

**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-98-33-A
Date: 19 April 2004
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Judgement: 19 April 2004

PROSECUTOR

v.

RADISLAV KRSTIĆ

JUDGEMENT

Counsel for the Prosecution:

Mr. Norman Farrell
Mr. Mathias Marcussen
Ms. Magda Karagiannakis
Mr. Xavier Tracol
Mr. Dan Moylan

Counsel for the Defendant:

Mr. Nenad Petrušić
Mr. Norman Sepenuk

prison sentences in the courts of the former Yugoslavia;⁴³² (iii) the individual circumstances of the convicted person;⁴³³ and (iv) any aggravating or mitigating circumstances.⁴³⁴

268. Regarding the gravity of the crimes alleged, as the Appeals Chamber recently acknowledged in the *Vasiljević* case, aiding and abetting is a form of responsibility which generally warrants lower sentences than responsibility as a co-perpetrator.⁴³⁵ This principle has also been recognized in the ICTR and in many national jurisdictions.⁴³⁶ While Radislav Krstić's crime is undoubtedly grave, the finding that he lacked genocidal intent significantly diminishes his responsibility. The same analysis applies to the reduction of Krstić's responsibility for the murders as a violation of laws or customs of war committed between 13 and 19 July 1995 in Srebrenica. As such, the revision of Krstić's conviction to aiding and abetting these two crimes merits a considerable reduction of his sentence.

269. The Appeals Chamber has also concluded that the Trial Chamber erred in setting aside Radislav Krstić's convictions for Counts Three (extermination as a crime against humanity) and Six (persecution as a crime against humanity) as impermissibly cumulative with the conviction for genocide. The Appeals Chamber concluded, however, that Krstić's level of responsibility with respect to these two offences was that of an aider and abettor and not of a principal perpetrator. While these conclusions may alter the overall picture of Radislav Krstić's criminal conduct, the Prosecution did not seek an increase in sentence on the basis of these convictions.⁴³⁷ The Appeals Chamber therefore does not take Krstić's participation in these crimes into account in determining the sentence appropriate to the gravity of his conduct.

270. As regards the general sentencing practice of the courts of the former Yugoslavia, the Appeals Chamber has already explained that the Tribunal is not bound by such practice, and may, if the interests of justice so merit, impose a greater or lesser sentence than would have been imposed under the legal regime of the former Yugoslavia. In the above discussion of this factor, the Appeals Chamber has considered the sentencing practice of the courts of the former Yugoslavia applicable in this case, and has taken those practices into account. In particular, the sentence of a person who

⁴³² Article 24(1) of the Statute, Rule 101(B)(iii).

⁴³³ Article 24(2).

⁴³⁴ Rules 101(B)(i) and (ii).

⁴³⁵ *Vasiljević* Appeal Judgement, paras. 181 – 182, n.291.

⁴³⁶ *Kajelijeli* Trial Judgement, para. 963; *Vasiljević* Appeal Judgement, n. 291 (citing the law of seven common law and civil law jurisdictions).

⁴³⁷ Prosecution Appeal Brief, para. 3.95.