



ADC-ICTY NEWSLETTER

ISSUE 24

31 January 2012

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• 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.

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

On 10 January, after the thawing of the three-week winter recess, the Simatović defence continued with the Prosecution's cross-examination of confidential witness DFS-014. During the examination-in chief in December 2011, the witness repudiated the Prosecution's claim that the commander of the Knin special unit, Captain Dragan Vasiljković, was connected with the Serbian State Security Service (DB). The Stanišić and Simatović indictment alleges, *inter alia*, that as key figures in the DB, they directed and organised the financing, training, logistical support and other substantial assistance to various special military units that committed crimes against humanity and violations of the laws or customs of war within the Serbian Autonomous District of Krajina (SAO Krajina) in Croatia. During cross-examination, the Prosecution challenged the witness's declaration that the DB did not play an active role in Krajina during the relevant period, however, the witness stood strongly by his statements.

The following week, Defence witness Jovan Dimitrijević, a member of the Serbian Volunteer Guard (SDG) in Croatia and Bosnia during the relevant period, testified. The Prosecution alleges that the SDG was under the control of the DB. Dimitrijević asserted that the SDG was part of the Krajina police and was not under the control of or had any connection to the DB.



Mihajlo Bakrač, Simatović's defence counsel

The Simatović Defence continues to call witnesses.

Prosecutor v. Mladić (IT-09-92)

On 16 December 2011 the Prosecution filed the Fourth Amended Indictment against Ratko Mladić. Trial Chambers granted the Prosecution's proposal to cut the initially proposed 196 crimes to 106 crimes. This comes after the Prosecution's proposal to sever the indictment into two parts was dismissed on 13 October 2011. The new indictment also lowers the amount of municipalities from 23 to 15. The Chamber announced this decision to provide a fairer and more expeditious trial. Nevertheless the Prosecution can still present the evidence it proposed to remove from the Indictment, although it has to do so with prior notification and explanation according to Rule 65ter.

In the Status Conference on 19 January 2012 the Chamber granted the request by the Defence to extend its deadline for rule 67(B) Notice of alibi and special defence, with reference to addresses of witnesses and not the location of the Accused during the alibi defence period.

The Defence also asked the Chamber to postpone the start of the trial to the end of October, due to the amount of evidence and exhibits running into hundreds of thousands of pages that the Defence needs to examine to prepare itself. This proposed deadline is also needed to establish a fully functional electronic database.

The next Status Conference is scheduled for 23 February 2012.

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

For the last two weeks there have been two appearances in the case against General Zdravko Tolimir. Dragomir Pećanac, who is the former Security and Intelligence Officer of the Main Staff of the Army of Republika Srpska (VRS), was the first witness appearing before the Court in 2012. Pećanac accepted testifying in Court after being convicted of contempt of court in October 2011 and receiving a three month prison sentence. Most of his testimony was given in private session, because there was the risk that he could be incriminated for any answers he gave during the cross-examination.

Pećanac had kept a high number of documents that needed to be analysed. During his testimony there was not any evidence found that could link Tolimir with the events in Srebrenica. Pećanac testified not to have seen the accused during those days in the area, since Tolimir was in Krajina with Ratko Mladić. Pećanac furthermore said that, prior to his testimony, he was not aware of any documents, even those showed to him during the trial, that could be used as evidence of intentional separation of men and women.

After Pećanac's testimony and the pre-defence conference on 23 January, Slavko Kralj was the first witness out of four called by the self-represented accused. Kralj served in the Department of Civil Affairs and Cooperation with International Organisations in the VRS Main Staff. The witness declared that UNPROFOR, the UN mission in Yugoslavia, was biased towards the VRS and supportive of Croatian forces during the conflict. For example, he claimed that UNPROFOR personnel abused their freedom of movement and supplied ammunition and fuel, disguised as humanitarian aid material, to the enclaves in the protected area.



Slavko Kralj

The Prosecution then started to cross-examine Slavko Kralj on 25 January. During his first testimony with the prosecution, Kralj stated that although Tolimir might have been allowed to check convoys, he was not obliged to check all of them. The cross-examination continues.

