

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“STUPNI DO” (IT-95-12)

IVICA RAJIĆ

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Convicted of wilful killing, inhumane treatment (including sexual assault) appropriation of property, extensive destruction not justified by military necessity and carried out unlawfully and wantonly



Commander of units of Bosnian Croat soldiers - the Croatian Defence Council (HVO) - based in Kiseljak, a town in central Bosnia and Herzegovina; also known as Viktor Andrić

- Sentenced to 12 years' imprisonment

Crimes convicted of (examples):

Wilful killing, inhumane treatment (including sexual assault), appropriation of property, extensive destruction not justified by military necessity and carried out unlawfully and wantonly (grave breaches of the Geneva conventions)

- Rajić commanded an attack in October 1993 on the central Bosnian village of Stupni Do near the town of Vareš, which resulted in the murder of at least 37 Bosnian Muslim men, women, elderly and children (approximately six of whom were combatants), as well as the destruction of the village.
- He commanded forces that attacked and looted Vareš, detaining about 250 Bosnian Muslim men, physically and mentally abusing their families and other inhabitants, and sexually assaulting the women. He also ordered the detention of several local Bosnian Croat officials who interfered with the round up and detention of Muslim men of military age.

Born	5 May 1958 in the village of Johovac, Bosnia and Herzegovina
Indictments	Initial: 29 August 1995, made public on 6 September 1995; amended: filed on 14 January 2004, in accordance with an order of the Trial Chamber of 12 January 2004
Arrested	5 April 2003, by Croatian authorities
Transferred to ICTY	24 June 2003
Initial and further appearances	27 June 2003, pleaded not guilty to all charges; 29 January 2004, pleaded not guilty to all charges
Guilty plea	26 October 2005, pleaded guilty to grave breaches of the Geneva conventions
Trial Chamber sentencing judgement	8 May 2006, sentenced to 12 years' imprisonment
Sentence served	13 April 2007, transferred to Spain to serve the remainder of his sentence; credit was given for 1130 days spent in detention; early release granted on 22 August 2011

STATISTICS

As a plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
8 May 2006	
Trial Chamber I	Judge Christine Van Den Wyngaert (presiding), Judge Janet Nosworthy, Judge Frank Höpfel
Counsel for the Prosecution	Kenneth Scott, Ms Josée D'Aoust
Counsel for the Defence	Doris Košta

RELATED CASES
by geographical area
NO RELATED CASES

INDICTMENT AND CHARGES

The initial indictment against Rajić was confirmed on 29 August 1995 and made public on 6 September 1995. An amended indictment was filed on 14 January 2004, following an order by the Trial Chamber of 12 January 2004.

The indictment alleged that Rajić was the commander of the Croatian Defence Council's (HVO) Second Operational Group in the Central Bosnia operational zone, based in the town of Kiseljak. As the commanding officer, Rajić had *de jure* and *de facto* command and control of various HVO units in his area of responsibility (including Kiseljak, Kakanj and Vareš municipalities).

The indictment charged Rajić on the basis of individual criminal responsibility (Article 7(1) of the Statute) and on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- Wilful killing, inhuman treatment (including sexual assault), unlawful confinement of a civilian, appropriation of property, extensive destruction not justified by military necessity and carried out unlawfully and wantonly (grave breaches of the Geneva conventions of 1949, Article 2);
- Murder, outrages upon personal dignity, in particular humiliating and degrading treatment (including sexual assault), cruel treatment, plunder of public and private property, wanton destruction of a city or devastation not justified by military necessity (violations of the laws or customs of war, Article 3).

PRE-TRIAL PROCEEDINGS - Rule 61:

In certain instances, where the Tribunal has been unable to obtain custody of an accused, it has proceeded under Rule 61 of its Rules of Procedure and Evidence. In such proceedings, a full Trial Chamber examines an indictment and the supporting evidence in public and, if it determines that there are reasonable grounds for believing that the accused committed any or all of the crimes charged, confirms the indictment and issues an international arrest warrant. A Rule 61 hearing is not a trial *in absentia* and does not provide for a finding of guilt.

