

**ANNOTATED LEADING CASES OF
INTERNATIONAL CRIMINAL TRIBUNALS**

VOLUME XXXIV:

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
2007**

André KLIP and Göran SLUITER (eds.)



intersentia

Cambridge – Antwerp – Portland

Intersentia Publishing Ltd.
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
Tel.: +44 1223 393 753 | Email: mail@intersentia.co.uk

Distribution for the UK:

NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7PP
United Kingdom
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for the USA and Canada:

International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free)
Tel.: +1 503 287 3093
Email: info@isbs.com

Distribution for Austria:

Neuer Wissenschaftlicher Verlag
Argentinierstraße 42/6
1040 Wien
Austria
Tel.: +43 1 535 61 03 24
Email: office@nwv.at

Distribution for other countries:

Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50
Email: mail@intersentia.be

Please cite as: ICTY, Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules, *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, T. Ch. II, 14 December 2007, Klip/ Sluiter, ALC-XXXIV-29.

Annotated Leading Cases of International Criminal Tribunals

André Klip and Göran Sluiter (eds.)

Cover illustration: Hendrik E. Kluwer

© 2013 Intersentia
Cambridge – Antwerp – Portland
www.intersentia.com | www.annotatedleadingcases.com

ISBN 978-1-78068-098-9
D/2013/7849/97
NUR 828

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

TABLE OF CONTENTS

Table of Contents	5
Preface	9
Part 1/ Preliminary Matters	
1. Jurisdiction	
Decision on Ante Gotovina’s Interlocutory Appeal Against Decision on Several Motions Challenging Jurisdiction, <i>Prosecutor v. Gotovina et al.</i> , Case No. IT-06-90-AR72.1, A. Ch., 6 June 2007	11
Decision of Vlastimir Đorđević’s Preliminary Motion on Jurisdiction, <i>Prosecutor v. Đorđević</i> , Case No. IT-05-87/1-PT, T. Ch. III, 6 December 2007	19
Commentary <i>David Bryden</i>	24
2. Indictment	
Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules, <i>Prosecutor v. Tolimir</i> , Case No. IT-05-88/2-PT, T. Ch. II, 14 December 2007	29
Commentary <i>Jocelyn Courtney</i>	48
Part 2/ Procedural Matters	
3. Counsel, self-representation and related issues	
Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, <i>Prosecutor v. Gotovina et al.</i> , Case No. IT-06-90-PT, T. Ch. I, 5 April 2007	53
Judge Orić’s Dissenting Opinion on Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković of 5 April 2007	60
Decision on Review of Registrar’s Decision Re Co-Counsel for Mićo Stanišić, <i>Prosecutor v. Stanišić</i> , Case No. IT-04-79-PT, T. Ch. II, 24 April 2007	65
Decision on Miroslav Šeparović’s Interlocutory Appeal Against Trial Chamber’s Decisions on Conflict of Interest and Finding of Misconduct, <i>Prosecutor v. Gotovina et al.</i> , Case No. IT-06-90-AR73.1, A. Ch., 4 May 2007	73
Decision on Momčilo Krajišnik’s Request to Self-represent, on Counsel’s Motions in Relation to Appointment of <i>Amicus Curiae</i> , and on the Prosecution Motion of 16 February 2007, <i>Prosecutor v. Krajišnik</i> , Case No. IT-00-39-A, A. Ch., 11 May 2007	85
Dissenting Opinion of Judge Pocar	92
Separate Opinion of Judge Shahabuddeen	93
Fundamentally Dissenting Opinion of Judge Schomburg on the Right to Self-Representation	102

