



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie



Press Release . Communiqué de presse

(Exclusively for the use of the media. Not an official document)

CHAMBERS

CHAMBRES

The Hague, 8 June 2005
CVO/MOW/974c

ORAL DECISION RENDERED PURSUANT TO RULE 98BIS IN THE ORIĆ CASE

Today, 8 June 2005, Trial Chamber II rendered its Rule 98bis oral decision in *The Prosecutor v. Naser Orić*. The decision was read out by Judge Agius, the Presiding Judge. In its decision, the Trial Chamber made the following findings:

- Count 1 – murder (Articles 3 and 7(3)). The Trial Chamber found that there was sufficient evidence, with the exception was the alleged murder of Bogdan Živanović, which had been already conceded by the Prosecution;
- Count 2 – cruel treatment (Articles 3 and 7(3)). The Trial Chamber found there was sufficient evidence, with the exception of the alleged cruel treatment of Miloje Obradović, which had been already conceded by the Prosecution;
- Counts 3 and 5 – wanton destruction (Articles 3(b), 7(1) and 7(3)). The Trial Chamber found that there was sufficient evidence, with the exception of the villages of Radijevići and Božići, as already conceded by the Prosecution;
- Counts 4 and 6 – plunder (Articles 3(e), 7(1) and 7(3)). The Trial Chamber acquitted Naser Orić of these two counts since it found that the Prosecution has failed to adduce evidence capable of supporting a conviction.

Background

The case against Naser Orić started on 6 October 2004. On 31 May 2005, the Prosecution rested its case. Naser Orić is charged with six counts of violations of the laws or customs of war pursuant to Article 3 of the Statute of the Tribunal. More specifically, Naser Orić is charged with murder and cruel treatment pursuant to Article 3 of the Statute and Common Article 3(1)(a) of the Geneva Conventions of 1949. He is also charged with wanton destruction of cities, towns or villages not justified by military necessity and with plunder of public or private property, pursuant to Article 3(b) and (e) of the Statute, respectively.

The Trial Chamber heard Rule 98bis submissions by the Defence and the Prosecution on 2 and 3 June 2005 respectively. Today, 8 June 2005, the Trial Chamber rendered its oral decision pursuant to Rule 98bis.

Rule 98bis was amended on 8 December 2004 and the decision in the *Orić* case is the first application of the rule. The procedure is now entirely oral, and it is no longer party driven. The Trial Chamber found that the standard of review remains the same and consequently applied the test as set out in the *Jelisić* Appeals Judgement, namely whether the Prosecution's evidence, if believed, is sufficient for any reasonable trier of fact to find that guilt of the accused has been proved beyond reasonable doubt. The new Rule 98bis procedure is much quicker, and it should be noted that the submissions – with the excellent cooperation of both parties - and the reasoned ruling were all completed within less than a week. As noted by the

Internet address: <http://www.un.org/icty>

Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Tel.: +31-70-512-5343; 512-5356 Fax: +31-70-512-5355

Trial Chamber, thanks to this new oral procedure, a considerable amount of valuable court time has already been saved in this case (possibly up to two months). In fact, as also ordered by the Trial Chamber at the end of today's ruling, the Defence case has been scheduled to begin soon, namely on Monday 4 July 2005 (with the pre-Defence conference on Friday 1 July 2005).

With regard to the contents of the Rule 98*bis* ruling, the Trial Chamber found that there was evidence which, if believed, would be capable of proving that the general legal requirements for the application of Article 3 are met, namely that:

- an armed conflict existed between 10 June 1992 and 20 March 1993 on the territory of Bosnia and Herzegovina;
- there was a nexus between the acts of Naser Orić and such armed conflict;
- the crimes of murder, cruel treatment, wanton destruction and plunder constitute violations of rules of international customary law which protect important values and entail individual criminal responsibility; and that
- regarding the crimes of murder and cruel treatment, the persons alleged to have been killed or subjected to cruel treatment were persons taking no active part in the hostilities at the relevant time.

The Trial Chamber elaborated on the applicable law in relation to both the underlying crimes and criminal responsibility.

Having considered all the evidence presented by the Prosecutor, the Trial Chamber entered a judgement of acquittal of Naser Orić of the charges against him in Counts 4 and 6 of the indictment, namely the charge of plunder of public or private property, a violation of the laws and customs of war punishable under Article 3(e), Articles 7(1) and 7(3) of the Statute. More specifically, it should be noted that the indictment charges Naser Orić only with the plunder of "*cattle, furniture and television sets*". The Trial Chamber found in this regard that there was very little evidence pertaining to the plunder of furniture and TV sets and thus that the evidence adduced did not fulfill the jurisdictional requirement of Article 1 of the Statute, namely the requirement that the violations be serious.

While the Trial Chamber held that there was ample evidence which, if believed, could lead to the conclusion that several hundred heads of cattle were appropriated during or immediately after the attacks, it found that any criminal responsibility of the Naser Orić both under Article 7(1) and 7(3) was offset by the real and present necessity to acquire food for the survival of the population of Srebrenica. Having recognised that the defence of necessity was an established principle in customary international law in 1992 and 1993, the Trial Chamber considered the extraordinary humanitarian circumstances in Srebrenica at the time. It thus found that there was abundant evidence that Srebrenica was isolated, that the starving population was drastically increasing with the influx of refugees and that there had been repeated calls for help.

The Trial Chamber noted that there was no evidence that the taking away of cattle was disproportionate or that the direct perpetrators of the appropriation of cattle had brought about the humanitarian situation themselves, but rather that these acts had become indispensable for the survival of the population of Srebrenica. The Trial Chamber thus held that the Prosecution failed to adduce evidence capable of supporting a conviction for the crime of plunder of public or private property and consequently acquitted Naser Orić of Counts 4 and 6 of the indictment.

The Trial Chamber ordered the continuation of the case against Naser Orić in relation to the other counts in the indictment, namely Counts 1, 2, 3 and 5. However, with regard to the alleged murder of Bogdan Živanović in Count 1 and the alleged cruel treatment of Miloje Obradović in Count 2, the Trial Chamber found that there was no evidence capable of supporting a conviction and that Naser Orić consequently did not need to address these alleged incidents. Similarly, with regard to the alleged wanton destruction in the villages of Radijevići and Božići set out in Counts 3 and 5, the Trial Chamber found that there was no evidence capable of supporting a conviction and that Naser Orić therefore does not need to address those alleged incidents during the Defence case.

For practical purposes, the Trial Chamber invited the Prosecution to present an amended version of the indictment to reflect the above mentioned findings.

Proceedings can also be followed on the Tribunal's website www.un.org/icty.