

## II. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

### (a) List of Current Proceedings: Update\*

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#### 1. CASES AT THE PRE-TRIAL STAGE

##### 1.1. The Prosecutor v. Dragan Nikolić, Case No. IT-94-2

Following the transfer of Dragan Nikolić to the ICTY on 22 April 2000,<sup>1</sup> at his initial appearance, the accused pleaded “not guilty” to all charges raised against him in the amended indictment, dated 21 March 2000.

The amended indictment charges Dragan Nikolić on the basis of individual criminal responsibility<sup>2</sup> and superior criminal responsibility<sup>3</sup> with crimes against humanity<sup>4</sup> (murder; rape; torture; and other inhumane acts), grave breaches of the Geneva Conventions of 1949<sup>5</sup> (wilful killing; torture or inhuman treatment; and wilfully causing great suffering), and violations of the laws or customs of war<sup>6</sup> (outrages upon personal dignity; murder; cruel treatment and torture). In addition, Nikolić is charged on the basis of individual criminal responsibility with persecution on political, racial and religious grounds and with the wilful causing of serious injury to body or health.

##### 1.2. The Prosecutor v. Duško Sikirica, Case No. IT-95-8

Following the detention of Duško Sikirica by SFOR on 26 June 2000, at his initial appearance on 7 July, the accused pleaded not guilty to all counts charged against him in the amended indictment, dated 9 September 1999.

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\* This *List of Current Proceedings: Update* covers cases pending between 1 April 2000 and 14 July 2000 that merit attention because of a new procedural event. See, generally, the website of the Tribunal: <http://www.un.org/icty>.

\*\* The author currently works as a Legal Intern at the International Criminal Tribunal for the Former Yugoslavia. The selection of events and the interpretation of these are those of the author and do not necessarily represent those of the International Tribunal or the United Nations.

1. ICTY Press Release JL/P.I.S./485-E, 4 April 2000.
2. Art. 7(1) of the Statute of the Tribunal.
3. Art. 7(3) of the Statute of the Tribunal.
4. Art. 5 of the Statute of the Tribunal.
5. Art. 2 of the Statute of the Tribunal.
6. Art. 3 of the Statute of the Tribunal.

The amended indictment charges Duško Sikirica on the basis of individual criminal responsibility and superior criminal responsibility with genocide and complicity in genocide,<sup>7</sup> crimes against humanity (murder; persecution on political, racial and religious grounds; and inhumane acts), and violations of the laws or customs of war (outrages upon personal dignity; murder; and cruel treatment).

**1.3. The Prosecutor v. Dragan Kolundžija and Damir Došen,  
Case No. IT-95-8**

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 and seeking the disclosure by the Office of the Prosecutor of the unedited version of a document entitled "Extracts of evidence" that accompanied the indictment at confirmation.

Considering that the document forms part of the supporting material of the indictment, the Trial Chamber ordered the Prosecution to disclose to the defence the unedited "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.

On 9 June 2000, the Trial Chamber ordered the Prosecution to file an amended pre-trial brief fulfilling the requirements of Rule 65 *ter* (E)(i) and a witness list fulfilling the requirements of Rule 65 *ter* (E)(iv) by 28 July 2000. The Defence was directed to file its pre-trial briefs pursuant to Rule 65 *ter* (F) by 2 October 2000. A tentative date for the commencement of the trial is 6 November 2000.

**1.4. The Prosecutor v. Milan Simić, Miroslav Tadić, Simo Zarić and  
Stevan Todorović, Case No. IT-95-9**

On 4 April 2000, Trial Chamber III (Judges Robinson (Presiding), Hunt and Bennouna) granted motions for the provisional release of Miroslav Tadić and Simo Zarić, filed by the accused on 19 January 2000. On 19 April 2000, a Bench of the Appeals Chamber rejected the Prosecution's application for leave to appeal the Trial Chamber III decision on provisional release.

