁹ The four rooms in the Keraterm camp came to be referred to as Rooms 1, 2, 3 and 4.⁶⁰ The rooms were located on the same side of the building. Rooms 1 and 2 were contiguous, as were Rooms 3 and 4. The section of the building containing Rooms 3 and 4 was set out a few meters further than the section containing Rooms 1 and 2. The distance between Room 2 and

⁵⁴ See Došen Plea Agreement, para. 7; Sikirica Plea Agreement, para. 7; Kolundžija Plea Agreement, para. 1(C).

⁵⁵ Witness J, T. 2147-48.

⁵⁶ Witness C, T. 939.

⁵⁷ Witness B, T. 804-05.

⁵⁸ See Exhs 2A-2I; Witness B, T. 765-68, Exh. 4; Jusuf Arifagi}, T. 1551, Exh. 21; Witness C, T. 890, Exh. 13; Hajrudin Zubovi}, T. 2554-61, Exh. 37; Witness N, T. 2864-68.

⁵⁹ Jusuf Arifagi}, T. 1550-51.

⁶⁰ Witness B, T. 765-68, Exh. 4.

Room 3 was somewhere between 15 and 20 metres.⁶¹ The distance between Room 1 and the front of Room 3 was approximately 60 metres, maybe less.⁶²

54. At the entrance, there was a reception area with a small brick building with windows, referred to as a kiosk (weigh hut), with large weighing scales in front of it,⁶³ and what was described as grassy areas and a tarmac area (“pista”) in front of the rooms. There were machine-gun emplacements in front of the rooms.⁶⁴ Searchlights were placed in the camp some 20 days before its closure, before the Room 3 massacre.⁶⁵ There were lampposts in the camp, which would work when there was electricity.⁶⁶ There were no fixed guard posts.⁶⁷

2. Population

55. The number of people detained in Keraterm increased markedly over time, from just a few individuals in the beginning to a state of overcrowding. Some of the first persons to be brought to Keraterm on 31 May 1992 testified that it was empty.⁶⁸ Witness A testified that, the first night he spent in Keraterm, around 120 people were in Room 2.⁶⁹ Most witnesses testified that subsequently the number of people in Keraterm ranged between 1000 and 1400,⁷⁰ with an average of 1200. The Chamber also heard evidence as to where those who were detained in Keraterm had come from within the municipality of Prijedor.⁷¹

3. Procedure upon arrival

56. Most witnesses testified to having been searched upon arrival at Keraterm at the entrance in front of the kiosk.⁷² There is also some testimony that people were first lined up against the wall, with their legs spread and their hands against the wall.⁷³ Their identity cards and other official documents were taken.⁷⁴ Sharp objects,⁷⁵ valuables and personal belongings were usually taken

⁶¹ Hajrudin Zubovi}, T. 2557-58.

⁶² Witness M, T. 2754.

⁶³ Witness B, T. 780; Witness C, T. 891; Witness F, T. 1486; Hajrudin Zubovi}, T. 2609; Witness N, T. 2868.

⁶⁴ Witness C, T. 891; Hajrudin Zubovi}, T. 2609; Witness P, T. 3194.

⁶⁵ Witness C, T. 891, 974-76, 1036.

⁶⁶ Witness G, T. 1753.

⁶⁷ Senad Kenjar, T. 3585.

⁶⁸ Witness A, T. 702; Witness B, T. 752-61.

⁶⁹ Witness A, T. 702.

⁷⁰ Witness A, T. 586, 703; Witness B, T. 809; Witness C, T. 940; Witness E, T. 1301; Witness F, T. 1462; Witness H, T. 1850-51; Witness I, T. 2086; Witness DB, T. 4461-62.

⁷¹ Ante Tomi}, T. 1950-51, 1956; Witness DR, T. 5570.

⁷² Witness F, T. 1502; Witness H, T. 1790-91; Witness L, T. 2501-02; Witness N, T. 2837-39; Witness R, T. 3308; Senad Kenjar, T. 3534, Witness P, T. 3096.

⁷³ Witness A, T. 570; Witness D, T. 1063; Witness E, T. 1240-41; Witness G, T. 1700.

⁷⁴ Witness A, T. 571; Witness E, T. 1286-87; Witness H, T. 1790; Witness P, T. 3096, 3178; Salko Saldumovi}, T. 3477; Witness R, T. 3310.

⁷⁵ Witness B, T. 752.

away on arrival at Keraterm, including money, jewellery, watches and cigarettes.⁷⁶ Personal documents taken were returned to some detainees but not to others.⁷⁷ Some witnesses' names were written down upon arrival.⁷⁸

57. Most witnesses who had been detained in the camp testified to having been hit upon arrival, or to having seen others being beaten.⁷⁹ New detainees arriving in the camp do not appear to have been beaten systematically, especially at the beginning.⁸⁰ Later, however, new persons brought to the camp appear to have been beaten more systematically.⁸¹ The Chamber also heard evidence that some detainees were immediately singled out for mistreatment upon arrival.⁸² Others were hit with rifle-butts and metal pipes, and some with wooden sticks. Witness G's beating lasted for around half an hour.⁸³

58. Some former detainees testified that they were either simply taken directly into one of the rooms, or made to wait upon arrival.⁸⁴

4. Shifts

59. After an initial period at Keraterm camp, the guards were organised into three shifts: usually one shift came on between 6 and 8 a.m. and would be on duty for 12 hours and would be relieved sometime between 6 and 8 p.m. Each shift had a shift leader and about 10 guards.⁸⁵

5. Assignment to rooms and transfer from one room to another

60. There is evidence that there was a general pattern, with a few exceptions, according to which certain categories of people would be placed in certain rooms. The first people taken to Keraterm on 31 May 1992 were placed in Room 2.⁸⁶ The detainees were usually transferred to Room 1 after interrogation, particularly in the early days of the camp.⁸⁷ Others were moved to

⁷⁶ Witness H, T. 1790; Witness K testified that Sikirica told them to remove their jewellery, T. 2263-64; Witness L, T. 2502, 2534; Witness N, T. 2837-38; Witness P, T. 3096, 3178-79; Witness X, T. 4011; Witness DN, T. 5129-30.

⁷⁷ Witness A, T. 571; Witness E, T. 1286-87; Witness N, T. 2916; Witness P, T. 3178; Salko Saldumovi}, T. 3478; Witness X, T. 4053.

⁷⁸ Witness G, T. 1700; Ante Tomi}, T. 1950; Witness L, T. 2501; Hajrudin Zubovi}, T. 2551-52, 2567; Witness R, T. 3310; Witness DO, T. 5225.

⁷⁹ Witness D, T. 1063; Witness H, T. 1882-84.

⁸⁰ Witness A, T. 570-71; Witness E, T. 1241; Fikret Hidi}, T. 2330-31; Witness DM, T. 5080-81, 5096.

⁸¹ Witness L, T. 2501; Witness Q, T. 3239-41; Witness X, T. 4011; Jusuf Arifagi}, T. 1550.

⁸² Witness G, T. 1700-01.

⁸³ Witness G, T. 1701-03.

⁸⁴ Witness J, T. 2148; Ante Tomi}, T. 1950; Witness L, T. 2502.

⁸⁵ Witness B, T. 756; Witness C, T. 898; Witness F, T. 1407-08.

⁸⁶ Witness A, T. 572; Witness B, T. 768-69; Witness E, T. 1244; Jusuf Arifagi}, T. 1550; Witness G, T. 1703-04; Witness H, T. 1791; Salko Salmudovi}, T. 3453; Senad Kenjar, T. 3533; Witness W, T. 3875.

⁸⁷ Witness A, T. 572; Witness B, T. 768; Witness C, T. 981; Witness V, T. 3800-02; Witness E, T. 1246.

Room 4, in some cases after interrogation.⁸⁸ The Chamber also heard testimony that some detainees moved from one room to the other without authorization.⁸⁹ Some witnesses remained in Room 1 throughout their stay.⁹⁰ Room 4 did not seem to be used for a particular purpose. Do{en suggested that Witness B should move from Room 1 to Room 4, because Room 1 was overcrowded and Room 4 was free. Do{en then told Witness B that he would give him a key, so that he could lock himself up and that they would be safe in that way. According to Witness B, Do{en said: "And if anybody asked you about that, tell them that Kajin has the key, so there would be no problem."⁹¹

61. People who were detained in Room 3 were all transferred to the other rooms around 20 July 1992.⁹² Before the arrival of new detainees, Dragan Kolund`ija, who was on duty, asked detainees in other rooms to take a number of people from the Kozarac area from Room 3 into their rooms.⁹³ All the new detainees from the Brdo area who were brought to Keraterm around 20 July were put in Room 3.⁹⁴ Some testified to having been taken to Room 3 upon arrival between 20 and 23 July.⁹⁵ Witness N testified that the room was empty and seemed to have been prepared for them.⁹⁶

B. General living conditions

1. Accommodation

(a) Rooms where prisoners were kept

(i) Room 1

62. According to former detainees, Room 1 was between 6 and 10 metres wide and 15 to 20 metres long, with a ceiling 3 to 4 metres high.⁹⁷ Room 1 had a metal door, later replaced by a door with metal bars which allowed the detainees to see out, and allowed more air to circulate.⁹⁸ The Chamber heard testimony that there was no space for the detainees to sit and that people frequently

⁸⁸ Witness G, T. 1704, 1731; Witness DN, T. 5131.

⁸⁹ Ante Tomi}, T. 1950-51; Witness C, T. 973-74.

⁹⁰ Witness F, T. 1395-96; Witness S, T. 3619; Witness J, T. 2150; Witness M, T. 2761.

⁹¹ Witness B, T. 769-70.

⁹² Hajrudin Zubovi}, T. 2552-54; Jusuf Arifagi}, T. 1585.

⁹³ Witness A, T. 620-21; Witness B, T. 784.

⁹⁴ Witness A, T. 621-22; Witness B, T. 784-85; Witness C, T. 919; Jusuf Arifagi}, T. 1585; Fikret Hidi}, T. 2357-59; Hajrudin Zubovi}, T. 2577; Witness M, T. 2704.

⁹⁵ Witness L, T. 2501-02; Witness N, T. 2838; Witness Q, T. 3239-42; Witness R, T. 3314.

⁹⁶ Witness N, T. 2838.

⁹⁷ Witness B, T. 766; Witness F, T. 1395; Fikret Hidi}, T. 2337-38; Witness C, T. 892-93; Hajrudin Zubovi}, T. 2607-08.

⁹⁸ Witness C, T. 894; Witness F, T. 1395-96; Witness M, T. 2753-54, 2761-62; Witness DN, T. 5185-86; Witness DO, T. 5230.

had to stand.⁹⁹ The average population in Room 1 was estimated by most witnesses to be between 200 and 350 persons.¹⁰⁰ According to one witness, they were all prominent citizens from Prijedor.¹⁰¹

(ii) Room 2

63. Room 2 was the biggest of all the rooms. It was estimated to be 15 to 20 metres wide and 18 to 20 metres long, and about 2.5 to 3 metres high.¹⁰² It was partitioned with some sort of fence, and there was a small warehouse, where tools and machinery were kept.¹⁰³ Room 2 had a solid aluminium double door, which was later replaced, around the end of June, with metal bars allowing more air in and better visibility.¹⁰⁴ Padlocks were also installed.¹⁰⁵ The floor of Room 2 was concrete and was always cold. There was some cardboard, which the detainees shared in the beginning when there were not so many of them.¹⁰⁶ The Chamber heard testimony that it was too hot in the room, that there was no light, and that there was a terrible smell.¹⁰⁷ As in Room 1, because of the overcrowding, some inmates took turns standing.¹⁰⁸ The number of Room 2 detainees was estimated by most witnesses to be between 250 and 500 persons,¹⁰⁹ with a peak in the month of July, when there was an influx of detainees into Room 2 because of the transfer of people from Room 3. Hajrudin Zubovi} testified that a count taken on 27 or 28 July 1992 revealed that there were 570 people in Room 2.¹¹⁰

(iii) Room 3

64. Room 3 was approximately 6 metres by 8 or 10 metres, L-shaped and divided in the middle.¹¹¹ There was a wall going up to the ceiling between Rooms 3 and 4, with no windows or breaks.¹¹² The detainees could see through the door in Room 3, but could not see through the windows.¹¹³ Room 3 was next to the toilet facilities and lavatories, which leaked into Room 3 and

⁹⁹ Fikret Hidi}, T. 2398; Witness J, T. 2150; Witness M, T. 2760, 2762.

¹⁰⁰ Witness A, T. 580, 621; Witness F, T. 1396; Witness J, T. 2150; Fikret Hidi}, T. 2337; Witness M, T. 2760; Witness C, T. 974.

¹⁰¹ Witness J, T. 2148.

¹⁰² Hajrudin Zubovi}, T. 2607-08; Witness A, T. 573; Witness B, T. 766-67; Witness C, T. 892; Jusuf Arifagi}, T. 1555; Witness P, T. 3190.

¹⁰³ Witness B, T. 767.

¹⁰⁴ Witness DN, T. 5185-86; Witness DO, T. 5230.

¹⁰⁵ Witness A, T. 704; Jusuf Arifagi}, T. 1556.

¹⁰⁶ Witness B, T. 763.

¹⁰⁷ Witness G, T. 1704; Witness H, T. 1792.

¹⁰⁸ Hajrudin Zubovi}, T. 2613.

¹⁰⁹ Witness A, T. 572, 702-03; Jusuf Arifagi}, T. 1626-27; Senad Kenjar, T. 3534; Ante Tomic, T. 1950-51, 1986; Witness E, T. 1244; Witness H, T. 1791.

¹¹⁰ Hajrudin Zubovi}, T. 2613.

¹¹¹ Witness N, T. 2859-60.

¹¹² Witness L, T. 2530.

¹¹³ Witness P, T. 3193.

produced a terrible smell.¹¹⁴ Conditions in Room 3 were described as very poor or “dramatic” and hot inside.¹¹⁵ As to the number of people detained in Room 3, the Chamber mostly heard testimony as to the status on or about 20 July 1992 when the groups from Brdo arrived.¹¹⁶ Witnesses testified that there were between 250 and 400 people in Room 3 at that time and later the number rose to 570.¹¹⁷

(iv) Room 4

65. Room 4 was roughly the same size as Room 3, or a little larger.¹¹⁸ It consisted of two parts of 6 by 6 metres with a small hallway in the middle. The room changed to a horseshoe shape from the middle. The ceiling was about 3 to 4 metres high, and there was a small toilet in one of the corners to the right of the door, which was dirty and made the air stale.¹¹⁹ As with the other rooms, Room 4 had a double metal door and there was a window above. When the door was closed, people could not see what was happening on the other side.¹²⁰ Similarly, Room 4 was overcrowded, with a population that grew to 280 and later 400 to 500 people.¹²¹

(b) Room “leaders”

66. The Trial Chamber heard testimony that each room had a “leader” who served as a link between the guards, the shift commanders and the detainees, and he kept a record or list of the detainees in the room.¹²² Detainees who were easily recognisable were usually picked out by the guards for the task.¹²³

(c) Sleeping facilities

67. There is evidence before the Chamber that no sleeping facilities as such were provided to the persons detained in the camp. In addition to the lack of space available to lie down, because of the overcrowding in the rooms, no bedding facilities or blankets were provided, and inmates slept on the concrete floor for the first month, without any blankets or bedding until they were given

¹¹⁴ Witness H, T. 1810; Witness B, T. 785.

¹¹⁵ Witness B, T. 785; Witness L, T. 2505.

¹¹⁶ Witness P, T. 3102; Hajrudin Zubovi}, T. 2553; Witness DO, T. 5226-27.

¹¹⁷ Witness L, T. 2503; Witness N, T. 2838-40, 2859; Witness Q, T. 3239-42; Witness R, T. 3314, 3394-95.

¹¹⁸ Hajrudin Zubovi}, T. 2608; Witness B, T. 767.

¹¹⁹ Witness B, T. 767; Witness I, T. 2048-49; Witness D, T. 1071-72.

¹²⁰ Witness I, T. 2111-12.

¹²¹ Witness B, T. 769-70; Witness G, T. 1742; Witness I, T. 2049.

¹²² Witness A, T. 598-99; Witness B, T. 770-73; Witness F, T. 1503; Witness L, T. 2505; Witness DN, T. 5132-34.

¹²³ Witness L, T. 2503.

some wooden pallets on which to sleep.¹²⁴ Witness B testified that Kolund`ija would sometimes allow them to be given blankets,¹²⁵ sent, according to Witness DO, by the Red Cross.¹²⁶

(d) Access to toilets

68. The Trial Chamber heard evidence as to the inadequacy of the toilet facilities accessible to the detainees. Most toilets were not working and to access them detainees had to wade through water, urine and excrement.¹²⁷ The detainees had to use a barrel to relieve themselves in Rooms 2 and 3, or bags in Room 1, where, according to Witness DO, Do{en suggested that the detainees take a barrel into the room and use it as a toilet for the night because, for their safety, it was better not to go to the toilet during the night.¹²⁸ In addition to the inadequacy of toilet facilities and their terrible state, and depending on the shift, detainees were not always allowed to use them.¹²⁹ For instance, the Chamber heard testimony that, during the shift of another shift commander, Fu{tar, sometimes by day, and always at night, detainees were not permitted to use the toilet, while during Do{en's and Kolund`ija's shifts, they were allowed to use the toilet both day and night, although Do{en advised that, for their own safety, detainees not go to the toilets at night.¹³⁰ Witness F testified that it was very hazardous to go to the toilets during the night because one could be beaten and some never came back.¹³¹

(e) Facilities for personal hygiene

69. Witnesses testified that there were no washing facilities in Keraterm and that the detainees were, as a general rule, not able to wash themselves or their clothes, or to change.¹³² As a result their clothes were filthy and smelled bad, and lice were prevalent.¹³³ A few witnesses testified that they would sometimes be allowed to attend to their personal hygiene, in particular, during Kolund`ija's shift.¹³⁴ Clothing and other objects in the rooms were taken out for disinfection once and, at least on one occasion, powder to eradicate lice was provided.¹³⁵ Witness W testified that after Marinko Sipka became the commander of the camp, two or three days after the Room 3

¹²⁴ Witness B, T. 763-64; Witness A, T. 580; Witness C, T. 892, 894-95; Witness I, T. 2049; Witness DM, T. 5081.

