

**ANNOTATED LEADING CASES OF  
INTERNATIONAL CRIMINAL TRIBUNALS**

**VOLUME XXIX:**

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA  
2006**

**André KLIP and Göran SLUITER (eds.)**



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:  
Hart Publishing Ltd.  
16 C Worcester Place  
Oxford OX1 2JW  
UK  
Tel.: +44 1865 51 75 30  
Email: mail@hartpub.co.uk

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  
Argentinerstraße 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 Ojdanić's motion challenging jurisdiction: indirect co-perpetration, *Prosecutor v. Milutinović et al*, Case No. IT-05-87-PT, T. Ch. III, 22 March 2006, Klip/ Sluiter, ALC-XXIX-11.

Annotated Leading Cases of International Criminal Tribunals  
André Klip and Göran Sluiter (eds.)  
Cover illustration: Hans Der Kinderen

© 2012 Intersentia  
Cambridge – Antwerp – Portland  
www.intersentia.com

ISBN 978-94-000-0069-8  
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

<b>Table of Contents</b> .....	5
<b>Preface</b> .....	9
<b>Part 1/Preliminary Matters</b>	
<b>1. Jurisdiction</b>	
Decision on Ojdanić’s motion challenging jurisdiction: indirect co-perpetration, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, T. Ch. III, 22 March 2006 .....	11
Separate Opinion of Judge Bonomy .....	28
Commentary <i>Annemieke van Verseveld</i> .....	40
<b>2. Provisional Release</b>	
Decision on defence’s interlocutory appeal of Trial Chamber’s decision denying Ljubomir Borovčanin provisional release, <i>Prosecutor v. Popović et al.</i> , Case No. IT-05-88-AR65.2, A. Ch., 30 June 2006 .....	45
Commentary <i>Christodoulos Kaoutzanis</i> .....	57
<b>Part 2/Procedural Matters</b>	
<b>3. Disclosure</b>	
Decision on Serbia and Montenegro’s motion to vacate or suspend 9 March 2006 Decision and request to redact parts of public version of Decision, <i>Prosecutor v. Milošević</i> , Case No. IT-02-54-T, T. Ch. III, 12 April 2006 .....	61
Commentary <i>Heather Stevenson</i> .....	66
<b>4. Contempt and Counsel</b>	
Second decision on payment of fines, <i>Prosecutor v. Marijačić and Rebić</i> , Case No. IT-95-14-R77.2-A, A. Ch., 11 April 2006 .....	69
Decision on “Assigned counsel appeal against the ‘Decision on submission of former assigned Counsel’ filed on 6 April 2006 and confidential annex 1”, <i>Prosecutor v. Milošević</i> , Case No. IT-02-54-Misc.1, A. Ch., 12 May 2006 .....	71
Revised version of the decision adopting guidelines on the standards governing the presentation of evidence and the conduct of counsel in court, <i>Prosecutor v. Martić</i> , Case No. IT-95-11-T, T. Ch. I, 19 May 2006 .....	75
Decision on the prosecution motion to withdraw the indictment, <i>Prosecutor v. Šešelj, Margetić and Križić</i> , Case No. IT-95-14-R77.5, T. Ch. III, 20 June 2006 .....	81

