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International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# ICTY WEEKLY UPDATE-43

28 August 1998

## LAST MINUTE NEWS

### CELEBICI CASE:

#### CLOSING ARGUMENTS AS OF MONDAY 31 AUGUST

Pursuant to an Order issued by the Trial Chamber consisting of Judge Karibi-Whyte (presiding), Judge Odio Benito and Judge Jan, the Parties will present their closing arguments as of Monday 31 August 1998 at 10 a.m.

The speaking time has been determined as follows:

- 60 minutes for the Prosecution's initial statement
- 45 minutes for each defendant's statement in reply
- 30 minutes for the Prosecution's rebuttal statement, if any
- 20 minutes for each Defendant's rejoinder statement, if any

#### **Prosecutor's motion to re-open its case denied Prosecutor seeks leave to appeal Defendant Delic applies for stay of proceedings**

On 19 August 1998, the Trial Chamber issued a written decision confirming its oral ruling of 4 August to deny a Prosecutor's Motion to re-open its case.

The Trial Chamber found "*difficult to agree that the best time to pursue [rebuttal] evidence vigorously is after the close of the case for the Defence.*" Having "*carefully studied the comprehensive account of the Prosecution's efforts at retrieving evidence*", the Trial Chamber further concluded that the Prosecution "*has not met its burden of demonstrating that with reasonable diligence the proposed evidence could not have been previously obtained and presented as part of the Prosecution case.*"

As to the documents sought to be introduced by the Prosecution, they demonstrated "*a hastily assembled evidence without analysis of their probative value*" and "*belong to a category of evidence which existed ab initio, the relevance of which did not arise ex improviso.*"

Finally, the Trial Chamber found that "*apart from the number of witnesses slated for oral testimony on the part of the Prosecution, there are undoubtedly other persons whose testimony will be required to authenticate the several documents sought to be tendered (...) there can be no doubt that the trial, which has lasted for more than 18 months with the Prosecution claiming more than 12 months of that period, is likely to continue for the next three months. (...) In our view the justice of the case and the fair and expeditious conduct of the proceedings enjoins a rejection of the application.*"

The Office of the Prosecutor filed an application for leave to appeal the above Trial Chamber's Decision. It contends that "*the testimony and documents are critical and probative and may have a direct impact on the Trial Chamber's judgement with regard to at least one accused(...) The presentation of the documents... would be in the interests of justice; the Defence will not be prejudiced because it can present any appropriate responsive evidence. Given that the direct testimony for the prosecution's case would be less than four hours, the resulting rebuttal by the Defence should not unduly delay the trial (...)*".

.../...

The courtroom schedule is provisional and you are invited to check for last minute changes with the Public Information Unit.

Internet address: <http://www.un.org/icty>

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On 26 August 1998, Defendant Hazim Delic filed an Emergency Motion “for stay of the proceedings in the Trial Chamber(...) pending the Appeals Chamber’s determination of the application by the Office of the Prosecutor (see above).

### **FURUNDZIJA CASE:**

#### **RE-OPENING OF THE PROCEEDINGS POSTPONED**

The proceedings in the Furundzija case will NOT re-open on 14 September, as initially scheduled. The Trial Chamber, consisting of Judge Mumba (presiding), Judge Cassese and Judge May, will issue soon a new scheduling order.

#### **DEFENCE EMERGENCY MOTION DISMISSED**

Following the examination-in-chief on 24 August 1998 of a Prosecution witness in the Kupreskic & Others trial, who was questioned about the connections between one of the accused in this case (Vlado Santic) and Anto Furundzija, the Defence counsel of Anto Furundzija filed on 25 August an Emergency Motion “requesting the Trial Chamber to prohibit the Prosecutor from examining witnesses and adducing evidence regarding Anto Furundzija” in the course of the Kupreskic & Others trial.

On 26 August 1998, Trial Chamber II (Judge Cassese, presiding, Judge May and Judge Mumba) – which sit in both the Kupreskic & Others trial and the Furundzija trial) – dismissed the Defence motion and reminded both Parties that “whatever evidence is produced in the case of Prosecutor v. Kupreskic et al. will not be used as evidence in the case Prosecutor v. Furundzija”.

