

Jelusic Judgement: 40 Years For The 'Serbian Adolf'

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Before pronouncing what is the heaviest sentence so far handed down by the Tribunal, Presiding Judge Claude Jorda listed the 13 known and anonymous victims whose murder Jelusic admits, and the detainees that he physically tortured or robbed. Concluding, Jorda said: "For all these crimes, for all your crimes, the Trial Chamber sentences you, Goran Jelusic, to 40 years in prison."

Goran Jelusic had pleaded guilty on 31 counts of crimes against humanity and violations of the laws or customs of war, and not guilty on Count 1, charging him with crime of genocide. After the prosecution presented its evidence - the judges decided proprio motu (on their own initiative, ie: not at the defence's request) to acquit Jelusic of the crime of genocide.

However more than a third of the sentence announced on December 14 cited the dropped genocide count of the indictment.

In short, even though the judges believe that the prosecution proved beyond reasonable doubt that "the material element of genocide, namely the murder of the members of a given group" - they concluded that the "mental element," i.e. Jelusic's specific intent "to destroy, in whole or in part, a national, ethnical, racial or religious group" was not proved in the same manner.

According to the Trial Chamber, in order to establish Jelusic's genocidal intent, the Prosecutor had to prove that either Jelusic was an executioner, a participant to a "global" genocidal project, or that, he himself committed genocide. However the Trial Chamber considered that neither had been proven.

With regard to the first option, the Trial Chamber was not satisfied that a 'global' genocide, that is, genocide across the whole Brcko region, had been demonstrated beyond reasonable doubt. Specifically to dispel ambiguity however, the sentence specifies that "the Trial Chamber is not stating that there was no genocide in Brcko in May 1992 but merely noting that the elements presented do not allow it to conclude that such 'all inclusive' genocide was committed".

With regard to the second option, the Trial Chamber found that Jelusic's declarations and actions could not be interpreted as an expression of the specific genocidal intent as expressed in Article 4 of the Statute.

According to the Chamber, Jelusic's behaviour, "in addition to being clearly odious and discriminatory, was opportunistic and inconsistent". However, "the Trial Chamber is of the opinion that the acts of Goran Jelusic are not the expression of a person with the conscious intention to destroy a group as such."

Instead, the judges established that Jelusic had "discriminatory intent which does not equate to genocidal intent - a peculiar intent which renders genocide special and distinguishes it from the other crimes of international humanitarian law and in particular the crime of persecution."

As mitigating circumstances, the Trial Chamber has taken into consideration Jelusic's age at the moment of the crime (23), that he had never before been convicted for a violent crime, that he is the father of a small child and, finally, that he had pleaded guilty.

But "aggravating circumstances," however, prevailed when determining a sentence, they said. Explaining the sentence, the Trial Chamber emphasised "the repugnant, bestial and sadistic nature" of Jelusic's acts and his "scornful attitude towards victims", his "enthusiasm for committing the crimes," their inhumanity and his dangerous nature evidenced by his actions... "constitute especially aggravating circumstances which far outweigh the mitigating circumstances".

Placing Goran Jelusic's sentence into a wider context, the Trial Chamber stated that "one of the missions of the International Criminal Tribunal is to contribute to the restoration of the peace in the former Yugoslavia".

To do so, its aid, "the identification, prosecution and punishment of the principal political and military officials responsible for the atrocities committed since 1991 in the territories concerned must be a priority. However, where need be, it should be recalled that although the crimes perpetrated during armed conflicts may be more specifically ascribed to one or other of these officials, they could not achieve their ends without the enthusiastic help or contribution, direct or indirect, of individuals such as you, Goran Jelusic."

After pronouncing the sentence, Deputy Prosecutor Graham Blewitt stated that it was "still premature" to say whether the Office of the Prosecutor would appeal the genocide judgement. "As far as the sentence is concerned," Blewitt said, "the Prosecution asked for life imprisonment notwithstanding the guilty plea of the accused and the court has imposed a very substantial sentence of 40 years. It is unlikely that the Prosecution would appeal against the inadequacy of that sentence."

Jelusic's defence counsel, Veselin Londrovic, says the sentence is too high, that all the mitigating circumstances had not been taken into account and that it was very difficult for Jelusic to accept the sentence. Accordingly, on December 15, the defence filed a notice of appeal against the sentence and judgement.

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