

27 February 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 Practising before the ICTY.

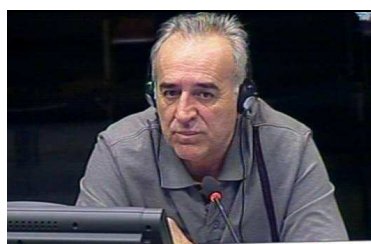
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### Prosecutor v. Karadžić (IT-95-5/18-1)

The trial in the case of Prosecutor v. Karadžić continued with the testimonies of the witnesses Momir Nikolić, Robert Block, and Milan Lešić.

In 2003, Momir Nikolić pleaded guilty before the Tribunal to crimes against humanity, and is currently serving a twenty-year prison sentence. Nikolić was the chief of intelligence and security in the Bratunac Light Infantry Brigade in 1995. He testified in the Karadžić trial that the killings in Srebrenica were premeditated and planned



Momir Nikolić

by Bosnian Serb forces and that Vujadin Popović had discussed with him the organisation of this operation.

After Nikolić, former foreign correspondent Robert Block took the stand. Block was the chief foreign correspondent for the British newspaper *The Independent*, who travelled to the region to report on the fall of Srebrenica. In Belgrade, he viewed a documentary that had been broadcast on 15 July 1995, as well as the accompanying raw footage. Block saw a short clip of what looked like the bodies of 20 to 25 men who appeared to have been killed in an execution, as well as what appeared to be detained men being held on the balcony of a white house and men being led out of the white house at gunpoint. When the witness returned to view the footage two days later, the tapes had been confiscated.



*Robert Block*

The Prosecution introduced evidence regarding Karadžić being angry about this video being in the public domain, which the Defence moved to have excluded on grounds that it was, at minimum, triple hearsay. The Defence relied on two Milutinović decisions in which the Chamber refused to admit certain evidence on hearsay grounds.

Prosecution argued that the evidence was sufficiently probative and reliable to be admitted, as the witness spoke directly to the man who told him that Karadžić was upset with him, as well as the fact that Karadžić publicly expressed a negative attitude towards Serbs providing foreign news agencies with

footage or pictures related to the conflict. The Chamber denied the motion, citing Appeals Chamber jurisprudence that the reliability of hearsay depends on the circumstances under which it arose.

The next witness to testify was Milan Lešić, a member of the Serbian Public Humanitarian Organization, which sent aid to Republika Srpska. Lešić made multiple trips to the region, as well as to the UN headquarters in New York City, between 1992 and 1995. He met with Karadžić, Ratko Mladić, and others from the region, overseeing the distribution of donor funds.

### Prosecutor v. Stanišić & Simatović (IT-03-69)

The Simatović Defence continued to challenge Prosecution claims that Franko Simatović and Jovica Stanišić were connected with various paramilitary units that committed crimes against non-Serbs within the area of Serbian Autonomous District of Krajina (SAO Krajina) and Bosnia and Herzegovina (BiH). Former Serbian police officer in SAO Krajina, Gvozden Gagić, testified between 8 and 14 February.

Gagić, who arrested members of the paramilitary group Yellow Wasps, testified that based on the information he was aware of, the members of the Yellow Wasps never had anything to do with either the members of the Ministry of the Internal Affairs of the Republic of Serbia (MUP) or with members of the DB. Additionally, during his investigation of another paramilitary group, the Scorpions, he found no link between members of the Scorpions and the DB.

From 14 to 16 February, Osman Selak, former commander of the Yugoslav People's Army (JNA) and Bosnian Serb Army (VRS) logistics base in Banja Luka, testified. Selak testified that he had no knowledge of any involvement of the



*Gvozden Gagić*

DB regarding the supplying of arms, ammunition, and equipment by the JNA to the VRS and Serbian volunteer units in Banja Luka.