Decision on Ivan Čermak’s Interlocutory Appeal Against Trial Chamber’s Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, <i>Prosecutor v. Gotovina et al.</i> , Case No. IT-06-90-AR73.2, A. Ch., 29 June 2007	125
Dissenting Opinion of Judge Shahabuddeen	142
Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, <i>Prosecutor v. Delić</i> , Case No. IT-04-83-T, T. Ch. I, 24 July 2007	145
Decision on Motion of <i>Amicus Curiae</i> Regarding Appellate Ground of Ineffective Assistance of Counsel, <i>Prosecutor v. Krajišnik</i> , Case No. IT-00-39-A, A. Ch., 20 July 2007	155
Decision on Financing the Defence of the Accused, <i>Prosecutor v. Šešelj</i> , Case No. IT-03-67-PT, P-T. Judge, 30 July 2007	161
Decision on Krajišnik Request and on Prosecution Motion, <i>Prosecutor v. Krajišnik</i> , Case No. IT-00-39-A, A. Ch., 11 September 2007	175
Commentary <i>Alexander Zahar</i>	190
4. Equality of arms, effective defence investigations and undue delay	
Decision on Motion to Appoint <i>Amicus Curiae</i> to Investigate Equality of Arms, <i>Prosecutor v. Perišić</i> , Case No. IT-04-81-PT, T. Ch. III, 18 June 2007	193
Decision on Ojdanić Third Motion for Stay of Proceedings, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-T, T. Ch. III, 27 August 2007	199
Decision on Motion for Sanctions for Failure to Bring the Accused to Trial Without Undue Delay, <i>Prosecutor v. Perišić</i> , Case No. IT-04-81-PT, T. Ch. III, 23 November 2007	211
Commentary <i>Masha Fedorova</i>	217
5. Witnesses and admission of evidence	
Decision on Defence Request for Audio-Recording of Prosecution Witness Proofing Sessions, <i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84-T, T. Ch. I, 23 May 2007	229
Decision on Notification of Cross-Examination Material, <i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84-T, T. Ch. I, 31 May 2007	239
Decision on Praljak’s Appeal of the Trial Chamber’s 10 May 2007 Decision on the Mode of Interrogating Witnesses, <i>Prosecutor v. Prlić et al.</i> , Case No. IT-04-74-AR73.5, A. Ch., 24 August 2007	245
Decision on Motion by Witness 28 to Set Aside Subpoena or for Alternative Relief, <i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84-T, T. Ch. I, 5 September 2007	251
Decision on Appeal Against Decision Admitting Material Related to Borovčanin’s Questioning, <i>Prosecutor v. Popović et al.</i> , Case No. IT-05-88-AR73.1, A. Ch., 14 December 2007	255
Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65ter Exhibit List, <i>Prosecutor v. Popović et al.</i> , Case No. IT-05-88-T, T. Ch. II, 25 October 2007	269

Partial Dissenting Opinion of Judge Prost	291
Commentary <i>Kelly Pitcher</i>	298
6. Judicial notice	
Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts with Dissenting Opinion of Judge Harhoff, <i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-T, T. Ch. III, 10 April 2007	311
Dissenting Opinion of Judge Harhoff	320
Decision on Interlocutory Appeals Against Trial Chamber’s Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts, <i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-AR73.1, A. Ch., 26 June 2007	323
Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Joint Motion Concerning Agreed Facts, <i>Prosecutor v. Delić</i> , Case No. IT-04-83-PT, T. Ch. I, 9 July 2007	333
Decision on Appeals Chamber Remand of Judicial Notice of Adjudicated Facts with Separate Opinion of Judge Robinson, <i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-T, T. Ch. III, 18 July 2007	339
Separate Opinion of Judge Robinson	343
Commentary <i>Koen Vriend</i>	344
7. Referral	
Decision on Trial Chamber’s Competence to Entertain Motion Filed After Entry into Force of Decision under Rule 11bis, <i>Prosecutor v. Trbić</i> , Case No. IT-05-88/1-PT, T. Ch. II, 1 June 2007	351
Decision on Milan Lukić’s Appeal Regarding Referral, <i>Prosecutor v. Lukić and Lukić</i> , Case No. IT-98-32/1-AR11bis.1, A. Ch., 11 July 2007	355
Commentary <i>Yvonne McDermott</i>	364
8. Contempt of court	
Decision on Vojislav Šešelj’s Appeal Against the Trial Chamber’s Decision of 19 July 2007, <i>Prosecutor v. Šešelj</i> , Case No. IT-03-67-AR77.1, A. Ch., 14 December 2007	369
Declaration of Judge Shahabuddeen.....	372
Commentary <i>Birgitte Hagem</i>	375
Part 3/ Judgements	
9. Judgements	
Judgement, <i>Prosecutor v. Blagojević and Jokić</i> , Case No. IT-02-60-A, A. Ch., 9 May 2007	377
Partly Dissenting Opinion of Judge Shahabuddeen	464

