

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

"SARAJEVO" (IT-98-29/1)

DRAGOMIR MILOŠEVIĆ



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From around March 1993, Chief of Staff to Stanislav Galić, Commander of the Sarajevo Romanija Corps of the Bosnian Serb Army (VRS), based around Sarajevo, Bosnia and Herzegovina; from about 10 August 1994, succeeded Galić as Corps Commander of the Sarajevo Romanija Corps.

- Sentenced to **29 years' imprisonment**

Convicted of:

Murder, inhumane acts (crimes against humanity)

Terror (violations of the laws or customs of war)

- Milošević conducted a campaign of sniping and shelling attacks on the city of Sarajevo and did so with the primary aim of spreading terror among the city's civilian population;
- He conducted a campaign of artillery, mortar and modified air bomb shelling of civilian areas of Sarajevo and its civilian population. The attacks were deliberate, indiscriminate, and/or excessive and disproportionate to the concrete and direct military advantage anticipated, and resulted in over a thousand civilians being killed or injured.

Born	4 February 1942, in the village of Murgas, municipality of Ub, Serbia
Indictment	24 April 1998, partly confidential until 2 November 2001 (including Stanislav Galić); 19 March 1999 (against only Dragomir Milošević); 12 December 2006, amended indictment
Surrendered	3 December 2004
Transferred to ICTY	3 December 2004
Initial appearance	7 December 2004, pleaded not guilty to all charges
Trial Chamber Judgement	12 December 2007, sentenced to 33 years' imprisonment
Appeals Judgement	12 November 2009, sentence reduced to 29 years' imprisonment
Serving sentence	22 March 2011, transferred to Estonia to serve the remainder of his sentence

STATISTICS

Trial days	106
Witnesses called by Prosecution	84
Prosecution exhibits	937
Witnesses called by Defence	53
Defence exhibits	459
Witnesses called by Trial Chamber	2
Chamber exhibits	15

TRIAL	
Commenced	11 January 2007
Closing arguments	9-10 October 2007
Trial Chamber II	Judges Patrick Robinson, Antonie Kesia-Mbe Mindua, Frederik Harhoff
Counsel for the Prosecution	Alex Whiting, Stefan Waespi
Counsel for the Defence	Branislav Tapušković, Branislava Isailović
Trial Chamber Judgement	12 December 2007

APPEALS	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mehmet Güney, Judge Liu Daqun, Judge Andréia Vaz and Judge Theodor Meron
Counsel for the Prosecution	Paul Rogers
Counsel for the Defence	Branislav Tapušković, Branislava Isailović
Judgement	12 November 2009

RELATED CASES
STANISLAV GALIĆ (IT-98-29) "SARAJEVO"

INDICTMENT AND CHARGES

An indictment against Galić and Milošević was confirmed on 24 April 1998 but remained partially under seal until 2 November 2001. On 15 March 1999 the Prosecution was granted leave to redact the indictment and file a separate indictment naming only Galić. The indictment was filed on 26 March 1999 and made public upon the detention of Galić on 20 December 1999. On 30 November 2006, the Appeals Chamber sentenced Galić to life imprisonment.

On 19 March 1999, the Pre-trial Chamber issued an order allowing the Prosecution to file an indictment solely against Milošević. The Prosecution filed this indictment on 26 March 1999. On 13 November 2006, the Prosecution sought leave to file an amended indictment. On 23 November 2006, the Trial Chamber invited the Prosecution to reduce the scope of its case by one-third. On 12 December 2006, the Trial Chamber issued a decision in which it granted leave to the Prosecution to file the proposed amended indictment. On 18 December 2006, the Prosecution filed the amended indictment, which became the operative indictment in this case. The indictment against Milošević charged him with seven counts under Articles 3, 5, 7(1) and 7(3) of the Statute for his participation in a campaign of sniping and shelling against civilians in Sarajevo from August 1994 to November 1995.

It was alleged that Milošević assumed command of the Sarajevo Romanija Corps (SRK) on or about 10 August 1994 and remained in that position until on or about 21 November 1995. During that time, the Sarajevo Romanija Corps implemented a military strategy, which used shelling and sniping to kill, injure, and spread terror among the civilian population of Sarajevo. The shelling and sniping killed and wounded thousands of civilians of both sexes and all ages, including children and the elderly.