The Bench of three Judges considered that "Sub-rule 65(D) [of the Rules of Procedure and Evidence] provides that decisions on provisional release are subject to appeal in cases where leave to appeal is granted upon good cause being shown." Good cause requires that the Bench is satisfied that the Trial Chamber may have erred in making the decision on provisional release. The Bench found that "the Prosecutor has failed to demonstrate such an error on the part of the Trial Chamber."

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7. Art. 4 of the Statute of the Tribunal.

On 29 June, the Trial Chamber denied the "Application of the Accused Mr. Miroslav Tadić to Provisionally Leave his Residence for Medical Examinations" filed on 15 June 2000. In his application, the accused sought permission to leave the municipality in which he has been residing after his provisional release granted on 4 April, and to travel to Belgrade, the Federal Republic of Yugoslavia, for a specified medical examination.

In denying the application by Miroslav Tadić to leave Bosanski Šamac, the Trial Chamber considered "the history of non-cooperation with the International Tribunal evidenced to date by the Federal Republic of Yugoslavia, and the risk of non-appearance of the accused for trial if permitted to travel to the Federal Republic of Yugoslavia." The Chamber further noted that, "although the accused should not be deprived of obtaining treatment indispensable for his health, on the material provided the Trial Chamber is not satisfied that the specified examination is either necessary or unavailable elsewhere." The application was denied "without prejudice to any further application, supported by a second opinion, for the specified examination in a different location."

On 29 May 2000, the Trial Chamber ordered the provisional release of Milan Simić under certain terms and conditions detailed in the decision. In making this decision, the Trial Chamber considered the physical condition of the accused and the fact "that the accused has been acquitted of allegations of interference with a witness and that nothing in the Prosecution's submissions raises any credible apprehension that the accused has or will interfere with any victim or witness if released." The Trial Chamber further noted that it is "satisfied that the accused, if released, will appear for trial and further, that he will not pose a danger to victims, witnesses or other persons, [...] that the accused has twice voluntarily surrendered to the custody of the International Tribunal, has once returned for hearings and that he has previously been provisionally released by the International Tribunal and complied with all Orders concerning his release, [and] that the accused has provided the guarantees and undertakings sought by the Trial Chamber in its Order of 16 May 2000."

On 30 June 2000, the Trial Chamber delivered its written Judgment in the contempt of court proceedings against Milan Simić and his counsel, Mr. Branislav Avramović. This follows an oral Judgment which was handed down on Wednesday 29 March 2000. The Trial Chamber concluded that there was not enough evidence to prove beyond a reasonable doubt that the accused were guilty of contempt.

On 31 May 2000, Trial Chamber III denied a confidential motion to sever the trial of Todorović from that of Milan Simić, filed by Todorović on 21 September 1999. Todorović had argued that any ruling "adverse to the accused Milan Simić and his counsel Branislav Avramović will 'poison' this Trial Chamber's impartiality." The Trial Chamber had deferred consideration of the motion pending the outcome of the contempt proceedings against Milan Simić and his former counsel, Mr. Branislav Avramović. The Trial Chamber held that the judgment of

acquittal rendered in those proceedings on 29 March 2000 removed the only new ground relied upon by the accused.

On 7 June 2000, the Trial Chamber denied Todorović's motion for an order requesting judicial assistance in securing documents and witnesses from the International Committee of the Red Cross (ICRC). On 28 February 2000, the Trial Chamber had directed that Todorović be provided with access, on a confidential basis, to material which the ICRC had put before the Trial Chamber when it had argued against a prosecution motion, filed on 10 February 1999, which sought a ruling from the Trial Chamber as to whether a former ICRC employee could be called to give evidence of facts that came to his knowledge by virtue of his employment.

