

## **'Tadpole' Tadic's Sentence Reduced**

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The first convicted war criminal has had his sentence reduced by five years to reflect his relative low position in the Serbian command structure.

Concluding that the Trial Chamber's judgement "fails to adequately consider the need for sentences to reflect the relative significance of the role of the appellant in the broader context of the conflict in the former Yugoslavia", the Appeals Chamber, last week, reduced Dusan Tadic's sentence by five years.

Tadic was convicted of crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws or customs of war. The offences were committed in 1992 in the region of Prijedor (north-west Bosnia) and the infamous prison camps of Omarska and Keraterm.

"Although the criminal conduct underlying the charges of which the appellant now stands convicted was incontestably heinous," the Appeals Chamber considered that "his level in the command structure, when compared to that of his superiors, or the very architects of the strategy of ethnic cleansing, was low."

The Appeals Chamber, therefore, ruled, "In the circumstances of the case, the Appeals Chamber considers that a sentence of more than 20 years' imprisonment for any count on the indictment on which the appellant stands convicted is excessive. The Appeals Chamber therefore revises the sentencing judgement of November 11, 1999 and sentences Mr. Tadic to 20 years imprisonment for each of the counts 29, 30 and 31 in the indictment, to run concurrently both inter se and in relation to the prison terms earlier imposed by the Trial Chambers as affirmed by the Appeals Chamber in this judgement."

The Appeals Chamber therefore accepted the main argument of Tadic's British defence counsel, William Clegg and John Livingston, according to which the accused was only a "tadpole in a pool of sharks".

Gabrielle Kirk McDonnell, former president of the Tribunal and presiding judge in the trial which originally sentenced Tadic to 25 years imprisonment, dismissed this defence, arguing that those who suffered at Tadic's hands did not see him as a "tadpole." (For the Sentencing Judgement of November 11, 1999, see Tribunal Update No. 151).

The Appeals Chamber also revised two positions in the first sentencing judgement against Tadic, pronounced on July 14, 1997.

The Appeals Chamber held that the trial's recommendation that the ten-year minimum sentence begin to run "from the date of this sentencing judgement [July 14, 1997] or from the final determination of any appeal, whichever is the later" raises legitimate concerns with respect to the right of appeal.

Clearly the accused is discouraged from using his right to appeal because this merely postpones the beginning of the expiration of the minimum sentence imposed.

For this reason the Appeals Chamber ruled that Tadic "should serve a minimum period of imprisonment ending no earlier than July 14, 2007, i.e, ten years from the imposition of the original sentences."

Finally, the Appeals Chamber increased Tadic's "credit" by 8 months - time spent in detention prior to and

during the trial. According to the original sentence issued in July 1997, Tadic was not entitled to credit for the period between February 12, 1994 and November 8, 1994. That is from the date of his arrest to the date on which the Tribunal requested a deferral of his case to The Hague.

The Appeals Chamber held that Tadic is entitled to credit for time spent in custody in Germany for the period pending his surrender to the International Tribunal. Furthermore it recognised that criminal proceedings against Tadic in Germany "emanated from the same criminal conduct for which he now stands convicted by the Tribunal."

Consequently, the Appeals Chamber ruled "that fairness requires that account be taken of the period the appellant spent in custody in Germany prior to the issuance of the Tribunal's formal request for deferral."

The Appeals Chamber - presiding Judge Shahabuddeen and Judges Mumba, Cassese, Wang and Nieto-Navia - voted by a majority of 4 to 1 (Judge Cassese dissenting) to accept one other aspect of Tadic's appeal - namely that no distinction should be made for the purpose of sentencing between the seriousness of crimes against humanity and war crimes.

This ruling is particularly interesting because it contradicts a previous Appeals Chamber ruling of October 7, 1997. In the case of Drazen Erdemovic - sentenced to 5 years imprisonment for participation in the shooting of more than a thousand Bosniak (Muslim) men detained after the fall of Srebrenica - a majority of 4 to 1 voted "that a punishable offence, if proven as crime against humanity, is more serious and should ordinarily entail a heavier penalty than if it were proceeded upon on the basis that it were a war crime." (See Tribunal Update No. 47). Judge Cassese presided on the Appeals Chamber's ruling in the Erdemovic's case.

According to the separate opinion of Judge Shahabuddeen, attached to the Tadic's appeal judgement, there is no principle under international law that, all things being equal, a crime against humanity is a more serious offence than a war crime. For the purpose of sentencing, therefore, no distinction should be made.

According to Judge Cassese, in cases of crimes against humanity, because of the broader criminal context of such crimes (i.e, widespread or systematic practice) and the knowledge of such context by the accused, the reaction of the international community "must be more severe than in cases where the same conduct amounts to a war crime."

Judge Cassese concluded that whenever an offence committed by an accused is deemed to be a crime against humanity, "it must be regarded as inherently of greater gravity, all else being equal, than if it is instead characterised as a war crime." Consequently, crimes against humanity should entail a heavier sentence.

After announcing the Appeals Chamber judgement, the prosecutor's spokesman, Paul Risley, expressed hope that "this is the last the Tribunal will hear of Tadic" and that "he will be able to start serving his sentence."

This might depend on the verdict that the Appeal Chamber is expected to announce in the case of his former defence counsel, Belgrade lawyer Milan Vujin, on Monday.

Vujin was accused by Tadic of having worked - in collaboration with Serbian secret services - to undermine his defence. The "contempt hearing" was conducted before the Appeals Chamber last year.

Should Vujin be found guilty and convicted, Tadic's defence counsel may use this development as grounds to renew procedures and delay Tadic's transfer to prison.

**Location:** Balkans  
Bosnia and  
Herzegovina

**Focus:** International Criminal Tribunal for the former  
Yugoslavia

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