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## 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)

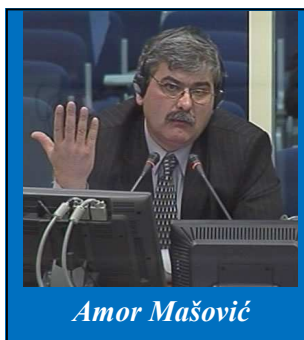
Lukić & Lukić (IT-98-32/1)

Perišić (IT-04-81)

Popović et al. (IT-05-88)

Šainović et al. (IT-05-87)

## Prosecutor v. Karadžić (IT-95-5/18-I)



The trial in the case of Prosecutor v. Karadžić continued with the testimonies of witnesses Mašović, KDZ084, Blaszczyk and Premović.

The court heard testimony from Amor Mašović, who is a member of the Missing Persons Institute of Bosnia and Herzegovina (BiH), on 10 April. From 1992-1995, the witness worked for the BiH State Commission for Exchange of Prisoners of War Captured Persons and Bodies of People Killed and Record of People Killed, Injured and Missing on the Territory of the Republic of BiH. The witness's testimony focused primarily upon the exchange of prisoners and the examination of documents relating to exhumations, autopsies and identifications conducted in Bosnia and Herzegovina. Karadžić used his cross-examination to contest the number of those killed in Srebrenica, noting that the numbers and population figures did not match up.

On 11 April, a video link was set up so that the court could hear evidence from witness KDZ084, but the information was gathered in closed session and is not available to the public.

Later that same day, OTP investigator Tomasz Blaszczyk testified. In previous testimony from August 2010, Blaszczyk confirmed the authenticity of notebooks seized at the house of Ratko Mladić's wife. This was the

## ICTY NEWS

- Karadžić: Prosecution case continues
- Stanišić & Župljanin: Request for time extension rejected
- Stanišić & Simatović: Simatović granted provisional release
- Rašić: Provisional release granted
- Šešelj: Request for compensation rejected
- Defence symposium at the ICTY

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**Amor Mašović**

(born on 29 December 1955), is a Bosnian politician and Chairman of the Bosnian Federal Commission for Missing Persons. He is responsible for maintaining the records of individuals missing since the Bosnian war and co-operation with local courts and UN specialised agencies.

third time the witness has testified and on this occasion the focus was on other materials found at the home, including audio and video tapes. Karadžić questioned Blaszczyk on search and seizure procedures, arguing that materials from the house were taken based on the needs of the prosecution, and were selected in such a way to help the other side.

Tomislav Premović, a Serb-American, testified on 12 April. The witness was a member of the Lord Byron Foundation for Balkan Studies, an organisation dedicated to improving the image of Bosnian

Serbs in the Western media. Like others who testified before him, Premović was present in Pale, in a meeting with Karadžić, during the time of the events in Srebrenica. The witness stated that he received no information about crimes related to the enclave until he returned to the United States, and when he heard, he did not believe the reports, as they were completely contrary to what he had seen in Pale.

As the prosecution case nears its closure, Karadžić has submitted a motion requesting ten months of preparation for the defence case. This would delay the start of his defence until March 2013.

*Tomislav Premović***Prosecutor v. Stanišić and Župljanin (IT-08-91)**

The joint Defence and Prosecution motion for the extension of the deadline for final briefs and final oral arguments was dismissed by the Trial Chamber on 5 April. The Trial Chamber stated there was no good cause shown to extend the deadline beyond 7 May 2012 for the final briefs and 21 May 2012 for the final arguments.

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

On 4 April, Trial Chamber I granted Franko Simatović's request for provisional release. On 2 March 2012, the Defence for Simatović requested provisional release for the period of 30 March to 30 April 2012.

On 6 March 2012, the Trial Chamber invited the Republic of Serbia to state, within ten days of receipt, its position in respect of the Request. On 7 March 2012, The Netherlands filed a letter pursuant to Rule 65(B) of the Tribunal's Rules of Procedure and Evidence, stating that it did not oppose the Request.

