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l'ex-Yougoslavie

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THE ALEKSOVSKI JUDGEMENT

Introduction

Further to pronouncing its Judgement on 7 May 1999 (see Press Release No. 400), Trial Chamber I *bis* (Judges Rodrigues (Presiding), Vohrah and Nieto-Navia), rendered its written Judgement and sentence in the *Aleksovski* case on 25 June 1999. Appended to the Judgement are a Dissenting Opinion of Judge Almiro Simoes Rodrigues and a Joint Separate Opinion of Judge Lal Chand Vohrah and Judge Rafael Nieto-Navia, all concerning the applicability of Article 2 of the Statute of the Tribunal (grave breaches of the 1949 Geneva Conventions).

The main legal findings in the Judgement and the Dissenting and Separate Opinions are outlined below. A comprehensive summary will appear in the August 1999 edition of the 'Judicial Supplement to the Bulletin of the ICTY'.

The Indictment

According to the indictment, Zlatko Aleksovski was the commander of the prison facility at Kaonik, near Busovaca in Bosnia and Herzegovina. It alleges that "*[f]rom January 1993 until at least the end of May 1993, Zlatko Aleksovski accepted hundreds of detained Bosnian Muslim civilians from the HVO or their agents into his custody at the detention facilities in Kaonik. The detainees were from a widespread area including, but not exclusive to, Vitez and Busovaca municipalities. Many of the detainees under his control were subjected to inhumane treatment, including, but not limited to, excessive and cruel interrogation, physical and psychological harm, forced labour (digging trenches), in hazardous circumstances, being used as human shields and some were murdered or otherwise killed*".

The accused was charged on the basis of both individual and superior criminal responsibility with two counts of grave breaches of the 1949 Geneva Conventions (Article 2 of the Statute), namely, inhuman treatment and wilfully causing great suffering or serious injury to body or health, and one count of a violation of the laws or customs of war (Article 3 of the Statute), namely, outrages upon personal dignity.

The main legal findings

As a general prerequisite for the application of Articles 2 and 3 of the Statute, the parties agreed that during the time period relevant to the indictment an armed conflict existed between the armed forces of the Muslim community of Bosnia and Herzegovina and military units of the Bosnian Croats. The Trial Chamber determined a sufficient link between the conflict and the alleged crimes.

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Public Information Unit/ Bureau d'information publique

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas

Tel.: +31-70-416-5356; 416-5343 Fax: +31-70-416-5355

Article 2 of the Statute (grave breaches of the 1949 Geneva Conventions)

By majority, the Trial Chamber found that Article 2 of the Statute was not applicable and, consequently, it pronounced the accused not guilty of the two corresponding charges. Judges Vohrah and Nieto-Navia explained that, in their view, the alleged offences against Bosnian Muslims did not take place during an international armed conflict and that the alleged victims were not “protected persons” within the meaning of the fourth Geneva Convention (*see Joint Opinion of the Majority, Judge Vohrah and Judge Nieto-Navia, on the Applicability of Article 2 of the Statute Pursuant to Paragraph 46 of the Judgement*).

Judge Rodrigues explained that, according to him, the evidence presented proved the international character of the armed conflict. However, even if this were not the case, Judge Rodrigues opined that the international character is not a condition for Article 2 of the Statute to apply (*see Dissenting Opinion of Judge Rodrigues, Presiding Judge of the Trial Chamber*).

Article 3 of the Statute (violations of the laws or customs of war)

The Trial Chamber first turned to the alleged events at the Kaonik prison. Pursuant to Article 7(1) of the Statute (individual criminal responsibility), the Trial Chamber found the accused guilty of ordering, and/or aiding and abetting physical and psychological maltreatment of Muslim prisoners. This maltreatment qualifies as outrages upon personal dignity which is prohibited pursuant to Article 3 common to the 1949 Geneva Conventions which in turn falls under Article 3 of the Statute.

The Trial Chamber also held that the accused, whether in a civilian or military capacity, was the commander or director of the Kaonik prison and he was in a *de jure* and *de facto* superior position to the prison guards. The Trial Chamber further found that the accused knew of the offences being committed and that he failed to take any measure to prevent them or to punish the perpetrators thereof. Consequently, the Trial Chamber also found the accused guilty under Article 7(3) of the Statute (superior criminal responsibility).

As to events outside the prison, the Trial Chamber found Zlatko Aleksovski guilty, pursuant to Article 7(1) of the Statute, of aiding and abetting in the use of the prisoners for digging trenches and as human shields. These offences qualify as outrages upon personal dignity, punishable under Article 3 of the Statute.

Reminder

Hard-copies of the Judgement (issued in French), the Dissenting Opinion (issued in French) and the Joint Separate Opinion (issued in English and translated into French) are available from the Public Information Services. These documents are ALREADY available on the ICTY's Internet Homepage (provisionally only in PDF format).

The Judgement and the Dissenting Opinion are being translated and will be available at a later stage. These translations will also be released in due course on the Internet Homepage.