The shelling and sniping was directed at civilians who were tending vegetable plots, queuing for bread, collecting water, attending funerals, shopping in markets, riding on trams, gathering wood, or simply walking with their children or friends. People were even injured and killed inside their own homes, being hit by bullets that came through the windows. The modified air bombs used could only have been intended to cause civilian casualties, given their inherent inability to engage specific targets.

Milošević was charged on the basis of his individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and his superior criminal responsibility (Article 7(3)) with:

- Murder, inhumane acts other than murder (crimes against humanity, Article 5).
- Terror and attacks on civilians (violations of the laws and customs of war, Article 3).

REFERRAL IN ACCORDANCE WITH RULE 11*bis*

For a case to be referred pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, the Referral Bench, comprised of three Judges, has to order a referral of its own accord or following a request from the Prosecutor. A decision to refer a case is rendered only if the Bench is fully satisfied that the accused would be tried in accordance with international standards and that neither the level of responsibility of the accused nor the gravity of the crimes alleged in the indictment are factors that would make a referral to national authorities inappropriate.

On 31 January 2005, the Prosecution submitted a motion requesting the case be transferred according to Rule 11*bis* to the state court of Bosnia and Herzegovina. The Referral Bench denied the Prosecution's motion on 8 July 2005 finding that the accused should be tried before the Tribunal.

THE TRIAL

The trial commenced on 11 January 2007.

The Prosecution completed its case-in-chief on 2 May 2007.

The Defence case commenced on 24 May 2007 and lasted until 27 August 2007.

On 25 September 2007, the parties met to hear the testimony of a witness called by the Trial Chamber.

The closing arguments were held on 9 and 10 October 2007.

RULE 98*bis* PROCEEDINGS

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule on whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charges, it can dismiss those charges and enter a judgement of acquittal before the beginning of the presentation of Defence evidence.

On 3 May 2007, the Trial Chamber issued an oral decision pursuant to Rule 98*bis* in which it concluded there was evidence capable of supporting a conviction for the crimes charged in each of the counts of the indictment. Therefore, the Chamber dismissed the Defence motion for acquittal.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber rendered its judgement on 12 December 2007.

During the trial, the Prosecution led evidence that Milošević, as Commander of the SRK, carried out a campaign of shelling and sniping of civilians, civilian areas and the civilian population of Sarajevo. This campaign was allegedly conducted by Bosnian Serb forces comprising or attached to the SRK, or affiliated with the Armed forces of the Republika Srpska. The Prosecution alleged that the attacks were deliberate, indiscriminate, excessive and disproportionate in relation to the anticipated concrete and direct military advantage. The Prosecution further alleged that the campaign had the primary purpose of spreading terror within the civilian population of Sarajevo.

The main Defence arguments were that during the entire conflict in Bosnia and Herzegovina, the area of Sarajevo and its surroundings was the scene of serious conflict and heavy fighting. Accordingly, the Defence argued that Sarajevo as a whole, and certain neighbourhoods of the city, could not be considered to be civilian areas. The existence of an armed conflict was also central to the Defence case. The Defence argued that the intensity of the conflict showed that the activities of the SRK were a necessary and legitimate response to activities of the ABiH, and did not constitute a deliberate attack against the civilian population. The Defence also argued that many deaths and injuries during the conflict resulted directly from the high level of intensity of combat activities, in effect offering this as an explanation for civilian casualties.

The Trial Chamber found that the evidence that was led in three scheduled incidents was insufficient to establish that the origin of fire was SRK-held territory. The remaining scheduled incidents were all proven. The Trial Chamber rejected the Defence submission on the status of Sarajevo.

The Chamber found that the civilian population of Sarajevo was subjected to conditions of extreme fear and insecurity, which, combined with the inability to leave the city, resulted in "deep and irremovable mental scars on that population as a whole." The Trial Chamber found that the SRK put its campaign into effect in a number of ways: It employed snipers using rifles with telescopic sights, it used mortars to shell the city and it used modified air bombs, which were inaccurate and served no military purpose.

