



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-6-D
Date: 11 May 1995
Original: English and French

IN THE TRIAL CHAMBER

Before: Judge McDonald, Presiding
Judge Deschênes
Judge Vohrah

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 11 May 1995

**IN THE MATTER OF A PROPOSAL FOR
A FORMAL REQUEST FOR DEFERRAL
TO THE COMPETENCE OF THE TRIBUNAL
ADDRESSED TO
THE REPUBLIC OF BOSNIA AND HERZEGOVINA
IN RESPECT OF CRIMES AGAINST
THE POPULATION OF THE LASVA RIVER VALLEY**

DECISION

The Prosecutor:

Mr. Richard J. Goldstone
Mr. Graham Blewitt
Mr. Erik Ostberg

Amicus Curiae

Ms. Vasvija Vidovic - Republic of Bosnia and Herzegovina

THE TRIAL CHAMBER

Considering the Application dated 21 April 1995 ("the Application"), filed by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia ("the International Tribunal"),

Noting that the Trial Chamber has been designated by the President of the International Tribunal pursuant to Rule 9 of the Rules of Procedure and Evidence ("the Rules") of the International Tribunal to determine the Application,

Having read and considered the Application and the Schedule ("the Schedule") annexed thereto,

Having granted leave to the Government of the Republic of Bosnia and Herzegovina to appear as *amicus curiae*, and having read and considered the submission of its representative,

Having heard both the Prosecutor and the representative of the Government of the Republic of Bosnia and Herzegovina at a public sitting held at The Hague on 9 May 1995,

HEREBY ISSUES ITS DECISION.

I - The Application

1. This is an application by the Prosecutor of the International Tribunal, made pursuant to Article 9(2) of the Statute of the International Tribunal in accordance with Rule 9 (iii) of the Rules. The Application is for the issue of a formal request from this Trial Chamber to the Government of the Republic of Bosnia and Herzegovina, pursuant to Rule 10 of the Rules, that its national courts defer to the competence of the International Tribunal all investigations and criminal proceedings being conducted by the Government of the Republic of Bosnia and Herzegovina respecting genocide and other serious violations of international humanitarian law allegedly committed by Bosnian Croat forces in Ahmici and other locations in the Lasva River Valley Area in the territory of the former Yugoslavia between October 1992 and May 1993. The basis for the Application is set forth in the Schedule.
2. In the Schedule, the Prosecutor has stated that certain identified persons, being Bosnian Croat military and political leaders, have been identified by the Higher Court in Zenica, in the Republic of Bosnia and Herzegovina, in a decision dated 1 September 1993 founded on reasonable suspicion of involvement in a policy of ethnic cleansing and in crimes against humanity, such as assault, murder, rape, torture and persecution based on religious grounds. The decision of the Higher Court in Zenica concluded that the accused had committed the criminal offence of genocide, contrary to the law of the Republic of Bosnia and Herzegovina, and to Article 141 of the Criminal Law of the Socialist Federal Republic of Yugoslavia as recognised by the Republic of Bosnia and Herzegovina.

3. The Prosecutor states in the Schedule that he is currently conducting investigations into alleged serious violations of humanitarian law in the territory of the former Yugoslavia as set forth in Articles 2 to 5 of the Statute of the International Tribunal. The Prosecutor confirmed in his oral submission that these investigations not only include, but are broader than, the incidents which are the subject of the investigations and the decision of 1 September 1993 of the Higher Court of Zenica. The Prosecutor asserts that he is in possession of evidence which identifies a number of Bosnian Croat perpetrators of the alleged offences but that in order to complete his investigations, the Prosecutor must collect further essential evidence and obtain full access to the statements, documents and other findings of the investigations conducted by the Government of the Republic of Bosnia and Herzegovina pursuant to the above decision of the Higher Court of Zenica.
4. The Prosecutor asserts that the national investigations and criminal proceedings involve issues closely related to, or otherwise involve significant factual or legal questions which may have implications for those investigations, as set out in the Schedule.
5. In particular, the Prosecutor refers, *inter alia*, to the following significant factual or legal questions which may have implications for his investigations or any subsequent prosecutions:
 - (i) issues relating to the principle of *non-bis-in-idem*;
 - (ii) witnesses may be exposed to greater risks as their identities and evidence will already have been made public;

- (iii) witnesses may be unwilling or unable to testify for a second time;
- (iv) there is the potential inadvertently to create inconsistent sworn evidence;
- (v) critical evidence stored in war zones in the Republic of Bosnia and Herzegovina could be damaged or lost before use by the International Tribunal;
- (vi) a trial *in absentia* may have implications for a fair trial before the International Tribunal;
- (vii) it would be undesirable and not in the interest of justice if the decisions of a national court and of the International Tribunal were to conflict;
- (viii) witnesses may become confused as to the scope and authority of the two investigations;
- (ix) the International Tribunal is not a party to the conflict in the Republic of Bosnia and Herzegovina and has a better ability to obtain evidence worldwide.

6. The Prosecutor has stated in his oral submission that the International Tribunal is the appropriate forum to try the persons responsible for the kind of crimes covered by the investigations currently being conducted by the Government of the Republic of Bosnia and Herzegovina, taking into account the seriousness and nature of the crimes alleged.