On 21 and 22 February, Simatović's Defence witness Risto Šeovac, a former commander of the border police station in Bajina Bašta, testified with image distortion as a protective measure. Šeovac discussed the war time events in 1993 when a Muslim offensive was launched against the Serb positions in Eastern Bosnia. The witness asserted that on 16 January 1993, the Bosnian army attacked Serb forces in Skelani, killing approximately 60 VRS soldiers and civilians. Unfortunately, four or five children were also killed during the attack.

Additionally, on 22 February, the Chamber heard the testimony of retired JNA colonel Mladen Karan. The witness denied Prosecution claims that Arkan's men and the DB were working together.



*Mladen Karan*

The **Yellow Wasps** were a Serbian paramilitary group which was active in the Bosnian War. Its leader was Vojin Vučković. The group was active in the Zvornik region. Vučković and his brother Duško, along with four other members of the group were charged with war crimes.

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

Ratko Škrbić appeared as one of the last two Defence witnesses in Zdravko Tolimir's trial. During the hearing on 8 February the testimony followed the same path of his previous appearances and thus, discussions about the number of missing people and refugees continued. Among the evidence shown was a video in which soldiers of the Bosnia and Herzegovina (BiH) army mentioned around 2.000 or 3.000 Serbian soldiers killed, as well as a bulletin published by the Main Staff of the BiH army. This bulletin confirmed data provided by the witness regarding members of the BiH army's 28<sup>th</sup> division from the area of Srebrenica who joined the column of 25.000 men that were evacuated from Potočari to Tuzla.

Furthermore, a document considering the evacuation of women, children and elderly from Žepa to the territory under the control of the BiH Army was shown. Another document, the report entitled "The fall of Žepa", was analysed. This report mentioned a meeting where Tolimir said that the agenda included 'demilitarisation' of the enclave as well as allowing the civilian population to leave the municipality in accordance with the Geneva conventions of 12 August 1949. It also included the possibility to stay in Žepa for all those who wished to stay. However, Škrbić stated that those who stayed were armed and therefore not complying with the disarmament agreement.

"The Srebrenica Massacre, Evidence, Context, Politics", a book written by Škrbić, caused some controversy. Škrbić quotes Phillip Corwin, who was the head of the G5 organ at the UNPROFOR command for Bosnia and Herzegovina in Sarajevo. The latter expressed his intention to find more "balance" in everything related to Srebrenica and that "the facts presented in this volume make a very cogent argument that the figure of 8.000 killed, which is often mentioned in the international community, is an exaggeration. The true

figure may be closer to 800". Corwin also wrote that "(w)hat happened in Srebrenica is not a single large massacre of Muslims by Serbs, but rather, a series of very bloody attacks and counterattacks over a three-year period" and that "it is likely that the number of Muslim dead was probably no more than the number of Serbs that had been killed in Srebrenica and its environs during the preceding years by Bosnian Commander Naser Orić and his predatory gangs".

The Prosecution questioned the witness about his sources of information and asked what kind of data Škrbić used to write his expert report. He was told he did not take into consideration data from Tolimir that raised the amount of detainees higher, as well as other sources of information that could have improved the report.

The last witness appearing before the Court was Slavko Čulić, commander of an infantry brigade. Čulić stated that Tolimir was not in a position to command the security intelligence organ in his brigade and that he was there only to co-ordinate the intelligence work. Therefore, the responsibility lied with the unit commanders.

After Čulić, the Chamber ordered the parties to submit their final briefs, which should be completed before 31 May 2012. Closing arguments will then be presented on 21 August 2012, by the Prosecution, and the following day by the Defence. During the hearing on housekeeping matters on 21 February 2012 the parties were told to submit or withdraw certain pieces of evidence.



*Slavko Čulić*

### Prosecutor v. Haradinaj *et al.* (IT-04-84)

The Prosecution's case in Prosecutor v. Haradinaj *et al.* is nearing completion. There only remains one witness to be called, whose evidence has been sought by the Prosecution for nearly five years. It remains to be seen how the evidence of this witness will be presented. Once this witness' evidence is completed, the Defence may present evidence if they choose to do so.



