



VOJISLAV ŠEŠELJ

ADC-ICTY
Newsletter
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MICT News

Prosecutor v. Šešelj (MICT-16-99)

On 2 May 2016, the Office of the Prosecutor for the MICT filed a Notice of Appeal in response to the Trial Chamber judgement issued on 31 March 2016, which gave acquittals on all charges.

Šešelj was the founder of the Serbian National Renewal Party, which was banned by the authorities of the Socialist Federal Republic of Yugoslavia (SFRY) in December 1990. In February 1991, he was appointed President of the newly founded Serbian Radical Party (SRS) and in June 1991,

he was elected as a member of the Assembly of the Republic of Serbia.

Šešelj was alleged to have propagated a policy of uniting all 'Serbian lands' to create a homogeneous Serbian state. He was alleged to have been part of a joint criminal enterprise to permanently and forcibly remove the majority of Croatian, Muslim and other non-Serbian civilian populations from parts of Croatia, Bosnia and Herzegovina and the province of Vojvodina in the Republic of Serbia. He was charged with three counts of crimes against

ICTY News..... Page 3

News from the Region..... Page 5

Looking Back..... Page 6

Rostrum..... Page 8

Articles and blogs..... Page 9

Jobs and Opportunities..... Page 10

The trial began in November 2006 but was twice delayed, once in 2006 due to Šešelj's hunger strike and his refusing to appear in court and in 2009 due to the alleged intimidation of a number of the prosecution's witnesses.

On 31 March 2016, the Trial Chamber delivered its judgement and found that the prosecution had failed to prove the existence of a criminal purpose; that the recruitment of volunteers was a legal activity and that Šešelj's speeches were made in the context of conflict to boost the morale of his troops rather than a call 'to spare no one'.

The notice of appeal comprises two grounds. The first ground alleges that the Trial

Chamber erred in law by failing to deliver a reasoned judgement. Specifically, the prosecution alleges that the Trial Chamber failed: to provide sufficient reasons for key conclusions; to address Prosecution arguments and relevant evidence; to adjudicate essential issues in the case; and to explain the substantive law applied.

The Prosecution admits that pinpointing these failings throughout the judgement will be a challenge, but they do helpfully provide six examples of specific paragraphs, such as paragraph 29, where the Trial Chamber decided not to consider crime pattern evidence.

The second ground claims that the Trial Chamber erred in fact by acquitting the

accused. Thus, if it is not plausible to find that the Trial Chamber erred in failing to deliver a reasoned judgement, then it means that the Trial Chamber erred in fact by acquitting the Accused. This error of fact led to a miscarriage of justice.

The errors of fact committed by the Trial Chamber can be found through different paragraphs of the Judgement. The Prosecution focused its attention in the Disposition and states that the Trial Chamber erred in fact by acquitting the Accused.

The Prosecution requests that the Appeals Chamber grant the Prosecution's appeal, overturn the acquittal, sentence the accused accordingly and order a re-trial.

Prosecutor v. Karadžić (MICT-13-55)

On 29 April 2016, Counsel for Radovan Karadžić submitted to the Mechanism a motion for disclosure of a recording. The recording is of a conversation that occurred on 13 July 1995, between Karadžić and Miroslav Deronjić. Deronjić was a high ranking member of the Serbian Democratic Party in the municipality of Bratunac, Bosnia and Herzegovina. In July 1995, he was appointed Civil Commissioner for the Municipality of Srebrenica and President of the War Presidency for that municipality.

The recording was a significant piece of evidence that constituted the foundation of Karadžić's conviction for genocide. The Trial Chamber found, from the transcript of this conversation, that Karadžić conveyed to Deronjić the direction that the detainees

(Muslim males) should be transferred to Zvornik where they were ultimately killed.

Deronjić testified in the *Milošević* trial that he understood Karadžić to mean that the prisoners should be transferred to a military base at Batković. This interpretation was confirmed by Police Commander Dragomir Vasić during the *Perišić* trial. Counsel for Karadžić asserts that the recording may contain words or phrases that could confirm Karadžić ordered the prisoners to be taken to the ICRC-inspected Batković prison, not Zvornik. Technical enhancements may also be available to assist with interpretation.

