



12 May 2000

## ICTY WEEKLY UPDATE – 125

### PROCEDURAL DEVELOPMENTS:

#### I. OVERVIEW OF COURT PROCEEDINGS

#### **KORDIĆ & ČERKEZ CASE (“LAŠVA VALLEY”)**

*Trial Chamber III – Judges May (Presiding), Bennouna and Robinson*

The Trial Chamber reconvened this week continuing to hear the testimony of Živko Totić, who began to give evidence on Friday 5 May.

Mr. Totić testified that he was appointed by Colonel Tihomir Blaškić on 29 July 1992, as the commander of the Croatian Defence Council (HVO) staff in Zenica, and after that by Mr. Mate Boban, who, according to Mr. Totić, was the supreme commander of the HVO.

Mr. Totić's testimony was followed by that of Mr. Luka Sekerija, a former Brigadier in the HVO.

Mr. Sekerija testified that he joined the HVO in April 1992 and was Chief of Staff of the Operative Zone of central Bosnia until January 1993. In late January 1993 he became the Chief of Staff in the Dr. Ante Starčević Brigade, which was commended by Mr. Totić.

On Tuesday 9 May the Trial Chamber heard the testimony of Mr. Branko Drmić and then Mr. Mile Vinać who were both called to rebut the statement of Mr. Midhat Haškić.

Mr. Haškić had made a statement in September 1995 but died in June 1997. Upon application by the Prosecution, the Trial Chamber admitted his statement into evidence in an oral decision rendered in open session on 21 February 2000. Mr. Haškić's statement dealt with the issue of Kordić's presence in Donja Večeriska on the evening of 15 April 1993 when he was allegedly in the company of members of the military.

*Due to technical difficulties it was not possible to summarise all of this week's proceedings in the Kordić & Čerkez case.*

#### **KVOČKA, KOS, RADIĆ, ŽIGIĆ & PRCAČ CASE (“OMARSKA & KERATERM CAMPS”)**

*Trial Chamber I – Judges Rodrigues (Presiding), Riad and Wald*

The Trial Chamber entered its third week of hearings on Monday 8 May with the conclusion of the testimony of “Witness AJ”, a former detainee in the Omarska camp, which began on Friday 5 May.

The following witness Mr. Azedin Oklopčić, a Muslim resident of Prijedor, testified about events on 30 May 1992 when he, and several of his neighbours, hung white flags outside their houses, as instructed by the Serb Council, to indicate their loyalty to the Serb authorities.

Mr. Oklopčić told the court that later the same day all those people in the houses with white flags were ordered by soldiers to the Hotel Balkan, where the Serb police and army separated the men from the women and children and boarded the men between the ages of about 18 to 60 years onto buses.

Mr. Oklopčić testified that the bus he was loaded on to was later boarded by soldiers who indiscriminately beat the passengers with batons and rifle butts for 10 to 12 minutes. Mr. Oklopčić said that he was then taken to the Omarska Camp where prisoners were beaten almost every day, particularly when they were taken for interrogation, went to lunch, went to the WC, went to fetch water, and during the night.

Mr. Oklopčić said that after his release from Omarska he was taken to Trnopolje camp, subsequently being returned to his home in Prijedor on 14 August 1992.

The examination-in-chief of Mr. Oklopčić concluded on Tuesday 9 May, however, due to the Prosecution's failure to make timely and complete disclosure of material relevant to several of the

witnesses next on the witness list, the trial was adjourned until 12 May to allow the defence time to prepare.

---

**DELALIĆ, MUCIĆ, DELIĆ & LANDŽO CASE (“ČELEBIĆI CAMP”)**

*Pre-Appeal Judge -Judge Hunt*

---

On Friday 12 May, the Appeals Chamber held a status conference in open session.

**II. OVERVIEW OF COURT DOCUMENTS**

---

**BRĐANIN & TALIC CASE (“KRAJINA”)**

REQUEST FILED BY TALIC FOR DISQUALIFICATION OF TRIAL JUDGE

On 4 May 2000, counsel for Talić filed a request that Judge Mumba be disqualified from hearing the case on the basis that “*she has already set out an opinion on the fact that the armed conflict in the Krajina region in 1992 was international and on the organisation, structure, role and actions of the army of the Republika Srpska and more specifically of this army’s 1<sup>st</sup> Corps commanded by General Talić*” when she sat as a member of the Appeals Chamber in the Tadić case.

