



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 10 December 1998

## STATEMENT OF THE TRIAL CHAMBER AT THE JUDGEMENT HEARING

### The Prosecutor v. Anto Furundzija 10 December 1998

Good afternoon ladies and gentleman.

Would the Registrar please call the case?

Mr. Furundzija, are you able to hear me in a language which you understand?

May we have the appearances for the Prosecution and the Defence please?

Thank you.

This afternoon, Trial Chamber II delivers its Judgement in this case, *Prosecutor v. Anto Furundzija*. The trial of Mr. Furundzija commenced on 8 June 1998 and the proceedings continued until 22 June 1998, at which time the hearing was closed with judgement reserved to a later date. Subsequently, upon a motion filed by the Defence, the Trial Chamber ordered that the proceedings be reopened. The reopened proceedings covered a period of four days and the hearing was finally closed on 12 November 1998.

The accused, Anto Furundzija, stands charged with serious violations of international humanitarian law namely, torture as a Violation of the Laws or Customs of War, and outrages upon personal dignity, including rape, as a Violation of the Laws or Customs of War. The Amended Indictment alleges that the accused was the local commander of a special unit of the military police of the HVO known as the "Jokers", in which capacity he, and another soldier, Accused B, interrogated Witness A. During the questioning, Witness A had a knife rubbed against her inner thigh and lower stomach, and the perpetrator threatened to put his knife inside her vagina should she not tell the truth. The Amended Indictment further alleges that the accused continued to interrogate Witness A and Victim B while they were beaten on the feet with a baton and further, that the accused stood by, failing to intervene in any way, while Witness A was forced to have oral and vaginal sexual intercourse with Accused B.

The Judgement of the Trial Chamber in this case is some one hundred pages in length. Accordingly, instead of presenting the Judgement in its entirety, we will provide a brief summary of the Trial Chamber's findings as to the charges against the accused before delivering the disposition.

The Judgement comprises nine sections, including the disposition. We shall briefly address each of these in turn, emphasising the main theme characterising each section and the pertinent findings therein.

Section I contains a detailed description of the procedural history of the case, including the nature of the accused's arrest, surrender to the International Tribunal and initial appearance

Internet address: <http://www.un.org/icty>

Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-5343; 512-5356 Fax: +31-70-512-5355

before the Trial Chamber, as well as a discussion of the more substantial procedural issues that arose over the course of these proceedings.

Section II contains a summary of the submissions of the parties in relation to the charges against the accused in the Amended Indictment and the underlying facts.

Section III addresses the jurisdictional prerequisites for the application of Article 3, namely the existence of an armed conflict. In this context, the Trial Chamber finds that the test formulated by the Appeals Chamber of the International Tribunal in *Tadic* is the correct test to apply in determining the existence of an armed conflict. Based on the evidence submitted by both parties, the Trial Chamber finds that, at the material time, a state of armed conflict existed in central Bosnia and Herzegovina between the Croatian Defence Council (the "HVO") and the Army of Bosnia and Herzegovina (the "AbiH"). In Section IV, the Trial Chamber finds a nexus between this armed conflict and the acts underlying the charges against the accused.

Section V addresses the evidence relating to the charges in the Amended Indictment. This section begins with an overview of the relevant evidence and the arguments of the parties relating thereto, then proceeds to examine the background and circumstances leading up to the critical events alleged to have occurred at the Bungalow and the Holiday Cottage in Nadioci. The evidence relating to those acts giving rise to individual criminal liability of the accused, including the evidence identifying Anto Furundzija as one of the persons involved in those criminal acts, is then discussed. The following sub-section places the re-opening proceedings in procedural context and examines the evidence relating to the central issue of those proceedings, namely the extent to which the reliability of Witness A's evidence may have been affected by any psychological disorder arising out of her traumatic ordeal. In this respect, the Trial Chamber examines the evidence presented through expert witnesses for both the Prosecution and the Defence, on the issue of post-traumatic stress disorder (PTSD) and its potential effect on memory. It is found that Witness A's memory regarding material aspects of the events through which she suffered has not been affected by any disorder she may have had. The Trial Chamber notes that the expert evidence demonstrates that even when a person is suffering from PTSD she or he may still be a reliable witness, and accepts Witness A's testimony that she has sufficiently recollected the material aspects of the relevant events. The Trial Chamber then examines the inconsistencies in Witness A's testimony and makes a finding as to its general reliability. Section V concludes with the Trial Chamber's factual findings in relation to the events alleged in the Amended Indictment.