Karadžić was advised during the trial that the Prosecution did not have the recording. However, Deronjić testified that the

conversation was recorded. Deronjić also testified in the *Blagojević* trial that the Prosecution had admitted to him that they had listened to the recording. Counsel submits that the recording exists and argues that it is extremely important it be found to assist in their preparations for Karadžić's appeal.

The defence requests that the prosecution conduct an exhaustive search for it, whilst pointing out that the Prosecution were found by the Trial Chamber to have violated its disclosure obligations on more than 80 separate occasions.

ICTY News

Prosecutor v. Mladić (IT-09-92)



JAN SEGERS

On 28 April 2016, the Defence continued its case with the examination of Jan Segers, a former UNPROFOR officer and an UNMO observer. Segers was deployed in the former Yugoslavia between 1991 and 1995 and worked as a Belgian Military Information Officer, a Deputy Senior Military Observer and as a Military Intelligence Officer.

Segers testified with regard to an interview that he gave in 1995, which was later published in the Belgian weekly paper 'Tele Moustique' under the title Le Grand Bluff. During his testimony Segers addressed the first Markale Market shelling in 1994. He stated that it was 'almost certain' the Serbs were not responsible. He testified that military observers who were permanently on the terrain and who were the first ones on the site presented an objective oral report. In this report they stated that there was a possibility the incident had been caused by explosives planted under a table. During cross-examination the Prosecution tried to undermine this report by stating that other reports argued the Serbs had shelled the

market. However, Segers maintained its position and said that for him the objective report made directly after the incident was "the whole truth". Another topic that Segers addressed was the attack on the Kosovo hospital in Sarajevo. According to Segers, the ABiH forces provoked this attack. He described that while being in the hospital he heard two explosions and saw two mortars being fired. He testified that the Serbian side reacted to this with a 'short shelling without causing any material substantive damage'. Segers testified that he repeatedly encountered the ABiH making use of the surroundings of UN buildings in Sarajevo to position artillery or mortars and would fire from there. He argued that it was logical the Serb adversaries retaliated. Segers also testified about a colleague who reported that the ABiH shot at its own TV building. Segers stated that BiH declared this person 'persona non grata'.

Finally, Segers made it clear that the war was much more complex than the black and white image that he had when he went to the Balkans: "I thought there were three bad parties instead of just one".

Dr. Svetlana Radovanović, demography expert called by Ratko Mladić's defence, recently testified and challenged the integrity of the prosecution demography expert Ewa Tabeau across four days of evidence at trial. In the final stage of Ratko

Mladić's defence case, the defence aimed to contest the findings of Tabeau, on the number, identification and cause of death of the victims exhumed from the Tomašica mass grave near Prijedor.

Radovanović stated that the prosecution's demography expert presented her 'personal views', which lacked scientific foundations and Tabeau failed to present her definition of ethnic cleansing. In her evidence at Mladić's trial, Tabeau explained that she defined ethnic cleansing as actions directed towards a specific group, which then lead to the disappearance of that group from a territory. That, Radovanović argued, was not a 'scientifically correct explanation'.



SVETLANA RADOVANOVIĆ

In the final part of her examination-in-chief, Radovanović stated Tabeau 'deliberately concealed' the criteria she used to match the remains of Tomašica victims and presented her data in a manner calculated to 'confuse' readers about statistics and demography. Radovanović outlined that other parts of the report were an exercise in 'pure statistical exhibitionism'.



EWA TABEAU

Radovanović was then cross-examined by prosecutor Jason File. The Prosecutor aimed to show that Radovanović 'had taken out of context' some parts of the prosecution expert's report and unjustly accused Tabeau of failing to reveal the matching criteria. The defence expert maintained that the explanation does not meet the standards of scientific demography.

