



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-98-34-A  
Date: 16 September 2005  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrésia Vaz  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Order of:** 16 September 2005

**PROSECUTOR**

v.

**Mladen Naletilić, aka "TUTA"  
Vinko Martinović, aka "ŠTELA"**

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**SCHEDULING ORDER FOR APPEALS HEARING**

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**Counsel for the Prosecutor:**

Mr. Norman Farrell  
Mr. Peter M. Kremer, QC

**Counsel for the Appellants:**

Mr. Matthew Hennessy and Mr. Christopher Young Meek for Mladen Naletilić  
Mr. Želimir Par and Mr. Kurt Kerns for Vinko Martinović

*JK*

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”);

**NOTING** the “Judgement” rendered in this case by the Trial Chamber on 31 March 2003 (“Trial Judgement”);

**BEING SEIZED OF** appeals by the parties against the Trial Judgement;

**NOTING** the “Notice of Appeal of Mladen Naletilić aka Tuta” filed on 29 April 2003 (“Naletilić Notice of Appeal”); “Mladen Naletilić’s Revised Appeal Brief” filed confidentially on 10 October 2003 (“Naletilić Revised Appeal Brief”);<sup>1</sup> the “Prosecution’s Respondent’s Brief to Mladen Naletilić’s Appeal Brief” filed confidentially on 30 October 2003;<sup>2</sup> “Mladen Naletilić’s Reply to the Prosecution’s Response to Naletilić’s Appeal Brief” filed confidentially on 17 November 2003; the “Notice of Appeal Against Judgement No. IT-98-34-T of 31 March 2003 in the Case: Prosecutor vs. Vinko Martinović” filed on 29 April 2003 (“Martinović Notice of Appeal”); the confidential “Appeal Brief of Mr. Vinko Martinović” filed on 29 August 2003 (“Martinović Appeal Brief”);<sup>3</sup> the “Prosecution’s Respondent’s Brief to Vinko Martinović’s Appeal Brief” filed confidentially on 8 October 2003;<sup>4</sup> the “Supplemental Memorandum to Martinović’s Appeal Brief” filed on 3 February 2005; the “Prosecution’s Response to Vinko Martinović’s Supplemental Appeal Brief” filed on 4 March 2005; the “Prosecution’s Notice of Appeal” filed on 2 May 2003 (“Prosecution Notice of Appeal”); the “Appeal Brief of the Prosecution” filed on 14 July 2003 (“Prosecution Appeal Brief”); “Mladen Naletilić’s Response to the Prosecution’s Appeal Brief” filed on 26 September 2003; the “Response Brief of Vinko Martinović” filed on 26 September 2003; and the “Consolidated Reply Brief of the Prosecution” filed on 13 October 2003;

**RECALLING** the “Scheduling Order” issued on 6 June 2005, which set the dates for the hearing on the merits of the appeals in this case from 17-19 October 2005 in The Hague (“Hearing”), and informed the parties that a precise timetable for the Hearing would be set forth in a separate scheduling order;

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<sup>1</sup>This brief replaced the original “Mladen Naletilić’s Brief on Appeal” filed confidentially and under seal on 15 September 2003 (“Naletilić Appeal Brief”) pursuant to an order of the Pre-Appeal Judge. *See* Decision on Prosecution’s Urgent Motion Regarding Defects in Mladen Naletilić’s Brief on Appeal of 15 September 2003, 3 October 2003, p. 3.

<sup>2</sup> A public redacted version of this brief was filed by the Prosecution on 21 March 2005.

<sup>3</sup> The Pre-Appeal Judge in this case ordered that this brief be treated as filed confidentially. *See* Order, 23 September 2003, p. 2. A public redacted version of this brief was filed on 24 May 2005.

NOTING the "Prosecution's Request in Relation to the Appeals Hearing" filed on 9 September 2005;

HEREBY INFORMS the parties that during the Hearing, without prejudice to any matter the parties or the Appeals Chamber may wish to raise, the Appeals Chamber invites the parties to, *inter alia*, further develop their submissions on the following issues:

1. Alleged vagueness of the Indictment<sup>5</sup>: In the event that the Appeals Chamber finds that the Indictment is defective as alleged by Naletilić and Martinović with regard to the following incidents, whether the defective Indictment was nevertheless timely cured by the Prosecution:
  - a. Naletilić: 1) unlawful transfer of civilians from the DUM area in Mostar on 13 and 14 June 1993 and from the Centar II area in Mostar on 29 September 1993 (Count 18);<sup>6</sup> and 2) mistreatment in Ljubuški prison (Counts 11 and 12).<sup>7</sup>
  - b. Martinović: 1) the turning of a private property into the headquarters of the Vinko Škrobo ATG (Count 5);<sup>8</sup> 2) three incidents of beatings of prisoners in Martinović's area of command (Counts 11 and 12);<sup>9</sup> 3) unlawful transfer of civilians from the DUM area in Mostar on 13 and 14 June 1993 and from the Centar II area in Mostar on 29 September 1993 (Count 18);<sup>10</sup> and 4) different incidents of plunder in Mostar other than those taking place at the DUM neighbourhood on 13 June 1993 (Count 21).<sup>11</sup>
2. Alleged error in the Trial Chamber's definition of deportation:<sup>12</sup>
  - a. Discuss the definition and rationale behind the penalisation of deportation (English version of the International Tribunal's Statute) and expulsion (French version of the International Tribunal's Statute) as distinct from other terms often used interchangeably in a narrow context such as unlawful transfer, forcible transfer, forcible displacement, expulsion and evacuation.
  - b. Discuss whether there is a crossing of a State border requirement in the crime of deportation and, if so, whether it only refers to a *de jure* border or may also include a *de facto* border.
3. Alleged error on the admission of evidence secured by a Search Warrant executed without the assistance of Bosnia and Herzegovina and whether, at trial, Naletilić challenged the admission of evidence on this basis;<sup>13</sup>

<sup>4</sup> A public redacted version of this brief was filed by the Prosecution on 21 March 2005.