In Section VI, the Trial Chamber commences a discussion of the elements of each of the offences charged in the Amended Indictment. This section contains a comprehensive analysis of the nature and status of the prohibition against torture under conventional and customary international law, as well as providing a definition of torture under international humanitarian law. In this regard, the Trial Chamber finds that the prohibition against torture has attained the status of *jus cogens*. Further, the requisite elements of the offence of torture are found to be as follows:

The intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession or of punishing, intimidating, humiliating or coercing the victim or a third person, or of discriminating on any ground against the victim or a third person. For such an act to constitute torture, one of the parties thereto must be a public official or must, at any rate, act in a non-private capacity, e.g. as a *de facto* organ of a State or any other authority wielding entity.

This section continues with a discussion of the prohibition against rape and other serious sexual assaults under international law. The Trial Chamber finds it is indisputable that rape and other serious sexual assaults in situations of armed conflict entail criminal liability of the perpetrators. In this context, the Trial Chamber upholds the recent finding by Trial Chamber II

of the ICTY in *Prosecutor v. Delali} et al.*, that in certain circumstances, rape may amount to torture under international law. However, this Trial Chamber has seen fit to expand the definition of rape first formulated by Trial Chamber I of the ICTR in *Akayesu* and followed in the *Delali}* Judgement. Thus, the Trial Chamber finds that the following comprise what may be accepted as the requisite elements of the offence of rape under international criminal law:

The sexual penetration, however slight, either of the vagina or anus of the victim by the penis of the perpetrator, or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator, where such penetration is effected by coercion or force or threat of force against the victim or a third person.

In Section VI(B), the Trial Chamber turns its attention to analysing the content of the various heads under which individual criminal liability may be incurred pursuant to Article 7(1) of the Statute of the International Tribunal. In this regard, the Trial Chamber finds the necessary elements of aiding and abetting under international criminal law to comprise: an *actus reus* requiring practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime and a complementary *mens rea* requiring knowledge that such acts assist the commission of the offence.

The Trial Chamber further elaborates the principles of individual criminal responsibility in the context of torture by finding that an accused, who would otherwise be liable as an aidor and abettor to torture under the foregoing standard, will be held responsible as a co-perpetrator of torture, where the accused participates in an integral part of the torture and partakes of the prohibited purpose behind the torture, i.e. the intent to obtain information or a confession, to punish or intimidate, humiliate, coerce or discriminate against the victim or a third person.

Section VII of the Judgement sets forth the legal findings of the Trial Chamber with respect to each of the charges against the accused in the Amended Indictment.

Mr. Furundzija, will you please stand to receive the Judgement of this Trial Chamber.

For the foregoing reasons, having considered all of the evidence, the submissions of the parties and the Statute and Rules by which it is bound, the Trial Chamber finds as follows with respect to the accused, Anto Furundzija:

Count 13: As a co-perpetrator, GUILTY of a Violation of the Laws or Customs of War (torture).

Count 14: For aiding and abetting, GUILTY of a Violation of the Laws or Customs of War (outrages upon personal dignity, including rape).

Pursuant to sub-Rule 85(A)(vi) of the Rules of Procedure and Evidence, the Trial Chamber heard the oral submissions of the Prosecution and the Defence on sentencing in this case, on 22 June 1998. It sets out its discussion and findings in this regard in Section VIII of the Judgement. The Trial Chamber considers that the imposition of sentence must take account of various mitigating and aggravating factors as well as the sentencing practices of the courts of the former Yugoslavia.

The Trial Chamber imposes sentence as follows:

Count 13: For torture as a Violation of the Laws or Customs of War, the Trial Chamber sentences you, Anto Furundzija, to ten years' imprisonment.

Count 14: For outrages upon personal dignity, including rape, as a Violation of the Laws or Customs of War, the Trial Chamber sentences you, Anto Furundzija, to eight years' imprisonment.

The Trial Chamber has determined that the foregoing sentences are to be served concurrently, *inter se*. In addition, pursuant to sub-Rule 101(D) of the Rules of Procedure and Evidence, persons convicted by the International Tribunal are entitled to credit for time spent in custody

pending surrender to the Tribunal and time spent in detention pending trial or appeal. Accordingly, eleven months and twenty-two days shall be deducted from the sentence today imposed on Anto Furundzija, together with such additional time as he may serve pending the determination of any appeal. In accordance with Rule 102 of the Rules of Procedure and Evidence, Anto Furundzija's sentence, subject to the above mentioned deduction, shall begin to run from today.

Pursuant to Article 27 of the Statute and Rule 103 of the Rules, Anto Furundzija shall serve his sentence in a State designated by the President of the International Tribunal. The transfer of Anto Furundzija to the designated State shall be effected as soon as possible after the time-limit for appeal has elapsed. In the event that notice of appeal is given, the transfer of the accused, Anto Furundzija, if compelled by the outcome of such an appeal, shall be effected as soon as possible after the determination of the appeal by the Appeals Chamber. Until such time as his transfer is effected, Anto Furundzija shall remain in the custody of the International Tribunal, in accordance with Rule 102.

This concludes the Judgement of the Trial Chamber.

Thank you. The Trial Chamber now stands adjourned.