

14 February 2012

ICTY Cases

Cases in Pre-trial

Hadžić (IT-04-75)

Mladić (IT-09-92)

Cases at Trial

Haradinaj et al. (IT-04-84)

Karadžić (IT-95-5/18-I)

Prlić et al. (IT-04-74)

Šešelj (IT-03-67)

Stanišić & Simatović (IT-03-69)

Stanišić and Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

Cases on Appeal

Đorđević (IT-05-87/1)

Gotovina et al. (IT-06-90)

Lukić & Lukić (IT-98-32/1)

Perišić (IT-04-81)

Popović et al. (IT-05-88)

Šainović et al. (IT-05-87)

Inside this Issue

News from the ICTY	1
Defence Rostrum	6
Blog Updates	7
Publications and Articles	7
Upcoming Events	8
Opportunities	8

Head of Office: Dominic Kennedy

Coordinators: Jana Hofmann

Contributors: Matt Cicchetti, Tadej Koncar, Diego Naranjo, Kirsten Schlewitz & Kushtrim Zymberi

• NEWS FROM THE ICTY •

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing before the ICTY.

In this section

- Stanišić/ Simatović: Defence case continues
- Rašić sentencing hearing
- Karadžić: Defence case continues
- Ben Emmerson elected Judge for Residual Mechanism
- Tolimir: new insights into VRS structure & tasks
- Šešelj requests compensation
- Former Prosecutor allegedly destroyed material

Prosecutor v. Tolimir (IT-05-88/2)

Slavko Kralj testified on 25 and 26 January and went through an examination-in-chief by Tolimir. Kralj testified that UNHCR and UNPROFOR convoys were inspected routinely and that the Army of Republika Srpska (VRS) main staff, of which Tolimir was a member, was not able to alter decisions related to the movements of these convoys.

According to Kralj, the VRS main staff's only role after 1994 was to check if the routes that those convoys were to follow where safe. Kralj also commented on how the main staff did all that was necessary to allow humanitarian convoys to arrive safely at Muslim enclaves, despite the opposition of some groups of civilians. He moreover described incursions of Muslim groups attacking civilians and the main staff in areas controlled by UNPROFOR in 1994. Accord-

ing to the witness statement, the halt of convoys was ordered by those sending the convoys, not by the co-ordinating body. The Prosecutor, however, contested this with reports from the UNPROFOR as well as testimonies from previous trials.

Petar Škrbić also testified in Tolimir's trial. He had testified before in the Popović et al. and Perišić cases, doing so on behalf of the Prosecution in the first and for the Defence in the latter case.



Petar Škrbić

Škrbić was assistant commander of the VRS main staff. During his testimony he described how the different positions were distributed within the VRS main staff, including Tolimir's position. Škrbić also commented on the general mobilisation ordered by Bosniak leader Alija Izetbegović and the declaration of war by the Serbs in October 1995. During his appearance in court it was said that, according to certain testimonies and documents, there were attacks from Žepa and Srebrenica and that the Bosnian army was receiving weapons from different sources, therefore proving that those enclaves were not demilitarised areas at the time they were declared as such.

According to the witness, ceasefire and cessation of hostilities were not respected by the Muslim side, following orders by Alija Izetbegović. According to documents shown during this hearing, the Bosnian army obtained weapons through "humanitarian aid" air-drops. Škrbić stated that US President Bill Clinton had told President Izetbegović that until there were 5,000 Bosniak casualties, "the air force will not

be used against the Serbs". He also stated that and that the Muslims military actions from protected zones were "a breach of the mandate of UNPROFOR" and that in consequence "the public and NATO had an excuse to intervene if the Serbs respond(ed) to such provocations".

Ratko Škrbić, the next witness appearing for the Defence, drafted a document titled "The Movement of the Population of Srebrenica" and was questioned about figures of inhabitants and refugees. Škrbić stated that the "inhabitants of Srebrenica left the Srebrenica enclave of their own free will". He also questioned the number of deaths in Srebrenica, mentioning that the number of 7,000 deaths is "unrealistic".



Ratko Škrbić, commander of the 15th Bihac Brigade in the 2nd Krajina Corps during the events in Srebrenica. He started investigating Srebrenica in 2005 when he joined the investigation team working for Radivoj Miletić's defence. He wrote a book entitled 'Srebrenica – Genocide against Truth'.