During the final day of testimony there was some disagreement between the parties. Radovanović believed she did not receive adequate background information on the matching of certain criteria regarding the identification of Tomašica victims in Tabeau's report. The prosecution argued that this process of matching had already been done and that if needed the defence should have simply asked to inspect those documents. Ratko Mladić's defence counsel objected stating that they had asked on multiple occasions for access to the

materials that the prosecution expert relied upon. Without these documents the defence cannot know how the matching was performed in order to verify what criteria were used and what criteria were not used to produce the report. Defence counsel for Ratko Mladić stated this is a serious issue since "jurisprudence relates to the transparency of expert report and ability of opposing party to have access to the materials that the expert relied upon in reaching their conclusions. Therefore, if the Prosecution and Tabeau are unable to provide this Chamber and this Defence with the methodology that she employed to create the matches in a format that we can understand, that we can see, that we can verify, it's much more serious...because in that case it doesn't go to the weight of the expert testimony. It goes towards its exclusion...and if that is the case, this Defence will move for the expert report of Tabeau and her related testimony to be stricken from these proceedings not only as to Tomašica but as to Srebrenica." Finally, with regard to the methodology of Tabeau the Chamber stated it will consider the matter.

As the cross-examination continued, the prosecutor focused on Radovanović's claim that in her report Tabeau 'deliberately neglected' the evidence showing that there was fighting going on in the Prijedor area at the time when the mass grave was made. To that end, Radovanović testified that the prosecution expert had made a number of professional errors in her report by failing to indicate that some of the victims exhumed from the Tomašica mass grave had died in combat, which would mean that not all the victims had been executed. Based on a document produced by the VRS 1st Krajina Corps, expert Radovanović concluded that there was fighting with the 'extremist' groups in Prijedor area at the relevant time. When the prosecutor stressed that the document does not state that the groups were armed, the demography expert stated that her goal was not to establish 'whether someone was armed or not but whether there was fighting going on'. It is still unclear when Ratko Mladić's trial will continue. The dates for testimony of the two remaining defence witnesses has not yet been confirmed.

News from the Region



Bosnia and Herzegovina

Bosnian Serb Acquitted of Crimes Against Humanity

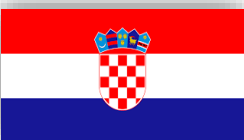
On 4 May 2016, the State Court in Sarajevo acquitted Jovan Popović of crimes against humanity, ruling that the prosecution had failed to prove whether he was guilty or even if he was a member of the Bosnian Serb Army or any paramilitary group at the time the crimes occurred.

Jovan Popović was cleared of making unlawful arrests and seizing civilians from the village of Rodica Brdo in the Višegrad area with a group of Serbs fighters in 1992. The arrests were carried out by Serb paramilitaries led by Milan Lukić, who was sentenced to life imprisonment by ICTY for these and other crimes. Presiding Judge Stanisa Gluhajic stated that, "after having carried out an analysis, the Chamber has not been able to determine beyond a reasonable doubt that defendant Popović committed the crimes with which he is charged in the indictment".

This verdict comes after on 21 April 2016, the Court of Bosnia and Herzegovina announced that the Appeals Chamber upheld its verdict acquitting former Bosnian Serb fighter Goran Popović, son of Jovan Popović, of crimes against humanity, rejecting the prosecution's appeal as unfounded. Goran Popović was acquitted of charges that he participated in the persecution, abuse and torture of the non-Serb civilian population in the Višegrad area in 1992 and 1993. In February 2014, both Jovan and Goran Popović pleaded not guilty and later in May 2014, the Bosnian State court separated the proceedings against father and son due the sickness of Jovan Popović.



GORAN & JOVAN POPOVIĆ



Croatia

Croatia Convicts Five and Acquits Two Rebel Serb Policemen

Five former members of a wartime Serb police special purposes unit have been found guilty of war crimes committed in Udbina in August 1991, while two others have been acquitted for a lack of evidence. The five men were convicted in absentia because they are no longer in Croatia.

