



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-03-66-A  
Date: 29 November  
2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Decision of:** 29 November 2006

**THE PROSECUTOR**

v.

**FATMIR LIMAJ  
HARADIN BALA  
ISAK MUSLIU**

**CORRIGENDUM TO TRIAL JUDGEMENT AND DECISION  
ON PROSECUTION MOTION TO ADMIT AN AGREED FACT  
AND SUPPLEMENT THE TRIAL RECORD**

**The Office of the Prosecutor:**

Ms. Helen Brady

**Counsel for the Accused:**

Mr. Michael Mansfield Q.C. and Mr. Karim A.A. Khan for Fatmir Limaj  
Mr. Gregor Guy-Smith and Mr. Richard Harvey for Haradin Bala  
Mr. Michael Topolski Q.C. and Mr. Steven Powles for Isak Musliu

1. The Appeals Chamber of the 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of appeals against the Judgement of Trial Chamber II in this case, rendered on 30 November 2005 (“*Limaj* Judgement”). The Appeals Chamber is also presently seized of the “Prosecution Motion to Admit an Agreed Fact and Supplement the Trial Record”, filed 5 October 2006 (“Motion”).

2. The Prosecution has filed this Motion in light of evidence discovered after the close of the Prosecution’s case-in-chief. In its case-in-chief, the Prosecution sought to prove that Stamen Genov had been murdered at the Llapushnik/Lapušnik camp in Kosovo. It presented no evidence, however, that Genov’s remains had been found.

3. After closing arguments had begun on 29 August 2005, the Prosecution was informed by telephone that UNMIK investigators had matched Genov’s DNA to a body found in a Kosovo gravesite.<sup>1</sup> The body was found with both hands bound, and an autopsy showed that death had resulted from gunshots to the head and chest.<sup>2</sup> The Prosecution did not seek to reopen the case to introduce this new information.<sup>3</sup> Accordingly, the Trial Chamber did not have this information before it when rendering the Judgement. In the Judgement, the Trial Chamber found that while Genov was detained at the Llapushnik/Lapušnik camp and suffered “particularly brutal treatment” there, “[n]o finding can [...] be made as to the fact and circumstances of his death.”<sup>4</sup>

4. In July 2006, the Prosecution received documentary support related to the discovery of Genov’s remains from the Department of Justice of UNMIK – namely, the report regarding the recovery of the remains, the autopsy report, and the DNA analysis.<sup>5</sup>

5. In the Motion, the Prosecution seeks to “bring the trial record into conformity with the historical record”.<sup>6</sup> In particular, the Prosecution asks the Appeals Chamber to admit a proposed statement of facts into the record, overturn Trial Chamber findings of relevance in paragraphs 371 and 372 of the *Limaj* Judgement, and substitute “corrected factual findings that Mr. Genov’s body with its hands tied was recovered from a gravesite containing thirteen bodies in total, and that examination revealed he was killed by gunshot wounds to the head and chest.”<sup>7</sup> The Prosecution represents that the Defence consents to this objective and agrees with the proposed statement of

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<sup>1</sup> Motion, para. 5.

<sup>2</sup> *Ibid*, para. 3.

<sup>3</sup> Motion, para 5.

<sup>4</sup> *Limaj* Judgement, para. 372.

<sup>5</sup> Motion, para. 6.

<sup>6</sup> *Ibid*, para. 3.

facts.<sup>8</sup> The Prosecution emphasises that the “Trial Chamber’s findings related to the alleged murder of Mr Genov have not been appealed” and that the “granting of this motion does not impact any of the grounds of appeal by parties.”<sup>9</sup> In particular, the Prosecution “does not seek a finding that Mr Genov was killed at Llapushnik/Lapušnik or to rely on these agreed facts in support of any of its existing grounds of appeal in this case.”<sup>10</sup>

6. In Annex 1 to its Motion, the Prosecution submits the “Statement of Agreed Facts”. It reads:
  - 1.1 “Between 13 and 18 May 2005, investigators from the Office on Missing Persons and Forensics at the Department of Justice of UNMIK carried out the exhumation of a gravesite on the outskirts of the village of Malishevo, Prizren Municipality, Kosovo. Thirteen bodies were exhumed.
  - 1.2 The twelfth body exhumed was the body of a male lying on his front with both hands tied with a plastic rope.
  - 1.3 An autopsy was performed and DNA analysis carried out on this body.
  - 1.4 The DNA analysis identified the body as that of Stamen Genov.
  - 1.5 The autopsy determined that Stamen Genov had been shot in the head and chest and that these gunshot wounds caused his death.”
7. The Defence has not filed a response to the Motion.
8. The Appeals Chamber notes that a review pursuant to Rule 119 of the Rules of Procedure and Evidence would be inadequate, as would a motion pursuant to Rule 115 to admit new evidence, because the agreed amendments are not being used to revisit the acquittals or convictions entered in the Trial Judgement. Nevertheless, the Appeals Chamber recognises that in view of the Prosecution’s submission and specifically in view of the mutual agreement between Prosecution and Defence it is in the interest of justice to rectify the Trial Record and Judgement so that they adequately reflect Stamen Genov’s fate.<sup>11</sup>
9. On the basis of the foregoing, the Appeals Chamber **GRANTS** the Motion.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

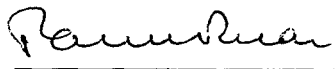
<sup>9</sup> *Ibid.*, para. 4.

<sup>10</sup> *Ibid.*

10. The Appeals Chamber hereby **ORDERS** that the Trial Record be supplemented by Annex 1 of the Motion.
11. The Appeals Chambers **FURTHER ORDERS** that the Trial Judgement is to be read in conjunction with the Statement of Agreed Facts, Annex 1 of the Motion, which shall override any factual findings in paragraphs 371-372 of the Trial Judgement that are inconsistent with the Statement of Agreed Facts.

Done in English and French, the English text being authoritative.

Dated this 29th day of November 2006,  
At The Hague,  
The Netherlands.

  
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Judge Fausto Pocar  
Presiding Judge

[Seal of the Tribunal]

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<sup>11</sup> See *Prosecutor v. Stakić*, Case No. IT-97-24-T, IT-97-24-A & IT-97-24-R, Corrigendum to Judgements of 31 July 2003 and 22 March 2006, 16 November 2006, p. 3 (finding it appropriate to modify two judgements even though Rule 119 was not applicable).