In his motion Todorović asserted that the ICRC took the position that its reports are "confidential and privileged and not available" and therefore requested the Trial Chamber to repeat the request on his behalf. In reaching its decision, the Trial Chamber considered that "the ICRC has the right under the Geneva Conventions and Additional Protocols to insist upon non-disclosure in judicial proceedings of information relating to the work of the ICRC in the possession of an ICRC employee and, further, that the ICRC has a right under customary international law to non-disclosure of certain information." Judge David Hunt agreed with the majority that the Motion should be denied but set out his own reasoning in a Separate Opinion.

On 7 July 2000, Trial Chamber III granted SFOR's request, dated 28 June 2000, seeking an extension of time in which to file a written response to the motion for judicial assistance, filed on behalf of Todorović on 24 November 1999. Considering that the reasons given in support of SFOR's request constitute good cause for the variation of the time limit, the Trial Chamber ordered that a hearing on the application be held on 25 July 2000 at 9.00 a.m., at which SFOR could be heard. SFOR submitted its views concerning the motion for judicial assistance on 10 July 2000 and informed the Trial Chamber on 13 July 2000 that it will not be represented at the hearing on the application.

On 7 July 2000, the Trial Chamber denied Todorović's request, filed on 20 June 2000, that the Trial Chamber take judicial notice of the position taken by the Prosecution on the issue of co-operation by "member states making up organisations such as NATO and SFOR", as reflected in comments made by the Deputy-Prosecutor at a Weekly Press Briefing at the ICTY on 14 June 2000.

Noting that Rule 94(A) of the Rules of Procedure and Evidence of the ICTY provides that a Trial Chamber "shall not require proof of facts of common knowledge but shall take judicial notice thereof", the Trial Chamber held that the material referred to does not meet this requirement nor that of Rule 94(B), i.e., "adjudicated facts of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings." The Trial Chamber nevertheless considered that it remains open to the Todorović defence

to present the material in the request as part of its submissions in the hearing on the motion on 25 July 2000.

### **1.5. The Prosecutor v. Milorad Krnojelac, Case No. IT-97-25**

On 3 April 2000, the President of the Tribunal, Judge Claude Jorda, assigned Judge Liu Daqun to sit on Trial Chamber II in place of Judge Fausto Pocar in the *Krnojelac* case. Judge Liu will join Judges Hunt (Presiding) and Mumba.

On 11 May 2000, Trial Chamber II dismissed Krnojelac's preliminary motion on the form of the second amended indictment, dated 25 April 2000. The accused had argued that the form in which paragraph 5.2 of the indictment had been pleaded was insufficiently precise; that paragraphs 5.4 to 5.6 contain contradictory allegations which caused confusion; that the Prosecution had failed to comply, in certain paragraphs, with the directions to state if it was unable to properly identify any persons to whom it referred; and that it was not clear to what "prison authorities" referred in paragraph 5.22. The Trial Chamber addressed each of these issues raised by the defence giving reasoned decisions for dismissing the motion.

### **1.6. The Prosecutor v. Stanislav Galić, Case No. IT-98-29**

On 11 May 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) rejected a defence "Motion to suppress insufficiency of indictment", filed on 13 April 2000, on the grounds that the motion was not filed on time. In the motion the defence requested that the Trial Chamber dismiss the indictment for its failure to provide sufficient facts and information to support the allegations therein; that the defence was in possession of insufficient materials and submissions for a full argument on the case; and that the limited number of witness statements disclosed to the defence had been edited so that many of the citations could be easily read out of context.

On 11 May 2000, the Trial Chamber also rejected three defence motions, filed on 13 April 2000, to suppress or exclude statements by the accused which were seized from the accused at the time of his arrest or were obtained as a result of wire interception or electronic surveillance, or during interrogation, or while the accused was in custody. The Trial Chamber ruled that any issue of the statements' admissibility into evidence is a matter to be addressed by the parties at trial.

**1.7. The Prosecutor v. Vinko Martinović and Mladen Naletilić,  
Case No. IT-98-34**

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 was defective as to jurisdiction because it alleged particular acts had been 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 gave 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 that it alleged 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 referred 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 were not supported by evidence and that they were not facts of such common knowledge that they might be the subject of judicial notice. The Trial Chamber considered that these facts must ultimately be proven by the Prosecution at trial.

