

SUMMARY OF APPEALS CHAMBER SENTENCING JUDGEMENT

The Prosecutor v. Dusko Tadic **26 January 2000**

The Appeals Chamber of this International Tribunal is now delivering judgement in this matter.

Copies of the judgement, which is in writing, will be made available by the Registrar to the parties towards the end of this sitting. Following the practice of the Tribunal, I shall not be reading out the text of the judgement, except for the operative paragraph. Save for a reading of that paragraph, I shall limit myself to introductory matters.

Introduction

The Appeals Chamber has before it two appeals by Mr. Tadic against Sentencing Judgements rendered by different Trial Chambers on 14 July 1997 and 11 November 1999, respectively. They arise in this way.

The Appellant, Dusko Tadic was arrested in Germany on 12 February 1994. A request for deferral by the German courts to the competence of the International Tribunal was issued on 8 November 1994. On 24 April 1995 Mr Tadic was transferred to the custody of International Tribunal where he has remained in detention until the present time.

Mr. Tadic was indicted on 34 counts of crimes within the jurisdiction of the International Tribunal. At his initial appearance on 26 April 1995, he pleaded not guilty to all counts. Three of the counts were subsequently withdrawn at trial.

On 7 May 1997, Trial Chamber II found Mr. Tadic guilty on nine counts, guilty in part on two counts and not guilty on 20 counts. In a subsequent Sentencing Judgement, issued on 14 July 1997, the Trial Chamber imposed penalties ranging from 6 to 20 years' imprisonment for each of the counts on which Mr. Tadic had been convicted, and ordered that the sentences were to run concurrently *inter se*. The Trial Chamber recommended that, unless exceptional circumstances applied, Mr. Tadic's sentence should not be commuted or otherwise reduced to a term of imprisonment less than ten years from the date of the Sentencing Judgement "or of the final determination of any appeal, whichever is the" later. Further, in calculating the credit to which Mr. Tadic was entitled for time spent in detention, the Trial Chamber held that he was not entitled to such credit from the point in time at which he was originally arrested in Germany, but only from the subsequent date when a request was issued to Germany to defer to the competence of the International Tribunal. The Trial Chamber also ordered that the minimum sentence imposed was not to be subject to any entitlement to credit.

Both Mr. Tadic and the Prosecutor appealed against separate aspects of the Judgement. Additionally, Mr. Tadic appealed against the Sentencing Judgement.

On 15 July 1999, the Appeals Chamber entered its Judgement on the two appeals against the Trial Chamber's Judgement. Reversing the Judgement in certain respects, the Appeals Chamber found the Appellant guilty on a number of additional counts. With the agreement of the parties, the Appeals Chamber deferred sentencing on these additional Counts to a separate stage of sentencing procedure. Considering that the two matters could appropriately be considered together, the Appeals Chamber similarly deferred its judgement on Mr. Tadic's appeal against the Trial Chamber's Sentencing Judgement until the completion of this sentencing procedure.

With the agreement of the parties, the Appeals Chamber subsequently remitted the matter of sentencing in respect of the additional counts to a Trial Chamber to be designated by the President of International Tribunal.

On 11 November 1999, the designated Trial Chamber issued its Sentencing Judgement on the additional counts. The Trial Chamber imposed sentences ranging from 6 to 25 years for each of the counts, and stipulated that the new sentences were to run concurrently both *inter se* and in relation to each of the sentences imposed by the Sentencing Judgement of 14 July 1997. The Trial Chamber held that Mr. Tadic was entitled to credit only from the point in time when the request was issued to Germany to defer to the competence of the International Tribunal.

On 25 November 1999, Mr. Tadic appealed against this second Sentencing Judgement. On 3 December 1999, the Appeals Chamber ordered that Mr. Tadic's appeals against the two sentencing judgements be joined.

Accordingly, the present judgement relates both to Mr. Tadic's Appeal against the Sentencing Judgement of 14 July 1997 and his appeal against the Sentencing Judgement of 11 November 1999.