On 26 April 2016, Rijeka County Court sentenced Dane Radočaj- Gajota and Nikola Ćuruvija to 15 years' imprisonment, Đjordže Kosanović to 12 years, Radoslav Korać to 10 years and Dragan Galović to six years while Damir Radočaj and Dane Radočaj- were acquitted due to a lack of evidence. The Court found that their crimes were used to intimidate and expel the Bosniak and Croat population from the Udbina region.



Kosovo

Impending End to EULEX, while Kosovo Court Faces Trouble Before It Begins

Two significant developments have taken place in Kosovo in recent weeks. Around 20 April, Albanian-language daily newspaper Koha Ditore published a document setting out Pristina's plans for the transfer of all ongoing and remaining European Union Rule of Law Mission in Kosovo (EULEX) cases to the local judiciary. Having already been extended twice, EULEX's current mandate is due to expire on 14 June 2016.

The plan entailed the handing over of sensitive information, including in relation to witnesses, to the regular Kosovo courts. Concerns have arisen in view continuing allegations of corruption and serious crime links within Kosovo's governance structure, although the EULEX judiciary has also recently been the subject of a bribery scandal. The document also sought to end the mandates of the three international judges presently sitting on Kosovo's Constitutional Court.



ISA MUSTAFA

Nonetheless, Koha Ditore reported on 4 May that Prime Minister Mustafa had, in a televised address, indicated that EULEX would continue to operate in Kosovo beyond June of this year. The mandate of the mission moving forward remain under debate, with the Prime Minister confirming the government's desire for as much power as possible to be transferred to local authorities. Meanwhile, as debate over the establishment of a special court for Kosovo continues, reports have emerged that a potential witness has been murdered. Bedri Curri, a former member of the Kosovo Liberation Army (KLA), was found dead near Glogovac in Kosovo, having been shot in the head.

Dick Marty, a Swiss senator and former Council of Europe Special Rapporteur, spoke out about the difficulties of witness protection after Curri's death. It was Marty's 2011 report investigating inhuman treatment and organ harvesting carried out by the KLA during the war that led to the proposal of a special court for Kosovo.

Curri's family and friends said that they had no knowledge of whether he was likely to testify before the special court. A police investigation into Curri's murder has been opened.

Looking Back...

International Criminal Tribunal for the former Yugoslavia (ICTY)

Five years ago...

On 9 May 2011, the Trial Chamber II issued an order in lieu of an indictment for contempt of court. Šešelj was accused of contempt for failing to remove confidential information from his personal website in violation of the Chamber's orders. A public version of the order in lieu of indictment was issued on 24 May 2011.

The confidential information included books written by Šešelj. In these books, there was six confidential filings submitted by him as part of his main trial and one previous trials for contempt of court. These books

and filings reveal confidential information about a number of protected witnesses who testified in his main trial before the Tribunal.

The outcome resulted in a 18 month imprisonment that was announced on 31 October 2011.

International Court of Justice (ICJ)

Fifteen Years Ago ...

On May 9 2006, the case of Bosnia and Herzegovina v. Serbia and Montenegro was concluded at the ICJ. Serbia was alleged to have attempted to exterminate the Bosnian Muslim (Bosniak) population of Bosnia and Herzegovina. The claim was filed by Dr. Francis Boyle, an adviser to Alija Izetbegovic during the Bosnian War.

The Court found that Serbia was neither directly responsible for the Srebrenica genocide, nor that it was complicit in it, but it did rule that Serbia had committed a breach of the Genocide Convention by failing to prevent the act from occurring and for not cooperating with the ICTY in punishing the perpetrators of the genocide, in particular General Ratko Mladić, and for violating its obligation to comply with the provisional measures ordered by the Court. The then Vice-President of the Court, Awn Shawkat Al-Khasawneh, dissented on the grounds that "Serbia's involvement, as a principal actor or accomplice,

in the genocide that took place in Srebrenica is supported by massive and compelling evidence".

Under the statute of the ICJ, Bosnia and Herzegovina may file a request for revision within ten years from the date of the decision and six-months from the discovery of a new fact Bosnia will need to show that the fact was not known at the time of the original judgment and that it would change the outcome of the proceedings.



