

Aleksovski Judgement: Factual & Legal Findings Published

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Aleksovski was released immediately after the judgment was given when both sides announced their intention to appeal against the verdict. Zlatko Aleksovski commanded the prison facility at Kaonik, near Busovaca in Central Bosnia, where, according to the indictment, from January 1993 until at least the end of May 1993, he took charge of hundreds of Bosnian Muslim civilians from the HVO or their agents. Many of the detainees under his control were subjected to inhumane treatment, including excessive and cruel interrogation, physical and psychological harm, forced labour (digging trenches), in hazardous circumstances. Many were used as human shields and some were murdered or otherwise killed.

The Trial Chamber found that Aleksovski did not play a decisive role in the commitment of those crimes; that he belonged to a 'second echelon' of the local Bosnian Croat Defense council (HVO) hierarchy; and that he did not have influence over the Military Police which was putting the prisoners to work on digging trenches in the line of fire.

Aleksovski, the judges concluded, was guilty in accepting to be an "instrument" in the crimes committed by members of HVO against detained Bosnian Muslims.

Pursuant to Article 7(1) of the Statute (individual criminal responsibility), the Trial Chamber found him guilty of ordering, and/or aiding and abetting physical and psychological maltreatment of Muslim prisoners. The Trial Chamber also held that Aleksovski whether in a civilian or military capacity, was the commander or director of the Kaonik prison and he was in a de jure and de facto superior position to the prison guards. The Trial Chamber further found that the accused knew of the offences being committed and that he failed to take any measure to prevent them or to punish the perpetrators thereof. Consequently, the Trial Chamber also found the accused guilty under Article 7(3) of the Statute (superior criminal responsibility).

As to events outside the prison, the Trial Chamber found Zlatko Aleksovski guilty, pursuant to Article 7(1) of the Statute, of aiding and abetting in the use of the prisoners for digging trenches and as human shields. For the above violations of the law or customs of war, Aleksovski was sentenced to two-and-a-half years' imprisonment. By a majority (2:1), the Trial Chamber found that Article 2 of the ICTY Statute (grave breaches of the 1949 Geneva Conventions) was not applicable and, consequently, it pronounced the accused not guilty of the two corresponding charges.

In a Joint Opinion of the Majority, Judges Lal Chand Vohrah and Rafael Nieto-Navia explained that, in their view, the alleged offences against Bosnian Muslims did not take place during an international armed conflict. The Prosecution, according to the majority opinion, "failed to discharge its burden of proving that, during the time-period and in place of the indictment, the HVO was in fact acting under the overall control of the HV (Croatian Army) in carrying out the armed conflict against Bosnia and Herzegovina.

The majority of the Trial Chamber finds that the HVO was not a de facto agent of Croatia, and that there was no indirect involvement of that country in the armed conflict in Bosnia and Herzegovina. Therefore, the Prosecution has failed to establish the internationality of the conflict to the satisfaction of a majority of the Trial Chamber for Article 2 to apply."

As to the status of the alleged victims, the majority found that the Bosnian Muslim civilian detainees were not protected persons within the meaning of the fourth Geneva Convention... "because they hold the same nationality as their (Bosnian Croat) captors." According to Article 4 of the fourth Geneva Convention, protected persons "are those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are

not nationals."

Presiding Judge Almiro Rodrigues in his Dissenting Opinion claims the opposite. First, he thinks that the Prosecutor succeeded in proving beyond doubt the international character of the conflict - if not in Central Bosnia, then at least in Herzegovina, in which case, according to him, the Geneva Conventions are to be applied throughout the length of the conflict, and throughout the territory of Bosnia and Herzegovina. He further argues that it was proven that the aims of the so-called Croatian Community of Herzeg-Bosnia (HZ H-B) and the republic of Croatia were identical - "to unite all Croats in a single political entity." In the attainment of that goal, the Republic of Croatia extended all necessary assistance to HVO, which was not only fully integrated into strategic and tactical structures of the Croatian Army (HV), but had also in fact acted as its agent.

The other ground for Presiding Judge Rodrigues' Dissenting Opinion is of potentially far greater importance for the future functioning of the Tribunal. According to his line of argument, the international character of conflict is not a condition for Article 2 of the Tribunal's Statute to apply. This way Judge Rodrigues reopened an old dilemma that has been with the Tribunal since its inception.

In May 1993, when Security Council founded the Tribunal, for practical political reasons they deliberately avoided defining the character of conflict in former Yugoslavia, Judge Rodrigues notes. Had the Security Council defined it as an internal conflict, the establishment of the Tribunal may have appeared as intervention in the internal matters of Yugoslavia. Had it, on the other hand, declared it to be an international conflict, the mandate of the Tribunal would have started only with international recognition of the new states, and would not cover crimes committed in 1991.

In its landmark Tadic Jurisdiction Decision of November 1995, the Appeals Chamber passed a Solomon's judgment, which said that conflicts in former Yugoslavia may be both internal and international in nature, and that the character of the conflict is to be determined for each individual case brought before the Tribunal. The decision further confirmed that grave breaches of the Geneva Conventions could only be committed in the international armed conflict.

In his separate opinion, the late Judge Haopei Li, in whose view the conflict in former Yugoslavia was undoubtedly of international character, then said that, "because the Decision has not determined that the armed conflict in the context of which the alleged criminal acts were committed was international in character, it has a flaw in that it has not established an important element of the jurisdiction of this Tribunal under Article 2."

Judge Georges Abi-Saab, who pointed out that "a strong case can be made for the application of Article 2, even when the incriminated act takes place in an internal conflict", also filed separate opinion to that Decision. The Jurisdiction Decision left an open door for such evolution by recognising that the change in the customary law scope of the "grave breaches" in this direction may be occurring.

Such position was also supported in the Celebici judgment in November last year. "This trial Chamber," the judgment read, "is also of the view that the possibility that customary law has developed the provisions of the Geneva Conventions since 1949 to constitute an extension of the system of 'grave breaches' to internal armed conflict should be recognized."

In his dissenting opinion in Aleksovski Judgment, Presiding Judge Rodrigues inter alia notes that at the time of the drafting of the Geneva Conventions of 1949, most conflicts in the world were of international character, whereas armed conflicts of today are often conducted between various ethnic or religious communities within the borders of a state. The international law, according to him, is in the process of evolution towards the extension of applicability of Geneva Conventions - which have now acquired the status of international customary law - on all forms of conflicts, in order to ensure the full protection of every individual who gets caught up in the conflict. On the other hand, Judge Rodrigues warns, the maintenance of restrictive interpretation of Article 2 of the Statute will in effect strengthen the feeling of impunity of perpetrators of certain types of crimes in internal conflicts.

The Appeals Chamber will pass the final word on the applicability of Article 2 in Aleksovski case and beyond. Until then, Judge Rodrigues' Dissenting Opinion is very bad news for the defence of General Tihomir Blaskic. Judge Rodrigues recently joined the panel of judges on his trial as a replacement for Judge Fouad Riad. The indicted Bosnian Croat general and war commander of HVO will undoubtedly not be too pleased with Judge Rodrigues' firm stance on the international character of the conflict in Central Bosnia and his view that HVO acted in Bosnia as an agent of the Croatian Army.

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