Prosecutor v. Stanišić and Simatović (IT-03-69)

On 24 January, the Simatović Defence continued to defy Prosecution claims that Serbian State Security Service (DB) had influence over the Serbian Volunteer Guard (SDG) by calling witness Borislav Pelević, former member of Arkan's Tigers, an elite unit of the SDG in Croatia and Bosnia and Herzegovina (BiH). The Serbian politician and former Serbian presidential candidate declared that the SDG had no connection with the DB or the Serbian Ministry of Internal Affairs (MUP) during the wars in Croatia and BiH.



The following week Aco Drača, former officer of the State Security Service in the Serbian Autonomous Oblast of Krajina (SAO Krajina), testified that the Krajina Serbs were mobilised without the influence or support of Jovica Stanišić and Franco Simatović. Furthermore, Drača emphasized that from 1991 to 1995, the DB never gave assistance, orders, or support to him or other members of the State Security Service in SAO Krajina. Drača's testimony directly conflicts with the Prosecution's version of events.

Prosecutor v. Rašić (IT-98-32/1-R77.2)

Rule 77

Contempt of the Tribunal

(G) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

On 7 February, Jelena Rašić was sentenced to twelve months imprisonment for contempt of court. Eight months of her sentence will be suspended and she will be given credit for the 78 days already spent in detention.

Rašić, the former case manager for Milan Lukić, was charged with interfering with the administration of justice by bribing witnesses. On 24 January, Rašić signed a plea agreement with the prosecution and last week she was convicted.

According to Rule 77(G), the maximum penalty available for the crimes is seven years in prison or a fine of €100,000. The defence sought three months imprisonment, asking the sentence to be suspended if it were longer, due to Rašić's health problems. The prosecution responded that the accused's health issues were not a pre-existing condition, but rather a reaction to the circumstances she created by committing her crimes.

The Chamber noted that the actions of Rašić would ordinarily result in a harsh sentence. Despite knowing that the statements she was seek-

ing were false, she persisted in obtaining them, a clear interference with the administration of justice.

Taking into account Rašić's youth and inexperience in her position, as well as the fact that this

was her first conviction for such crimes, the Tribunal handed down a twelve month sentence. The Chamber also considered Rašić's health, both physical and psychological. As the only female in the United Nations Detention Unit, she is essentially forced into a quasi-solitary confinement. Considering these factors, the court suspended eight months of the sentence, provided that Rašić is not convicted of another crime that carries a prison sentence in the next two years.



Jelena Rašić

Prosecutor v. Šešelj (IT-03-67)



Vojislav Šešelj

In a written filing which was released on 30 January 2012, Vojislav Šešelj requested monetary compensation from the Tribunal in the amount of €2 Million for alleged violations of his "elementary human rights". Šešelj is charged with nine counts of crimes against humanity and war crimes for

his alleged role in recruiting paramilitaries and inciting crimes through his speeches between 1991 and 1993.

Šešelj surrendered to the Tribunal on 24 February 2003 and has been in custody since. During that time, he was convicted twice of contempt of court for publishing names of protected witnesses. He has been a vocal critic of the Tribunal throughout his 9 years of detainment.

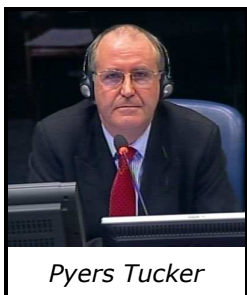
The latest filing, in which he seeks compensation, is also very critical of the Tribunal. The motion, signed by Šešelj and drafted by an expert team member assisting his defence,

reads: "A large number of states and organisations have long since issued publications defining in detail human rights and how to protect them. It would appear, however, that this information has not reached the ICTY. We will attempt to rectify this omission".

In the filing, Šešelj seeks compensation for various reasons: €300,000 for attempts to impose counsel; €100,000 for being prevented from familiarising himself with legal sources cited by the Trial Chamber and Prosecution; €100,000 for not receiving some material in the Serbian language; €200,000 for "violation of the right to legal assistance over many years"; €300,000 for not being able to communicate with legal advisers and "family, friends, doctor, etc."; €400,000 for violating his right to have his defence financed and violating the principle of equality of arms; €500,000 for deliberate delays in the proceedings; and €100,000 for being tried for contempt of court, something that is not outlined in the ICTY Statute but has been repeatedly confirmed by the Tribunal's case law jurisprudence.

Prosecutor v. Karadžić (IT-95-5/18-I)

The trial in the case of Prosecutor v Karadžić continued with the testimonies of the witnesses Tucker, KDZ523, Malagić, Blaszczyk, Haglund, Ruez and KDZ333.