*Ramush Haradinaj*

### Prosecutor v. Tupajić (IT-95-5/18-R77.2)

#### Rule 101

#### Penalties

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

Milan Tupajić was handed a two months prison sentence on charges of contempt of court on 24 February. The Chamber noted that he deprived the Chamber of important information and, while taking into consideration his health and family situation as mitigating factors, found him guilty under Rule 77. However, he might receive credit for the time served so far under Rule 101.

Tupajić, former President of the Sokolac municipality, was indicted because he failed to testify against Radovan Karadžić. Tupajić had previously testified in the case of Momčilo

Krajišnik and had to make negative experiences living in his home town afterwards. *Those seven years would have been easier for me in the Detention Unit in Scheveningen than in my town, Sokolac*, he said.



Milan Tupajić

### Prosecutor v. Mladić (IT-09-92)

On 23 February 2012, another status conference was scheduled in the case Prosecutor v. Mladić, which is due to begin on 14 May 2012.



Ratko Mladić

Initially, the start of trial was scheduled for 27 March 2012. This date was changed to “allow the parties time to complete any outstanding pre-trial preparations”. The Chamber also limited the number of sitting weeks for the early stage of trial up to 20 August 2012 to allow the parties more preparation time.

The Defence had previously requested to start the trial no earlier than October 2012 due to the large amount of documents and witness statements that have been disclosed to it. However, the Chamber noted that it sees the Defence sufficiently prepared and thus scheduled

the start of trial for May.

The Defence also requested that the Chamber takes into consideration Ratko Mladić’s poor health conditions and therefore schedules sitting weeks of less than five days, only hold morning court sessions and shorten the length of each court session. Mladić has suffered at least one stroke before his arrest. However, the Chamber was “not convinced that the Accused’s health condition requires modification of the daily and weekly sitting schedule” but considers it appropriate to grant the Defence’s request for morning court sessions.

Trial proceedings are scheduled for the period from 29 May to 13 July 2012, while the Defence must file its Pre-trial brief on 16 March at the latest. A rule 65 ter meeting will be held on 26 March; the next status conference will take place on 29 March.

#### Rule 65 ter

#### Pre-Trial Judge

(F) After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time-limit set by the pretrial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues [...].



### Prosecutor v Hadžić (IT-04-75)

At the second status conference in the case against Goran Hadžić on 17 February, the parties discussed preparations for his trial, which was suggested to start on 16 October 2012. Both Defence and Prosecution regard this date as too early.

Hadžić, the former Prime Minister of the Serbian District of Eastern Slavonia, Baranja and Western Srem and President of the Republic of Serbian Krajina, was indicted in 2004 for crimes against humanity and war crimes allegedly committed in eastern Slavonia, Croatia, between 1991 and 1993. He was arrested in Serbia on 20 July 2011 and transferred into the Tribunal's custody on 22 July. At his further initial appearance on 24 August 2011, he pleaded not guilty to all of the charges laid against him.

In the coming period the Chamber will decide on the Defence's motion for access to confidential material in adjudicated cases and the Prosecution's motion to amend the indictment. As the parties continue to discuss pre-trial issues, the presiding judge Guy Delvoie praised them for the "spirit of cooperation that they have showed".

Hadžić had no complaints about his health or conditions in the detention unit. Two more status conferences will be held before the trial starts, on 14 June and 13 September 2012.



Goran Hadžić

### Prosecutor v. Gotovina & Markač (IT-06-90-A)



Ante Gotovina

On 14 February, the Appeals Chamber issued a decision in the Gotovina and Markač case denying an application and proposed *amicus curiae* brief filed

on 13 January 2012 by 12 experts in international humanitarian law, ten Americans, one Briton and a Canadian. The experts requested leave to file the proposed *amicus curiae* brief and hoped that the Appeals Chamber would reverse the Trial Chamber's Judgment of Ante Gotovina and Mladen Markač regarding the unlawful artillery attack on civilians in Operation Storm in 1995.