¹²⁵ Witness B, T. 854-55.

¹²⁶ Witness DO, T. 5232.

¹²⁷ Witness D, T. 1072; Witness E, T. 1277; Witness F, T. 1398; Witness H, T. 1810.

¹²⁸ Witness DO, T. 5232-34; Witness A, T. 586-87; Witness C, T. 895-96, 912; Jusuf Arifagi}, T. 1655; Witness L, T. 2505; Witness N, T. 2857.

¹²⁹ Witness C, T. 895, 904; Witness D, T. 1072.

¹³⁰ Witness A, T. 586-87; Witness DO, T. 5232-34.

¹³¹ Witness F, T. 1398-99; Witness M, T. 2700; Witness V, T. 3759; Witness X, T. 4028.

¹³² Witness B, T. 764; Witness D, T. 1072-73; Witness G, T. 1704.

¹³³ Witness A, T. 587; Witness C, T. 910; Fikret Hidi}, T. 2337; Witness DN, T. 5145.

¹³⁴ Witness A, T. 629-30; Witness B, T. 764; Witness E, T. 1277; Witness DK, T. 4816.

¹³⁵ Witness C, T. 983; Witness D, T. 1134; Witness P, T. 3216.

massacre, the living conditions improved for that last week. The detainees were then allowed to clean their rooms, have baths or even shave.¹³⁶

2. Food conditions

70. The Trial Chamber heard evidence that the detainees were fed a starvation ration of food of poor quality once a day, while on some occasions they received no food at all, either at the beginning, because the distribution of food had not yet been organised,¹³⁷ or because there was not enough food for everyone.¹³⁸ The detainees from the Brdo area who arrived around 20 July 1992 were not given any food for several days, although Witness B testified that Kolund`ija, during his shift on the eve of the massacre, allowed him to give them bread.¹³⁹ The food, brought from outside, was served in the afternoon, between 3 and 6 p.m., in front of Rooms 1 and 2.¹⁴⁰ It consisted of hot water with sometimes a cabbage leaf, a little bit of potato or beans, or some bones, and two very thin slices of bread.¹⁴¹ As the number of detainees increased, the amount of food detainees received decreased.¹⁴² There was never enough food for everyone, and detainees from the last room to be served would not get anything.¹⁴³ There was no order of distribution, and every second day a different room would be served first.¹⁴⁴

71. In addition to the inadequacy of the food, the detainees were not always allowed enough time to eat their meagre portion. The detainees were given only several minutes in which to eat their ration, or else they would be beaten.¹⁴⁵ Detainees were also beaten while lining up for food, as testified by Fikret Hidi}, who saw a guard beating an imam who had heart problems.¹⁴⁶

72. There is evidence that some detainees were occasionally allowed to receive food from outside, especially during Do{en and Kolund`ija's shifts.¹⁴⁷ Witnesses E and X also testified that

¹³⁶ Witness W, T. 3888-89.

¹³⁷ Witness A, T. 587; Witness B, T. 764; Witness DG, T. 4612.

¹³⁸ Witness I, T. 2049-50; Witness DB, T. 4454-55.

¹³⁹ Witness B, T. 784-85; Witness A, T. 637; Witness H, T. 1811; Fikret Hidi}, T. 2359; Witness L, T. 2505; Hajrudin Zubovi}, T. 2578; Witness N, T. 2843; Witness P, T. 3131-32; Witness R, T. 3315-16; Salko Saldumovi}, T. 3482-83; Witness W, T. 3888, 3949.

¹⁴⁰ Witness I, T. 2049; Hajrudin Zubovi}, T. 2557; Witness P, T. 3195; Witness DB, T. 4452.

¹⁴¹ Witness A, T. 591-92; Witness C, T. 907; Witness D, T. 1072-73; Witness F, T. 1399; Jusuf Arifagi}, T. 1570-71; Witness G, T. 1704; Witness I, T. 2049-50; Hajrudin Zubovi}, T. 2585; Witness P, T. 3195-96; Witness DB, T. 4454; Witness DN, T. 5132-34.

¹⁴² Witness D, T. 1072-73; Witness DB, T. 4456; Witness DN, T. 5132-34.

¹⁴³ Witness F, T. 1399; Witness DB, T. 4454-55.

¹⁴⁴ Witness C, T. 907-08; Witness F, T. 1400; Witness DO, T. 5235.

¹⁴⁵ Witness A, T. 592; Witness C, T. 908-09; Witness D, T. 1087-88; Jusuf Arifagi}, T. 1571.

¹⁴⁶ Witness F, T. 1511; Jusuf Arifagi}, T. 1583; Fikret Hidi}, T. 2354-55.

¹⁴⁷ Witness A, T. 684-85; Witness B, T. 805; Witness C testified that a month after his arrival, he was allowed by Sikirica to keep a bag of food brought to him by his family, T. 914-16; Witness DA, T. 4432; Witness DG, T. 4606; Witness DJ, T. 4744; Witness DL, T. 4980; Husein Gani}, T. 5050; Witness DM, T. 5085-86; Witness DN, T. 5136-37; Witness DO, T. 5234.

Kolund`ija tried to give the detainees leftovers from the guards.¹⁴⁸ As a result of the inadequate food supply, the detainees each lost, on average, 20 kilograms in weight.¹⁴⁹

3. Water conditions

73. The Trial Chamber heard testimony that the detainees had limited access to water, if at all. There was no water in the camp - or through the Prijedor water system. In the early days of the camp, the water for industrial use was supplied by a hose,¹⁵⁰ and was not of drinking quality, and so made them sick.¹⁵¹ Detainees from the Brdo area had no access to water during the first days of their detention in Room 3.¹⁵² At times, however, detainees had access to drinking water, which was brought in by truck.¹⁵³ They were allowed to fill bottles and to take them back to their room, mostly during Kolund`ija's or Došen's shifts.¹⁵⁴ Shift commanders organised the distribution of water.¹⁵⁵

4. Access to medical care

74. For most of the time medical treatment was not available to the detainees.¹⁵⁶ Furthermore, detainees who were injured as a result of beatings often did not dare to ask for medical care.¹⁵⁷ Some witnesses, however, received medical attention or were taken to the hospital or witnessed others being treated.¹⁵⁸ Witnesses testified that Do{en helped them or other detainees to get medical treatment or obtained medicine.¹⁵⁹ Husein Gani} testified that his son asked Drasko Do{en, Damir Do{en's brother, for help and Dr. Barud`ija intervened at their request. Seventeen persons were taken to the hospital.¹⁶⁰ Witness F, who received medical attention after Do{en noticed during his shift that "many detainees were half-alive", testified that he was taken to the hospital in early July for 10 days before being brought back to the camp (five other people were taken to the hospital

¹⁴⁸ Witness E, T. 1346; Witness X, T. 4118; the second time Kolund`ija attempted to give the detainees leftovers, guards came and threw all the food away, T. 4118.

¹⁴⁹ Witness A, T. 592; Witness C, T. 907; Witness E, T. 1279; Witness F, T. 1401; Jusuf Arifagi}, T. 1601; Witness H, T. 1818-19; Fikret Hidi}, T. 2377; Hajrudin Zubovi}, T. 2585; Witness M, T. 2712; Witness P, T. 3141; Witness R, T. 3350; Witness DN, T. 5181-82; Witness DO, T. 5258.

¹⁵⁰ Witness A, T. 724-25; Witness B, T. 764; Witness C, T. 910.

¹⁵¹ Witness C, T. 1004; Witness E, T. 1277-79; Witness F, T. 1399-401; Witness G, T. 1753-54.

¹⁵² Witness A, T. 637-38; Witness L, T. 2505.

¹⁵³ Witness A, T. 724-25; Witness C, T. 910, 976; Witness DB, T. 4455; Ranko Do{en, T. 4907, 4939-40.

¹⁵⁴ Witness A, T. 724; Witness B, T. 764, 825-27; Witness G, T. 1754; Witness I, T. 2086; Ranko Do{en, T. 4907-08; Witness DN, T. 5135-36.

¹⁵⁵ Witness F, T. 1408-09; Witness DK, T. 4816.

¹⁵⁶ Witness G, T. 1706.

¹⁵⁷ Witness E, T. 1260.

¹⁵⁸ Witness G, T. 1706, 1754; Witness I, T. 2088; Witness P, T. 3216; Salko Saldumovi}, T. 3479, 3497; Witness DM, T. 5089-90; Witness DN, T. 5145.

¹⁵⁹ Witness B, T. 825-27; Witness E, T. 1331-33; Witness F, T. 1495-96; Witness H, T. 1888; Witness W, T. 3910; Witness DO, T. 5246.

¹⁶⁰ Husein Gani}, T. 5070-71.

at the same time).¹⁶¹ Witness W testified that he requested some medical assistance for his leg and was taken to the hospital by Do{en and Sikirica, who waited for him outside.¹⁶² Jusuf Arifagi} was taken to the Prijedor hospital, with Do{en's help, together with six or seven injured prisoners.¹⁶³ Jusuf Arifagi}, however, also testified that he was denied medical treatment at the hospital and he spent the rest of his time at Keraterm with broken fingers.¹⁶⁴ Witness R also testified that on 4 August he was taken to the hospital in Prijedor, together with 25 persons, who were escorted by Sikirica.¹⁶⁵ Witness D testified that a doctor came to the camp at least once.¹⁶⁶

5. Daily life in the camp

75. Witnesses gave evidence as to the daily routine of life in the camp. Detainees were mostly not locked in the rooms during the day, and were able to go outside or walk around, depending on the shift. Witness A testified that during Kolund`ija and Do{en's shifts, prisoners were often allowed to spend a lot of time in the open air, and to play cards.¹⁶⁷ When the other shift was on duty, the detainees were not allowed to move around as freely.¹⁶⁸ The detainees from the Brdo area were not usually allowed to go out of Room 3 during any of the shifts, other than Kolund`ija's.¹⁶⁹

76. The Trial Chamber heard testimony that each shift commander had a key to the rooms and could lock them at will. The doors of the rooms were usually locked at dusk, especially under Do{en's and Kolund`ija's shifts.¹⁷⁰ The guards mostly walked around the camp. Do{en and Kolund`ija would come to the rooms to talk to detainees they knew.¹⁷¹

77. The detainees in Keraterm were sometimes allowed to meet visitors or receive packages with food or clothes, particularly during Do{en and Kolund`ija's shifts.¹⁷² Do{en would also give them cigarettes.¹⁷³

¹⁶¹ Witness F, T. 1427-29, 1516-17; Witness D, T. 1086-87; Witness S, T. 3668-69.

¹⁶² Witness W, T. 3886-87.

¹⁶³ Jusuf Arifagic, T. 1564.

¹⁶⁴ Jusuf Arifagic, T. 1569, 1612.

¹⁶⁵ Witness R, T. 3351-52.

¹⁶⁶ Witness D, T. 1134; Witness DO, T. 5246.

¹⁶⁷ Witness A, T. 630; Witness B, T. 825-27; Witness C, T. 994-95; Witness M, T. 2800-02; Senad Kenjar, T. 3591, 3610; Witness DN, T. 5185-86.

¹⁶⁸ Witness D, T. 1173; Witness P, T. 3179; Senad Kenjar, T. 3591; Witness W, T. 3910, 3940-41.

¹⁶⁹ Witness A, T. 637-38; Witness H, T. 1811; Witness L, T. 2505; Witness M, T. 2704; Witness N, T. 2838-40; Witness P, T. 3131-32.

¹⁷⁰ Witness A, T. 709-10, 736-37; Witness F, T. 1408-09, 1411.

¹⁷¹ Witness G, T. 1755; Witness DN, T. 5141-42, 5154; Witness DO, T. 5243-44; Witness DR, T. 5566.

¹⁷² Witness F, T. 1502; Witness I, T. 2089-90; Witness K, T. 2258-59; Fikret Hidi}, T. 2370-77; Witness M, T. 2800; Witness O, T. 3021-23; Witness W, T. 3944; Witness DG, T. 4606, 4610-11; Witness DJ, T. 4744; Ranko Do{en, T. 4908-09; Husein Gani}, T. 5050; Witness DM, T. 5085-86; Witness DN, T. 5136-37, 5155; Witness DO, T. 5234; Witness DP, T. 5270-74; Witness DR, T. 5565.

¹⁷³ Witness DN, T. 5144-45.

78. The Chamber also heard testimony that, in the early days of the camp, one group of detainees who had volunteered for tasks outside the camp were picked up daily by a truck and came back in a good mood and were never hungry,¹⁷⁴ while some other volunteers never returned.¹⁷⁵

C. Interrogations

79. Most witnesses testified to having been interrogated at least once while in the Keraterm camp. The first detainees to arrive in Keraterm on 31 May 1992, as well as other detainees who arrived later, were interrogated within 8 to 12 days of their arrival.¹⁷⁶ Others who arrived around the same time were interrogated several weeks later.¹⁷⁷

80. Witness B testified that most of the detainees interrogated were from Puharska.¹⁷⁸ There is some evidence that, at some point, a few weeks after the camp was opened, detainees would be interrogated according to a specific order on a list.¹⁷⁹ Senad Kenjar testified that interrogations started after a guard made a list of the detainees kept in Room 2 on 15 June 1992.¹⁸⁰ Some detainees, however, were never interrogated.¹⁸¹ Ante Tomic testified that none of the detainees from Ljubija, including himself, were interrogated.¹⁸²

81. After being called out from a list, the detainees were escorted by a camp guard¹⁸³ for interrogation in an office located above Room 1.¹⁸⁴ The interrogations took place during the day¹⁸⁵ and lasted from 15 minutes to one hour.¹⁸⁶

82. The Chamber heard testimony that the interrogations were usually conducted by one or two persons,¹⁸⁷ referred to as "inspectors" or "investigators", who came from outside the camp.¹⁸⁸ Witness DJ was one of them. He testified that he would usually arrive at the camp at 8 a.m. with

¹⁷⁴ Witness A, T. 612.

¹⁷⁵ Witness A, T. 603; Witness C, T. 925; Witness N, T. 2840-42.

¹⁷⁶ Witness A, T. 596, 680; Witness B, T. 768, 814; Witness H, T. 1792; Hajrudin Zubovi}, T. 2616; Witness P, T. 3103; Witness W, T. 3883, 3921.

¹⁷⁷ Witness C, T. 906, 940; Jusuf Arifagi}, T. 1582; Witness G, T. 1730; Fikret Hidi}, T. 2351; Witness DM, T. 5083-84.

¹⁷⁸ Witness B, T. 769.

¹⁷⁹ Witness DG, T. 4619.

¹⁸⁰ Witness O, T. 3050; Witness P, T. 3103; Senad Kenjar, T. 3535.

¹⁸¹ Witness DO, T. 5260.

¹⁸² Ante Tomi}, T. 1962.

¹⁸³ Witness C, T. 906; Witness G, T. 1730; Fikret Hidi}, T. 2385; Witness V, T. 3776; Witness DM, T. 5084, 5099-100; Witness DN, T. 5177-79.

¹⁸⁴ Witness A, T. 597; Witness C, T. 905; Witness F, T. 1411; Witness G, T. 1730; Witness H, T. 1792; Witness P, T. 3103.

¹⁸⁵ Witness C, T. 905; Witness F, T. 1411; Witness M, T. 2702.

¹⁸⁶ Witness A, T. 597; Witness F, T. 1413; Fikret Hidi}, T. 2385; Witness M, T. 2745; Salko Saldumovic, T. 3482; Witness W, T. 3883.

¹⁸⁷ Witness A, T. 597, 680; Witness B, T. 814; Witness H, T. 1792, 1884-85; Witness V, T. 3776.

