

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

“Lašva Valley” (IT-95-14)

TIHOMIR BLAŠKIĆ


TIHOMIR BLAŠKIĆ
Convicted of inhuman treatment and cruel treatment


Held the rank of Colonel in the Croatian Defence Council (HVO) and became commander of the HVO in the Central Bosnian Operative Zone on 27 June 1992; was promoted to the rank of General and appointed Commander of the HVO at the beginning of August 1994

- Sentenced to **9 years' imprisonment**
- Released on 2 August 2004, early release granted prior to transfer

Crimes convicted of (examples):

Inhuman treatment (grave breach of the Geneva convention)

Cruel treatment (violation of the laws or customs of war)

- From January 1993 to April 1993, together with members of the HVO, Tihomir Blaškić planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of the use of Bosnian Muslim civilians as human shields in order to prevent the Bosnian Army from firing on HVO positions or to force Bosnian Muslim combatants to surrender.
- He exposed Bosnian Muslims detained in HVO detention facilities, to beatings, to physical and psychological abuse, intimidation, inhumane treatment, including being confined in cramped or overcrowded facilities and not being provided with adequate food and water. Detainees were also made to dig trenches in the municipalities of Kiseljak, Vitez, and Busovača, during which a number of Bosnian Muslims were killed, injured or wounded.
- Notwithstanding his knowledge that detention-related crimes had been committed in the Vitez Cultural Centre and the Vitez veterinary hospital, and the knowledge of the circumstances and conditions under which the Muslims were detained in, he failed to punish those subordinates of his who were responsible, and over whom he could exercise effective control. Furthermore, he failed to report the infractions of which he was aware to the competent authorities.
- Tihomir Blaškić also ordered troops under his command to participate in the attack directed at the Muslim civilian population in Ahmići and the neighbouring villages on 16 April 1993.

Born	2 November 1960 in Brestovsko, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995; first amended: 22 November 1996; second amended: 25 April 1997
Surrendered	1 April 1996, voluntarily surrendered
Transferred to ICTY	1 April 1996
Initial appearances	3 April 1996, pleaded "not guilty" to all counts 4 December 1996, pleaded "not guilty" to all counts
Trial Chamber sentencing judgement	3 March 2000, sentenced to 45 years' imprisonment
Appeals Chamber judgement	29 July 2004, sentenced to 9 years' imprisonment
Sentence served	Released on 2 August 2004, granted early release before transfer

STATISTICS

Trial days:	239
Witnesses called by Prosecution:	104
Witnesses called by Chambers:	9
Witnesses called by Defence:	49
Prosecution exhibits:	787
Chambers exhibits:	13
Defence exhibits:	614

TRIAL	
Commenced	24 June 1997
Closing arguments for the Prosecution	The closing arguments were heard from 26 to 30 July 1999
Closing arguments for the Defence	The closing arguments were heard from 26 to 30 July 1999
Trial Chamber I	Judge Claude Jorda (Presiding), Judge Mohamed Shahabuddeen, Judge Almiro Rodrigues
Counsel for the Prosecution	Mark Harmon, Andrew Cayley, Gregory Kehoe
Counsel for the Defence	Russell Hayman, Anto Nobile

APPEALS	
Appeals Chamber	Judge Fausto Pocar (Presiding), Judge Wolfgang Schomburg, Judge Florence Mumba, Judge Mehmet Güney, Judge Inés Mónica Weinberg De Roca
Counsel for the Prosecution	Norman Farrell
Counsel for the Defence	Anto Nobile, Russell Hayman, Andrew Paley

RELATED CASES	
ALEKSOVSKI (IT-95-14/1) "LAŠVA VALLEY"	
KORDIĆ AND ČERKEZ (IT-95-14/2) " LAŠVA VALLEY"	
MARINIĆ (IT-95-15) "LAŠVA VALLEY"	
KUPREŠKIĆ <i>et al.</i> (IT-95-16) "LAŠVA VALLEY"	
BRALO (IT-95-17) "LAŠVA VALLEY"	
FURUNDŽIJA (IT-95-17/1) "LAŠVA VALLEY"	

THE INDICTMENT AND CHARGES

Tihomir Blaškić was originally named in an indictment confirmed on 10 November 1995 with five other co-accused including Dario Kordić, Mario Čerkez, Zlatko Aleksovski, Ivan Santić and Pero Skopljak.

