

## ***Mens rea***

### **ICTR (Trial Chamber), *Prosecutor v. Jean-Paul Akayesu*, Judgement of 2 September 1998**

523. On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.

### **ICTY (Appeals Chamber), *Prosecutor v. Goran Jelisič*, Judgement of 5 July 2001**

45. Article 4, paragraphs (2) and (3) of the [ICTY] Statute largely reflect Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide. As has been seen, Article 4(2) of the Statute defines genocide to mean any of certain "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". The Statute itself defines the intent required: the intent to accomplish certain specified types of destruction. This intent has been referred to as, for example, special intent, specific intent, *dolus specialis*, particular intent and genocidal intent. [...]

47. As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.

48. The Appeals Chamber is of the opinion that the existence of a plan or policy is not a legal ingredient of the crime. However, in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases. The evidence may be consistent with the existence of a plan or policy, or may even show such existence, and the existence of a plan or policy may facilitate proof of the crime.

49. The Appeals Chamber further recalls the necessity to distinguish specific intent from motive. The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide. In the *Tadić* appeal judgement the Appeals Chamber stressed the irrelevance and "inscrutability of motives in criminal law".

### **ICTY (Appeals Chamber), *Prosecutor v. Slobodan Milošević*, Decision of 18 April 2002 ('Interlocutory Appeal Decision')**

30. [...] In order to establish that the accused participated in a joint criminal enterprise (stated in general terms) to remove forcibly the majority of the non-Serb population from areas which the Serb authorities wished to establish or to maintain as Serbian controlled areas by the commission of the crimes charged, the prosecution must establish that he intended that those crimes be committed for that purpose.

31. A person's state of mind is no different to any other fact concerning that person which is not usually visible or audible to others. It may be established by way of inference from other facts in evidence. Where, as here, the state of mind to be established is an essential ingredient of the basis of criminal responsibility charged, the inference must be established beyond reasonable doubt. If there is any other inference reasonably open from the evidence which is consistent with the innocence of the accused, the required inference will not have been established to the necessary standard of proof. Any words of or conduct by the accused which point to or identify a particular state of mind on his part is relevant to the existence of that state of mind. It does not matter whether such words or conduct precede the time of the crime charged, or succeed it. Provided that such evidence has some probative value, the remoteness of those words or conduct to the time of the crime charged goes to the weight to be afforded to the evidence, not its admissibility .

## **ICTY (Trial Chamber), *Prosecutor v. Radovan Karadžić*, Judgement of 24 March 2016**

### Murder

2449. The Chamber recalls its findings that the death of the victims for each of the incidents identified above was a result of the acts of Serb Forces. The Chamber finds that the perpetrators of each of these incidents acted with the intent to kill the victims or at least wilfully caused serious bodily harm, which they should reasonably have known might lead to death.

2450. In reaching that conclusion, the Chamber had regard to the circumstances and the manner in which the victims were killed. With respect to the [first group of] killing incidents, the Chamber found that many of the victims were deliberately shot. In other incidents, while the Chamber did not have evidence that the victims were deliberately shot, the Chamber did find that they were killed during or after the take-over of towns or villages by Serb Forces and is satisfied considering the surrounding circumstances that these killings were deliberate. [...]

2452. The Chamber recalls its finding that in Vogošća and Ilidža a number of detainees were taken from their place of detention by Serb Forces and killed while carrying out work on the frontlines or while being used as human shields. The victims died as a result of the actions of Serb Forces who used them for work on the front-lines or as human shields. In using the victims for work on the front-lines or as human shields, the members of the Serb Forces deliberately took the risk that they would be killed. The Chamber finds that in using them as human shields or in forcing them to work on the frontlines, the perpetrators wilfully caused the victims serious bodily harm, which they should reasonably have known might lead to death.

2453. With respect to victims who died as a result of cruel and inhumane treatment at detention facilities, the Chamber found that the victims died in circumstances which showed an intent by the perpetrators to kill or at least wilfully cause them serious bodily harm, which they should reasonably have known might lead to death. For example the Chamber found that the detainees were severely beaten inter alia with chains and metal rods. Others were subjected to such conditions that they died from starvation, exhaustion, lack of medical care, intense heat, or suffocation.

### Extermination

2462. The Chamber recalls its finding that the perpetrators of each of the killing incidents identified above acted with the intent to kill the victims or at least wilfully caused serious bodily harm, which they should reasonably have known might lead to death. Having regard to the scale of the killings, the Chamber further finds that with respect to the killing incidents above, the perpetrators had intent to kill on a mass scale.

## Rape and other acts of sexual violence

2504. The Chamber finds that each of these acts of rape and other acts of sexual violence were committed by members of Serb Forces without the consent of the victims, that the perpetrators intentionally committed these acts, and that the perpetrators were aware that the victims did not consent to such acts. In reaching that conclusion the Chamber has had regard to the circumstances in which they occurred and the horrific nature of the acts themselves. This includes the fact that the victims were often detained and subjected to threats of or actual violence and humiliation.

### **Otázky k textu:**

- 1. Jakými důkazy lze prokázat, že určitý zločin byl spáchán úmyslně? Z čeho všeho lze podle uvedených rozsudků takovýto závěr odvodit?**
- 2. Zaměřte se na rozsudek ve věci *Jelisić* a vysvětlete, co znamená výraz „specific intent“ (dolus specialis) a v čem se tento specifický úmysl liší od „motivu“ pachatele.**