Rule 67

Reciprocal Disclosure

(A) [P]rior to the commencement of the trial:

(ii) the defence shall notify the Prosecutor of its intent to offer:

(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

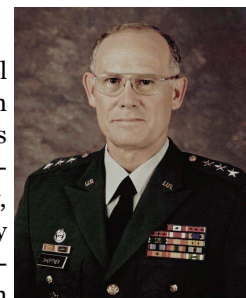
(b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.

Prosecutor v. Gotovina and Markač (IT-06-90)

On 12 January, a group of high-ranking British, Canadian and American legal and military experts applied to the ICTY for the status of amicus curiae in the Gotovina-Markač case. They submitted a 25 page Application and Brief analysing the ICTY's Judgement on Croatian Generals Ante Gotovina and Mladen Markač who were sentenced to 24 and 18 years in prison, respectively, in April 2011. The Court found that the Generals were members of a joint criminal enterprise and guilty of war crimes against Serb civilians during the Operation Storm, a 1995 Croatian offensive to recover territory seized by Serb forces.

The Application and Brief relates to the alleged excessive shelling of Knin, Benkovac, Gracac and Obrovac during the 1995 operation. The brief supports the Generals' defence by stating that if the Judgement was to be upheld, it would have long term implications for international humanitarian military laws and the future of armed conflict.

The group of experts suggests that unrealistic standards of battle and shelling were applied by the Trial Chamber in the April 2011 Judgement, which do not conform to practised and acceptable standards in past conflicts around the world. Retired U.S. Army Lieutenant General Wilson A. Schoffner stated in his expert report to the Application and Brief that, should the standards adopted by the Trial Chambers become the norm, it would unfairly condemn commanders who have executed their tasks in a proper way, who would then stand the threat of "being brought before some international tribunal and unfairly charged with war crimes, as was General Gotovina here". Thus, the group of experts concludes, the Appeals Chamber should "reconsider and reject the findings of unlawful artillery attacks during Operation Storm".



Wilson A. Schoffner

The Defence Counsel of Gotovina and Markač regard the brief as fair and professional. It is the second application for amicus curiae status in this case after the Croatian government, which applied last year. The Appeals Chamber said that it will decide on the requests in due course. On 23 January, the Prosecution called upon the Chamber to reject the amicus curiae status application by the group of experts.

At the status conference on 26 January it was announced that an appeal hearing will be held in spring rather than autumn this year, a decision welcomed by the Defence. A judgement could thus be delivered in the first half of 2013, rather than 2014.

Prosecutor v Karadžić (IT-95-5/18-I)

After the ICTY's winter recess the last three witnesses from the UN Dutch Battalion (Dutchbat), namely Paul Groenewegen, Roger Patelski and Robert Franken, as well as UN Military Observer (UNMO) Joseph Kingori gave their testimonies. Dutchbats obtained a rather negative image in the eyes of the international community due to their dealings within the Srebrenica enclave.



Paul Groenewegen

The witness Groenewegen testified on 13 January 2012. He was a private attached to the Charlie Company in 1995. Their main role was to man Observation Posts (OPs). These included OP Alpha, Mike, November, Pappa, Quebec and Romeo. Groenewegen was only stationed in OP November, OP Pappa and the last OP he was manning was OP Mike. He left OP Mike on the 8 July 1995 for the Potočari compound. He was present at the compound on 12 and 13 July 1995 when the evacuation of the Srebrenica enclave took place. He testified to have witnessed the different groups of Army of Republika Srpska (VRS) soldiers who were present at the evacuation and who separated men and women. He was also present when General Mladić visited Potočari compound on 12 July 1995.

The next witness on 13 January was Patelski. He was also a private stationed at the Potočari compound. Patelski was posted at OP Pappa during different times in 1995 before the fall of the enclave. During his time at OP Pappa he noticed Bosnian Serb Army (BSA) troops building in the area and digging trenches in the hills above the enclave. During cross-examination he was shown video footage that describes these trenches as made by Muslims and not VRS as claimed by Patelski. On 12 July 1995 OP Pappa was seized by VRS troops and the Dutchbats manning the post were held there for the better part of the day, after which they were released and sent to the Potočari compound. Patelski claims that during detention he managed to go up to the roof of the observation post and saw different types of soldiers moving towards Potočari and destroying houses on their way.

