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ICTY CASES

Cases in Pre-trial

Hadžić (IT-04-75)

Cases at Trial

Haradinaj et al. (IT-04-84)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

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 als . (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. Karadzic (IT-95-5/18-I)



Radovan Karadžić

On 1 October 2012 Karadžić submitted the list of six partial Rule 92 *ter* witnesses he intends to call during the first week of the presentation of his defence case. On the same day, he and his team also submitted an order of witnesses for November and December 2012. All witnesses will

testify pursuant to Rule 92 *ter* with the exception of one who will testify *viva voce*. Karadžić's team further submitted that the time estimate for each witness would be between 15 and 30 minutes for direct examination and one hour in total.

Karadžić's defence case will take place from 16 October 2012 onwards.

On 5 October 2012, the Trial Chamber granted Karadžić leave to appeal the "Decision on Time Allocated to the Accused for the Presentation of his Case" issued on 19 September 2012 which had granted him 300 hours in order for him to examine the witnesses he intends to call during the defense case.

In its "Decision on application for certification to appeal decision on time for defence case", the Trial Chamber took into account Karadžić's argument according to which the issue of adequate time for the presentation of his defence case would significantly affect the fairness and expeditiousness of the trial and its outcome as this issue affects his ability to present evidence of his innocence and to rebut the prosecution's evidence of his guilt.

The Trial Chamber further noted that an immediate resolution of the issue by the Appeals Chambers would

ICTY NEWS

- *Karadžić*: Defence Case due to Commence
- *Mladić*: Prosecution Case Continues

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materially advance the proceedings.

In the Trial Chamber's opinion, the issue of the 300 hours granted to Karadžić for the presentation of his case would significantly affect the fair and expeditious conduct of the proceedings in this case, as it pertains to the necessity for him to present his case within a set amount of time and to organise his case accordingly.

Prosecutor v. Mladić (IT-09-92)

The trial of *Prosecutor v. Ratko Mladić* continued with crime-base witnesses relating to the Prijedor area and Sarajevo. On 24 October, RM-051, a VRS member who served as a security guard in Manjača, testified about the conditions in the camp. Defence Counsel, Miodrag Stojanović cross-examined the witness and elicited testimony on the tolerable conditions at Manjača and that there was an effective organisation in the camp for providing medical care and basic needs.

During the week of 1 October, Idriz Merdzanić, a Muslim doctor in Trnopolje who has testified several times before the Tribunal, spoke about his experience in the camp. Fadila Tarcin, who was wounded by a shelling in Sarajevo in May 1992 testified about her experience and Mevludin Sejmenović, a former SDA president from Prijedor testified to events in the area during the spring and summer of 1992 and to the policies of the SDS. Defence Counsel, Branko Lukić attempted to elicit testimony that the military under the command of Mladić did not have representatives on the Prijedor Crisis Staff.



Ratko Mladić

The week concluded with the testimony of Husein Aly Abdel-Razek, Commander of UNPROFOR for the Sarajevo Sector, from August 1992 until February 1993. Razek testified about the Serb policy of shelling and sniping, as well as their complete control over the water and electricity supply of the

city and the humanitarian resources. On cross examination the witness admitted that the Army of Bosnia and Herzegovina indeed fired from vehicles close to civilian positions and that there were allegations of manipulation to secure international intervention. The witness also acknowledged that the VRS had a right to retaliate but they should have taken into account the civilian or UN nature of the target area. Defence Counsel Nenad Petrusić also cross-examined the witness on his meetings with Mladić, suggesting that it was Karadžić, not Mladić who would have been responsible for any shelling policies that may have violated international agreements at the time. In the following week, witness Piers Tucker, an aide to UNPROFOR Commander Phillippe Morillon, went further in asserting that the Serb policy of shelling and sniping amounted to terror and deliberate targeting of civilians. On cross-examination by Dragan Ivetić, the witness withdrew slightly, and admitted to attacks by Bosnian forces on UN forces, as well as a rumour that Markale I was staged.

The prosecution has filed several 92 *ter* motions and its sixth and seventh 92 *bis* motions during the past two weeks. The sixth 92 *bis* motion was based on the need to avoid re-traumatizing five witnesses to sniping incidents in Sarajevo by requiring them to testify again to events which they have already testified to in prior trials. An additional 92 *ter* motion for witness Richard Mole was opposed by the Defence on the basis of its late timing and that significant evidence should be led *viva voce*; while the Defence did not object to the tendering of the statement itself, it nonetheless demanded that sections of the statement that were effectively expert testimony disguised as fact should be redacted.