---

**DELALIĆ, MUCIĆ, DELIĆ & LANDŽO CASE (“ČELEBIĆI CAMP”)**

MOTION ON EXPERT WITNESS DISMISSED

On 9 May 2000, the Appeals Chamber (Judges Hunt (Presiding), Riad, Nieto-Navia, Bennouna and Pocar) dismissed Landžo’s “Motion for permission to allow expert witness to view tape extracts and to admit expert opinion as to sleep disorders (‘Landžo’s fourth ground of appeal’), filed on 27 April 2000.

The motion was filed in relation to Landžo’s ground of appeal that his right to a fair and expeditious trial “*were violated when verdict and sentence were rendered by a Trial Chamber whose presiding Judge was permitted to sleep through much of the proceedings*”.

In reaching its decision the Appeals Chamber considered that:

- (1) to allow the Prosecution a reasonable amount of time to respond to any expert statement would require the postponement of the hearing of oral argument in the appeal, which has been scheduled to take place on 5 June 2000, and therefore cause further delay in the determination of this appeal;
- (2) the rights of other appellants would be impaired if the hearing of the present appeal were to be delayed any longer and any further delay in the hearing of the appeal would be contrary to the interests of justice;
- (3) the Appellant, who could in the exercise of due diligence have sought orders of the Appeals Chamber to facilitate the making of an expert’s statement at an earlier time in these proceedings, cannot now complain of unfairness;
- (4) the medical expert on sleeping disorders would not have access to any medical records of the Presiding Judge and did not have an opportunity to conduct a medical examination of the Presiding Judge at the time relevant to the fourth ground of appeal; and
- (5) the weight given to any expert statement based on the viewing of the extract tapes, in the absence of further medical information, is not such as to justify the prejudice to the Prosecution and to other appellants which would be caused by delaying the hearing of the appeal.

CLARIFICATION OF POSITION OF LANDŽO’S LEAD COUNSEL IN FOURTH GROUND OF APPEAL

On 10 May 2000, the pre-Appeal Judge, Judge Hunt, further clarified the position of lead counsel for Landžo arising from her need to give evidence with regard to Landžo’s fourth ground of appeal (see above).

Judge Hunt stated that “*any counsel who is likely to become a witness should not be seen as pleading the case in which he or she is to be such a witness*”, whether the pleadings are oral or written. However, insofar as filed documents are concerned, Judge Hunt stated they have been signed by or on behalf of co-counsel, and are therefore validly filed.

Cont.

**GALIĆ CASE (“SARAJEVO”)**

HEARING SCHEDULED ON MOTION FOR PROVISIONAL RELEASE

**On 11 May 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) ordered that a hearing be held on Thursday 18 May 2000 at 5.00 p.m. during which the Prosecution and defence will present their arguments on the Galić’s motion for provisional release, filed on 13 April 2000.**

ORDER ISSUED ON MOTION TO SUPPRESS INSUFFICIENCY OF INDICTMENT

On 11 May 2000, Trial Chamber I rejected a defence “Motion to suppress insufficiency of indictment”, filed on 13 April 2000.

In the motion the defence had submitted that the Trial Chamber should dismiss the indictment for its failure to provide sufficient facts and information to support the allegations therein; that the defence is currently in possession of insufficient materials and submissions which would allow for a full argument on the case; and the limited number of witness statements which the defence has in its possession have been redacted and edited so that many of the citations can easily be read out of context.

Considering that the motion was filed out of time, the Trial Chamber rejected the motion.

ORDER ISSUED ON MOTION TO SUPPRESS/EXCLUDE ACCUSED’S STATEMENTS

On 11 May 2000, Trial Chamber I rejected the defence “Motion to suppress/exclude accused’s statements”, filed on 13 April 2000, in which the defence requested the Trial Chamber to order that any statement attributed to the accused, obtained as a result of wire interception or electronic surveillance, be suppressed or excluded from trial.

Noting the response, in which the Prosecution submits that it does not intend to rely on, or seek to introduce into evidence any such statements, the Trial Chamber considered that if there was to be an issue of the statements’ admissibility into evidence then that is a matter to be addressed by the parties at trial.