<sup>5</sup> Second Amended Indictment, 28 September 2001.

<sup>6</sup> See Naletilić Notice of Appeal, 12<sup>th</sup> Ground of Appeal; Naletilić Appeal Brief, para. 143.

<sup>7</sup> See Naletilić Appeal Brief, paras. 176, 270.

<sup>8</sup> See Martinović Appeal Brief, para. 143.

<sup>9</sup> See Martinović Appeal Brief, para. 184.

<sup>10</sup> See Martinović Appeal Brief, paras. 417, 498.

<sup>11</sup> See Martinović Appeal Brief, paras. 431, 434, and 453.

<sup>12</sup> See Prosecution Notice of Appeal, 3<sup>rd</sup> Ground of Appeal; Prosecution Appeal Brief, paras. 4.1-4.28.

<sup>13</sup> See Naletilić Revised Appeal Brief, paras. 39-56.

4. Alleged errors relating to the admission of evidence in support of the Prosecution's rebuttal case;<sup>14</sup>
5. Alleged errors relating to the finding on Naletilić's *mens rea* regarding the activities of ATG units in Ljubuški and Mostar;<sup>15</sup>
6. Alleged errors relating to the findings in paragraph 268 and footnotes 722-729 of the Trial Judgement with regard to unlawful labour in the area of responsibility of the Vinko Škrobo ATG and whether Martinović raised, at trial, the argument that nothing changed with regard to fortification works along the frontline in his area of responsibility since the beginning of the conflict;<sup>16</sup>
7. Alleged error in Trial Chamber's finding that Martinović ordered four prisoners of war to walk across the frontline with wooden rifles on 17 September 1993 on grounds that it is not logical that human shields were used alongside a tank for the purpose of ascertaining enemy positions and that this is confirmed by Defence Witness MN's testimony;<sup>17</sup>
8. Alleged errors related to the finding that Martinović is guilty of unlawful labour through the use of detainees to assist in the looting of private property on the basis of the evidence of Witnesses F, YY, and AB;<sup>18</sup>

**CONSIDERING** that the identification of these issues is in no way an expression of an opinion on the merits of the appeals;

**FURTHER INFORMS** the parties that the timetable for the Hearing shall be as follows:

**Monday, 17 October 2005:**

9:00 a.m. – 9:15 a.m.	Introductory Statement by the Presiding Judge (15 minutes)
9:15 a.m. – 10:45 a.m.	Submissions by Naletilić (1 hour and 30 minutes)
10:45 a.m. – 11:15 a.m.	Pause (30 minutes)
11:15 a.m. – 12:45 p.m.	Response by the Prosecution (1 hour and 30 minutes)
12:45 p.m. – 2:45 p.m.	Pause (2 hours)
2:45 p.m. – 3:15 p.m.	Reply by Naletilić (30 minutes)
3:15 p.m. – 4:15 p.m.	Submissions by Martinović (1 hour)
4:15 p.m. – 4:45 p.m.	Pause (30 minutes)
4:45 p.m. – 5:15 p.m.	Continued Submissions by Martinović (30 minutes)
5:15 p.m. – 5:45 p.m.	Response by the Prosecution (30 minutes)

<sup>14</sup> See Naletilić Notice of Appeal, 8<sup>th</sup> Ground of Appeal; Naletilić Revised Appeal Brief, paras. 133-137.

<sup>15</sup> See Naletilić Notice of Appeal, 21<sup>st</sup> Ground of Appeal; Naletilić Revised Appeal Brief, paras. 174-194.

<sup>16</sup> See Martinović Appeal Brief, paras. 37-48.

<sup>17</sup> See Martinović Appeal Brief, paras. 100-102.

**Tuesday, 18 October 2005:**

9:00 a.m. – 10:00 a.m.	Continued Response by the Prosecution (1 hour)
10:00 a.m. – 10:30 a.m.	Reply by Martinović (30 minutes)
10:30 a.m. – 11:00 a.m.	Pause (30 minutes)
11:00 a.m. – 12:00 p.m.	Submissions by the Prosecution (1 hour)
12:00 p.m. – 12:30 p.m.	Response by Naletilić (30 minutes)
12:30 p.m. – 2:30 p.m.	Pause (2 hours)
2:30 p.m. – 3:00 p.m.	Continued Response by Naletilić (30 minutes)
3:00 p.m. – 4:00 p.m.	Response by Martinović (1 hour)
4:00 p.m. – 4:30 p.m.	Pause (30 minutes)
4:30 p.m. – 5:00 p.m.	Reply by the Prosecution (30 minutes)
5:00 p.m. – 5:15 p.m.	Brief Personal Address by Naletilić (Optional)
5:15 p.m. – 5:30 p.m.	Brief Personal Address by Martinović (Optional)

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




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Judge Fausto Pocar  
Presiding

Done this 16th day of September 2005,  
At The Hague,  
The Netherlands.

**[Seal of the International Tribunal]**

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<sup>18</sup> See Martinović Appeal Brief, paras. 127-140.