As to these two appeals, I shall be doing three things. First, I shall introduce the text of the judgement of the Appeals Chamber. Second, I shall give a summary of the findings of the Appeals Chamber. Finally, I shall read out the disposition of the judgement of the Appeals Chamber.

I make it clear that the judgement is set out in the text to be handed out. This statement is not the judgement of the Appeals Chamber, except for the reading of the disposition of the judgement.

Structure of the Judgement

Today's judgement is divided into three sections. Section I sets out the procedural background to the appeals, together with the respective grounds of appeal and the reliefs sought. Section II relates to Mr. Tadic's appeal against the Sentencing Judgement of 14 July 1997. Section III relates to Mr. Tadic's appeal against the Sentencing Judgement of 11 November 1999.

I shall now go briefly through the grounds of appeal and the reliefs sought by the two appeals.

Grounds of appeal and reliefs requested

Appeal against the Sentencing Judgement of 14 July 1997.

First, the Appellant's Appeal against the Sentencing Judgement of 14 July 1997. There are three grounds of appeal.

The first ground of appeal is as follows:

The total sentence of 20 years decided by the Trial Chamber is unfair.

In relation to this ground, the Appellant raises three separate points. He says that:

- (i) the sentence is unfair, as it was longer than the facts of the case required;
- (ii) the Trial Chamber erred by failing to take sufficient account of the general practice regarding prison sentences in the courts of the former Yugoslavia, as required by Article 24 of the Statute of the International Tribunal;
- (iii) the Trial Chamber erred by giving insufficient attention to the Appellant's personal circumstances.

The second and third grounds of appeal are as follows:

2. The Trial Chamber erred in proposing that the calculation of the recommended minimum sentence should commence "from the date of this Sentencing Judgement or of the final determination of any appeal, whichever is the" later.
3. The Trial Chamber erred by not giving the Appellant credit for the time spent in detention in Germany prior to the issuance of a request for deferral by the International Tribunal.

As for the reliefs sought on behalf of the Appellant in respect of this appeal, these are:

- (1) That the sentence imposed by the Trial Chamber be reduced.
- (2) That the calculation of the minimum sentence imposed by the Trial Chamber be altered to run from the commencement of the Appellant's detention in Germany.
- (3) That the Appellant be given credit for time spent in detention in Germany prior to the request for deferral made by the International Tribunal.

Appeal against the Sentencing Judgement of 11 November 1999.

I pass now to Mr. Tadic's appeal against the Sentencing Judgement of 11 November 1999. There are six grounds of appeal. They are as follows:

Ground (1): The Trial Chamber erred in placing excessive weight on deterrence in the assessment of the appropriate sentence for violations of international humanitarian law.

Ground (2): The Trial Chamber erred in failing to have sufficient regard to the need to develop a range of sentences which properly reflects the relative position of different accused and their role in the events in which they were involved.

Ground (3): The Trial Chamber erred in determining that the Appellant's act of submitting certain material to the Prosecutor did not constitute substantial co-operation within the meaning of Sub-rule 101(B)(ii) of the Rules of Procedure and Evidence of the International Tribunal.

Ground (4): The Trial Chamber erred in holding that, all other things being equal, crimes against humanity should attract a higher sentence than war crimes.

Ground (5): The Trial Chamber erred in placing insufficient weight on the general practice regarding prison sentences in the courts of the former Yugoslavia

Ground (6): The Trial Chamber erred in not giving the Appellant credit for the period of his detention in Germany prior to the issuance of a request for deferral by the International Tribunal.

In respect of this appeal, the Appellant seeks the following relief:

- (i) That the sentence imposed by the Trial Chamber be reduced.
- (ii) That the Appellant be given credit for time spent in detention in Germany prior to the request for deferral made by the International Tribunal.

The Holdings of the Appeals Chamber

I shall now mention briefly the holdings of the Appeals Chamber.