The evidence showed that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. Of the 15 scheduled shelling incidents, eleven involved the use of these modified air bombs. The effects of these modified air bombs were overwhelming in terms of injuries, deaths, destruction and the psychological impact on the civilian population.

Of the twelve scheduled sniping incidents, the Trial Chamber heard evidence pertaining to five incidents in which trams were targeted and several passengers killed or seriously injured by SRK snipers. In addition to these five, the Trial Chamber heard of other incidents involving the sniping of trams. All these incidents took place during cease-fires. Witnesses testified as to the fear and horror they experienced as passengers.

Shelling with mortars was a common occurrence and caused many deaths and injuries among the civilian population in the city of Sarajevo. Of all the incidents in the campaign of shelling, the mortar attack on the Markale Market on 28 August 1995 was one of the most horrendous. The Trial Chamber found that the Markale Market was shelled by the SRK with a 120 mm mortar, which killed 34 civilians and wounded 78.

The main argument of the Defence in relation to the Markale Market shelling was that this was a staged event, an explosion caused by a static explosive and not a 120 mm mortar. The Chamber rejected this submission, as well as the other Defence arguments in relation to this event.

The Chamber found that Milošević, as the commander of the SRK, held a tight chain of command. He ensured that he was kept abreast of the activities of his units by improving an already existing reporting system; he decided on matters such as the replenishment of ammunition, the placement of mortars and the training of snipers. Milošević also regularly visited the SRK units along the confrontation lines.

It was under Milošević's command that modified air bombs were introduced and regularly used to shell Sarajevo. Several orders showed that he decided on the deployment and placement of the bomb launchers. Moreover, the evidence showed that Milošević ordered the shelling by way of modified air bombs.

The Trial Chamber considered that Milošević's position as commander of the SRK obligated him to prevent the commission of crimes and to ensure that the troops under his command conducted themselves with respect for international humanitarian law. The evidence presented to the Trial Chamber showed that Milošević abused his position and that he planned and ordered gross and systematic violations of international humanitarian law. Moreover, Milošević made regular use of modified air bombs, a highly inaccurate weapon with great explosive power. The Trial Chamber found that it was clear from the evidence that the SRK knew that these weapons were indiscriminate and inaccurate.

On 12 December 2007, the Trial Chamber rendered its judgement convicting Milošević on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Terror (violations of the laws or customs of war, Article 3)
- Murder (crime against humanity, Article 5)
- Inhumane acts (crime against humanity, Article 5)

The finding of guilt on Count 1, terror, had the consequence that Counts 4 and 7, unlawful attacks against civilians, a violation of the laws or customs of war, were dismissed.

Sentence: 33 years' imprisonment

Credit was given to Milošević for time spent in detention since 3 December 2004.

APPEALS PROCEEDINGS

The Prosecution filed its notice of appeal on 31 December 2007, and its appeal brief on 30 January 2008. The Defence filed its (confidential) notice of appeal on 16 January 2008 and its appeal brief on 14 August 2008.

The appeals hearing was held on 21 July 2009.

The Prosecution put forth a single ground of appeal, whereas Milošević set forth 12 grounds.

Under his eighth ground of appeal, Milošević challenged the Trial Chamber's finding that the SRK was behind certain shelling incidents. With regard to the shelling of the Baščaršija flea market on 22 December 1994, the Appeals Chamber noted that the evidence clearly showed that both of the shells which exploded on 22 December 1994 at the flea market were fired from the south-east. However, the Appeals Chamber further noted that the testimony of witness W-12 was the only evidence identifying with precision Vidikovac as the origin of the fire, and that the witness based his conclusion solely on the sound of one shell being fired. Because of the location of the ABiH and SRK positions, both in the direction from which the shell was fired, the Appeals Chamber was of the view that the testimony of witness W-12 was insufficient to establish beyond reasonable doubt that the first shell was fired from SRK-held territory. Accordingly an analysis of the charge, as explained in the Galić appeal judgement, could have determined with greater precision the position from which the shell was fired. The Appeals Chamber found that the Trial Chamber failed to address the deficiencies in the relevant evidence and to articulate its reasons for dismissing other possible conclusions with respect to the origin of fire. The Appeals Chamber therefore found that whereas the evidence on the record could lead a reasonable Trial Chamber to conclude that it was most likely that the shells that hit the flea market were fired from SRK-held territory, it was insufficient to support such a conclusion beyond reasonable doubt. In light of the above, the Appeals Chamber granted Milošević's eighth ground of appeal in part, and overturned his conviction for the shelling incident of 22 December 1994. The remainder of this ground of appeal was dismissed.