Pyers Tucker

Witness Pyers Tucker was in Bosnia and Herzegovina (BiH) in 1992 and 1993 and witnessed first-hand the atmosphere in the region during his travels with General Philippe Morillon. Amongst others he has also met with Karadžić.

Mirsada Malagić also testified, and was one of the refugees who had to leave Srebrenica for Potočari and the UNPROFOR compound during the days before the fall of the enclave in July 1995. She was accompanied by her son and father-in-law on this journey. During the move, she was injured and while at the Potočari compound she witnessed her father-in-law being taken away by the Army of Republika Srpska (VRS). During the fall of the Srebrenica enclave she lost her husband and two older sons.

After Malagić the following witness to testify was Tomasz Blaszczyk, staff member of the Office of the Prosecutor (OTP). His testimony was based on his task to compile a follow-up of a report made by Serbian journalist Zoran Piročanac during 13 and 14 July 1995. He also testified on the finding of the Drina Corps Collection of documents, which were found nine years after the incident in Srebrenica and thus their authenticity/ legitimacy is to a degree questionable. The witness furthermore testified on the difficult

times throughout 1993 and 1995, especially regarding hardships due to food shortages.

Another notable witness was William Haglund, a forensic anthropologist, who has played a role in the excavation and exhumation of bodies from alleged mass graves. He has also performed autopsies and identifications of bodies. The mass graves he has attended include Cerska, Lazete 2 and Pilica.

Jean-René Ruez testified before Haglund, but returned to be cross-examined by Karadžić after Haglund finished giving his evidence. Ruez was part of the OTP between 1995 and 2001 as the Lead Investigator of the Srebrenica investigation. He conducted many visits to the area in question and furthermore carried out witness interviews and document gathering. During both Haglund's and Ruez's cross-examination, Karadžić presented a theory that the so-called mass graves are in fact graves of fallen soldiers, to which both witnesses disagreed.

Among other developments, Karadžić asked the Chamber to subpoena the president of Greece, Karolos Papoulias, after the latter denied the request for an interview by Karadžić. Papoulias and Karadžić met on 15 February 1994 and Karadžić claims to have told him that Bosnian Serbs had nothing to do with the Markale market incident.



William Haglund

William Haglund, a forensic anthropologist, served as Chief Medical Investigator of the King County Examiner's Office, Seattle, for 14 years. In December 1995 he became the United Nations' Senior Forensic Advisor for the International Criminal Tribunals for Rwanda and the Former Yugoslavia.

Former Prosecutor Allegedly Destroyed Evidence

According to the office of the ICTY's Chief Prosecutor, Serge Brammertz, important material on human organ trafficking was destroyed during the term of former ICTY Chief Prosecutor Carla Del Ponte. The so-called yellow house case concerns the alleged atrocity of organ theft and killing of around 300 ethnic Serbs during and after the Kosovo war in 1999, committed by the Kosovo Liberation Army (KLA).

Brammertz's office claims that some pieces of evidence were destroyed in 2005 when Del Ponte was the Chief Prosecutor, that she knew about these actions and that the decision was made by then members of the prosecution.

Del Ponte stated that NATO and UNMIK hindered the investigations into alleged human organ trafficking in Kosovo. In her opinion, there was a lack of political will to resolve this case since the situation in Kosovo was seen as fragile. When asked about the destruction of material, Del Ponte said that she was shocked to learn about this from the media and that it was done without previous consultation with her.



Carla del Ponte

Election of Judges for the Residual Mechanism

Ben Emmerson, a QC from the United Kingdom who was also recently appointed as the new Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Aside from his time as a Defence Counsel at the ICTY, he has over 25 years of experience in domestic and international human rights law, international humanitarian law and international criminal law.

The UN General Assembly elected 25 judges on 20 December 2011 who will be part of the Residual Mechanism for the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). One of the judges elected is Ben Emmerson, member of the ADC-ICTY and Lead Counsel representing Ramush Haradinaj, former Prime Minister of Kosovo, in the case of *Prosecutor v. Haradinaj et al.*

The Residual Mechanism was established by the UN Security Council Resolution 1966 (2010) and has the mandate to continue the "jurisdiction, rights and obligations and essential functions" of the ICTY and to maintain the Tribunal's legacy. The ICTY branch of the Residual Mechanism will begin operating on 1 July 2013. The Mechanism has an initial 4 year mandate, with renewal sub-



Ben Emmerson

ject to biennial reviews. It will maintain a permanent President, Prosecutor and Registrar. The 25 elected judges will carry out their functions remotely, insofar as it is deemed possible by the President. There will also be a roster of

Defence counsel.

