

**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-97-24-A
Date: 22 March 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Judgement of: 22 March 2006

PROSECUTOR

v.

MILOMIR STAKIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark J. McKeon
Ms. Helen Brady
Mr. Xavier Tracol
Ms. Barbara Goy
Ms. Katharina Margetts

Counsel for the Appellant:

Mr. Branko Lukić
Mr. John Ostojić

63. For these reasons, the Appeals Chamber finds that the relevant part of the Trial Judgement must be set aside. In order to remedy this error, the Appeals Chamber will apply the correct legal framework to the factual conclusions of the Trial Chamber to determine whether they support joint criminal enterprise liability for the crimes charged.

B. The requirements for joint criminal enterprise liability

64. The Tribunal's jurisprudence recognises three categories of joint criminal enterprise liability.¹⁵¹ Regardless of the category at issue, or the charge under consideration, a conviction requires a finding that the accused participated in a joint criminal enterprise. There are three requirements for such a finding. First, a plurality of persons is required. They need not be organised in a military, political or administrative structure.¹⁵² Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required.¹⁵³ There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.¹⁵⁴ Third, the participation of the accused in the common purpose is required.¹⁵⁵ This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose.

65. The *mens rea* required for a finding of guilt differs according to the category of joint criminal enterprise liability under consideration. For first category, or "basic" joint criminal enterprise liability, it must be shown that the accused and the other participants in the joint criminal enterprise intended that the crime at issue be committed.¹⁵⁶ For second category joint criminal enterprise liability, it must be shown that an organised criminal system exists – as is the case with concentration or detention camps. The accused must be shown to have personal knowledge of the system and intent to further the criminal purpose of the system¹⁵⁷ – the personal knowledge may be proven by direct evidence or by reasonable inference from the accused's position of authority.¹⁵⁸ The third or "extended" category of joint criminal enterprise liability allows conviction of a participant in a joint criminal enterprise for certain crimes committed by other participants in the joint criminal enterprise even though those crimes were outside the common purpose of the enterprise. The accused can be found to have third category joint criminal enterprise liability if he

¹⁵¹ *Vasiljević* Appeal Judgement, paras 96-99; see also *Tadić* Appeal Judgement, paras 195-225; *Krnjelac* Appeal Judgement, paras 83-84.

¹⁵² *Tadić* Appeal Judgement, para. 227.

¹⁵³ *Tadić* Appeal Judgement, para. 227.

¹⁵⁴ *Tadić* Appeal Judgement, para. 227.

¹⁵⁵ *Tadić* Appeal Judgement, para. 227.

¹⁵⁶ *Tadić* Appeal Judgement, para. 228.

¹⁵⁷ *Tadić* Appeal Judgement, paras 202-203.

¹⁵⁸ *Tadić* Appeal Judgement, para. 228.