The Prosecution, in opposition, submitted a response on 16 March, requesting and seeking a reasonable opportunity to respond to any written submissions by Serbia on the issue of provisional release.

On 2 April 2012, Serbia submitted to the Trial Chamber a guarantee that Serbia would comply with all orders issued by the Trial Chamber and ensure that Simatović would appear for trial.

The Trial Chamber recalled the discussion in its decision of 13 December 2011, whereby it was satisfied that the Simatović would appear for the trial and would not pose a danger to any victim, witness or other person. The Trial Chamber also noted that it did not receive information indicating a change of circumstances in this regard.

Additionally, with regard to the current stage of the trial and to the adjournment granted at Simatović's request, the Chamber considered that Simatović's presence in Belgrade may be beneficial to the preparation of his defence. Therefore, the Trial Chamber found provisional release to be appropriate.

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

On 4 April, the Appeals Chamber granted Jelena Rašić provisional release. Pursuant to Rule 65(1) of the Rules of Procedure and Evidence of the Tribunal the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period, if it is satisfied that:

*(i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release.*

Rašić submitted that she presented no flight risk, as demonstrated by her previous compliance with all conditions of her provisional release.

Furthermore, Rašić submitted that she posed no danger to any victim, witness or other person, as previously noted by the Trial Chamber.

Finally, she submitted that special circumstances in her case warrant provisional release.

Rašić contended that, as the only female detainee at the UN Detention Unit (UNDU), her detention is a form of quasi-solitary confinement.

The Prosecution accepted Rašić's position that if released she will not pose a danger to any victim, witness or other person,

but argued that the motion should be denied on the substantial risk that Rašić will not return to custody to face the remainder of her sentence should the Prosecution's appeal be successful.

Additionally, the Prosecution contended that Rašić did not identify any special circumstances sufficient to warrant provisional release.

The Appeals Chamber disagreed with the Prosecution and was satisfied that Rašić met the requirements under Rule 65.

The Appeals Chamber was not aware of any instance of non-compliance by Rašić with the conditions imposed on her during previous periods of her provisional release. In its Sentencing Judgment, the Trial Chamber found that at all times Rašić complied with the Trial Chamber's orders.

The Appeals Chamber did find that as the only female detainee at the UNDU her detention is consequently "special circumstances" pursuant to Rule 65(I)(iii) of the Rules. The Appeals Chamber stated that if it was not for the Prosecution's appeal, she would have been eligible for release on 16 March 2012.

In the Appeals Chamber's view, this constituted a special circumstance that, when assessed in conjunction with Rašić's fulfillment of the other requirements of Rule 65(1) of the Rules, warrants granting her provisional release.



Jelena Rašić

### Prosecutor v. Šešelj (IT-03-67)



Vojislav Šešelj

Vojislav Šešelj introduced a submission requesting damages for violations of fundamental rights since his arrest. Šešelj argued, among other topics, that he had been prevented from obtaining legal information for his defence; that he did not have legal assistance for several years, that he was prohibited from receiving visits of relatives, friends and doctors and that there were deliberate delays in the proceedings. The total amount of the compensation requested by Šešelj was 2 million euros.

The Chamber dismissed the request in its entirety. Specifically, the Chamber stated that Šešelj had the choice of not defending himself, thus having appointed a defence counsel to support him with legal information. The issue of the initial attempt to impose a lawyer despite Šešelj's wish to represent himself is not considered by the Chamber as a violation of Šešelj's rights, since he was able to appeal.

Regarding the visits of relatives, friends and doctors the decision refers to the ambiguous provisions of Rule 61 of the Rules on Detention. Rule 61(B) states that "The Registrar shall refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain

information which may be subsequently reported in the media". Therefore, the decision argues that his wife was initially not allowed to visit him in detention since he was in a delicate health situation and she could disclose this information to the media. This argument may be described as arbitrary and could be viewed as an additional punishment for Šešelj and his relatives.

