



17 November 2000

ICTY WEEKLY UPDATE – 148

PROCEDURAL DEVELOPMENTS:

I. OVERVIEW OF COURT PROCEEDINGS

KORDIĆ & ČERKEZ CASE (“LAŠVA VALLEY”)

Trial Chamber III – Judges May (Presiding), Bennouna and Robinson

The Trial Chamber reconvened this week having adjourned on 18 October 2000. On Monday 13 and Tuesday 14 November the hearings were held in closed session.

On Wednesday 15 November, the Trial Chamber called Colonel Marinko Palavra as a Court witness. Colonel Palavra, currently Chief of the Military Police in the Department of Security and Intelligence Affairs attached to the Federation of Bosnia and Herzegovina Defence Ministry, previously testified in the *Blaškić* case on 11 and 12 January 1999. From August 1993 to August 1997, Colonel Palavra was the head of the 4th Battalion of Military Police of the HVO in central Bosnia.

During this hearing, the parties were given the opportunity to question Colonel Palavra on the testimony he gave in the *Blaškić* case. After the conclusion of Colonel Palavra's cross-examination on Thursday 16 November, Counsel for Čerkez recalled Colonel Hendrick Morsink to question him about an exhibit entitled "The list of Muslims being taken prisoner by the HVO Vitez" which he received from Borislav Jozić, the HVO liaison officer in April 1993.

The Kordić defence then recalled Mr. Edin Husić, who previously testified in this case on 2 February 2000, to be cross-examined about the authenticity of a tape he produced during the course of his original evidence. The Trial Chamber concluded the week's hearings in closed session.

JELISIĆ CASE (“BRČKO-LUKA CAMP”)

Appeals Chamber – Judge Pocar

On Tuesday 14 November, Judge Pocar held the scheduled status conference in open session. Judge Pocar noted that a scheduling order for the continuation of the appeal will be issued shortly.

BRĐANIN & TALIĆ CASE (“KRAJINA”)

Trial Chamber II – Judges Hunt (Presiding) and Liu

On Friday 17 November, Judges Hunt and Liu held the scheduled status conference in open session.

II. OVERVIEW OF COURT DOCUMENTS

NALETILIĆ & MARTINOVIĆ CASE (“TUTA & ŠTELA”)

DECISION ON PROSECUTION MOTION TO TAKE DEPOSITIONS FOR USE AT TRIAL

On 10 November 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) issued its decision on the prosecution motion, dated 11 October 2000, to take depositions for 23 named witnesses in Sarajevo in closed session for use at trial pursuant to Rule 71.

In its decision, the Trial Chamber noted that “*many of the witnesses were prisoners in camps mentioned in the indictment and their testimony covers matters such as general living conditions and the occurrence of forced labour in the camps, knowledge of deaths and injuries caused by performing dangerous labour, witnessing acts such as beatings, hearing gun shots and/or screams, and being the victim of, or witness to, property damage*”. Further, the witnesses would not present eyewitness evidence directly implicating the accused in the crimes charged and many witnesses will give evidence of similar facts. Therefore, the Trial Chamber found that the witnesses were suitable to give evidence by way of

depositions. The Trial Chamber emphasised that deposition evidence may be accorded less weight than evidence given directly in the courtroom.

Ordering that the depositions of the persons identified in the motion may be taken for use at trial, the Trial Chamber also ordered that the question of location for the deposition procedure, whether the sessions will be held in open or closed session, and the presence of the accused be discussed between the parties.

DECISION ON PROSECUTION AMENDED MOTION FOR TAKING FORMAL STATEMENTS

On 10 November 2000, Trial Chamber I granted the prosecution's amended motion for the taking of formal statements, dated 11 October 2000.

Trial Chamber I had, on 22 June 2000, denied the prosecution's first motion seeking approval for Rule 94ter statements to be taken by an investigator from the Office of the Prosecutor in order to safeguard the confidentiality of the information given by the witnesses, instead of by an investigating judge from Bosnia and Herzegovina in accordance with the rules of that country as required by the Rule 94ter. Considering that the parties had not exhausted all potential means of obtaining statements in accordance with the terms of Rule 94ter, such as making special arrangements with the Bosnian authorities, the Trial Chamber denied the Prosecution's motion (see Weekly Update 130).

In the present motion, the prosecution proposed that the statements be taken by an investigating judge from Bosnia and Herzegovina, but that the witnesses be transported to Sarajevo by the ICTY Victims and Witnesses Section, instead of being called through domestic channels, and that the procedure may take place in the ICTY Sarajevo field office if the identity of the witnesses and confidentiality of their statements cannot be guaranteed in Sarajevo court facilities.

In reaching its decision, the Trial Chamber found that this later proposal by the prosecution "*represents an acceptable compromise between the technical requirements of Rule 94ter, and the need to ensure the safety and security of witnesses, and does not infringe the rights of the accused*".

TODOROVIĆ CASE ("BOSANSKI ŠAMAC")

SUBMISSIONS FILED REGARDING DECISION ON MOTION FOR JUDICIAL ASSISTANCE

Pursuant to the decision and scheduling order issued by the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Wald and Pocar) on 8 November 2000, Italy (on 14 November 2000), Canada, Denmark, France, Germany, NATO, the United Kingdom, the United States of America and the prosecution (on 15 November 2000) have filed written briefs in support of their applications for review. (see Weekly Update 147).