During the deployment of the Dutchbats in the Srebrenica enclave in 1995 witness Franken was a deputy battalion commander and head of logistics. As such he knew the situation in the enclave well regarding events and specifically the state of supplies.

He mentioned that the VRS imposed strict restrictions on Dutchbat and humanitarian aid convoys. Franken was also present during evacuation on the 12 and 13 July 1995, and witnessed the separation of men and women. During separation he has sent one of the UNMOs to check on the men.

Kingori was part of the UN Military Observers. He was initially stationed in Srebrenica in the PTT (post office) building. It was also claimed that PTT was where the Republic of BiH Army had its headquarters. Kingori's main task was to observe any violations of the demilitarisation agreement as well as to try and initiate meetings between the two sides to the conflict. He was reporting on the shelling in the enclave and claimed that he had not seen any armed Muslims in the enclave. He keeps to his point of view even though he was not permitted into all areas of the Srebrenica enclave, namely the Bandera triangle. Due to safety reasons the UNMOs had moved to the Potočari compound on the 9 July 1995. During the evacuation on the 12 and 13 July 1995 he witnessed the separation of men and women and the segregation of men in the 'white house'. He also met with General Mladić and other high-ranking VRS officials.



Joseph Kingori

Rule 65

Provisional Release

(A) Once detained, an accused may not be released except upon an order of a Trial Chamber.

(B) Release may be ordered by a Trial Chamber only in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

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

The case against Mićo Stanišić and Stojan Župljanin stretches as far back as 1999, when the initial indictment against Župljanin was made public. It was nine years later though, on 23 September 2008, that the Trial Chamber granted a Prosecution motion to join the cases against Stanišić. The two are accused of violations of laws or customs of war and crimes against humanity, alleged to have occurred between 1 April and 31 December 1992 in Bosnia and Herzegovina. Before trial commenced, Stanišić was granted several years of provisional release between 2005 and 2009, while his co-accused Župljanin was arrested on 11 June 2008. The Prosecution finally began its case on 14 September 2009 and closed it on 1 February 2011. The Defence presented its case next, beginning on 11 April 2011 and closing it on 8 December 2011.

Since the close of the Defence case, the parties met once more on 15 December 2011 for an administrative hearing. The Prosecution was then given an opportunity to present its evidence in rebuttal to the Defence, calling only two witnesses between 10 and 12 January 2012. The first witness was Mirza Lišinović, a police inspector in Doboj during the relevant period. The testimony of the second witness, known only by the pseudonym Witness ST-266, was elicited in closed session.

The Chamber reconvened once more on 18 January 2012 for an administrative hearing. The Chamber pointed out that it was seized of three separate motions, all dealing with the admission of new material into evidence. The Chamber further dealt with other administrative matters, such as the length of the final trial briefs and the time given to file them. The Chamber is also considering calling its own witnesses, but no indication was given as to how many and which witnesses would be called. As a result, the trial was adjourned *sine die*.

Vinko Martinović granted early release



Vinko Martinović

President Meron's decision granting early release to Vinko Martinović was made public on Monday 9 January. Martinović was commander of a sub-unit of the 'Convicts' Battalion, a military unit within the Croatian Defence Council. On Monday 9 August 1999, he was transferred from the custody of the Croatian authorities to the ICTY's Detention Unit. Martinović was jointly indicted with Mladen Naletilić for their alleged involvement in the "ethnic cleansing" in Mostar, Bosnia and Herzegovina in 1993 and 1994. For these crimes, he was sentenced to 18 years' imprisonment on 31 March 2003.

Provisional Release Precedent set for ICTY Accused Awaiting Final Judgement



Jadranko Prlić

On 15 December 2011, the ICTY Appeals Chamber issued a significant decision on provisional release, affirming the Prlić Trial Chamber's Decision of 24 November 2011 to release Jadranko Prlić for three months with the possibility of extension (Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, IT-04-74-A65.26, 15 December 2011). It is the first Appeals Chamber decision issued pursuant to the amended version of Rule 65(B) and paves the way for Accused at the ICTY to be granted provisional release for extended periods pending final judgement.