Separate Opinion of Judge Bonomy in the motion for leave to withdraw the indictments against Stjepan Šešelj, Domagoj Margetić and Marijan Kržić .....	83
Commentary <i>Björn Elberling</i> .....	85
<b>5. Impartiality of the Tribunal</b>	
Decision on defence motion for a ruling that his Honour Judge Canivell is unable to continue sitting in this case, <i>Prosecutor v. Krajišnik</i> , Case No. IT-00-39-T, T. Ch. I, 16 June 2006 .....	91
Decision on Krajišnik’s appeal against the Trial Chamber’s decision dismissing the defense motion for a ruling that Judge Canivell is unable to continue sitting in this case, <i>Prosecutor v. Krajišnik</i> , Case No. IT-00-39-AR73.2, A. Ch., 15 September 2006 .....	97
Commentary <i>Jocelyn Courtney</i> .....	105
<b>6. Evidence and Witnesses</b>	
Revised version of the decision adopting guidelines on conduct of trial proceedings, <i>Prosecutor v. Prlić et al.</i> , Case No. IT-04-74-PT, T. Ch. II, 28 April 2006 .....	109
Decision on defence motion to exclude the testimony of witness Milan Babić, together with associated exhibits, from evidence, <i>Prosecutor v. Martić</i> , Case No. IT-95-11-T, T. Ch. I, 9 June 2006 .....	115
Commentary <i>Firew Kebede</i> .....	134
<b>7. Rule 11bis Referral</b>	
Decision on joint defence appeal against decision on referral under Rule 11bis, <i>Prosecutor v. Međakić et al.</i> , Case No. IT-02-65-AR11bis.1, A. Ch., 7 April 2006 .....	141
Commentary <i>Krit Zeegers</i> .....	165
<b>8. Cooperation with States</b>	
Decision on the request of the United States of America for review, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-AR108bis.2, A. Ch., 12 May 2006 .....	171
Decision on request of the North Atlantic Treaty Organisation for review, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-AR108bis.1, A. Ch., 15 May 2006 .....	185
Commentary <i>Young Sok Kim</i> .....	194
<b>9. Fitness to Stand Trial</b>	
Decision on Stanišić defence’s motion on the fitness of the accused to stand trial with confidential annexes, <i>Prosecutor v. Stanišić and Simatović</i> , Case No. IT-03-69-PT, T. Ch. III, 27 April 2006 .....	201
Commentary <i>Kate Clark</i> .....	206
<b>Part 3/ Judgements and Sentencing</b>	
<b>10. Judgements</b>	
Judgement, <i>Prosecutor v. Stakić</i> , Case No. IT-97-24-A, A. Ch., 22 March 2006.....	213

---

Partly Dissenting Opinion of Judge Shahabuddeen .....	310
Opinion dissidente du Juge Güney sur le cumul de déclarations de culpabilité .....	325
Joint Separate Opinion of Judges Vaz and Meron .....	327
Commentary <i>Eric Iverson</i> .....	341
Judgement, <i>Prosecutor v. Naletilić and Martinović</i> , Case No. IT-98-34-A, A. Ch., 3 May 2006 ...	347
Declaration of Judge Shahabuddeen .....	486
Opinion dissidente conjointe des juges Güney et Schomburg sur le cumul de déclarations de culpabilité .....	487
Separate and Partly Dissenting Opinion of Judge Schomburg .....	488
Commentary <i>Maria Nybondas</i> .....	512
Judgement, <i>Prosecutor v. Orić</i> , Case No. IT-03-68-T, T. Ch. II, 30 June 2006 .....	519
Commentary <i>Christopher Gevers and Max du Plessis</i> .....	721
<b>11. Sentencing Judgement</b>	
Sentencing judgement, <i>Prosecutor v. Rajić</i> , Case No. IT-95-12-S, T. Ch. I, 8 May 2006 .....	741
Commentary <i>Erica Finkle</i> .....	772
<b>Index</b> .....	777
<b>Contributors and Editors</b> .....	781

## PREFACE

This is the twenty-ninth 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 16 March 2006 up to and including 30 June 2006. It is the fourteenth 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 a motion challenging jurisdiction (1) and provisional release (2).

Part 2 deals with procedural matters. Under heading 3, a decision is included relating to disclosure. Heading 4 includes several decisions regarding to contempt of court and the conduct of counsel. The decisions incorporated under heading 5 deal with issues regarding the impartiality of the tribunal. Heading 6 includes decisions relating to admissibility of evidence and witnesses. Under heading 7, a decision is included regarding referral under Rule 11 *bis*. Cooperation with states is the subject of heading 8 and heading 9 includes a decision regarding the fitness of the accused to stand trial.

Part 3, ‘Judgement and sentencing’, consists of a trial chamber judgement, judgements on appeal (10) and a sentencing judgement (11). As mentioned above, judgements are by definition included in this series, because of their importance, both from factual and legal perspective.

We owe acknowledgements to many people without whom we could not have completed this twenty-ninth 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, Mariam Pathan (Maastricht) 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, February 2012