



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-99-36-A
Date: 24 July 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Order of: 24 July 2006

PROSECUTOR

v.

RADOSLAV BRĐANIN

ORDER TO FILE TABLE

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Shelagh McCall

Counsel for the Accused:

Mr. John Ackerman

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 Notice of Appeal filed by Radoslav Brđanin on 1 October 2004 against the Judgement of Trial Chamber II dated 1 September 2004 (“Trial Judgement”);

NOTING the Appellant Brđanin’s Brief on Appeal, filed by Radoslav Brđanin on 25 July 2005 (“Appeal Brief”);

NOTING that on appeal, Radoslav Brđanin raises numerous challenges to factual findings made by the Trial Chamber, claiming throughout his Appeal Brief that those findings were not supported by evidence that would permit them to be made beyond a reasonable doubt or were not the only reasonable conclusions that could have been drawn from the evidence;

CONSIDERING that not every factual finding in a Trial Judgement must be established beyond a reasonable doubt, and that a Trial Chamber must find beyond a reasonable doubt only those facts upon which a finding of guilt or the sentence depend;¹

CONSIDERING FURTHER that, pursuant to Article 25(1)(b) of the Statute of the International Tribunal, “[o]nly errors of fact which have ‘occasioned a miscarriage of justice’ will result in the Appeals Chamber overturning [a] Trial Chamber’s decision”;²

CONSIDERING that the appellant has the burden of demonstrating that an alleged error of fact occasioned a miscarriage of justice;³

CONSIDERING that the onus is therefore on Radoslav Brđanin to establish that the facts which he challenges as not established beyond a reasonable doubt are facts upon which his conviction relies;

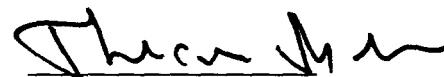
CONSIDERING that in many instances Radoslav Brđanin fails to do so;

¹ *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Appeal Judgement, 7 July 2006, para. 174 (“[L]e principe d’établissement de la preuve ‘au-delà de tout doute raisonnable’ doit être appliqué s’il s’agit d’établir l’existence d’un élément du crime ou du mode de responsabilité retenu à l’encontre de l’accusé, ou encore s’il agit d’établir l’existence d’un fait indispensable pour entrer en voie de condamnation”), para. 175 (“La Chambre d’appel rappelle que le principe de la présomption d’innocence veut que chaque fait qui fonde la condamnation de l’accusé soit prouvé au-delà de tout doute raisonnable.”); *Prosecutor v. Stakić*, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006, para. 219 (“A Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime (as defined with respect to the relevant mode of liability) beyond a reasonable doubt.”). See also *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para. 763 (“[O]nly those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused’s sentence or taken into account in aggravation of that sentence”).

hereby **ORDERS** Radoslav Brđanin to file, on or before 21 August 2006, a table in which he indicates, for each factual finding that he alleges the Trial Chamber could not properly have made beyond a reasonable doubt, the relevant paragraph(s) of the Trial Judgement where the Trial Chamber relied on the factual finding in question to convict him – *i.e.* to establish an element of a crime and/or of the relevant mode of liability, or to aggravate his sentence.

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

Done this 24th day of July 2006,
At The Hague
The Netherlands.


Judge Theodor Meron
Presiding

[Seal of the Tribunal]

² See *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, para. 7; *Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (“*Kordić & Čerkez*”), para. 19.

³ *Kordić & Čerkez*, para. 19.