

**Declassified to Public
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ANNEX A

AUTHORITY 30

**UNITED
NATIONS**

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

Case No. IT-98-29-T
Date: 5 December 2003
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar: Mr. Hans Holthuis

Judgement Of: 5 December 2003

PROSECUTOR

v.

STANISLAV GALIĆ

JUDGEMENT AND OPINION

The Office of the Prosecutor:

Mr. Mark Ierace
Mr. Chester Stamp
Mr. Daryl Mundis
Ms. Prashanthi Mahindaratne
Mr. Manoj Sachdeva

Counsel for the Accused:

Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin

B. Offences Charged under Article 5 of the Statute

1. Prerequisites of Article 5 of the Statute

139. For a crime to be adjudicated under Article 5 of the Statute (crimes against humanity), there are two prerequisites: that there was an armed conflict, and that the alleged criminal acts occurred during that armed conflict.²²⁹ The latter “require[s] nothing more than the existence of an armed conflict at the relevant time and place.”²³⁰ No nexus between the underlying crime and the armed conflict is necessary.²³¹

140. With regard to the general elements of a crime against humanity under Article 5 of the Statute, the Trial Chamber follows the law as stated by the Appeals Chamber.²³² The required elements related to *actus reus* are that:

- (i) there must be an “attack;”
- (ii) the underlying crime must be part of the attack;
- (iii) the attack must be directed against any civilian population;
- (iv) the attack must be widespread or systematic;

The *mens rea* requirement is that the perpetrator knows of the wider context in which the underlying crime occurs and knows that his or her conduct is part of the attack.

141. An “attack” may be defined as a course of conduct involving the commission of acts of violence.²³³ In the context of a crime against humanity, “attack” is not limited to armed combat.²³⁴

It may also encompass situations of mistreatment of persons taking no active part in hostilities, such as of a person in detention.²³⁵ In comparing the content of customary international law concerning crimes against humanity to the Tribunal’s Statute, the Appeals Chamber noted that “the ‘attack on the civilian population’ and the ‘armed conflict’ must be separate notions, although of course under Article 5 of the Statute the attack on ‘any civilian population’ may be part of an ‘armed

merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful” (id., vol. XV, p. 274, emphasis added).

²²⁹ *Kunarac* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 249; *Tadić* Jurisdiction Decision, para. 141.

²³⁰ *Tadić* Appeal Judgement, para. 249.

²³¹ *Tadić* Appeal Judgement, para. 249 and 251.

²³² *Kunarac* Appeal Judgement, para. 85.

²³³ *Krnjelac* Trial Judgement, para. 54; *Kunarac* Trial Judgement, para. 415.

²³⁴ *Kunarac* Trial Judgement, para. 416.

²³⁵ *Id.*, para. 416 endorsed by *Kunarac* Appeal Judgement, para. 89.

conflict””.²³⁶ In accordance with customary international law, the attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.²³⁷

142. The phrase “directed against” is an expression which “specifies that in the context of a crime against humanity the civilian population is the primary object of the attack.”²³⁸ In order to determine whether the attack may be said to have been so directed, the following, *inter alia*, are to be considered: the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time, and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirement of the laws of war.²³⁹

143. The attack must be directed against a “civilian population.”²⁴⁰ A population may qualify as “civilian” even if non-civilians are among it, as long as the population is predominantly civilian.²⁴¹ The definition of a “civilian” is expansive and includes individuals who at one time performed acts of resistance, as well as persons *hors de combat* when the crime was perpetrated.²⁴² There is no requirement that the entire population of the area in which the attack is taking place must be subjected to that attack.²⁴³ It is sufficient to show that a certain number of individuals were targeted in the course of the attack, or that individuals were targeted in such a way as to compel the conclusion that the attack was in fact directed against a civilian “population,” rather than against a small and randomly selected number of individuals.²⁴⁴

144. The Prosecution submits that, in the context of an armed conflict, the determination that an attack is unlawful in light of treaty and customary international law with respect to the principles of distinction and proportionality is critical in determining whether the general requirements of Article 5 have been met.²⁴⁵ Otherwise, according to the Prosecution, unintended civilian casualties resulting from a lawful attack on legitimate military objectives would amount to a crime against humanity under Article 5 and lawful combat would, in effect, become impossible.²⁴⁶ It therefore submits that an accused may be found guilty of a crime against humanity if he launches an unlawful attack against persons taking no active part in the hostilities when the general requirements of Article 5

²³⁶ *Kunarac* Appeal Judgement, para. 86 quoting *Tadić* Appeal Judgement, para. 251.

