



15 December 2000

## ICTY WEEKLY UPDATE – 152

**Please note that court proceedings will resume on Monday 15 January 2001**

### PROCEDURAL DEVELOPMENTS:

#### **I. OVERVIEW OF COURT PROCEEDINGS:**

##### **KRSTIĆ CASE (“SREBRENICA”)**

*Trial Chamber I – Judges Rodrigues (Presiding), Riad and Wald*

The Trial Chamber reconvened this week entering its eighteenth week of hearings, with the seventh and final week of the defence case-in-chief.

On Monday 11 December, the cross-examination of General Radinović by the prosecution continued from Friday 8 December. On Tuesday 12 December, General Radinović was re-examined by the defence before being questioned by the Trial Chamber. On Wednesday 13 December, the Trial Chamber heard the testimony of protected defence witness “DF” partly in open session. Witness “DF” testified about events surrounding the attack on Srebrenica, the beginning of the operation Krivaja 95, in July 1995 and clashes between his Brigade and the 28th Division of the Bosnia and Herzegovina army.

The Trial Chamber has now adjourned until 15 January 2001 when it will begin to hear rebuttal arguments of the prosecution.

##### **TODOROVIĆ CASE (“BOSANSKI ŠAMAC”)**

*Trial Chamber III – Judges Robinson*

On Wednesday 13 December, Judge Robinson (sitting in the absence of Judges Hunt and Bennouna) held a hearing on the joint *ex parte* and confidential motion filed by the Office of the Prosecutor (OTP) and counsel for Stevan Todorović, dated 29 November 2000.

The joint motion reflected a negotiated plea agreement whereby Todorović would plead “guilty” to Count 1 of the indictment, dated 25 March 1999, namely persecutions on political, racial and religious grounds, a crime against humanity. The agreement also provided that the accused would withdraw all motions pending before the Trial Chamber relating to an evidentiary hearing regarding the circumstances of his arrest and his request for judicial assistance. Specifically, he would withdraw the allegations that his arrest was unlawful and that SFOR or NATO was involved in any unlawful activity in relation to his arrest (please see Press Releases 536 and 539).

The OTP stated that it would formally request the withdrawal of Counts 2 to 27 of the indictment against Todorović and would recommend to the Trial Chamber that they impose a sentence of not less than five years and not more than 12 years. At the hearing, Judge Robinson reminded the parties that any final decision on sentencing ultimately rested with the Trial Chamber.

At the hearing, Todorović entered a plea of “guilty” to Count 1 of the indictment, however, pursuant to Rule 62 (vi)(b) of the Tribunal’s Rules of Procedure and Evidence, Judge Robinson will refer the plea of “guilty” to the fully constituted Trial Chamber so that it may satisfy itself that, pursuant to Rule 62 *bis*, the plea was made voluntarily, it was informed, not equivocal, and that “*there is a sufficient factual basis for the crime and the accused’s participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case*”.

A hearing has been scheduled to take place on **12 January 2001** for the Trial Chamber to determine whether it is satisfied as to the matters set forth in Rule 62 *bis* and to enter a finding of guilt, if it is so satisfied. The parties have been ordered to submit a brief setting out the full factual basis for the Count, including the participation of the accused in the crimes and witness statements by **5 January 2001**.

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**KORDIĆ & ČERKEZ CASE (“LAŠVA VALLEY”)**

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

On Thursday 14 and Friday 15 December, the Trial Chamber heard the parties' closing arguments. The Trial Chamber has now adjourned to consider its judgement which will be rendered in due course.

During the trial, which commenced on 12 April 1999, the Trial Chamber sat for 239 trial days and heard the testimony of 122 prosecution witnesses, 62 witnesses for Kordić, 55 witnesses called by Čerkez and 2 witnesses called by the Trial Chamber itself.

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**KUPREŠKIĆ & OTHERS CASE (“LAŠVA VALLEY”)**

*Pre-Appeal Judge - Judge Bennouna*

On Thursday 17 December, Judge Bennouna held a status conference partly in open session.

**II. OVERVIEW OF COURT DOCUMENTS:**

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**SIKIRICA, DOŠEN & KOLUNDŽIJA CASE (“KERATERM CAMP”)**

KOLUNDŽIJA'S APPLICATION FOR LEAVE TO APPEAL DISMISSED

On 12 December 2000, a Bench of the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah and Nieto-Navia) issued a decision rejecting Kolundžija's application for leave to appeal the decision of Trial Chamber III (Judges May (Presiding), Bennouna and Robinson), dated 22 September 2000, in which the Trial Chamber refused to allow the disclosure of certain documents and related materials relied on by potential prosecution witness Sophie Hanne Greve in her expert testimony.

Finding that Kolundžija had not shown that the decision would cause such prejudice to his case as could not be cured by the final disposal of the trial including post-judgement appeal, nor that the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally, the Bench dismissed the application for leave to appeal.