On 22 June 2000, Trial Chamber I denied the Prosecution's motion for modification of the procedure for obtaining and accepting Rule 94 *ter* evidence. With the aim of protecting the safety of its witnesses, the Prosecution had asked the Chamber to allow Prosecution investigators to take formal statements by witnesses under Rule 94 *ter*, without regard to Bosnian law, provided that those investigators observed certain formalities.

The Trial Chamber noted that the Prosecution's proposed procedure was not "in accordance with the law and procedure of the State in which such affidavits or statements are signed" and therefore did not satisfy the express terms of Rule 94 *ter*. Considering that the parties had not exhausted all potential means of obtaining statements in accordance with the terms of Rule 94 *ter*, such as making special arrangements with the Bosnian authorities, the Trial Chamber denied the Prosecution's motion, without prejudice to further solutions proposed by the parties.

**1.8. The Prosecutor v. Radislav Brđanin and Momir Talić,  
Case No. IT-99-36**

On 3 April 2000, the President of the Tribunal, Judge Claude Jorda, assigned Judge Liu Daqun to sit on Trial Chamber II in place of Judge Fausto Pocar in the *Brđanin & Talić* case.

On 16 May 2000, a Bench of the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah and Nieto-Navia) rejected Talić's "Request to appeal against the decision of 9 March 2000." In the impugned decision, the Trial Chamber had rejected a preliminary motion seeking the separation of Talić's trial from that of Brđanin. The Bench of three Judges noted that none of the three grounds presented by Talić show good cause for granting leave to appeal the Trial Chamber's decision.

On 18 May 2000, Judge Hunt, the Presiding Judge of Trial Chamber II, refused Talić's request for the disqualification and withdrawal of Judge Mumba from hearing the trial. The request, dated 4 May 2000, asserted that Judge Mumba be dismissed, as "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 1st Corps commanded by General Talić" when she sat as a member of the Appeals Chamber in the *Tadić* case. In reaching his decision, Judge Hunt stated that he was not satisfied that "the reaction of a fair-minded observer would be that Judge Mumba might not bring an impartial and unprejudiced mind to any of the issues in this case."

On 3 July 2000, Trial Chamber II issued its decision on the motion for protective measures filed confidentially by the prosecution on 10 January 2000. The prosecution sought, amongst other things, a non-disclosure order directed to the two accused and their legal teams and an order allowing the prosecution to make limited redactions to witness statements or prior testimony concerning the identity and whereabouts of vulnerable victims or witnesses.

The prosecution purported to comply with its disclosure obligations under Rule 66(A)(i) of the Rules of Procedure and Evidence on 11 January 2000 by serving on counsel for the two accused copies of the supporting material which had accompanied the indictment when confirmation was sought. Every statement served had been edited to remove the name and any other material that would identify either the persons who had made the statements or their whereabouts. Initially stating that the prosecution had not satisfied the requirement of "exceptional circumstances" for protective measures to be ordered, pursuant to Rule 69 (A), the Trial Chamber held that the prosecution must file fresh motions seeking to justify a non-disclosure order in relation to each particular victim or witness.

As to the likelihood that prosecution witnesses will be interfered with or intimidated once their identity is made known to the accused and his counsel, but not to the public, the Trial Chamber noted that "[a]ny fears expressed by potential witnesses themselves that they may be in danger or at risk are not in themselves sufficient to establish any real likelihood that they may be in danger or at risk. Something more than that must be demonstrated to warrant an interference with the rights of the accused which those redactions represent."

Trial Chamber II did, however, order that, "if a member of the Brdanin and Talić defence team withdraws from the case, all the material in his or her possession shall be returned to the lead defence counsel," on the basis that the member of the team no longer has any need for the documents.