Prlić Defence Legal Assistant Joshua Kern's blog on the decision is available at <http://www.internationallawbureau.com/blog/?p=3707>.

ICTY makes donation to Montenegro

The ICTY's Outreach Programme made a significant donation of international legal material to Montenegro's Ministry of Justice, Central Library, Supreme Prosecutor's office and Youth Initiative for Human Rights (YIHR). The donation includes copies of the ICTY's Judicial Reports, the Encyclopaedia of Modern Legal Systems, the Commonwealth Law Reports and a number of publications of the European Court of Human Rights. Montenegrin officials said they were grateful for the donation and said it was an example of the good cooperation between their country and the ICTY.

The contribution forms part of a series of donations of legal material to universities and judicial training centres in the region. Croatia, Kosovo and Bosnia and Herzegovina already benefit from Outreach Programme donations. The programme was established in 1999 as the first of its kind in order to support the ICTY's commitment to promoting the rule of law and to increase the access of students and legal practitioners to educational resources in the field of international law. The tribunal intensifies its efforts as it moves towards the completion of its mandate. Other international tribunals have since followed the ICTY's example and set up similar mechanisms.

John Hocking appointed Registrar for new International Judiciary Mechanism

John Hocking, serving as Registrar of the ICTY since May 2009, has been appointed Registrar of the International Residual Mechanism for Criminal Tribunals by UN Secretary Ban Ki-Moon on 18 January. The judiciary mechanism will maintain some essential functions of the ICTY and the ICTR after their closure. It was established by the UN Security Council in 2010 and will have two branches, in Arusha and The Hague, which will commence working on 1 July 2012 and 1 July 2013, respectively. Hocking is the first Registrar of the Residual Mechanism and will thus be responsible for the effective commencement of its functions. While performing his new duties, he will continue to serve as Registrar of the ICTY.



John Hocking

• DEFENCE ROSTRUM •

Arrest of Radovan Stanković

On 23 January 2012, the ICTY welcomed the arrest of Radovan Stanković, formerly a member of a Serb paramilitary unit named the Milijevina battalion. Stanković was arrested in Bosnia and Herzegovina over four years after he escaped from prison in 2007.

He was originally indicted with Dragan Zelenović, Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovac, Zoran Vuković, and Dragoljub Kunarac. Stanković's case was referred to the Court of Bosnia and Herzegovina on 1 September 2005 and was thus the first case to be referred to the court in Sarajevo by the ICTY under the Tribunal's completion strategy.

On 14 November 2006, the Trial Panel of the Court of Bosnia and Herzegovina found Radovan Stanković guilty of crimes against humanity and sentenced him to 16 years imprisonment. On 28 March 2007, the Appellate Panel of the Court handed down the final verdict in the case of Radovan Stanković, increasing his sentence to 20 years imprisonment.

On 25 May 2007, Stanković escaped from the Foča prison where he was serving his sentence.



Radovan Stanković

Canada deports Rwanda genocide suspect Leon Mugesera

On 23 January 2012, the Quebec Superior Court and Canada's Federal Court rejected an appeal for a stay of deportation from Leon Mugesera. Mugesera has been fighting deportation for 16 years with a series of appeals, even after the Canadian Supreme Court upheld the order in 2005.

Mugesera is accused of delivering an anti-Tutsi speech in 1992 that helped incite the 1994 Rwandan genocide. Mugesera maintains that the speech was taken out of context. Lawyers requested extra time for the UN Committee Against Torture to investigate whether Mugesera would be at risk of persecution if sent back to Rwanda. This was dismissed by the Quebec court on 23 January 2011. He was then deported from Canada to Kigali, Rwanda where he faces charges.



Leon Mugesera

BiH suspends investigations into Karadžić's helpers

On 24 January 2012, the Prosecutor's office of Bosnia and Herzegovina suspended investigations into allegations against 58 people suspected of assisting Radovan Karadžić financially while in hiding. According to the country's daily Dnevni Avaz the decision for suspension was delivered due to a lack of evidence and in cooperation with the ICTY.