The brief was filed pursuant to Rule 74 of the Rules of Procedure and Evidence which provides that a Chamber may, if it considers it desirable for the proper determination of a case, invite or grant leave to a State, organisation or person to appear before it and make submissions.

The Appeals Chamber found that the Prosecution Response to the application and proposed

*amicus curiae* brief was 5,483 words in length, and thus exceeded the 3,000 word limit. However, the Appeals Chamber, in light of the need to facilitate expeditious proceedings, considered the response in its entirety.

The Appeals Chamber was not convinced that the proposed *amicus curiae* brief would assist in determining the issues on appeal and therefore declined to grant leave to file the proposed *amicus curiae* brief.

Gotovina and Markač appealed the Trial Judgment in which they were found to have participated in a joint criminal enterprise by making significant contributions to its common purpose of permanently removing the Serb civilian population from the Krajina region of Croatia by force or threat of force, amounting to persecution (deportation, forcible transfer, unlawful attacks against civilians and civilian objects, and discriminatory and restrictive measures), deportation and forcible transfer. Further they were both found guilty of the deviatory crimes of murder, inhumane acts, cruel treatment, plunder, destruction, and unlawful detention, ascribing liability to them on the basis of the third form of joint criminal enterprise. Gotovina was sentenced to 24 years and Markač was sentenced to 18 years in prison.

#### Rule 74

##### Amicus Curiae

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

## • NEWS FROM OTHER INTERNATIONAL COURTS & TRIBUNALS •

### In this section

Extraordinary Chambers in the Courts of Cambodia

- Duch's Appeal Judgement
- Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith: Prosecution case continues

### Extraordinary Chambers in the Courts of Cambodia (ECCC)



Contributed by: David Fagan, Legal Consultant, Defence Support Section

\* The views expressed herein are those of the author alone and do not necessarily reflect the views of the Extraordinary Chambers in the Courts of Cambodia.

### Case 001 – Kaing Guek Eav alias Duch

#### Appeal Judgment

The Trial Chamber issued its judgment in Case 001 on 26 July 2010. Both the Defence and the Co-Prosecutors appealed the judgment and an Appeal Hearing was held from 28-30 March 2011.



*Kaing Guek Eav alias Duch*

On Friday 3 February 2012, the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) read a summary of its judgment.

The Supreme Court Chamber (SCC) rejected the Defence appeal on personal jurisdiction, which argued that Duch was not a senior leader of Democratic Kampuchea or one of those most responsible for the crimes committed by the regime within the meaning of Article 1 of the Agreement between the United Nations and the Royal Government of Cambodia. The SCC held that the personal jurisdiction of the ECCC covers Khmer Rouge officials but the question of whether such officials were senior leaders or most responsible for the crimes committed by the Democratic Kampuchea regime was a non-justiciable policy guide for the Co-Investigating Judges and the Co-Prosecutors in the exercise of their discretion as to the scope of investigations and prosecutions. Therefore, the SCC held that the Co-Investigating Judges and Co-Prosecutors were accountable for such decisions, and not the Chambers.

The Supreme Court Chamber granted in part the appeal by the Co-Prosecutors requesting cumulative convictions for crimes against humanity. In its findings, the SCC applied the test set out in the *Delalić et al* Appeal Judgment (ICTY, February 2001) and held that the Trial Chamber erred in law by subsuming specific crimes against humanity under the crime of persecution instead of convicting Duch for all the crimes against humanity for which he was found responsible. As a result, the SCC affirmed the conviction for the crime against humanity of persecution and entered additional convictions for the crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture and other inhumane acts.

Granting an appeal from the Co-Prosecutors, the SCC quashed the 35 year sentence imposed by the Trial Chamber on 26 July 2010 and sentenced Duch to life imprisonment for crimes against humanity and grave breaches of the 1949 Geneva Conventions.

