

Seselj Scores a Point

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Court rules that crimes committed in Vojvodina would not be covered by the Hague tribunal's statute.

Vojislav Seselj, the Serbian nationalist politician accused of war crimes and crimes against humanity, won a point this week in his challenge to the Hague tribunal's indictment against him.

In a ruling on June 3, the tribunal hearing upheld in part a challenge by Seselj questioning the charges against him.

Seselj challenged charges against him for actions in the Vojvodina province of Serbia, arguing that since there was no armed conflict, the Hague tribunal has no right to try anyone in connection with events there.

The two statutory provisions under which he was charged -- war crimes and crimes against humanity -- both require that an armed conflict exist before they become applicable.

The court dismissed the remainder of Seselj's challenges, including his questioning of the very legality of the tribunal and the power of the United Nations Security Council to establish it. He also asserted that the indictment was not properly formed, since it was missing the names of people whose deportation he is charged with, among other complaints.

Seselj has also been indicted for alleged war crimes in Croatia and Bosnia and Herzegovina, but it is only Vojvodina that has raised questions.

The indictment charges Seselj with deportation of the non-Serb, predominantly Croat, population of Vojvodina. He is accused of instructing his "associates" in the Serbian Radical Party, which he led, to "contact non-Serbs and threaten them with death if they did not leave the area", at a May 1992 meeting in Vojvodina.

After the meeting, a campaign of ethnic cleansing began, including harassment, intimidation and threats, which continued for three months. Many Croats left the area, and their homes were then looted and occupied by Serbs.

The indictment sought to link these events to the larger campaign of ethnic cleansing in Croatia and Bosnia, where the existence of an armed conflict has been established.

However, the trial court ruled that the prosecution must also allege that there was a state of armed conflict in Vojvodina at the time the charges relate to, and that it must back up this claim with adequate supporting material. Should prosecutors now fail to do this, the Vojvodina charges will be withdrawn or dismissed.

For the most part, there was no warfare within Serbia. Yet ethnic cleansing in Vojvodina would, if proven, clearly form part of the overall criminal scheme that the prosecution says was implemented.

The latest ruling seems to run contrary to the view taken by the tribunal's appeals chamber in the case of Bosnian Serb soldier Dragoljub Kunarac on June 12, 2002, which said that, "There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states or, in the case of internal armed conflicts, the whole territory under the control of a party to the conflict."

Since the prosecution has alleged a joint criminal enterprise - involving inter alia Serbian and Yugoslav Federal officials - to remove non-Serbs from parts of Croatia, Bosnia and Vojvodina, the fact that there was no fighting between armed forces in Vojvodina should not matter. Forced removal of civilians should fall within the terms of the statute. As the appeals chamber in the Kunarac trial concluded, "A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place."

The trial chamber has given the prosecution permission to clarify jurisdictional issues relating to Vojvodina and armed conflict. If the chamber remains unsatisfied, the prosecution can seek permission to appeal.

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