Under his twelfth ground of appeal, Milošević challenged the Trial Chamber's finding that he ordered the attacks against civilians.

The Appeals Chamber noted that the Trial Chamber did not analyze whether Milošević ordered every sniping or shelling incident, but rather concluded that those incidents could only have taken place if ordered by him in the framework of the campaign of terror. The Appeals Chamber further noted that the Trial Chamber did not rely on any evidence that would identify a specific order issued by Milošević with respect to the campaign of shelling and sniping in Sarajevo as such. Rather, it relied on the nature of the campaign carried out in the context of a tight command to conclude that it could only "have been carried out on [Milošević's] instructions and orders". However, the Appeals Chamber was not satisfied that the Trial Chamber established beyond reasonable doubt the existence of a positive act required for the *actus reus* of ordering showing that Milošević instructed his troops to perform a campaign of sniping and shelling against the civilian population in Sarajevo as a whole.

The Appeals Chamber further noted that Milošević was convicted for both planning and ordering the campaign of shelling and sniping of civilians in Sarajevo during the indictment period, subsequent to Galić's term in command. With respect to the *actus reus* of planning, the Trial Chamber held that, although Milošević did not devise a strategy for Sarajevo on his own and acted in furtherance of orders by the VRS Main Staff, he was able to implement the greater strategy in a manner he saw fit. The Appeals Chamber considered that it was unclear from these findings whether Milošević was found to have participated in the design of the military strategy concerning the ongoing campaign as such or whether he planned each and every incident for which he was held responsible by the Trial Chamber. The Appeals Chamber further found that it was unclear what specific evidence was relied upon by the Trial Chamber to come to these conclusions. In light of these uncertainties, the Appeals Chamber found that Milošević's responsibility for planning the campaign of sniping and shelling of civilians in Sarajevo as such could not be established beyond reasonable doubt. The Appeals Chamber emphasized that these findings pertained strictly to Milošević's individual criminal responsibility, and therefore had no effect on the conclusions of the Trial Chamber (as well as those of the Galić Trial and Appeal Chambers) that a campaign of shelling and sniping against the civilian population in Sarajevo took place during the relevant period.

With regard to Milošević's responsibility as far as the shelling incidents were concerned, the Appeals Chamber was of the opinion that on the basis of the evidence relied upon by the Trial Chamber, coupled with the established fact that Milošević was directly involved in the use and deployment of modified air bombs and issued orders regarding their use from as early as August 1994, it was not unreasonable for the Trial Chamber to conclude beyond reasonable doubt that all the shelling involving modified air bombs and mortars fired by the SRK in Sarajevo during the indictment period could only occur pursuant to Milošević's orders. However, the Appeals Chamber noted that the Trial Chamber's conclusions that Milošević planned the shelling incidents were based on essentially the same set of facts. The Appeals Chamber found that Milošević's responsibility for ordering the shelling incidents fully encompassed his criminal conduct and thus did not warrant a conviction for planning the same crimes.

Considering Milošević's responsibility as far as the sniping incidents were concerned, the Appeals Chamber noted that the Trial Chamber's reference to "an order for combat readiness and to draw up a firing plan onto the Old Town", which the Trial Chamber held to be an example of Milošević planning and ordering the sniping, was not accompanied by any mention of an exhibit or witness testimony, and the Appeals Chamber was therefore unable to discern what exactly the Trial Chamber was citing to. Furthermore, the Appeals Chamber noted that the Trial Chamber found that, unlike the manner in which he exercised control over shelling activities, when it came to sniping Milošević "would issue general orders as to how to engage a target and the low level commander would then organise the firing position." The Appeals Chamber concluded that the inference that Milošević ordered all sniping incidents attributed to the SRK snipers was not the only reasonable one on the ground that he generally controlled the sniping activity and training.

