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Tribunal Pénal
International pour
l'ex-Yougoslavie

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APPEALS CHAMBER

CHAMBRE D'APPEL

The Hague, 9 February 2000

CC/P.I.S./469-E

ALEKSOVSKI CASE:

THE APPEALS CHAMBER ORDERS ALEKSOVSKI'S RETURN TO CUSTODY

Today, Wednesday 9 February 2000, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) consisting of Judges May (Presiding), Mumba, Hunt, Wang and Robinson, heard the oral arguments on the appeals filed by the Parties against the Judgement rendered by Trial Chamber I on 7 May 1999 (see Press Release 400).

At the conclusion of today's hearing, the Appeals Chamber:

- dismissed Aleksovski's appeal against conviction,
- allowed the Prosecution's appeal against sentence, stating that a "revised sentence" will be pronounced in due course,
- and ordered Aleksovski's immediate return to custody.

Following this oral ruling, Aleksovski was led away to be detained at the ICTY's Detention Unit "until such a time as revised sentence is pronounced".

THE TRIAL CHAMBER JUDGEMENT

On 7 May 1999, Trial Chamber I found Aleksovski guilty of one count of violations of the laws or customs of war (Article 3 of the Statute), namely outrages upon personal dignity, committed in 1993 in a prison facility at Kaonik (central Bosnia). Aleksovski was the commander of this prison, and was convicted on the basis of his individual and superior responsibility.

He was sentenced to two years' and six months' imprisonment. However, applying sub-rule 101(D) of the Tribunal's Rules of Procedure and Evidence, the Trial Chamber considered that Aleksovski was entitled to credit for time served for a period of two years, 10 months and 29 days. The Trial Chamber therefore ordered his immediate release, notwithstanding any appeal.

THE GROUNDS OF APPEAL

Following the Trial Chambers' Judgement, Aleksovski appealed on the following grounds:

1. The Trial Chamber failed to establish that the accused had a discriminatory intent which is necessary to convict him under Article 3 of the Statute.
2. The conduct proved, in particular, the violence against the detainees was not sufficiently grave as to warrant a conviction under Article 3 and, secondly, that it may have been justified by necessity.

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3. The Trial Chamber erred in relying on evidence which was inherently unreliable and did not meet the standard of proof required for conviction.
4. The Trial Chamber erred in their finding that the appellant was in a position of superior responsibility.

The Prosecution appealed on the following grounds:

1. The Trial Chamber erred in law in deciding that Article 2 of the Statute was inapplicable because the Bosnian Muslims who were held in the Kaonik prison were not protected persons within the meaning of Article 4 of the Geneva Conventions.
2. The Trial Chamber erred in law and fact in holding that the accused did not incur responsibility under Article 7(1) of the Statute for mistreatment suffered by the detainees outside the Kaonik prison compound.
3. The Trial Chamber erred in sentencing the accused to a term of two and a half years imprisonment.

THE APPEALS CHAMBER'S RULING

After hearing the oral submissions by the Parties, the Appeals Chamber rejected Aleksovski's appeal and allowed the Prosecution's third ground of appeal.

It reserved its judgement on the Prosecution's first and second ground of appeal, and it announced that a reasoned written judgement and sentence will be issued in due course.

BACKGROUND ON THE ACCUSED

Zlatko Aleksovski was arrested on 8 June 1996 in the Republic of Croatia by the Croatian police acting pursuant to an arrest warrant issued by the Tribunal. He was transferred to the Tribunal's Detention Unit at The Hague on 28 April 1997.

According to the indictment, Aleksovski was the commander of the prison facility at Kaonik, near Busovaca, prior to becoming the Head of the District Croatian Defence Council (HVO) "Heliodrom" prison in Mostar. According to the indictment "*[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 trial before the Trial Chamber commenced on 6 January 1998 and ended on 23 March 1999. Thirty-eight witnesses appeared for the Prosecution and 26 for the Defence. The Prosecution presented 139 exhibits and the Defence 37.