A Rule 61 hearing in the Rajić case took place on 13 September 1996. The Trial Chamber unanimously confirmed all counts of the indictment, being satisfied that the Prosecutor had presented reasonable grounds for believing that Rajić had committed the alleged crimes. It issued an international arrest warrant, ordering it be sent to all States and to the multinational military Implementation Force (IFOR), which was in place in Bosnia and Herzegovina at the time.

PLEA AGREEMENT/GUILTY PLEA

Rule 62 *ter* of the Tribunal's Rules of Procedure and Evidence provide for a plea agreement. The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 26 October 2005, the Trial Chamber held a hearing to consider a plea agreement between Rajić and the Office of the Prosecutor. At the hearing, Rajić entered a guilty plea to the following four counts listed in the amended indictment:

- Count 1, wilful killing, a grave breach of the Geneva conventions of 1949 punishable under Article 2 of the Statute
- Count 3, inhumane treatment (including sexual assault), a grave breach of the Geneva conventions of 1949 punishable under Article 2 of the Statute
- Count 7, appropriation of property, a grave breach of the Geneva conventions of 1949 punishable under Article 2 of the Statute
- Count 9, extensive destruction not justified by military necessity and carried out unlawfully and wantonly, a grave breach of the Geneva conventions of 1949 punishable under Article 2 of the Statute

The Trial Chamber accepted the agreement and stated that it met the requirements of the Rules of Procedure and Evidence. Accordingly, the Trial Chamber found the accused guilty on the four counts contained in the plea agreement. The sentencing hearing was held on 7 April 2006, and both the Prosecution and the Defence agreed to recommend a single combined sentence in the range of 12 to 15 years' imprisonment.

On 27 April 2006, pursuant to the plea agreement, the Prosecution submitted a motion to withdraw counts 2, 4, 5, 6, 8, and 10 of the amended indictment without prejudice (meaning that should the judgement or sentence be reversed or modified for any reason, the Prosecution would be entitled to renew these charges).

STATEMENT OF IVICA RAJIĆ

"Your Honours, thank you for giving me the opportunity in this encounter with the truth to say a few words about myself and the war in which I took part, about the reasons for the war, tragic consequences, and my real role in the events which led me to appear before this Court. I was born in a country where, at the time when I was a child, when I attended school, an impression was created that all of the reasons that had until then caused small peoples living there to fight had ceased. I remember well my thoughts as a young man when I believed that I belonged to this fortunate generation which will never experience war and that all that was needed for a happy future was an honourable and proper attitude to work the society and work.

Growing up with such beliefs and growing up in a poor family, while still a high school student, I received a scholarship which enabled me to continue my education. I enrolled into a very prestigious air force academy where I achieved great results in my studies. The profession that I required [as interpreted], that of a very sophisticated radar engineer, opened up great possibilities for me in life. In addition to that, a very brave, very decisive, young woman of a different faith and ethnic background but with similar convictions and values became my wife. We started a family without any prejudice. We were an example for all generations.

At the time it seemed that nothing could be better or happier. However, different times came, times when people started splitting along religious or ethnic lines, times that did not allow one a lot of choice. The war broke out with lightning speed and forced me to accept the call given by my friends and neighbours to assist in the defence of our people. To remain with one's nation in difficult times was

always considered an honourable choice. Although I had some different plans for myself, this unfortunate development of events determined my fate.

The chance to leave that hell decreased on a daily basis and as did their demands to remain on their side, to stand by them. This is how I came to be a member of the worst war whichever took place in that area. The plans of great powers and ambitions of small nations to organise the state of Bosnia and Herzegovina in accordance with their wishes were not compatible. This conflict between great powers and small nations caused violence, and overnight animosity was created, as were alliances which were difficult to understand. Although I was not a political man, I had sufficient background in history in order to know that my Croatian nation which was not very numerous in Bosnia and Herzegovina had nevertheless very deep roots in Bosnia and Herzegovina. Due to the aggression against Bosnia and Herzegovina, our people were exposed to great suffering, and I believe that it was my duty, my clear duty, to remain with my nation.

Your Honours, this is my belief to this day. Since I was not active in politics nor did I participate in setting the goals of the war, I believed that the leadership was doing this wisely, the leadership that was entrusted with this. Unfortunately, the time and events which ensued showed that some of the decisions were neither wise nor responsible. The conflict between Croats and Muslims should not have happened. There are witnesses, and I have also provided some evidence to the Prosecution clearly showing that back in the summer of 1992 I took a decisive stand against mad action of Tihomir Blaškić and those who protected him and provoked this conflict in Central Bosnia.