ORDER ISSUED ON FURTHER MOTION TO SUPPRESS/EXCLUDE ACCUSED’S STATEMENTS

On 11 May 2000, Trial Chamber I rejected the defence “Motion to suppress/exclude accused’s statements”, filed on 13 April 2000, in which the defence requested that the Trial Chamber order that any statement attributed to the accused, obtained during interrogation or while in custody, be suppressed or excluded from trial.

Noting the Prosecution submission that it is not aware of any such statements; that the accused was only interviewed briefly by an investigator of the Office of the Prosecutor after his detention by SFOR for the purpose of identification; and that, after his initial appearance, the accused declined to be interviewed, the Trial Chamber considered that the admissibility of any evidence is to be addressed by the parties at trial.

ORDER ON DEFENCE MOTION TO SUPPRESS PHYSICAL EVIDENCE

On 11 May 2000, Trial Chamber I rejected the defence “Motion to suppress physical evidence”, filed on 13 April 2000, in which the defence requested that the Trial Chamber order that any physical evidence seized from the accused at the time of his arrest be suppressed or excluded from trial.

In reaching its decision, the Trial Chamber considered that the admissibility of any evidence is to be addressed by the parties at trial.

ORDER ON DEFENCE MOTION TO COMPEL PRODUCTION OF DISCOVERY AND EXCULPATORY INFORMATION

On 11 May 2000, Trial Chamber I rejected the defence “Motion to compel production of discovery and exculpatory information”, filed on 13 April 2000. In the motion the defence had demanded that the Prosecution disclose and provide a considerable number of categories of information and materials described in general terms.

Considering, “*first and foremost that in great part the motion is clearly not founded on the criminal procedural law applicable before the International Tribunal as provided in its Statute and Rules, which raises serious concerns*”, the Trial Chamber stated that “*any further defence motion that so blatantly*

*ignores the general rules and procedures governing the proceedings before the International Tribunal shall be considered a major failure of counsel for the defence to perform his obligations”.*

### **NALETILIĆ & MARTINOVIĆ CASE (“ŠTELA & TUTA”)**

#### **DECISION ON NALETILIĆ’S PRELIMINARY MOTION ON THE INDICTMENT**

On 11 May 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) denied Naletilić’s preliminary motion on the indictment, filed on 20 April 2000.

The defence argued that the indictment is defective as to jurisdiction because it alleges particular acts were committed by the Army of the Republic of Croatia (HV), the Croatian Defence Council (HVO), or the Convict’s Battalion (KB), whereas the Tribunal’s Statute only gives it jurisdiction over natural persons, and not over collective organizations. However, the Trial Chamber considered that the indictment was not brought against the HV, HVO or KB, but against Naletilić, a natural person, and alleges the individual responsibility of Naletilić as the commander of the KB for acts committed by KB troops acting alone and in conjunction with units of the HVO and HV, and necessarily refers to those entities for identification purposes.

The defence further argued that the facts alleged in the “Background”, “General Allegations”, and “Superior Authority” sections of the indictment are not supported by evidence, and they are not facts of such common knowledge that they may properly be the subject of judicial notice. The Trial Chamber considered that these facts must ultimately be proven by the Prosecution at trial.

With regard to the defence submission that the descriptions of the crimes do not provide a “*clear indication of the time of the crime perpetration, the manner, location, consequences, and the form of guilt*” the Trial Chamber referred to its decision on the same issue, as raised by Martinović, dated 15 February 2000 (see Weekly Update No. 113).

### **KRNOJELAC CASE (“FOČA - KP DOM CAMP”)**

#### **DECISION ON FORM OF SECOND AMENDED INDICTMENT**

On 11 May 2000, Trial Chamber II (Judges Hunt (Presiding), Mumba and Liu) dismissed Krnojelac’s preliminary motion on the form of the second amended indictment, dated 25 April 2000.

The accused had argued that:

- (1) the form in which paragraph 5.2 of the indictment had been pleaded was insufficiently precise;
- (2) paragraphs 5.4 to 5.6 contain contradictory allegations which cause confusion;
- (3) although the Prosecution has complied with the directions to state if it was unable to properly identify any particular persons referred to, the Prosecution has failed to do so in relation to other specified paragraphs;
- (4) it is not clear to what “prison authorities” refers in paragraph 5.22.

