



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

Case No. IT-96-20-T
Date: 24 April 1996
Original: ENGLISH AND
FRENCH

IN THE TRIAL CHAMBER

Before: Judge Jorda, Presiding
Judge Odio Benito
Judge Riad

Registrar: Mr. Dominique Marro, Deputy Registrar

Decision of: 24 April 1996

PROSECUTOR
v.
DJORDJE DJUKIĆ

**DECISION REJECTING THE APPLICATION TO WITHDRAW
THE INDICTMENT
AND ORDER FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Graham Blewitt
Mr. Michael Blaxill
Mr. Michael Keegan

Counsel for the Applicant:

Mr. Milan Vujin
Mr. Toma Fila

THE TRIAL CHAMBER,

NOTING the urgency of this case,

NOTING the submission of General Djukić presented on 19 March 1996 requesting, *inter alia*, that he be released on the grounds of both lack of evidence supporting the indictment and the gravity of the medical condition of the accused,

NOTING the report dated 12 April 1996 of Dr. Th. J. de Man, Inspector of the Dutch Penitentiary Services, designated as an expert by decision of this Trial Chamber on 25 March 1996,

NOTING the decision of Judge Karibi-Whyte rendered 19 April 1996 declining jurisdiction in this case,

NOTING the submission of the Prosecutor presented on 19 April 1996 for leave to withdraw the indictment confirmed on 29 February 1996 on the grounds that, given the medical condition of General Djukić, it would be unjust and inhumane to force him to stand trial and that, furthermore, the accused would be incapable of participating in his defence in any meaningful way,

NOTING the brief presented in response by the Defence counsel of General Djukić on 22 April 1996 objecting to the request from the Prosecutor on those grounds but requesting that the indictment be withdrawn because of the lack of supporting evidence,

NOTING the withdrawal by the Defence of its request in respect of the wearing of handcuffs, during the hearing of 22 April 1996,

HAVING HEARD the parties to the hearings of 25 March and 22 April 1996, the latter without the presence of the accused who has been hospitalised,

HAVING ALSO HEARD the Dutch authorities at the hearing of 22 April, pursuant to Rule 65 (B) of the Rules of Procedure and Evidence of the Tribunal ("the Rules"), and Dr. Th. J. de Man during the *in camera* part of the hearing of 22 April 1996 pursuant to Rule 74 of the Rules,

CONSIDERING that Judge Karibi-Whyte has already received a request from the Prosecutor to withdraw the indictment against General Djukić and that the request has been rejected,

CONSIDERING that, as Judge Karibi-Whyte has noted, the trial has already begun with the accused's having pleaded not guilty to the counts against him during his initial appearance on 4 March 1996 and that, pursuant to Rule 51 (A) of the Rules, an indictment may be withdrawn while the trial is in progress only with leave from the Trial Chamber,

CONSIDERING that, pursuant to Rule 47 of the Rules, it should be recalled that the Prosecutor has issued and obtained confirmation of an indictment against General Djukić based on the existence of reasonable grounds for believing that General Djukić has committed a crime against humanity and a violation of the laws and customs of war,

CONSIDERING that the Prosecutor does not allege any exculpatory evidence nor does he state that any exculpatory evidence which might exonerate the accused exists and that he bases his request solely on the serious medical condition of General Djukić,

CONSIDERING that on the basis both of the report from Dr. Th. J. de Man and the closed deliberations at the hearing of 22 April 1996 the Tribunal has verified the extreme gravity of the medical condition of General Djukić of which his Counsels state that he is aware;

CONSIDERING that General Djukić is suffering from an incurable illness which, in the opinion of the medical experts, is in its terminal phase,

CONSIDERING, however, that no matter how critical the medical reasons cited may be, nothing in the Statute or the Rules authorises the withdrawal for those reasons of an indictment for major crimes which the International Criminal Tribunal must judge, and that, consequently, no grounds exist for granting leave to the Prosecutor to withdraw that indictment;

CONSIDERING that during the Nuremberg and Tokyo trials, identical situations arose (accused Krupp von Bohlen und Halbach and Osawa) and that the International Military Tribunals did not consider it necessary to withdraw the indictments,

CONSIDERING moreover that the Prosecutor alleges that the withdrawal of the indictment is necessary because the inevitable mental decline of General Djukić would conflict with the principles of an equitable trial, but considering that the Trial Chamber, the only guarantor of those principles, could itself draw all the consequences stemming from this situation which would ensure that the accused would enjoy the equitable trial to which he is entitled;

CONSIDERING furthermore that the withdrawal of the indictment as requested by the Defence counsel in its brief of 22 April 1996, and during the hearing that same day, also may not be accepted; that such a request is, in fact, not relevant at this stage of the proceedings; that the issue of alleged sufficient or insufficient evidence could only be reviewed at a later date, either during the review of the preliminary motions or during the trial proper;

CONSIDERING therefore that leave to withdraw the indictment cannot be granted,

CONSIDERING, however, that the critical medical condition of General Djukić requires urgent and appropriate measures;

CONSIDERING that pursuant to Rule 65 of the Rules, the Trial Chamber may, after hearing the host country, order the provisional release of the accused under exceptional circumstances so long as it is satisfied the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person; and that the Chamber may impose such conditions upon the provisional release of the accused as it may determine appropriate;

CONSIDERING that the extreme gravity of the current medical condition of General Djukić is not compatible with any form of detention and that the palliative care which his condition requires, or will require, justifies a different environment;

CONSIDERING therefore that solely for humanitarian reasons an order must be issued for the provisional release of General Djukić and authorisation granted to him to leave the territory of The Netherlands so he may join his family without delay;

CONSIDERING however that given the fact that the indictment against him shall stand, such an exceptional measure must be accompanied by stringent conditions to ensure, if necessary, the appearance of the accused, these being:

1) General Djukić or his counsel to inform the Registry before his release of his address and of any subsequent changes to his address;

2) General Djukić or his counsel to use those same channels to send periodic medical reports on his condition;

3) General Djukić to respond to any summons from the Tribunal if his medical condition so permits;

4) the Government of the country to which General Djukić will inform the Tribunal that he intends to go, will not obstruct the execution of the requests from the Tribunal in respect of the accused, pursuant to the obligations of States to cooperate according to Article 29 of the Statute;

FOR THESE REASONS

NOTES the withdrawal of the request from the Defence in respect of the wearing of handcuffs,

REJECTS the request from the Prosecutor of 19 April 1996 that the indictment be withdrawn,

REJECTS the request from the Defence of 22 April 1996 that the indictment be withdrawn,

ORDERS the provisional release of General Djukić and authorises him to leave the territory of The Netherlands to join his family without delay,

ORDERS

1) General Djukić or his counsel to inform the Registry before his release of his address and, later, of any subsequent changes to his address;


2) General Djukić or his counsel to use those same channels to send periodic medical reports on his condition;

3) General Djukić to respond to any summons from the Tribunal if his medical condition so permits,

4) the Government of the country to which General Djukić will inform the Tribunal that he intends to go, will not obstruct the execution of the requests from the Tribunal in respect of the accused, pursuant to the obligations of States to cooperate according to Article 29 of the Statute;

INSTRUCTS the Registry to take all the necessary measures to execute this order immediately.

Done in French and English, the French version being authoritative.



Claude Jorda
Presiding Judge of Trial Chamber I

Done this 24th day of April 1996
at The Hague, The Netherlands