

Jelusic Judgement: Discriminatory But not Genocidal Intent

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The Chamber acquitted the accused of genocide, considering that the Prosecutor had failed to prove beyond reasonable doubt that Jelusic acted with the required intent to destroy 'in whole or in part' a national, ethnic or religious group.

In the scheduling order announcing a judgement before the end of the proving procedure against Goran Jelusic the Judges cited Article 23 of the Statute and Rule 98 ter of the Rules of Procedure and Evidence, which determines in a general way the manner of making and pronouncing the judgement.

But in the event the Judges based the decision announced Tuesday on a Rule 98 bis motion (Motion for Judgement of Acquittal), probably in order to keep their intention to acquit secret until the appropriate date. For the full text of Rule 98 bis see Tribunal Update No. 147.

According to the oral Judgement read by Jorda, it must be proven that the accused had full consciousness, desire or at least a clear knowledge that he was participating in genocide. The Trial Chamber concluded that the Prosecutor had not established that Goran Jelusic planned, incited, ordered or otherwise participated in criminal acts with the intent of destroying, even in part, the Bosnian Muslim population as a national, ethnic or religious group.

How the judges arrived at that conclusion will be known only after the full written judgement is issued, as announced, "in due time".

But according to the oral Judgement, the Judges did establish that Jelusic carried out murders in May 1992 in the Luka camp in Brcko with "discriminatory intent" against Bosnian Muslims and Bosnian Croats. This was not enough to prove genocidal intent, but still counted as a key element in proving persecution, defined as a crime against humanity.

Jelusic admitted those killings and has pleaded guilty on 31 counts of indictment - crimes against humanity and violations of the laws or customs of war. The Judges stated in their oral Judgement that his guilty plea was in accordance with Rule 62 bis, i.e. that it was "made voluntarily," was "informed" and "not equivocal" and that "there is a sufficient factual basis for the crime and the accused's participation in it... (and) lack of any material disagreement between the parties about the facts of the case".

On that basis, the Chamber found Goran Jelusic guilty of all remaining counts in the indictment, namely crimes against humanity and violations of the laws or customs of war.

The Trial Chamber will sentence Jelusic at a later stage, following submissions by the prosecution and defence.

Paul Risley, spokesman for the OTP, stated on Friday that the Prosecutor has already "filed a notice of appeal", but will "wait for a written judgement to see whether to pursue the appeal or to withdraw that notice".

The Tribunal chief prosecutor Carla Del Ponte believes, Risley said, that the Judgement raises "fundamental issues" of law.

"This is the first decision of its kind in the Tribunal for the former Yugoslavia," he said, "although the Rwanda Tribunal has already begun to elaborate on the particular elements of genocide that must be proved in a criminal case. The (Office of the Prosecutor) will therefore look closely at this Judgement in the light of the other jurisprudence and consider whether to lodge an appeal."

One of Jelusic's two defence counsels, British barrister Michael Greaves, did not hide his satisfaction after the acquittal on the genocide charge. "Goran Jelusic," Greaves said, "had always maintained that he was not guilty of genocide and he is pleased and grateful that the Trial Chamber had vindicated that position..."

"From the outset, Jelusic accepted his guilt of other serious crimes... Now he wishes to take this opportunity to express his great remorse for the serious crimes he has committed and his profoundest regrets to the families of his victims. In the event that the prosecution appeals against the acquittal, that appeal will be vigorously resisted by him and his defence."

"The judgement in Jelusic case," Jim Landale, spokesman for the Trial Chambers and Registry, said Wednesday, "shows that a high level of proof is needed to sustain genocide conviction. In this case, the prosecutor did not prove necessary elements for genocide, especially the intent."

Location: Balkans

Focus: International Criminal Tribunal for the former Yugoslavia

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