

VIEW FROM THE HAGUE

FINNISH PRISONER FURUNDŽIJA GRANTED EARLY RELEASE

On 29 July this year, the President of the ICTY, Theodor Meron granted the Government of Finland's application for the early release of Anto Furundžija, effective as of 17 August 2004. Through this order Meron has brought to a close a landmark case which dealt with crimes, as described in the Judgement, of the utmost cruelty and barbarity. The case also provided a definition of torture and expanded the definition of rape under international law, a case that began with an initial indictment confirmed on 10 November 1995.

Furundžija was initially charged with crimes committed in the central Bosnia area of the Lašva River Valley. According to the indictment Furundžija was, at the time, a commander of a special forces group within the Croatian Defense Council called the "Jokers", whose headquarters, based in Vitez, were commonly referred to as the "Bungalow". It was alleged that it was at this location on about 15 May 1993 that two prisoners (Witness A and Witness D) were mistreated by another member of the "Jokers" while being interrogated by the accused. Furundžija was also present while one of those prisoners, witness A, was sexually assaulted and he did nothing to stop or curtail the action.

Following his arrest on 18 December 1997 by members of SFOR, Furundžija was transferred to the detention unit of the ICTY, with the trial beginning 8 June 1998. In the amended indictment, in his capacity as commander, Furundžija was charged with two counts of violations of the laws or customs of war - torture (count 13) and outrages upon personal dignity including rape (count 14). The prosecution's case centered around the testimony of Witness A against whom the sexual assaults were alleged to have been perpetrated. While the sexual assaults were happening it was also alleged that the accused continued to interrogate her about her children, indeed, the witness testified that the accused issued threats against her children. She spoke of a direct relationship between his dissatisfaction with her answers and the assaults inflicted upon her by Furundžija's associate. The purpose of this abuse was to extract information from Witness A about her family, her connection with the Army of Bosnia and Herzegovina and her relationship with certain Croatian soldiers and also to degrade and humiliate her.

The Judgement articulated that torture is one of the most serious offences known to international criminal law and in the situations described they felt that Furundžija played a role every bit as grave as the person who actually inflicted the pain and suffering. "The circumstances of these attacks were particularly horrifying. A woman was bought into detention, kept naked and helpless before her interrogators and treated with the utmost cruelty and barbarity. The accused, far from preventing these crimes, played a prominent part in their commission".

Based on the evidence, the Trial Chamber determined that both Witness A and Witness D had been subjected to severe physical and mental suffering amounting to torture. In finding Furundžija guilty as a co-perpetrator of the torture the Trial Chamber held that, "[t]here is no doubt that the accused and Accused B, as commanders, divided the process of interrogation by performing different functions. The role of the accused was to question, while Accused B's role was to assault and threaten in order to elicit the required information from Witness A and Witness D".

The Trial Chamber also held that Furundžija's presence and continued interrogation of Witness A while she was subjected to rape and serious sexual assault by his associate aided and abetted these crimes. Accordingly, it found him individually responsible for outrages upon personal dignity including rape and based upon these findings of guilt sentenced Furundžija to ten years imprisonment.

The Defence filed an appeal at the end of 1998 and the hearing of the appeal took place on 2 March 2000. The case had been appealed by the Defence on several grounds; they claimed that Furundžija had been denied a fair trial, that the Prosecutor had failed to prove the crimes beyond reasonable doubt, that the verdict had been based on evidence of acts not charged in the indictment, that the sentence was too harsh and that the Presiding Judge, was biased. All of these claims were unanimously rejected by the Appeals Chamber and the sentence of ten years was upheld. On 22 September 2000 Anto Furundžija was transferred to Finland to serve his prison sentence and the time he spent in detention was included in the sentence.

Persons sentenced by the Tribunal, serve their sentences in states that have signed agreements with the UN to that effect. They realise their rights to submit motions for early release in accordance with the laws of such countries, but such motions are decided upon by the President of the Tribunal. In deciding on such motions, he relies on reports submitted by the state in question. In reaching his decision to order the early release of Furundžija, President Meron took into consideration a number of elements including that "... as reported by the Finnish authorities, Mr Furundžija has accepted the Judgement he received as fair and has expressed remorse for the suffering of victims."

Outreach Programme

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