Due to my position, I was removed in early 1993 from all positions I held at the time, so that this man with the support of the same people could immediately after that start his second war against Muslims. Having a good reputation in both nations and risking my own life, I played a key role in stopping this completely senseless conflict which could not produce a winner.

Your Honours, there are many witnesses who can testify about this, and there are numerous documents which I, through my co-operation, provided to the Prosecution. However, despite of everything, the same people basically deported me from Kiseljak which was my town. In late April of 1993, when visiting some relatives in Kiseljak, I found myself amid crucial events when the same people started their third war against Muslims. It was no longer possible to do anything that could have stopped this senseless plight of people, destruction of their homes and settlements. A scenario was set in motion, a scenario that I knew nothing about, neither did many people that I spoke to.

However, based on what we could see, and based on what I could learn, it didn't take much to realise what was going on. There was no double chain of command, nor was there an interruption in communication between those issuing orders and what was going on. Everything unfolded precisely as Blaškić requested it, pursuant his decision or somebody's order. I hope that he will be forced to explain this.

The second issue was conceived in the eyes of cowards when they had to avoid their own responsibility and catastrophic effects. Lack of knowledge of what was going on the ground and due to distance and poor communication, all of these facts point to the direction of lack of sensible leadership. However, as was easy to predict, the fortunes of war changed direction and soon Croats were under an all-out attack. The situation -- the status of Croats living in Central Bosnia became a terrible one. They started making plans for moving out. I also provided evidence about this to the Prosecution.

Then the same authors of war remembered me. Knowing that I previously held a high reputation among Muslims and their military commanders, they entrusted me with a role of a negotiator and later on appointed me commander who was tasked with saving whatever was there left to save. It was difficult to negotiate and convince the opposing side that something that wasn't true in fact was true. Fully aware of tragic consequences should the war continue, I did my best to put an end to this madness.

Unannounced I went to the headquarters of the army of Bosnia and Herzegovina in Visoko, and at the risk of being imprisoned, once again I attempted to negotiate the end of war. I did everything that they asked me to do, even what they themselves believed to be impossible. However, the spiral of violence had reached such a high level that it was impossible to even discuss a truce. The desire to survive is such that it is difficult to ensure that those who had suffered terrible personal losses will always act reasonably.

How to act in compliance with what was permissible under the circumstances which themselves are as impermissible as that war was.

Your Honours, I knew that a large number of people that were under my command had suffered a personal loss, a loss of their family members or homes. I knew that there were people with their human faults. However, it was impossible for me to predict how each of them was going to react under war circumstances. I carried out my tasks with the people I had under my command, not the people I wish I had under my command. I never ordered a crime to be committed. I only ordered the implementation of what was necessary in terms of our operations.

Within the framework of my possibilities, I sanctioned certain acts straight away, some upon the advice of my associates and the authorities and institutions were recorded with the intention of taking the necessary steps and procedure at a time when this would not be counter-productive for the overall system of defence. I also stood up to lawlessness, very often at the risk of my own life, and this is borne out by the fact that the criminals from my own ethnic group attacked me very often and a number of times tried to abduct me and kill me. There are documents to bear that out and I have put them at the disposal of the Prosecution.

I have said all this in order to paint a realistic picture of the situation and the circumstances I had to act in. My departure to Vareš did not have as its aim to perpetrate any crime which would create as a response an attack by the BH army on Vareš, after which the Croatian people would have to leave that territory.

The attack launched by the BH army on Vareš lasted for several days. It was already ongoing. The HVO Vareš asked for assistance, and in following orders, the orders given to me by my superiors, I did everything in my power to do what I could to save the situation. Unfortunately, certain individuals and groups did not respect the instructions received from their superiors and in that very difficult and unforeseeable development of events a crime took place. Nonetheless, it should not have been a justification for the serious crimes which happened to the Croatian people later on in that same territory.

Your Honours, from everything that I have said and that you have heard, I would like to say that I did not order that crime to take place nor did it take place with my knowledge but it did happen. It was affected by individuals and groups to which I was superior. So that is why I am held accountable. Just as a commander can bask in glory for his good acts, the acts that he accomplishes together with his soldiers, so also military ethics and honour make it incumbent upon him to accept responsibility for the evil deeds that were committed.