After his voluntary surrender on 1 April 1996 Tihomir Blaškić was immediately transported to the Tribunal. On 3 April 1996, he pleaded "not guilty" to all 13 counts of the initial indictment.

Considering that others on the indictment were still at large and in order for the trial to progress, the Prosecution moved to separate his indictment from the others. An additional six counts were added in order to more appropriately reflect his alleged conduct. The first amended indictment was issued on 22 November 1996 and on 4 December 1996, Tihomir Blaškić pleaded "not guilty" to all counts against him in the new indictment.

A "not guilty" plea was registered to the second amended indictment, filed on 25 April 1997 with a corrigendum filed on 16 March 1999. Although all counts still stood, the second amended indictment contained more specific allegations as to the scope of his alleged culpability in both temporal and geographical terms, as well as more specific allegations with regard to the type of responsibility he was charged with. The amended indictment initially charged the defendant with one additional count (count 2, devastation not justified by military necessity) however this count was withdrawn by the Prosecution on the grounds that it was already covered in the other areas of the same indictment.

Of the five additional names on the initial indictment, only Dario Kordić is still serving his sentence, whereas Mario Čerkez (Kordić & Čerkez case (IT-95-14/2)), together with Zlatko Aleksovski (Aleksovski case (IT-95-14/1)) have been released after completing the sentence imposed by the Trial Chamber. Furthermore, on 19 December 1997, charges against Ivan Santić and Pero Skopljak were dropped and they too were immediately released.

The indictment charged Tihomir Blaškić on the basis of both individual responsibility (Article 7(1) of the Statute of the Tribunal) and superior responsibility (Article 7(3) of the Statute of the Tribunal) with:

- Wilful killing; wilfully causing great suffering or serious injury to body or health; extensive destruction of property; inhuman treatment; taking civilians as hostages (grave breaches of the 1949 Geneva conventions, Article 2)
- Devastation not justified by military necessity; unlawful attack on civilians; unlawful attack on civilian objects; murder; violence to life and person; plunder of public or private property; destruction or wilful damage to institutions dedicated to religion or education; cruel treatment; taking of hostages (violations of the laws or customs of war, Article 3)
- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity, Article 5)

THE TRIAL

The trial commenced on 24 June 1997. The trial took place before Trial Chamber I (Judge Claude Jorda (presiding), Judge Shahabuddeen, Judge Rodrigues). The Prosecution completed its case-in-chief on 29 July 1998 and the Defence case-in-chief commenced on 7 September 1998. Further to that, the closing arguments were heard from 26 to 30 July 1999. The Trial Chamber heard 158 witnesses and considered more than 1300 pieces of evidence.

Tihomir Blaškić, testified from 17 February 1999 till 8 May 1999.

TRIAL CHAMBER JUDGEMENT

Tihomir Blaškić was sentenced to 45 years' imprisonment after being found guilty of committing, ordering, planning, or otherwise aiding and abetting, between 1 May 1992 and 31 January 1994, various crimes against the Bosnian Muslim population in central Bosnia and Herzegovina.

As a Colonel in the Croatian Defence Council (HVO) and a commander of the HVO in the central Bosnian Operative Zone since his appointment on the 27 June 1992, Tihomir Blaškić was found to have personally

ordered a significant number of attacks and to have failed to prevent or punish crimes committed by his subordinates, particularly in the Lašva Valley, and more specifically the municipalities of Vitez, Busovača, Kiseljak and Zenica.

As a consequence, he was found guilty on the basis of his individual and superior criminal responsibility of all the counts contained in the indictment against him, bar one (count 2) that was withdrawn by the Prosecutor as it was deemed that it was covered by the other counts in the indictment.

The Trial Chamber stipulated that the acts ascribed to Tihomir Blaškić occurred as part of an international armed conflict because the Republic of Croatia exercised total control over the Croatian Community of Herceg-Bosna and the HVO, as well as exercised control over the Croatian political and military authorities in central Bosnia.

