

II. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

(a) List of Current Proceedings: Update*

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1. CASES AT THE PRE-TRIAL STAGE

1.1. The Prosecutor v. Dragan Kolundžija and Damir Došen, Case No. IT-95-8

Following the detention of Damir Došen by SFOR on 25 October 1999,¹ Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) scheduled an initial appearance hearing to take place on 1 November 1999. However, the accused was unable to attend the hearing. The initial appearance hearing was subsequently held on 8 November 1999, during which the accused pleaded 'not guilty' to all counts charged against him in the amended indictment, as confirmed on 30 August 1999.

The amended indictment charges Damir Došen on the basis of individual criminal responsibility² and, or alternatively, superior criminal responsibility³ with crimes against humanity⁴ (persecutions on political, racial and religious grounds; inhumane acts; torture) and violations of the laws or customs of war⁵ (outrages upon personal dignity; torture; cruel treatment) for his alleged role as a shift commander at the Keraterm detention camp in north-western Bosnia and Herzegovina between May and August 1992.

* This *List of Current Proceedings: Update* covers cases pending between 1 October 1999 and 1 January 2000 that merit attention because of a new procedural event. See, generally, the website of the Tribunal: <http://www.un.org/icty>.

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1. ICTY Press Release JL/P.I.S./443-E, 25 October 1999.
2. Art. 7(1) of the Statute of the Tribunal.
3. Art. 7(3) of the Statute of the Tribunal.
4. Art. 5 of the Statute of the Tribunal.
5. Art. 3 of the Statute of the Tribunal.

¹³ Leiden Journal of International Law 91-100 (2000)

1.2. The Prosecutor v. Milan Simić, Miroslav Tadić, Simo Zarić and Stevan Todorović, Case No. IT-95-9

On 1 October 1999, Trial Chamber III (Judges Robinson (Presiding), Hunt and Bennouna) issued an order lifting the confidential status of an *ex parte* decision, dated 27 July 1999, in which the Trial Chamber decided that the evidence of a former employee of the International Committee for the Red Cross sought to be called by the Prosecution should not be given.⁶

Subsequently, on 5 October 1999, accused Todorović filed a motion seeking to re-open the *ex parte* proceedings to allow him an opportunity to be heard in light of a pending motion for an order requesting assistance in securing documents and witnesses from the ICRC filed by counsel for Todorović on 23 September 1999.

On 18 November 1999, the Trial Chamber granted leave to the ICRC to appear as *amicus curiae* in respect of the above motion. In the same order the Trial Chamber also granted Todorović access, on a confidential basis, to the material filed in connection with the ICRC decision which was available to the Prosecution, except to any material which could identify the proposed witness.

On 13 October 1999, the Appeals Chamber (Judges Kirk McDonald (Presiding), Cassese, Nieto-Navia, Shahabuddeen and Wang) issued its decision on Todorović's appeal from an oral order dated 4 March 1999, and a written decision dated 25 March 1999, in which the Trial Chamber III had denied the accused's motion for an evidentiary hearing on abduction and kidnapping and a motion to repatriate the accused to the country of refuge, filed on 25 May 1999.

Dismissing the appeal, the Appeals Chamber noted that the issue before the Trial Chamber was not whether there was a kidnapping and, if so, what its legal effects were, but whether or not, as stated by the Trial Chamber, to grant the accused's request for an evidentiary hearing as to the alleged kidnapping of the accused. Thus, the Appeals Chamber considered that the Trial Chamber did not abuse its discretion in reaching its decision on the basis that the motion did not contain sufficient factual and legal material.

In the matter of contempt allegations against Milan Simić and his counsel, Branislav Avramović, pursuant to Rule 77 of the Tribunal's Rules of Procedure and Evidence which commenced on 29 September 1999,⁷ the Trial Chamber adjourned to consider its decision on 2 December 1999.

6. ICTY Press Release JL/PIS/439-E, 8 October 1999.

7. See International Criminal Tribunal for the Former Yugoslavia: List of Current Legal Proceedings: Update, 12 LJIL 919 (1999).

**1.3. The Prosecutor v. Dragoljub Kunarac and Radomir Kovać,
Case No. IT-96-23**

On 4 November 1999, Trial Chamber II (Judges Mumba (Presiding), Cassese and Hunt) granted in part a motion on the form of the amended indictment, dated 3 September 1999, filed by counsel for Kovać on 7 October 1999. Considering that those allegations raised in the accused's application relating to issues to be resolved at trial are specific enough to enable the accused to prepare his case in this regard, the Trial Chamber directed the Prosecutor to amend the indictment where more details could assist the accused in preparing his case.

