

Genocide Charges Against Ex-Serb Leader to Stay

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Lawyers' motion to throw out main charge is rejected by majority of Milosevic trial judges.

The tribunal this week rejected calls to acquit Slobodan Milosevic on genocide charges.

In an extensive and detailed judgment delivered on June 16, the three-judge panel - which included Lord Iain Bonomy, who was sworn in to his post only nine days earlier - turned down a motion submitted in March by the defendant's amici curiae, or friends of the court, for genocide and some other charges to be dropped - though they did throw out some specific allegations.

Milosevic is charged with 66 counts of genocide, crimes against humanity, grave breaches of the Geneva conventions and violations of the laws or customs of war.

The tribunal found that the prosecution could show a joint criminal enterprise existed, the aim of which was to commit genocide against Bosnian Muslims, and that its participants did indeed commit genocide in Brcko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Kljuc, and Bosanski Novi.

A majority of the judges — namely presiding judge Patrick Robinson and Lord Bonomy — also believed they had heard enough evidence to possibly find Milosevic had been a member of such an enterprise.

But Judge O-Gon Kwon dissented from the part of the decision about Milosevic's involvement in the latter, explaining that, based on the evidence seen so far, he did not believe a court could rule that the defendant himself had the required intent.

But Judge Kwon did, however, agree with his colleagues that the prosecution could show Milosevic aided and abetted, or was complicit in, the commission of genocide; or to argue that he was guilty of genocide committed by his subordinate on the grounds of command responsibility.

In one small victory for Milosevic, the judges agreed to dismiss the allegations of genocide in Kotor Varos, as they said there was no evidence that genocide had been committed there.

The tribunal was careful to point out that in making its determinations, it was not finding Milosevic guilty of anything. A ruling at this stage "does not necessarily mean that the trial chamber will, at the end of the case, return a conviction", they explained.

Rule 98bis, under which the motion for acquittal was filed, allows an accused to ask the tribunal to throw out charges for which the evidence is insufficient, after the prosecution finishes presenting its case.

The rule has its origins in the common law system where a defendant is not required to answer charges for which the prosecution has not produced enough evidence. The fear is that if such charges remain, a jury might find the accused guilty even when there's not enough evidence to justify a conviction.

But the Hague tribunal, of course, does not have a jury system.

This fact was not lost on Judge Robinson who, in a separate opinion appended to the tribunal's decision, argued that because it has "a chamber of professional judges perfectly capable of sifting evidence to determine what items could lawfully sustain a conviction and what items could not, there is far less danger of an unjust conviction at the tribunal than in criminal proceedings in common law jurisdictions".

He suggested that Rule 98bis be modified so that motions to acquit are permitted only when there is no evidence — not just insufficient evidence — to support a charge.

The motion to acquit made on Milosevic's behalf sought to throw out some charges besides genocide.

Specifically, the amici disputed the prosecution's assertion that it had provided enough evidence to show there was an "armed conflict" in Kosovo before March 24, 1999, the date the NATO bombing began. This is important because according to the tribunal's statute, violations of the laws or customs of war, as well as crimes against humanity, can only occur in times of armed conflict.

The tribunal held that, based on the evidence presented, they could find an armed conflict existed in Kosovo before March 24, 1999. They reached this conclusion because there were indications that the Kosovo Liberation Army, KLA, had been an organised military force and that conflict between it and Serb forces had been intense in the aforementioned period.

The amici motion also said the prosecution had failed to establish that the armed conflict in Croatia had

been international in character between January 15, 1992 - when Croatia was recognised by the European Community - and May 22, of that year, when it was admitted to the United Nations.

The prosecution, by contrast, argued that it had offered evidence to show the conflict was international as of October 8, 1991, when Zagreb's declaration of independence became effective.

This is important because according to the tribunal's statute, grave breaches of the Geneva conventions can only be committed during times of international armed conflict - not during civil wars.

The tribunal determined that the prosecution had produced enough evidence to show Croatia met the criteria for statehood — a population, a defined territory, a government and the ability to enter into relations with other states — by October 8, 1991, and that the conflict was therefore international at the relevant times.

Finally, the amici argued that there were many specific allegations contained within the indictment for which there was no, or not enough, evidence. The prosecution had concurred on a number of these.

The tribunal agreed with the amici in several of these instances, and dismissed a number of specific allegations. Such dismissal, however, had no effect on any of the counts on Milosevic's indictment.

Milosevic is scheduled to begin presenting his defence on July 5.

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