¹⁸⁸ Witness C, T. 940; Witness G, T. 1731; Witness M, T. 2745-46.

two other interrogation officers, one an individual from the State security and another from the military. They would interview between 12 to 14 detainees daily.¹⁸⁹ There seemed to be three separate interrogation teams operating in Keraterm.¹⁹⁰ A man named Modi} was the most frequently mentioned by the Prosecution witnesses as their interrogator.¹⁹¹ Drasko (or Dragan) Radeti} and Ranko Bucalo were cited by several other witnesses.¹⁹² Some detainees testified to having been interrogated by other people.¹⁹³ Some detainees testified that these interrogators were members of the civilian police.¹⁹⁴ All the interrogated detainees testified that the guards of the camp were not involved in the interrogations: they were not present during the interrogation and their role was limited to escorting the detainee from his room to the interrogation room.¹⁹⁵ According to Witness C, the investigators determined which detainees they investigated.¹⁹⁶

83. It appears from the evidence presented by witnesses that the aim of the investigators was to find out which detainees had been involved in the fighting, or where they came from, and based on their answers, to categorise the detainees.¹⁹⁷ Some were asked whether they engaged in political activities, or about their families or neighbours.¹⁹⁸ Following interrogation, some detainees appear to have been considered "innocent" or not guilty.¹⁹⁹ It may be inferred from the evidence that, based on the category in which they were placed, detainees would be selected for mistreatment or for transfer to the Omarska camp. Witness M testified that the interrogators wanted to find people who were responsible for something and that, in the evening, lists were prepared and people on those lists were usually taken out.²⁰⁰ Witness P testified that Modi} appeared to be referring to other lists of names when interrogating him.²⁰¹ Salko Saldumovi} testified that Došen told the new detainees in Room 2 that they should tell everything they knew when they were interrogated, otherwise they would be taken to Omarska and beaten to death until they told the truth.²⁰²

¹⁸⁹ Witness DJ, T. 4710.

¹⁹⁰ Witness DJ, T. 4651.

¹⁹¹ Witness C, T. 906; Witness P, T. 3103, 3180-81; Senad Kenjar, T. 3581; Witness V, T. 3801; Witness X, T. 4063.

¹⁹² Witness C, T. 905-06; Witness F, T. 1388-89; Fikret Hidi}, T. 2351-53; Witness O, T. 3050; Witness W, T. 3883.

¹⁹³ Witness A, T. 597; Witness C, T. 905-06; Witness W, T. 3883; Husein Gani}, T. 5044; Witness DM, T. 5083-84; Witness DN, T. 5130-31.

¹⁹⁴ Witness F, T. 1414, 1487-89; Witness M, T. 2702; Witness DN, T. 5130-31.

¹⁹⁵ Witness C, T. 905-06; Witness F, T. 1413; Jusuf Arifagic, T. 1632; Fikret Hidi}, T. 2385; Witness M, T. 2745-46; Salko Saldumovic, T. 3481-82; Witness DG, T. 4609; Witness DJ, T. 4720-22, 4741.

¹⁹⁶ Witness C, T. 981.

¹⁹⁷ Witness DJ, T. 4705.

¹⁹⁸ Witness A, T. 597, 681; Witness B, T. 814; Witness C, T. 906, 940; Witness F, T. 1413; Witness G, T. 1705; Witness H, T. 1792; Fikret Hidi}, T. 2385; Hajrudin Zubovi}, T. 2616; Witness M, T. 2746; Witness P, T. 3103, 3181-82; Salko Saldumovic, T. 3481-82; Senad Kenjar, T. 3570-71; Witness V, T. 3776; Witness W, T. 3883, 3922; Witness X, T. 4063; Witness DG, T. 4604-05; Witness DJ, T. 4651; Witness DR, T. 5563.

¹⁹⁹ Witness O, T. 3050.

²⁰⁰ Witness M, T. 2702.

²⁰¹ Witness F, T. 1499; Witness P, T. 3103.

²⁰² Salko Saldumovi}, T. 3462.

D. Beatings and mistreatment

1. General atmosphere in the camp

84. Almost all the witnesses detained in the Keraterm camp testified to having been subjected to physical and psychological mistreatment, or to having seen others being so subjected.²⁰³ The mistreatment started three to seven days after the camp was opened and went on daily.²⁰⁴ Whoever wanted to beat detainees could do so as they pleased.²⁰⁵ Beatings took place mostly at night, inside and outside the rooms, near a garbage dump, or in a room used specifically for beatings.²⁰⁶ Detainees were usually called out by a guard.²⁰⁷ Some were beaten and returned to the rooms. Others were killed and their bodies brought back to their room, or left on the dump and then taken away the next day.²⁰⁸ The beatings were conducted by the camp guards and by visitors from outside, individually or together.

85. In addition to being directly subjected to mistreatment, most detainees also witnessed mistreatment being inflicted upon others. Once, Witness F had to sit for half an hour in Room 1 and watch prisoners being beaten with baseball bats, batons, rods, hands and feet.²⁰⁹ Witness N testified that, one evening, after having been locked in his room, prisoners from other rooms were beaten in front of Room 3, with terrible screams.²¹⁰

86. This all created an atmosphere of terror, and the detainees lived in constant fear of selection for mistreatment. The effect of such mistreatment was apparent to those who visited the camp. Witness K testified that when she visited her husband in the camp, all the detainees were in an awful state and fear was evident on their faces.²¹¹

87. The victims of such beatings never reported the incidents because they were afraid of the guards.²¹² According to one witness, any prisoner who complained of ill-treatment was killed and thrown on the garbage dump the next day.²¹³

²⁰³ Witness M, T. 2699; Hajrudin Zubovi}, T. 2585; Ranko Do{en, T. 4914; Witness DR, T. 5572.

²⁰⁴ Witness V, T. 3806; Witness I, T. 2088; Salko Saldumovi}, T. 3480-81; Witness M, T. 2700.

²⁰⁵ Witness M, T. 2700.

²⁰⁶ Witness C, T. 913, 926; Witness F, T. 1415-16; Jusuf Arifagi}, T. 1573; Witness M, T. 2702.

²⁰⁷ Witness C, T. 913; Witness L, T. 2506, 2507; Witness DM, T. 5108.

²⁰⁸ Witness G, T. 1706; Witness C, T. 913, 972; Witness Z, T. 4205-09, 4237-42, 4261.

²⁰⁹ Witness F, T. 1393-94.

²¹⁰ Witness D, T. 1077; Witness N, T. 2839-40.

²¹¹ Witness K, T. 2259-60.

²¹² Witness D, T. 1164; Husein Gani}, T. 5042, 5053.

²¹³ Witness G, T. 1781.

88. The detainees who had been interrogated were treated slightly better.²¹⁴ The mistreatment sometimes seems to have been inflicted on a random basis,²¹⁵ or for the entertainment of those inflicting it. Witness X testified that regularly, during the day, the guards would order one inmate to chase another and, if he did not catch him, he was beaten by the soldiers. The guards would also make detainees sing “Chetnik” songs.²¹⁶ At times the guards would put a dead body into a wheelbarrow and then force a prisoner to push the wheelbarrow while marching.²¹⁷ Witness DP testified that inmates were forced to pray in accordance with Islamic custom, even if they were Catholic.²¹⁸ At other times, it appeared that particular detainees were targeted.²¹⁹

89. People were often subjected to mistreatment in order to extort money from them, or to settle old scores, or to repay old debts from before the conflict.²²⁰ Detainees who were labelled “extremist” seemed to receive the worst treatment. Witness B testified that, as a room leader, he was asked in mid-July, by a policeman or a soldier, to inform on two “extremists”. When he replied that there were no such persons in the room, he was beaten with a police baton. This happened during the shift of Fu{tar who was present. Fu{tar then asked for a list and called out two people, whom he beat.²²¹ Some detainees were chosen for “special treatment” which meant that anybody could beat or even kill them. They were put next to the door so that they would be “available” for mistreatment at any moment.²²²

2. Beatings by the guards

90. Guards and soldiers would come and go at the camp, regardless of the shift to which they were assigned.²²³ The guards wore military camouflage uniforms of different types, with the majority of them having automatic rifles while the officers carried pistols.²²⁴ According to Witness M, the behaviour of the regular guards was “beastly”; they were sometimes drunk and could behave as they pleased with the detainees if there was no one there to stop them.²²⁵ The Trial Chamber heard numerous accounts of beatings perpetrated by non-identified guards.

²¹⁴ Witness C, T. 888, 952.

²¹⁵ Witness P, T. 3100; Witness V, T. 3759.

²¹⁶ Witness X, T. 4022; Witness DJ, T. 4679.

²¹⁷ Witness X, T. 4105.

²¹⁸ Witness DP, T. 5286.

²¹⁹ Witness P, T. 3099, 3102; Salko Saldumovi}, T. 3502-03.

²²⁰ Witness B, T. 816; Witness N, T. 2838-40; Salko Saldumovi}, T. 3490; Witness S, T. 3654, 3657; Witness DM, T. 5108-10.

²²¹ Witness B, T. 773-74, 842-48.

²²² Witness G, T. 1701-03; Witness DP, T. 5283-87.

²²³ Witness M, T. 2815; Witness S, T. 3654-55.

²²⁴ Senad Kenjar, T. 3585.

²²⁵ Witness F, T. 1394; Witness M, T. 2818; Jusuf Arifagi}, T. 1651.

91. Fikret Avdi}, a waiter, had worked at a bar near the railway station in Prijedor. He was called out at night, around 18 to 20 July 1992, and beaten. He was brought back in front of Room 2 and the inmates were told to carry him in. He was very badly injured, unconscious, and was vomiting blood. He died the following morning. His body was taken beyond Room 4, to the place where the bodies were kept before being taken away.²²⁶

92. On 23 June 1992, Jovo Rado-aj, a Serb, was brought in during the Banovi} brothers' shift. According to Witness E, ^upo Banovic called him out and beat him with a baseball bat, while the other guards shouted: "That is how we punish Serb traitors."²²⁷ Witness I said that Banovic told Jovo Rado-aj: "You, a Serb, joining the SDA. You should be scalded like a sheep for Bajram."²²⁸ Moans and screams of pain were heard. When he was returned to a room, Jovo Rado-aj was covered in blood, marks and bruises, and died in the early morning. When a new shift started, the bodies of Jovo Rado-aj and one or two others were moved to the waste dump. Jovo Rado-aj's body was taken away and buried in the cemetery.²²⁹

93. Witness H testified that, a few days before the closure of the camp, as he went to fill a bottle with water, ^upo Banovic asked him if he knew that he had to pay for the water. He then took off his shoes and hit Witness H on the head with them, breaking his nose. As Došen was approaching the camp on his motorcycle, Banovic took a knife and attempted to stab Witness H in his left side. Witness H protected himself with his arm, and received a cut of approximately 10 to 13 centimetres.²³⁰ Witness H thinks that Došen's arrival saved his life.²³¹

94. Other witnesses gave evidence of beatings. Among those were Witness A,²³² Witness B,²³³ Witness C,²³⁴ Witness W²³⁵ and Fikret Hidi}.²³⁶

²²⁶ Witness F, T. 1424; Witness H, T. 1805-06, 1845-46, 1895; Salko Saldumovi}, T. 3465; Senad Kenjar, T. 3583-85, 3541.

²²⁷ Witness E, T. 1250.

²²⁸ Witness I, T. 2130-31, as corrected.

²²⁹ Witness B, T. 775-77; Witness D, T. 1129-30; Witness E, T. 1250-52; Ante Tomic, T. 1961-62; Witness I, T. 2050-51, 2086, 2118; Witness Z, T. 4213; Witness DP, T. 5274, 5294-95.

²³⁰ Witness H, T. 1816-17.

²³¹ Witness H, T. 1817, 1903.

²³² Witness A, T. 613-16, 685.

²³³ Witness B, T. 816.

²³⁴ Witness C, T. 926-28, 986-87.

²³⁵ Witness W, T. 3880, 3928.

²³⁶ Fikret Hidi}, T. 2338-40, 2342-50.

3. Beatings by visitors

95. Visitors came mostly at night, armed with guns, and they did as they pleased.²³⁷ Among them were Zoran @igic, Du{an (Du{ko) Kne`evic (nicknamed Du}a), Goran Laji}, and Faca.²³⁸ @igi} and Du}a did not follow anyone's orders and did what they wanted.²³⁹

96. Among the visitors, @igic, who would come to beat people regardless of which shift was on duty, inspired the greatest fear.²⁴⁰ @igic used to spend a lot of time trying to extort money from detainees.²⁴¹ Witness Z testified that in the summer of 1992 he heard @igi} talk of how he would go to Keraterm and Omarska to beat the "Turks," or "balijas".²⁴² @igi} had a "special team", set up for the "special treatment" of certain detainees.²⁴³

97. One day, Kne`evi} came and said his brother or cousin had been killed. He ordered everyone from Kozarac to come out. About 22 people came out, were lined up on the pista in front of Rooms 1 and 2, told to kneel down and, in this position, to go back and forth several times to the small hut. As the ground was covered with gravel, their knees and palms of their hands became bloody. After that, they were ordered to form two columns facing one another, and to kneel down. @igi} hit people on the back with a metal rod, while another soldier would hit them all in the face or the neck. @igi} then told them to stand up and fight with the person opposite them, otherwise they would be beaten. When Witness G's turn came, Došen arrived and told @igi} to stop and asked the detainees to go back to Room 2.²⁴⁴

98. Around 13 or 14 June 1992, Du}a and others beat prisoners from Room 3. The other prisoners, locked in their respective rooms, could hear what was going on outside. The people from Room 3 were screaming with pain from the injuries sustained.²⁴⁵ Du}a would also pick out two prisoners and force them to beat each other.²⁴⁶ Witness D testified to having been beaten by Du}a and others with rubber batons, at night. After he called out to Do{en for help, the beating stopped, and Do{en, who came over, ordered the guards to stop.²⁴⁷

²³⁷ Witness M, T. 2818-19; Witness DM, T. 5085; Witness DO, T. 5229.

²³⁸ Witness A, T. 680; Witness B, T. 775-78; Witness E, T. 1251-52; Witness F, T. 1391; Witness G, T. 1707; Witness H, T. 1802; Witness M, T. 2702-03, 2824; Witness P, T. 3136-37; Witness S, T. 3654; Witness DN, T. 5214.

²³⁹ Witness A, T. 711.

²⁴⁰ Witness G, T. 1707, 1760; Witness V, T. 3807; Witness X, T. 4026.

²⁴¹ Witness W, T. 3907, 3878-79, 3923-27.

²⁴² Witness Z, T. 4215-16; Witness DO, T. 5241.

²⁴³ Witness B, T. 775-76; Witness E, T. 1294; Witness F, T. 1700-01.

²⁴⁴ Witness G, T. 1707-09, 1729; Witness DP, T. 5284-86.

²⁴⁵ Ante Tomi}, T. 1955-56.

²⁴⁶ Ante Tomic, T. 1956.

²⁴⁷ Witness D, T. 1085-88, 1191.

99. Rapes were also committed in the Keraterm camp. One woman told Witness K that she had been raped in an office at Keraterm by Nedeljko Timarac, and then by other men in turn, all night long. She was then taken outside and told to sit on a rock. At one point a guard walked by and kicked her.²⁴⁸

100. Other witnesses testified as to beatings by visitors to the camp. Among those were Witness A,²⁴⁹ Witness B,²⁵⁰ Witness E²⁵¹ and Witness V.²⁵²

E. The Room 3 massacre

101. In the afternoon and evening of 24 July 1992, many more soldiers could be seen in the Keraterm camp than was customary.²⁵³ One witness testified that the soldiers were wearing the uniform of the former Yugoslav People's Army (JNA) and that, prior to that time, he had not seen any of the guards in the camp wearing that uniform.²⁵⁴ Those who arrived in the camp that afternoon were not regular Keraterm guards.²⁵⁵ A machine-gun was placed on a desk or table in front of Room 3 sometime before the massacre took place.²⁵⁶

102. At around 3 or 4 p.m., the Room 3 detainees were put back in the room and the doors were locked.²⁵⁷ Soon thereafter, some gas was thrown into the room.²⁵⁸ Some of the prisoners attempted to break down the door and it was then that the soldiers responded with a burst of gunfire.²⁵⁹ According to several witnesses who survived the Room 3 massacre, there were repeated bursts of gunfire.²⁶⁰ Several people ahead of Witness N, who was near the door in Room 3, were hit with bullets and three or four of them fell on top of him. As Witness N put it: "Misfortune was my luck, because these bullets - they were absorbing these bullets that were being fired from outside. They were bouncing from the bullets that were hitting them. It was horrible. It was like being in hell, a night in hell."²⁶¹ The bullets entered the room through the glass windows and the door, ricocheting

²⁴⁸ Witness K, T. 2267-72.

²⁴⁹ Witness A, T. 593-96, 677-78.

²⁵⁰ Witness B, T. 775-76.

²⁵¹ Witness E, T. 1247-48, 1257-60.

²⁵² Witness V, T. 3818, 3753-55.

²⁵³ Witness B, T. 861-62; Witness F, T. 1431; Witness L, T. 2509; Hajrudin Zubovi}, T. 2582; Witness M, T. 2810; Senad Kenjar, T. 3593; Witness S, T. 3624, 3679-80; Witness X, T. 4060.

²⁵⁴ Witness W, T. 3948-49.

²⁵⁵ Witness A, T. 639.

²⁵⁶ Witness A, T. 639-40; Witness F, T. 1431; Witness G, T. 1771; Hajrudin Zubovi}, T. 2582; Witness M, T. 2706; Witness R, T. 3327-28; Witness S, T. 3627; Witness V, T. 3779-81.

²⁵⁷ Witness L, T. 2535.

²⁵⁸ Witness H, T. 1812; Witness L, T. 2511; Witness N, T. 2862; Witness R, T. 3333-35.

²⁵⁹ Witness R, T. 3334-35; Witness DJ, T. 4669; Witness DN, T. 5164.

²⁶⁰ Witness R, T. 3335; Witness L, T. 2512-14; Witness B, T. 788-90; Witness DN, T. 5164-67.

