

Appeals Chamber Partially Affirms the Convictions against Dragomir Milošević and Reduces his Sentence to 29 Years

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APPEALS CHAMBER

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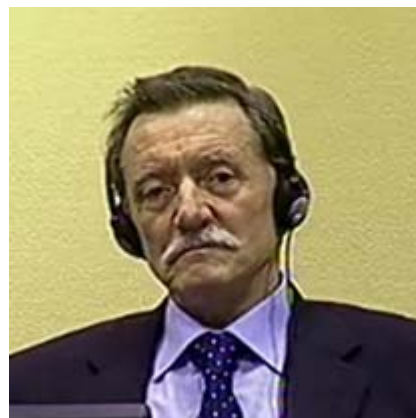
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Appeals Chamber Partially Affirms the Convictions against Dragomir Milošević and Reduces his Sentence to 29 Year

The Appeals Chamber today partially upheld the Trial Chamber's findings in the case of Dragomir Milošević, a former Bosnian Serb Army general, convicted for the crimes committed against civilians of Sarajevo during the second half of the 1992-1995 siege of the capital city of Bosnia and Herzegovina.

The Appeals Chamber also granted Milošević's appeal in part and reduced his sentence from 33 to 29 years' imprisonment. The Prosecution's sole ground appeal requesting that Milošević be sentenced to life imprisonment was dismissed in its entirety.

Dragomir Milošević was the commander of the Sarajevo-Romanija Corps (SRK) of the Bosnian Serb Army (VRS) which encircled and entrapped the city of Sarajevo during the three and half year long conflict. Milošević assumed the command of the SRK from his former superior Stanislav Galić in August 1994 and remained in that position over a 15-month period up to the end of the conflict in November 1995.



Dragomir Milošević

The Trial Chamber found that Milošević was guilty of crimes against humanity and of a violation of the laws or customs of war. He was convicted on five counts of terror, murder and inhumane acts conducted during a campaign of sniping and shelling which resulted in the injury and death of a great number of civilians in the besieged Bosnian capital. Two counts of unlawful attacks against civilians were dismissed in the December 2007 judgement, as impermissibly cumulative on the ground that the elements of the crime of unlawful attack against civilians are fully encompassed by the crime of terror. Having corrected the Trial Chamber's errors of law with regards to the elements of the crime of terror, the Appeals Chamber held that convictions for both crimes could be entered cumulatively, but declined to pursue its analysis given that the Prosecution did not appeal the matter.

The Appeals Chamber replaced Milošević's convictions for planning and ordering the sniping of the civilian population with respective convictions under Article 7(3) of the Statute. The Appeals Chamber ruled that, whereas the evidence cited in the Trial Judgement does not support a finding that Milošević planned and ordered the sniping incidents, his command responsibility for having failed to prevent and punish the said crimes committed by his subordinates has been established beyond reasonable doubt.

The Appeals Chamber upheld the majority of the Trial Chamber's convictions for ordering the shelling of the civilian population in Sarajevo during the 15-month period, except for the shelling of the Baščaršija Flea Market on 22 December 1994, of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995. It further ruled that Milošević's convictions for planning the crimes resulting from the shelling incidents be overturned given that his responsibility for ordering the said incidents fully encompasses his criminal conduct and thus does not warrant a separate conviction for planning the same crimes.

With respect to the shelling of the Baščaršija flea market the Appeals Chamber found that both shells that exploded at the market were fired from south-east direction. However, only one witness, who based his conclusion solely on the sound of one shell being fired, provided evidence pertaining to their precise origin. Given that the positions of both the Army of Bosnia and Herzegovina and those of SRK were in the direction from which the shell was fired the Appeals Chamber found that an analysis of the charge could have determined the position where the shell was fired from with greater precision. In addition, the Trial Chamber failed to address the deficiencies in the relevant evidence and to articulate its reasons for dismissing other possible conclusions with respect to the origin of fire. The Appeals

Chamber therefore concluded that “whereas the evidence on the record could lead a reasonable Trial Chamber to conclude that it was most likely that the shells that hit the flea market on 22 December 1994 were fired from SRK-held territory, it was insufficient to support such a conclusion beyond reasonable doubt.”