I will accept your sentence and judgement bravely and courageously. I am very sorry for all the victims and suffering that took place in Stupni Do and Vareš. Those victims were unnecessary, just as the war between two friendly nations was unnecessary.

I should like to apologise to the families of the people who have suffered, expressing my full sympathies for having lost their -- and my regrets for the loss of their nearest and dearest. This comes from the heart, and it is my sincere regret, because I understand the pain and suffering. I know this because the war brought pain and suffering to my own family, as it did to many other families, regardless of their ethnicity. All those victims deserve the truth and justice, and my cooperation with the Prosecution is a contribution to the establishment of the truth and the acceptance of my responsibility of a man who is responsible but not broken, as my former attorney was prone to state.

I am convinced that this grain of truth will be recognised and separated from the sea of lies which for years in Bosnia and Herzegovina and the Republic of Croatia have been put about -- about me by individuals and the intelligence services and media who are owned by various proprietors in order to make me keep quiet, to remain silent, and to cover up the truth, to cover up the truth about the policies and politics pursued, policies which have made my own people both victims and aggressors in their own country.

Only the truth can help future generations, and I will tell the truth and defend the truth regardless of threats and physical assaults, indeed, which I experienced in the Detention Unit. Since those threats were not only held at me personally but at my entire family and, indeed, my Defence counsel as well, I should like to ask this Honourable Trial Chamber to use its influence to protect them.

Those people who are afraid of the truth will stop at nothing and use subtle and dangerous methods which confirms the well-devised intelligence and media campaign launched in the Republic of Croatia against me after I had reached a plea agreement with the Prosecution. How else can one explain the writings of a very influential Croatian weekly which refers to Croatian intelligence services and the lies they put out that I was responsible for the terrible tragedy that took place at the Markale market in Sarajevo and as a threat to my family. If along with this monstrous lie they publish a photograph of my wife with my address and even the licence plates of our family car. Is that not a covered up invitation to the friends and family of those who suffered in that terrible crime to lynch my family in retaliation and revenge. And even more monstrous and worse lies were bandied about me through a programme that is very popular on Croatia television immediately after the plea agreement was made and immediately after I recognised my guilt.

I should like to mention that my former attorney took part in that television programme. I described him earlier on by just two words --just two words. Such tricks that are being played and the fate of individuals in Croatia who cooperated with this Tribunal are a lesson for caution, that I should proceed with care and do everything to see that my family are safe. They are well tried and tested methods of the lackeys of the regime, of poodles and dogs from the intelligence service and security services, of former political clans and present-day political clans who were at the head of fateful events and who had our destiny in our hands in order to protect themselves. They are trying to cover up what actually happened and are doing their best to provide false evidence and proof and accuse others by doing so, and thus belittle this Tribunal before the eyes of the Croatian public as well.

I know full well that the Prosecution is undertaking concrete steps to unmask certain false constructions that have been slipped into this Tribunal. And I sincerely hope that they will give me the opportunity of personally taking part in unmasking these untruths.

Your Honours, I have done everything in my power to ensure that you arrive at the whole truth. Proof and evidence about everything that happened stand firmly, placed before you in your hands. I believe in your courage and your wisdom in weighing up a just sentence. I pray to God to give me the strength and health to persevere honourably and to go back to my family, which is blameless and who needs me very much. Thank you." (Rajić, sentencing hearing, 7 April 2006)

TRIAL CHAMBER SENTENCING JUDGEMENT

Rajić was born on 5 May 1958 in the village of Jehovac in Bosnia and Herzegovina. From May to at least November 1993, he was the Commander of the Second Operational Group of the Croatian Defence Council's (HVO) Central Bosnia Operative Zone, based in Kiseljak.

On 21 October 1993, following an attack by the army of Bosnia and Herzegovina in Vareš municipality, the deputy head of the HVO armed forces ordered Rajić to seize control of the situation in Vareš town and the surrounding area.