NEWS FROM THE REGION



Bosnia and Herzegovina

Zurahid Mujcinović Sentenced to Eight Year Sentence

The Bosnian State Court has sentenced former Bosnian Army soldier, Zurahid Mujcinović, to eight years in prison for abusing Bosnian Serb civilians detained in the Youth Center in Rapanica, in the municipality of Srebrenik, Bosnia from June to July 1992.

The witness testimony was overwhelming regarding the type of torture occurring in the stated period. Victims Drago Djukić and Pero Djukić both testified as being abused by Mujcinović, burned with a soldering iron, poked with needles and tortured with salt. There was also evidence that “[t]he defendant also contacted witnesses and the victims to intimidate them so they would change their statements”, said Davorin Jukić, the presiding judge.

Co-defendant, Sulejman Hrustić, who was a fellow soldier of Mujcinović, was released for lack of evidence. The verdict can be appealed.

Albina Terzić’s Defence Finished Presenting the Closing Arguments

The case against Albina Terzić, an ex member of the Croatian Defence Forces (HVO), is the Bosnian court’s second ever trial of a female war crimes defendant. The prosecution has asked the court to find Terzić guilty of abusing illegally detained Bosnian Serb prisoners in the elementary school and the Strolit factory in Odzak from May to July 1992. The indictment alleges that she hit prisoners, encouraged a dog to attack them and forced them to have sexual intercourse.

Terzić’s defence has argued that it is impossible to draw conclusions from the presented witness statements. They maintain the charges should be dropped because the detained men were not prisoners but soldiers and that Terzić was wrongfully charged against civilians and not POWs. Finally, the defence pointed that the prosecution has not disputed Terzić’s alibi confirmed by three witnesses, that she was a refugee in the town of Kutjevo in Croatia at the time of the alleged war crimes.

The verdict will be due mid-October.

Gazdić Verdict for Foca War Rapes Due End of October

Gazdić, a former member of the Bosnian Serb army, is charged with raping several Bosniak women who were imprisoned in the Partizan sports hall in Foca between April 1992 and late March 1993. Two of the rape victims are girls aged 12 at the time of the incident.

In his defence Gazdić stated “I have raped no one. I am not a maniac or a pedophile. I may have been present during some uncomfortable situations, but that was only because I had to”.

His defence lawyer, Dusko Tomić, deeply believes his client is innocent and that there is a problem with the indictment because not all of the the alleged rape and torture victims were called to testify. Additionally, Tomić accused the presiding judge, Vesna Jesenković, of being biased.

The Bosnian State court will announce its verdict on 31 October.

War Crimes Defendant Elected as the New Mayor of Krupa na Uni

On 7 October, in a Serbian municipality of Krupa na Uni, Gojko Klicković won over 60 percent of the votes in the local election. While the results have to be finalised by the Bosnian Central Election Commission, Klicković's current status as a criminal defendant points to the current electoral laws in allowing war criminals, alleged or convicted, to stir nationalistic sentiments through their presence in local politics. The trend and attitude is alarming with numerous other war criminals returning to office through Bosnia and Serbia including Branko Drujić, Simo Zarić and Blagoje Smić.

Klicković is charged by the Bosnian State Court for his involvement with the forced expulsion of Bosniaks and other crimes against non-Serbs but is currently released on bail. At the beginning of his retrial, Klicković stated that the prosecution may continue its investigations "for another 100 years, but they won't prove that what I did was a crime".

Current electoral laws in Bosnia and Herzegovina do not allow prisoners and those failing to comply with an order to appear before the court, to run as a political candidate. However, the law does allow convicted criminals who have served their sentences and those awaiting trial to run for office. With a region struggling for a new identity such relaxed electoral standards could be fatal for regional political renewal.

NEWS FROM OTHER INTERNATIONAL COURTS



International Criminal Tribunal for Rwanda

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of International Criminal Tribunal for Rwanda (ICTR).

Appeals Chamber hears Oral Arguments in the Mugenzi and Mugiraneza Case

On 8 October 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda, composed of Judge Theodor Meron, presiding, Judge Patrick Robinson, Judge Liu Daqun, Judge Andrézia Vaz, and Judge Bakhtiyar Tuzmukhamedov, heard oral arguments regarding the appeals of Justin Mugenzi and Prosper Mugiraneza against the Judgement rendered by Trial Chamber II of the Tribunal on 30 September 2011.