²⁶¹ Witness N, T. 2862.

around the room.²⁶² In addition to these accounts of the massacre, there was abundant evidence from witnesses who were detained elsewhere in the camp that night.²⁶³

103. The dead and wounded, approximately 160 to 200 men in total, were taken away in a truck.²⁶⁴ None of those whose bodies were removed that morning were ever seen again.²⁶⁵

²⁶² Witness N, T. 2863-64.

²⁶³ Witness C, T. 921-23; Witness E, T. 1263; Jusuf Arifagi}, T. 1588-89; Witness G, T. 1768-69; Witness H, T. 1812; Fikret Hidi}, T. 2362, 2367; Hajrudin Zubovi}, T. 2583; Witness M, T. 2707-08; Witness S, T. 3626-27; Witness L, T. 2516; Witness R, T. 3335-36.

²⁶⁴ Witness B, T. 791; Jusuf Arifagi}, T. 1591; Witness L, T. 2517; Witness H, T. 1813-15; Witness C, T. 924-25; Witness M, T. 2709; Witness N, T. 2869-70; Witness V, T. 3760.

²⁶⁵ Witness B, T. 791; Witness L, T. 2517-18; Hajrudin Zubovi}, T. 2583; Witness N, T. 2870; Witness R, T. 3336-38.

IV. SENTENCING

A. Applicable Law

104. Those provisions of the Statute and Rules which pertain to sentencing are set forth below:

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Rule 101

Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
 - (i) any aggravating circumstances;
 - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
 - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

B. Sentencing Factors

1. General factors

105. The Trial Chamber has recently set out, in the *Todorovi* case,²⁶⁶ the factors to be taken into account in determining the sentence for an individual accused. These include the gravity of the crime, and any mitigating circumstances, as well as the general practice regarding prison sentences in the courts of the former Yugoslavia.

(a) Gravity of the crime

106. Article 24 of the Statute requires a Trial Chamber, in determining an appropriate sentence, to take into account, *inter alia*, the gravity of the offence. As the Appeals Chamber reiterated in the *^elebi}i* Appeal Judgement, "the gravity of the offence is the primary consideration in imposing sentence."²⁶⁷ The Appeals Chamber also stated that:

The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.²⁶⁸

107. In order to be in a position to evaluate the gravity of the offences committed by each of the accused, and in light of the fact that each conviction rests upon a plea of guilt, it behoves the Trial Chamber to set forth the details of the criminal conduct underlying each of the convictions²⁶⁹ and to consider the aggravating factors. This is done below.

108. In relation to any aggravating circumstances, the Trial Chamber observes that the Appeals Chamber in the *^elebi}i* case held that "only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused's sentence or taken into account in aggravation of that sentence."²⁷⁰

(b) Mitigating circumstances

109. Rule 101 (B)(ii) of the Rules provides that the Trial Chamber, in determining sentence, shall take into account "any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction."

²⁶⁶ *Prosecutor v. Stevan Todorovi*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 ("*Todorovi* Sentencing Judgement").

²⁶⁷ *Prosecutor v. Delali} et al.*, Case No. IT-96-21-A, Judgement, 20 Feb. 2001 ("*^elebi}i* Appeal Judgement"), para. 731; see also *Todorovi* Sentencing Judgement, para. 31.

²⁶⁸ *^elebi}i* Appeal Judgement, para. 731.

²⁶⁹ As set out in the relevant Plea Agreements.

²⁷⁰ *^elebi}i* Appeal Judgement, para. 763.

110. Unlike aggravating circumstances, which must be proved beyond a reasonable doubt, mitigating circumstances need only be established on the balance of probabilities.²⁷¹

111. An accused's "substantial" cooperation with the Prosecutor is the only mitigating circumstance which a Trial Chamber is obliged, by the Rules, to consider. In the *Todorovi* case the Trial Chamber held that the determination as to whether an accused's cooperation has been substantial "depends on the extent and quality of the information he provides."²⁷² The Trial Chamber has heard and considered submissions on cooperation in this case. However, the Chamber concluded that they were not of sufficient substance as to affect its decision.

(c) The general practice regarding prison sentences in the courts of the former Yugoslavia

112. Article 24, paragraph 1, of the Statute and Rule 101 (B)(iii) of the Rules require the Trial Chamber, in determining sentence, to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia. The Appeals Chamber has interpreted this provision to mean that, while a Trial Chamber must consider the practice of courts in the former Yugoslavia, its discretion in imposing sentence is not bound by such practice.²⁷³

113. In this regard, the Trial Chamber has had reference to the relevant provisions of the Criminal Code of the Socialist Republic of Yugoslavia ("SFRY Criminal Code").

114. Article 142 thereof provides for a punishment ranging from five years' imprisonment to the death penalty for anyone who

orders that civilian population be subject to killings, torture, inhuman treatment ... immense suffering or violation of bodily integrity or health; dislocation or displacement ... unlawful bringing in concentration camps and other illegal arrests and detention ... or who commits one of the foregoing acts . . .

115. Article 38 of the SFRY Criminal Code provides that, where criminal acts are eligible for the death penalty, the court may impose a maximum sentence of 20 years' imprisonment in lieu thereof.

116. In sum, the Trial Chamber finds that, under the penal provisions in effect in the former Yugoslavia at the relevant time, the crime of persecution of which each of the accused stand convicted, would have attracted a sentence of between 5 and 20 years' imprisonment.

²⁷¹ *Prosecutor v. Kunarac et al*, Case No. IT-96-23-T and IT-96-23/1-T, Judgement, 22 Feb. 2001 ("*Kunarac* Judgement") para. 847, referred to in Došen Sentencing Brief, para. 23.

²⁷² *Todorovi* Sentencing Judgement, para. 86.

²⁷³ *Prosecutor v. Duško Tadi*, Case No. IT-94-1-A and IT-94-1-A bis, Judgement in Sentencing Appeals, 26 Jan. 2000 ("*Tadi* Sentencing Appeals Judgement"), para. 21.

2. Factors relating to each of the accused

117. While Duško Sikirica, Damir Došen and Dragan Kolund`ija have each pleaded guilty to the single crime of persecution as a crime against humanity, the various means through which it is agreed that this crime was perpetrated vary with respect to each one. In addition, the aggravating and mitigating circumstances will vary for each. Accordingly, the gravity of the offence and the mitigating factors will be addressed for each accused in turn.

(a) Duško Sikirica

(i) The gravity of the crime

a. Criminal conduct forming basis for conviction

118. Duško Sikirica arrived at Keraterm as Commander of Security on or about (but not before) 14 June 1992 and his duties continued until on or about 27 July 1992.²⁷⁴ Although Sikirica carried out some administrative acts,²⁷⁵ he did not have any role in the effective administration of Keraterm, which was conducted from Prijedor II police station by Živko Knežević under the general authority of Simo Drljaca of the Crisis Staff.²⁷⁶ Sikirica did not hold any rank and was of the same seniority as those in respect of whom he was “first among equals”, by virtue of the duties assigned to him by Živko Knežević. The role assigned to him gave him only very limited authority over his equally ranked reserve police colleagues and, although he had the authority to report incidents or people to Živko Knežević, he did not himself have power to punish any person subordinate to him.²⁷⁷ As Commander of Security, Sikirica was not responsible for ensuring adequate food, clothing, water, medical assistance and satisfactory accommodation (including sanitary arrangements). He did have the power to permit family or friends to give food to a detainee, and also had other discretionary powers.²⁷⁸

119. The evidence which indicated his position was as follows.²⁷⁹ Some inmates testified that they were told that Sikirica was senior to the shift commanders,²⁸⁰ whereas others explained that Sikirica had introduced himself to them, informing them of his position.²⁸¹ Other detainees learnt

²⁷⁴ Sikirica Plea Agreement, p. 5; Witness B, T. 761-62; Witness C, T. 897; Witness E, T. 1291-93.

²⁷⁵ For example, recording the names of those being detained at Keraterm or reporting to Živko Knežević on the attendance of or requests for leave of guards. Sikirica Plea Agreement, p. 8.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ There was documentary evidence regarding Sikirica's position: an “Official Note”, dated 4 July 1992, was compiled by Sikirica as “Commander of Keraterm Security”: Exh. D40/1 and Exhs D45/1, D46/1.

²⁸⁰ Witness B, T. 753.

²⁸¹ Witness E, T. 1275, 1294; Witness J, T. 2263-64.

of Sikirica's position from fellow detainees and simply by observing how he was addressed in the camp.²⁸² Sikirica organised matters in the camp. He was present in the camp every day from 7 a.m. until about 4 p.m. He wore a military uniform²⁸³ and usually sat in the weigh hut just outside the main building, where the new detainees would arrive.²⁸⁴ There, Sikirica took down the names of the newly arrived inmates.²⁸⁵ Sikirica would also receive visiting civilian persons and escort them around the camp.²⁸⁶ Whenever something of importance was needed the inmates would go to Sikirica rather than to the shift commanders.²⁸⁷

i. Murder

120. Sikirica has admitted to the murder, by shooting, of one unnamed detainee near the lavatories at Keraterm.²⁸⁸ Three witnesses gave evidence about this incident. Salko Saldumovi} was on his way to the toilet when he saw Sikirica talking to a young man. Ten minutes later, on his way back, he saw Sikirica fire a shot at the man's head. Salko Saldumovic returned quickly to the toilet and stayed there for another 10 to 15 minutes; when he left, he saw the man lying on the ground, and Sikirica was gone. Salko Saldumovic saw Sikirica from behind and in profile and was 2 to 3 metres away from him when he delivered the shot.²⁸⁹ The second witness was Senad Kenjar who, when returning from the toilet, saw a man lying on the ground and Sikirica standing next to him. The witness ran past them back to his room; later he was told that the man had been killed by Sikirica.²⁹⁰

121. With regard to the Room 3 massacre, there is no evidence that Sikirica was present at the Keraterm camp during the build-up to the massacre or that he knew that it was about to take place. Nor is there evidence that he was present during the commission of this incident or participated in it in any way.²⁹¹ Sikirica admits that, as Commander of Security, he was under a technical duty to

²⁸² *E.g.*, Witness N, T. 2884; Salko Saldumovic, T. 3454; Witness W, T. 3880-81; Witness X, T. 4013.

²⁸³ Witness E, T. 1275; Witness F, T. 1405.

²⁸⁴ Witness A, T. 604, 611; Witness B, T. 821. Most of the detainees arrived during daytime: Witness F, T. 1421.

²⁸⁵ Hajrudin Zubovic, T. 2563-64; Witness M, T. 2689-90, 2724-25.

²⁸⁶ Witness F, T. 1406. Jusuf Arifagic testified that he thinks that he saw Sikirica accompanying Drljaca and other dignitaries in the camp: T. 1592-93.

²⁸⁷ Witness B, T. 822-24. There was evidence that Sikirica took inmates to the doctor at Prijedor Hospital on 4 August: Witness R, T. 3352-57.

²⁸⁸ Sikirica Plea Agreement, p. 5.

²⁸⁹ Salko Saldumovic, T. 3455-56, 3486-88.

²⁹⁰ The witness stated that he heard it from either D'evad Kulasic or Salko Saldumovic, who had said: "I've just seen a man being killed"; Senad Kenjar, T. 3547. While there is no further evidence to indicate whether this is the same incident to which Salko Saldumovi} referred, there is a coincidence of time, place and type of incident to allow an inference to be drawn that it is. The third witness to this incident was Witness H, T. 1809-10, 1839-45.

²⁹¹ Sikirica Plea Agreement, p. 7.

prevent the entry to the camp of those persons from outside the camp, who came in, armed with machine-guns and other automatic weapons, and perpetrated the massacre.²⁹²

122. Sikirica admits that there is considerable evidence concerning the murder and killing of other named individuals at Keraterm during the period of his duties.²⁹³ There is evidence that, of such persons, many were ill-treated and then killed for financial gain by the perpetrators, and that others were killed because of their rank and position in society and their membership of a particular ethnic group or nationality.²⁹⁴

ii. Beatings

123. Duško Sikirica admits that there is evidence of many detainees having been beaten during their detention in Keraterm, often by persons from outside the camp.²⁹⁵ The beatings caused serious physical and mental harm to the victims.²⁹⁶

124. As has already been described, upon their arrival at the Keraterm camp the new prisoners would be searched and their names would be taken down at the entrance of the camp. Some prisoners were also beaten. Some witnesses testified that they had seen Sikirica present by the weigh hut when new detainees were beaten.²⁹⁷ In particular, Witness B testified that one day a group of 12 detainees from Kurevo was brought to the weigh hut at the entrance. The detainees were beaten on the grass opposite the hut and spent the night there. The witness said that Sikirica was present during the beatings but did not personally beat anybody.²⁹⁸

iii. Sexual assault and rape

125. It is admitted that a small number of women were raped at Keraterm.²⁹⁹ There is no evidence that Sikirica knew of any such incidents or that he was in a position to know of their having happened after the event.³⁰⁰ He admits that there is evidence that certain detainees were forced to engage in sexual activities against their will.³⁰¹

²⁹² *Ibid.* See paragraphs 101 - 103.

²⁹³ Sikirica Plea Agreement, p. 5.

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.* See paragraphs 84 - 100.

²⁹⁷ Witness A stated that Sikirica must have been present during the beatings, sitting inside the hut: T. 611-12. Witness F saw that Sikirica was present on several occasions when new detainees were beaten: T. 1420-21.

²⁹⁸ Witness B, T. 780-81.

²⁹⁹ Sikirica Plea Agreement, p. 6.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.* See paragraph 99.

iv. Harassment, humiliation and psychological abuse

126. Sikirica admits that there is evidence of humiliation, harassment and psychological abuse of the detainees at the Keraterm camp, leading to a general atmosphere of terror.³⁰² He admits that the killings and beatings which took place also caused mental harm to the inmates.³⁰³ These acts were perpetrated by some of the guards and sometimes by army personnel and others who entered the camp without authority and with impunity, and who would mistreat detainees on a regular and frequent basis, and usually on discriminatory grounds.³⁰⁴

v. Confinement in inhumane conditions

127. Sikirica admits that there is ample evidence that the Bosnian Muslims, Bosnian Croats and other non-Serbs were subjected to inhumane conditions during their confinement at the Keraterm camp.³⁰⁵ As described above, these conditions included: insufficient food and water; inadequate medical care and treatment; overcrowding and lack of opportunities for fresh air and exercise; and lack of proper hygiene arrangements.³⁰⁶ These conditions already existed when Sikirica arrived to take up his duties at Keraterm and continued throughout the period of his assignment.³⁰⁷

b. Aggravating circumstances

i. Arguments of the Parties

128. The Prosecution submits that Sikirica has admitted that he had some, albeit limited, command responsibility arising out of his role as Commander of Security at the Keraterm facility.³⁰⁸ It is submitted that Sikirica was part of the command structure of the camp,³⁰⁹ and that, on at least one occasion, Sikirica reported the misconduct of Zoran Žigić up the chain of command.³¹⁰ The Prosecution contends, therefore, that, based on all the evidence before the Chamber and the Plea Agreement, Sikirica had command responsibility, even if it was limited, for the overall conditions in the camp, including the mistreatment of detainees.³¹¹

³⁰² Sikirica Plea Agreement, p. 4.

³⁰³ *Ibid.*, p. 5.

³⁰⁴ *Ibid.*, p. 4. See paragraphs 84 – 103.

³⁰⁵ Sikirica Plea Agreement, pp. 6–7.

³⁰⁶ See paragraphs 62 – 78.

³⁰⁷ Sikirica Plea Agreement, p. 4.

³⁰⁸ Sentencing Hearing, T. 5669.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

129. The Prosecution stresses that Sikirica admitted that he personally shot one detainee near the toilets in the camp, which was confirmed by the testimony of two witnesses, Salko Saldumovi³¹² and Senad Kenjar.³¹³ The Prosecution submits that there is no evidence that the detainee provoked this killing in any way.³¹⁴ The Prosecution submits that the fact that the murder was committed in daylight and in full view of both detainees and guards must have left the impression that this conduct was acceptable, and certainly contributed to the overall atmosphere of terror which existed in the camp during the summer of 1992.³¹⁵

130. The Prosecution submits that the evidence disclosed that some detainees³¹⁶ were beaten to death by guards over whom Sikirica had supervisory authority and by visitors to the camp, whom, as Commander of Security, he had a "technical" duty to prevent from entering, knowing the likely consequences to the detainees to whom he owed a duty of care.³¹⁷ In this regard, the Prosecution submits that Sikirica, as Commander of Security at the camp, bore some responsibility for all the acts of persecution committed at the camp during the relevant time period.³¹⁸

131. The Prosecution further contends that Sikirica bore responsibility for the Room 3 massacre on the grounds that, as Commander of Security, he controlled the egress and ingress to the camp.³¹⁹ The Prosecution points to the fact that Sikirica was involved in the clean-up the day after the massacre,³²⁰ and that he remained in the camp until at least 27 July 1992; the Prosecution argues that this indicates that Sikirica was prepared to continue in his capacity as Commander of Security, despite the massacre.³²¹

132. The Defence submits that, in assessing the factual basis underlying the crime, it must be the Sikirica Plea Agreement which takes precedence, since that document, by common consent of the parties, "accurately described the accused's culpability".³²² The Defence submits that, although a

³¹² Salko Saldumovi}, T. 3455-56.

³¹³ Prosecution Sentencing Brief, para. 49; Senad Kenjar, T. 3547.