On 1 December 1999, Judge Vohrah granted the Prosecutor's motion for leave to file an amended indictment and confirmed the third amended indictment which was subsequently submitted by the Prosecutor on 2 December 1999.

At a status conference on 14 December 1999 the start of the trial was postponed until 20 March 2000 to allow counsel for Kovać to prepare his defence.

1.4. The Prosecutor v. Zoran Vuković, Case No. IT-96-23

Following his detention by SFOR on 23 December 1999,⁸ Zoran Vuković pleaded "not guilty" on 29 December 1999 to all charges against him contained in the indictment, dated 7 October 1999, namely, violations of the laws or customs of war (torture; rape) and crimes against humanity (torture; rape) on the basis of individual criminal responsibility.

1.5. The Prosecutor v. Milorad Krnojelac, Case No. IT-97-25

On 1 November 1999, the pre-trial Judge, Judge Hunt, modified the order he issued at the status conference on 14 September 1999 in which it was proposed that to ensure compliance with the obligations of the disclosure of exculpatory evidence an "affidavit of discovery" should be made specifying that there had been a complete search for material which should be the subject of disclosure.

The modifications were that the Prosecution must comply with its "obligation to disclose to the defence evidence known to it which in any way tends to suggest the innocence of, or to mitigate the guilt of, the accused, or which may affect the credibility of the Prosecution evidence" and file a signed report by a member of its team in which he or she certifies that "a full search has been conducted throughout the materials in the possession of the prosecution or otherwise within its knowledge for the existence of such evidence; and that he or she is aware of the continuing nature of the [disclosure obligation]" by 15 November 1999.

8. ICTY Press Release CC/PIS/458-E, 24 December 1999.

1.6. The Prosecutor v. Stanislav Galić, Case No. IT-98-29

Stanislav Galić was detained by SFOR on 20 December 1999, pursuant to a sealed indictment filed on 26 March 1999.⁹

The indictment charges the accused on the basis of individual criminal responsibility and superior criminal responsibility with crimes against humanity (murder; inhumane acts other than murder) and violations of the laws and customs of war (unlawfully inflicting terror upon civilians; attacks on civilians). At his initial appearance on 29 December 1999, the accused pleaded "not guilty" to all the above charges.

1.7. The Prosecutor v. Miloslav Kvočka, Mlađo Radić, Milojica Kos and Zoran Žigić, Case No. IT-98-30

On 19 October 1999, Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) issued its decision on the Prosecution's motion for joinder filed on 22 July 1999. In the motion the Prosecution requested that Kolundžija be severed from the "Sikirica & others" indictment (IT-95-8) and joined to the "Kvočka & others" indictment (IT-98-30). Considering that the joining of Kolundžija to the Kvočka & others indictment is not in the interest of justice as it would delay the proceedings against the other accused charged in that indictment, the Trial Chamber dismissed the motion.

On 8 November 1999, the Trial Chamber III dismissed submissions filed by Radić and Žigić on 17 June 1999 on the form of the amended indictment dated 31 May 1999. The Trial Chamber considered that the level of detail of the information contained in the amended indictment provides the accused with sufficient material to enable them to prepare their defence adequately and thus complies with the decision issued by the Trial Chamber on 12 April 1999 in which the Prosecution was directed to add particulars to the indictment against the accused dated 12 June 1998.

On 15 November 1999, the Trial Chamber ordered that the evidence of certain witnesses would be taken by way of deposition and appointed the Senior Legal Officer as Presiding Officer in respect of the depositions. The deposition evidence is to be taken in closed session in the absence of the accused. The Trial Chamber considered that exceptional circumstances existed for the taking of evidence by way of deposition, namely, the length of the pre-trial detention of the accused and the inability of the Trial Chamber to set a date for the commencement of a trial due to the complexity of cases currently assigned to this Trial Chamber.

9. ICTY Press Release JL/PIS/456-E, 20 December 1999.

1.8. The Prosecutor v. Vinko Martinović Case No. IT-98-34

On 12 October 1999, the Deputy Registrar Mr. Jean-Jacques Heintz, issued a decision on behalf of the Registrar not to grant Vinko Martinović's request for the assignment of Mr Branko Šerić, attorney from Zagreb, as his counsel.

