
CASE COMMENTARY ON PROSECUTOR V. BLAŠKIĆ (INTERNATIONAL CRIMINAL LAW AND HUMAN RIGHTS)

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ABSTRACT

Armed conflicts often cause serious violations of human rights and international humanitarian law, particularly when civilians and persons who are not taking part in hostilities become victims of violence. The case of Prosecutor v. Tihomir Blaskic is an important decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) concerning war crimes, crimes against humanity, and the criminal responsibility of military commanders. The case arose from the conflict in Central Bosnia and Herzegovina, particularly the Lasva Valley region, where Bosnian Muslim civilians were subjected to attacks, unlawful detention, mistreatment, destruction of property, forced displacement, and the use of detainees as human shields. This study will examine the legal issues involved in Prosecutor v. Blaskic, with particular focus on individual criminal responsibility and superior or command responsibility under international criminal law. It will analyze the responsibility of military commanders for crimes committed by their subordinates, including the requirements of effective control, knowledge or “reason to know,” and the duty to prevent or punish crimes.

The study will also examine important issues relating to unlawful attacks against civilians, cruel and inhuman treatment, detention, hostage-taking, the use of protected persons as human shields, and persecution as a crime against humanity. The study will further analyze the findings of the Trial Chamber and the Appeals Chamber, particularly the correction of the legal standards applied to command responsibility and individual responsibility. The Appeals Chamber reversed several of Blaskic’s convictions and reduced his sentence from 45 years to 9 years, while affirming certain findings concerning detention-related crimes, the use of protected persons for military construction, and the inhuman treatment of detainees used as human shields. The study will evaluate the contribution of the Blaskic judgment to the development of international criminal jurisprudence and its continuing relevance to the principles of command responsibility, effective control, mens rea, protection of civilians, and accountability for serious violations of international humanitarian law.

1. INTRODUCTION

The case of **Prosecutor v. Tihomir Blaškić** is an important decision of the **International Criminal Tribunal for the former Yugoslavia (ICTY)**¹ concerning war crimes, crimes against humanity, and the responsibility of military commanders. The case arose from the armed conflict between Croatian Defence Council (HVO) forces and Bosnian Muslim forces in the Lašva Valley region of Central Bosnia and Herzegovina between 1992 and 1994. During the conflict, Bosnian Muslim civilians in areas including the municipalities of Vitez, Busovača and Kiseljak were subjected to attacks, unlawful detention, mistreatment, displacement and destruction of property. The case also concerned allegations relating to the use of protected persons for military construction and the use of detainees as human shields.

The accused, Tihomir Blaškić, held a senior military position within the HVO command structure. The Prosecution alleged that he was responsible for crimes committed against the Bosnian Muslim population through his own acts, including ordering certain operations, and through his responsibility as a superior for crimes committed by persons under his command. The case therefore required the Tribunal to examine the distinction between individual criminal responsibility under Article 7(1) and superior or command responsibility under Article 7(3) of the ICTY Statute.

The **main issues** before the Tribunal concerned whether Blaškić had ordered or otherwise contributed to crimes against civilians, whether he exercised effective control over the forces responsible for particular crimes, and whether he knew or had reason to know that crimes were being committed by his subordinates. The case also raised questions concerning the duty of a military commander to take necessary and reasonable measures to prevent crimes or punish those responsible. The Appeals Chamber later emphasised that formal military rank alone was not sufficient to establish command responsibility, the material ability to prevent or punish criminal conduct was an important element of effective control.²

The **Trial Chamber delivered its judgment on 3 March 2000 and found Blaškić guilty** on the basis of individual and superior criminal responsibility for a number of crimes. It imposed a sentence of 45 years' imprisonment. Blaškić appealed against the judgment, challenging both

¹ Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment, ¶¶ 1–2 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004).

² Blaškić, Case No. IT-95-14-A, ¶¶ 50–70 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004).

the findings of responsibility and the sentence.