The SCC held that in determining the sentence the Trial Chamber attached undue weight to mitigating circumstances and insufficient weight to the gravity of crimes and aggravating circumstances. The SCC noted that the high number of deaths for which Duch was responsible, along with the extended period of time over which the crimes were committed, undoubtedly placed the case among the gravest to have come before an international criminal tribunal.

A supermajority (Judge Klonowiecka-Milart and Judge Jayasinghe dissenting) of the SCC also quashed the Trial Chamber's decision to

#### Article 1

##### Purpose

The purpose of the present Agreement is to regulate the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

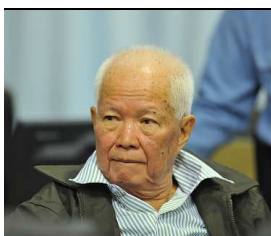
grant a remedy for the violation of Duch's rights resulting from his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007. The supermajority held that the Trial Chamber misinterpreted the relevant international jurisprudence in finding that violations of Duch's rights should be redressed by the ECCC even in the absence of violations attributable to the ECCC itself and in the absence of

abuse of process. Judges Klonowiecka-Milart and Jayasinghe considered that it was the ECCC's responsibility to grant a remedy for the illegal detention and considered that it would be appropriate to grant Duch a remedy by commuting the life sentence to a fixed term of 30 years imprisonment.

A full judgment is to be made available in due course.

## Case 002 – Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirth

### Defence Filings



Khieu Samphan

On 5 January 2012, the Khieu Samphan Defence Team filed its Objection To The Admissibility Of The Other Parties' Remaining Document Lists For The First Four Segments Of The First Trial, stating that it is impossible for Khieu Samphan to review and file objections to the thousands of documents listed by the other parties in

the short deadline set by the Trial Chamber. Referring to a previous filing which set out challenges to document categories, Khieu Samphan wished to stress that this should not in any way preclude challenges to specific documents, and that on the contrary, "it is imperative to assess each and every item of evidence that the parties and the Chamber intend to put at trial".

The Nuon Chea Defence Team (NCDT) also filed its objections, stressing that the "Trial Chamber should accept for consideration only those documents whose authenticity has been sufficiently established by the party seeking their admission", and reserving the right "to submit all documents and evidence conducive to ascertaining the truth in accordance with the [Cambodian Code of Criminal Procedure]".

The Ieng Sary Defence Team (ISDT) also filed its objections to documents submitted by the Co-Prosecutors, equally stressing that the Defence "objects to the admission of any document which is not demonstratively authentic or shown to be authentic by the party seeking to introduce it".

Also on 5 January 2012, ISDT filed an appeal "Against The Trial Chamber's Decision Denying His Right To Waive His Presence In The Courtroom During Trial And Denying His Constitutional Right To Assist In His Own Defence". Requesting to hold a public hearing on this matter, ISDT asked the Supreme Court Chamber to find that the Trial Chamber erred in compelling Mr. Ieng Sary to remain in the courtroom and refusing to permit him to participate in the proceedings from a specially equipped holding cell. On the same day, ISDT filed

an appeal Against The Trial Chamber's Decision On Motions For Disqualification Of Judge Silvia Cartwright.

On 20 January 2012, ISDT filed an appeal "Against The Trial Chamber's Decision Refusing Its Request For The Trial Chamber To Direct Its Senior Legal Officer To Maintain Open And Transparent Communication With All The Parties", requesting the Supreme Court Chamber to hold that the Trial Chamber erred in directing its Senior Legal Officer to engage in *ex parte* communications (and to order an end to this practice), in directing the parties not to respond to the Request, and in failing to issue a reasoned decision.

On 31 January 2012, the ISDT filed a request to clarify whether an Accused has the right to remain silent and the right not to incriminate himself, that no adverse inferences can be drawn from an Accused who exercises his right to remain silent; and that no adverse inferences can be drawn from an Accused who exercises his right to remain silent when questioned about one subject area but testifies on another subject area.

