



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-99-36-A
Date: 3 November 2006
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 3 November 2006

PROSECUTOR

v.

RADOSLAV BRĐANIN

**SCHEDULING ORDER FOR PREPARATION OF APPEAL
HEARING**

The Office of the Prosecutor:

Mr. Peter Kremer
Ms. Helen Brady
Ms. Kristina Carey
Ms. Katharina Margetts

Counsel for the Accused:

Mr. John Ackerman

Counsel for the Association of Defence Counsel:

c/o Mr. Joeri Maas

Head of Office – Association of Defence Counsel

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 (“Appeals Chamber” and “Tribunal” respectively);

RECALLING the Scheduling Order issued by the Appeals Chamber on 3 October 2006, which set the dates for the hearing of the merits of the appeals in this case as Thursday 7 and Friday 8 December, and which informed the parties that a timetable for the hearing would be established in a subsequent scheduling order;¹

NOTING the submissions of the parties at the Status Conference held on 18 October;²

NOTING the Appeals Chamber’s decision of 7 November 2005 in which it granted the Association of Defence Counsel 15 minutes to make submissions at the appeal hearing, and granted the Prosecution 15 minutes to respond;³

CONSIDERING the need to ensure that the time allotted for the appeal hearing is used as efficiently as possible;

EMPHASISING that the present order in no way expresses the Appeals Chamber’s views on the merits of the appeal, which will be determined in the Appeal Judgement;

HEREBY INFORMS the parties that during the course of the appeal hearing, and without prejudice to any other matter which the parties or the Appeals Chamber may wish to address, the Appeals Chamber invites the parties to develop their submissions with regard *inter alia* to the following issues:

Questions to Brdanin

Estimated Time

(1) Corrigendum to Judgement

10 Minutes

In its Decision of 31 January 2005,⁴ the Appeals Chamber ordered that any discussion on Brdanin’s Motion of 13 December 2004, in which he sought to strike or otherwise set aside the “Corrigendum to Judgement”, be deferred. The Appeals Chamber invites Brdanin to elaborate on the relevance of the issues he raised in that motion to the pending appeal.

(2) Withdrawal of Alleged Errors

10 Minutes

In the table he filed on 21 August 2006, Brdanin does not address every error he alleges in his brief (he addresses only 57 out of 172). The Appeals Chamber

¹ Scheduling Order for Appeals Hearing, 3 October 2006.

² Appeal Transcript, pp. 27-40.

³ Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005.

⁴ Decision on Appellant’s Motion to Strike or Otherwise Set Aside “Corrigendum to Judgement”, 31 January 2005.

invites Brđanin to explain whether this means that: (1) he no longer submits that the findings in question had to be established beyond reasonable doubt, because they are not findings on which his convictions rely; and (2) he has, for all practical purposes, withdrawn the related allegations of errors of fact not included in his table.

(3) Evidence relating to the SOS

5 Minutes

The Appeals Chamber notes that Brđanin contends in his Reply Brief (para. 48) that the SOS did not exist at any time that the ARK Crisis Staff was in existence, claiming that there is “significant evidence” to that effect. The Appeals Chamber invites Brđanin to identify this evidence.

(4) Relationship between Prijedor Crisis Staff and ARK Crisis Staff

10 Minutes

In paragraphs 43-44 of his Reply Brief, Brđanin challenges as inapposite the Trial Chamber’s finding (at para. 205) that, with the exception of Prijedor, all municipalities in the ARK “unquestionably” accepted the authority of the ARK crisis staff, since the Trial Chamber nevertheless convicted him for crimes committed in the municipality of Prijedor. In light of the findings of the Trial Chamber in paragraphs 207-208 of the Judgement, and of the evidence referred to in the Judgement as a whole, the Appeals Chamber invites Brđanin to elaborate on his submission that the finding that the Prijedor municipality did not unquestionably accept the ARK Crisis Staff decisions as binding leads to the conclusion that the ARK Crisis Staff had no *de facto* authority over the municipalities, including Prijedor municipality.