#### **DEFENCE REQUEST FOR LEAVE TO APPEAL DENIED**

On 24 August 1998, a Bench of three Judges of the Appeals Chamber (Judge Shahabuddeen, presiding, Judge Vohrah and Judge Tieya) unanimously refused to grant the Defence leave to appeal against the Decision of 16 July 1998 by which Trial Chamber II (presided over by Judge Mumba) ordered “the re-opening of the proceedings to enable further evidence to be given by either party”.

- On 23 July, the Defence filed a request for leave to appeal this Decision, contending that:
- *the Trial Chamber erred in ordering the reopening of the proceedings as a remedy for the “serious misconduct” in which it found the Prosecution had engaged by withholding documents that “clearly had the potential to affect the credibility of prosecution evidence” (...)*
  - *the Trial Chamber did not have the authority (...) to order the reopening of the case. It did have the authority (...) to provide the relief which Mr.Furundzija requested, namely the exclusion of Witness A’s testimony (...)*
  - *the Trial Chamber denies Mr. Furundzija his right to be tried without undue delay; denies Mr. Furundzija his right to examine the witnesses against him , and gives improper standing to Witness A.*

The Bench of the judges of the Appeals Chamber found that “the Decision to re-open the proceedings cannot cause such prejudice to the case of the defence as could not be cured by the final disposal of the trial including post-judgement appeal (...)” and that “the issue in the proposed appeal is not of general importance to proceedings before the International Tribunal or in international law generally (...).”

## KUPRESKIC & OTHERS CASE:

### UNPRECEDENTED ORDER FOR NON-DISCLOSURE BY THE MEDIA AND THE PUBLIC

On 24 August 1998, Trial Chamber II, consisting of Judge Cassese (presiding), Judge May and Judge Mumba, issued an unprecedented Order following the disclosure in open session by a Defence lawyer of the identity of a protected Prosecution witness during the cross-examination of another witness.

The order reads as follows: “Orders the media and members of the public not to publish or disclose in any way the identity of the protected witness named by defence counsel during cross-examination on 21 August 1998.”

#### **COURTROOM'S SCHEDULE: MONDAY 31 AUGUST TO FRIDAY 4 SEPTEMBER 1998 <sup>1</sup>**

##### COURTROOM I:

<u>Monday 31 Aug.</u>	<u>Tuesday 1</u>	<u>Wednesday 2</u>	<u>Thursday 3</u>	<u>Friday 4</u>
10.00 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	10.00 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	10.00 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	10.00 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	10.00 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T
14.30 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	14.30 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	14.30 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T	14.30 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T  16.00 Judge Jorda will hear the further appearances of <b>Simic, Zaric</b> and <b>Tadic</b> in Case no. IT-95-9-PT.	14.30 ,TC IIqtr <b>Celebici case</b> trial, open session IT-96-21-T

##### COURTROOM 2:

<u>Monday 31 Aug.</u>	<u>Tuesday 1</u>	<u>Wednesday 2</u>	<u>Thursday 3</u>	<u>Friday 4</u>
		10.00, TCI pre trial Judge Riad <b>Jelusic case</b> Status conf, closed IT-95-10-PT		
		14.30, TC I pre trial Judge Jorda <b>Kordic case</b> IT-95-14/2-PT		

##### COURTROOM 3:

<u>Monday 31 Aug</u>	<u>Tuesday 1</u>	<u>Wednesday 2</u>	<u>Thursday 3</u>	<u>Friday 4</u>
9.30, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	9.30, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	9.30, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	9.30, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	9.30, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T
	14.30-16.15, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	14.30-16.15, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	14.30-16.15, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T	14.30-16.15, TC II <b>Kupreskic et al.</b> trial, open session IT-95-16-T

.../...

For the latest list of all court filings, please visit the [ICTY Court Records](#)

For a selection of the latest public documents, please visit the [ICTY Website](#)