With respect to the shelling of BITAS building and Markale Market, which occurred while Milošević was receiving medical treatment in Belgrade between 6 August and 10 September 1995, the Appeals Chamber noted that during this period, the Chief of Staff, Čedomir Sladoje, was in charge of the SRK command in Sarajevo and issued orders in lieu of the commander. The Appeals Chamber found that even though Milošević formally preserved his rank and duties, the position of authority on the ground belonged to the stand-in commander. Furthermore the Appeals Chamber found that “it was unreasonable for the Trial Chamber to infer that Milošević ordered these two shelling incidents on the basis that the incidents in question were similar to the ones that took place in his presence”.

The Presiding Judge clarified that “in light of the acquittals with respect to the shelling of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995, the Appeals Chamber did not need to address Milošević’s challenges in relation to the victims thereof and the SRK participation therein. In this sense, the Trial Chamber’s relevant findings remain undisturbed on appeal.”

The Appeals Chamber dismissed Milošević’s claim that Vojničko Polje, Alipašino Polje, Dobrinja, Sedrenik, Hrasnica and Marin Dvor were military zones within the city of Sarajevo. His contention that trams were not deliberately targeted by SRK members was also dismissed. Milošević also failed to show that the Trial Chamber erred when it found that SRK was behind the shelling of Livanjska street on 8 November 1994. The Appeals Chamber further dismissed Milošević’s challenges with respect to the civilian status of the victims of a number of shelling and sniping incidents.

The Appeals Chamber dismissed Milošević’s ninth, tenth and eleventh grounds of appeal concerning the possession and use of modified air bombs throughout the Indictment period, including with respect to the shelling of the television building on 28 June 1995. The Trial Chamber judgement described these bombs “as highly inaccurate with great explosive power”.

The Appeals Chamber dismissed both Milošević’s and the Prosecution’s appeal on the length of the sentence imposed by the Trial Chamber. In addition, it concluded proprio motu that the Trial Chamber erred in counting the same factors in considering both the gravity of the crimes and the aggravating circumstances. Nonetheless, the Appeals Chamber found this error to be without impact on Milošević’s sentence.

In considering the impact of the remainder of its conclusions, notably with respect to the modes of Milošević’s liability, Judge Fausto Pocar, presiding said: “Milošević did more than merely tolerate the crimes as a commander. In maintaining and intensifying the campaign directed at the civilian population in Sarajevo throughout the Indictment period, he provided additional encouragement to his subordinates to commit the crimes against the civilians. Therefore, no reduction of sentence is warranted”. However the Appeals Chamber found that the reversal of Milošević’s convictions for three shelling incidents, including the Markale Market, have an impact, although limited, on Milošević’s overall culpability. It therefore reduced his sentence to 29 years’ imprisonment. Judge Liu Daqun appended a partly dissenting opinion with respect to the crime of terror and certain sentencing considerations.

Credit will be giving for the time Milošević already spent in the Detention Unit, where he will also await the President’s decision on the state in which he is to serve the remainder of his sentence. Dragomir Milošević surrendered on 3 December 2004. His trial began on 10 January 2007 and ended in October of the same year. Milošević’s predecessor at the command of the SRK, Stanislav Galić was sentenced on appeal to life imprisonment in November 2006.

Since its inception 16 years ago, the Tribunal has indicted 161 persons for war crimes committed on the territory of the former Yugoslavia. The proceedings against 121 individuals have been completed.

Proceedings are currently open for 40 accused with 24 at trial stage, seven awaiting trial judgement and 13 before the Appeals chamber. Zdravko Tolimir is the only remaining Accused in custody, awaiting the commencement of trial. Two accused, Ratko Mladić and Goran Hadžić, are at large awaiting arrest and transfer to The Hague for trial.

The full text of the summary of the judgement can be found at the following link:

http://www.icty.org/x/cases/dragomir_milosevic/acjug/en/091112_summary_en.pdf

International Criminal Tribunal for the former Yugoslavia

For more information, please contact our Media Office in The Hague

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