Questions to Prosecution

Estimated Time

(5) Deportation

5 Minutes

With regard to the crime of deportation, the Prosecution, at paragraph 6.174 of its Response Brief, refers the Appeals Chamber to the appropriate discussion of evidence in Annex B to that Brief (in respect of Trial Judgement, para. 194). There appears to be no discussion of the other relevant evidence in Annex B. The Appeals Chamber invites the Prosecution to identify the evidence to which it refers.

(6) The requisite legal duty for commission by omission

10 Minutes

The Trial Judgement (para. 537) says that Brđanin did “not take a stand either in public or at the meetings of the ARK Crisis Staff but ... he adopted a *laissez-faire* attitude” and that, although Brđanin “did not actively assist in the commission of any of the crimes committed in these camps and detention facilities, in the light of his position as the President of the ARK Crisis Staff, the Trial Chamber is satisfied beyond reasonable doubt that his inactivity as well as his public attitude with respect to the camps and detention facilities constituted encouragement and moral support to the members of the army and the police to continue running these camps and detention facilities in the way described to the Trial Chamber throughout the trial.”

In light of the holding of the Appeals Chamber in the *Blaškić* Appeal Judgement (at para. 663; *see also Ntagerura et al.* Appeal Judgement, paras 334-335), the Appeals Chamber invites the Prosecution to elaborate on the basis for upholding this finding of the Trial Chamber, in particular regarding the nature of the legal duty, if any, breached by Brđanin and on the evidence supporting it.

(7) JCE: Evidence (if any) of Brđanin's liability under JCE

15 Minutes

If the Appellant's responsibility were to be analysed in terms of his participation in a JCE, the Appeals Chamber invites the Prosecution to elaborate on how the elements of JCE would be met, and which form(s) of JCE would be met, based on the findings of the Trial Chamber.

The Appeals Chamber would like a *brief* answer to this question, **if anything needs to be added to the filing pursuant to the Order of 27 October 2006**, in light of the understanding between the parties at trial that liability pursuant to JCE requires physical perpetrators to be members of the JCE, and pursuant to the Prosecution's position that it does not seek reversal of the verdict on the basis of its first ground of appeal. Did the Trial Chamber find that certain members of the JCE physically perpetrated any of the crimes? Is there evidence to establish beyond reasonable doubt that this was the case? If so, what is that evidence, and to which specific crimes does it relate?

RECALLING that, at the Status Conference of 18 October 2006, it was proposed that, while the hearings would be held on the afternoon of Thursday 7 December and the morning of Friday 8 December, the Appeals Chamber and the parties will reserve the afternoon of Friday 8 December in the event that more time is required;⁵

INFORMS the parties that the timetable for the appeal hearing in this case shall be as follows, subject to adjustments where appropriate:

Thursday 7 December

	<i>minutes</i>
14:15 – 14:30	15
Introductory Statement by the Presiding Judge	
14:30 – 15:45	75
Submissions of the Prosecution	
15:45 – 16:00	15
Break	
16:00 – 16:45	45
Response of the Defence	
16:45 – 17:00	15
[Submissions of the Association of Defence Counsel, if applicable]	
17:00 – 17:15	15
Break	
17:15 – 17:45	30
Reply of the Prosecution	
17:45 – 18:00	15
[Reply of the Prosecution to the submissions of the Association of Defence Counsel, if applicable]	

⁵ Appeal Transcript, pp. 34-35.

Friday 8 December

09:00 – 10:15	Submissions of the Defence	75
10:15 – 10:30	Break	15
10:30 – 11:15	Response of the Prosecution	45
11:15 – 11:45	Reply of the Defence	30
11:45 – 12:00	Brief Personal Address by Radoslav Brđanin (optional)	15

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



Judge Theodor Meron
Presiding Judge

Dated this 3rd day of November 2006,
At The Hague,
The Netherlands

[Seal of the Tribunal]