

IT-01-47-A
A5085-A5082
14 November 2007

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HL

UNITED
NATIONS



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-01-47-A
Date: 14 November 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Order of: 14 November 2007

PROSECUTOR

v.

**ENVER HADŽIHASANOVIĆ
AMIR KUBURA**

PUBLIC

**SCHEDULING ORDER FOR PREPARATION OF APPEAL
HEARING**

The Office of the Prosecutor:

Mr. Peter Kremer, QC
Ms. Shelagh McCall
Mr. Marwan Dalal
Mr. Xavier Tracol
Ms. Barbara Goy
Ms. Katharina Margetts
Mr. Matteo Costi

Counsel for the Appellants:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Mr. Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Mr. Kubura

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

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 that Rule 114 of the Rules of Procedure and Evidence provides that “[a]fter the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties”;

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

EMPHASISING that the present order in no way expresses the Appeals Chamber’s view 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:

(1) Hadžihasanović’s third ground of appeal (failure to punish murder committed in Bugojno on 5 August 1993)

Hadžihasanović argues under his third ground of appeal (murder and cruel treatment in Bugojno) that there is no evidence on the record on which the Trial Chamber could have found that the perpetrators were given a period of detention not exceeding 60 days, as “[t]his is an inference that could only have been drawn [...] if the measures had been taken precisely by the commander of [the 307th] Brigade; which [was] not the case”.¹ The Appeals Chamber invites the Prosecution and Hadžihasanović to address the following question: based on the Rules on Military Discipline, or any other relevant provision, could military disciplinary courts or superiors exercising disciplinary powers impose a sanction in excess of 60 days of imprisonment?

(2) Hadžihasanović’s fifth ground of appeal (murder and cruel treatment in Orašac)

The Prosecution noted, concerning Hadžihasanović’s conviction under Count 3 of the Indictment, that the Trial Chamber not only relied on Hadžihasanović’s failure to take necessary and reasonable measures to prevent the crimes of cruel treatment and the murder of Dragan Popović, but also relied on his failure to set up a disciplinary system to ensure compliance with the rules of international humanitarian law.² The Trial Chamber also relied on Hadžihasanović’s failure to provide the mujahedin with international humanitarian law training.³ The Appeals Chamber invites the Prosecution to: (i) point to evidence in the trial record pertaining to Hadžihasanović’s failure to provide the mujahedin with international humanitarian law training and his failure to set up a disciplinary system to ensure compliance with the rules therein; and (ii) explain whether such failure, if proven, would be sufficient in itself to attract Hadžihasanović’s criminal responsibility for failure to prevent the crimes of cruel treatment and the murder of Dragan Popović.

¹ Appellant Brief on Behalf of Enver Hadžihasanović (Confidential), filed 5 February 2007 (Public redacted version filed 18 May 2007), para. 221.

² Prosecution’s Response Brief (Confidential), filed 19 March 2007 (Public redacted version filed 18 May 2007), para. 285. *See* Trial Judgement, para. 1480.

³ Trial Judgement, paras 1480, 1483.

(3) Kubura's second ground of appeal (failure to prevent plunder committed in Vareš in November 1993)

The Appeals Chamber invites the Prosecution to address the following questions:

(a) The Trial Chamber found that Kubura knew that his subordinates had committed acts of plunder in the Ovnak area in June and November 1993.⁴ Was evidence provided at trial establishing whether 7th Brigade soldiers engaged in military operations in the period between June 1993 and November 1993? If so, was evidence presented that the 7th Brigade soldiers committed acts of plunder during these military operations?

(b) The Trial Chamber found that Kubura "put a stop to the plunder once it had started".⁵ Based on the evidence presented at trial, when in the course of 4 November 1993 did Kubura acquire knowledge that acts of plunder were being committed and how, and when, did Kubura react to stop their occurrence.

HEREBY ORDERS that the appeal hearing shall be held on Tuesday, 4 December 2007, and Wednesday, 5 December 2007, in Courtroom I, subject to the following tentative arrangements:

Tuesday, 4 December 2007:

08:30 am – 08:40 am	Introductory statement by the Presiding Judge (10 minutes)
08:40 am – 09:40 am	Appeal from Amir Kubura (one hour)
09:40 am – 10:10 am	Response by the Prosecution (30 minutes)
10:10 am – 10:40 am	<i>Pause (30 minutes)</i>
10:40 am – 11:10 am	Continued response by the Prosecution (30 minutes)
11:10 am – 11:30 am	Reply by Amir Kubura (20 minutes)
11:30 am – 12:30 pm	Appeal from the Prosecution (one hour)
12:30 pm – 12:50 pm	<i>Pause (20 minutes)</i>
12:50 pm – 13:10 pm	Response by Hadžihasanović (20 minutes)

Wednesday, 5 December 2007:

08:30 am – 09:10 am	Response by Amir Kubura (to the Prosecution's appeal, 40 minutes)
09:10 am – 09:30 am	Reply by the Prosecution (20 minutes)
09:30 am – 10:00 am	Appeal from Enver Hadžihasanović (30 minutes)
10:00 am – 10:30 am	<i>Pause (30 minutes)</i>
10:30 am – 11:10 am	Appeal from Enver Hadžihasanović (continued, 40 minutes)
11:10 am – 12:20 pm	Response by the Prosecution (one hour 10 minutes)
12:20 pm – 12:40 pm	<i>Pause (20 minutes)</i>
12:40 pm – 13:00 pm	Reply by Enver Hadžihasanović (20 minutes)
13:00 pm – 13:10 pm	Brief Personal Address by Amir Kubura (10 minutes) (optional)
13:10 pm – 13:20 pm	Brief Personal Address by Enver Hadžihasanović (10 minutes) (optional)

⁴ See Trial Judgement, paras 1982-1986.

⁵ Trial Judgement, para. 1989.

AND ORDERS Enver Hadžihasanović and Amir Kubura to be present during the appeal hearing.

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



Fausto Pocar
Presiding Judge

Dated this 14th day of November 2007,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]