BRĐANIN & TALIĆ CASE ("KRAJINA")

DECISIONS ON FOURTH AND FIFTH PROSECUTION MOTIONS FOR PROTECTIVE MEASURES

On 15 November 2000, Trial Chamber II (Judges Hunt (Presiding), Mumba and Liu) issued its decisions on the fourth and fifth motions of the prosecution for protective measures, filed on 21 September 2000 and 10 October 2000 respectively.

SECOND DECISION ON MOTION FOR ACCESS TO CONFIDENTIAL INFORMATION

On 15 November 2000, Trial Chamber II issued its decision further to submissions filed on 30 October 2000 by the prosecution regarding the decision of Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) in the *Kvočka & others* case, dated 3 October 2000.

Pursuant to a decision issued by Judge Hunt, the pre-trial Judge in this case, on 31 July 2000, (see Weekly Update 136), on 3 October 2000, Trial Chamber I ordered that the transcripts, exhibits and confidential materials filed to date in the *Kvočka & others* case be disclosed to Trial Chamber II for "*any purposes that it will deem appropriate in accordance with its jurisprudence in practice, which might allow for disclosure to the Defence in the Brđanin and Talić case*" subject to certain conditions (see Weekly Update 142).

In the present motion, the prosecution sought redaction of parts of the material released by Trial Chamber I which would reveal the identity of any prosecution witnesses prior to its disclosure to Brđanin and Talić.

In its decision, the Trial Chamber II considered that, at this stage, the defence "*do not need to know the identity of the witnesses who gave this evidence in order to determine whether any particular piece of*

this evidence will in fact assist them in their preparation for this case. If having considered the material, Brđanin and Talić wish to give further consideration to a particular piece of this evidence, either with a view to calling the witness in the trial themselves or to interview the witness in order to obtain additional information, then at that stage, and only at that stage, they will be in a position to justify the revelation to them of the identity of that protected witness.”

Trial Chamber II therefore granted the defence access to the material produced by Trial Chamber I with the identity of any witness who gave evidence on a confidential basis redacted. Trial Chamber II also granted leave to the defence to make an application, at the appropriate time, justifying the disclosure of the identity of any witness.

JELISIĆ CASE (“BRČKO-LUKA CAMP”)

DECISION ON REQUEST TO ADMIT ADDITIONAL EVIDENCE

On 15 November 2000, the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Wald and Pocar) dismissed the appellant’s motion to present additional evidence, filed on 8 September 2000.

In the motion, the appellant sought an order allowing the admission of the following evidence pursuant to Rules 107 and 115 of the Tribunal’s Rules of Procedure and Evidence: (1) an expert’s report from Mrs. Ljiljana Mijović with respect to Jelisić’s rank in the police hierarchy and powers deriving from this rank; and (2) a report and/or testimony from Mr. Timothy McFadden, Commanding Officer of the UN Detention Unit, with respect to the overall behaviour of Jelisić as a detainee.

In reaching its decision, the Appeals Chamber considered that the appellant had not shown that the material, with the exception of the report concerning Jelisić post-sentencing behaviour, was not available at the trial. With regard to the latter report, the Appeals Chamber held that it had not been shown that it was in the interests of justice to admit the report as it was not relevant to any issue before the Trial Chamber nor was it capable of being considered by the Trial Chamber. Therefore, in this respect, the Trial Chamber had not committed any error in the exercise of its discretion.

COURTROOM SCHEDULE: 20 NOVEMBER – 24 NOVEMBER *

MONDAY 20 NOVEMBER

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Closing arguments
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Closing arguments
Courtroom II 09:20 - 12:50, **Krstic**, Trial
13:50 - 15:00, **Krstic**, Trial
Courtroom III 09:30 - 13:00, **Kordic/Cerkez**, Trial
14:30 - 16:00, **Kordic/Cerkez**, Trial

TUESDAY 21 NOVEMBER

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Closing arguments
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Closing arguments
Courtroom II 09:20 - 12:50, **Krstic**, Trial
13:50 - 15:00, **Krstic**, Trial
Courtroom III 09:30 - 13:00, **Kordic/Cerkez**, Trial
14:30 - 16:00, **Kordic/Cerkez**, Trial

WEDNESDAY 22 NOVEMBER

Courtroom I 09:30 - 13:00, **Kunarac/Kovac/Vukovic**, Closing arguments
14:30 - 16:00, **Kunarac/Kovac/Vukovic**, Closing arguments
Courtroom II 09:20 - 12:50, **Krstic**, Trial
13:50 - 15:00, **Krstic**, Trial
Courtroom III 09:30 - 13:00, **Kordic/Cerkez**, Trial
14:30, **Sikirica/Kolundzija/Dosen**, Pre-trial Conference

THURSDAY 23 NOVEMBER

Courtroom I 09:20 - 12:50, **Krstic**, Trial
13:50 - 15:00, **Krstic**, Trial
Courtroom II 09:30 - 13:00, **Krnojelac**, Trial
14:30 - 16:00, **Krnojelac**, Trial
Courtroom III 09:30 - 13:00, **Kordic/Cerkez**, Trial
14:30 - 16:00, **Kordic/Cerkez**, Trial

FRIDAY 24 NOVEMBER

Courtroom I 09:20 - 12:50, **Krstic**, Trial
13:50 - 15:00, **Krstic**, Trial
Courtroom II 10:00, **Nikolic**, Status Conference
Courtroom III 09:30 - 13:00, **Kordic/Cerkez**, Trial

*The courtroom schedule is provisional and you are invited to check for last minute changes with the Public Information Services. Unless otherwise indicated, all sessions are open.

For the latest list of all court filings, please visit the [ICTY Court Records](#)

For a selection of the latest public documents, please visit the [ICTY Website](#)