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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

ICTY WEEKLY UPDATE-45

11 September 1998

LAST MINUTE NEWS

CELEBICI CASE:

SENTENCING SUBMISSIONS AND WITNESSES TO BE HEARD AS OF MONDAY 12 OCTOBER

On 10 September 1998, the "Celebici" Trial Chamber, consisting of Judge Karibi-whyte, presiding, Judge Odio Benito and Judge Jan, issued a Scheduling Order for the Parties to prepare to present evidence on sentencing.

One recalls that amendments to the Rules of Procedure and Evidence were adopted in July 1998 (see press Release 333) providing that Judgements rendered by Trial Chambers would not only determine whether the accused is/are innocent or guilty but also, if the accused is/are found guilty of some or all of the charges brought against him/them, impose sentence. These amendments entered into force immediately, a few weeks before completion of the presentation of evidence in the Celebici case. This evidence did not include sentencing issues or witnesses since the Parties had not prepared for it under the Rules in force at the beginning of the trial.

In its Order of 10 September 1998, the Trial Chamber considered "*that it would be within the spirit of the amendments to require the accused to present evidence on sentencing at this stage of the proceedings to enable the judgement on the guilt or otherwise of the accused to the charges in the indictment to be rendered at the same time as the penalty to be imposed in respect of any finding of guilt, and that this procedure would not prejudice the rights of the accused nor in any way indicate the guilt or otherwise of the accused*" (emphasis added).

Accordingly the Chamber ordered the Prosecution and the Defence to file by 1 October 1998 and 5 October 1998 respectively "*written submissions if any in respect of sentencing, including a list of witnesses to be called*". A closed Status Conference is scheduled on 7 October 1998 and public hearings will be held as of Monday 12 October 1998: the Prosecution will take the floor for a maximum of one sitting day and the Defence for a maximum of two sitting days.

ICTY'S BUREAU DENIES DEFENCE MOTION ON JUDICIAL INDEPENDENCE

On 4 September 1998, the Bureau of the International Tribunal (President McDonald, Vice-President Shahabuddeen, Judge Cassese, Presiding Judge of Trial Chamber II, and Judge Jorda, Presiding Judge of Trial Chamber I) denied a Defence Request that Judge Odio Benito ceases to take any further part in the proceedings of the Celebici case.

In their Motion, which was filed on 25 May 1998, the Defendants contended that Judge Odio Benito had "*ceased to meet the qualifications for a Judge of the International Criminal Tribunal for the former Yugoslavia by virtue of her having taken the oath of office of a Vice-President of the Republic of Costa Rica (...) and has acquired an association which may affect her impartiality.*" The Prosecutor filed no response.

Considering that "*what is being questioned is whether, having regard to the holding of the office of Second Vice-President of Costa Rica, the requirement of impartiality (...) [is] now being met*", the Bureau found that "*the mere fact that a person who exercises judicial functions is to some extent subject, in another capacity, to executive supervision, is not by itself enough to impair judicial independence*".

The courtroom schedule is provisional and you are invited to check for last minute changes with the Public Information Unit.

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

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It further found that “*Judge Odio Benito has been holding the position of Vice-President in name only from the date she took the oath of office. She has committed herself not to take up the duties of her post until she has completed her judicial duties (...) [and] not to assume the functions or duties of the President of Costa Rica in his temporary or permanent absence prior to the termination of her tenure as a Judge. Furthermore, the President of the Republic of Costa Rica has agreed that she will not assume her duties as Second Vice-President until such time.*”

The Bureau thus concluded that Judge Odio Benito “*is not disqualified under Sub-rule 15(A) of the Rules of Procedure and Evidence from sitting on the trial of the applicants.*”

COURTROOM'S SCHEDULE: MONDAY 14 SEPTEMBER TO FRIDAY 18 SEPTEMBER 1998

COURTROOM I:

No court proceedings scheduled for this week.

COURTROOM II:

No court proceedings scheduled for this week.

COURTROOM III:

<u>Monday 14</u>	<u>Tuesday 15</u>	<u>Wednesday 16</u>	<u>Thursday 17</u>	<u>Friday 18</u>
No court proceedings	9.30, TC II Kupreskic et al. trial, open session	9.30, TC II Kupreskic et al. trial, open session	9.30, TC II Kupreskic et al. Trial, open session	9.30, TC II Kupreskic et al. Trial, open session
No court proceedings	14.30-16.15, TC II Kupreskic et al. trial, open session	14.30-16.15, TC II Kupreskic et al. trial, open session	No court proceedings	No court proceedings

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