On 3 February 2012, the ISDT filed a response to the Co-Prosecutor's Request to Include Additional Crime Sites within the Scope of the Trial in Case 002/01. The response argued that the Co-Prosecutor's request was "yet another attempt by the OCP to request the Trial Chamber to reconsider its Severance Order" and submitted that the request should be summarily dismissed.



Ieng Sary

On 8 February 2012, the NCDT filed submissions relating to a request it had previously made in court for clarification of the provenance and chain of custody of Documentation Center of Cambodia (DC-Cam) documents. The submission requested that the Trial Chamber request DC-Cam to provide information from its database contained in two specific fields, the first recording the source of a document and its former or current owners, and the second indicating whether a document was a copy or an original.

## In the Courtroom

The defence teams for Nuon Chea, Khieu Samphan, and Ieng Sary participated in 11 days of substantive hearings before the Trial Chamber in January.

On 10 January 2012, the NCDT referred to a statement made by the Prime Minister of Cambodia in early January 2012, in which he allegedly declared that Nuon Chea was guilty of genocide. The NCDT requested that the Trial Chamber officially condemn such statements, which the NCDT argued prejudiced its client and violated his rights to a fair trial. On 23 January the Trial Chamber stated that the matter would be taken into consideration in “due course and when it’s appropriate to do so”.

Also on 10 January, under examination by the Co-Prosecutor, Nuon Chea declined to comment on whether an electronic copy of a document on the case file was a correct statement of Communist Party of Kampuchea policy, requesting an original copy of the document for verification purposes. The Nuon Chea, Ieng Sary and Khieu Samphan Defence each submitted that the authenticity of copied documents needed to be ensured throughout the proceedings.

On 12 January, Nuon Chea reiterated his position that he could not accept the credibility of copied documents as the basis for questions put to him and indicated his intention to exercise his right to silence in response to questions put to him by parties referencing copied documents. In addition,



*Nuon Chea*

Nuon Chea requested that the Co-Prosecutors inform him in a timely manner of any documents they intend to present to him, so that he might have time to examine the documents thoroughly.

In response to a request for clarification from the Trial Chamber, Khieu Samphan indicated that in light of his earlier statements before the Trial Chamber on the matter, he had no further comments to make on the historical background of Democratic Kampuchea and would exercise his right to silence in response to questioning from the Trial Chamber on such issues.

On 24 January 2012, during the questioning of witness, Mr. Dara Peou, the NCDT requested that DC-Cam produce a list of documents that have been provided to the Office of the Co-Prosecutors and the Office of the Co-Investigating Judge, with an indication for each document of the custodian of the document prior to DC-Cam obtaining it, where the document was found, by whom it was found, and when it was found.

On 26 January 2012, in response to the Co-Prosecutor’s questioning of witness Ms. Prak Yut the previous day, the ISDT requested that the Trial Chamber issue an order to all parties that they strictly abide by the parameters of the first trial in Case 002 as stipulated in the Trial Chamber’s Severance Order of 22 September 2011 and other related memoranda. Defence for Nuon Chea and Khieu Samphan supported the request.

## • DEFENCE ROSTRUM •

### UN Human Rights Office calls for Syrian Officials to be sent to ICC

According to the United Nations Human Rights Office, Syrian officials suspected of crimes against humanity should be referred to the International Criminal Court. On 10 February, Rupert Colville, spokesman for UN High Commissioner for Human Rights Navi Pillay, stated that “We believe, and we’ve said it and we’ll keep repeating it, that the case of Syria belongs in the International Criminal Court. This would give a very, very strong message to those running the show”. Two advisors to UN General Secretary Ban Ki-moon have repeatedly warned that the attacks of

the Syrian government against civilians could amount to crimes against humanity.

A new draft resolution on a Syrian peace plan was proposed by the Arab League on 10 February after a similar document was vetoed in the UN Security Council by Russia and China. This draft resolution makes no reference to a possible involvement of the ICC. Only the Security Council can refer Syria to the court, which diplomats see as highly unlikely given the divisions between its permanent members.