The Trial Chamber found Mugenzi and Mugiraneza guilty of conspiracy to commit genocide based on their role in the removal of Jean-Baptiste Habyalimana, who had opposed the genocide, from his post as the prefect of Butare Prefecture on

17 April 1994. The Trial Chamber also found Mugenzi and Mugiraneza guilty of direct and public incitement to commit genocide based on their role in the installation ceremony of Sylvain Nsabimana as the new prefect of Butare Prefecture on 19 April 1994. Mugenzi and Mugiraneza were each sentenced to 30 years of imprisonment.

Both Mugenzi and Mugiraneza contend that the Trial Chamber committed a number of errors of law and fact and requested that the Appeals Chamber overturn their respective convictions and acquit them on all counts or, alternatively, reduce their sentences.

Appeals Chamber Affirms Gatete's Convictions but Reduces his Sentence

On 9 October 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda, composed of Judge Liu Daqun, presiding, Judge Mehmet Güney, Judge Fausto Pocar, Judge Andrézia Vaz, and Judge Carmel Agius, delivered its judgement in the case of The Prosecutor v. Jean-Baptiste Gatete.

On 29 March 2011, Trial Chamber III of the Tribunal convicted Gatete pursuant to Article 6(1) of the Statute of the Tribunal of genocide and extermination as a crime against humanity in relation to the killings of Tutsis in the Rwankuba sector on 7 April 1994, at Kiziguro parish on 11 April 1994 and at

Mukarange parish on 12 April 1994. The Trial Chamber sentenced him to a single term of life imprisonment. Gatete and also the Prosecution appealed this judgment.

The Appeals Chamber affirmed Gatete's convictions and granted, Judge Pocar partially dissenting and Judge Agius dissenting, the Prosecution's ground of appeal on the failure to enter a conviction for conspiracy to commit genocide. It entered, Judges Pocar and Agius dissenting, a conviction for conspiracy to commit genocide and reduced Gatete's sentence to 40 years of imprisonment as a remedy for the violation of his right to be tried without undue delay.



Special Court for Sierra Leone

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of Special Court for Sierra Leone (SCSL).

Former Special Court Investigator Accused of Contempt

Prince Taylor, a local investigator formerly attached to the Charles Taylor defence team, was arrested on 6 October 2012 in Bo by the Sierra Leone Police acting on a warrant issued by the court as provided under the Special Court Agreement on nine counts of contempt of the Special Court. The Order in Lieu of an Indictment alleges that he interfered with four prosecution witnesses who testified in the Charles Taylor trial and that he also interfered with a fifth person who was about to give evidence in contempt proceedings.

Prince Taylor, who is a Sierra Leonean, was charged on evidence given by Eric Koi Senessie at his sentencing hearing and from subsequent further investigations. He pleaded not guilty to all nine contempt charges.

On 4 October 2012, Justice Teresa Doherty found that there was sufficient evidence to support a *prima facie* case against Prince Taylor pursuant to Rule 77 of the Rules of Procedure and Evidence, and issued an Order in Lieu of an Indictment charging him with nine counts of contempt. Four counts allege that Prince Taylor offered a bribe to a witness to recant testimony given before the Court, and four counts allege that he otherwise interfered with a witness to recant testimony. The last count alleges that he interfered with a witness about to give evidence in proceedings before a Chamber by “instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II”.



International Criminal Court

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of International Criminal Court (ICC).

ICC hearings on Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi.

On 9 and 10 October 2012, Pre-Trial Chamber I of the International Criminal Court held hearings on Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi. The hearings were held in open court in the presence of representatives of Libya, the ICC Prosecutor, the Office of Public Counsel for the Defence and the Office of Public Counsel for Victims.

Saif Al-Islam Gaddafi's is accused of committing war crimes against the rebels who overthrew his father last year. His lawyers have argued that he will not receive a fair trial in Libya, where he is currently held, whilst the Libyan authorities has reiterated that he will be tried in Libya, the country where he is accused of committing crimes.

At the beginning of the two-day hearing, Libyan lawyer Ahmed al-Jehani called for the international community to 'be patient', telling ICC judges the Libyan authorities 'needed time' to organise a fair trial for Saif Gaddafi. Al-Jehani told the judges they had not ruled out some level of ICC involvement. One of the lawyers representing Libya, Philippe Sands, confirmed that Saif al-Islam is still being held by the Zintan Bri-

gade in Libya, saying he would be transferred to a secure detention facility in Tripoli before the trial. Sands added that 'There is a wide range of evidence that will constitute an indictment the same as that presented by the ICC's prosecutor'.