AWN SHAWKAT AL-KHASAWNESH

International Criminal Tribunal for Rwanda (ICTR)

Twenty years ago...



THÉONESTE BAGOSORA

On 17 May 1996, the Prosecutor of the ICTR submitted to the Trial Chamber an application for a formal request for deferral to be made to the Government of Belgium in the case of Théoneste Bagosora.

The Trial Chamber, presided by Judge Laïty Kama, President of the ICTR granted the request and formally requested the Government of Belgium to defer to the ICTR all investigations and criminal proceedings that were being conducted against Théoneste Bagosora.

Judge Aspergren permitted the requests made by the Prosecutor and ordered the provisional detention of Bagosora

Defence Rostrum

The 2016 Serbian Elections

By Caroline Nash

The Serbian parliamentary elections were held on 24 April 2016. Initially, the election was scheduled for March 2018 but Prime Minister, Aleksander Vučić, called for an early election because he believed that Serbia “needs four more years of stability so that it is ready to join the European Union”. The parliamentary elections were held alongside local elections. The overall turnout was approximately 56 percent.

Vučić and his centre-right Serbian Progressive Party (SNS) won the majority, winning 131 of the 250 seats. Polls showed that the Progressive Party won the support of almost half the electorate with 48.2 percent but had an overall loss of 39 seats.

The pro-EU Vučić announced that his party will form the new government by early June 2016. The left Social Party of Serbia (SPS) won 11 percent of the turnout; winning 29 seats. This was a loss of 4 representatives in the Assembly. The nationalist Serbian Radical Party (SRS) received 8.1 percent of the vote share, which resulted in 22 seats. In the previous Assembly, there were no representative seats for the SRS. The nationalists could cause difficulties in Serbia's EU membership by opposing compromises, such as terminating the declaration of sovereignty over Kosovo. Other parties that will be represented in the National Assembly include the Liberal Democratic Party and the Democratic Party

of Serbia. Three parties are new to the Assembly: the liberal Enough is Enough, the conservative Dveri (in coalition with the Democratic Party of Serbia (DSS)) and the Green Party (as a Slovak ethnic minority party). The Green Party gained one seat, whereas the Enough is Enough won 16, and Dveri will have 13 representatives.

The SNS will maintain an “absolute majority” in the National Assembly, even though there will be a decrease in the number of their representatives. There was some controversy over the election results due to the monitoring organisations, Republic Election Commission (RIK) and CeSID (Centre for Free Elections and Democracy). The election results floated around the constitutional 5 percent threshold. While the votes were being counted, it seemed that the seven main parties would exceed the threshold. But the final count that was announced by RIK on 28 April stated that the DSS-Dveri coalition was short by one single vote. Because of this, tensions were high and coalitions began to accuse other parties and the RIK of fraud and corruption. Consequently, voting was repeated at 15 polling stations due to alleged “irregularities”. In the re-run elections held on 4 May, DSS-Dveri won the required number of votes, which was 5 percent. The Electoral Commission announced the final results of the parliamentary elections on 5 May.



ALEKSANDER VUČIĆ

Four Serbian opposition coalitions are still continuing to demand that the authorities investigate all alleged irregularities at the recent parliamentary polls and plan to ask for an overhaul of election law. The opposition demanded for the RIK's election documents, voter lists and polling station records to be released to the public. Their worries of fraud were further heightened due to the fact that the president of the RIK, Dejan Đurđević, is a member of the Serbian Progressive Party, which won the majority.

The Serbian Radical Party (SRS), founded and led by Vojislav Šešelj, will be the third largest party in the parliament. Šešelj was recently acquitted of 15 counts of crimes against humanity and violations of the laws or customs of war on 31 March 2016 at the ICTY. His acquittal seemed to strengthen the SRS due to support in the polls. For more information on Šešelj case, please refer to the MICT Update in this issue.