**Navanethem “Navi” Pillay**, UN High Commissioner for Human Rights since September 2008, after serving as an ICTR judge and president and ICC judge. Born 1941 in a poor Durban neighbourhood, she was the first South African to obtain a Harvard law doctorate, defended anti-apartheid activists and was appointed to the country’s high court as the first non-white woman.



## Garzón's conviction: A critical approach

by Diego Naranjo

Baltasar Garzón, former member of the Spanish National Court (Audiencia Nacional) has been banned from serving as a judge. Garzón was convicted for having wiretapped conversations between lawyers and clients accused in a corruption case. His conviction has raised a number of condemnations from several newspapers ([The Guardian](#), [New York Times](#)), organisations ([Human Rights Watch](#), [International Commission of Jurists](#)) as well as individuals, such as famous artists in Spain. Their criticism against his conviction is based on the political motivation of the case.



Baltasar Garzón

In fact, they are right to some extent. Garzón's process was launched by the right-wing organisation Manos Limpias, most likely because of his attempts to investigate crimes committed by the Franco regime rather than because of his investigation in corruption cases. However, despite the political motivation behind Garzón's conviction, the judgment has a legal basis. The verdict states that Garzón wiretapped conversations between clients and their lawyers, something that has only been allowed in cases relating to terrorism, and that those activities "are only found in totalitarian regimes these days". For anyone with convictions on the Rule of Law and the right to a fair trial, wiretapping professional conversations between an Accused and his defence counsel must be restricted to extremely exceptional circumstances. The Supreme Court ruled that this was not the case and that Garzón overstepped his authority ordering these activities.

Garzón became famous worldwide with his attempt to investigate against former Chilean dictator Augusto Pinochet alleging universal jurisdiction because of the crimes against humanity committed against Spanish citizens. He also started similar cases against former top Argentinian officials. These cases provided him with a 'human rights' status abroad, whilst in Spain he was controversial across almost the whole spectrum of political opinions for different reasons. Accusa-

tions of trying to pursue personal goals where widespread; yet, more serious ones as those by [human rights organisations working to prevent torture](#), were omitted in the mass media. These organisations as well as the European Court of Human Rights (in its November 2004 judgment in the Martínez Sala and others v. Spain case) denounced on several occasions how Spanish authorities (including Garzón) failed to investigate properly accusations of public officers torturing those accused of terrorism.

As stated above, Garzón seems not to have been convicted because of these serious actions (and omissions) that occurred in the past, but most likely, and this is the main point, because of his intentions to introduce Transitional Justice mechanisms in his own country. Garzón has been proven guilty of crimes for which he deserves to be convicted (wiretapping lawyers and their clients). However, the political motivation behind his conviction shows how the praised "exemplary transition" of Spain from Dictatorship to Parliamentary Democracy, including the [1977 Amnesty Law criticised by the UN](#), is far from being a model for other countries implementing democracy.

Furthermore, Garzón's journey through the Courts is not over yet. The mere existence of the case regarding his investigation on crimes against humanity during the Franco regime is contrary to the non-lapsable character of such crimes, and definitely against any sense of justice and intention to end impunity. However, Garzón's position is difficult to defend. For some, he is a victim of the same "justice" he applied himself, or failed to do so. Their argument is that [he is just having a taste of his own medicine](#).

None of the issues analysed above are good symptoms of an appropriate justice system (transitional or not) in the Spanish state. The Spanish justice system has been found partial, politically motivated, and unfair. Victims of the Franco regime and victims of torture will need to keep struggling to find justice. If they prove to be persistent and determined, they will obtain it, but unfortunately this will take time.