The **Appeals Chamber delivered its judgment on 29 July 2004**. It reversed several findings of the Trial Chamber, including findings concerning Blaškić's responsibility for crimes committed in the Ahmići area. It also examined the requirements for responsibility under Article 7(1) and Article 7(3), particularly the mental element required for ordering a crime and the requirement of effective control for superior responsibility. **The Appeals Chamber ultimately reduced Blaškić's sentence from 45 years to 9 years imprisonment.**

2. ARGUMENTS OF THE PARTIES

I] Arguments of the Prosecution

The Prosecution argued that Tihomir Blaškić should be held individually responsible for serious violations of international humanitarian law committed by HVO forces in Central Bosnia. It submitted that his responsibility arose both from his individual participation under Article 7(1) of the ICTY Statute and from his position as a military superior under Article 7(3). The Prosecution relied on his position as Commander of the HVO Armed Forces in Central Bosnia, the orders issued by him, his reports, and other evidence concerning his relationship with the forces operating in the region.³

The Prosecution argued that Blaškić had participated in the planning, instigating, ordering and implementation of military operations in which crimes against civilians were committed. It contended that his responsibility under Article 7(1) could be established through direct as well as circumstantial evidence. According to the Prosecution, the orders and instructions issued by Blaškić demonstrated his involvement in military operations and established a connection between his conduct and the crimes committed by HVO forces.

A major argument of the Prosecution was that Blaškić exercised effective control over the HVO forces responsible for the violations. It argued that a formal or legal designation as commander was not essential. A person could be considered a superior where, in practice, he exercised sufficient authority or influence and possessed the material ability to prevent crimes or punish their perpetrators. The Prosecution also argued that Blaškić knew, or at least had

³ Prosecutor v. Tihomir Blaškić, Case No. IT T, Judgment ¶¶ 278–82, 293–306 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000).

reason to know, that crimes were being committed or were about to be committed by forces under his control. It submitted that actual knowledge could be established through direct or circumstantial evidence.

Finally, the Prosecution submitted that Blaškić had failed to take the necessary and reasonable measures to prevent crimes or punish those responsible. Thus, the Prosecution's overall case was that Blaškić was not merely a commander who happened to be in a position of authority. It argued that his orders, his relationship with HVO units, the information available to him, and his alleged failure to prevent or punish violations established the necessary connection between his conduct and the crimes committed during the conflict. The Trial Chamber subsequently examined these arguments in determining the extent of Blaškić's individual and superior responsibility.

II] Arguments of the Defence/Appellants

The Defence argued that Tihomir Blaškić should not be held criminally responsible merely because he held the position of Commander of the HVO Armed Forces in Central Bosnia. It maintained that the Prosecution had failed to establish the necessary connection between Blaškić and the specific crimes committed by HVO forces. The Defence particularly challenged the Trial Chamber's findings concerning his individual responsibility under Article 7(1) and superior responsibility under Article 7(3) of the ICTY Statute.⁴

The Defence strongly argued that Blaškić did not have effective control over all the military and police units alleged to have committed crimes. According to the Defence, formal or de jure authority as a commander was not sufficient to establish command responsibility. What had to be proved was his actual material ability to prevent the commission of crimes or punish the perpetrators.

The Defence also challenged the finding that Blaškić knew or had reason to know that crimes were being committed or were about to be committed. It argued that there was insufficient evidence showing that he had information which would have put him on notice of the crimes, particularly in relation to the events at Ahmići. With regard to the attacks in Ahmići and other parts of the Vitez Municipality, the Defence argued that Blaškić's military orders were issued

⁴ Prosecutor v. Tihomir Blaškić, Case No. IT A, Judgment ¶¶ 1–10, 41–42 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004).

for legitimate military purposes and were not intended to target the civilian population or cause crimes. The Defence also argued that there was no sufficient evidence that Blaškić knew of, ordered, or intended the crimes that subsequently occurred.

The Defence further challenged the mens rea required for ordering crimes under Article 7(1). It argued that criminal responsibility could not be based merely on the existence of a risk that crimes might occur following a military order.

