



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-98-29/1-A
Date: 6 July 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrézia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 6 July 2009

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

***ADDENDUM TO THE ORDER SCHEDULING THE APPEALS
HEARING***

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Dragomir Milošević :

Mr. Branislav Tapušković
Ms. Branislava Isailović

THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively),

NOTING the appeals lodged by the Office of the Prosecutor (“Prosecution”)¹ and the Counsel for Dragomir Milošević (“Milošević”)² (jointly, “Appeals”) against the Trial Judgement rendered in this case by Trial Chamber III on 12 December 2007;³

NOTING the “Scheduling Order for Appeals Hearing” issued by the Appeals Chamber on 22 June 2009, ordering that the Appeals be heard on Tuesday, 21 July 2009 (“Appeals Hearing”), and informing the parties that another order specifying the exact time, courtroom, and modalities of the hearing will be issued in due course;

CONSIDERING the need to ensure that the time allotted for the Appeals Hearing is used as efficiently as possible;

RECALLING that the parties are to focus their oral arguments on the grounds of appeal raised in their briefs and that the appeals hearing is not the occasion for presenting new arguments on the merits of the case;⁴

RECALLING further that, during the hearing of an appeal, the parties are expected “to prepare themselves in such a way as not simply to recount what has been set out in their written submission, but to confine their oral arguments to elaborating on points relevant to this appeal that they wish to bring to the Appeals Chamber’s attention”;⁵

RECALLING that, in principle, the parties may argue the grounds of appeal in the order they consider most suitable;⁶

¹ Prosecution Notice of Appeal, 31 December 2007; Prosecution Appeal Brief, 30 January 2008 (collectively, “Prosecution’s Appeal”).

² Defence Notice of Appeal Against the Trial Judgement, 11 January 2008 (confidential) (the English translation filed on 16 January 2008; public redacted version filed in French on 11 May 2009); Defence Appeal Brief Including Confidential Annexes A and B and Public Annexes C and D, 14 August 2008 (confidential) (the English translation filed on 11 September 2008; public redacted version filed on 11 May 2009) (“Defence Appeal Brief” and, collectively, “Milošević’s Appeal”).

³ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgement, 12 December 2007 (“Trial Judgement”).

⁴ *Prosecutor v. Naser Orić*, Addendum to Order Scheduling Appeal Hearing, 10 March 2008 (“Orić Order”), p. 1.

⁵ Orić Order, p. 1, referring to *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on the Appellant Jean-Bosco Barayagwiza’s Motion Concerning the Scheduling Order for the Appeals Hearing, 5 December 2006, p. 4 and *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Order Re-Scheduling Appeal Hearing, 5 May 2006, p. 6.

⁶ Orić Order, p. 1.

HEREBY INFORMS the parties that, subject to adjustments where appropriate, the timetable for the Appeals Hearing in the present case shall be as follows (the parties need not make use of all the time allotted to them):

- 09:00 – 09:15 Introductory Statement by the Presiding Judge (15 minutes)
- 09:15 – 10:45 Submissions in support of Milošević's Appeal (1 hour 30 minutes)
- 10:45 – 11:15 *Pause (30 minutes)*
- 11:15 – 11:45 Continued submissions in support of Milošević's Appeal (30 minutes)
- 11:45 – 12:45 Prosecution's Response (1 hour)
- 12:45 – 14:15 *Pause (1 hour 30 minutes)*
- 14:15 – 15:15 Continued Prosecution's Response (1 hour)
- 15:15 – 16:00 Milošević's Reply (45 minutes)
- 16:00 – 16:20 *Pause (20 minutes)*
- 16:20 – 16:50 Submissions in support of the Prosecution's Appeal (30 minutes)
- 16:50 – 17:20 Milošević's Response (30 minutes)
- 17:20 – 17:30 Prosecution's Reply (10 minutes)
- 17:30 – 17:40 Brief personal address by Milošević (10 minutes) (*optional*);

EMPHASIZING that the present *Addendum* in no way expresses the Appeals Chamber's views on the merits of the Appeals;

HEREBY INVITES the parties, without prejudice to any other matter which they or the Appeals Chamber may wish to address, to develop their written submissions during the time allotted for their oral arguments as above with regard to, *inter alia*, the following issues:

1. Under his first ground of appeal, Milošević challenges, *inter alia*, the Trial Chamber's legal and factual findings with respect to the elements of the crime of terror. In particular, he presents a series of arguments challenging the civilian status of the victims of the sniping and shelling incidents that the Trial Chamber found to be examples of terror. In light of the Prosecution's submission in response that the crime of terror does not require proof of an attack which results in death or serious injury to body or health of civilians,⁷ as well as the discussions of the elements of

⁷ Prosecution Response Brief, 23 September 2008 (confidential) and Notice Changing Status of the Public Redacted Version of Prosecution Response Brief Filed on 7 October 2008 and Filing of New Public Redacted Version, 15 May 2009 ("Prosecution Response Brief"), para. 53.

the crime of terror in the *Galić* and *D. Milošević* Trial and the *Galić* Appeal Judgements,⁸ the Appeals Chamber invites the parties to elaborate on the elements of the crime of terror.

2 Under his fourth ground of appeal, Milošević submits that his absolute inability to act exempted him from criminal responsibility for the crimes committed in the period from 6 August 1995 to 10 September 1995.⁹ In response, the Prosecution argues that once it was established that the crimes that took place during Milošević's absence from Sarajevo were part of the campaign he had planned and ordered, it became unnecessary to determine whether it was possible for him to issue orders during his absence.¹⁰ The Appeals Chamber invites the parties to point to the evidence on the record, if any, concerning the nature of appointment and the mandate of Čedomir Sladoje during Milošević's absence.¹¹

3 In relation to Milošević's fifth ground of appeal, the Appeals Chamber invites the parties to address the question of whether the Trial Chamber erred in taking into account the same circumstances both for determining the gravity of the crime and the aggravating factors, or whether it correctly concentrated on distinct aspects of those circumstances relevant for each consideration.

4 Under his eighth ground of appeal, Milošević argues that the origin of the shells that hit the Baščaršija Flea Market on 22 December 1994 has not been established beyond reasonable doubt.¹² In response, the Prosecution submits that the totality of the evidence shows that the direction of fire was south-east and that the shells were fired from SRK territory.¹³ The Appeals Chamber invites the parties to discuss the evidence on the trial record, if any, that supports or rebuts the allegation that the shells may have originated from the territory controlled by the ABiH in the same direction;

FURTHER INFORMS the parties that the Appeals Hearing will take place in Courtroom I.

Done in English and French, the English text being authoritative.

Dated this sixth day of July 2009,

At The Hague, The Netherlands



Judge Fausto Pocar, Presiding

[Seal of the Tribunal]

⁸ E.g., *Galić* Trial Judgement, paras 132-135; *Galić* Appeal Judgement, paras 87, 100-107; Trial Judgement, paras 875-876, 880, 911.

⁹ Defence Appeal Brief, paras 155-157.

¹⁰ Prosecution Response Brief, para. 88.

¹¹ Trial Judgement, para. 975.

¹² Defence Appeal Brief, para. 251.

¹³ Prosecution Response Brief, para. 133.