From May 1992 to January 1993, tensions between Croats and Muslims continued to rise. At the same time, Tihomir Blaškić reinforced the structure of the HVO armed forces with the agreement of the Croatian political authorities.

In January 1993 and on 15 April 1993, the Croatian military and political authorities, which included the accused, sent an ultimatum to the Muslims in central Bosnia and Herzegovina so as to force them to surrender their weapons.

In events leading up to the second ultimatum, Tihomir Blaškić met with the HVO, military police and Vitezovi commanders and gave them orders which the Trial Chamber considered to be genuine attack orders. On 16 April 1993, the Croatian forces, commanded by Blaškić, attacked the municipalities of Vitez and Busovača. They sought to gain control of all the territories considered historically Croatian, in particular the Lašva Valley.

During and after the attack, hundreds of Bosnian Muslim civilians were systematically arrested, interned, treated inhumanly, intimidated and coerced to leave their homes or forcibly transferred to zones outside the municipalities of Vitez, Busovača and Kiseljak. Whilst in detention, many civilians were forced to dig trenches whereas others were used as hostages or as human shields. Furthermore, the Croatian forces, both the HVO and independent units, plundered and burned to the ground the houses and stables, separated families, killed the civilians regardless of age or gender, slaughtered the livestock and destroyed or damaged the mosques.

Tihomir Blaškić himself stated that twenty or so villages were attacked according to a pattern which never changed. The village was firstly "sealed off", artillery fire opened the attack and then search forces "cleansed" the village. The same scenario was repeated in other municipalities during the period of attack on the region. The Croatian forces acted in perfect co-ordination and the scale and uniformity of the crimes committed against the Muslim population over such a short period of time has enabled the conclusion that the operation was, beyond all reasonable doubt, planned and that its objective was to make the Muslim population take flight.

To achieve the political objectives to which he subscribed, Tihomir Blaškić used all the military forces on which he could rely, whatever the legal connection subordinating them to him. In addition, despite knowing that some of the forces had committed crimes, he redeployed them for other attacks. At no point did he even take the most basic measure which any commander must take when he knows that crimes are about to be or have actually been committed.

The end result of such an attitude was not only the scale of the crimes, but also the realisation of the Croatian nationalists' goals - the forced departure of the majority of the Muslim population in the Lašva Valley after the death and wounding of its members, the destruction of its dwellings, the plunder of its property and the cruel and inhuman treatment meted out to many.

In determining Tihomir Blaškić's sentence, the Trial Chamber took into account the mitigating and aggravating circumstances surrounding the case. Mitigating circumstances such as judicial practices of the former Yugoslavia; the fact that the accused did not directly participate; the context in which the crimes were committed; the accused's conduct after the crimes were committed and specifically his co-operation with the Prosecutor; remorse shown, voluntary surrender and a guilty plea, were all factors which were considered, however, no undue weight was given to any of the points stated, nor was the Trial Chamber decision bound by them.

Aggravating circumstances were also examined in the Trial Chamber judgement. In this case, the issue such as the motives and the number of victims were raised on several occasions as aggravating factors.

Furthermore, the heinous nature of the crimes at Ahmići village were highlighted, because during a carefully prepared attack, many Muslim children, women and adults were systematically murdered and sometimes burnt alive in their homes, the houses plundered and set alight and the mosques and religious buildings destroyed.

In conclusion, the Trial Chamber held that, in this case, the aggravating circumstances unarguably outweighed the mitigating circumstances and that the sentence pronounced accurately reflected the degree of seriousness of the crimes perpetrated and the faults of the accused given his character, the violence done to the victims, the circumstances at the time and the need to provide a punishment commensurate with the serious violations of international humanitarian law which the Tribunal was set up to punish according to the accused's level of responsibility.

On 3 March 2000, the Trial Chamber rendered its judgement, convicting the accused as follows:

Tihomir Blaškić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3) of the Statute of the Tribunal) with:

- Wilful killing; wilfully causing great suffering or serious injury to body or health; extensive destruction of property; inhuman treatment; taking civilians as hostages (grave breaches of the 1949 Geneva Convention, Article 2)
- Devastation not justified by military necessity; unlawful attack on civilians; unlawful attack on civilian objects; murder; violence to life and person; plunder of public or private property; destruction or wilful damage to institutions dedicated to religion or education; cruel treatment; taking of hostages (violation of the laws or customs of war, Article 3)
- Persecutions on political, racial or religious grounds; murder; inhumane acts (crime against humanity, Article 5)

Sentence: 45 years' imprisonment.

