

Criticism of Delic Appeal Termination

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Recent death of former Bosnian army commander prompts tribunal to end appeals process.

Lawyers for recently deceased Bosnian army commander Rasim Delic have railed against a Hague tribunal decision last week terminating appeals proceedings in his case and rendering the trial judgement final.

“Mr Delic has been left condemned as a war criminal without the right to clear his name,” John Jones, Delic’s lawyer, told IWPR. “Any civilised and humane system of justice would either have allowed his appeal to continue or would have nullified the trial judgement.”

Delic, who was the highest authority in the Bosnian government army during the war, was sentenced in September 2008 to three years in prison for failing to prevent or punish the cruel treatment of Serb prisoners by the El Mujahed, EMD, detachment of the Bosnian army. He was acquitted of all other charges, including rape and murder.

He appealed against his conviction, and a hearing was held in January of this year. Delic died in April before the judgement could be rendered.

After Delic’s death, his defence team and his son, Adnan, asked judges to deliver the appeals verdict, arguing in a motion that “General Delic has already been convicted by the trial chamber, and thus effectively branded a war criminal. If his estate is not permitted to pursue his appeal, then he and his family are deprived of any opportunity of clearing his name, a gross injustice”.

The prosecution then withdrew their own appeal against the trial verdict, and said the judges should use their discretion to issue the appeals judgement because “it is in the interest of justice to do so”.

As the judges noted in their June 29 decision, it was the first time in the history of the tribunal where an appellant has died before the appeals judgement has been delivered.

In the past, defendants have died during their trial, which is what occurred during the proceedings against former Serbian president Slobodan Milosevic. No verdict was ever rendered in his case and the presumption of innocence still stands.

In the Delic case, judges argued last week that the tribunal’s jurisdiction “is limited to living accused or convicted persons”. As result, the appeals proceedings should be terminated “following the death of the appellant for lack of jurisdiction”.

As for the finality of the trial judgement, the judges acknowledged there is no “general principle” followed in most national jurisdictions for situations like this. But they stated that unlike an accused who is awaiting a trial judgement, “the presumption of innocence does not apply to persons convicted by trial chambers pending the resolution of their appeals”.

Therefore, they concluded that the trial judgement is the final judgement.

“Having found that the death of the appellant results in the termination of proceedings and given that no appeal judgement can be rendered in this case, nothing can undermine the finality of the trial judgement,” the judges stated.

Observers say that while this particular situation was unprecedented and challenging to navigate in the legal sense, the judges’ ultimate decision on the matter raises questions about whether justice was done.

“I do believe that the appeals chamber could have exercised its discretion to render the appeals judgment ... in light of one of the governing principles of international justice, which is maintaining an accurate historical record, not least for the benefit of the victims of atrocity crimes,” explained Nick Kaufman, a former prosecuting lawyer at the tribunal.

Dov Jacobs, an international criminal law expert and PhD researcher at the European University Institute, agreed.

“Given that the tribunal is oft quoted as saying their ambition goes beyond criminal responsibility, to the right to truth for victims, and the obligation to write the historical record, in this case it seems counterproductive to the ambitions of the court not to issue the appeal judgement,” he said.

Kaufman pointed out that in the trial judgement, Judge Bakone Justice Moloto dissented from the other judges, arguing that Delic did not have “effective control” over the EMD at any time during his tenure as

commander of the Bosnian army.

This aspect of the case, said Kaufman, “leaves a serious question mark over the responsibility of Delic for the crimes with which he is charged”.

Jones, Delic’s lawyer, was less equivocal. “[The decision] unjustly leaves a flawed conviction against him for perpetuity,” he said. “[It is] all the more incomprehensible given that the appeal proceedings had been completed and it only remained for them to deliver their judgment.”

Tribunal spokeswoman Nerma Jelacic told IWPR that these issues “will be debated in the region and internationally because people have different views”.

She said that in terms of establishing the historical record, the trial judgement itself did exactly that.

“The judgement itself is full of historical facts, including facts about the victims of the El Mujahed detachment,” Jelacic continued. “The facts have been established beyond reasonable doubt, and the actual crimes themselves would not have been questioned on appeal.”

Rather, she said, the appeal was meant to deal with Delic’s ability to effectively control the EMD. She said that in last week’s decision, the judges found they simply could not continue proceedings when the appellant was no longer living.

“This is a decision that highly experienced, long-term judges at the tribunal came to, they didn’t come to it quickly,” she said. “They spent considerable time looking into all the different options.”

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