



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-95-9-A
Date: 5 May 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andrézia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Order of: 5 May 2006

PROSECUTOR

v.

BLAGOJE SIMIĆ

ORDER RE-SCHEDULING APPEAL HEARING

Office of the Prosecutor:
Mr. Peter Kremer

Counsel for the Appellant:
Mr. Igor Pantelić
Mr. Peter Murphy

A handwritten signature in black ink, appearing to be 'P. Kremer'.

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 (“International Tribunal”),

NOTING the Judgement rendered in this case by Trial Chamber II on 17 October 2003;¹

BEING SEIZED OF the appeal lodged by Blagoje Simić (“Appellant”) against the Trial Judgement;

NOTING the notice of appeal² and the Appellant’s brief³ filed by the Appellant on 17 November 2003 and 17 June 2004, respectively, the Respondent’s brief⁴ filed by the Prosecution on 27 July 2004, the reply brief⁵ and the amended notice of appeal⁶ filed by the Appellant on 10 August 2004 and 22 September 2004, respectively;

NOTING the “Joint Request in Relation to the Appeals Hearing”, filed by the parties on 17 January 2006, in which they jointly request “the Appeals Chamber to indicate those issues and questions arising from the grounds of appeal and the briefs of the parties in which the Chamber is particularly interested”;⁷

CONSIDERING that the identification of such issues as requested by the parties can in no way be interpreted as an expression of the Appeals Chamber’s opinion on the merits of the appeal;

NOTING that the appeal hearing initially scheduled on Monday, 20 March 2006⁸ was postponed pursuant to the request of the Appellant’s Counsel;⁹

PURSUANT to Rule 114 of the Rules of Procedure and Evidence of the International Tribunal;

¹ On 29 October 2003, Judge Mumba, Presiding Judge, considering that the Judgement rendered on 17 October 2003 contained clerical errors which did not affect in any way its content, recalled the Judgement and issued in its place the judgement accompanying the order to recall: *see Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić*, Case No. IT-95-9-T, Order Recalling Judgement and Substituting New Judgement, 29 October 2003. The Appeals Chamber will refer to the Judgement filed on 29 October 2003 with the order to recall as the “Trial Judgement”.

² Appellant Blagoje Simić’s Notice of Appeal, 17 November 2003.

³ Appellate Brief of Blagoje Simić, 17 June 2004.

⁴ Prosecution’s Response Brief, Confidential, 27 July 2004; Public Redacted Version of Prosecution’s Response Brief of 27 July 2004, 19 October 2004.

⁵ Reply Brief of Blagoje Simić, Partly Confidential, 10 August 2004.

⁶ Appellant Blagoje Simić’s Amended Notice of Appeal Filed Pursuant to the Decision of the Presiding Judge of 16 September 2004, 22 September 2004.

⁷ Joint Request in Relation to the Appeals Hearing, 17 January 2006, para. 1.

⁸ Scheduling Order for Appeal Hearing, 17 February 2006.

⁹ *See* Decision on Blagoje Simić’s Motion (1) for Access to Further Confidential Materials; (2) for Leave to Disclose Confidential Materials to Expert; and (3) to Vary Scheduling Provisions of Orders of 3 and 17 February 2006, confidential, 15 March 2006, p. 7. A public redacted version of the decision was filed on 17 March 2006.

HEREBY ORDERS that the hearing in the present appeal be heard on Friday, 2 June 2006 in Courtroom 3, commencing at 9:00;

INVITES the parties, without prejudice to any matter the parties or the Appeals Chamber may wish to raise, to, *inter alia*, make or further develop submissions during the hearing on the following issues:

Alleged defects in the form of the Fifth Amended Indictment

1. Both parties are invited to explain until what stage of the trial proceedings they consider that a defective indictment may be cured, in order to put the accused on notice of the concrete charges against him and the facts underpinning them, in such a timely manner, that he is able to prepare his defence.
2. Given that a decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in an indictment is the nature of the alleged criminal conduct charged, the Prosecution is invited to explain how its argument that the Third Amended Indictment pleads all material elements required for charging joint criminal enterprise can be reconciled with the Trial Chamber's finding to the effect that the amendments to the Third Amended Indictment amounted to no more than harmonising or cleaning up the language as stated in its decision to amend the Third Amended Indictment.
3. Given that the expression "joint criminal enterprise" was not contained in the Initial Indictment against the Appellant or in any of the subsequent amended versions, and that the Trial Chamber found that the Pre-Trial Brief did not refer specifically to a joint criminal enterprise or any of the material facts upon which it is based, the Prosecution is invited to explain – against this backdrop and in accordance with the jurisprudence of the Appeals Chamber – how the words "acting together in concert with others" would have been sufficient to notify the Appellant that he was being charged with participating in a joint criminal enterprise.

Mode of liability

4. Issue for both parties: In case the Appeals Chamber were to find that the Appellant was not put on notice that he was charged with participating in a joint criminal enterprise, is the Appellant's responsibility best characterized by a different mode of liability pleaded in the Fifth Amended Indictment, and, if so, which one and on what basis?
5. Issue for both parties: If the Appellant's responsibility were to be analysed in terms of a different mode of liability as argued by the parties upon the Appeals Chamber's request at paragraph 4, would the elements of such mode of liability be fulfilled based on the findings in the Trial Judgement?

Sentencing

6. Both parties are invited to make submissions as to the effect that a possible re-qualification of the Appellant's mode of liability should have upon his sentence.



INFORMS the parties that the timetable for the hearing shall be as follows:

9:00 – 09:10	Introductory Statement by the Presiding Judge (10 minutes)
9:10 – 10:40	Appellant's submissions (1 hour and 30 minutes)
10:40 – 11:10	<i>Pause</i>
11:10 – 12:10	Continued Appellant's submissions (1 hour)
12:10 – 12:55	Response by the Prosecution (45 minutes)
12:55 – 14:30	<i>Pause</i>
14:30 – 16:15	Continued Response by the Prosecution (1 hour and 45 minutes)
16:15 – 16:45	<i>Pause</i>
16:45 – 17:45	Reply by the Appellant (1 hour)
17:45 – 18:00	Personal Address by the Appellant (Optional); and

REMINDS the parties to prepare themselves in such a way as not simply to recount what has been set out in their written submissions, but to confine their oral arguments to elaborating on points relevant to this appeal that they wish to bring to the Appeals Chamber's attention.

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

Dated this fifth day of May 2006,
At The Hague, The Netherlands.



Judge Mehmet Güney
Presiding Judge

[Seal of the International Tribunal]