Finally, the length of the proceedings was explained by the Chamber with the complexity of the case and the amount of witnesses and exhibits. However, this reasoning could be applicable for almost every case before the ICTY, which may lead to the extension of the proceedings of the remaining cases if this argument is accepted as such and used as a "disclaimer note".

### ADC-ICTY Defence Symposium



*Stéphane Bourgon*

On 12 April, Stéphane Bourgon conducted a lecture titled "Military Organization, Rank Structure and Operations - Everything You Ever Wanted to Know about the Military" in the ICTY Pressroom. Bourgon, a military academy graduate, former officer and military legal advisor who served in the Canadian Armed

Forces for more than 20 years, has been practicing before the International Criminal Tribunal for the former Yugoslavia (ICTY) on a full time basis for more than 14 years.

During the lecture Bourgon discussed the intricacies of military organisation—focusing on the Army of Republika Srpska (VRS). He explained the military ranking system, detailing the differences between commissioned and non-

commissioned officers. Additionally, he provided a breakdown of military units and command structure—from platoon to army.

If you are involved in a case, it is important to "get to know the links" of command, Bourgon advised. When it comes to the structure and organisation of an army it is helpful to make an organisational chart to understand the command and control responsibilities of the accused you are representing.

Lastly, Bourgon discussed the British Principles of War. The Principles of War guide commanders and their staff in the planning and conduct of warfare. Of the ten British Principles of War, the most important is the "selection and maintenance of the aim". Bourgon stressed the importance of these principles and stated that when people disregard the Principles of War "crimes are committed".

## UN cannot be tried for Srebrenica

On 13 April, the Dutch Supreme Court ruled that the United Nations cannot be tried in the Netherlands for failing to prevent the Srebrenica massacre. This ruling was the last legal instance for the group of 6,000 survivors of Srebrenica, who call themselves Mothers of Srebrenica. Their lawyers confirmed the group's intent to appeal before the European Court of Human Rights.

"The U.N., as the international human rights champion, should not stand above the law but should take responsibility for its role in the

Srebrenica genocide in 1995", a statement issued by the group said.

In July 1995, inexperienced and outgunned Dutch soldiers were unable to prevent attacking Serb fighters from capturing Srebrenica. The events in Srebrenica have been classified as genocide by the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Last year, a Dutch appeals court found the Dutch state responsible for the deaths of three victims, opening the way for compensation claims over the failed peacekeeping mission.

## DEFENCE ROSTRUM

- UN cannot be tried for Srebrenica

## Blog Updates

- Kirsty Sutherland, **Full Duch appeal judgement released**, 10 April 2012, available at: <http://www.internationallawbureau.com/blog/?p=4531>
- Valentina Azarov, **ICC jurisdiction in Palestine: Blurring law and politics**, 9 April 2012, available at: <http://internationallawobserver.eu/2012/04/09/icc-jurisdiction-in-palestine-blurring-law-and-politics/>
- Alison Cole, **Myth-buster: Rwanda tribunal judgment established new prohibitions of wartime rape**, 10 April 2012, available at: <http://www.intlawgrrls.com/2012/04/myth-buster-rwanda-tribunal-judgment.html>
- Antoine Buyse, **Inter-State Case Georgia v Russia goes to Grand Chamber**, 10 April 2012, available at: <http://echrblog.blogspot.com/2012/04/inter-state-case-georgia-v-russia-goes.html>
- Annette LaRocco, **Top U.N. Human Rights Official Condemns Sudan Leader's Incitement of War Crimes**, 10 April 2012, available at: <http://www.enoughproject.org/blogs/top-un-human-rights-official-condemns-sudan-leader-incitement-war-crimes>
- William A. Schabas, **Harsh Sentencing Judgment from the European Court of Human Rights**, 10 April 2012, available at: <http://humanrightsdoctorate.blogspot.com/2012/04/harsh-sentencing-judgment-from-european.html>
- Peter Spiro, **In other ECHR news: Greeks have no right to vote, at least not in Strasbourg**, 10 April 2012, available at: <http://opiniojuris.org/2012/04/10/in-other-echr-news-greeks-have-no-right-to-vote-at-least-not-in-strasbourg/>