However, the Appeals Chamber noted that its findings did not exclude Milošević being held responsible for the crimes committed through sniping under Article 7(3) of the Statute, considering that this mode of liability was pleaded in the indictment and discussed in the trial judgement. The Appeals Chamber was satisfied that, although it did not convict Milošević under Article 7(3) of the Statute, the Trial Chamber made the findings necessary for the establishment of his command responsibility for the sniping incidents. Having applied the correct legal framework to the conclusions of the Trial Chamber, the Appeals Chamber was satisfied that Milošević's responsibility under Article 7(3) of the Statute for having failed to prevent and punish the said crimes committed by his subordinates was established beyond reasonable doubt.

The Appeals Chamber then turned to consider Milošević's arguments raised under his fourth ground of appeal, in which he claimed that he could not be held responsible for planning and ordering the incidents that took place between 6 August and 10 September 1995, namely the shelling of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995, since he was receiving medical treatment in Belgrade. The Appeals Chamber recalled that while Milošević was hospitalized in Belgrade, the person in charge of the SRK command in Sarajevo was his Chief of Staff, Čedomir Sladoje, who issued orders in lieu of the commander. Therefore, the Appeals Chamber found that, even though Milošević formally preserved his rank and duties, the position of authority on the ground belonged to the stand-in commander, albeit temporarily. The Appeals Chamber noted that the Trial Chamber did not establish the existence of the prior positive act required for the *actus reus* of ordering with respect to the two shelling incidents at stake. The Appeals Chamber further found that it was unreasonable for the Trial Chamber to infer that Milošević ordered these two shelling incidents on the basis that the incidents in question were similar to the ones that took place in his presence and thus were part of the overall plan and general orders of Milošević. Consequently, the Appeals Chamber quashed the Trial Chamber's findings in this regard and acquitted Milošević of the crimes related to the shelling of the BITAS building on 22 August 1995 and that of the Markale Market on 28 August 1995.

In light of the foregoing, the Appeals Chamber granted Milošević's twelfth and fourth grounds of appeal in part and (i) upheld Milošević's convictions for ordering the shelling of the civilian population in Sarajevo during the indictment period, except for the shelling of the Baščaršija Flea Market on 22 December 1994, of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995; (ii) quashed his conviction for planning the same crimes; and (iii) replaced Milošević's convictions for planning and ordering the sniping of the civilian population by respective convictions under Article 7(3) of the Statute. As shown in the reasoning of the judgement, in light of the acquittals with respect to the shelling of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995, the Appeals Chamber did not need to address Milošević's challenges in relation to the victims thereof and the SRK participation therein. In this sense, the Trial Chamber's relevant findings remained undisturbed on appeal.

The Chamber dismissed Milošević's appeal in all other respects.

It affirmed the remainder of Milošević's convictions under counts 1 (Judge Liu dissenting), 5 and 6.

The Prosecution's appeal, which suggested that the sentence imposed by the Trial Chamber was manifestly inadequate, was dismissed.

With regard to sentencing the Appeals Chamber found that the overturning of Milošević's convictions for planning the crimes of terror, murder and inhumane acts, did not warrant any reduction of the sentence taking into account Milošević's criminal conduct and the seriousness of the crimes that remain undisturbed. Concerning the specific incidents, the Appeals Chamber found that although the reversal of Milošević's convictions for the shelling of the Baščaršija Flea Market, the BITAS building, the Markale Market did not change the fact that the entire population of Sarajevo was the victim of the crime of terror committed under Milošević's command, he was now held to be responsible for fewer victims of the crimes of murder and other inhumane acts. The Appeals Chamber thus found that these reversals had an impact, although limited, on Milošević's overall culpability.

On 12 November 2009, the Appeals Chamber rendered its judgement and reduced Milošević's sentence to 29 years of imprisonment, subject to credit being given for time spent in detention.

On 22 March 2011, Milošević was transferred to Estonia to serve his sentence.