THE APPEAL

Tihomir Blaškić filed a notice of appeal against the Trial Chamber judgement and sentence on 17 March 2000. As a response to the appeal, the Appeals Chamber held a hearing on 29 July 2004.

A major feature of this appeal was characterised by the cooperation of the Republic of Croatia authorities, the opening up of their archives and ultimately the filing of an enormous amount of additional evidence.

The appellant presented ten grounds of appeal and alleged errors by the Trial Chamber with respect to:

A. Alleged errors of law concerning Article 7(1) and (3) of the Statute

The appellant challenged the standards set forth in the trial judgement concerning the forms of criminal participation in Article 7(1) of the Statute. He also challenged the Trial Chamber's findings in relation to the *actus reus* (guilty act) and *mens rea* (guilty mind) requirements for aiding and abetting.

In respect of this requirement for commanders, the appellant further submitted that the Trial Chamber erred in its interpretation of the knowledge requirement under Article 7(3) regarding superior criminal responsibility.

B. Alleged errors of law concerning Article 5 of the Statute

The appellant submitted that the Trial Chamber erred in several significant respects in construing and applying the legal requirements of Article 5, crimes against humanity.

The first element highlighted by the appellant was the error of law concerning the requirement of a widespread or systematic attack. Furthermore, he also claimed that an error of law occurred; in relation to the requirement that the attack be directed against a civilian population; the requirement that the acts of the accused and the attack itself must have been committed in pursuance to a pre-existing criminal policy or plan; the requirement that the accused has knowledge that his acts formed part of the

broader criminal attack; the *actus reus* element of persecutions as a crime against humanity; and lastly the *mens rea* element of persecutions as a crime against humanity.

C. Alleged errors of law in application of Article 2 of the Statute

Considering that Article 4(1) of Geneva convention IV defines protected persons as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying power of which they are not nationals" the appellant asserted that, under the "allegiance test," Bosnian Croats would not qualify as "protected" *vis-à-vis* Bosnian Muslim captors.

D. Alleged errors concerning denial of due process of law

The appellant claimed that he was unfairly denied his right to a fair trial in two principal ways: (i) he was tried and convicted on the basis of a "fatally vague" indictment; and (ii) the Prosecution failed to meet its disclosure obligations with respect to exculpatory evidence under Rule 68. He contended that this deprived him of the due process of law and materially prejudiced his ability to prepare and present his defence.

E. Alleged errors concerning the appellant's responsibility for crimes committed in the Ahmići area

The appellant raised the issue with regards to his individual criminal responsibility and superior criminal responsibility covered under Article 7(1) and 7(3) of the Statute of the Tribunal.

F. Alleged errors concerning the appellant's responsibility for crimes committed in other parts of the Vitez municipality

The main argument of the appellant was that the Trial Chamber erred by attributing crimes associated with military action in the Vitez municipality to him as a superior officer of the HVO in the area. On the other hand, he never disputed that he had legal authority to command regular HVO troops in Central Bosnia, generally, or that he ordered certain military actions in the Vitez municipality in 1993.

G. Alleged errors concerning the appellant's responsibility for crimes committed in the Busovača municipality

The appellant submitted that he did not issue any orders for an attack on Lončari and Očehnići and that the Trial Chamber erred in attributing crimes committed by the Military Police, including the Jokers, to him.

H. Alleged errors concerning the appellant's responsibility for crimes committed in the Kiseljak municipality

The appellant challenged the Trial Chamber findings that he ordered the attacks on the Kiseljak municipality and "deliberately ran the risk" of making Muslims and their property the main targets of these offensives. Furthermore, he challenged the conclusion that he "had to have known" that by ordering such attacks, very violent crimes would result.