On the same day, Rajić left the town of Kiseljak with approximately two hundred HVO soldiers. He reached Vareš the following day. On 23 October, the head of the HVO Main Staff ordered Rajić "to sort out the situation in Vareš showing no mercy towards anyone". Rajić ordered HVO forces under his command to round up military-aged Muslim men in Vareš town and to detain them. HVO forces rounded up more than two hundred and fifty Bosnian Muslim men and detained them in two schools, the "Ivan Goran Kovačić" and "Vladimir Nazor" schools. During the process of rounding up these men, the HVO commanders and soldiers entered houses, abused their inhabitants and robbed them of their valuables. HVO soldiers also beat and abused male Bosnian Muslim detainees.

Also on 23 October, HVO soldiers under Rajić's command attacked the village of Stupni Do. They forced the civilians out of their homes and hiding places, robbed them of their valuables, sexually assaulted Muslim women, and wilfully killed at least thirty-seven Bosnian men, woman, elderly persons and children. Among the men, there were approximately six combatants. On 23 and 24 October, most of the village was destroyed.

In determining Rajić's sentence, the Trial Chamber took a number of issues into consideration. The Trial Chamber found that the sentence should reflect the fact that the crimes were committed on a large scale, were of particularly violent nature and caused severe pain to the victims and their relatives. For

instance, the Trial Chamber noted that two elderly women, one of whom was an invalid, were found burned inside a house and that seven members of the same Muslim family (two men, three women and two children aged 2 and 3 years old) were found burned inside their shelter.

The Chamber further found that Rajić played a significant role in ordering HVO soldiers and commanders to attack Stupni Do and to round up more than 250 Muslim men in Vareš town, and that he did so, knowing the substantial likelihood that criminal acts would ensue following his orders. According to the agreed facts between the Parties, Rajić was indeed aware that these soldiers had previously committed serious crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and physical assault.

The Chamber also evaluated the seriousness of Rajić's crimes in the light of their impact upon the victims and their effect upon the victims' families. In so doing, the Trial Chamber examined the evidence submitted by the Prosecution and found that the victims and their families suffered severe pain as a direct result of the crimes.

The Trial Chamber also examined a number of aggravating circumstances put forward by the Prosecution.

With regard to the vulnerability of victims, the Trial Chamber considered that certain victims - five children and two elderly women, one of whom was an invalid - were in a situation of special vulnerability during the attack on Stupni Do. The Trial Chamber found this element to be an aggravating factor.

The Trial Chamber was not convinced by the arguments of the Prosecution according to which absconding from justice and participation in cover-up activities should aggravate the sentence. The Prosecution did not prove that these elements were aggravating circumstances pursuant to customary international law or general principles of law. However, the Trial Chamber accepted that these factors could be taken into account when appraising the weight to be attributed to certain mitigating circumstances, especially when evaluating Rajić's good character.

The Trial Chamber further reviewed four mitigating circumstances submitted by the Parties: Rajić's guilty plea, his remorse, his co-operation with the Prosecution and his personal circumstances.

The Trial Chamber held that Rajić's guilty plea helped to establish the truth surrounding the crimes committed in Stupni Do and Vareš, and that could contribute to the reconciliation of the peoples of the former Yugoslavia and to the restoration of a lasting peace in the region. Such recognition of responsibility also saved valuable court time and resources. The Trial Chamber therefore found that Rajić's guilty plea was a mitigating factor.

As to remorse, the Trial Chamber, after listening Rajić's statement at the hearing, felt that Rajić's expression of remorse was real and sincere and must be taken into account in mitigation.

In respect of Rajić's co-operation, in the light of the assessment made by the Prosecution in its Brief and during the sentencing hearing, the Trial Chamber considered it to be a mitigating factor.

In relation to Rajić's personal circumstances, the Trial Chamber considered that, where an accused has been convicted of extremely serious crimes, his family circumstances can only have limited bearing on the sentence to be imposed.

On 8 May 2006, the Trial Chamber rendered its judgement, convicting Rajić of:

- wilful killing; inhumane treatment; appropriation of property; extensive destruction not justified by military necessity and carried out unlawfully and wantonly (Grave breaches of the Geneva conventions of 1949, Article 2)

Sentence: 12 years' imprisonment.

Rajić was entitled to credit for time spent in detention, namely 1130 days. On 13 April 2007, Rajić was transferred to Spain to serve the remainder of his sentence.

On 22 August 2011, Rajić was granted early release.