Finally, the Defence challenged the fairness of the proceedings, arguing that the Second Amended Indictment was vague and did not provide sufficient details about the allegations against Blaškić. It also alleged that the Prosecution had failed to disclose relevant exculpatory material under Rule 68, thereby affecting his ability to prepare and present his defence.⁶ The Defence also challenged the severity of the 45-year sentence, arguing that the Trial Chamber had made errors in assessing his individual responsibility and the appropriate punishment.

III] Tribunal's Approach to the Arguments

The Tribunal examined whether Blaškić could be held individually responsible under Article 7(1) and as a superior under Article 7(3) of the ICTY Statute. It emphasized that criminal responsibility had to be established through reliable evidence connecting Blaškić with the crimes committed by HVO forces. The Appeals Chamber therefore reviewed several findings of the Trial Chamber for errors of law and fact.⁵ With regard to ordering, the Appeals Chamber clarified that mere knowledge of a risk was not sufficient. The prosecution had to establish that Blaškić was aware of a substantial likelihood that a crime would be committed in execution of his order. The Tribunal found that the Trial Chamber had applied an incorrect legal standard on this issue and reconsidered the relevant convictions.

The Tribunal also examined effective control for the purpose of command responsibility. It held that formal military authority alone was insufficient; the commander must have the material ability to prevent or punish the crimes of subordinates. Applying this standard, the Appeals Chamber reversed several findings because the evidence did not establish Blaškić's effective control over certain units in relation to the crimes at Ahmići.

⁵ Prosecutor v. Tihomir Blaškić, Case No. IT A, Judgment ¶¶ 24–29 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004)

The Appeals Chamber further considered whether Blaškić knew or had reason to know about crimes committed by persons under his control. It concluded that the evidence did not sufficiently establish that he had information which would have put him on notice of certain crimes. However, the Tribunal did not accept all the Defence arguments. It affirmed certain findings concerning detention-related crimes, the use of protected persons for military construction, and the inhuman treatment of detainees used as human shields.

After reversing several convictions and correcting legal and factual errors, the Appeals Chamber reduced Blaškić's sentence from 45 years to 9 years' imprisonment.

3. FINAL JUDGMENT OF THE TRIBUNAL

The **Trial Chamber** initially convicted Tihomir Blaškić on 19 counts relating to crimes committed in the Vitez, Busovača, and Kiseljak municipalities and **sentenced him to 45 years' imprisonment**. The convictions were based on Articles 2, 3 and 5 of the ICTY Statute and included responsibility under Article 7(1) and Article 7(3). Blaškić appealed against the findings of responsibility and the sentence.⁶

On 29 July 2004, the Appeals Chamber delivered its final judgment and found several legal and factual errors in the Trial Chamber's decision. It reversed Blaškić's convictions relating to the Ahmići crimes and several other attacks in the Vitez, Busovača and Kiseljak areas. The Appeals Chamber particularly found that the evidence did not establish beyond reasonable doubt that Blaškić had the required responsibility for many of these crimes.

The Appeals Chamber nevertheless affirmed certain convictions. It upheld Blaškić's responsibility under Article 7(3) for certain detention-related crimes under Count 15. It also affirmed his conviction under Article 7(1) for ordering the use of protected persons for the construction of defensive military installations under Count 16, and for the inhuman treatment of detainees used as human shields under Count 19.

The Tribunal also made important findings concerning command responsibility and individual criminal responsibility. It clarified that effective control requires the material ability to prevent or punish criminal conduct and that ordering requires awareness of a substantial likelihood that

⁶ Prosecutor v. Tihomir Blaškić, Case No. IT A, Judgment ¶¶ 1–10 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004).

a crime will be committed. These findings became important principles in the development of international criminal law concerning the responsibility of military commanders.

The Appeals Chamber reconsidered the sentence of 45 years imposed by the Trial Chamber. After taking into account the convictions that remained, the errors in the original judgment, and relevant aggravating and mitigating circumstances, it imposed a **new sentence of nine years' imprisonment**, giving credit for the period Blaškić had already spent in detention.

Thus, the final judgment substantially modified the Trial Chamber's original findings while maintaining responsibility for specific serious crimes.