³¹⁴ Sentencing Hearing, T. 5670.

³¹⁵ Prosecution Sentencing Brief, para. 52; Sentencing Hearing, T. 5670.

³¹⁶ Several detainees were murdered at Keraterm, including Emsud Bahonji}; Witness V, T. 3753; Besim Hergi}; Witness F, T. 1424; Zvezda}; Witness G, T. 1713; D'evad Karabegovi}; Witness A, T. 613-16; D'emal Me{ic: Senad Kenjar, T. 3539-41; Safet Me{i} a.k.a [pija: Witness G, T. 1717; Jovo Rado-aj: Witness D, T. 1080; and Dragan Tokmad' i}; Witness I, T. 2055.

³¹⁷ Prosecution Sentencing Brief, paras 50-51; Sentencing Hearing, T. 5669-70.

³¹⁸ Prosecution Sentencing Brief, para. 55.

³¹⁹ *Ibid.*, para. 53.

³²⁰ Witness A, T. 647-48.

³²¹ Prosecution Sentencing Brief, para. 54.

³²² Sikirica Plea Agreement, p. 4.

number of factual issues have been raised in the Sikirica Sentencing Brief, if these facts are at variance with the Plea Agreement, it should be the Plea Agreement which prevails.³²³

133. The Defence notes that Sikirica has admitted to being the “Commander of Security” at Keraterm. In that regard, it is, therefore, accepted that some, albeit limited, command responsibility attaches to him.³²⁴

134. The Defence submits that, whilst Sikirica stood in a superior position to the guards at the camp, his formal superiority should be considered in light of a number of factors.³²⁵ Firstly, he had no power to punish anyone. That power, it is argued, lay in the hands of @ivko Kne`evic and Simo Drljaca.³²⁶ Secondly, Duško Sikirica was obliged to report such matters to those superiors, who consistently failed to take action.³²⁷ Thus, whilst Sikirica has accepted that he had a legal duty over the shift commanders and guards at the camp, it is submitted that, in light of the nature of that authority, his superior responsibility should not be considered as an aggravating factor at all, or only to a limited extent.³²⁸

135. In the submission of the Defence, while Sikirica had a notional duty to prevent the Room 3 massacre, he was not present during its inception, nor did he know it was about to take place.³²⁹

136. With regard to the individual killing, the Defence observes that this killing was committed with a firearm that caused the instantaneous death of the victim and that there is no evidence that it was accompanied by prior acts of torture, beating or humiliation of the victim.³³⁰

137. With regard to the general conditions within the Keraterm camp, the Defence submits that, while the treatment of the detainees at Keraterm cannot be characterised as satisfactory, the camp was not the place that was represented to the Trial Chamber in the Prosecution’s Pre-Trial Brief and its opening statement. While the conditions within the facility may be an aggravating feature, it must, the Defence submits, be tempered by the nature of Sikirica’s authority in the camp.³³¹

³²³ Sentencing Hearing, T. 5695.

³²⁴ Sikirica Sentencing Brief, Registry Page (“RP”) 10105.

³²⁵ Sentencing Hearing, T. 5697.

³²⁶ Sikirica Sentencing Brief, RP 10105.

³²⁷ *Ibid.*

³²⁸ *Ibid.*, RP 10103.

³²⁹ See Sikirica Plea Agreement, para. 10(j).

³³⁰ Sikirica Sentencing Brief, RP 10103.

³³¹ *Ibid.*, RP 10102.

ii. Findings

138. The Prosecution argues that Sikirica's superior position in the camp should be taken into account as an aggravating factor in relation to his crime. In this regard, the Chamber observes that Duško Sikirica has admitted to being "Commander of Security" at the Keraterm camp and, as such, that there was a "technical duty upon him to prevent the entry of persons from outside the camp";³³² in fact, Sikirica in his brief accepts "some, albeit limited, command responsibility".³³³

139. Accordingly, the Chamber considers that Duško Sikirica's failure in his duty to prevent outsiders from coming into the camp to mistreat the detainees is an aggravating factor.

140. In addition, the Chamber considers Duško Sikirica's position of authority within the camp to be an aggravating factor in respect of the murder of one of the detainees in the camp, to which the accused has pleaded guilty. As described by eye-witnesses, the murder was committed in full view of both the detainees and the guards.³³⁴ The Trial Chamber concurs with the Prosecution's submission that this act must have left the impression that this conduct was encouraged (or at least not subject to sanction) and contributed to the overall atmosphere of terror that existed in the camp over the relevant period.

(ii) Mitigating circumstances

a. Arguments of the Parties

141. The Prosecution notes that, while a guilty plea should generally be taken into account as a factor in mitigation of sentence,³³⁵ in this instance it should be accorded very little weight, as Sikirica has not demonstrated remorse.³³⁶

142. The Defence submits that, despite the fact that the guilty plea was entered at a late stage in the proceedings, Sikirica should receive substantial credit³³⁷ because the guilty plea has been important for the purpose of establishing the truth in relation to his crime.³³⁸

³³² Sikirica Plea Agreement, para. 10(j).

³³³ Sikirica Sentencing Brief, RP 10105.

³³⁴ See paragraph 120.

³³⁵ Prosecution Sentencing Brief, para. 56. Several cases before the International Tribunal and the International Criminal Tribunal for Rwanda have raised this proposition, including *Todorovi*} Sentencing Judgement, paras 75-82.

³³⁶ *Ibid.*, para. 77, which quotes the *Jelisi*} Appeal Judgement, para. 127, referred to in Prosecution Sentencing Brief, para. 56.

³³⁷ Sentencing Hearing, T. 5690.

³³⁸ *Ibid.*, T. 5688.

143. It is a matter of sound common sense, the Defence submits, that pragmatic judicial policy should seek to encourage guilty pleas by those who are guilty. Plainly, if a plea is entered at the outset of the trial, so much the better.³³⁹ However, it is submitted, there is another aspect to the work of the International Tribunal, to which reference has been made: namely, the truth-finding process.³⁴⁰ The Defence submits that, in this trial, the presentation of the evidence has enabled a clearer picture to emerge, both in terms of the role of Sikirica and of the events at Keraterm, which differs from the picture painted by the Prosecution at the outset of the trial.³⁴¹

144. The Defence submits that, had Duško Sikirica pleaded guilty to persecution at the outset of the trial, it is doubtful whether the Prosecution would have accepted the factual basis that it has now accepted as accurately describing Sikirica's culpability.³⁴² Thus, in the absence of a trial, Sikirica's culpability could not have been properly reflected. For that reason the Defence invites the Trial Chamber to treat him as though he had pleaded guilty at the outset, and had thereafter had a trial on the narrower issue of the actual nature of his role at Keraterm.³⁴³ It should also be noted that the process has confined Sikirica's responsibility for persecution to events at Keraterm.

145. In the Defence's submission, the unpleasant nature of the regime at Keraterm had been established some time before Sikirica arrived to work there; in other words, it was not one of his creation. The Defence submits that, once the pattern had been set, it would have been extremely difficult to change the situation, considering Sikirica's limited authority.³⁴⁴

146. The report of the Commanding Officer of the United Nations Detention Unit reveals that Sikirica has, at all times, behaved properly while in detention.³⁴⁵ Moreover, the Defence notes that, during the trial, he behaved in an exemplary fashion and has not shown any disrespect to the International Tribunal.³⁴⁶

147. The Defence submits that Sikirica has no previous criminal convictions and is married with two children. As such there is a reasonable prospect that he can return to his home community. There is no suggestion that he represents a continuing danger.³⁴⁷

³³⁹ Sikirica Sentencing Brief, RP 10102.

³⁴⁰ Sentencing Hearing, T. 5694.

³⁴¹ Sikirica Sentencing Brief, RP 10102.

³⁴² *Ibid.*, RP 10101.

³⁴³ *Ibid.*

³⁴⁴ Sentencing Hearing, T. 5703.

³⁴⁵ Sikirica Sentencing Brief, RP 10099.

³⁴⁶ Sentencing Hearing, T. 5717.

³⁴⁷ Sikirica Sentencing Brief, RP 10100.

b. Findings

148. The Trial Chamber considers that the primary factor to be considered in mitigation of Duško Sikirica's sentence is his decision to enter a guilty plea, although it will also take into account his expression of remorse.

149. A guilty plea facilitates the work of the International Tribunal in two ways. Firstly, by entering a plea of guilt before the commencement of his trial, an accused will save the International Tribunal the time and effort of a lengthy investigation and trial. Secondly, notwithstanding the timing of the guilty plea, a benefit accrues to the Trial Chamber, because a guilty plea contributes directly to one of the fundamental objectives of the International Tribunal: namely, its truth-finding function. As was held in the *Todorovi* case, "a guilty plea is always important for the purpose of establishing the truth in relation to a crime."³⁴⁸

150. Accordingly, while an accused who pleads guilty to the charges against him prior to the commencement of his trial will usually receive full credit for that plea, one who enters a plea of guilt any time thereafter will still stand to receive some credit, though not as much as he would have, had the plea been made prior to the commencement of the trial.

151. Therefore, the Chamber holds that, despite the lateness of his guilty plea, Duško Sikirica should receive some credit.

152. In the *Todorovi* case, it was stated that: "In order to accept remorse as a mitigating circumstance ... the Trial Chamber must be satisfied that the expressed remorse is sincere."³⁴⁹ In this regard, the Chamber takes account of Duško Sikirica's statement during the Sentencing Hearing, in which he said: "I deeply regret everything that happened in Keraterm while I was there. I feel only regret for all the lives that have been lost and the lives that were damaged in Prijedor, in Keraterm, and unfortunately, I contributed to the destruction of these lives."³⁵⁰ In the Chamber's opinion his expression of remorse was sincere and this will be taken into account in mitigation of sentence.

³⁴⁸ *Todorovi* Sentencing Judgement, para. 81 (emphasis added).

³⁴⁹ *Ibid.*, para. 89 (citations omitted).

³⁵⁰ Sentencing Hearing, T. 5718-19.

(b) Damir Došen

(i) Gravity of the crime

a. Criminal conduct forming basis for conviction

153. Damir Došen was a shift leader of approximately 6 to 12 men at the Keraterm camp from 3 June to early August 1992. As such, he exercised some limited authority, although he did not hold any rank and was of the same seniority as the other guards on his shift.³⁵¹ He did not have the power to punish anybody. Došen had no role in the administration of the camp and was not responsible for ensuring adequate supplies of food, clothing, water, medical assistance and satisfactory accommodation.³⁵²

154. Numerous witnesses testified about Došen's position in the camp. For instance, Witness A said that Došen and Kolund`ija were shift commanders and that they wore uniforms without military insignia.³⁵³ Witness C said that the shift leaders were Fužtar, Došen and Kolund`ija: their role was to lock and unlock the dormitories, give the guards their assignments and issue orders to the guards.³⁵⁴ Likewise, Ante Tomić said that he saw Došen on a daily basis wearing a blue police uniform: the witness identified him as a shift commander by the fact that he carried keys to the rooms and opened and unlocked doors or ordered guards to do it; and the witness also learned that he was a shift commander from the accounts of other inmates.³⁵⁵ Other witnesses to identify Došen as a shift commander were Witness D,³⁵⁶ Witness P,³⁵⁷ Salko Saldumović³⁵⁸ and Witness W.³⁵⁹

i. Beatings

155. There is evidence that beatings occurred at times when Došen's shift was on duty and he admits that that he was aware of these beatings.³⁶⁰ The beatings caused both serious physical and mental harm to the victims.³⁶¹ Some witnesses testified about incidents where Došen had been present and others about beatings which took place during Došen's shift but in his absence. There

³⁵¹ Došen Plea Agreement, p. 6.

³⁵² *Ibid.*

³⁵³ Witness A, T. 742.

³⁵⁴ Witness C, T. 898.

³⁵⁵ Ante Tomić, T. 1951-52. Tomić also mentioned a fourth man, "Tomo".

³⁵⁶ Witness D, T. 1074, 1171, 1227-28.

³⁵⁷ Witness P, T. 3111.

³⁵⁸ Salko Saldumović, T. 3461-62.

³⁵⁹ Witness W, T. 3876-77.

³⁶⁰ Došen Plea Agreement, p. 6.

³⁶¹ *Ibid.*, p. 4.

is also evidence that he attempted to prevent mistreatment of detainees when aware that beatings were about to take place.³⁶²

156. With regard to the beatings where Došen was present, the evidence included the following: Ante Tomić testified that Došen was present for a short time after Duca Knežević beat prisoners from Room 3, the detainees were still screaming with pain from the injuries sustained;³⁶³ and Witness X said that Došen and the guards would make inmates chase each other and that Došen was present when people were beaten.³⁶⁴

157. In a separate but related type of incident, Witness N said that on 23 July 1992 he and all the other inmates of Room 3 (approximately 200 men) were taken outside and had to lie on the grass in front of Room 3 without moving. They had to lie there for hours in the burning sun; while they were there Došen sat on a chair nearby with a rifle and threatened that anyone who moved would not stand up again.³⁶⁵

158. As noted, there was also evidence that beatings occurred on Došen's shift although he himself was not present. For instance, Witness B said that one night he and many others were beaten during Došen's shift, as was Drago Tokmadžić (a Croat) who died as a result of his beating.³⁶⁶ Witness D said that he was so badly beaten that night during Došen's shift that he called out: "Kajin, they are killing me." Došen came over and told the guards to stop beating the witness and the beating stopped.³⁶⁷ Jusuf Arifagić said that beatings were less frequent on Došen's shift: "if he was physically present there and had control over it, then there wasn't as much beating and mistreatment. However ... if his shift was on and he was not present, it would start immediately."³⁶⁸

159. Finally, there was some evidence that Došen intervened or prevented beatings. Witness H said that on one occasion, the arrival of Došen saved his life while he himself was under attack from Cupo Banović.³⁶⁹ Hajrudin Zubović said that on his arrival at Keraterm he was in a column of detainees who were being interrogated and mistreated by Cupo Banović and that on Sikirić's intervention, Došen stopped him twice, telling him to let the prisoners be: on the second occasion Banović obeyed him and moved away.³⁷⁰ Witness G described an occasion when Žigić lined up

³⁶² Došen Plea Agreement, p. 6.

³⁶³ Ante Tomić, T. 1955-56.

³⁶⁴ Witness X, T. 4022-23.

³⁶⁵ Witness N, T. 2842-43, 2849, 2944-50.

³⁶⁶ Witness B, T. 775-78.

³⁶⁷ Witness D, T. 1081-85, 1186-89.

³⁶⁸ Jusuf Arifagić, T. 1575.

³⁶⁹ Witness H, T. 1816-17, 1903.

³⁷⁰ Hajrudin Zubović, T. 2567.

two rows of inmates, beat them, and made them fight each other, until Došen arrived and told Žigi} to stop.³⁷¹

ii. Harassment, humiliation and psychological abuse

160. Damir Došen admits that many detainees were beaten during their detention in the Keraterm camp and that the beatings caused both serious physical and mental harm to the victims and mental harm to those who witnessed such events. This contributed in large part to the atmosphere of terror in Keraterm.³⁷² These acts were perpetrated by some of the guards and sometimes by army personnel and others who entered the camp without authority and who would beat and mistreat detainees on a regular and frequent basis.³⁷³

iii. Confinement in inhumane conditions

161. Došen admits that there is ample evidence that the Bosnian Muslims, Bosnian Croats and other non-Serbs were subjected to inhumane conditions during their confinement at the Keraterm camp.³⁷⁴ As described above, these conditions included: insufficient food and water; inadequate medical care and treatment; overcrowding and lack of opportunities for fresh air and exercise; and lack of proper hygienic arrangements.³⁷⁵

b. Aggravating circumstances

i. Arguments of the Parties

162. The Prosecution states that Došen exercised some authority in the Keraterm camp as a shift leader of approximately 6 to 12 men³⁷⁶ and that he referred to himself as a "commander".³⁷⁷

163. The Prosecution submits that, as a police officer in the reserve force at the camp, Damir Došen was obliged to respect the ordinary duties and responsibilities of a police officer even during the conflict,³⁷⁸ which means that he was obliged to prevent mistreatment to all citizens.³⁷⁹

³⁷¹ Witness G, T. 1707-09.

³⁷² Došen Plea Agreement, p. 4.

³⁷³ *Ibid.* See paragraphs 84 - 100.

³⁷⁴ *Ibid.*, pp. 4-6.

³⁷⁵ See paragraphs 62 - 78.

³⁷⁶ Došen Plea Agreement, para. 11, and T. 742-43, 891, 1094, 1171, 1408, 1951, 2561, 3110, 3112-13, 3622, 3750, 3876-77, as cited in Prosecution Sentencing Brief, para. 59; Sentencing Hearing, T. 5674.

³⁷⁷ Salko Saldumovi}, T. 3462, referred to in Prosecution Sentencing Brief, para. 59.

³⁷⁸ Dušan Lakcevic, T. 5533, referred to in Prosecution Sentencing Brief, para. 65; Sentencing Hearing, T. 5675.

³⁷⁹ Sentencing Hearing, T. 5675.

