

II. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

(a) List of current legal proceedings: Update*

*Compiled by Sarah-Jane Pigott***

1. CASES AT THE INDICTMENT STAGE

1.1. **The Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić and Vljako Stojiljković, Case No. IT-99-37**

On Monday 24 May 1999, Judge David Hunt confirmed an indictment against, and issued initial arrest warrants for Slobodan Milošević, the President of the Federal Republic of Yugoslavia; Milan Milutinović, the President of Serbia; Nikola Šainović, Deputy Prime Minister of the Federal Republic of Yugoslavia; Dragoljub Ojdanić, Chief of Staff of the Yugoslav Army; and Vljako Stojiljković, Minister of Internal Affairs of Serbia.¹

Further to a request by the Prosecutor, Judge Hunt ordered that the indictment and the arrest warrants remain sealed until 27 May 1999 to ensure the safety of persons within or close to the Federal Republic of Yugoslavia, such as staff of the Office of the Prosecutor or other United Nations, Governmental and humanitarian agencies. United Nations Member States were also ordered to make inquiries to discover whether any of the accused had assets located in their territory and, if so, to freeze such assets until the accused are taken into custody.

The indictment charges the accused on the basis of individual criminal responsibility² with violations of the laws or customs of war³ and crimes against humanity.⁴ By virtue of their high positions of power, the accused Milošević,

* This *List of Current Proceedings: Update* covers cases pending from 1 April 1999 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 1 July 1999. See, generally, the website of the Tribunal: <http://www.un.org/icty>.

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1. ICTY Press Releases JL/PIU/403-E and JL/PIU/404-E, 27 May 1999.

2. Art. 7(1) of the Statute of the Tribunal (hereinafter "the Statute", originally an annex to the report of the Secretary-General pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), UN Doc. S/25704 (1993), and adopted pursuant to UN Doc. S/RES/827 (1993)).

3. Art. 3 of the Statute.

4. Art. 5 of the Statute.

¹² Leiden Journal of International Law 625-630 (1999)

Milutinović, Ojdanić and Stojiljković are also, or alternatively, charged on the basis of superior criminal responsibility.⁵

The indictment alleges that all the crimes took place between 1 January and late May 1999 in the Province of Kosovo, Republic of Serbia, Federal Republic of Yugoslavia. This is the first indictment issued by the Tribunal to charge a Head of State during an on-going armed conflict with the commission of serious violations of international humanitarian law.

2. CASES AT THE PRE-TRIAL STAGE

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

On 8 June 1999, a Bench of the Appeals Chamber (Judges Shahabuddeen (Presiding), Wang and Nieto-Navia) issued its decision on an application by Miroslav Tadić for leave to appeal the Decision of Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) denying his motion for provisional release. The Bench reaffirmed its acceptance of the validity of the application for leave to appeal, filed on 3 March 1999.⁶ Considering that the issue raised in the application is of general importance to proceedings before the Tribunal, that is, whether a Trial Chamber may properly issue a decision on written submissions after having previously ordered that oral arguments must be heard on the matter, the Bench granted Tadić leave to appeal.

On 1 July 1999, another Bench of the Appeals Chamber (Judges Kirk McDonald (Presiding), Shahabuddeen and Cassese) granted Stevan Todorović leave to appeal the decision of the Trial Chamber denying the accused's motion for an evidentiary hearing as to his alleged kidnapping, and thereafter for leave to file a motion to repatriate the accused to the country of refuge, filed on 24 May 1999.⁷

Also on 1 July 1999, pursuant to the Scheduling Order issued by the Trial Chamber on 10 May 1999, the Prosecution filed a statement of matters which are not disputed by the parties for consideration by the Trial Chamber in connection with the Prosecution motion for judicial notice of common knowledge and adjudicated facts, filed on 10 February 1999.⁸

The Trial was due to begin on 22 June 1999, but has been postponed. As yet no new commencement date has been set.

5. Art. 7(3) of the Statute.

6. ICTY Weekly Update-81, 11 June 1999.

7. ICTY Weekly Update-84, 2 July 1999.

8. ICTY Weekly Update-84, 2 July 1999.

2.2. The Prosecutor v. Radislav Krstić, Case No. IT-98-33

Pursuant to the Trial Chamber's Order to the Prosecution to "specify or clarify the indictment in respect of the points relating to the responsibility of the accused and his co-accused and to their share of the responsibility without, however, disclosing the names of the co-accused", dated 6 May 1999.⁹ On 7 June 1999, the Prosecution filed a memorandum to this effect.

2.3. The Prosecutor v. Dragan Kolundžija, Case No. IT-95-8

On 7 June 1999, pursuant to the *Sikirica & others (Keraterm Camp)* indictment initially issued on 21 July 1995 and revised on 21 July 1998, Dragan Kolundžija was detained by SFOR forces in Bosnia and transferred later the same day to the Detention Unit of the Tribunal in The Hague.

The indictment names a total of eight individuals including Dragan Kolundžija, one of his co-accused, Zoran Zigić, surrendered himself to the Tribunal's custody on 16 April 1998.¹⁰ The six others remain at large.

