

**UNITED
NATIONS**



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-05-88-A
Date: 6 November 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge William H. Sekule
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Mandiaye Niang

Registrar: Mr. John Hocking

Order of: 6 November 2013

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
VINKO PANDUREVIĆ**

PUBLIC

**ORDER FOR THE PREPARATION OF THE APPEAL
HEARING**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušković for Mr. Vujadin Popović
Mr. John Ostojić for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Peter Haynes QC and Mr. Simon Davis for Mr. Vinko Pandurević

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 “Scheduling Order for Appeal Hearing”, issued on 3 October 2013 by the Appeals Chamber (“Scheduling Order”), which sets the dates for the hearing of the appeals in this case (“Appeal Hearing”) as 2-13 December 2013;¹

RECALLING that in the Scheduling Order, the Appeals Chamber informed the parties that it would specify in due course questions the parties may be invited to address during the Appeal Hearing;²

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

RECALLING that the parties are expected to focus their oral arguments on the grounds of appeal raised in their briefs and that an appeal hearing is not the occasion for presenting new arguments on the merits of the case;³

EMPHASISING that the present Order in no way expresses the Appeals Chamber’s views on the merits of the appeals;

HEREBY INFORMS Vujadin Popović (“Popović”) and the Office of the Prosecutor (“Prosecution”) that, during the course of the Appeal Hearing, in addition to other matters advanced in their submissions or that the Appeals Chamber may wish to raise, they are invited to:

- (i) discuss, regarding Popović’s submission that the Trial Chamber erred in convicting him for the execution of more than 1,000 males at Kozluk on 15 July 1995 while the Indictment only charged him with killing about 500 Muslim men at that location,⁴ first, the Trial Chamber’s interpretation of paragraphs 30.10 and 30.8.1 of the Indictment at footnote 1839 of the Trial Judgement and, second, whether Popović was convicted for any killings in excess of those pleaded in these two provisions;

¹ Scheduling Order, p. 1.

² Scheduling Order, p. 1.

³ *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, *Addendum* to the Scheduling Order for Appeal Hearing, 12 April 2013, p. 1; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Order for the Preparation of the Appeal Hearing, 20 February 2013, p. 1.

⁴ See Appeal Brief on Behalf of Vujadin Popovic [*sic*], 21 January 2011 (confidential; public redacted version filed on 14 April 2011), paras 438, 442-443; Corrigendum to Brief in Reply on Behalf of Vujadin Popovic [*sic*] and Notice of Refiling of Vujadin Popovic’s [*sic*] Reply Brief, 18 May 2011 (confidential; public redacted version filed on 6 July 2011), para. 132.

HEREBY INFORMS the Prosecution and Drago Nikolić (“Nikolić”) that, during the course of the Appeal Hearing, in addition to other matters advanced in their submissions or that the Appeals Chamber may wish to raise, they are invited to:

- (i) discuss whether the Prosecution’s allegation that the Trial Chamber failed to apply the accepted factors for inferring genocidal intent to the evidence when assessing Nikolić’s *mens rea* for genocide⁵ exceeds the Prosecution’s Notice of Appeal⁶ and, if it does, whether the Prosecution wishes to add any further arguments to its motion to vary its notice of appeal concerning good cause for variation;⁷ and
- (ii) discuss whether in taking into account the alleged errors committed by the Trial Chamber in determining Nikolić’s *mens rea* for genocide,⁸ Nikolić’s specific intent for genocide would be unequivocally established, and particularly whether genocidal intent is the only reasonable inference available on the evidence;

HEREBY INFORMS Ljubiša Beara (“Beara”) and the Prosecution that, during the course of the Appeal Hearing, in addition to other matters advanced in their submissions or that the Appeals Chamber may wish to raise, they are invited to:

- (i) discuss whether the trial record supports a finding that the necessary link existed between the principal perpetrators of the killings in Jadar River and in Trnovo and Beara;⁹ and more generally, whether this link existed between the principal perpetrators of crimes who were not necessarily members of the VRS and members of the JCE to Murder;¹⁰

HEREBY INFORMS Vinko Pandurević (“Pandurević”) and the Prosecution that, during the course of the Appeal Hearing, in addition to other matters advanced in their submissions or that the Appeals Chamber may wish to raise, they are invited to:

⁵ Prosecution Appeal Brief, 21 January 2011 (confidential; public redacted version filed on 25 January 2011) (“Prosecution’s Appeal Brief”), paras 237-243. See also Prosecution Consolidated Reply Brief, 2 May 2011 (confidential; public redacted version filed on 6 July 2011) (“Prosecution’s Reply Brief”), para. 103.

⁶ Prosecution’s Notice of Appeal, 8 September 2010 (“Prosecution’s Notice of Appeal”), paras 38-39.

⁷ See Prosecution Reply Brief, para. 107.

⁸ Prosecution’s Appeal Brief, paras 272-289.

⁹ Trial Judgement, para. 1074. See Appellant Ljubiša Beara’s Appeal Brief, 21 January 2011 (confidential; public redacted version filed on 16 June 2011) (“Beara’s Appeal Brief”), introduction before para. 199, para. 199.

¹⁰ Trial Judgement, paras 794.1, 794.2, 794.7, 794.9. See Beara’s Appeal Brief, introduction before para. 204, paras 206, 207.

- (i) discuss the Trial Chamber's finding that Pandurević had the ability to exercise effective control over the Zvornik Brigade members in Zvornik between 4 and 15 July 1995,¹¹ in particular, with reference to its reliance on Witness PW-168's evidence;¹²
- (ii) discuss the Trial Chamber's finding that Pandurević did not have sufficient notice of the Zvornik Brigade's involvement in possible exterminations as of 12 p.m. on 15 July 1995;¹³
- (iii) discuss the legal standard applied by the Trial Chamber in finding that Pandurević did not have reason to know that crimes "*would* be committed with discriminatory intent"¹⁴ as well as the Trial Chamber's factual finding that Pandurević did not have reason to know that crimes would be committed by Zvornik Brigade members with discriminatory intent;¹⁵
- (iv) discuss the Trial Chamber's finding that it was not possible for Pandurević to report to the Military Prosecutor because of the likely interference by the VRS Main Staff in any possible proceedings,¹⁶ as well as the Trial Chamber's finding that Pandurević did take some measures to address the crimes of his subordinates;¹⁷ and
- (v) discuss whether, in the event that the Appeals Chamber were to grant Pandurević's argument that he lacked effective control over the Zvornik Brigade in the 4-15 July 1995 period,¹⁸ Pandurević could nonetheless be criminally liable for failing to punish members of the Zvornik Brigade with respect to crimes committed in that time-frame.¹⁹

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

Dated this sixth day of November 2013,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

¹¹ See Pandurević Appeal Brief Against the Judgment [*sic*] of the Trial Chamber of 10 June 2010, 21 January 2011 (confidential; public redacted version filed on 12 April 2011) ("Pandurević's Appeal Brief"), paras 177-185.

¹² See Trial Judgement, paras 2029-2030.

¹³ See Trial Judgement, para. 2079.

¹⁴ See Trial Judgement, para. 2100.

¹⁵ See Trial Judgement, para. 2100 (emphasis added).

¹⁶ See Trial Judgement, para. 2063.

¹⁷ See Trial Judgement, para. 2064.

¹⁸ See Pandurević's Appeal Brief, paras 177-185.

¹⁹ See Prosecution's Appeal Brief, paras 168, 184-186.