

**Declassified to Public  
06 September 2012**

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**ANNEX A**

**AUTHORITY 29**

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**UNITED  
NATIONS**

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-95-17/1-T  
Date: 10 December 1998  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Antonio Cassese  
Judge Richard May

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Judgement of:** 10 December 1998

**PROSECUTOR**

v.

**ANTO FURUND@IJA**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Ms. Brenda Hollis  
Ms. Patricia Viseur-Sellers  
Ms. Michael Blaxill

**Counsel for the Accused:**

Mr. Luka Miseti}  
Mr. Sheldon Davidson

as a spectator in civilian dress, a SA (*Stürmabteilung*) "parade" in which two political opponents of the NSDAP (*Nationalsozialistische Deutsche Arbeiterpartei*) were exposed to public humiliation. P had followed the "parade" without taking any active part. The court found that P,

followed the parade only as a spectator in civilian clothes, although he was following a service order by the SA for a purpose yet unknown . . . His conduct cannot even with certainty be evaluated as objective or subjective approval. Furthermore, silent approval that does not contribute to causing the offence in no way meets the requirements for criminal liability.<sup>230</sup>

P was found not guilty. He may have lacked the necessary *mens rea*. But in any event, his insignificant status brought the effect of his "silent approval" below the threshold necessary for the *actus reus*.

209. It appears from the *Synagogue* and *Pig-cart parade* cases that presence, when combined with authority, can constitute assistance in the form of moral support, that is, the *actus reus* of the offence. The supporter must be of a certain status for this to be sufficient for criminal responsibility. This emphasis on the accused's authority was also affirmed in *Akayesu*. Jean-Paul Akayesu was the *bourgmestre*, or mayor, of the Commune in which atrocities, including rape and sexual violence, occurred. That Trial Chamber considered this position of authority highly significant for his criminal liability for aiding and abetting: "The Tribunal finds, under Article 6(1) of its Statute, that the Accused, having had reason to know that sexual violence was occurring, aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal and by facilitating the commission of such sexual violence through his words of encouragement in other acts of sexual violence which, *by virtue of his authority*, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place: [ . . . ]".<sup>231</sup> Furthermore, it can be inferred from this finding that assistance need not be tangible. In addition, assistance need not

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<sup>230</sup> *Strafsenat. Urteil vom 10. August 1948 gegen L. u. a. StS 37/48 (Entscheidungen, Vol. I, pp. 229 and 234).*

<sup>231</sup> Case No. ICTR-96-4-T, para. 692, emphasis added.

constitute an indispensable element, that is, a *conditio sine qua non* for the acts of the principal.

210. Mention should also be made of several cases which enable us to distinguish aiding and abetting from the case of co-perpetration involving a group of persons pursuing a common design to commit crimes.

211. The *Dachau Concentration Camp* case was held before a US Tribunal under Control Council Law No. 10.<sup>232</sup> All the accused held some position in the hierarchy running the Dachau concentration camp. While allegations of direct participation in instances of ill-treatment were made against certain accused, and allegations of command responsibility against others, the real basis of the charges was that all the accused had "acted in pursuance of a common design" to kill and mistreat prisoners, and hence to commit war crimes.

212. The organised and official nature of the system by which war crimes were perpetrated in this case adds a specific element to the "complicity" of the accused. The report of the case by the United Nations War Crimes Commission isolates three elements necessary to establish guilt in each case. The first was the existence of a system to ill-treat the prisoners and commit the various crimes alleged; the second was the accused's knowledge of the nature of this system; and the third was that the accused "encouraged, aided and abetted or participated" in enforcing the system. Once the existence of the system had been established, a given accused was potentially liable for his participation in this system. The roles of the accused ranged from camp commanders to guards and prisoner functionaries and all were found guilty, with the difference in the levels of participation reflected in the sentences. It would seem that the holding of any role in the administration of the camps was sufficient to constitute encouraging, aiding and abetting or participating in the enforcement of the system.

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<sup>232</sup> *The Dachau Concentration Camp Trial, Trial of Martin Gottfried Weiss and Thirty-Nine Others*, General Military Government Court of the United States Zone, Germany, 15 Nov.-13 Dec. 1945, Vol. XVI, Law Reports, p. 5. The Prosecution did refer to principles of American criminal law on the subject of complicity (pp. 12-13).

on Anto Furund`ija, together with such additional time as he may serve pending the determination of any final appeal. In accordance with Rule 102 of the Rules, Anto Furund`ija's sentence, subject to the above mentioned deduction, shall begin to run from today.

**B. Enforcement of Sentences**

Pursuant to Article 27 of the Statute and Rule 103 of the Rules, Anto Furund`ija shall serve his sentence in a State designated by the President of the International Tribunal. The transfer of Anto Furund`ija to the designated State shall be effected as soon as possible after the time-limit for appeal has elapsed. In the event that notice of appeal is given, the transfer of the accused, Anto Furund`ija, if compelled by the outcome of such an appeal, shall be effected as soon as possible after the determination of the final appeal by the Appeals Chamber. Until such time as his transfer is effected, Anto Furund`ija shall remain in the custody of the International Tribunal, in accordance with Rule 102.

Done in English and French, the English text being authoritative.

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Florence Ndepele Mwachande Mumba  
Presiding

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Richard May

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Antonio Cassese

Dated this tenth day of December 1998  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**