The indictment charges Dragan Kolundžija on the basis of both individual criminal responsibility and superior criminal responsibility with crimes against humanity (murder; persecutions on political, racial and religious grounds; and other inhumane acts), violations of the laws or customs of war (murder; cruel treatment; and outrages upon personal dignity) and grave breaches of the 1949 Geneva Conventions (wilful killing; and wilfully causing great suffering or serious injury to body and health).¹¹

At his initial appearance hearing before Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) on 14 June 1999, Counsel for the accused submitted that Dragan Kolundžija was not the person named in the *Keraterm Camp* indictment. The accused contended that the name, date and place of birth given in the indictment are not his and denied any link with the Keraterm camp. The Trial Chamber ordered that both parties give written submissions on the matter by 21 June 1999 and ordered that an evidentiary hearing be held on 24 June 1999.¹²

At the evidentiary hearing, the Trial Chamber determined that it was satisfied that Dragan Kolundžija is "the accused named in the indictment" and ordered that the accused enter his plea on 13 July 1999.¹³

Subsequently, on 6 July 1999, Judge Vohrah rejected the Prosecutor's Request for Leave to amend the *Sikirica & others* indictment and the *Kvočka &*

9. ICTY Weekly Update-81, 11 June 1999.

10. ICTY Press Release CC/PIU/310-E, 16 April 1998

11. CC/PIS/407-E, 10 June 1999.

12. ICTY Press Release CC/P.I.S/410-E, 15 June 1999.

13. ICTY Press Release SP/PIS/411-E, 25 June 1999

*others*¹⁴ indictment on the basis that a confirming Judge is not competent to consider such a request.

The Prosecution had wanted to withdraw Dragan Kolundžija from the *Sikirica & others* indictment and join him as an accused to the indictment in the pending *Kvočka & others* trial.¹⁵

2.4. The Prosecutor v. Radislav Brđanin, Case No. IT-99-36

Further to a sealed indictment confirmed by Judge Almiro Rodrigues on 14 March 1999, the accused was detained by SFOR troops on 6 July 1999 and transferred to the custody of the Tribunal on the same day.¹⁶

The accused, who was scheduled to make his initial appearance on 12 July 1999 before Trial Chamber II (Judges Cassese (Presiding), Mumba and Hunt), is charged on the basis of both individual criminal responsibility and superior criminal responsibility with a crime against humanity, namely, persecutions on political, racial or religious grounds.

In his position as President of the Autonomous Region of Krajina Crisis Staff, Radislav Brđanin is alleged to be responsible, in concert with others, for the major ethnic cleansing operations conducted in the Krajina area throughout 1992.

3. CASES AT THE TRIAL STAGE

3.1. The Prosecutor v. Tihomir Blaškić, Case No. IT-95-14

Pursuant to a series of Orders issued by Trial Chamber I (Judges Jorda (Presiding), Shahabuddeen and Rodrigues) on its own motion, dated 25 March 1999,¹⁷ between 9 and 21 June 1999 the Trial Chamber heard the testimony of following witnesses:

1. Colonel Asim Koričić, Colonel Amir Kubura and Colonel Šerif Patković, Commanders of the 7th Muslim Brigade of the Army of Bosnia and Herzegovina at the time of some of the acts mentioned in the indictment;
2. General Enver Hadžihasanović, Commander of the 3rd Corps of the Army of Bosnia and Herzegovina at the relevant time;

14. Case No. IT-98-30-PT.

15. ICTY Weekly Update-85, 9 July 1999.

16. ICTY Press Release JL/PIS/414-E, 6 July 1999.

17. ICTY Press Releases CC/PIU/393-E, 6 April 1999 and JL/PIU/405-E, 7 June 1999.

3. Mr. Jean-Pierre Thébault, Chief of the European Community Monitoring Mission (ECMM) at the time of the acts mentioned in the indictment (at the request of the witness, his testimony was heard in closed session);
4. Colonel Robert Stewart, Commander of the British Battalion of the United Nations Protection Force (UNPROFOR) during part of the time covered by the indictment;
5. General Philippe Morillon, Commander of UNPROFOR at the time of the acts mentioned in the indictment (at the request of the witness, his testimony was heard in closed session); and
6. General Milivoje Petković, Commander of the Main Staff of the Croatian Defence Council (HVO) who testified by video-link from Zagreb (his testimony was heard in closed session).

The Trial Chamber adjourned on 8 July 1999 and was scheduled to reconvene on 26 July 1999 to hear the final arguments of both the Defence and Prosecution.

3.2. The Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2

Pursuant to the Defence Motion to suppress evidence, filed on 22 January 1999 by Counsel for Dario Kordić, on 25 June 1999 the Trial Chamber issued a written Decision detailing its reasons for rejecting the Motion.¹⁸

The Trial Chamber held that the Statute of the Tribunal empowered the Prosecution to carry out the investigation at the Vitez Defence Office on 23 September 1998 which resulted in the materials being seized, and further, the assistance of SFOR in this investigation was in accordance with its own mandate. Thus, the Trial Chamber ordered that the materials seized will be admitted as evidence.

On 2 July 1999, Counsel for Dario Kordić filed an application for leave to appeal the above ruling.¹⁹

4. CASES AT THE APPEAL STAGE

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

The Appeals Chamber was scheduled to issue its Judgement on 15 July 1999.²⁰

18. ICTY Weekly Update-84, 2 July 1999.

19. ICTY Weekly Update-84, 2 July 1999.

20. ICTY Press Release CC/PIS/416-E, 7 July 1999.

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

On 11 June 1999, the President of the Tribunal assigned Judges Shahabudden, Wang, May, Mumba and Hunt as members of the Appeals Chamber for the purpose of hearing the appeals.²¹

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

On 2 July 1999, pursuant to an Order of the Appeals Chamber (Judges Nieto-Navia (Presiding), Wang, Rodrigues, Hunt and Bennouna), dated 12 February 1999, Cross-Appellant, Zejnil Delalić, and Appellants, Zdravko Mucić, Hazim Delić (also Cross-Appellant) and Esad Landžo, filed their respective Appellant/Cross-Appellant Briefs. The Prosecution filed its Appeal Brief on the same date.²²

21. ICTY Weekly Update-82, 18 June 1999.

22. ICTY Weekly Update-85, 9 July 1999.