



Sentencing in the Stakić Appeal

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On 22 March 2006, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) upheld the conviction of Milomir Stakić, the former President of the Prijedor Municipal Assembly, for crimes committed in the municipality of Prijedor in 1992, but reduced the sentence to 40 years in prison.

This commentary will focus on the Appellant's sixth ground of appeal – sentencing – since this was the main reason for changing the initial life sentence to 40 years' imprisonment. Milomir Stakić and his defence team submitted that the Trial Chamber had committed a discernible error in imposing a life sentence and he requested a new trial on sentencing or, in the alternative, a significantly reduced sentence.

Stakić submitted twelve grounds of appeal relating to sentencing. All grounds but two were dismissed by the Appeals Chamber. I will only discuss the grounds that were upheld by the Appeals Chamber.

The first ground of appeal that was not dismissed was whether the Trial Chamber imposed a minimum sentence. In sentencing the Appellant to life imprisonment, it stated:

"The then competent court ... shall review this sentence and if appropriate suspend the execution of the remainder of the punishment of imprisonment for life and grant early release, if necessary on probation, if: ... **20 years** (emphasis in original) have been served calculated in accordance with Rule 101 (C) from the date of Dr. Stakić's deprivation of liberty for purposes of these proceedings, this being the 'date of review'."

Stakić submitted that the Trial Chamber erred by imposing conditions on the review of the sentence, when that authority is reserved to the relevant Host State, and by doing so usurps the competence of the President of the ICTY to ultimately decide on the conditions of review. The Appeals Chamber noted that the above mentioned quote appears to impose a "20 year review obligation" on the Host State and stated that this is contrary to the Statute, Rules, and relevant Practice Direction of the ICTY, as well as the Model Agreement for enforcing sentences. By doing so, the Trial Chamber imposed on the Host State a date of review and the relevant considerations



when conducting the review, thereby taking over applicable municipal laws. It also effectively removed the power from the President of the ICTY to make the final determination regarding the sentence.

The Appeals Chamber found that the Trial Chamber exceeded its authority by imposing a review obligation on the Host State. It found that this discernable error was relevant to the determination of the sentence and that, therefore, the Appeals Chamber would take it into account when revising Milomir Stakić's sentence.

The Appeals Chamber also upheld two sub-grounds of the appeal relating to aggravating factors. The first related to the Appellant's professional background, the second to the "long phase of preparation and planning". The Trial Chamber found that Stakić's medical background was an aggravating circumstance in the sentencing. It relied on the *Ntakirutimana* and *Kayishema and Ruzindana* cases before the International Criminal Tribunal for Rwanda (ICTR). The Appeals Chamber found that the context in those cases was completely different from this case. Even though the Trial Chamber has discretion in determining the factors in aggravation, it must provide convincing reasons for its choice of factors. The Appeals Chamber found that the Trial Chamber did not do this and thus found that the latter committed an error in identifying the professional background of Milomir Stakić as an aggravating factor.

The Appellant also submitted that the Trial Chamber erred in concluding that a "long phase of preparation and planning" was an aggravating factor. The Appeals Chamber, as noted by the Prosecution, did not dispute that this can be an aggravating factor. But the Appeals Chamber argued that the long phase of planning and preparation appears to have ended with the take-over of Prijedor (30 April 1992), which falls outside the relevant period of the indictment. The fall of Prijedor is the beginning of the relevant period of the indictment. The Appeals Chamber found that the Trial Chamber committed a discernible error by not providing a reasoned opinion as to using the long phase of preparation and planning as an aggravating circumstance which falls temporally outside the scope of the indictment.

In conclusion, the Appeals Chamber found that the errors made by the Trial Chamber had a very limited impact on the sentence. One of the errors, however, concerned the sentence itself. The Appeals Chamber noted that the imposition of a fixed term sentence must be revised, and found that the appropriate sentence should be 40 years' imprisonment. According to the Appeals Chamber, this reflects both the criminality of the Appellant and the substance of the sentence imposed by the Trial Chamber.

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