7. The Government of the Republic of Bosnia and Herzegovina does not oppose the issue of a formal request by the Trial Chamber for the deferral of all investigations and criminal proceedings in respect of the crimes alleged to have been committed in the Lasva River Valley area.

8. The Government of the Republic of Bosnia and Herzegovina, appearing as *amicus curiae*, has indicated in both its written and oral submissions that it is engaged in several inter-related investigations into genocide and other serious violations of international humanitarian law between October 1992 and May 1993, including those in the Lasva River Valley area which are the subject of the decision of 1 September 1993 of the Higher Court of Zenica.

9. The Government of the Republic of Bosnia and Herzegovina is aware and does not dispute that its national investigations and criminal proceedings involve issues closely related to, or otherwise involve significant factual or legal questions which may have implications for, investigations or prosecutions before the International Tribunal.

10. The Government of the Republic of Bosnia and Herzegovina has also made clear its intent to pursue its investigations in regard to the alleged crimes in the Lasva River Valley area and to proceed to trial in the absence of a formal request for deferral.

II - Discussion

11. Article 8 of the Statute extends the territorial jurisdiction of the International Tribunal to the territory of the former Socialist Republic of Yugoslavia, including its land surface, airspace and territorial waters, beginning on 1 January 1991.

12. Article 9 of the Statute provides as follows:
 - "1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.
 2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal."

13. Pursuant to Chapter VII of the United Nations Charter, which gives the Security Council authority to determine the existence of a threat to the peace and take measures to maintain or restore international peace and security, the Security Council established the International Tribunal in resolutions 808 and 827. Member States of the United Nations are obliged to carry out decisions of the Security Council, to take the necessary steps to comply with these resolutions and to implement the decisions of the International Tribunal: *see* United Nations Charter, Article 25. This obligation of cooperation is included in Article 29 of

the Statute of the International Tribunal. The obligation to carry out decisions of the Security Council takes precedence over conflicting obligations arising under any other international agreement: *see* United Nations Charter, Article 103. While Article 9 of the Statute recognizes that the International Tribunal and national courts have concurrent jurisdiction, it explicitly states that the International Tribunal has primacy over the national courts. The Rules provide the modus for the exercise of that primacy.

14. Rules 9 and 10 provide in relevant parts:

Rule 9

Prosecutor's Request for Deferral

Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the national courts of any State:

- (i) ...
- (ii) ...
- (iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that the national court defer to the competence of the Tribunal.

Rule 10

Formal Request for Deferral

- (A) If it appears to the Trial Chamber seized of a proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its court defer to the competence of the Tribunal.
- (B) A request for deferral shall include a request that the results of the investigations and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.
- (C) ...
15. To comply with the enabling provisions for grant of the Application, the Prosecutor must therefore establish that:
- (a) there is an investigation currently being conducted by the Prosecutor into crimes within the jurisdiction of the International Tribunal alleged to have taken place against the population of the Lasva River Valley area of Bosnia and Herzegovina between October 1992 and May 1993;
 - (b) the matters that are being investigated by the Prosecutor are also the subject of investigations or criminal proceedings instituted in the national courts of the Republic of Bosnia and Herzegovina;
 - (c) what is in issue in the national investigations or criminal proceedings is closely related to, or otherwise involves, significant factual or legal questions which may have

implications for the investigations of the Prosecutor and any subsequent proceedings before the International Tribunal.

See also Decision of the International Tribunal of 8 November 1994, Case No. IT-94-1-D (*In re Tadic Deferral*).

16. The Trial Chamber is satisfied that the Prosecutor has shown that a crime or crimes within the jurisdiction of the International Tribunal are the subject of investigations and criminal proceedings being carried out by the Government of the Republic of Bosnia and Herzegovina and that such investigations and criminal proceedings involve issues which are closely related to, or otherwise involve, significant factual or legal questions which may have implications for investigations or prosecutions before the International Tribunal, so as to meet the requirements of Rule 9.

17. The Trial Chamber is satisfied that deferral of the investigations and proceedings which are the subject of this Application is appropriate and, pursuant to Article 9 of the Statute and Rules 9 and 10, issues a formal request for deferral to the Government of the Republic of Bosnia and Herzegovina as hereinafter set forth.

III - Disposition

For the foregoing reasons **THE TRIAL CHAMBER**, being seized of the Application made by the Prosecutor,

HEREBY GRANTS the said Application and accordingly,

FORMALLY REQUESTS the Government of the Republic of Bosnia and Herzegovina that its national courts defer to the International Tribunal all investigations and criminal proceedings respecting serious violations of international humanitarian law, as set forth in Articles 2 to 5 of the Statute of the International Tribunal, concerning the population of the Lasva River Valley between October 1992 and May 1993,

INVITES the Government of the Republic of Bosnia and Herzegovina to take all necessary steps, both legislative and administrative, to comply with this Formal Request and to notify the Registrar of the International Tribunal of the steps taken to comply with this Formal Request, and

REQUESTS that the Government of the Republic of Bosnia and Herzegovina forward to the International Tribunal the results of its investigations and a copy of the records and judgement of its national courts.

The Trial Chamber requests the Registrar of the International Tribunal to notify the Government of the Republic of Bosnia and Herzegovina of this its Decision and Formal Request.

Dated this eleventh day of May 1995

The Hague

The Netherlands


Gabrielle Kirk McDonald
Presiding Judge

[Seal of the Tribunal]