I. Alleged errors concerning the appellant's responsibility for detention-related crimes

The appellant argued that the Trial Chamber erred when considering his responsibility with regards to: inhuman and cruel treatment of the detainees and prisoners; hostage-taking for the purpose of prisoner exchanges and in order to deter military operations against the HVO; and finally with regards to using prisoners of war and civilian detainees as human shields.

J. Appeal against sentence

The appellant appealed against this sentence by arguing that the sentence of 45 years' imprisonment imposed on him should be vacated.

The Prosecution filed no grounds of appeal in relation to the Trial Chamber judgement.

APPEALS CHAMBER JUDGEMENT

On 29 July 2004, the Appeals judgement reversed the majority of the Trial Chamber's convictions and sentenced Tihomir Blaškić to 9 years' imprisonment.

Although dismissing the third ground of appeal and partially dismissing grounds 1, 2 and 4, the Appeals Chamber in fact supported the appellant on all other grounds and overturned the Trial Chamber decision on many aspects of its conclusion.

In relation to ground 1, the Appeals Chamber concluded that the Trial Chamber was correct in part and erred in part in setting out the legal requirements of aiding and abetting. Furthermore, the Appeals Chamber expressed concern at the disposition of the trial judgement wherein the Trial Chamber, having found the appellant guilty for ordering persecutions and for having committed other offences on the basis of the same factual findings, further found that in any event, as a commander, he failed to take the necessary and reasonable measures which would have prevented these crimes or led to the perpetrators being punished.

Therefore, the Appeals Chamber concluded that the disposition of the trial judgement, constituted a legal error invalidating the trial judgement in this regard.

The Appeals Chamber reached a mixed decision in relation to the second grounds of appeal. In relation to the requirement that the attack be directed against a civilian population, the Appeals Chamber concluded that the Trial Chamber erred in its characterisation of the civilian population and of civilians under Article 5, especially as it stated that the specific situation of the victim at the time the crimes were committed must be taken into account in determining his standing as a civilian. As to the requirement that the acts of the accused and the attack itself must have been committed in pursuance to a pre-existing criminal policy or plan, the Appeals Chamber found that the trial judgement was not clear on this point of law.

Moreover, in relation to the requirement that the accused had knowledge that his acts formed part of a broader criminal attack, the Appeals Chamber discovered that the trial judgement erred in part in its articulation of the *mens rea* applicable to crimes against humanity. As to the *actus reus* element of Persecutions as a crime against humanity, the Appeals Chamber noted that it was not enough that the underlying acts be perpetrated with a discriminatory intent, and as a result the Trial Chamber erred in this regard.

To the fourth ground of appeal and specifically the "vagueness of the indictment", the Appeals Chamber, having analysed the second amended indictment in accordance with the principles of pleading set out in this judgement, found that the indictment failed to plead the material facts with sufficient particularity, and concluded that it did not comply with the principles of pleading set out in the present judgement.

For the fifth ground of appeal, the Appeals Chamber considered that the trial evidence did not support the Trial Chamber's conclusion that the Armed Forces of the Government of Bosnia and Herzegovina (ABiH) were not preparing for combat in the Ahmići area. Additionally, the Appeals Chamber acknowledged that further evidence admitted on appeal, demonstrated that there was a Muslim military presence in Ahmići, and that the appellant had reason to believe that the ABiH intended to launch an attack.

The Appeals Chamber also affirmed that the appellant lacked effective control over the military units responsible for the commission of crimes in the Ahmići area on 16 April 1993, in the sense of a material ability to prevent or punish criminal conduct, and therefore the constituent elements of command responsibility were not satisfied. The Appeals Chamber was therefore unsatisfied that the trial evidence, assessed together with the additional evidence admitted on appeal, proved beyond reasonable doubt that the appellant was responsible under superior criminal responsibility for having failed to prevent the crimes in the Ahmići area or to punish the perpetrators.

On the charge of individual criminal responsibility in respect of the attacks on the town of Vitez and in the light of additional evidence, the Appeals Chamber concluded that it could not be proved beyond reasonable doubt that the attack was directed at a civilian target, nor that the attack targeted the civilian population of the town. After applying the correct standard, the same conclusion was reached in relation to the crimes committed in April and September 1993 in the villages of Donja Večeriska, Gačice, and Grbavica.