The ICC prosecutor's office agreed with Libya, saying in a statement that the government 'is taking the same serious tack,' and that it was 'confident that it meets the admissibility standards,' allowing Libya to put Saif Al-Islam on trial at home. ICC prosecutors also believed that 'the court might want more tangible proof' that Libya could hold Saif Al-Islam's trial itself, and added that it was therefore 'appropriate to give Libya additional time'.

Lawyers for the ICC defence team on the other hand have accused the Libyan authorities of 'empty rhetoric' and of having 'aspirations divorced from reality' with regards to holding Saif Al-Islam Gaddafi's trial in Tripoli. Lawyer Melinda Taylor said Libya's lawyers are misleading the ICC, by saying a possible death sentence for Saif Al-Islam Gaddafi could be commuted. She cited a law passed by Libya's post-revolutionary National Transitional Council which said 'no child of Gaddafi will ever

benefit from leniency'. She further added that Libya might have used coercion and torture to gather evidence against Saif Al-Islam and that it had 'provided absolutely no information as to how this trial can be conducted in a safe and secure manner, bearing in mind the current level of instability and insecurity in Libya'.

So far, the Libyan authorities have made no secret of the fact that they have absolutely no intention of handing Saif Al-Islam Gaddafi over to the ICC. The ICC is therefore unlikely to be able to have him transferred to The Hague but it may still

have some influence on the way the trial is conducted. The ICC is expected to rule on this hearing within the next few months.



Extraordinary Chambers in the Courts of Cambodia

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of Extraordinary Chambers in the Courts of Cambodia (ECCC).

Christelle Mercier, Intern on the Ieng Thirith Defence team.

Case 002

The three defence teams for Nuon Chea, Khieu Samphan and Ieng Sary continued defending the Accused in the courtroom by examining several witnesses covering issues of communication, political training and propaganda under the Khmer Rouge as well as the administrative and military structure of the regime and the issue of forced movement.

Following the Trial Chamber's decision on reassessment of the Accused Ieng Thirith's fitness to stand trial, which ordered her unconditional release, the Office of the Co-Prosecutors appealed the decision and requested a stay of release. The defence for the Accused immediately argued that any further detention would violate Ieng Thirith's basic rights and asked the Trial Chamber to reject the stay of release. The Accused was subsequently released on 16 September 2012 after the dismissal of the Co-Prosecutors' request for a stay of release. The Ieng Thirith defence team is currently preparing its answer to the Co-Prosecutors' appeal and supplementary submissions, requesting that the release of the Accused remain unconditional. The Supreme Court Chamber's decision is expected to be issued within three months.

Health concerns regarding the Accused Ieng Sary led to a special hearing on 21 September where two doctors who had examined the Accused gave details on the causes of his dizziness and fatigue. Following these statements and to avoid substantial delays in the proceedings of Case 002, the Ieng Sary defence team waived the Accused's right to be present for the testimonies of several witnesses. However, it declined to waive this right for other witnesses, especially for experts Philip Short and Elizabeth Becker. This led to a reorganization of the court proceedings for the next several months.

On 27 September 2012, Ieng Sary's defence team filed a request for the Trial Chamber to seek clarifications from the

Office of the Co-Investigative Judges regarding the manner in which witness Norng Sophang's interview took place (E234). The audio recording of the interview indicates that the investigators conducted an unrecorded interview with him the previous day. Because no mention was made of this earlier interview in the case file, Co-Lawyers Ang Udom and Michael G. Karnavas asked the Trial Chamber to either seek clarification or disregard the witness's statements and testimony altogether.

Furthermore, the Supreme Court Chamber (SCC) rendered a decision on 14 September 2012 concerning the presumption of innocence and speeches made by public officials (E176/2/1/4). The Nuon Chea defence team had requested the Trial Chamber to officially condemn statements attributed to Prime Minister Hun Sen qualifying Nuon Chea as a "killer" and "perpetrator of genocide" and to ask him to refrain from similar remarks in the future. On appeal, the SCC was not satisfied that the Prime Minister had the specific intent to interfere with the administration of justice. In dismissing the appeal, the SCC accepted the Trial Chamber's affirmation of the presumption of innocence and its confirmation that the Trial Chamber would not take into account any public comments concerning the guilt or innocence of any Accused.