### **1.9. The Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39**

Following the detention of Momčilo Krajišnik by SFOR on 3 April 2000,<sup>8</sup> at his initial appearance, the accused pleaded "not guilty" to all counts charged against him.

The indictment charges Momčilo Krajišnik on the basis of individual criminal responsibility and superior criminal responsibility<sup>9</sup> with genocide and complicity in genocide, crimes against humanity (extermination, murder, persecution on political, racial and religious grounds, deportation, inhumane acts), violations of the laws or customs of war (murder), and grave breaches of the Geneva Conventions of 1949 (wilful killing).

## **2. CASES AT THE TRIAL STAGE**

### **2.1. The Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2**

Following the filing by the defence in the Kordić and Čerkez trial of motions for judgment of acquittal on 17 March 2000 and oral arguments heard on 30 March 2000, Trial Chamber III denied on 6 April 2000 the judgment for acquittal sought by the accused. However, it determined that there is "no case to answer" in relation to counts 39, 42, 43 and 44 on some of the locations specified in the indictment.

At the hearing on 30 March 2000, the Prosecution conceded that it has not produced evidence on certain locations referred to in counts 43 and 44 (destruction of institutions dedicated to religion or education) of the indictment and has agreed to amend it accordingly. These locations are: Count 43: Divjak and Stupni Do, and Count 44: Divjak. In its decision of 6 April 2000, the Trial Chamber found that there is no or insufficient evidence on counts 39 and 42 (plunder of public or private property) in relation to the following locations: Count 39: Merdani, Putis, Ocenici, Kazagici, Behrici, Gromiljak, Visnjica, Nadioci, Pirici, Gacice; and, Count 42: Nadioci and Pirici.

On 2 May 2000, the Trial Chamber denied the Prosecution's request to submit for entry into evidence five affidavits relating to Novi Travnik, although it

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8. ICTY Press Release JL/P.I.S./485-E, 4 April 2000.

9. Art. 7(3) of the Statute of the Tribunal.



considered that the Prosecution retains the right to call evidence in rebuttal. The Trial Chamber considered that the Prosecution notified the Trial Chamber of its intention to submit the affidavits after the close of its case and that the Prosecution submitted the affidavits too late without having formally sought leave to do so.

**2.2. The Prosecutor v. Dragoljub Kunarac and Radomir Kovač,  
Case No. IT-96-23 and Zoran Vuković, Case No. IT-96-23/1**

On 15 May 2000, Trial Chamber II (Judges Mumba (Presiding), Hunt and Po-car) granted leave to the defence to disclose the witness statements of six more protected Prosecution witnesses to Prof. Dr. Dusan Dunjić, a forensic expert; Dr. Aleksander Jovanović, a neuropsychiatrist; Dr. Milan Kostić, a psychologist; and Dr. Sci. Sanda Rasković-Ivić, a psychiatrist. It also ordered that the five witness statements for which it had previously granted the defence leave to disclose to Prof. Dr. Dusan Dunjić, Dr. Aleksander Jovanović and Dr. Milan Kostić, be disclosed to Dr. Sci. Sanda Rasković-Ivić. The Chamber further ruled that “[a]ll protective measure orders in force for all the Prosecution witnesses [...] will bind the medical experts and anyone assisting them.”

On 3 July 2000, Trial Chamber II granted in part a motion to exclude certain defence evidence and limit testimony, filed by the prosecution on 15 June 2000. The prosecution sought an order limiting the presentation of the defence case in relation to the report of defence expert Dr. Radinović and 18 videotapes.

After addressing each of the issues raised by the Prosecution, the Trial Chamber ruled that certain specified portions of the expert’s report are inadmissible and thus the expert’s oral testimony was limited accordingly. The remaining relief sought by the Prosecution was refused at this stage. The Trial Chamber held that, pursuant to Rule 89(C) of the Rules of Procedure and Evidence, “evidence is inadmissible where it is irrelevant to the charges against an accused or where it has no probative value.” And, “in general, an expert may express an opinion (within the confines of his or her expertise) upon facts which are established in the evidence (either by the expert’s own evidence or independently), if that opinion is relevant to the issues in the case. The Trial Chamber is not bound to accept that opinion. If the Trial Chamber does not accept that the facts upon which the opinion is based have been established, that opinion has no probative value and it is inadmissible for that reason.”