164. Moreover, the Prosecution submits that the psychiatric and psychological evidence led by Došen concerning his inability to exercise any leadership role³⁸⁰ should be given little evidentiary weight; it is based almost entirely on interviews with Došen without any objective and independent verification³⁸¹ conducted nine years after he held the position as shift leader.³⁸² The Prosecution submits that there is no evidence that Došen suffered any medical or psychiatric condition at the relevant time which would have affected his capacity to perform his duties as a shift leader in Keraterm. The Prosecution submits that any such condition has developed since he left the camp.³⁸³

165. The Prosecution submits that the persecutory acts committed by Došen were committed in circumstances of aggravation.³⁸⁴ It notes that, as a shift commander and police officer, he abused the trust placed in him³⁸⁵ and that the victims at Keraterm were particularly vulnerable and helpless.³⁸⁶

166. The Prosecution submits that the fact that the crime of persecution in which Došen participated was committed repeatedly and over an extended period of time should constitute an aggravating factor.³⁸⁷ Moreover, the detainees at the Keraterm camp were subjected to particularly degrading and humiliating treatment.³⁸⁸

167. The Defence notes that Damir Došen is criminally liable on account of his position as a shift leader of 6 to 12 men, who exercised some authority in the camp. He was not entrusted with any public duty and, accordingly, he could not be considered to have abused this trust.³⁸⁹ The Defence notes that the Prosecution has employed for the first time the concept of "public trust", allegedly derived from Došen's position as reserve policeman.³⁹⁰ The Defence considers that this concept of responsibility is not recognised in the Rules or in the practice of the International Tribunal, and as such has to be rejected.³⁹¹

³⁸⁰ Expert psychiatric report of Dr. Dužica Lecic-Tosevski, Exh. D41/2, Dužica Lecic-Tosevski T. 5584; Expert psychological report of Ana Najman, Exh. D19/2.

³⁸¹ Ana Najman, T. 5384-87; Dužica Lecic-Tosevski, T. 5587.

³⁸² Prosecution Sentencing Brief, para. 67.

³⁸³ *Ibid.*, citing T. 558 and 5592; Exhs D41/2 and D19/2.

³⁸⁴ Prosecution Sentencing Brief, para. 76.

³⁸⁵ *Ibid.*, para. 77; Sentencing Hearing T. 5674, 5681.

³⁸⁶ Prosecution Sentencing Brief, para. 78.

³⁸⁷ *Ibid.*, para. 79.

³⁸⁸ *Ibid.*

³⁸⁹ Došen Sentencing Brief, paras 16-17.

³⁹⁰ Sentencing Hearing, T. 5724.

³⁹¹ *Ibid.*, T. 5725.

168. Moreover, the Defence submits that Došen only exercised some authority and had very limited control over the equally ranked guards.³⁹² Therefore this element cannot be considered as an aggravating circumstance,³⁹³ in particular because that was the essence of his position there.³⁹⁴

169. The Defence further submits that neither the agreed facts nor any of the allegations during the hearings indicate that Došen subjected any detainees to mistreatment, humiliation or degradation.³⁹⁵

170. The Defence also submits that, while Došen has admitted that the detention conditions were very difficult,³⁹⁶ he did all he could to help the detainees and to protect them to the extent possible.³⁹⁷

171. Accordingly, the Defence submits, there are no aggravating factors in relation to Došen's crime of persecution.

ii. Findings

172. The Chamber is of the view that Damir Došen's position as shift leader is an aggravating factor in relation to this crime. He was in a position of trust which he abused: he permitted the persecution of, and condoned violence towards, the very people he should have been protecting. However, the amount of aggravation must be limited in light of the limited nature of his authority.

173. The Chamber does not consider that any of the other points raised by the Prosecution are capable of being construed as aggravating factors in relation to the crime of persecution of which Damir Došen has been convicted.

(ii) Mitigating circumstances

a. Arguments of the Parties

174. The Prosecution submits that, while a plea of guilt is usually a mitigating circumstance,³⁹⁸ the accused must demonstrate some degree of contrition and honesty. The Prosecution further

³⁹² Došen Sentencing Brief, para. 18; Sentencing Hearing, T. 5725.

³⁹³ Došen Sentencing Brief, para. 18; Sentencing Hearing, T. 5725-26.

³⁹⁴ Sentencing Hearing, T. 5726.

³⁹⁵ Došen Sentencing Brief, paras 19-20; Sentencing Hearing, T. 5726.

³⁹⁶ Došen Plea Agreement, para. 10, referred to in Došen Sentencing Brief, para. 21; Sentencing Hearing, T. 5726.

³⁹⁷ Došen Plea Agreement, paras 13-14, referred to in Došen Sentencing Brief, para. 21.

³⁹⁸ *Prosecutor v. Dražen Erdemovic*, Case No. IT-96-22, Sentencing Judgement, 5 Mar. 1998 ("*Erdemovic Sentencing Judgement*"); *Jelisić* Appeal Judgement; *Prosecutor v. Kambanda*, Case No. ICTR-97-23-A, Judgement, 19 Oct. 2000; *Todorović* Sentencing Judgement, referred to in Prosecution Sentencing Brief, para. 80.

submits that, because of the lateness of the plea, the victims and witnesses were not saved from having to give evidence and in particular from being cross-examined, and that very little time was saved in this instance.³⁹⁹ Accordingly, it is submitted, the plea entered by Do{en should be accorded little weight.⁴⁰⁰

175. The Prosecution, however, agrees that it is important that Damir Do{en, as a person of Serbian ethnicity from the Prijedor region, has acknowledged his guilt and admitted to perpetrating the crime.⁴⁰¹ In the Prosecution's submission, such acknowledgement is very rare,⁴⁰² and it considers this to be important for the process of reconciliation.⁴⁰³

176. The Prosecution acknowledges that Damir Do{en expressed some remorse to the detainees whilst in Keraterm.⁴⁰⁴ However, it recalls that there is also evidence that Do{en said that the detainees in Room 3 deserved their fate,⁴⁰⁵ and that any remorse expressed at the time the offences were committed should be weighed against that evidence.⁴⁰⁶ Moreover, the Prosecution submits that the psychiatric report of Dr. Kmeti} concerning Do{en does not refer to any expression of remorse.⁴⁰⁷

177. The Prosecution contends that Damir Do{en has failed to establish that he was suffering from a diminished mental capacity at the time the offences took place.⁴⁰⁸ According to the Prosecution, the evidence suggests that, while there were various factors which may have given rise to post-traumatic stress disorder, Damir Do{en was not afflicted with this disorder at Keraterm.⁴⁰⁹ In this regard, the Prosecution notes that Do{en was able to continue his duties even after the Room 3 massacre, and that he was able to function in society after he left the camp.⁴¹⁰ Moreover, the Prosecution submits that much of the stress that Damir Do{en has suffered first materialised after he became aware that he was under investigation and upon being taken into custody.⁴¹¹ The Prosecution therefore considers that, at most, Do{en is suffering from post-traumatic stress disorder,

³⁹⁹ *Todorovi}* Sentencing Judgement, para. 81, referred to in Prosecution Sentencing Brief, para. 80.

⁴⁰⁰ Prosecution Sentencing Brief, para. 80.

⁴⁰¹ Sentencing Hearing, T. 5676-77.

⁴⁰² *Ibid.*, T. 5677.

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.*, T. 5676.

⁴⁰⁵ Prosecution Sentencing Brief, para. 75; Sentencing Hearing, T. 5676.

⁴⁰⁶ Sentencing Hearing, T. 5676.

⁴⁰⁷ *Ibid.*, T. 5677.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid.*, T. 5677-78.

⁴¹⁰ *Ibid.*, T. 5678.

⁴¹¹ *Ibid.*

not diminished mental capacity, and the Chamber should not reduce the sentence in light of his condition.⁴¹²

178. The Prosecution submits that, while prior to the commission of the crimes Do{en was a person of good character, and that during and afterwards he suffered personal hardship,⁴¹³ the Defence has failed to link such hardship to the offences that occurred in Keraterm. Accordingly, the Prosecution considers that this factor does not justify a significant reduction in sentence.⁴¹⁴

179. The Defence notes that some Prosecution witnesses testified that Do{en had Muslim friends and never drew distinctions among people on the basis of their ethnic background.⁴¹⁵ The Defence further submits that seven witnesses, who were detained in the Keraterm camp, testified in favour of Do{en.⁴¹⁶

180. The Defence notes that Do{en could not have avoided the military call-up,⁴¹⁷ and that some Defence witnesses testified that Do{en had told them that he was in Keraterm against his will and that he could no longer perform this duty.⁴¹⁸

181. The Defence contends that the Do{en Plea Agreement referred to evidence that Do{en asserted his influence to improve conditions in the camp.⁴¹⁹ In this regard, the Defence observes that many witnesses testified that when Do{en was on duty people had enough time to eat decently;⁴²⁰ they could receive food;⁴²¹ there was water;⁴²² detainees were never beaten when he was around⁴²³ or that Do{en tried to prevent beatings;⁴²⁴ detainees could leave their rooms;⁴²⁵ Do{en did not mistreat or beat anyone;⁴²⁶ and that he helped detainees to go to the hospital or to receive medical care.⁴²⁷ The Defence emphasises that some of the witnesses testified that Do{en

⁴¹² *Ibid.*

⁴¹³ Prosecution Sentencing Brief, para. 81 and n. 206 referring to the death of his infant son and of his father; Sentencing Hearing, T. 5678.

⁴¹⁴ Sentencing Hearing, T. 5680.

⁴¹⁵ Witness A, T. 714, 718; Witness B, T. 825; Witness H, T. 1798; Witness M, T. 2784; Sentencing Hearing, T. 5727. See also Witness DN, T. 5141; Karlo Petrinovic, T. 5312-13; Witness DQ, T. 5342-43, 5346.

⁴¹⁶ Sentencing Hearing, T. 5729.

⁴¹⁷ *Ibid.*, T. 5727.

⁴¹⁸ Witness DN, T. 5142; Witness DO, T. 5244.

⁴¹⁹ Do{en Plea Agreement, para. 13, referred to in Do{en Sentencing Brief, paras 25-27; Sentencing Hearing, T. 5728.

⁴²⁰ Witness A, T. 592.

⁴²¹ Witness DG, T. 4610; Husein Ganic, T. 5049-50.

⁴²² Witness B, T. 764, 826.

⁴²³ Witness A, T. 625-26; Jusuf Arifagic, T. 1652; Senad Kenjar, T. 3582.

⁴²⁴ Witness G, T. 1708, 1756; Witness I, T. 2115, 2118; Witness P, T. 3106, 3203; Witness S, T. 3667, 3669; Witness DP, T. 5272.

⁴²⁵ Witness B, T. 825; Witness C, T. 955; Witness W, T. 3910.

⁴²⁶ Witness A, T. 625-26, 702; Witness B, T. 826; Senad Kenjar, T. 3582.

⁴²⁷ Witness A, T. 710; Witness B, T. 825; Witness F, T. 1427, Jusuf Arifagic, T. 1564; Witness H, T. 1806, 1888; Senad Kenjar, T. 3582; Witness W, T. 3910, 3917; Husein Ganic, T. 5037.

tried to talk with the detainees⁴²⁸ and was generally friendly with them.⁴²⁹ The Defence also points out that some Defence witnesses testified that Do{en helped them at great personal risk to himself.⁴³⁰ Moreover, the Defence submits that Do{en did all of this regardless of whether he had known those people before or not.⁴³¹

182. The Defence points out that Damir Do{en was 25 years old at the relevant time and had only graduated from primary school.⁴³² The Defence underscores that Do{en lost his first child, a son,⁴³³ immediately prior to the outbreak of the conflict,⁴³⁴ and that his father died in February 2000, i.e., three months after his arrest.⁴³⁵

183. Moreover, the Defence notes that Do{en's wife is unemployed and lives with their two children, aged 8 years, and 16 months,⁴³⁶ and with his mother, who suffers from serious mental disorders.⁴³⁷ The Defence submits that Do{en's family lives in Prijedor in very difficult material circumstances.⁴³⁸ The Defence submits that these personal circumstances should be taken into account in mitigation of sentence.⁴³⁹

184. The Defence points out that Damir Do{en has been in the United Nations Detention Unit for two years and that the Commander of the United Nations Detention Unit stated in his report that Do{en has behaved well during his incarceration.⁴⁴⁰

185. The Defence submits that Do{en has expressed remorse and that he is deeply sorry for those who suffered in Keraterm.⁴⁴¹ The Defence contends that some witnesses testified that they saw Do{en apologising for mistreatment in the camp,⁴⁴² that he was in disagreement with the policy of the Serb Democratic Party, and that he felt that the guilty persons should be brought to the police.⁴⁴³ Some witnesses testified that Do{en cried many times while in the camp.⁴⁴⁴ The Defence therefore

⁴²⁸ Jusuf Arifagic, T. 1651; Ante Tomic, T. 1994; Salko Saldumovic, T. 3498; Witness DG, T. 4610; Witness DN, T. 5142, 5144; Witness DO, T. 5244; Witness DR, T. 5565; Witness DM, T. 5089; Sentencing Hearing, T. 5728.

⁴²⁹ Witness DG, T. 4610; Witness DN, T. 5142, 5144; Witness DR, T. 5565.

⁴³⁰ Witness DN, T. 5144; Witness DP, T. 5271.

⁴³¹ Sentencing Hearing, T. 5728.

⁴³² Do{en Sentencing Brief, paras 29-30; Sentencing Hearing, T. 5727.

⁴³³ Exhs D15/2, D16/2, D17/2.

⁴³⁴ Do{en Sentencing Brief, paras 29-30; Sentencing Hearing, T. 5727.

⁴³⁵ Sentencing Hearing, T. 5731, 5325-28.

⁴³⁶ *Ibid.*, T. 5730-31.

⁴³⁷ Exhs D19/2, D41/2, referred to in Do{en Sentencing Brief, paras 29-30; Sentencing Hearing, T. 5731.

⁴³⁸ Sentencing Hearing, T. 5731.

⁴³⁹ Do{en Sentencing Brief, paras 29-30.

⁴⁴⁰ Report on Behaviour, 19 Sept. 2001, Exh. D50/2, referred to in Do{en Sentencing Brief, para. 31; Sentencing Hearing, T. 5733.

⁴⁴¹ Do{en Sentencing Brief, para. 32.

⁴⁴² Witness A, T. 626; Jusuf Arifagic, T. 1596; Witness P, T. 3138; Sentencing Hearing, T. 5730.

⁴⁴³ Jusuf Arifagic, T. 1596, 1663.

⁴⁴⁴ Witness A, T. 713; Witness F, T. 1504; Jusuf Arifagic, T. 1663.

considers that Damir Došen expressed remorse as early as 1992, at the time the offence was perpetrated, and that this must have special weight as a mitigating circumstance.⁴⁴⁵

186. The Defence considers that the plea of guilty by Došen has a great impact on the realisation of one of the most important functions of the International Tribunal, namely the understanding that a criminal offence was perpetrated and that one must be held accountable for it.⁴⁴⁶ Moreover, the Defence notes that the guilty plea had a strong echo in Prijedor because it indicated to those of Serbian nationality that there are people brave enough to admit that evil happened,⁴⁴⁷ and it is an example to all those “who should stand up and confess their guilt, thus contributing to what is so sorely needed in Bosnia and Herzegovina today: truth, justice and reconciliation.”⁴⁴⁸ The Defence points out that, with this act, Damir Došen has greatly contributed to the fact that in Prijedor today, people are speaking much more freely about crime and responsibility for crimes, which contributes to important functions of the International Tribunal, namely, truth-finding and reconciliation.⁴⁴⁹ Therefore, the Defence submits that Došen’s admission of guilt should be taken into account as a mitigating factor.⁴⁵⁰

187. The Defence submits that Došen’s guilty plea and his agreement with the Prosecution have helped to shorten the proceedings.⁴⁵¹ Moreover, the Defence regards as an important element the fact that Došen has waived his right to an appeal in the event that the Chamber pronounces a sentence within the limits set by the Plea Agreement.⁴⁵²

188. According to the Defence, the *^elebi}i* Appeal Judgement established that where an accused seeks to rely on diminished mental capacity in mitigation of sentence, he must demonstrate that, more probably than not, such a condition existed at the relevant time.⁴⁵³

189. The Defence considers that, over the relevant period, Došen experienced multiple traumas and stresses: namely, the death of his first baby and the situation in Keraterm.⁴⁵⁴ The Defence points out that both situations were characterised by expert Dr. Leci}-Tosevski as acute stress reactions that in a later stage transformed into a post-traumatic stress disorder, where the difference between acute stress reaction and a post-traumatic stress disorder is only in its duration and

⁴⁴⁵ Došen Sentencing Brief, para. 33.

⁴⁴⁶ *Ibid.*, para. 36.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ Sentencing Hearing, T. 5733.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Došen Sentencing Brief, para. 36.

⁴⁵¹ Sentencing Hearing, T. 5733.

⁴⁵² *Ibid.*, T. 5733-34.

⁴⁵³ *Celebici* Appeal Judgement, para. 590, referred to in Došen Sentencing Brief, para. 38.

