



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-95-17/1-PT

Date: 13 May 1998

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Florence Ndepele Mwachande Mumba, Presiding
Judge Antonio Cassese
Judge Richard May

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of: 13 May 1998

PROSECUTOR

v.

ANTO FURUNDŽIJA

DECISION ON THE DEFENDANT'S EMERGENCY PETITION OF 6 MAY 1998

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Terree Bowers
Mr. Michael Blaxill
Ms. Patricia Viseur-Sellers

Counsel for the Accused:

Mr. Luka Misetić

THIS TRIAL CHAMBER of the 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 ("International Tribunal");

BEING SEISED of the "Defendant's Emergency Petition for Rule to Show Cause Why the Office of the Prosecution Should Not Be Held in Contempt of this Trial Chamber for Failure to Comply with the Trial Chamber's Order of 29 April 1998, and Emergency Motion to Dismiss of 6 April 1998" filed on 6 May 1998 (Official Record at Registry Page ("RP") D361 - D355) ("Emergency Motion"), the Prosecutor's Response thereto filed on 11 May 1998 (RP D367 - D366) ("Prosecution Response") and the Defendant's Reply of 12 May 1998 (RP D373 - D369) ("Defence Reply");

CONSIDERING that the matters raised in the Emergency Motion, the Prosecution Response and the Defence Reply are proper for determination by the Trial Chamber in the absence of oral argument pursuant to the "Order for Filing of Motions" issued by the Trial Chamber on 19 December 1997 (RP D21-D22);

RECALLING the grave concerns of the Trial Chamber about the conduct of the Prosecution in this matter as expressed in its Scheduling Orders of 29 April 1998 (RP D342 -D340) and 8 May 1998 (RP D364 - D363), in its "Decision on Motion of Defendant Anto Furundžija to Preclude Testimony of Certain Prosecution Witnesses" of 29 April 1998 (RP D334 - D333) and as expressed orally to the Prosecution in the Status Conference on 29 April 1998;

CONSIDERING the allegations made against Anto Furundžija in the Indictment issued by the Prosecutor against him on 2 November 1995 (RP D50, D41 - D36) and that the Prosecution has indicated to the Defence and to the Trial Chamber that it will only proceed with the charges detailed in Counts 13 and 14 of the said Indictment (leave to withdraw Count 12 was given on 13 March 1998);

CONSIDERING FURTHER that Article 7(1) of the Statute of the International Tribunal provides that a person who planned, instigated, ordered, committed or otherwise aided and

abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the Statute shall be individually responsible for the crime;

CONSIDERING ALSO the "Prosecutor's Reply Re: Article 7 (1) of the Statute of the Tribunal" filed on 31 March 1998 (RP D235 - D234), the "Prosecutor's Reply to Trial Chamber Order to Produce Factual Basis for Accused's Liability for the Charge of Torture in Counts 13 and 14") filed on 29 April 1998 (RP D346 - D344) and the "Prosecutor's Document Pursuant to the Scheduling Order of 29 April 1998 and Supplemental to the Prosecutor's Document Filed on 1 May 1998" (RP D350 - D348);

NOTING that to date there has been no filing by the Defence of a notice of intention to rely on the defence of alibi or a special defence such as diminished or lack of mental responsibility pursuant to Rule 67 of the Rules of Procedure and Evidence and therefore no obligation is outstanding upon the Prosecution;

NOTING ALSO that the Defence is not required by the judicial practice of the International Tribunal to disclose the outline of its defence in advance of its Opening Statement nor is it in the absence of the required notification under Rule 67 of the Rules of Procedure and Evidence obliged to provide simultaneous discovery;

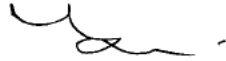
TAKING INTO ACCOUNT that on 1 May 1998 in accordance with Rule 66 (A) of the Rules of Evidence and Procedure and this Trial Chamber's Scheduling Order of 29 April 1998 (RP D342 -D340), the Prosecution delivered to the Defence the statements of all the witnesses which it intends to call at trial;

APPRECIATING that under Rule 72 of the Rules of Procedure and Evidence the Defence is entitled to have 60 days from the date of disclosure by the Prosecution of all the documents disclosed to it pursuant to Rule 66 (A) within which to file pre-trial motions and that the unjustified delay caused by the Prosecution may result in the postponement of the trial of Anto Furundžija should the Defence elect not to waive this right;

HEREBY

1. **FINDS** that without prejudice to the Pre-trial Brief which the Prosecution is bound to file by 22 May 1998, sufficient information on the case against Anto Furundžija has been provided by the Prosecution to enable the Defence to develop its defence;
2. **FINDS** that in the circumstances it is not necessary to make a ruling on the allegation that the Prosecution is in contempt of the Trial Chamber; and
3. **DECLINES** to reconsider its "Decision on the Defendant's Motion to Dismiss Counts 13 & 14 of the Indictment" issued on 29 April 1998 (RP D332 - D331).

Done in both English and French, the English text being authoritative.



Florence Ndepele Mwachande Mumba
Presiding Judge

Dated this thirteenth day of May 1998
At The Hague,
The Netherlands.

[Seal of the Tribunal]