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**KRSTIĆ CASE (“SREBRENICA”)**

ORDER FOR GENERAL HALILOVIĆ TO APPEAR AS A WITNESS

On 12 December 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald), ordered General Halilović to appear before the Trial Chamber on 1 February 2001 as a witness and called upon the competent authorities of Bosnia and Herzegovina to take all measures for the appearance of the witness.

The Trial Chamber issued the order *proprio motu* pursuant to Rule 98 of the Tribunal's Rules of Procedure and Evidence, considering that “*in order to establish the truth about the crimes ascribed to the accused, it is imperative to summon a witness able to provide the Trial Chamber with more specific information as to the presence and role of the 28<sup>th</sup> Division of the Army of the Republic of Bosnia-Herzegovina just before, during and just after the attack upon it by the Serbian forces in July 1995 and as to the column of persons seeking to leave the Srebrenica enclave at the time of the attack including: its composition, the arms carried by it, the experiences of the column in military terms and, in particular, the possible meeting up with an operation conducted by the Bosnian forces from Tuzla (and more generally from the territories controlled by these forces), the possible breakthroughs made by the column and the number of people concerned, the losses suffered by the column, the moments (exact as possible) at which the authorities and the population became aware of the capture and, then, the execution or sudden disappearance of members of the column, and, generally, the circumstances surrounding the seizure of the Srebrenica enclave as lived through by the Bosnian Muslim civilian and military authorities as the time of the facts*”.

SCHEDULING ORDER ISSUED FOR REMAINDER OF TRIAL

On 14 December 2000, Trial Chamber I, noting the close of the prosecution and defence cases on 28 July 2000 and 13 December 2000 respectively, issued a scheduling order for the remainder of the trial as follows: prosecution rebuttal evidence: **15 to 19 January 2001**; the defence rejoinder evidence: **29 January to 2 February 2001**; closing briefs to be filed by **9 March 2001**; closing arguments: **19 to 23 March 2001**.

Cont.

## TODOROVIĆ CASE (“BOSANSKI ŠAMAC”)

### ORDER ON MOTION FOR ADDITIONAL EVIDENCE

On 13 December 2000, the Appeals Chamber (Judges Shahabuddeen (Presiding), Vohrah, Nieto-Navia, Wald and Pocar) denied Todorović’s motion for additional evidence, filed on 22 November 2000 (see Weekly Update 151).

In reaching its decision, the Trial Chamber considered that the issue of concern in the appeal is whether the motion for judicial assistance should have been addressed to the States and to NATO. This issue is not affected by their awareness of the motion for judicial assistance served upon SFOR and as such, the present motion was misconceived.

## KVOČKA, KOS, RADIĆ, ŽIGIĆ & PRCAĆ CASE (“OMARSKA & KERATERM CAMPS”)

### DECISION ON DEFENCE ADDITIONAL MOTION FOR PSYCHOLOGICAL EVALUATION OF THE ACCUSED PRCAĆ

On 14 December 2000, Trial Chamber I (Judges Rodrigues (Presiding), Riad and Wald) denied Prcać’s additional motion for a psychological evaluation, dated 24 November 2000.

Noting its decision of 18 May 2000 (see Weekly Update 127) ordering that a psychological and medical-psychiatric examination of Prcać be conducted in conformity with the regulations of the profession, the Trial Chamber considered that the defence now submits that the psychological report cannot be accepted as it does not meet the required professional standards.

In reaching its decision, the Trial Chamber considered that the defence did not oppose the Registrar’s original decision not to appoint Ms. Najman, the psychologist who the defence now propose to conduct an additional expert assesment, and that the psychological report was filed nearly five months ago and that the defence had “*ample time to ask for a re-examination*”. Moreover, the Tribunal is only required to pay the expenses of legal representation that are “*necessarily and reasonably incurred*”.

### DECISION ON PROSECUTION MOTION TO FILE AFFIDAVIT EVIDENCE

On 14 December 2000, Trial Chamber I rejected the prosecution’s motion to re-file affidavits and formal statements pursuant to Rule 94*ter* of the Tribunal’s Rules of Procedure and Evidence, dated 15 November 2000.

In the motion the prosecution proposed to file unredacted versions of six affidavits previously rejected by the Trial Chamber on 30 October 2000 (see Weekly Update 147). However, the Trial Chamber noted that it rejected the affidavits on the ground that the Trial Chamber and the defence were unable to determine whether they had been certified in accordance with the provisions of Rule 94*ter* before the witnesses whose testimony they corroborate were heard. Further, the witnesses have now been heard by the Trial Chamber and the prosecution’s case has finished. In these circumstances, the filing of the unredacted versions of the six affidavits *a posteriori* did not cure their failings.

## PRESS RELEASES ISSUED SINCE 8 DECEMBER:

| DATE       | NUMBER | TITLE  | E | F | B/C/S |
|------------|--------|--|---|---|-------|
| 12/12/2000 | 548    | HENRY HANS HOLTHUIS IS APPOINTED AS REGISTRAR OF THE ICTY    | E |   | B/C/S |
| 13/12/2000 | 549    | PLEA AGREEMENT ANNOUNCED AT MOTION HEARING IN TODOROVIĆ CASE | E |   | B/C/S |

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