Considering that a presumption has arisen that the accused was paying for his defence at the time of his transfer to The Hague in light of the fact that Mr Šerić already represented the accused in national proceedings, and also considering that the Republic of Croatia has failed to provide information of the indigent status of the accused before the Zagreb County Court and that the apparent lifestyle of the accused appears to be above average, the Registrar was not satisfied that the accused fulfils the requirement of indigency.

On 15 October 1999, Vinko Martinović filed a request before the President of the Tribunal for the review of the Registrar's decision which was subsequently rejected by Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) on 30 November 1999. In its decision the Trial Chamber considered that it is not clear if the accused lacks the means to permit him to conduct his defence, and consequently that by refusing the request the Registrar has not committed an obvious error in its assessment to justify the decision being overturned. The Trial Chamber stated that the accused must present to the Registrar any new element relating to the possibility of the Tribunal bearing all or part of the costs and fees incurred in the conduct of his defence.

On 21 December 1999, the Deputy-Registrar, partially granted Martinović's new request for assignment of counsel. Legal aid was granted with regard to the cost of hiring one legal assistant and up to two investigators, and case related travel expenses along with daily subsistence applied to the number of days of work necessary and reasonably performed by all members of the defence team.

**1.9. The Prosecutor v. Radislav Brđanin and Momir Talić,
Case No. IT-99-36**

On 5 October 1999, Trial Chamber II (Judges Cassese (Presiding), Mumba and Hunt) issued its decision on a motion to dismiss the indictment filed by the accused on 31 August 1999, in which it was alleged that the material presented by the Prosecution in support of the indictment does not in fact provide support for the allegations in the indictment. Considering that there is no provision in the Rules of Procedure and Evidence which would permit the Trial Chamber to review the confirming Judge's decision that the material provided by the Prosecution supports the facts pleaded in the indictment, the Trial Chamber denied the motion.

On 12 October 1999, counsel for Brđanin filed an interlocutory appeal against the decision, contending that "it makes no sense [...] to use the trial as a process to determine the existence of a *prima facie* case". On 14 October 1999,

counsel for Talić filed a motion for the dismissal of the indictment submitting that the evidence supporting the indictment does not sufficiently constitute a *prima facie* case against the accused. The Prosecution filed its response to these motions on 19 October 1999.

Also on 14 October 1999, counsel for Momir Talić filed a motion to separate his trial from that of Radoslav Brđanin as it would otherwise result in a conflict of interest. This could cause him serious prejudice in respect of the defence which he means to present, as each of the accused has a different approach in the conduct of his defence and Brđanin appears to be placing sole responsibility for some of the charges on Talić.

On 26 October 1999, Judge Hunt, the pre-trial Judge, ordered that the time limits for the Prosecution to respond to documents filed for the accused in the French language shall not commence to run until the receipt by the Prosecutor of a translation of that document in the English language. Judge Hunt noted that the Prosecutor intends to apply to the confirming Judge for leave to amend the indictment adding further charges against Talić based upon new material. On 4 November 1999 the pre-trial Judge issued two orders deferring the Trial Chamber's decision on the motion to dismiss the indictment and the motion seeking to separate trials filed by Talić until the result of the application by the Prosecutor to amend the indictment is known.

On 16 November 1999, the Appeals Chamber (Judges Bennouna (Presiding), Shahabuddeen, Vohrah, Wang and Nieto-Navia) issued its decision on the interlocutory appeal from the decision on the motion to dismiss the indictment filed by Brđanin on 12 October 1999. Considering that a challenge to the confirmation of an indictment cannot be regarded as constituting a challenge to jurisdiction and further that the interlocutory appeal cannot be treated as an application for leave to appeal, the Appeals Chamber rejected the interlocutory appeal as improperly filed and dismissed a motion for a protective order prohibiting the Prosecution from seeking to amend the indictment until the Appeals Chamber has entered a decision in this matter filed by Brđanin on 25 October 1999.

On 30 November 1999, Brđanin filed a petition for a writ of *habeas corpus* for which the Trial Chamber issued its decision on 8 December 1999. Considering that the Tribunal is not a court of civil jurisdiction which can hear proceedings commenced by such a writ, the Trial Chamber treated the petition as a wrongly entitled motion seeking to challenge the lawfulness of detention which, according to the Trial Chamber, is within the power and the procedure of the Tribunal. However, the Trial Chamber decided that there could be no basis for any allegation that the accused has been denied his right to be informed promptly of the charges against him. Furthermore, the order of the Trial Chamber dated 12 July 1999 detaining the accused on remand was lawfully based upon the arrest of the accused pursuant to the arrest warrant issued by Judge Rodrigues, which in turn was lawfully based upon the confirmation by that

Judge of the indictment against the accused. Thus, the Trial Chamber considered the accused to be lawfully detained at the Detention Unit.