²³⁷ *Kunarac* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 251.

²³⁸ *Kunarac* Trial Judgement, para. 421, endorsed by *Kunarac* Appeal Judgement, para. 91.

²³⁹ *Kunarac* Appeal Judgement, para. 91.

²⁴⁰ *Krnjelac* Trial Judgement, para. 56; *Kunarac* Trial Judgement, paras 421-426.

²⁴¹ *Krnjelac* Trial Judgment, para. 56; *Kunarac* Trial Judgement, para. 425; *Tadić* Trial Judgement, para. 638.

²⁴² *Krnjelac* Trial Judgement, para. 56; *Kupreškić* Trial Judgement, paras 547-549; *Blaškić* Trial Judgement, para. 214; *Jelić* Trial Judgement, para. 54.

²⁴³ *Kunarac* Appeal Judgement, para. 90.

²⁴⁴ *Id.*

²⁴⁵ Prosecution Final Trial Brief, para. 38.

²⁴⁶ *Id.*, para. 38.

have been established.²⁴⁷ The Trial Chamber accepts that when considering the general requirements of Article 5, the body of laws of war plays an important part in the assessment of the legality of the acts committed in the course of an armed conflict and whether the population may be said to have been targeted as such.²⁴⁸

145. Evidence of attack by opposing forces on the civilian population to which the accused belongs may not be introduced unless it tends to prove or disprove an allegation made in an indictment, such as the Prosecution's contention that there was a widespread or systematic attack against a civilian population.²⁴⁹ A submission that the opposing side is responsible for starting the hostilities is not relevant to disproving the allegation that there was an attack on the civilian population in question.²⁵⁰

146. The attack must be widespread or systematic. "Widespread" denotes a large-scale attack with a large number of victims,²⁵¹ while "systematic" refers to the organized nature of the attack.²⁵² The assessment of what constitutes a widespread or systematic attack is relative to the civilian population under attack.²⁵³ The Trial Chamber must first identify the population which is the object of the attack and, in light of the means, methods, patterns, resources, participation of officials or authorities, and result of the attack upon that population, ascertain whether the attack was widespread or systematic.²⁵⁴

147. The jurisprudence of the Tribunal has established that there is no requirement under customary international law that the attack be connected to a policy or plan.²⁵⁵ Evidence of a plan or policy may, however, be used in showing that the attack was widespread or systematic.²⁵⁶

148. In addition to the intent to commit the underlying crime, the accused must know that there is an attack directed against the civilian population and that the acts performed by him or her are part of that attack.²⁵⁷ Knowledge of the details of the attack is not necessary,²⁵⁸ and it is not required that

²⁴⁷ *Id.*, para. 38.

²⁴⁸ *Krnjelac* Trial Judgment at para. 54.

²⁴⁹ *Id.*, para. 88.

²⁵⁰ *Id.*

²⁵¹ *Id.*, para. 94.

²⁵² *Id.*, citing *inter alia* the discussion in *Tadić* Trial Judgement, para. 648.

²⁵³ *Kunarac* Appeal Judgement, para. 95; *Kunarac* Trial Judgement, para. 430.

²⁵⁴ *Id.*

²⁵⁵ *Id.* (and discussion thereof).

²⁵⁶ *Id.*, para. 98.

²⁵⁷ *Id.*, para. 102.

²⁵⁸ *Id.*, para. 102.

the accused shares the purpose or goal behind the attack.²⁵⁹ It is sufficient that through his or her acts or function the accused knowingly participated in the attack.²⁶⁰

2. Crimes Alleged under Article 5 of the Statute

(a) Murder

149. Counts 2 and 5 of the Indictment charge the Accused with murder as a crime against humanity pursuant to Article 5(a) of the Statute. The counts are referenced to the Accused's alleged conduct of a coordinated and protracted campaign of sniping, artillery, and mortar attacks upon civilian areas and the civilian population of Sarajevo, resulting in the death of civilians.

150. The basic requirements for murder as a crime against humanity are that:²⁶¹

- (a) the victim died;
- (b) the victim's death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility; and
- (c) the act was done, or the omission was made, by the accused, or by a person or persons for whose acts or omissions the accused bears criminal responsibility, with an intention:
 - (i) to kill, or
 - (ii) to inflict serious injury, in reckless disregard of human life.²⁶²

(b) Inhumane acts

151. Counts 3 and 6 charge the Accused with inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute. The counts are referenced to the Accused's alleged conduct of a coordinated and protracted campaign of sniping, artillery, and mortar attacks upon civilian areas and the civilian population of Sarajevo, resulting in the suffering and injury of civilians.