Some local Bosnian media had suggested that the decision comes in response to another recent decision to suspend investigations into the Dobrovoljacka Street case, which was met with criticism by Bosnian Serb leaders. The Dobrovoljacka case refers a 1992 massacre in Sarajevo when Muslim forces ambushed retreating Yugoslav People's Army (JNA) soldiers. This was refuted by the Prosecutor's office, though.

• BLOG UPDATES •

- Marie O’Leary, **The Future of the ACtHPR**, 10 January 2012, available at: <http://www.internationallawbureau.com/blog/?p=3803>
- Barrie Sander, **The African Court on Human and Peoples’ Rights Flexes its Muscles in respect of the Situation in Libya (African Commission on Human and Peoples’ Rights v. Great Socialist People’s Libyan Arab Jamahiriya)**, 4 January 2012, available at: <http://www.internationallawbureau.com/blog/?p=3778>
- Machiko Kanetake, **Law/politics discord, internal/external divide: The Zero Tolerance Policy & UN Peacekeeping**, 5 January 2012, available at: <http://www.intlawgrrls.com/2012/01/lawpolitics-discord-internalexternal.html>
- Ruti Teitel, **The ICC and Saif: After International Intervention, Avoiding Victor’s Justice**, 2 January 2012, available at: <http://opiniojuris.org/2012/01/02/the-icc-and-saif-after-international-intervention-avoiding-victor%E2%80%99s-justice/>
- Gentian Zyberi, **10 years Guantanamo: continuing the practice of detention without trial?**, 11 January 2012, available at: <http://internationallawobserver.eu/2012/01/11/10-years-guantanamo-continuing-the-practice-of-detention-without-trial/>
- Eric K. Leonard, **The US and the ICC, Part 3: Pursuing National Interests**, 10 January 2012, available at: http://ijcentral.org/blog/the_us_and_the_icc_part_3_pursuing_national_interests/

• PUBLICATIONS AND ARTICLES •

Books

Hector Olasolo (2012) *Essays on International Criminal Justice*, Hart Publishing

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

John Beggs, George Thomas, Susanna Rickard, and Michael Messenger (2012) *Public Order: Law and Practice*, Oxford University Press

Michael Tonry (2012) *Retributivism Has a Past: Has It a Future?* Oxford University Press


Assaf Meydani (2011) *The Israeli Supreme Court and the Human Rights Revolution: Courts as Agenda Setters*, Cambridge University Press

Articles


Anton Weiss-Wendt and Uğur Ümit Üngör (2011) ‘Collaboration in Genocide: The Ottoman Empire 1915–1916, the German-Occupied Baltic 1941–1944, and Rwanda 1994’, *Holocaust and Genocide Studies* 25(3) p. 404-437

Matthew Saul (2011) ‘The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?’ *Human Rights Law Review*, 11(4) p. 609-644

Katharina Margetts and Katerina I. Kappos (2011) ‘Current Developments at the Ad Hoc International Criminal Tribunals’, *Journal of International Criminal Justice*, 9(5) p. 1159-1197



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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. 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

• UPCOMING EVENTS •

Book Launch "Manual on International Criminal Defence: ADC-ICTY Developed Practices"

Date and time: 6 February 2012 at 6.00 pm

Venue: Main Lobby, International Criminal Court for the Former Yugoslavia, The Hague

Closing Conference - Convergence and Divergence of National Legal Systems

Date and time: 3 February 2012 at 9.00 am

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

Contact: morly.frishman@hiil.org

Conference on "Tension Between Universal and Regional Unification of Private Law"

Date and time: 16 & 17 February 2012 at 9.00 am & 8.45 am

Venue: Erasmus School of Law, Erasmus Universiteit, Rotterdam

More info: <http://www.eur.nl/erasmusacademie/tension/>

• OPPORTUNITIES •

Associate Special Assistant (P-2), The Hague, The Netherlands

Special Tribunal for Lebanon (STL)

Closing date: 10 February 2012

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

International Criminal Court (ICC)

Closing Date: 14 February 2012

Legal Officer (P-4), The Hague, The Netherlands

International Criminal Tribunal for the former Yugoslavia (ICTY)

Closing date: 16 February 2012