On 3 July 2000, the Trial Chamber entered a judgment of acquittal in favour of the accused Dragoljub Kunarac on Count 13 of the third amended indictment relating to plunder of private property. It also held that Zoran Vuković has no case to answer in relation to the allegations made by Witness FWS-48 in support of Counts 33 to 36 of the redacted indictment. The majority of the motion was dismissed, however. The judgment follows a motion for judgment of acquittal filed jointly by the three accused on 20 June 2000.

**2.3. Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić and Zoran Zigić, Dragoljub Prcač, Case No. IT-98-30/1**

On Wednesday 12 April, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) joined the trial of Dragoljub Prcač to that of Miroslav Kvočka, Milojica Kos, Mlado Radić and Zoran Zigić. The Kvočka & others trial had commenced on 28 February 2000, but adjourned on 7 March after the detention on 5 March of Dragoljub Prcač. The joint trial commenced on 2 May 2000.

Following a "Request for Medical Examination", filed by counsel for Prcač, on 18 May 2000, Trial Chamber I ordered a psychological and medical-psychiatric examination of Prcač with the purpose, of among other things, giving information regarding the past and present physical and mental ability of the accused; making any necessary observations on the mental state of the accused during the commission of the alleged crimes; and analysing the present psychological state of the accused and his potential ability to be reintegrated into society. The Trial Chamber considered that such an examination of the accused might provide relevant information regarding his mental state before, during and after the commission of acts attributed to him, which might be taken into consideration, if and where appropriate, for sentencing the accused.

The Trial Chamber also requested the Registry to assign this task to two experts. A joint written report of the evaluations, observations and recommendations formulated by the experts is to be transmitted to the Registry by 25 June 2000.

On 8 June 2000, Trial Chamber I issued a decision taking judicial notice of certain facts contained in a motion filed by the Prosecution on 11 January 1999. Trial Chamber III had previously issued a decision in this case on 19 March 1999, in which it took judicial notice of some of the facts included in the Prosecution's motion.

Trial Chamber I issued the current decision in light of the Tadić appeal judgment of 15 July 1999. It considered the parties' agreement that it was in the interests of justice, and in particular of expediting the trial, that judicial notice should be taken of facts included in 444 out of 583 paragraphs listed by the Prosecution. The Trial Chamber also noted that the amended indictment, dated 31 May 1999, charged the accused with violations of international humanitarian law in the Omarska, Keraterm and Trnopolje camps between 26 May and 30 August 1992, and that Tadić, whose conviction had become final, was convicted of crimes committed in the same places between 23 May and 31 December 1992.

Considering that the decision does not in itself indicate that the accused are responsible for the commission of the alleged crimes and that the Prosecution still has to prove the individual responsibility of the accused for the crimes of the indictment, the Trial Chamber took notice of the following facts: (1) that there existed an armed conflict at the times and places alleged in the indictment;

(2) that the conflict included a widespread and systematic attack against the Muslim and Croat population; and (3) that there was a nexus between this armed conflict and the widespread and systematic attack on the civilian population and the mistreatment of prisoners in the Omarska, Keraterm and Trnopolje camps.

### **3. CASES AT THE APPEAL STAGE**

#### **3.1. The Prosecutor v. Goran Jelisić, Case No. IT-95-10**

On 11 May, the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Wald and Pocar) held that briefs in the Jelisić appeals case shall be filed according to the following revised schedule: Appellants' Briefs shall be filed by 10 July 2000; Respondents' Briefs shall be filed by 9 August 2000; Briefs in Reply may be filed by 24 August 2000. On 10 July 2000, the Appeals Chamber ordered that the time for filing of the Appellants' Briefs be provisionally extended by seven days to 17 July 2000.