4. ANALYSIS OF THE JUDGMENT

The Blaškić judgment is significant because it clarified the limits of individual and superior criminal responsibility under international criminal law. The Appeals Chamber corrected the Trial Chamber's approach to Article 7(1), holding that a commander cannot be held responsible merely because a crime was a possible consequence of an order. There must be awareness of a substantial likelihood that the crime would be committed.

Another important aspect is the Tribunal's clarification of effective control under Article 7(3). The judgment established that formal rank or command position alone is insufficient. The prosecution must prove that the superior had the material ability to prevent or punish the criminal conduct. This principle strengthened the requirement of a real and functional superior-subordinate relationship.

The judgment also emphasized the importance of the "had reason to know" requirement. A commander cannot automatically be held responsible because crimes were committed by forces associated with him. The available information must be sufficient to put the commander on notice of the crimes, and the commander must fail to take necessary and reasonable measures within his ability.

The case is also important because the Appeals Chamber carefully reassessed the evidence and reversed several findings where the Trial Chamber had applied an incorrect legal standard or where the evidence did not establish guilt beyond reasonable doubt. At the same time, it maintained certain convictions relating to detention-related crimes, protected persons used for military construction, and inhuman treatment of detainees used as human shields.

Overall, Blaškić demonstrates the need to balance military command authority with individual criminal responsibility. The judgment prevents automatic attribution of crimes to commanders merely because of their position, while also confirming that commanders may be responsible where effective control, knowledge, and failure to take necessary measures are proved. The Appeals Chamber's substantial reduction of the sentence from 45 years to nine years further demonstrates the importance of applying precise legal standards to individual responsibility.

5. CONTEMPORARY RELEVANCE OF THIS JUDGEMENT

The Blaškić judgment remains relevant to international criminal law because it clarified the limits of command responsibility. Its emphasis on effective control continues to be important in determining whether a military commander can be held responsible for crimes committed by subordinates. The principle is also reflected in **Article 28 of the Rome Statute**, which requires effective command and control or effective authority and control over the forces concerned.⁷

The judgment is particularly relevant for determining when a commander can be held responsible for failing to prevent or punish crimes. Blaškić emphasized that formal rank alone is insufficient; the commander must have the material ability to take preventive or punitive measures. This approach continues to provide an important framework for examining superior responsibility in cases involving military and paramilitary forces.

Another continuing importance of the case is its treatment of the “had reason to know” standard. The Appeals Chamber rejected an approach that would effectively make negligence by itself a separate basis of criminal responsibility and emphasized the established legal standard for determining whether information available to a superior was sufficient to put that person on notice of crimes.

The case also remains relevant to the broader principle of accountability for serious violations of international humanitarian law. It demonstrates that commanders cannot be automatically held responsible for every crime committed by forces associated with them, but responsibility may arise where the required relationship of effective control, knowledge, and failure to take necessary measures is proved. These principles continue to be reflected in the international law

⁷ Rome Statute of the International Criminal Court art. 28(a), July 17, 1998, 2187 U.N.T.S. 90.

of superior responsibility.

6. CONCLUSION

The Prosecutor v. Tihomir Blaškić judgment is an important decision in the development of international criminal law, particularly concerning individual criminal responsibility and command responsibility. The Appeals Chamber clarified that a commander cannot be held responsible merely because of his formal position; effective control, knowledge, and the required connection between the commander's conduct and the crimes must be established.

The judgment also emphasized that effective control means the material ability to prevent or punish crimes, while responsibility for ordering requires awareness of a substantial likelihood that a crime will be committed. By correcting the Trial Chamber's application of these standards, the Appeals Chamber strengthened the requirement that criminal responsibility must be based on properly established legal and evidentiary standards.

At the same time, the Tribunal confirmed that military commanders can be held accountable where the necessary elements of responsibility are proved. The judgment therefore establishes an important balance between military authority and individual accountability, while reinforcing the protection of civilians and other protected persons during armed conflicts.

Ultimately, the reduction of Blaškić's sentence from 45 years to 9 years demonstrates the importance of carefully examining both the evidence and the applicable legal standards before imposing criminal responsibility. The case continues to be relevant for understanding command responsibility and accountability for serious violations of international humanitarian law.