



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-03-68-A
Date: 10 March 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Order of: 10 March 2008

PROSECUTOR

v.

NASER ORIC

Public

**ADDENDUM TO
ORDER SCHEDULING APPEAL HEARING**

The Office of the Prosecutor:

Ms. Michelle Jarvis
Mr. Paul Rogers
Ms. Laurel Baig
Ms. Kristina Carey

Counsel for Naser Orić:

Ms. Vasvija Vidović
Mr. John Jones

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 “International Tribunal”, respectively),

NOTING the appeals lodged by the Prosecution and Naser Orić against the Trial Judgement rendered in this case by Trial Chamber II on 30 June 2006;¹

NOTING the “Order Scheduling Appeal Hearing” issued on 23 November 2007 pursuant to Rule 114 of the Rules of Procedure and Evidence of the International Tribunal ordering that the appeal hearing shall be held on Tuesday, 1 April 2008, and Wednesday, 2 April 2008, and informing the parties that another order specifying the exact time, courtroom, and modalities of the hearing will be issued in due course;

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;

REMINDING the parties that, in principle, they may argue the grounds of appeal in the order they consider most suitable;

RECALLING that the parties are to focus their oral arguments on the grounds of appeal raised in their briefs and that the appeal hearing is not the occasion for presenting new arguments on the merits of the case;

RECALLING further that, during the hearing of an appeal, the parties are expected to prepare themselves in such a way as not simply to recount what has been set out in their written submission, but to confine their oral arguments to elaborating on points relevant to the appeal that they wish to bring to the Appeals Chamber’s attention;²

¹ *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement, 30 June 2006; Defence Notice of Appeal, 5 October 2006; Prosecution’s Notice of Appeal, 31 July 2006; Prosecution Corrigendum to Appeal, attaching an amended version of The Prosecution’s Appeal Brief filed on 16 October 2006, 18 October 2006; Defence Appellant’s Brief, public redacted version, 11 May 2007; Prosecution’s Notice of Withdrawal of its Third Ground of Appeal, 7 March 2008.

² *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Appellant Jean-Bosco Barayagwiza’s Motion Concerning the Scheduling Order for the Appeals Hearing, 5 December 2006, p. 4; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Order Re-Scheduling Appeal Hearing, 5 May 2006, p. 6.

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 to, *inter alia*, the following issues:

In relation to the Defence's appeal

1. What evidence on the trial record, if any, supports or rebuts the allegation that Naser Orić's subordinates, in particular the Commander of the Military Police Atif Krdžić, incurred criminal responsibility? (Defence's grounds of appeal 1 and 5)
2. What evidence on the trial record, if any, supports or rebuts the allegation that Naser Orić knew or had reason to know that the Military Police detained Serbs and that his subordinate(s) aided and abetted crimes against them? (Defence's sub-ground of appeal 1(F)(2))
3. If the Appeals Chamber were to uphold the Defence's appeal insofar as they allege that the Trial Chamber failed to make the proper factual findings on legal elements required for his conviction under Article 7(3) of the Statute, what would be the appropriate course of action?

In relation to the Prosecution's appeal

4. Does the Prosecution argue under paragraphs 17 to 19 of its Notice of Appeal that reasons to know that crimes have been committed, as distinct from reasons to know of the subordinate's criminal conduct, is sufficient to hold an accused responsible under Article 7(3) of the Statute? (Prosecution's ground of appeal 1)
5. The Defence in their Response Brief argue that Mirzet Halilović "died soon after he committed his crimes."³ Can the Defence or the Prosecution state the exact date of Mirzet Halilović's death? (Prosecution's ground of appeal 1)
6. Did the Prosecution plead at trial for a departure from the Appeals Chamber's Decision on Interlocutory Appeal Challenging Jurisdiction in relation to Command Responsibility rendered on 16 July 2003 in the *Hadžihasanović and Kubura* case on the issue of a superior's duty to punish crimes committed by his subordinates before the superior achieved effective control? If so, the Prosecution is invited to provide the Appeals Chamber with specific references to the trial record. (Prosecution's ground of appeal 1)

INVITES the parties, should they deem it necessary, to submit their answers to the above questions in writing no later than 25 March 2008; these written submissions – if any – must not exceed 3000 words in total for each party;

³ Defence Respondent's Brief, 27 November 2006, para. 410.

INFORMS the parties that the hearing will take place in Courtroom III and that the tentative timetable for the hearing shall be as follows (the parties need not make use of all the time allotted to them):

Tuesday, 1 April 2008

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|---------------|---|
| 09:00 – 09:10 | Introductory Statement by the Presiding Judge (10 minutes) |
| 09:10 – 10:10 | Submissions by Prosecution in response to the Appeals Chamber's questions 1 through 3 (1 hour) |
| 10:10 – 10:40 | Submissions by Counsel for Naser Orić in response to the Appeals Chamber's questions 1 through 3 (30 minutes) |
| 10:40 – 11:00 | <i>Pause</i> |
| 11:00 – 11:30 | Continued Submissions by Counsel for Naser Orić in response to the Appeals Chamber's questions 1 through 3 (30 minutes) |
| 11:30 – 11:40 | Submissions by Prosecution in reply (10 minutes) |
| 11:40 – 12:25 | Prosecution's submissions on its appeal (45 minutes) |
| 12:25 – 12:45 | <i>Pause</i> |
| 12:45 – 13:30 | Response by Counsel for Naser Orić (45 minutes) |
| 13:30 – 13:45 | Reply by the Prosecution (15 minutes) |
| 13:45 – 15:15 | <i>Pause</i> |
| 15:15 – 16:45 | Submissions by Counsel for Naser Orić on the Defence's appeal (1 hour 30 minutes) |

Wednesday, 2 April 2008

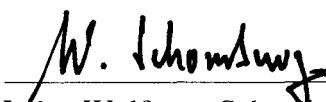
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| 09:00 – 10:30 | Response by Prosecution (1 hour 30 minutes) |
| 10:30 – 10:50 | <i>Pause</i> |
| 10:50 – 11:20 | Reply by Counsel for Naser Orić (30 minutes) |
| 11:20 – 11:30 | Personal Address by Naser Orić (Optional) |

INSTRUCTS that, should Naser Orić decide to exercise his right to be present during the appeal hearing as foreseen by Article 21(4)(d) of the Statute of the International Tribunal, he shall communicate that intention in writing no later than two weeks from the date of this *Addendum* so that appropriate arrangements can be made by the Registrar to guarantee Naser Orić's presence, without him being detained at the United Nations Detention Unit.

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

Dated this tenth day of March 2008,

At The Hague, The Netherlands.



Judge Wolfgang Schomburg
Presiding

[Seal of the International Tribunal]