

SUMMARY OF APPEALS CHAMBER JUDGEMENT

The Prosecutor v. Dusko Tadic **15 July 1999**

The Appeals Chamber of this International Tribunal is now delivering judgement in this matter. As will be explained, the judgement is limited to two of the three appeals now before the Chamber.

But, first, there is a word of explanation. The Appeals Chamber is sitting in the absence of one of its members, namely, Judge Nieto-Navia. In exceptional circumstances, he cannot attend today's sitting. The President has made an Order, dated 2 July 1999, of which notice has been given to the parties, authorising the Appeals Chamber to deliver judgement in his absence.

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 the 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

The Appeals Chamber has before it three appeals in this case. They arise in this way.

The Accused, Dusko Tadic, was indicted on 34 counts of crimes within the jurisdiction of the International Tribunal. At his initial appearance before the Trial Chamber on 26 April 1995, he pleaded not guilty to all counts. Three of the counts were subsequently withdrawn at trial. Of the remaining 31 counts, the Trial Chamber found the accused guilty on 9 counts, guilty in part on 2 counts, and not guilty on 20 counts. Judgement was handed down on 7 May 1997. The related Sentencing Judgement was delivered on 14 July 1997.

Both Mr. Tadic and the Prosecutor now appeal against separate aspects of the judgement of the Trial Chamber. Additionally, the Appellant appeals against the Sentencing Judgement. This explains why there are three appeals.

A great deal of time was taken up by proceedings relating to requests by the Appellant for leave to admit additional evidence. The main request, which concerned a proposal to produce more than 80 new witnesses, was made on 6 October 1997. It led to a number of steps. It was determined on 15 October 1998. Two further requests by the Appellant for leave to admit additional evidence were made on 8 January and 19 April 1999 respectively. They were disposed of on 25 January and 19 April 1999 respectively.

Oral argument on the three appeals was heard by the Appeals Chamber from 19 to 21 April 1999. On 21 April 1999, the Appeals Chamber reserved its judgement.

For reasons to be given, judgement on the Sentencing Appeal will be delivered at a later date. The present judgement relates to the Appellant's Appeal against Judgement and the Prosecutor's Cross-Appeal against Judgement.

As to these two appeals, I shall be doing three things. First, I shall introduce the text of the judgement of the Appeals Chamber. Second, 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 make it clear 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 of the judgement.

Structure of the Judgement

Today's judgement is divided into eight sections. Section I sets out the procedural background to the appeals, together with the respective grounds of appeal and the reliefs sought. Sections II and III of the judgement discuss the Appellant's first and third grounds of appeal, respectively. Leave to amend the Appellant's Notice of Appeal to include a second ground of appeal concerning the conduct of former counsel was not granted by the Appeals Chamber and is not addressed. Sections IV to VIII deal with the Prosecution's five grounds of appeal.

I shall now briefly go through the sections of the judgement of the Appeals Chamber.

Grounds of appeal and reliefs requested

(a) First, the Appellant's Appeal against Judgement. There are two grounds of appeal.

The first ground of appeal is as follows:

The Appellant's right to a fair trial was prejudiced as there was no "equality of arms" between the Prosecution and the Defence due to the prevailing circumstances in which the trial was conducted.

As mentioned earlier, a second ground of appeal is not being proceeded with.

The third ground of appeal is as follows:

The Trial Chamber erred at paragraph 397 of the Judgement when it decided that it was satisfied beyond reasonable doubt that the Appellant was guilty of the murders of the two men concerned.

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

(i) That the decision of the Trial Chamber that the Appellant is guilty of the crimes proved against him be set aside.

(ii) That a re-trial of the Appellant be ordered.

(iii) In the alternative to the relief sought under (i) and (ii) above, that the decision of the Trial Chamber at paragraph 397 of the Judgement that the Appellant is guilty of the murders of the two men concerned be reversed.

(iv) That the sentence of the Appellant be reviewed in the light of the relief sought under (iii) above.

(b) I pass now to the Prosecutor's Cross-Appeal against Judgement. There are five grounds of appeal. They are as follows:

1. The majority of the Trial Chamber erred when it decided that the victims of the acts ascribed to the accused in Section III of the Judgement did not enjoy the protection of the grave breaches regime of the Geneva Conventions of 12 August 1949 as recognised by Article 2 of the Statute of the International Tribunal.
2. The Trial Chamber erred when it decided that it could not, on the evidence before it, be satisfied beyond reasonable doubt that the accused had played any in part in the killing of any of the five men from the village of Jaskici, as alleged in Counts 29, 30 and 31 of the Indictment.

3. The Trial Chamber erred when it held that in order to be found guilty of a crime against humanity, the Prosecution must prove beyond a reasonable doubt that the accused not only formed the intent to commit the underlying offence but also knew of the context of a widespread or systematic attack on the civilian population and that the act was not taken for purely personal reasons unrelated to the armed conflict.
4. The Trial Chamber erred when it held that discriminatory intent is an element of all crimes against humanity under Article 5 of the Statute of the International Tribunal.
5. The majority of the Trial Chamber erred in a decision of 27 November 1996 in which it denied a Prosecution motion for production of defence witness statements.