With respect to the 18 July 1993 attack on Stari Vitez, the Appeals Chamber concluded that the nature of the attack of 18 July 1993 could not be categorically defined as that of a criminal act, in that there was still the presence of a considerable number of ABiH soldiers in Stari Vitez at that time.

On the charge of superior criminal responsibility, the Appeals Chamber found no evidence to show that Tihomir Blaškić knew or had reason to know beforehand about any of the things that occurred, therefore, it concluded that on the basis of the trial findings and evidence admitted on appeal, the issue of failure to prevent does not arise in relation to this part of the case.

Regarding the seventh ground of appeal about the crimes committed in the Busovača municipality, and given the absence of direct evidence that the appellant ordered the attacks in Lončari and Očehnići in April 1993, the Appeals Chamber found that no reasonable trier of fact could conclude beyond reasonable doubt that Tihomir Blaškić ordered these attacks. The Appeals Chamber noted that this conclusion was bolstered by the additional evidence admitted on appeal.

With respect to the eighth ground of appeal, the Appeals Chamber stated that on the basis of the evidence relied upon by the Trial Chamber, no reasonable trier of fact could have come to the conclusion beyond reasonable doubt that the appellant intended to effect forcible transfers of civilians. The Appeals Chamber further found that the evidence did not prove beyond reasonable doubt that the appellant was even aware of a substantial likelihood that crimes would be committed in the execution of his orders. For the foregoing reasons, it noted that no reasonable trier of fact could conclude that the appellant was responsible under superior criminal responsibility for the crimes committed in April 1993 in Kiseljak.

The Appeals Chamber also cleared Tihomir Blaškić of any wrong doing in relation to the detention related crime stated in the ninth ground of appeal.

On the issue of "inhuman and cruel treatment", the Appeals Chamber decided that the text of the trial judgement was insufficiently clear as to how the Trial Chamber justified its conclusion that the appellant ordered the detentions; it was a conclusion arrived at by extrapolation.

On the "hostage-taking" issue, the Appeals Chamber found no necessary causal connection between an order to defend a position and the taking of hostages. The Trial Chamber's finding was not supported by the evidence, and no reasonable trier of fact could have made that finding. The Appeals Chamber further found that the reasoning of the Trial Chamber in finding the appellant responsible for positively ordering the use of civilian detainees as human shields was flawed. A factual conclusion that detainees were used as human shields on a particular occasion does not mean that the appellant positively ordered that to be done.

For the tenth ground of appeal, the Appeals Chamber heard several arguments by the appellant against the Trial Chamber's sentence. These arguments were considered in the judgement of the Appeals Chamber, but in the interests of brevity, were not discussed in the hearing.

However, the Appeals Chamber considered that it was wrong for the Trial Chamber to hold that "it is impossible to identify which acts would relate to which of the various counts - other than those supporting the prosecution for and conviction of persecution under count one."

The Appeals Chamber found that the reasoning of the Trial Chamber was wrong in law. The Trial Chamber also erred in failing to consider the appellant's real and sincere remorse as a mitigating factor, and in considering his discriminatory intent as an aggravating factor in light of his conviction for persecutions at trial.

The Appeals Chamber rendered its judgement on 29 July 2004 altering the sentence handed down by Trial Chamber I on 3 March 2000. It reduced the sentence of Tihomir Blaškić from 45 years' to 9 years' imprisonment, subject to credit being given for the period that he has already spent in detention from 1 April 1996.

Judge Schomburg appended a separate opinion limited to the sentence and Judge Weinberg de Roca appended a partial dissenting opinion.

On 29 July 2004, following the appeals judgement, the Defence for Tihomir Blaškić filed a request for early release which was granted by the President on the same day. It came into effect on 2 August 2004 and Tihomir Blaškić has since been released.

REQUEST FOR REVIEW

On 29 July 2005, the Prosecution requested a review of the Appeals Chamber judgement. According to Rule 119 of the Tribunal's rules, the Prosecution or the Defence can request a review within one year of the final judgement if a new fact was found in the case. The Appeals Chamber found that the fact was not a decisive factor in reaching their judgement and dismissed the Prosecution's request on 23 November 2006.