## Publications and Articles

### Books

Sarah Williams (2012) *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues*, Hart Publishing

Chantal Meloni and Gianni Tognoni (Eds.) (2012) *Is there a Court for Gaza? A Test Bench for International Justice*, Springer

Elisabeth Kals and Jürgen Maes (Eds.) (2012) *Justice and Conflicts. Theoretical and Empirical Contributions*, Springer

Jeremy I. Levitt (2012) *Illegal Peace in Africa: An Inquiry into the Legality of Power Sharing with Warlords, Rebels, and Junta*, Cambridge University Press

Jennifer Moore (2012) *Humanitarian Law in Action within Africa*, Oxford University Press

### Articles

Briony Jones (2012) "Exploring the Politics of Reconciliation through Education Reform: The Case of Brčko District, Bosnia and Herzegovina", *The International Journal of Transitional Justice* 6(1), p. 126-148

Jennifer Bond (2012) "Excluding Justice: The Dangerous Intersection between Refugee Claims, Criminal Law, and 'Guilty' Asylum Seekers", *International Journal of Refugee Law* 34(1), p. 37-59

Alison Gerard and Sharon Pickering (2012) "The Crime and Punishment of Somali Women's Extra-Legal Arrival in Malta", *The British Journal of Criminology* 52(3), p. 514-533

Temitope Oriola (2012) "The Delta Creeks, Women's Engagement and Nigeria's Oil Insurgency", *The British Journal of Criminology* 52(3), p. 534-555

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**WE'RE ON THE WEB!**

**WWW.ADCICTY.ORG**

### **ADC-ICTY Legacy Conference 2012**

At the 2011 ADC-ICTY General Assembly it was decided that the association should organise a legacy conference in late 2012 or early 2013. The Executive Committee would like to involve as many members as possible in achieving this goal. The Executive Committee would therefore like to ask members to send their ideas on possible topics which could be covered, who the conference should be aimed at, where it should be held and whether you would be interested in participating. Please send any suggestions to the ADC-ICTY Head of Office: [dkennedy@icty.org](mailto:dkennedy@icty.org)

**Events****The Judicial Function and Legal Pluralism**

*Date:* 25 April 2012

*Venue:* The Hague Institute for Global Justice, Sophialaan 10, 2514 JR, The Hague

*More info:* <http://thehagueinstituteforglobaljustice.org/index.php?page=Events&pid=123&id=34&archive=0>

**Dispensing with Myths: The Role and Responsibilities of Senior Legal Advisors**

*Date:* 2 May 2012

*Venue:* The Hague Institute for Global Justice, Sophialaan 10, 2514 JR, The Hague

*More info:* <http://thehagueinstituteforglobaljustice.org/index.php?page=Events&pid=123&id=35&archive=0>

**PhD Day International Humanitarian and Criminal Law Platform**

*Date:* 25 May 2012

*Venue:* T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague

*More info:* [http://www.asser.nl/events.aspx?id=297&site\\_id=1](http://www.asser.nl/events.aspx?id=297&site_id=1)

**Opportunities****Translator/ Revisor (BCS) (P4), The Hague, Netherlands**

International Criminal Tribunal for the Former Yugoslavia

*Closing date:* 13 May 2012

**Investigator (communication evidence), Leidschendam, Netherlands**

Special Tribunal for Lebanon (STL)

*Closing date:* 16 May 2012

**Senior Legal Officer (LAS) (P4), Geneva, Switzerland**

UN High Commissioner for Refugees (UNHCR)

*Closing date:* 26 April 2012