Lastly, several members of the defence teams participated in a conference entitled "Hybrid Perspectives on the Legacies of the ECCC" organized jointly by the ECCC and the Cambodian Human Rights Action Committee. Speaking on a panel, Co-Lawyer for Ieng Sary Michael Karnavas emphasised that the ECCC, as part of the Cambodian court system, should have a strong positive legacy to improve the national judicial system. The Case Manager for the Ieng Sary defence team, So Mosseny, also underlined the usefulness of case management technologies that should be transferred to national courts.

BLOG UPDATES

- Sadie Blanchard, **Libya Pleads case for trying Qaddafi itself**, 11 October 2012, available at: <http://www.intlawgrrls.com/2012/10/libya-pleads-case-for-trying-qaddafi.html>
- William Schabas, **More on Judge Sow and the Special Court for Sierra Leone**, 8 October 2012, available at: <http://humanrightsdoctorate.blogspot.nl/2012/10/more-on-judge-sow-and-special-court-for.html>
- Kathryn Hovington, **Bangladesh ICT Alleges British Citizen Responsible for War Crimes—Toby Cadman speaks to World Service**, 11 October 2012, available at: <http://www.internationallawbureau.com/index.php/bangladesh-ict-alleges-british-citizen-responsible-for-war-crimes-toby-cadman-speaks-to-bbc-world-service/>
- Julien Maton, **Lawyer to ICC: Don't let Libya try Saif al-Islam**, 10 October 2012, available at: <http://ilawyerblog.com/lawyer-to-icc-dont-let-libya-try-saif-al-islam/>
- Meg deGuzman, **LJIL Symposium Vol 25-3: Good Deeds of International Defendants: A comment by Margaret deGuzman**, 10 October 2012, available at <http://opiniojuris.org/2012/10/10/ljil-symposium-vol-25-3-good-deeds-of-international-defendants-a-comment-by-margaret-deguzman/>
- Jean Galbraith, **LJIL Symposium Vol 25-3: Good Deeds of International Defendants: A response**, 10 October 2012, available at <http://opiniojuris.org/2012/10/10/ljil-symposium-vol-25-3-good-deeds-of-international-defendants-a-response/>
- Elli Goetz, **ICTY: Appeal Hearing Scheduled in the Momcilo Perisic Case**, 27 September 2012, available at <http://www.internationallawbureau.com/index.php/icty-appeal-hearing-scheduled-in-the-momcilo-perisic-case/>

PUBLICATIONS AND ARTICLES

Books

Masha Fedorova, *The Principle of Equality of Arms in International Criminal Proceedings*, (Nov 2012), Intersentia

Sabine Hassler, *Reforming the UN Security Council Membership: The illusion of representativeness*, (Nov 2012), Routledge

Nigel D White, *Research Handbook on International Conflict and Security Law*, (Nov 2012), Edward Elgar Publishing

Kjetil Mujezinovic Larsen, *Searching for a principle of humanity in International Humanitarian Law*, (Nov 2012), Cambridge University Press.

Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime*, Cambridge Studies in International and Comparative Law, (2012), Cambridge University Press

Articles

Linda A. Malone, (2012), “*The Legal Dilemma of Guantanamo Detainees from Bush to Obama*”, *Criminal Law Forum*, 26 September 2012.

Olga Martin-Ortega, (2012), “*Prosecuting War Crimes at Home: Lessons from the War Crimes Chamber in the State Court of Bosnia and Herzegovina*”, *International Criminal Law Review*, 12(4), pp. 589-628.

Geert-Jan Knoops, (2012), “*Legal, Political and Ethical Dimensions of Drone Warfare under International Law: A Preliminary Survey*”, *International Criminal Law Review*, 12(4), pp. 697-720.

Claire Garbett, (2012), “*The legal representation of the civilian and military casualties of contemporary conflicts: unlawful victimisation, its victims and their visibility at the ICTY*”, *The International Journal of Human Rights*, 16(7), pp. 1059-1077

EVENTS

Revolution in the Air

Date: 2 November 2012

Venue: 9 Bedford Row, London

More info: http://www.9bedfordrow.co.uk/92/?form_87.replyids=44

International Humanitarian Assistance and International Law: A Legal Approach to Practical Problems

Date: 24-25 January 2013

Venue: Leiden University

More info: <http://law.leiden.edu/research/news/conference-intern-humanitarian-assistance.html>

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WE'RE ON THE WEB!

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OPPORTUNITIES

Legal Officer (P-4), The Hague

International Residual Mechanism

Closing date: 20 October 2012

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

International Criminal Tribunal for the Former Yugoslavia

Closing date: 3 November 2012

Terminology Assistant, The Hague

Special Tribunal for Lebanon (STL)

Closing date: 1 November 2012