On the basis of grounds 1, 2 and 3 of its Cross-Appeal, the Prosecution sought to have the Judgement of the Trial Chamber correspondingly reversed. No reliefs were sought on grounds 4 and 5, but both parties agreed that these grounds raised issues of sufficient importance to justify a pronouncement one way or another.

The Holdings of the Appeals Chamber

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

(a) I shall deal first with the Appellant's Appeal against Judgement.

As to the first ground, the Appeals Chamber holds against the Appellant's contention that his right to a fair trial was prejudiced.

As to the second ground, as already mentioned, this is not being proceeded with.

As to the third ground, the Appeals Chamber holds that the Trial Chamber did not err when it decided that it was satisfied beyond reasonable doubt that the appellant was guilty of the murders of the two men concerned.

(b) I come now to the Prosecutor's Cross-Appeal.

As to the first ground, the Appeals Chamber holds that there was an international armed conflict and that in consequence the grave breaches regime of the Geneva Conventions applied. The Appeals Chamber also finds that victims were protected persons under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

The accused is therefore found guilty on the counts on which he was acquitted by the Trial Chamber on the sole basis of its findings to the contrary.

As to the second ground, the Appeals Chamber holds that the Trial Chamber erred when it decided that it could not, on the evidence before it, be satisfied beyond reasonable doubt that the accused had played any part in the killing of the five men from the village of Jaskici. In the view of the Appeals Chamber, the Trial Chamber also erred on the doctrine of common purpose.

As to the third ground, the Appeals Chamber holds that an act carried out for purely personal motives can constitute a crime against humanity.

As to the fourth ground, the Appeals Chamber holds that discriminatory intent is not required for all crimes against humanity, but only for such crimes relating to persecution.

As to the fifth ground, the Appeals Chamber holds that a Trial Chamber may order, depending on the circumstances of the case before it, the disclosure of a defence witness statement after examination-in-chief of the witness.

I come now to the Appellant's Appeal against Sentencing Judgement. As the judgement of the Appeals Chamber explains, sentencing in relation to certain counts on which the Appellant was acquitted at the trial but in respect of which he is now found guilty, will be deferred to a separate sentencing phase. That being so, the Appellant's Appeal against Sentencing Judgement will be determined when a decision is made as to sentencing on those counts.

The Disposition

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

I. Disposition

1. For the foregoing reasons, **THE APPEALS CHAMBER, UNANIMOUSLY**

(1) DENIES the first ground of the Appellant's Appeal against Judgement;

(2) DENIES the third ground of the Appellant's Appeal against Judgement;

(3) RESERVES JUDGEMENT on the Appellant's Appeal against Sentence until such time as the further sentencing proceedings referred to in sub-paragraph (6) below have been completed;

(4) ALLOWS the first ground of the Prosecution's Cross-Appeal, REVERSES the Trial Chamber's verdict in this part, AND FINDS the Appellant guilty on Counts 8, 9, 12, 15, 21 and 32 of the Indictment;

(5) ALLOWS the second ground of the Prosecution's Cross-Appeal, REVERSES the Trial Chamber's verdict in this part, AND FINDS the Appellant guilty on Counts 29, 30 and 31 of the Indictment;

(6) DEFERS sentencing on the Counts mentioned in sub-paragraphs (4) and (5) above to a further stage of sentencing proceedings;

(7) HOLDS that an act carried out for the purely personal motives of the perpetrator can constitute a crime against humanity within the meaning of Article 5 of the Tribunal's Statute relating to such crimes;

(8) FINDS that the Trial Chamber erred in finding that all crimes against humanity require discriminatory intent and HOLDS that such intent is an indispensable legal ingredient of the offence only with regard to those crimes for which it is expressly required, that is, for the types of persecution crimes mentioned in Article 5(h) of the Tribunal's Statute;

(9) HOLDS that a Trial Chamber may order, depending on the circumstances of the case at hand, the disclosure of Defence witness statements after examination-in-chief of the witness.

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

Judge Nieto-Navia appends a Declaration to this Judgement.

Judge Shahabuddeen appends a Separate Opinion 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.

Further Proceedings

It remains to add that the Appeals Chamber fixes 30 August 1999, at 2.30 p.m., to hear oral

arguments on sentencing for the counts mentioned in sub-paragraphs (4) and (5) of the disposition. Each party will have liberty to file a written brief in respect of that matter by 25 August 1999. The briefs may address the issue as to the relative seriousness in law of the crimes referred to in those counts from the point of view of penalty.

As mentioned earlier, the Appeal against Sentencing Judgement will be determined when a decision is made as to sentencing on the counts mentioned in sub-paragraphs (4) and (5) of the dispositive.

To return to the proceedings thus far, the result of the Appeals Chamber's decision, stated in a formula traditional to some law areas, is this:

The Appellant's Appeal against Judgement is dismissed.

The Prosecutor's Cross-Appeal against Judgement is allowed.