In its decision the Trial Chamber addressed each of these issues raised by the defence giving reasoned decisions for dismissing the motion.

### **DOŠEN & KOLUNDŽIJA CASE (“KERATERM CAMP”)**

#### **DECISION ON DEFENCE MOTION FOR DISCOVERY**

On 11 May 2000, Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) dismissed a “Defence motion for discovery”, filed on behalf of Kolundžija on 17 March 2000.

In the motion the defence had sought an order for disclosure by the Office of the Prosecutor of transcripts, audio or video-tapes, written or oral statements and/or investigative notes involving witnesses or witness statements generated by Bosnian and/or Muslim authorities; directing the Prosecution to inquire of the authorities in Bosnia which, if any, of the Prosecution witnesses were held in their custody; and permitting the defence for Kolundžija to examine witnesses before trial to determine which, if any, were interrogated by those authorities.

In reaching its decision the Trial Chamber considered that it is not within the scope of the Prosecution to provide the material requested and that evidence about the material can be elicited by other means, such as cross-examination of Prosecution witnesses.

**Cont.**

## DECISION ON DEFENCE MOTION TO COMPEL DISCOVERY

On 11 May 2000, Trial Chamber III (Judges May (Presiding), Bennouna and Robinson) granted a “Defence motion to compel discovery”, filed on behalf of Kolundžija on 29 March 2000.

In the motion the defence had sought an order for disclosure by the Office of the Prosecutor of an unredacted version of a document entitled “Extracts of evidence” which accompanied the indictment at confirmation.

Considering that the “Extracts of evidence” form part of the supporting material that accompanied the indictment when confirmation was sought, and thus the Prosecution is required to disclose to the defence an unredacted copy of the “Extracts of evidence” (but not the individual witness statements from which the extracts are taken, other than the two witness statements that accompanied the indictment when confirmation was sought) the Trial Chamber ordered the Prosecution to disclose to the defence the unredacted “Extracts of evidence” by Thursday 18 May 2000.

## COURTROOM SCHEDULE: 15 MAY – 19 MAY \*

### MONDAY 15 MAY

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Trial  
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30 - 13:00, **Kordic/Cerkez**, Trial  
14:30 - 16:00, **Kordic/Cerkez**, Trial  
Courtroom III 09:30 - 14:30, **Kvocka/Radic/Kos/Zigic/Prcac**,

### TUESDAY 16 MAY

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Trial  
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30 - 13:00, **Kordic/Cerkez**, Trial  
14:30 - 16:00, **Kordic/Cerkez**, Trial  
Courtroom III 09:30 - 14:30, **Kvocka/Radic/Kos/Zigic/Prcac**, Trial  
16:00, **Naletilic/Martinovic**, Status conference (*exact time to be confirmed*)

### WEDNESDAY 17 MAY

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Trial  
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30 - 13:00, **Kordic/Cerkez**, Trial  
14:30 - 16:00, **Kordic/Cerkez**, Trial  
Courtroom III 09:30 - 14:30, **Kvocka/Radic/Kos/Zigic/Prcac**, Trial  
16:15, **Kupreskic et. al.**, Status conference

Coverage of the proceedings in Courtroom II will be broadcast in the viewing area in the lobby.

\*The courtroom schedule is provisional and you are invited to check for last minute changes with the Public Information Services. Unless otherwise indicated, all sessions are open.

### THURSDAY 18 MAY

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Trial  
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30 - 13:00, **Kordic/Cerkez**, Trial  
14:30 - 16:00, **Kordic/Cerkez**, Trial  
Courtroom III 09:30 - 14:30, **Kvocka/Radic/Kos/Zigic/Prcac**, Trial

### FRIDAY 19 MAY

Courtroom II 09:30 - 13:00, **Kordic/Cerkez**, Trial  
Courtroom III 09:30 - 14:30, **Kvocka/Radic/Kos/Zigic/Prcac**, Trial

For the latest list of all court filings, please visit the [ICTY Court Records](#)

For a selection of the latest public documents, please visit the [ICTY Website](#)