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APPEALS CHAMBER
CHAMBRE D'APPEL

The Hague, July 2000
JL/P.I.S./519-e

**APPEALS CHAMBER UNANIMOUSLY DISMISSES FURUNDŽIJA APPEAL AND
AFFIRMS CONVICTIONS AND SENTENCES**

Today, Friday 21 July 2000, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), consisting of Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Robinson and Pocar, issued its Judgement in the Appeal against Sentence and Judgement in the case of *The Prosecutor v. Anto Furundžija*. The Appeals Chamber unanimously rejected each ground of appeal, dismissed the appeal, and affirmed the convictions and sentences.

The Presiding Judge of the Appeals Chamber, Judge Mohamed Shahabuddeen, read out the following summary of the Appeal Judgement in court:

The Appeals Chamber of this International Tribunal is now delivering judgement in the case of the Prosecutor v. Anto Furundžija. Copies of the judgement, which is in writing, will be made available by the Registrar to the parties towards the end of this sitting. Following the practice of this Tribunal, I shall not be reading out the text of the judgement, except for the operative paragraph. Save for a reading of that paragraph, I shall limit myself to introductory matters.

Introduction

This Chamber is seized of an appeal filed by Mr. Anto Furundžija on 22 December 1998. The appeal arises in this way.

The Appellant, Mr. Anto Furundžija, was indicted on three counts of crimes within the jurisdiction of the Tribunal. At his initial appearance before the Trial Chamber on 19 December 1997, he pleaded not guilty to all counts of the Indictment. One of the counts was subsequently withdrawn in the Amended Indictment.

On 10 December 1998, Trial Chamber II of this Tribunal found the Appellant guilty on both remaining counts: Count 13, as a co-perpetrator of torture as a violation of the laws or customs of war; and Count 14, as an aider and abettor of outrages upon personal dignity, including rape, as a violation of the laws or customs of war. The Trial Chamber sentenced the Appellant to ten years' imprisonment for the conviction under Count 13 and eight years' imprisonment for the conviction under Count 14. Consistent with the Trial Chamber's disposition, the Appellant is serving the sentences concurrently, inter se.

It is against the judgement so rendered that Mr. Furundžija now appeals.

After the appeal was brought, the Appellant filed a Post-Trial Application before the Bureau for the Disqualification of Judge Mumba, Presiding Judge at Trial, and a Motion to Vacate Conviction and Sentence and for a New Trial. This application was dismissed on the ground that the determination as to the fairness of the trial was not within the Bureau's competence.

The hearing of the appeal was held on 2 March 2000 and judgement was reserved to a later date. A subsequent motion regarding lack of jurisdiction on the part of the Trial Chamber filed by the Appellant on 8 March 2000 was rejected by the Appeals Chamber as being filed out of time.

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This afternoon, I shall be doing three things. First, I shall introduce the text of the judgement of the Appeals Chamber. Secondly, I shall give a summary of the findings of the Appeals Chamber. Finally, I shall read out the disposition of the judgement of the Appeals Chamber. I reiterate that the judgement is set out in the text to be handed out. This statement is not the judgement of the Appeals Chamber, except for the reading of the disposition.

Structure of the Judgement

Today's judgement is divided into eight sections. Section I sets out the procedural background to the appeal, together with the respective grounds of appeal and the reliefs sought. Section II addresses the preliminary matter of the standard of review on appeal. Sections III to VII of the judgement discuss the Appellant's five grounds of appeal. The final section contains the disposition.

I shall now briefly go through the sections of the Judgement.

Standard of review

As a preliminary matter, the Appeals Chamber addresses the relevant standard of review on appeal, which was raised by the parties. The Appeals Chamber holds that its role is limited, pursuant to Article 25 of the Statute, to correcting errors of law invalidating a decision, and errors of fact which have occasioned a miscarriage of justice. With respect to errors of law, an appellant bears the burden of argument but, if the arguments do not support the contention, the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law. With respect to errors of fact, it is only where the evidence relied on by the Trial Chamber could not reasonably have been accepted by any reasonable person that the Appeals Chamber can substitute its own finding for that of the Trial Chamber.

Grounds of Appeal and reliefs requested

The Appellant submits five grounds of appeal against the Judgement of 10 December 1998. They are as follows:

- 1. That the Appellant was denied the right to a fair trial in violation of the Statute.*
- 2. That the evidence was insufficient to convict him on either count.*
- 3. That the Defence was prejudiced by the Trial Chamber's improper reliance on evidence of acts that were not charged in the indictment and which the Prosecutor never identified prior to the trial as part of the charges against the Appellant.*
- 4. That presiding Judge Mumba should have been disqualified.*
- 5. That the sentence imposed upon him was excessive.*

As for the reliefs sought on behalf of the Appellant, these are:

- 1. That he be acquitted or, in the alternative, that his convictions be reversed or that he be granted a new trial; and*
- 2. That, in the alternative, if the Appeals Chamber affirms the conviction imposed by the Trial Chamber, the Appeals Chamber reduce the sentence to a term that does not exceed six years, including time served since the date of his original incarceration (18 December 1997).*

The holdings of the Appeals Chamber

I shall now mention briefly the holdings of the Appeals Chamber.

As to the first ground, the Appeals Chamber holds that the Appellant was not denied the right to a fair trial, and that this ground must fail.

As to the second ground, the Appeals Chamber holds that there has been no showing that the factual findings by the Trial Chamber were unreasonable on the basis of the evidence admitted at trial, and the Appeals Chamber has not been persuaded as to the existence of any legal errors which require it to intervene. Accordingly, this ground of appeal must fail.

As to the third ground, the Appeals Chamber holds that there is no requirement that the actual evidence on which the Prosecutor relies has to be included in the indictment, and that the Defence was not prejudiced by the Trial Chamber's admission during trial of evidence in

support of facts not alleged in the Amended Indictment. Therefore the third ground of appeal must fail.

As to the fourth ground, the Appeals Chamber holds that Judge Mumba, the Presiding Judge in the Appellant's trial, was subjectively free of bias and that there was nothing in the surrounding circumstances which objectively gave rise to an appearance of bias, and that this ground therefore must fail.

Finally, as to the fifth ground, the Appeals Chamber holds that the sentence imposed upon the Appellant was not excessive and that the Trial Chamber exercised its discretion in accordance with the relevant provisions of the Statute and the Rules as well as the previous decisions of the Tribunal. As a result, this ground must also fail.

The Disposition

I shall now read the operative paragraph of the judgement of the Appeals Chamber. It is as follows:

VIII. DISPOSITION

*For the foregoing reasons, **THE APPEALS CHAMBER, UNANIMOUSLY**, rejects each ground of appeal, dismisses the appeal, and affirms the convictions and sentences.*

Done in both English and French, the English text being authoritative.

Judge Shahabuddeen, Judge Vohrah and Judge Robinson append declarations to this Judgement.

There ends the final part of the judgement. I shall now ask the Registrar to deliver copies of the judgement to the parties.