Appeal against the Sentencing Judgement of 14 July 1997

I shall deal first with the Appeal against the sentencing Judgement of 14 July 1997.

As to the first ground, the Appeals Chamber holds that insofar as the Appellant argues that the sentence of 20 years was unfair because it was longer than the facts underlying the charges required, the Appeals Chamber can find no error in the exercise of the Trial Chamber's discretion. Similarly, the Appeals Chamber is not satisfied that the Trial Chamber erred in the exercise of its discretion with respect to the weight given to the sentencing practice of the former Yugoslavia. The Appeals Chamber is also unable to find support for the Appellant's final challenge to his sentence, namely, that the Trial Chamber failed to adequately consider his personal circumstances. The sentences imposed by the Sentencing Judgement of 14 July 1997 are therefore affirmed, subject to what is later said about the recommended minimum term and credit for previous custody in Germany.

As to the second ground, the Appeals Chamber holds that the Trial Chamber's recommendation that the ten-year minimum sentence begin to run "from the date of this Sentencing Judgement or of the final determination of any appeal, whichever is the" later raises legitimate concerns with respect to the right of appeal as provided by Article 25 of the Statute of the International Tribunal. Accordingly, the Appeals Chamber finds that the Trial Chamber erred insofar as it ordered that the recommended minimum term take as its starting point the final determination of any appeal. However, the Appeals Chamber is not satisfied that the Trial Chamber erred in the exercise of its discretion insofar as it ordered that the recommended minimum term begin to run from the date of the Sentencing Judgement of 14 July 1997, nor that it erred in ordering that the Appellant not be entitled to credit in respect of the minimum term. To preserve that part of the recommendation, the Appeals Chamber recommends that the Appellant should serve a minimum period of imprisonment ending no earlier than 14 July 2007, i.e. 10 years as from the imposition of the original sentences.

As to the third ground, the Appeals Chamber holds that, under the relevant rule, the Appellant is entitled to credit for the time spent in custody in Germany only for the period that he was in detention pending his surrender to the International Tribunal. However, the Appeals Chamber recognises that the criminal proceedings against the Appellant in Germany emanated from the same criminal conduct for which he now stands convicted by the International Tribunal. Consequently, the Appeals Chamber finds 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.

Appeal against the Sentencing Judgement of 11 November 1999.

I come now to the Appellant's appeal against the sentencing judgement of 11 November 1999.

As to the first ground, the Appeals Chamber is not satisfied that the Trial Chamber gave undue weight to deterrence as a factor in the determination of the appropriate sentence to be imposed on the Appellant. Accordingly, this ground of appeal is dismissed.

As to the second ground, the Appeals Chamber holds 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 considers that, although the criminal conduct underlying the charges of which the Appellant now stands convicted was incontestably heinous, 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. In the circumstances of the case, the Appeals Chamber considers that a sentence of more than 20 years' imprisonment for any count of the Indictment on which the Appellant stands convicted is excessive. The Appeals Chamber therefore revises the Sentencing Judgement of 11 November 1999 and

sentences Mr. Tadic to 20 years of imprisonment for each of Counts 29, 30 and 31 of 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.

As to the third ground, in which the Appellant contends that the Trial Chamber erred in finding that his act of providing the Prosecutor with certain material did not meet the standard of "substantial co-operation" within the meaning of the Rules, and therefore was not to be taken into account in the determination of the appropriate sentence, the Appeals Chamber is not satisfied that any basis in law or fact has been disclosed in support of this ground of appeal. This ground of appeal is accordingly dismissed.

As to the fourth ground (which was raised and argued only in relation to the second appeal), the Appeals Chamber (Judge Cassese dissenting) holds that there is in law no distinction between the seriousness of a crime against humanity and that of a war crime. The Appeals Chamber finds no basis for such a distinction in the Statute or the Rules of the International Tribunal, construed in accordance with customary international law, and takes the view that the position is similar under the Statute of the International Criminal Court. The Appeals Chamber therefore upholds this ground of appeal.