⁴⁵⁴ Du{ica Lecic-Tosevski, T. 5580, Exh. D41/2, pp. 5, 6.

intensity of symptoms.⁴⁵⁵ The Defence considers that the acute stress reaction caused by the loss of the child seriously compromised Do{en's capacity to respond adequately to the events and circumstances in which he found himself.⁴⁵⁶ The Defence argues that Do{en's mental state, both during the commission of the acts and today, is a mitigating factor.⁴⁵⁷

190. The Defence submits that Do{en is suffering from post-traumatic stress disorder of a chronic type, generalised anxiety disorder, and major depressive disorder of a recurrent type.⁴⁵⁸ It also points out that Do{en's behaviour is characterised by dependency, passivity, hypersensitivity, emotional vulnerability, with elevated anxiety and fears, the wish to be accepted, and that he is incapable of taking a leadership role.⁴⁵⁹ The Defence refers to Dr. Leci}-Tosevski who concluded that, in view of the established diagnosis and heredity, there are prospects for development of a more severe depression, with a risk of suicide.⁴⁶⁰

191. The Defence notes that both expert opinions were formed in accordance with the standards of psychiatric and psychological expert witnessing and exploration of personality.⁴⁶¹

b. Findings

192. The Chamber will consider the following factors in mitigation of Damir Do{en's sentence: his plea of guilt, his remorse, and the assistance he provided to some of the detainees at the Keraterm camp.

193. In relation to the plea of guilt, for the same reasons as set forth in relation to Sikirica, the Chamber considers that, despite the lateness of his guilty plea, Damir Do{en should receive some credit.

194. As noted above with respect to Sikirica, it was stated in the *Todorovi}* case that "the Trial Chamber must be satisfied that the expressed remorse is sincere". In his statement at the Sentencing Hearing, Damir Do{en acknowledged that the people who were detained in the Keraterm camp "were innocent and they were suffering grievously. A crime has been committed against these people, and I am prepared to take my part of the responsibility for this crime ...".⁴⁶² He went on to say that he was "sorry for every man who suffered, every family that lost a family

⁴⁵⁵ Du{ica Lecic-Tosevski, T. 5581.

⁴⁵⁶ Do{en Sentencing Brief, para. 39; Sentencing Hearing, T. 5732.

⁴⁵⁷ Do{en Sentencing Brief, para. 39; Sentencing Hearing, T. 5732-33.

⁴⁵⁸ Du{ica Lecic-Tosevski, T. 5579-80.

⁴⁵⁹ Exh. D41/2, p. 11; Exh. D19/2, p. 12 (cited by Defence as p. 13).

⁴⁶⁰ Do{en Sentencing Brief, para. 40.

⁴⁶¹ *Ibid.*, para. 42.

⁴⁶² Sentencing Hearing, T. 5736.

member, every child that has lost a father".⁴⁶³ The Chamber considers Damir Došen's expression of remorse in relation to his crime to be sincere. Consequently, it will be treated as a mitigating factor, albeit of limited effect, in the determination of his sentence.

195. The Chamber has also taken into account the evidence that Došen, as shift leader, often acted to ameliorate the terrible conditions that prevailed in the Keraterm camp, in relation to particular detainees.⁴⁶⁴ The Chamber considers that Damir Došen's acts in this regard constitute a mitigating factor for purposes of sentencing.

196. The Defence has argued that, in addition to the foregoing considerations, Došen's diminished mental capacity should be taken into account in mitigation of sentence. The Chamber does not consider this to constitute a mitigating factor in the circumstances of this case for the following reasons.

197. In the *^elebi}i* case, the Appeals Chamber established that Rule 67 (A)(ii)(b) of the Rules, pursuant to which the Defence shall notify the Prosecution of its intent to offer any special defence, including that of diminished mental responsibility, must be interpreted as referring to diminished mental responsibility where it is raised by the accused as a matter in mitigation of sentence. The Appeals Chamber further stated that, where the accused relies on this in mitigation, he must establish the condition on the balance of probabilities, in other words, he must show that, more probably than not, such a condition existed at the relevant time.⁴⁶⁵

198. The conclusion of Dr. Leci}-Tosevski's examination of Damir Došen was that, during the relevant period, there was evidence of acute stress reactions, due to the death of his first baby and the situation in Keraterm, that in a later stage transformed into a post-traumatic stress disorder.⁴⁶⁶ During her testimony, Dr. Leci}-Tosevski said that the only differences between acute stress reaction and a post-traumatic stress disorder are the duration and the intensity of symptoms.⁴⁶⁷ The second expert witness, Dr. Najman, did not deal in her report with the specific question of diminished mental capacity but considered that Došen was suffering from vulnerability, "depressiveness" and insecurity, especially after the traumatic event of the death of his first child.⁴⁶⁸

199. The Chamber concludes that Damir Došen's condition at the time his crimes were committed was not one which could give rise to mitigation of sentence.

⁴⁶³ *Ibid.*, T. 5737.

⁴⁶⁴ See paragraphs 60, 74 - 77, 83, 93, 98, 158 - 59.

⁴⁶⁵ *^elebi}i* Appeal Judgement, para. 590.

⁴⁶⁶ Dušica Leci}-Tosevski, T. 5580-82.

⁴⁶⁷ *Ibid.*, T. 5581.

⁴⁶⁸ Exh. D19/2; Ana Najman, T. 5369-71.

(c) Dragan Kolund`ija

(i) Gravity of the crime

a. Criminal conduct forming basis for conviction: confinement in inhumane conditions

200. Dragan Kolund`ija was a shift leader at the Keraterm camp from early June to 25 July 1992. Prior to his promotion to shift leader, he had been a guard at the camp.⁴⁶⁹ As shift leader he had some control over 6 to 12 guards on his shift and thus exercised some authority in the Keraterm camp.⁴⁷⁰ Kolund`ija admits that he was in a position to influence the day-to-day running of the camp when he was on duty.⁴⁷¹

201. Several witnesses testified about Kolund`ija's position in the camp. For instance, Witness A said that Kolund`ija was a shift commander and that he wore a uniform of camouflage trousers and olive-green shirt but no insignia of rank.⁴⁷² Witness F said that Kolund`ija was one of the shift commanders, each of whom had keys to the rooms and decided who would get water.⁴⁷³ Hajrudin Zubovic also identified Kolund`ija as a shift leader.⁴⁷⁴

202. There is no evidence that Kolund`ija personally mistreated or condoned the mistreatment of detainees by others.⁴⁷⁵ He accepts that there is evidence that mistreatment occurred regularly at the Keraterm camp during the period when he was a shift leader⁴⁷⁶ and he accepts responsibility for continuing as a shift leader despite being aware of the inhumane camp conditions.⁴⁷⁷

203. More specifically, Kolund`ija admits that there is ample evidence that the Bosnian Muslims, Bosnian Croats and other non-Serbs were subjected to inhumane conditions during their confinement at the Keraterm camp.⁴⁷⁸ As described above, these conditions included: insufficient food and water; inadequate medical care and treatment; overcrowding and lack of opportunities for

⁴⁶⁹ Agreed Facts, pp. 1, 3–4. Kolund`ija returned to the camp in a different capacity on about 30 July 1992.

⁴⁷⁰ Agreed Facts, pp. 2-3.

⁴⁷¹ *Ibid.*

⁴⁷² Witness A, T. 629, 742.

⁴⁷³ Witness F, T. 1407-09.

⁴⁷⁴ Hajrudin Zubovic, T. 2561-62.

⁴⁷⁵ Agreed Facts, p. 3.

⁴⁷⁶ Kolund`ija Plea Agreement, p. 1.

⁴⁷⁷ Agreed Facts pp. 3–4.

⁴⁷⁸ *Ibid.*, p. 2.

fresh air and exercise; lack of proper hygiene arrangements,⁴⁷⁹ and, in addition, humiliation, harassment and psychological abuse of the detainees leading to a general atmosphere of terror.⁴⁸⁰

b. Aggravating circumstances

i. Arguments of the Parties

204. The Prosecution concedes that almost all the witnesses testified that Kolund`ija did not personally mistreat or condone the mistreatment of detainees and, indeed, frequently prevented guards on his shift from doing so, and that he also attempted to prevent some visitors from mistreating or killing the detainees under his care during his shift.⁴⁸¹ However, the Prosecution contends that, although he was aware of the conditions under which the detainees were being kept, he maintained his employment and position as a shift leader until after the Room 3 massacre which occurred while he was on duty.⁴⁸²

205. The Prosecution notes that, while there is evidence that Kolund`ija gave preferential treatment to some of the prisoners, he did not extend the same privileges to all detainees.⁴⁸³ The Prosecution submits that although Kolund`ija's acts of kindness were not confined to those he knew, he always gave preferential treatment to detainees he knew.⁴⁸⁴ The Prosecution points out, for instance, that the men from the Brdo area were kept in their room for days, including during Dragan Kolund`ija's shift, without food or water.⁴⁸⁵

206. Even if many witnesses testified that Kolund`ija's shift was the "best shift",⁴⁸⁶ the Prosecution submits that, in any event, conditions were terrible and inhumane.⁴⁸⁷ Moreover, it is submitted that Kolund`ija accepted a promotion from guard to shift leader in full knowledge that beatings and murders were taking place and that the conditions in the camp were horrendous.⁴⁸⁸

⁴⁷⁹ See paragraphs 62 – 65, 67 – 78.

⁴⁸⁰ Agreed Facts p. 3. See paragraphs 84 – 100.

⁴⁸¹ Prosecution Sentencing Brief, para. 86; Sentencing Hearing, T. 5682.

⁴⁸² Prosecution Sentencing Brief, para. 86.

⁴⁸³ *Ibid.*, para. 87; Sentencing Hearing, T. 5682-83.

⁴⁸⁴ *Ibid.*, Sentencing Hearing, T. 5684.

⁴⁸⁵ *Ibid.*

⁴⁸⁶ Prosecution Sentencing Brief, para. 87; Sentencing Hearing, T. 5683.

⁴⁸⁷ Prosecution Sentencing Brief, para. 87; Sentencing Hearing, T. 5683.

⁴⁸⁸ Prosecution Sentencing Brief, para. 87; Sentencing Hearing, T. 5682, 5684.

207. The Prosecution also asserts that Kolund`ija was in the same situation as Do{en in that, as a reserve police officer, he had an obligation to protect people.⁴⁸⁹

208. The Defence submits that, as a shift leader, Kolund`ija had no power to discipline or punish guards who misbehaved on his shift; he only had the power to report misconduct to a superior. The Defence points out that this was conceded in Do{en's case.⁴⁹⁰ According to the Defence, there is no evidence that Kolund`ija held a position of superior authority but failed to take action to prevent or punish mistreatment;⁴⁹¹ indeed, there is some testimony to the contrary.⁴⁹² Moreover, the Defence submits that Kolund`ija could not be expected to exercise any power over guards on other shifts when he was not present.⁴⁹³

209. The Defence contends that, as a shift leader, Kolund`ija had no power to change the basic conditions of overcrowding, food, water shortage or lack of sanitary and hygienic care in the camp.⁴⁹⁴ The Defence notes that the Prosecution did not submit any evidence that Kolund`ija had such power⁴⁹⁵ and that, on the contrary, there was evidence that no such power existed.⁴⁹⁶ The Defence further submits that this was conceded by the Prosecution in Do{en's case.⁴⁹⁷ The Defence contends that Kolund`ija tried to improve those conditions over which he did have some control.⁴⁹⁸

ii. Findings

210. The Trial Chamber finds that Dragan Kolund`ija was in a similar position in the camp to that of Do{en, i.e., a shift leader with limited authority. By continuing as a shift leader, although aware of the conditions, he was abusing his position of trust. This amounts to an aggravating factor in his case, albeit limited in line with his authority.

⁴⁸⁹ Sentencing Hearing, T. 5685.

⁴⁹⁰ Do{en Plea Agreement, para. 11, referred to in Kolund`ija Sentencing Brief, p. 27.

⁴⁹¹ Kolund`ija Sentencing Brief, p. 26.

⁴⁹² *Ibid.*, p. 26-27, referring to Witness DK, T. 4798 and Du{an Lakcevi}, T. 5483-86.

⁴⁹³ *Ibid.*

⁴⁹⁴ Kolund`ija Sentencing Brief, p. 27, Sentencing Hearing, T. 5757.

⁴⁹⁵ Kolund`ija Sentencing Brief, p. 27, Sentencing Hearing, T. 5757.

⁴⁹⁶ Du{an Lakcevi}, T. 5486; Witness DK, T. 4800.

⁴⁹⁷ Do{en Plea Agreement, para. 11, referred to in Kolund`ija Sentencing Brief, p. 27; Sentencing Hearing, T. 5757.

⁴⁹⁸ Sentencing Hearing, T. 5757.

(ii) Mitigating circumstances

a. Arguments of the Parties

211. In relation to mitigating circumstances, the Prosecution notes that Kolund`ija admitted his guilt after the Prosecution case had been fully presented, but before presenting his defence case.⁴⁹⁹ The Prosecution asserts that, although Dragan Kolund`ija has saved the Chamber some time, it would have been preferable had he entered his plea earlier.⁵⁰⁰

212. The Defence submits that Kolund`ija, by pleading guilty to the crime of persecution, has shown a significant degree of remorse. It points out that the International Tribunal has considered a guilty plea as a proof of honesty⁵⁰¹ and as proof of establishing the truth,⁵⁰² and that guilty pleas must be encouraged considering their rarity.⁵⁰³ The Defence notes that, in this case, Kolund`ija's expression of remorse is particularly strong, as he said that he wanted to admit his guilt, even if he is to be acquitted.⁵⁰⁴

213. The Defence also considers that, while Kolund`ija did not plead at the earliest possible opportunity, there has still been a saving of time and money for the International Tribunal, as the Defence case had not yet begun when Kolund`ija changed his plea.⁵⁰⁵ Moreover, the Defence notes that, in waiving his right to appeal the Judgement on Defence Motions to Acquit, the ruling against his request for the Prosecution to make further disclosure, and "upon conviction (if such had resulted)", Kolund`ija has saved the International Tribunal time and resources.⁵⁰⁶ Furthermore, the Defence emphasises that Kolund`ija's plea may have precipitated the guilty pleas of his co-accused, which also shortened the length of the trial overall.⁵⁰⁷ The Defence submits that a guilty plea must be encouraged by way of a reduction in sentence.⁵⁰⁸

214. The Defence also submits that the lateness of Kolund`ija's plea must not be held against him, because, if Kolund`ija had pleaded earlier, the Chamber would not have known the truth about

⁴⁹⁹ Prosecution Sentencing Brief, para. 88; Sentencing Hearing, T. 5685.

⁵⁰⁰ Prosecution Sentencing Brief, para. 88.

⁵⁰¹ *Erdemovi*} Sentencing Judgement, para. 16, referred to in Kolund`ija Sentencing Brief, p. 23; Sentencing Hearing, T. 5768.

⁵⁰² *Todorovi*} Sentencing Judgement, para. 81, referred to in Kolund`ija Sentencing Brief, p. 23.

⁵⁰³ Opinion of Judge Cassese in the *Erdemovi*} Appeal Judgement. The Defence also notes that out of 47 cases completed or awaiting trial before the International Tribunal, only 3 have been guilty pleas before Kolund`ija's case. See Kolund`ija Sentencing Brief, p. 23.

⁵⁰⁴ Sentencing Hearing, T. 5769.

⁵⁰⁵ Prosecution Sentencing Brief, para. 88; Sentencing Hearing, T. 5765.

⁵⁰⁶ Kolund`ija Sentencing Brief, p. 23; Sentencing Hearing, T. 5765.

⁵⁰⁷ Kolund`ija Sentencing Brief, p. 24; Sentencing Hearing, T. 5767.

⁵⁰⁸ Sentencing Hearing, T. 5767.

what happened in the camp, and Kolund`ija would have been sentenced to a far longer term of imprisonment, unjustly.⁵⁰⁹

215. The Defence argues that Kolund`ija was never a free agent who could exercise discretion: he was conscripted in time of war, he was not a volunteer, and he was ordered to fulfil the task of a reserve unranked police guard at the time.⁵¹⁰ The Defence further argues that Kolund`ija would have been imprisoned had he deserted.⁵¹¹ The Defence contends that Kolund`ija disagreed with what went on in the camp.⁵¹² Although there is no defence of "superior orders", the Defence refers to Article 7, paragraph 4, of the Statute and submits that the circumstance of a subordinate having to obey orders may be considered in mitigation.⁵¹³

216. The Defence submits that there is evidence that Kolund`ija complained about the conditions at Keraterm camp and the behaviour of outsiders to his superior, @ivko Kne`evic, on several occasions,⁵¹⁴ and underscores that the Prosecution adduced no evidence that Kolund`ija failed to complain.⁵¹⁵ The Defence also points out that, after the Room 3 massacre, Dragan Kolund`ija threw his gun down in anger at the feet of @ivko Kne`evic and did not return for duty for some days.⁵¹⁶

217. The Defence argues that many witnesses testified that Kolund`ija, at considerable risk to himself, helped to protect detainees from violence.⁵¹⁷ There is evidence that, on one occasion, he prevented a soldier from firing on the dormitory,⁵¹⁸ that he prevented guards or outsiders from beating detainees,⁵¹⁹ and that he told the detainees to go back to their room when beatings occurred.⁵²⁰ One witness testified that he did his best;⁵²¹ another testified that Kolund`ija told him that he would go back home.⁵²²

218. The Defence submits that the limited extent of violence may be specifically relied on as a mitigating factor by the International Tribunal.⁵²³ The Defence points out that Kolund`ija never

⁵⁰⁹ Kolund`ija Sentencing Brief, p. 24; Sentencing Hearing, T. 5767.

⁵¹⁰ Kolund`ija Sentencing Brief, p. 24; Witness DN, referred to in T. 5746.

⁵¹¹ Sentencing Hearing T. 5748, referring to two persons who did not respond to the call-up: one was sentenced to two years' imprisonment, the other to eight years' imprisonment.

