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Tribunal Pénal  
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## Press Release . Communiqué de presse

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**APPEALS CHAMBER**

**CHAMBRE D'APPEL**

The Hague, 24 March 2000

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### **ALEKSOVSKI CASE:** **THE APPEALS CHAMBER INCREASES HIS SENTENCE TO SEVEN YEARS IMPRISONMENT**

Today, Friday 24 March 2000, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) rendered its reasoned written Judgement in the case of Zlatko Aleksovski.

As authorized by an Order of the Vice-President issued on 22 March 2000, the Judgement was delivered by Judge May (Presiding), Judge Mumba and Judge Hunt, in the absence of Judge Robinson and Judge Wang due to exceptional circumstances. Judge Robinson and Judge Wang participated in the hearing of the case, in deliberations and in the drafting of the Judgement.

#### **The substance of the Appeals Chamber's Judgement:**

- the accused's four grounds of appeal against his conviction by Trial Chamber I on 7 May 1999 are denied:
  - 1) The submission by the Appellant that the Trial Chamber failed to establish his "discriminatory intent" was rejected. The Appeals Chamber ruled that "*a discriminatory intent or motive is not an element of offences under Article 3 of the Statute (violations of the laws or customs of war) nor of the offence of outrages upon personal dignity*".
  - 2) The Appeals Chamber "*could find no reason to doubt the seriousness of the crimes*" committed by Zlatko Aleksovski. It also rejected the defence of extreme necessity: "*The Appellant, faced with the actual choice of ill-treating the detainees or not, was convicted for choosing the former*".
  - 3) The Appeals Chamber is satisfied that the Trial Chamber "*did not err in the exercise of its discretion when it evaluated the testimony of various witnesses*" and thus "*applied the standard of proof correctly*".
  - 4) The Appeals Chamber found that "*the Appellant has failed to convince the Chamber that unreasonable conclusions were drawn by the Trial Chamber*" in respect of his role as a superior.
- the Prosecution's two grounds of appeal against the Judgement of 7 May 1999 are allowed in part:
  - 1) Upholding the Tadic Decision of 15 July 1999, the Appeals Chamber accepted the Prosecution's submissions that the conflict in this case was "*international*" and that "*the victims were protected persons under Article 4 of Geneva Conventions IV*". However it decided "*not to remit the case to the Trial Chamber*" and "*declined to reverse the acquittals*" because "*any additional sentence imposed would be concurrent on all counts and would not lead to any increase in sentence*".

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- 2) The Appeals Chamber overturned the Trial Chamber's finding that the accused was not responsible for the mistreatment of prisoners outside the prison compound. The Appeals Chamber found that Zlatko Aleksovski "*was responsible for the mistreatment by the HVO outside the prison*" and declared him "*guilty of aiding and abetting*" this mistreatment. However the Appeals Chamber specified that it "*does not believe that the additional finding of itself warrants any heavier sentence*".
- the Prosecution's third ground of appeal against the initial sentence of two and a half years is allowed:
    - 1) The Appeals Chamber found that the Trial Chamber "*erred in its imposition of sentence. In particular, the Appeals Chamber finds that the Trial Chamber erred in not having sufficient regard to the gravity of the conduct of the Appellant for the following reasons. His offences were not trivial. Instead of preventing it, the Appellant as a superior involved himself in violence against those whom he should have been protecting, and allowed them to be subjected to psychological terror. He also failed to punish those responsible. Most seriously, the Appellant, by participating in the selection of detainees to be used as human shields and for trench digging, as he must have known, was putting at risk the lives of those entrusted to his custody. With his direct participation as a commander he provided additional encouragement to his subordinates to commit similar acts. The combination of these factors should, therefore, have resulted in a longer sentence and should certainly not have provided grounds for mitigation*".
    - 2) The Appeals Chamber decided to revise the sentence in accordance with the finding in the Tadic Decision of 15 July 1999 in which the Appeals Chamber held that it should not intervene in the exercise of the Trial Chamber's discretion with regard to sentence unless there is a "discernable error". Applying that test, the Appeals Chamber found that "*there was a discernable error (...): that error consisted of giving insufficient weight to the gravity of the conduct of the Appellant and failing to treat his position as commander as an aggravating feature in relation to his responsibility under Article 7(1) of the Statute. The sentence imposed by the Trial Chamber was manifestly inadequate*".
    - 3) In imposing a revised sentence, the Appeals Chamber considered "*the element of double jeopardy in this process in that the Appellant has had to appear for sentence twice for the same conduct, suffering the consequent anxiety and distress, and also that he has been detained a second time after a period of release of nine months. Had it not been for these factors the sentence would have been considerably longer*".
  - the accused's sentence is increased to 7 (seven) years.  
This prison term is to run from today, Friday 24 March 2000. However the time already spent by Zlatko Aleksovski in custody, namely three (3) years and 12 days will be deducted.

### **BACKGROUND ON THE PROCEEDINGS**

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.

Following the Trial Chambers' Judgement, both the accused and the Prosecution appealed against the Judgement and Sentence of 7 May 1999 (see press release 469).

On 9 February 2000, the Appeals Chamber heard the oral submissions by the Parties. At the conclusion of this hearing, the Appeals Chamber:

- dismissed Aleksovski's appeal against conviction;
- allowed the Prosecution's appeal against sentence, stating that a "revised sentence" would be considered, and ordered Aleksovski's immediate return to custody;
- reserved its Judgement on the Prosecution's grounds of appeal against the Judgement of 7 May 1999 and announced that a written reasoned Judgement, including the revised sentence, would 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 in The Hague on 28 April 1997.

According to the indictment issued against him on 10 November 1995, 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*".

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*The full text of the Summary read out in court by the Presiding Judge and the Judgement itself are available from the Public Information Services and on the ICTY's Internet Homepage.*

*The Summary is available in English as well as in French.  
The Judgement is being translated into French and will be released in due time.*