Blog Updates and Online Lectures

Blog Updates

Kravik, Andreas, "The Assembly of State Parties to the International Criminal Court Decides to Delete Article 124 of the Rome Statute", 12 April 2016. Blog available [here](#).

Ku, Julian, "Does the 'Justice Against Sponsors of Terrorism Act' Violate International Law?", 20 April 2016. Blog available [here](#).

Zwaagstra, D., "Preventing Bioterrorism, Risk and Legal Instruments", 28 April 2016. Blog available [here](#).

Online Lectures and Videos

"Is the law of armed conflict in crisis and how to recommit to its respect?", by International Committee of the Red Cross. Lecture available [here](#).

"The Peace Palace, Court House or Temple?", by Steven van Hoogstraten. Lecture available [here](#).

"Successive, Parallel and Contradictory Commitments in International Law", by Emmanuel Roucouas. Lecture available [here](#).

Publications and Articles

Books

Hiéramente, Mayeul and Schneider, Patricia (2016). **The Defence in International Criminal Trials: Observations on the Role of the Defence at the ICTY, ICTR and ICC**, Nomos.

Zeegers, Krit (2016). **International Criminal Tribunals and Human Rights Law - Adherence and Contextualization - International Criminal Justice Series**, Springer.

Sharma, Serena K. (2016). **The responsibility to protect and the International Criminal Court: protection and prosecution in Kenya**, Routledge, Taylor & Francis Group.

Articles

Dash, Amrutanshu; Sharm, Dhruv (2016). "Arrest Warrants at the International Court: Reasonable Suspicion or Reasonable Grounds to Believe?", *International Criminal Law Review*, Volume 16, P.158-176.

Nicholson, Joanna (2016). "Is Targeting Naked Child Soldiers a War Crime?", *International Criminal Law Review*, Volume 16, P.134-157.

Nahlawi, Yasmine (2016). "The Responsibility to Protect and Obama's Red Line on Syria", *Global Responsibility to Protect*, Volume 8, P.76-101.

Calls for Papers

The **Impact of the Law of Armed Conflict on General International Law Expert Roundtable** has issued a call for papers on various topics. Deadline: 20 May 2016, for more information click [here](#).

The **Hugo Valentin Centre and the Stockholm Center for International Law and Justice** have issued a call for papers on "Historicising International (Humanitarian) Law? Could we? Should we?". Deadline 30 May 2016, for more information click [here](#).

Events

[Africa and the International Court of Justice: Seven Decades On](#)

Date: 25 May 2016

Location: The Hague Institute for Global Justice, The Hague

For more information click [here](#).

[Launch of the book Foreign Fighters under International Law and Beyond](#)

Date: 31 May 2016

Location: Asser Institute, The Hague

For more information click [here](#).

[ADC-ICTY Mock Trial – Last Few Places Remaining!](#)

Date: 13-18 June 2016

Location: ICTY, The Hague

For more information click [here](#).

[Rules of Engagement Course](#)

Date: 10-14 October 2016

Location: International Institute for Humanitarian Law, San Remo

For more information click [here](#).

Opportunities

[Protection and Advocacy Advisor \(Mid-level\)](#)

Norwegian Refugee Council

Country Office-Kiev.

Deadline: 17 May 2016

For more information click [here](#).

[Legal Analyst \(P2\)](#)

UN Women

Support the Legal Adviser-New York

Deadline: 20 May 2016

For more information click [here](#).

[Legal Officer \(P3\)](#)

International Criminal Court

Office of Public Counsel for the Defence, Registry- The Hague

Deadline: 22 May 2016

For more information click [here](#).

[Human Resources Policy and Legal Officer \(P3\)](#)

UN Relief and Works Agency for Palestinian Refugees

Human Resources Planning, Policy & Development Division-
Amman.

Deadline: 3 June 2016

For more information click [here](#).

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GOODBYE AND THANK YOU!

The ADC-ICTY would like to express its sincere appreciation to Nuria Perez Cuso and Emilija Grubišić for their contributions to the Newsletter, we wish them all the best for the future!