The Mechanism will handle all appeals against ICTY judgements if notice of appeal is given on or after 1 July 2013. Appeals before that date will be handled by the Tribunal. Retrials that are ordered by the Tribunal's Appeals Chamber 6 months or less before 1 July 2013 and retrials ordered by the Mechanism's own Appeals Chamber will be conducted by the Mechanism. Trials for contempt or giving false testimony during proceedings before the Mechanism or before the Tribunal, if an indictment is confirmed by the operation date, will also be handled by the Mechanism. Other functions of the *ad hoc* body will include: proceedings for review of final judgements; continued protection of witnesses; supervision of enforcement of sentences; assistance to national courts; and preservation and management of ICTY archives.

• DEFENCE ROSTRUM •

Avoiding mistrust in Transitional Justice*

*by Diego Naranjo***

We can define Transitional Justice according to the International Center for Transitional Justice (ICTJ) as “a response to systematic or widespread violations of human rights” that “seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy” (ICTJ, 2010, p.1). In order to not confuse this concept, the ICTJ clarifies that “(t)ransitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse”. Finally, Dr. Migai Akech states that “transitional justice is not only concerned with retribution for past wrongs or providing justice to those who have suffered under repressive regimes; it also seeks to heal society, facilitate exit from authoritarianism, and establish a just society based on the rule of law” (Akech, 2010, p.14).

Overcoming mistrust and vengeance is one of the main challenges that often arise during transitional processes. For this to happen it is important that the process is not perceived by the population as revenge by the “winners” of the conflict. To this respect a critical view of this process was established by Jaques Verges and Pierre Marie Gallois when they stated that “(t)he International Criminal Tribunal for the former Yugoslavia is a weapon of war just as a bombing or an economic blockade can be. Contemporary wars comprise a number of phases (...) a phase of disinformation intended to demonize the enemy” and “a trial of the “vanquished” putting the finishing touches to the justification of the war. The right of intervention at the humanitarian and military level is now complemented by the right to intervene in the criminal-law field” (Verges and Gallois, quoted by Hazan, 2006). Priscilla B. Hayner also comments the difficulties that arose in Bosnia, Croatia and Serbia to make the ICTY reliable for the community (Hayner, 2002, pp.207-210). This position is supported by Hazan when he explains that the ICTY was seen by the “large majority of Serbs” or Croats as a “legal arm of the Atlantic alliance” and “regarded by Bosnians as an alibi for non-intervention” (Idem, p.33).

As many other critics like Noam Chomsky have argued (Chomsky, 2006), Hazan asks himself about the double-standards in Western policies and, in concrete the next question: “Why should the former Yugoslavs submit to international justice when the Americans were seeking to free themselves from it?” (Hazan, 2006, p.34, p.36). Rosemary Nagy also points in this direction when she asserts that “the ICC does not apply to non-state parties except in the instance of Security Council referral, which will inevitably be limited by

veto politics. There is also the USA’s active campaign against the ICC. Moreover, up to 100 countries, some of which have poor human rights records and have shown little ability or interest in domestic criminal procedures, have been induced by the USA to sign bilateral agreements refusing extradition to the International Criminal Court” (Nagy, 2008, pp.275-289).

In order to achieve success and avoid mistrust, there is the need of carefully planning the strategy prior to the beginning of the Transitional Justice process. This strategy would help in a very significant way to implement or establish a new government where the Rule of Law and the main instruments of International Law are recognized and respected. In case the process is not transparent or it does not take into consideration all sectors of the society (including former elites and opposition movements) the process can be perceived by the population as an imposition of the parties that have resulted victorious after a conflict and thus old evils may be resurrected and the system may be destabilized. In the worst of these scenarios nationalism, religious extremism and violence could arise again, as we can observe in the current situation in Serbia (Pesek and Nikolajevic, 2009, p.455).

There is no doubt that democracy is strengthened in many aspects (new and more stable institutions, education in new perspectives of History...) after an effective and planned strategy of transitional justice has been implemented. A successful transition will include, among other factors, a previous investigation of the current situation, planning carefully the intervention, implementing a fair reconciliation absent of attitudes of “revenge”, and implicate all sectors of the society in all stages of the process. In case we fail to achieve some of these actions, the whole process might be considered inefficient, partial or incomplete, consequently becoming ineffective for future generations.