### • BLOG UPDATES •

- Jennifer Castello, **The Paradoxical Path of Individuals to the African Court**, 8 February 2012, available at: <http://arcproject.co.uk/?p=329>
- Benjamin Joyes, **ICC Puts Fair Trials at Risk Through Drastic Legal Aid Cuts**, 20 February 2012, available at: <http://www.internationallawbureau.com/blog/?p=3995>
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- Adam Taylor, **After 14 Years And Almost \$1 Billion Spent, The International Criminal Court Has Finished ZERO Cases**, 10 February 2012, available at: <http://www.businessinsider.com/international-criminal-court-2012-2>
- Benjamin Watson, **Limiting the Exposure of Protected Witnesses in ICTY Proceedings**, 21 February 2012, available at: [http://hrbrief.org/2012/02/limiting-the-exposure-of-protected-witnesses-in-icty-proceedings/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=limiting-the-exposure-of-protected-witnesses-in-icty-proceedings](http://hrbrief.org/2012/02/limiting-the-exposure-of-protected-witnesses-in-icty-proceedings/?utm_source=rss&utm_medium=rss&utm_campaign=limiting-the-exposure-of-protected-witnesses-in-icty-proceedings)
- Gentian Zyberi, **IHL Experts Analyze the Legal Issues and Implications of the Gotovina Trial Judgement**, 10 February 2012, available at: <http://internationallawobserver.eu/2012/02/10/ihl-experts-analyze-the-legal-issues-and-implications-of-the-gotovina-trial-judgment/>


### • PUBLICATIONS AND ARTICLES •

#### Books

- Jeffery F. Addicott, Md Jahid Hossain Bhuiyan, and Tareq M.R. Chowdhury (2011) *Globalization, International Law and Human Rights*, Oxford University Press
- Antoine Buyse and Michael Hamilton (Eds.) (2011) *Transitional Jurisprudence and the ECHR*, Cambridge University Press
- John D. Jackson and Sarah J. Summers (2012) *The Internationalisation of Criminal Evidence*, Cambridge University Press
- M. N. S. Sellers (Ed.) (2012) *Parochialism, Cosmopolitanism, and the Foundations of International Law*, Cambridge University Press
- Margaret A. Young (Ed.) *Regime Interaction in International Law*, Cambridge University Press

#### Articles

- Jeffrey L. Dunoff (2011) "What is the purpose of international law?" *International Theory* 3(2), p. 326-338
- Lori Fisler Damrosch (2012) "The Impact of the *Nicaragua* Case on the Court and Its Role: Harmful, Helpful or In Between?" *Leiden Journal of International Law* 25(1), p.135-147
- Marina Kurkchian (2012) "What to expect from institutional transplants? An experience of setting up media self-regulation in Russia and Bosnia", *International Journal of Law in Context* 8(1), p.115-131
- James G. Stewart (2012) "The End of 'Modes of Liability' for International Crimes", *Leiden Journal of International Law* 25(1), p.165-219



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**WE'RE ON THE WEB!**

**WWW.ADCICTY.ORG**

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### **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](mailto:dkennedy@icty.org)

### • UPCOMING EVENTS •

#### The EU's Commitment to Fundamental Rights

Date: 28 February 2012

Venue: British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP

More info: <http://www.biicl.org/events/view/-/id/675/>

#### ECBA Spring Conference: What future for defence rights in Europe?

Date: 27-28 April 2012

Venue: Hotel Royal, 41-43 rue de Lausanne, 1201 Geneva

More info: [http://www.ecba.org/content/index.php?option=com\\_content&view=article&id=218&Itemid=16](http://www.ecba.org/content/index.php?option=com_content&view=article&id=218&Itemid=16)

#### 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 •

#### Senior Document Management Assistant, Leidschendam, Netherlands

Special Tribunal for Lebanon (STL)

Closing Date: 9 March 2012

#### Senior Administrative Assistant, Leidschendam, Netherlands

Special Tribunal for Lebanon (STL)

Closing date: 9 March 2012

#### Legal Officer (P3), The Hague, Netherlands

International Criminal Tribunal for the former Yugoslavia (ICTY)

Closing date: 11 March 2012