

**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-02-60/1-A

Date: 8 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: 8 March 2006

PROSECUTOR

v.

MOMIR NIKOLIĆ

JUDGEMENT ON SENTENCING APPEAL

Counsel for the Prosecution:

Mr. Peter M. Kremer, QC
Mr. Peter McCloskey
Ms. Marie-Ursula Kind

Counsel for the Appellant:

Mr. Rock Tansey
Mr. R J. Livingston

failed to give weight or sufficient weight to relevant considerations, [that it] made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."²³⁰

96. With respect to the mitigating circumstance of the accused's co-operation with the Prosecution, the Appeals Chamber considers that the Trial Chamber should take into account the Prosecution's assessment of this co-operation because, as noted above, the Prosecution is in a favourable position to make an assessment of it. Moreover, considering that the Trial Chamber has a general obligation to set out a reasoned opinion pursuant to Article 23(2) of the Statute, the Appeals Chamber finds that, if the Trial Chamber disagrees with the Prosecution's assessment of the accused's co-operation, it has a duty to provide sufficient reasons for not following the Prosecution's assessment. Only a reasoned opinion, one of the elements of the fair trial requirement embodied in Articles 20 and 21 of the Statute, allows the Appeals Chamber to carry out its function pursuant to Article 25 of the Statute by understanding and reviewing findings of a Trial Chamber.²³¹

97. The Appeals Chamber notes that the Trial Chamber took the Prosecution's assessment into account since it acknowledged, in its discussion on the nature and extent of the Appellant's co-operation, that in the view of the Prosecution the Appellant had co-operated fully.²³² The Appellant nonetheless argues that the Trial Chamber gave unreasoned or inadequate grounds for not giving him full credit for his co-operation.²³³ Bearing the above requirements in mind, the Appeals Chamber will address the Trial Chamber's four reservations, contested by the Appellant. The Appellant identified the Trial Chamber's reservations as follows: (1) that he had been evasive on a number of occasions during his testimony in the *Blagojević* trial, (2) that prior to signing the Plea Agreement, he had falsely confessed to ordering mass executions in Kravica and Sandići, (3) that his testimony was not as detailed as it could have been in certain areas,²³⁴ and (4) that, if he was

²²⁹ *Babić* Judgement on Sentencing Appeal, para. 44 referring to *Kayishema and Ruzindana* Appeal Judgement, para. 366; *Niyitegeka* Appeal Judgement, para. 266.

²³⁰ *Babić* Judgement on Sentencing Appeal, para. 44.

²³¹ See *Kunarac et al.* Appeal Judgement, para. 41: "Pursuant to Article 23(2) of the Statute, the Trial Chamber has an obligation to set out a reasoned opinion. In the *Furundžija* Appeal Judgement, the Appeals Chamber held that Article 23 of the Statute gives the right of an accused to a reasoned opinion as one of the elements of the fair trial requirement embodied in Articles 20 and 21 of the Statute. This element, *inter alia*, enables a useful exercise of the right of appeal available to the person convicted. Additionally, only a reasoned opinion allows the Appeals Chamber to understand and review the findings of the Trial Chamber as well as its evaluation of evidence." (Footnote omitted).

²³² Sentencing Judgement, para. 155.

²³³ Appellant's Brief, para. 49.

²³⁴ *Ibid.*, para. 40.