152. The crime of inhumane acts is a residual clause for serious acts which are not otherwise enumerated in Article 5 but which require proof of the same chapeau elements.²⁶³ The elements of the crime of inhumane acts are that:²⁶⁴

²⁵⁹ Id., para. 103.

²⁶⁰ *Krnojelac* Trial Judgment, para. 59; *Kunarac* Trial Judgment, para. 434; *Blaškić* Trial Judgment, para. 251.

²⁶¹ *Vasiljević* Trial Judgment, para. 205; *Krnojelac* Trial Judgment, para. 324; *Kordić* Trial Judgment, para. 236; *Kupreškić* Trial Judgment, paras 560-1; *Rutaganda* Trial Judgment, para. 80-1; *Akayesu* Trial Judgment, para. 589.

²⁶² *Čelebići* Trial Judgment, para. 439. The element of inflicting "serious injury" is expressed as infliction of "grievous bodily harm or serious injury" in, e.g., *Vasiljević* Trial Judgment, para. 205; *Krnojelac* Trial Judgment, para. 324

²⁶³ *Vasiljević* Trial Judgment, para. 234; *Krnojelac* Trial Judgment, para. 130; *Kvočka* Trial Judgment, para. 206; *Kordić and Čerkez* Trial Judgment, para. 269.

- (a) there was an act or omission of similar seriousness to the other acts enumerated in Article 5;
- (b) the act or omission caused serious mental or physical suffering or injury²⁶⁵ or constituted a serious attack on human dignity; and
- (c) the act or omission was performed intentionally by the accused, or by a person or persons for whose acts and omissions the accused bears criminal responsibility.

153. In order to assess the seriousness of an act or omission, consideration must be given to all the factual circumstances of the case. These circumstances may include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim including age, sex, and health, and the physical, mental, and moral effects of the act or omission upon the victim.²⁶⁶

154. The intention to inflict inhumane acts is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or where he knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity.²⁶⁷

155. Because some of the charges in this Indictment have the same underlying facts in common, the Trial Chamber will consider the law on cumulation of charges and convictions.

C. Cumulative Charging and Convictions

1. Cumulative Charging

156. The Defence deems it “unacceptable” that the Accused be cumulatively charged with three different crimes (murder, inhumane acts, and attacks on civilians) on the basis of the same set of factual allegations.²⁶⁸ The Appeals Chamber of the Tribunal has pronounced on the issue of cumulative charging and stated that “cumulative charging constitutes the usual practice of both this Tribunal and the ICTR” and “is to be allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an

²⁶⁴ *Vasiljević* Trial Judgement, para. 234; *Krnjelac* Trial Judgement, par 130; *Kayishema* Trial Judgement, paras 151, 154.

²⁶⁵ *Kvočka* Trial Judgment, para. 208; *Blaškić* Trial Judgment, para. 239.

²⁶⁶ *Vasiljević* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 131; *Čelebići* Trial Judgment, para. 536; *Jelisić* Trial Judgment para. 57; *Kunarac* Trial Judgment, para. 501.

²⁶⁷ *Vasiljević* Trial Judgement, para. 236; *Krnjelac* Trial Judgement, para. 132; *Kayishema* Trial Judgement, para. 153.

²⁶⁸ The Defence contends that cumulative charging under Counts 1 (Infliction of terror), 4 (attacks on civilians through sniping) and 7 (attacks on civilians through shelling) constitutes an error of law since, under all three Counts, the protected object is constituted by the civilian population and “illegal action against civilians can not be qualified as

The Trial Chamber, by Majority, hereby **SENTENCES** Stanislav Galić to a single sentence of 20 (twenty) years of imprisonment.

770. Pursuant to Rule 101(C) of the Rules, the accused is entitled to credit for time spent in detention. General Galić was arrested by SFOR on 20 December 1999, and since that date, he has been detained in the United Nations Detention Unit, The Hague, Netherlands. He is entitled to credit for this period towards service of the sentence imposed, together with such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Stanislav Galić shall remain in custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done on the Fifth Day of December 2003 in English and French, the English text being authoritative.

At The Hague,

The Netherlands

Judge Amin El Mahdi

Judge Alphonse Orié

Judge Rafael Nieto-Navia

Presiding