

## Revisiting the Blaškić Sentence: Some Reflections on the Sentencing Jurisprudence of the ICTY\*

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*It is obvious that predictability of punishment is one important aspect of legal rules.*

– H.L.A. Hart

### I. Introduction

On 1 April 1996, Tihomir Blaškić<sup>1</sup> voluntarily surrendered to the International Criminal Tribunal for the former Yugoslavia (“ICTY” or “Tribunal”).<sup>2</sup> He was tried, convicted, and sentenced to 45 years of imprisonment.<sup>3</sup> Five years later his superior, Dario Kordić, received 25 years following his conviction for substantially similar crimes.<sup>4</sup> The crimes for which each was convicted overlapped

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<sup>1</sup> Tihomir Blaškić was born on 2 November 1960 in the municipality of Kiseljak in Bosnia-Herzegovina. During the time of the events contained in the indictment against him, he was a colonel. He was later promoted to the rank of General of the army of the Republic of Croatia.

<sup>2</sup> The “International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991” was established by the Security Council, acting under Chapter VII of the Charter of the United Nations, in 1993 pursuant to Resolution 827.

<sup>3</sup> *Prosecutor v. Blaškić*, Judgement, Case No. IT-95-14-T, 3 March 2000, p. 270 (hereafter referred to as “*Blaškić* Judgement”). For the full text of all ICTY judgements cited herein see <[www.un.org/icty](http://www.un.org/icty)>. A full text of the *Blaškić* Judgement, along with notes and commentary, can be found in *A. Klip & G. Sluiter* (eds.), *Annotated Leading Cases of International Criminal Tribunals*, Vol. IV, (Intersentia 2002) pp. 477–667.

<sup>4</sup> *Prosecutor v. Kordić & Cerkez*, Judgement, Case No. IT-95-14/2-T, 26 February 2001

to a large degree and included crimes against humanity and war crimes committed in various municipalities in the Lasva Valley. They were in fact initially charged as co-defendants under a single indictment.<sup>5</sup> Yet Blaškić's punishment is nearly double that of his superior Kordić, who was described as "the most important Bosnian Croat political figure".<sup>6</sup> What motivated the Trial Chamber to condemn Blaškić to the harshest penalty it had ever imposed on a defendant?<sup>7</sup> Why did the man, described as combining "political authority" with "military authority",<sup>8</sup> who reportedly had "direct control" over the notorious Jokers unit<sup>9</sup> and gave orders to General Blaškić, receive 20 years less than Blaškić?

It is not adequate to brush the matter aside with a blithe retort that they are all criminals who committed outrageous acts and deserve to be punished severely. Moral simplicity has its own dangers. We may be outraged by their acts, but we cannot be outrageous in our response to them. Neither Blaškić nor Kordić had any prior criminal history.<sup>10</sup> While we may applaud the coming of

(hereafter referred to as "Kordić Trial Judgement"). Indeed, in its case against Kordić, the Prosecutor asserted that he was the superior of Blaškić. *Id.*, para. 538. The Trial Chamber appears to have accepted this assertion. For findings regarding the hierarchical relation between Kordić and Blaškić see for example *Id.*, paras. 544 (Kordić "was also the superior of Colonel Blaskic"), 588 (Kordić's orders prevail over Blaškić's), 590 (Blaškić complying with Kordić's orders), and 685 (Blaškić contacts Kordić for instructions).

<sup>5</sup> See Initial Indictment, 10 November 1995, Case No. IT-95-14 available at <www.icty.org>. Blaškić and Kordić were initially indicted along with three others. However, because Blaškić voluntarily surrendered to the ICTY a year and a half before Kordić came into custody, the trial against Blaškić proceeded without Kordić under a new amended indictment.

<sup>6</sup> *Kordić Trial Judgement*, supra note 4, para. 1.

<sup>7</sup> At that point in the ICTY's history, the 45 years of imprisonment imposed on General Blaškić was the highest sentence any trial chamber had handed down. Since his sentence only two defendants have received harsher penalties: General Radislav Krstić and Dr. Milomir Stakić. General Krstić was found guilty of genocide for the massacre of the Muslim men of Srebrenica, persecution as a crime against humanity, and violations of the laws and customs of war. He was sentenced to 46 years of imprisonment, only one year more than Blaškić, despite the fact that Krstić was convicted of a crime of greater gravity and held a higher rank. See, *Prosecutor v. Krstić*, Judgement, Case No. IT-98-33-T, 2 August 2001. The Appeals Chamber subsequently reduced Krstić's sentence to 35 years. See, *Prosecutor v. Krstić*, Judgement, Case No. IT-98-33-A, 19 April 2004. Dr. Stakić was convicted of persecution and extermination as a crime against humanity and of murder as violation of the laws and customs of war and sentenced to life imprisonment. See, *Prosecutor v. Stakić*, Judgement, Case No. IT-97-24-T, 31 July 2003. His case is pending on appeal.

<sup>8</sup> See *Kordić Trial Judgement*, supra note 4, paras. 532 and 556.

<sup>9</sup> *Id.*, para. 768 fn 1582. The Jokers, a unit in the IV Battalion Military Police, carried out particularly brutal campaigns of terror and ethnic cleansing aimed at purging Muslims from Lasva Valley. See, e.g., CNN News, "War crimes tribunal convicts Bosnian Croat of rape", 10 December 1998, available at <www.cnn.com/WORLD/europe/9812/10/bosnia.war.crimes/>.

<sup>10</sup> *Blaškić Judgement*, supra note 3, para. 780.