Commentary <i>David Turns</i>	478
Judgement, <i>Prosecutor v. Martić</i> , Case No. IT-95-11-T, T. Ch. I, 12 June 2007	481
Commentary <i>Chantal Meloni</i>	622
Judgement, <i>Prosecutor v. Halilović</i> , Case No. IT-01-48-A, A. Ch., 16 October 2007	633
Separate Opinion of Judge Meron	694
Separate Opinion of Judge Schomburg	696
Declaration of Judge Shahabuddeen	699
Commentary <i>Maria Nybondas</i>	710
10. Sentencing judgements	
Judgement on Sentencing Appeal, <i>Prosecutor v. Zelenović</i> , Case No. IT-96-23/2-A, A. Ch., 31 October 2007	715
Sentencing Judgement, <i>Prosecutor v. Zelenović</i> , Case No. IT-96-23/2-S, T. Ch. I, 4 April 2007	731
Commentary <i>Denis Abels</i>	752
Part 4/ Post-conviction or post-acquittal issues	
11. Reconsideration	
Decision on Strugar’s Request to Reopen Appeal Proceedings, <i>Prosecutor v. Strugar</i> , Case No. IT-01-42-Misc. I, A. Ch., 7 June 2007	757
Separate Opinion of Judge Shahabuddeen	766
Dissenting Opinion of Judge Schomburg	770
Commentary <i>Anja Havedal-Ipp</i>	781
Index	785
Contributors and Editors	789

PREFACE

This is the thirty-fourth volume in the series “Annotated Leading Cases of International Criminal Tribunals” and contains the most important decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) from 4 April 2007 up to and including 14 December 2007. It is the seventeenth volume containing decisions of the ICTY.

The present volume is in its approach and structure similar to the previous volumes. Thus, the book contains the full text of all the decisions and judgements, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As with the previous volumes, the editors have ensured that the decisions are fully identical to the *written* original text, as issued by the ICTY Press and Information Office and which bears the signatures of the judges. We are aware that more and more decisions are available on the internet. However, only the written decisions bearing the signatures of the judges can be considered as authoritative versions. In the course of our editorial work on this and previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version, if the latter is available at all. Much of our editorial efforts consist in making the texts in this series identical to the written original version.

We could only include the full text of the decisions in this volume by reducing their original format. Still, we wanted the reader to be able to identify the page number of the original text, which is throughout the text put in brackets []. We are again very happy that a number of scholars in the field of international criminal law were prepared to write interesting and stimulating commentaries regarding the decisions.

A few words regarding the selection of decisions may give the user insight into our working method. In principle, we select all final judgements. In addition, we publish decisions taken at any stage of the procedure that are important for other reasons: because they deal with a specific legal question, because they are representative of a specific type of decision or because they enter new legal waters. Of course, we cannot publish all decisions. As a result, we may not publish decisions in which issues have been decided in a way similar or identical to a decision that has already been selected.

The decisions are presented in different parts and under different headings.

Part 1, “Preliminary matters”, contains decisions regarding jurisdiction and the indictment, under headings 1 and 2.

Part 2 deals with procedural matters. Under heading 3, several decisions regarding counsel, self-representation and related issues are included. Heading 4 includes decisions regarding the investigation of equality of arms, effective defence investigations and bringing the accused to trial without undue delay. Decisions on issues regarding witnesses and the admissibility of evidence are included under heading 5. Heading 6 covers four decisions relating to judicial notice and the decisions under heading 7 relate to referral. Under heading 8, a decision regarding contempt of court is included.

Part 3, “Judgements”, contains trial and appeal judgements (9) and sentencing judgements (10). As mentioned above, judgements are by definition included in this series, because of their importance, both from a factual and legal perspective.

Part 4 deals with issues regarding post-conviction and post-acquittal, and contains a decision on the request to re-open appeal proceedings (11).

We owe acknowledgements to many people without whom we could not have completed this thirty-fourth volume. These include the Press and Information Office of the ICTY, which offered generous assistance in obtaining all the hard copies of decisions. Our publisher Intersentia, in particular Hans Kluwer, Tom Scheirs and Isabelle van Dongen, facilitated our work. We also acknowledge the work of our student assistants, Anzinga Low (Maastricht), Mariam Pathan (Amsterdam) and Jeroen Gunning (Amsterdam), who assisted with the corrections of the text and without whom we would not be able to publish this series. The Netherlands School of Human Rights Research stimulated our work. Steven Freeland from the University of Western Sydney, Australia, offered tremendous help by correcting our English. Last but not least, we wish to thank the distinguished authors of for their commentaries on the decisions.

We hope that this volume will contribute to the further dissemination of the important work of the ICTY and that it will provide access to its decisions to practitioners, academics and students.

André Klip and Göran Sluiter

Maastricht/ Amsterdam, June 2013