On 10 December 1999, Judge Hunt, the pre-trial Judge, refused the motion for release filed by Talić on 1 December 1999. Judge Hunt considered that there is no basis for the accused's assertion that he still does not know what the charges against him are, as he was provided with a copy of the indictment upon his arrest. Nor is there any basis for the accused's assertion that the Prosecution, by seeking leave to amend, has recognised the validity of his argument that the indictment does not demonstrate a *prima facie* case. Judge Hunt also rejected the accused's assertion that, by the failure of the prosecution to file a motion for leave to amend the indictment within the 28 days promised, it had reaffirmed that it did not have the 'elements' on which to base a *prima facie* case against him. It was therefore determined that the detention of the accused is lawful and that he has no right to have the decision of the confirming Judge reviewed.

On 17 December 1999, Judge Rodrigues confirmed an amended indictment submitted by the Prosecutor on 19 November and 16 December 1999. The amended indictment charges the accused on the basis of both individual criminal responsibility and superior criminal responsibility with two counts of genocide,¹⁰ five counts of crimes against humanity, two counts of violations of the laws or customs of war and three counts of grave breaches of the 1949 Geneva Conventions¹¹ for the 'ethnic cleansing' of non-Serbs from the Autonomous Region of Krajina between April and December 1992.

A further initial appearance hearing for both accused to plead to the amended indictment was scheduled to take place on 11 January 2000.

2. CASES AT THE TRIAL STAGE

2.1. **The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Vladimir Šantić, Drago Josipović, Dragan Papić, Case No. IT-95-16**

On 20 December 1999, Trial Chamber II (Judges Cassese (Presiding), May and Mumba) denied motions for provisional release filed by Šantić, Papić, Zoran and Mirjan Kupreškić on 15 December 1999. The Trial Chamber was not satisfied that the accused would not try to interfere with the witnesses and victims, and that they would appear for delivery of the Judgment. With regard to Šantić and Zoran and Mirjan Kupreškić, the Trial Chamber also deemed the danger of the accused absconding now, shortly before the Judgment, too high to allow their provisional release.

10. Art. 4 of the Statute of the Tribunal.

11. Art. 2 of the Statute of the Tribunal.

3. CASES AT THE APPEAL STAGE

3.1. **The Prosecutor v. Duško Tadić, Case No. IT-94-1**

Pursuant to the Judgment of 15 July 1999 handed down by the Appeals Chamber (Judges Shahabuddeen (Presiding), Cassese, Wang, Nieto-Navia and Mumba),¹² Trial Chamber II *bis* (Judges Kirk McDonald (Presiding), Vohrah and Robinson) held a sentencing hearing on 15 October 1999 for the additional counts of which Duško Tadić was convicted by the Appeals Chamber.

On 11 November 1999, the Trial Chamber handed down nine separate sentences ranging from six to 25 years' imprisonment. The sentences were to be served concurrently, including each of the sentences imposed in the sentencing Judgment of 14 July 1997.¹³ Counsel for Tadić filed a notice of appeal on 25 November 1999.

On 3 December 1999, the Appeals Chamber (Judges Shahabuddeen (Presiding), Mumba, Cassese, Wang and Nieto-Navia) issued an order joining the outstanding appeal against the sentencing Judgment of 14 July 1997 and the second appeal against the sentencing Judgment of 11 November 1999. Oral arguments on the matter were scheduled to take place on 14 January 2000.

The contempt hearings against Vujin which commenced on 30 March 1999 concluded on 18 November 1999. The Appeals Chamber then adjourned to consider its decision on the contempt allegations.

3.2. **The Prosecutor v. Goran Jelisić, Case No. IT-95-10**

On Tuesday 19 October 1999, the Trial Chamber pronounced its oral Judgment after hearing the Prosecution case-in-chief but without hearing the Defence case-in-chief.