**This article is a summary of “Introduction to Transitional Justice”, which can be found in full length at <https://www.safecreative.org/work/1202011005763>*

***This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License.*

• BLOG UPDATES •

- Naomi Roht-Arriaza, **Former Guatemalan dictator (finally!) in the dock for genocide and crimes against humanity**, 31 January 2012, available at: <http://www.intlawgrrls.com/2012/01/former-guatemalan-dictator-finally-in.html>
- Elli Goetz, **ICTR: Uwinkindi File Handed Over To Rwandan Government**, 29 January 2012, available at: <http://www.internationallawbureau.com/blog/?p=3875>
- Diane Marie Amann, **Mapping better ICC-Africa relations**, 28 January 2012, available at: <http://www.intlawgrrls.com/2012/01/mapping-better-icc-africa-relations.html>
- Gentian Zyberi, **December 2011 Resolution by the Assembly of States Parties on State Cooperation with the International Criminal Court**, 25 January 2012, available at: <http://internationalobserver.eu/2012/01/25/december-2011-resolution-by-the-assembly-of-states-parties-on-state-cooperation-with-the-international-criminal-court/>
- Deirdre Montgomery, **ICC: Kenya Confirmation of Charges Decision—Charges Confirmed Against 4 of 6 Suspects**, 23 January 2012, available at: <http://www.internationallawbureau.com/blog/?p=3870>
- Mariana Rodríguez-Pareja and Salvador Herencia-Carrasco, **Rome was not built in a day: ICC turning 10 years**, 23 January 2012, available at: http://ijcentral.org/blog/rome_was_not_built_in_a_day_icc_turning_10_years/

• PUBLICATIONS AND ARTICLES •

Books

Payam Akhavan (2012) *Reducing Genocide to Law*, Cambridge University Press

Manual on International Criminal Defence: ADC-ICTY Developed Practices (2012), UNICRI

Paul Christoph Bornkamm (2012) *Rwanda's Gacaca Courts: Between Retribution and Reparation*, Oxford University Press

James Crawford and Martti Koskeniemi (Eds.) (2012) *The Cambridge Companion to International Law*, Cambridge University Press

Dr Ozlem Ulgen (forthcoming) *Cases & Materials on International Criminal Law*, Sweet & Maxwell


Articles

Mark D. Kielsgard (2012) 'The Legality Principle in Sentencing at the ECCC: Making Up Law as It Goes Along?', *Asian Journal of International Law* 2(1), p.119-136

Andrew Altman (2012) 'Genocide and Crimes against Humanity: Dispelling the Conceptual Fog', *Social Philosophy and Policy* 29(1), p. 280-308

Joyce Neu (2012) 'Pursuing Justice in the Midst of War: The International Criminal Tribunal for the Former Yugoslavia', *Negotiation and Conflict Management Research* 5(1), p.72-95

Gabrielle Simm (forthcoming) 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers', *Journal of Conflict and Security Law*



ADC-ICTY

ADC-ICTY
Churchillplein 1
2517 JW The Hague
Room 085.087
Phone: +31-70-512-5418
Fax: +31-70-512-5718
E-mail: dkennedy@icty.org

Any contributions for the newsletter should be sent to Dominic Kennedy at dkennedy@icty.org

WE'RE ON THE WEB!

WWW.ADCICTY.ORG



The ADC-ICTY would like to say a huge thank you and goodbye to Jessica Taylor who has been working in the Head Office for the past 6 months. Her hard work and dedication has been an asset to the Association and she will be missed by all. We wish her all the best for the future.

• UPCOMING EVENTS •

Seminar Counter Terrorism, Technology and Transparency

Date and time: 15 February 2012 at 6.30pm

Venue: Campus The Hague Location Stichthage, 13th Floor

More info: http://www.icct.nl/news_vervolg.php?id=61

Seminar War & Law Paradigm

Date and time: 23 February 2012 at 6.00 pm

Venue: T.M.C. Asser Instituut, The Hague

More info: <http://www.asser.nl/events.aspx?id=289>

Summer Law Programme on International Criminal Law

Date: 4 June—30 June 2012

Venue: TMC Asser Institute, The Hague

More info: <http://www.asser.nl/events.aspx?id=281>

• OPPORTUNITIES •

Associate Translator—English (P-2), The Hague, The Netherlands

International Criminal Court (ICC)

Closing date: 14 February 2012

Associate Translator—French (P-2), The Hague, The Netherlands

International Criminal Tribunal for the former Yugoslavia (ICTY)

Closing Date: 25 February 2012

Investigator (P-3), The Hague, The Netherlands

Special Tribunal for Lebanon (STL)

Closing date: 31 March 2012