#### **3.2. The Prosecutor v. Tihomir Blaškić, Case No. IT-95-14**

On 12 April 2000, Vice-President Judge Mumba, exercising the functions of the President, decided that for the purposes of determining Blaškić's appeal against the judgment and sentence handed down by Trial Chamber I on 3 March 2000 the Appeals Chamber will be composed of Judges Vohrah, Nieto-Navia, Wald, Pocar and Liu.

#### **3.3. The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Vladimir Šantić, Drago Josipović, Case No. IT-95-16**

In his 29 June 2000 order on extension of time, Pre-appeal Judge Mohamed Bennouna ruled that the "change in the assignment of counsel for the Appellant in this case constitutes good cause for extending the time-limit for the filing of the Appellant's Brief of Vlatko Kupreškić" and ordered that Vlatko Kupreškić's brief be filed by 4 September 2000. The briefs by Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, and Vladimir Šantić were due to be filed on 3 July 2000. Drago Josipović will be filing a confidential brief.

#### **3.4. The Prosecutor v. Anto Furundžija, Case No. IT-95-17/1**

On 23 June 2000, the public versions of the Appellant's Amended Appellate Brief, the Appellant's Reply Brief and the Confidential Respondent's Brief of the Prosecution were filed.

On 10 July 2000, the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Robinson and Pocar) ordered that the Judgment in Anto Furundžija's appeal against Trial Chamber II's Judgment of 10 December 1998 be delivered on 21 July 2000 at 2.00 p.m.

**3.5. The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, Case No. IT-96-21**

On 31 March 2000, the Appeals Chamber (Judges Hunt (Presiding), Riad, Nieto-Navia, Bennouna and Pocar) issued its order on a notice filed by Mucić and Delić on 17 February 2000, seeking to "join" the arguments of Landžo on the substance of the latter's fourth ground of appeal, namely 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."

Considering that Delić did not raise the issue in his Appeal Brief, dated 2 July 1999, and therefore the indication of the intention to join Landžo's fourth ground of appeal does constitute an implied application for leave to add an additional ground of appeal, the Appeals Chamber granted leave to Delić to add the additional ground.

With regard to Mucić's notice, the Trial Chamber granted leave to Mucić to file additional submissions in relation to his eleventh ground of appeal, in which Mucić referred to Landžo's fourth ground of appeal. Delić was also granted leave to file additional submissions made in the notice.

On 9 May 2000, the Appeals Chamber 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:

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;

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 would be contrary to the interests of justice;

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;

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

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 appeals hearing.

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. 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 that they have been signed by or on behalf of co-counsel and are therefore validly filed.

On 19 May 2000, the Appeals Chamber rejected the "Designated Proposed Evidence" filed by counsel for Landžo on 15 May 2000 and dismissed Landžo's motions for the issuance of subpoenas to these proposed witnesses. Further, pursuant to a request filed by the Prosecution on 15 May 2000, the Appeals Chamber admitted into evidence the expert opinion of Mr. Alejandro Batalla, an expert in the law of Costa Rica.

The defence had sought to include the statements of four witnesses in relation to the Landžo's fourth ground of appeal. However, the Appeals Chamber considered that the witness statements did not show that the evidence of the proposed witnesses "would advance the appellants' case beyond what is already shown in the Extracts Tapes" and therefore rejected the "Designated Proposed Evidence" "in order to avoid needless consumption of time."

Noting that the expert opinion of Villalobos Brenes, submitted on behalf of Landžo in relation to the second ground of appeal, was admitted into evidence on 14 February 2000, the Appeals Chamber considered that the Prosecution expert opinion "offers a degree of relevance and probative value to the issues raised by the second ground of appeal which is sufficient to warrant its admission into evidence."