⁵¹² Kolund`ija Sentencing Brief, p. 24; Witness A, referred to in T. 5746-47.

⁵¹³ Kolund`ija Sentencing Brief, p. 24, Sentencing Hearing, T. 5752.

⁵¹⁴ Witness DK, T. 4803-06; Sentencing Hearing, T. 5749-51.

⁵¹⁵ Kolund`ija Sentencing Brief, p. 29.

⁵¹⁶ Sentencing Hearing, T. 5751.

⁵¹⁷ Kolund`ija Sentencing Brief, p. 31; Sentencing Hearing, T. 5754.

⁵¹⁸ Witness A, T. 627-32, referred to in Kolund`ija Sentencing Brief, p. 31; Sentencing Hearing, T. 5754-55.

⁵¹⁹ Witness W, T. 3878-950, referred to in Kolund`ija Sentencing Brief, pp. 31-32; Witness E, T. 1269-300, referred to in Kolund`ija Sentencing Brief, p. 35; Witness A, referred to in Sentencing Hearing, T. 5754-57.

⁵²⁰ Witness A, T. 627-32, referred to in Kolund`ija Sentencing Brief, p. 31; Sentencing Hearing, T. 5755-56.

⁵²¹ Witness DM, T. 5093.

⁵²² Witness X, T. 4117.

⁵²³ Sentencing Hearing, T. 5752.

mistreated or tolerated mistreatment of detainees at the camp⁵²⁴ and that, often at risk to himself, he went out of his way to help to relieve the conditions.⁵²⁵ The Defence submits that it is not a common denominator between the three defendants that there were beatings; there were no beatings on Kolund`ija's shift.⁵²⁶ The Defence relies on the testimony of many witnesses stating that Kolund`ija never prevented anyone from going to the toilets; food, water, medicine and insecticides were brought to the camp and distributed; detainees could leave their rooms for fresh air; detainees had time to eat decently; there was no killing or mistreatment when he was around; detainees could wash themselves; he allowed people to use the telephone; he allowed the detainees to receive blankets; and he took a few of the inmates to see their families.⁵²⁷ The Defence points out that he took detainees home to wash, shower and bathe.⁵²⁸ The Defence notes that many witnesses testified that they considered Kolund`ija's shift to be the best and the safest.⁵²⁹ One witness testified that Kolund`ija always behaved decently towards him,⁵³⁰ another witness referred to him as a kind person,⁵³¹ and another as a good man.⁵³² The Defence also points out that one witness testified that Kolund`ija disobeyed the order of a superior and might have been punished for having allowed men to come out of their room.⁵³³ The Defence further submits that some witnesses testified that they would have been killed if Kolund`ija had not been there.⁵³⁴

219. The Defence accepts that Kolund`ija knew a lot of the detainees, since he had been born and raised in Prijedor along with them.⁵³⁵ The Defence, relying on witness testimonies and statements from former detainees,⁵³⁶ contests the Prosecution's submission that Kolund`ija only gave preferential treatment to those he knew.⁵³⁷

220. The Defence also notes that Kolund`ija behaved the same way towards the Room 3 detainees as the rest of the detainees: one former detainee stated that, when Kolund`ija heard that

⁵²⁴ Since this is conceded by the Prosecution in the Kolund`ija Plea Agreement, the Defence decided not to give any example, but referred to Witness S, T. 3676; Salko Saldumovic, T. 3527; Witness DN, T. 5151-52, see Kolund`ija Sentencing Brief, p. 33; Sentencing Hearing, T. 5752.

⁵²⁵ Kolund`ija Sentencing Brief, p. 32.

⁵²⁶ Sentencing Hearing, T. 5754.

⁵²⁷ See Kolund`ija Sentencing Brief, pp. 33-40, citing Witness A, T. 561-745; Witness B, T. 745-864; Witness C, T. 896; Witness E, T. 1269-300; Fikret Hidi}, T. 2355-68; Witness M, T. 2798-802; Witness O, T. 3022-25; Salko Saldumovi}, T. 3528; Senad Kenjar, T. 3592; Witness DK, T. 4752-877; Witness DN, T. 5132-211; Sentencing Hearing, T. 5757-59.

⁵²⁸ Sentencing Hearing, T. 5757.

⁵²⁹ See Kolund`ija Sentencing Brief, pp. 33-40, citing Witness A, T. 561-745; Witness C, T. 896; Hajrudin Zubovic, T. 2654-58; Senad Kenjar, T. 3592; Witness DN, T. 5132-211; Sentencing Hearing, T. 5762.

⁵³⁰ Witness J, T. 2166.

⁵³¹ Salko Saldumovic, T. 3528.

⁵³² Witness DN, T. 5157.

⁵³³ See Kolund`ija Sentencing Brief, p. 37, citing Witness P, T. 3219-3133; Sentencing Hearing, T. 5748-49.

⁵³⁴ Witness A; Witness B, referred to in Sentencing Hearing, T. 5762.

⁵³⁵ Sentencing Hearing, T. 5760.

⁵³⁶ Witness DN, T. 5155; Witness Statements filed 8 Oct. 2001 ("Witness Statements") pp. 30, 33, 56 and 64, referred to in Sentencing Hearing, T. 5758-60.

⁵³⁷ Sentencing Hearing, T. 5758.

the people in Room 3 had not been given anything to eat, the detainees from this room were the first to be given food that day.⁵³⁸

221. The Defence asserts that, taking all this evidence into account, Kolund`ija might reasonably have expected to be acquitted on all charges; therefore, it considers that his decision to plead guilty can only be taken as additional and cogent evidence of his remorse.⁵³⁹

222. The Defence submits that Kolund`ija has no criminal convictions to date,⁵⁴⁰ and had an excellent character before and since the war.⁵⁴¹ The Defence submits evidence, from both Croats and Muslims, that Kolund`ija had never discriminated against another nationality or religious group.⁵⁴² The Defence notes that no fewer than 41 Muslim or Croat victims of the camp have spoken in favour of Dragan Kolund`ija before the Chamber.⁵⁴³

223. The Defence refers to the report of the Commander of the United Nations Detention Unit in which it is stated that Kolund`ija has always behaved in a gentlemanly fashion, that he has at all times complied with the Rules of Detention,⁵⁴⁴ that he has been helpful and shown respect for his fellow detainees and so made life more tolerable for all in detention.⁵⁴⁵ The Defence submits that this report is consistent with Kolund`ija's behaviour at Keraterm.⁵⁴⁶

224. The Defence points out that, in the *Furund`ija* case, the Chamber considered that the age and family circumstances of an accused are important factors.⁵⁴⁷ The Defence submits that Kolund`ija is now 41 years old, with elderly parents,⁵⁴⁸ and that he has opportunities for future employment.⁵⁴⁹ The Defence considers that his return to normal life in Prijedor may help restore ethnic harmony.⁵⁵⁰

⁵³⁸ Witness Statements, p. 64.

⁵³⁹ Kolund`ija Sentencing Brief, p. 40.

⁵⁴⁰ *Ibid.*; Witness Statements, referred to in Sentencing Hearing, T. 5769.

⁵⁴¹ The Defence referred to the Witness Statements, of which 23 were from character witnesses, of whom 11 were ethnic Muslims, 8 of whom were detainees at the camp, 8 were ethnic Croats and 2 were Jehovah's Witnesses living in Prijedor.

⁵⁴² Kolund`ija Sentencing Brief, p. 40; Witness A, referred to in Kolund`ija Sentencing Brief, p. 14; Witness DK, T. 4752-877, referred to in Kolund`ija Sentencing Brief, p. 38; Witness Statements pp. 1, 16; Sentencing Hearing, T. 5762-63.

⁵⁴³ Sentencing Hearing, T. 5762.

⁵⁴⁴ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev. 8.

⁵⁴⁵ Report on Behaviour, 19 Sept. 2001, Exh. D4/3, referred to in Kolund`ija Sentencing Brief, p. 40; Sentencing Hearing, T. 5770.

⁵⁴⁶ Kolund`ija Sentencing Brief, p. 41.

⁵⁴⁷ Sentencing Hearing, T. 5770; referring to *Prosecutor v. Anto Furund`ija*, Case No. IT-95-17/1-T, Judgement, 10 Dec. 1998, para. 284.

⁵⁴⁸ Sentencing Hearing, T. 5770.

⁵⁴⁹ Letters from companies prepared to employ Kolund`ija, filed 8 Oct. 2001, referred to in Sentencing Hearing, T. 5770.

⁵⁵⁰ Sentencing Hearing, T. 5771.

225. The Defence submits that Kolund`ija has already been punished severely for his part in Keraterm as he already lost nearly two and a half years of his life in prison, and he is separated from his wife, son and daughter,⁵⁵¹ and from his elderly parents.⁵⁵² The Defence also points out that Dragan Kolund`ija's psychological state has deteriorated substantially over the period he has spent in detention.⁵⁵³

226. For the foregoing reasons, the Defence submits that the level of mitigation must be at the high end of the scale.⁵⁵⁴

b. Findings

227. The Chamber considers the following factors in mitigation of sentence: Dragan Kolund`ija's guilty plea and his favourable treatment of the detainees.

228. The Trial Chamber observes that Kolund`ija, unlike his co-accused, pleaded guilty before the commencement of his case, although after the close of the Prosecution case. For the reasons discussed in relation to Sikirica and Došen's guilty pleas,⁵⁵⁵ and considering the additional savings to the International Tribunal on account of his more timely guilty plea, the Chamber finds that, although not made at the commencement of the proceedings, Dragan Kolund`ija should receive close to full credit for his guilty plea.

229. The Chamber has heard ample evidence of Dragan Kolund`ija's efforts to ease the harsh conditions in the Keraterm camp for many of the detainees.⁵⁵⁶ It considers that, on the basis of the testimony as to his benevolent attitude towards the detainees, Dragan Kolund`ija should receive a significant reduction in his sentence.

230. As noted above with respect to both Sikirica and Došen, a Trial Chamber must be satisfied that any remorse expressed is sincere. In this regard, the Chamber takes account of Dragan Kolund`ija's statement to the Chamber during the Sentencing Hearing, in which he said: "I express regret and remorse for all the acts, including my acts in situations when I could have done more and didn't. I am aware that this is no compensation to my own people of Prijedor, but I do hope that I will be contributing to a new beginning. My remorse will certainly not remove the scars of a

⁵⁵¹ Witness Statements, pp. 9-10, referred to in Kolund`ija Sentencing Brief, p. 41.

⁵⁵² Sentencing Hearing, T. 5771.

⁵⁵³ Petrovic Report and Report of Prof. Jovan Maric, referred to in Kolund`ija Sentencing Brief, p. 41; Sentencing Hearing, T. 5772, referring *inter alia* to an incident obliging the International Tribunal to adjourn a session.

⁵⁵⁴ Kolund`ija Sentencing Brief, p. 41.

⁵⁵⁵ See paragraphs 150 and 193.

⁵⁵⁶ See paragraphs 67 - 73, 75 - 77.

painful past, but I sincerely hope that it will help heal the wounds."⁵⁵⁷ In the Chamber's opinion his expression of remorse was sincere and this will be taken into account in mitigation of sentence.

⁵⁵⁷ Sentencing Hearing, T. 5743.

V. TRIAL CHAMBER'S DETERMINATION OF SENTENCE

231. Having identified the relevant matters to be taken into consideration, the Trial Chamber will now consider the relative weight to be accorded to each factor in determining sentence, in relation to each of the accused. In this regard, the Trial Chamber recalls that the overriding obligation of the Trial Chamber in determining sentence is to "individualise a penalty to fit the individual circumstances of the accused and the gravity of the crime".⁵⁵⁸

232. At the outset, the Chamber notes that each of the accused has been convicted of the crime of persecution, a crime against humanity, which, in the Chamber's opinion, is "inherently very serious".⁵⁵⁹ This crime, like other crimes against humanity, requires that the acts of the accused be related to a widespread and systematic attack on a civilian population of which the accused had knowledge.⁵⁶⁰ Moreover, persecution is the only crime enumerated in Article 5 of the Statute which requires a discriminatory intent, and which, by its nature, may incorporate other crimes. The *Blaški* Trial Chamber and, more recently, this Chamber in the *Todorovi* case, stated that the crime of persecution, on account of these distinctive features, justifies a more severe penalty.⁵⁶¹

1. Duško Sikirica

233. The gravity of Duško Sikirica's crime is distinguished from that of his co-accused on account of the breadth of the underlying criminal conduct and, more significantly, on the basis of the extent of his direct personal involvement in the crimes. He alone has been convicted for committing a murder in the camp, by shooting one of the detainees at close range within view of other detainees and camp guards. As discussed above, that crime is aggravated by his role as Commander of Security within the camp.

234. The primary factor which the Trial Chamber has considered in mitigation of Duško Sikirica's sentence is his guilty plea. His expression of remorse has also been considered. It is worth noting that, had he not pleaded guilty in the circumstances of this case, even taking into account the lateness of that plea, he would have received a much longer sentence.

235. In the case of Duško Sikirica, the Trial Chamber has decided that fifteen years' imprisonment is the appropriate punishment.

⁵⁵⁸ *^elebi}i* Appeal Judgement, para. 717.

⁵⁵⁹ *Todorovi*} Sentencing Judgement paras 32 and 113.

⁵⁶⁰ *Tadi*} Sentencing Appeals Judgement, para. 271; *Prosecutor v. Kordi*} *et al.*, Case No. IT-95-14/2-T, Judgement, 26 Feb. 2001, paras 178, 185.

⁵⁶¹ *Prosecutor v. Tihomir Blaški*}, Case No. IT-95-14-T, Judgement, 3 Mar. 2000, para. 785; *Todorovi*} Sentencing Judgement, para. 113.

236. Duško Sikirica has been detained in the United Nations Detention Unit since his arrest on 25 June 2000. Pursuant to Rule 101 (C), he is entitled to credit for the time he has spent in detention, which amounts to 1 year, 4 months and 19 days. In accordance with Rule 102 (A), the sentence shall begin to run as of today.

2. Damir Došen

237. Damir Došen's offence is a serious one, especially in light of the fact that he has been convicted of the crime of persecution. However, the Chamber, in assessing the gravity of the offence, has borne in mind that, while Damir Došen has admitted to being aware of beatings occurring on his shift, the Plea Agreement does not suggest his direct involvement in any of those beatings.

238. In relation to those factors which have been taken into account in mitigation of sentence, the Trial Chamber considers that Damir Došen's guilty plea and the evidence of the consideration that he showed the detainees are of primary importance. Damir Došen's expression of remorse, which the Trial Chamber has found to be sincere, has also been considered.

239. Accordingly, in relation to Damir Došen, the Trial Chamber finds that five years' imprisonment is the appropriate sentence.

240. Damir Došen has been detained in the United Nations Detention Unit since his arrest on 25 October 1999. Pursuant to Rule 101 (C), he is entitled to credit for the time he has spent in detention, which amounts to 2 years and 19 days. In accordance with Rule 102 (A), the sentence shall begin to run as of today.

3. Dragan Kolund`ija

241. Although Dragan Kolund`ija has been convicted of the crime of persecution, in the Chamber's view, the gravity of his crime is considerably diminished by the fact, as set forth in the Plea Agreement, that there was no evidence of his direct, personal involvement in any of the underlying criminal conduct.⁵⁶²

242. The Trial Chamber has considered the following mitigating circumstances in relation to Dragan Kolund`ija. Firstly, there is his guilty plea, which, unlike those of his co-accused, was entered before the presentation of evidence had commenced in his case. Secondly, there is the fact that many of the former detainees who testified in the Prosecution case gave evidence that Dragan Kolund`ija had, on many occasions, acted to alleviate the appalling conditions that prevailed in the camp.⁵⁶³ These mitigating factors weigh heavily in favour of a substantial reduction in his sentence.

243. Accordingly, in relation to Dragan Kolund`ija, the Chamber has determined that a sentence of three years' imprisonment is appropriate.

244. Dragan Kolund`ija has been detained in the United Nations Detention Unit since his arrest on 7 June 1999. Pursuant to Rule 101 (C), he is entitled to credit for the time he has spent in detention, which amounts to 2 years, 5 months and 6 days. In accordance with Rule 102 (A), the sentence shall begin to run as of today.

⁵⁶² Kolund`ija Plea Agreement, para. 1 (C).

⁵⁶³ See paragraphs 67 - 73, 75 - 77.

VI. DISPOSITION

245. For the foregoing reasons, having considered the arguments of the parties, the evidence presented at the Sentencing Hearing, and the Statute and the Rules, the TRIAL CHAMBER IMPOSES THE FOLLOWING SENTENCES:

In respect of DU[KO SIKIRICA, a sentence of 15 years' imprisonment with credit for 1 year, 4 months and 19 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

In respect of DAMIR DO[EN, a sentence of 5 years' imprisonment with credit for 2 years and 19 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

In respect of DRAGAN KOLUND@IJA, a sentence of 3 years' imprisonment with credit for 2 years, 5 months and 6 days as of the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

Pursuant to Rule 103 (C), each of the convicted persons shall remain in the custody of the International Tribunal pending the finalisation of arrangements for transfer to the State where sentence will be served.

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

Patrick Robinson, Presiding

Richard May

Mohamed Fassi Fihri

Dated this thirteenth day of November 2001
At The Hague
The Netherlands

[Seal of the Tribunal]