As to the fifth ground, in which the Appellant sets forth issues raised as part of the first ground of appeal against the Sentencing Judgement of 14 July 1997, the Appeals Chamber holds that it cannot find any error of discretion on the part of the Trial Chamber with respect to the weight given to the sentencing practice of the courts of the former Yugoslavia. Accordingly, this ground of appeal fails.

As to the sixth ground, which is identical to the third ground of appeal against the Sentencing Judgement of 14 July 1997, the Appeals Chamber holds that the interests of justice require that the Appellant be granted credit for the entire time spent in detention in Germany.

The Disposition

I shall now read the operative paragraph of the judgement of the Appeals Chamber. It is as follows:

For the foregoing reasons, THE APPEALS CHAMBER

- (1) DENIES the first ground of Appeal against the Sentencing Judgment of 14 July 1997 and AFFIRMS the sentences imposed upon the Appellant by the Sentencing Judgment of 14 July 1997;
- (2) DENIES the first, third and fifth grounds of Appeal against the Sentencing Judgment of 11 November 1999;
- (3) ALLOWS the second and fourth grounds of Appeal against the Sentencing Judgment of 11 November 1999, Judge Cassese dissenting with respect to the fourth ground, REVISES the Trial Chamber's Sentencing Judgment of 11 November 1999 with respect to Counts 29, 30 and 31 of the Indictment, and SENTENCES Dusko Tadic to twenty years' imprisonment for each of said Counts;
- (4) AFFIRMS the sentences imposed in the Sentencing Judgment of 11 November 1999 with respect to Counts 8, 9, 12, 15, 21 and 32;
- (5) ORDERS that the sentences imposed in sub-paragraph (3) above, as well as the sentences imposed by the Sentencing Judgments of 14 July 1997 and 11 November 1999 and affirmed in sub-paragraphs (1) and (4) above, shall begin to run as of today's date;
- (6) ORDERS that each of the sentences imposed in sub-paragraph (3) above be served concurrently both *inter se* and in relation to the sentences imposed in the Sentencing Judgments of 14 July 1997 and 11 November 1999 and affirmed in sub-paragraphs (1) and (4) above;

(7) ALLOWS the second ground of Appeal against the Sentencing Judgment of 14 July 1997 insofar as it now REVISES the Sentencing Judgment of 14 July 1997 by recommending that, unless exceptional circumstances apply, Dusko Tadic should serve a term of imprisonment ending no earlier than 14 July 2007;

(8) ALLOWS the third ground of Appeal against the Sentencing Judgment of 14 July 1997 and the sixth ground of appeal against the Sentencing Judgment of 11 November 1999, REVISES the Sentencing Judgment of 14 July 1997 and the Sentencing Judgment of 11 November 1999 by FINDING, as it now does, that Dusko Tadic is entitled to credit for five years, eleven months and fourteen days in relation to the sentences referred to in subparagraph (5) above, provided that such credit shall not affect the minimum term recommendation contained in sub-paragraph (7) above.

Accordingly, the Appeals are allowed in part, dismissed in part.

Judge Shahabuddeen and Judge Cassese append Separate Opinions to this Judgement.

There ends the final part of the Judgement.

I shall now ask the Registrar to deliver copies of the Judgement to the parties.

Mr. Tadic, you have heard the disposition of the Appeals Chamber's judgement in your two appeals. The substance of the disposition is that you will serve a period of 20 years' imprisonment, subject to the following:

(a) As regards the Trial Chamber's recommendation that you serve a minimum term of 10 years' imprisonment, the Appeals Chamber preserves the substance of the recommendation by recommending that you serve a term of imprisonment ending no earlier than 14 July 2007, i.e. 10 years as from the imposition of the original sentences.

(b) Subject to the condition that the actual period of imprisonment should not end before 14 July 2007, you are given credit for a total period of five years, eleven months and fourteen days to be deducted from the 20 year period of imprisonment imposed upon you.