The Trial Chamber considered that the Prosecution had not sufficiently proven the required intent for genocide and thus acquitted the accused of genocide. However, the Trial Chamber found Jelisić guilty of all remaining 31 counts in the indictment, namely, crimes against humanity and violations of the laws and customs of war to which he pleaded 'guilty' on 29 October 1998.¹⁴

Pre-sentencing hearings for the counts to which Goran Jelisić was found guilty commenced on 12 November 1999 and concluded on 25 November 1999. The Trial Chamber issued its written Judgment on 14 December 1999. Acquitting Jelisić of the one count of genocide to which he pleaded 'not guilty', the Trial Chamber sentenced Jelisić to 40 years' imprisonment for the 31 counts of

12. See 12 LJIL H 446 (1999).

13. ICTY Press Release JL/PIS/447-E, 11 November 1999.

14. ICTY Press Release JL/PIS/441-E, 19 October 1999.

violations of the law or customs of war and crimes against humanity to which he pleaded 'guilty'.¹⁵

Counsel for Jelisić filed a notice of appeal against the Judgment and sentence on 15 December 1999.

3.3. The Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1

On 24 September 1999, both the Prosecution and counsel for Zlatko Aleksovski filed their respective appeal briefs against the Judgment handed down by Trial Chamber I (Judges Rodrigues (Presiding), Vohrah and Nieto-Navia) on 25 June 1999.¹⁶ The hearing for the Appeal was scheduled to take place on 9 February 2000.

On 7 December 1999, the Appeals Chamber (Judges Hunt (Presiding), May, Wang, Bennouna and Robinson) issued a scheduling order in the matter of Mr. Anto Nobile's appeal against the decision of Trial Chamber I (Judges Rodrigues, (Presiding), Vohrah and Nieto-Navia) dated 11 December 1998, in which Mr Nobile was found to be in contempt of the Tribunal and fined 10,000 guilders.¹⁷

The Appeals Chamber ordered, *inter alia*, that both parties shall, by 14 January 2000, file statements indicating whether they request that the Appeals Chamber hear oral arguments on the appeal and, in the event that they do not so request, whether they wish to file additional written submissions prior to the Appeals Chamber's determination of the appeal.

3.4. The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, Case No. IT-96-21

On 25 October 1999, the Bureau unanimously decided that Judges Riad, Wang and Nieto-Navia are not disqualified from serving on the Appeals Chamber to hear the appeal against the Judgment handed down by Trial Chamber II (Judges Karibi-Whyte (Presiding), Odio Benito and Jan) on 16 November 1998.

In a motion to disqualify Judges or, in the alternative, that certain Judges recuse themselves filed on 30 July 1999, the accused had requested that all Judges who either participated in the plenary session which found that Judge Odio Benito's nomination as Vice-President of Costa Rica was compatible with service as a Judge of the Tribunal, or who took part in the plenary session after her election which approved her taking the oath of office as Vice-President of Costa Rica while remaining a Judge of the Tribunal, be disqualified from sitting on the Delalić & others appeal or, in the alternative that these Judges recuse them-

15. ICTY Press Release JL/PIS/454-E, 14 December 1999.

16. ICTY Press Release CC/PIS/413-E, 30 June 1999.

17. ICTY Press Release CC/PIU/375-E, 15 December 1998.

selves. The motion was filed in light of one ground of appeal which alleges improper constitution of the Trial Chamber on the basis that Judge Odio Benito's appointment as Vice-President disqualified her from serving as a Judge and sitting on the trial.

The accused had submitted that Judges Riad, Wang and Nieto-Navia were at the above-mentioned plenary session and, as such, those three Judges have formed a pre-Judgment upon one of the issues to be determined in the appeal and should thus be disqualified or recuse themselves. However, the Bureau declared that the appellants had failed to demonstrate that the conditions for disqualification of Judges were satisfied.

On 7 December 1999, the Appeals Chamber (Judges Hunt (Presiding), Riad, Wang, Nieto-Navia and Bennouna) issued an order unanimously dismissing a motion filed by Landžo on 27 September 1999 for permission to obtain and adduce further evidence through testimony and written records from Judge Cassese, the Registrar and a Senior Legal Officer as to whether the appellant had waived his right to assert his fourth ground of appeal by reason of a failure to raise the issue at trial.¹⁸ Landžo's fourth ground of appeal states that his right to a fair and expeditious trial was "violated when verdict and sentence were rendered by a Trial Chamber whose presiding Judge was permitted to sleep through much of the proceedings."

18. *See* ICTY Judicial Supplement No. 10, December 1999, at 10.