

**SPECIAL COURT FOR SIERRA LEONE**

TRIAL CHAMBER I

Before: Hon. Justice Pierre Boutet, Presiding Judge
Hon. Justice Benjamin Mutanga Itoe
Hon. Justice Bankole Thompson

Registrar: Herman von Hebel

Date: 2 March 2009

PROSECUTOR	Against	ISSA HASSAN SESAY MORRIS KALLON AUGUSTINE GBAO (Case No. SCSL-04-15-T)
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Public Document

JUDGEMENT

Office of the Prosecutor:

Pete Harrison
Vincent Wagona
Charles Hardaway
Reginald Fynn
Elisabeth Baumgartner
Régine Gachoud
Amira Hudroge
Bridget Osho

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Charles Taku
Kennedy Ogeto

Court Appointed Counsel for Augustine Gbao:

John Cammegh
Scott Martin

260. The Appeals Chamber has clarified that “the requirement that the common plan, design or purpose of a joint criminal enterprise is inherently criminal means that it must either have as its objective a crime within the Statute, or contemplate crimes within the Statute as the means of achieving its objective.”⁴⁵⁷

261. Third, the participation of the Accused in the common purpose is required.⁴⁵⁸ “This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture, rape, *etcetera*), but may take the form of assistance in, or contribution to, the execution of the common purpose.”⁴⁵⁹ It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.⁴⁶⁰ As to the required extent of the participation, the Prosecution need not demonstrate that the Accused’s participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.⁴⁶¹

262. Where the joint criminal enterprise is alleged to include crimes committed over a wide geographical area, the Chamber opines that an Accused may be found criminally responsible for his participation in the enterprise, even if his significant contributions to the enterprise occurred only in a much smaller geographical area, provided that he had knowledge of the wider purpose of the common design.⁴⁶² It is also legally possible for an Accused to withdraw

conceptualizes the common objective as fluid in its criminal means. An expansion of the criminal means of the objective is proven when leading members of the JCE are informed of new types of crime committed pursuant to the implementation of the common objective, take no effective measures to prevent recurrence of such crimes, and persist in the implementation of the common objective of the JCE. Where this holds, JCE members are shown to have accepted the expansion of means, since implementation of the common objective can no longer be understood to be limited to commission of the original crimes. With acceptance of the actual commission of new types of crime and continued contribution to the objective, comes intent, meaning that subsequent commission of such crimes by the JCE will give rise to liability under JCE form 1.”

⁴⁵⁷ AFRC Appeal Judgement, para. 80. *See also* Martić Appeal Judgement, paras 112-123, endorsing Martić Trial Judgement, para. 442.

⁴⁵⁸ Stakić Appeal Judgement, para. 64.

⁴⁵⁹ Tadić Appeal Judgement, para. 227.

⁴⁶⁰ Krajišnik Trial Judgement, para. 884.

⁴⁶¹ Brđjanin Appeal Judgement, para. 430, citing *Kvočka et al.* Appeal Judgement, paras 97-98.

⁴⁶² Tadić Appeal Judgement, para. 199, fn. 243, citing two cases of the Supreme Court for the British Zone (of occupied Germany) dealing with the participation of accused in the *Kristallnacht* riots: *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II, p. 284-290 and *Case no. 17*, vol. I, pp. 94-98. In the first case, according to the Appeals Chamber in Tadić, the Supreme Court held that “it was not required that the accused knew about the rioting in the entire Reich. It was sufficient that he was aware of the local action, that he approved it, and that he wanted it ‘as his own’ ... The fact that the accused participated consciously in the arbitrary measures directed against the Jews was sufficient to hold him responsible for a crime against humanity.” In the second case, as summarized by the Tadić Appeals Chamber, the Supreme Court held “that it was irrelevant that

from the joint criminal enterprise after which point, he will not bear legal responsibility for the acts of the other members of the group. The identity of the other person or persons making up the plurality may change over the course of the existence of the joint criminal enterprise as participants enter or withdraw from it.⁴⁶³

263. The principal perpetrator need not be a member of the joint criminal enterprise, but may be used as a tool by one of the members of the joint criminal enterprise. The Chamber adopts the view of the ICTY Appeals Chamber in *Brdjanin* that “where the principal perpetrator is not shown to belong to the JCE, the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan.”⁴⁶⁴

264. The *mens rea* requirements for liability under the first and third categories of joint criminal enterprise, which are pleaded in the Indictment, are different.

265. In the first category of joint criminal enterprise the Accused must intend to commit the crime and intend to participate in a common plan whose object was the commission of the crime.⁴⁶⁵ The intent to commit the crime must be shared by all participants in the joint criminal enterprise.⁴⁶⁶

266. The *mens rea* for the third category of joint criminal enterprise is two-fold: in the first place, the Accused must have had the intention to take part in and contribute to the common

the scale of ill-treatment, deportation and destruction that happened in other parts of the country on that night were not undertaken in this village. It sufficed that the accused participated intentionally in the action and that he was ‘not unaware of the fact that the local action was a measure designed to instill terror which formed a part of the nation-wide persecution of the Jews.’”

⁴⁶³ *Blagojevic and Jokic* Trial Judgement, paras 700-701. See also *United States v. Greifelt et al.*, U.S. Military Tribunal, Judgement, 10 March 1948 (“RuSHA Case”), in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. V, pp. 115, 140-141 [RuSHA Case]; *United States of America v. Josef Altstoetter, et al. (Case 3)*, U.S. Military Tribunal, October 1946 – April 1949 (“Justice Case”), in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. III, pp. 1083, 1086-1087 [Justice Case].

⁴⁶⁴ *Brdjanin* Appeal Judgement, para. 430. See also para. 413 of the same judgement. See further, *Martic* Appeal Judgement, paras 161-195.

⁴⁶⁵ *Brdjanin* Appeal Judgement, para. 365; *Tadic* Appeal Judgement, para. 228. See also *Kvočka et al.* Appeal Judgement, para. 82 (requiring “intent to further the common purpose”); and, *Vasiljevic* Appeal Judgement, paras 97, 101.

⁴⁶⁶ *Tadic* Appeal Judgement, para. 228.