



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 Nos.: IT-95-8-I and
IT-98-30-PT

Date: 6 July 1999

Original: English

Before: Judge Lal Chand Vohrah
Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh
Decision: 6 July 1999

THE PROSECUTOR

v.

DRAGAN KOLUNDŽIJA

**DECISION REJECTING PROSECUTOR'S REQUEST
FOR LEAVE TO AMEND INDICTMENTS**

Office of the Prosecutor:
Mr. Dirk Ryneveld
Mr. Kapila Waidyaratne

I, **Lal Chand Vohrah**, Judge of the International Tribunal for the Former Yugoslavia (“the International Tribunal”), in Chambers,

NOTING the original indictment against, *inter alia*, the accused Dragan Kolundžija and Zoran Žigić in the Keraterm camp case, Case No. IT-95-8-I (“the Keraterm Indictment”) confirmed by me on 21 July 1995,

NOTING the original indictment against, *inter alia*, the accused Miroslav Kvočka, Mladen Radić, Milojica Kos and Zoran Žigić in the Omarska camp case, Case No: IT-95-4-I (“the Omarska Indictment”), confirmed by Judge Karibi-Whyte on 13 February 1995,

NOTING the order of 9 November 1998, together with its corrigendum of 12 November 1998, in which (1) the Prosecutor was granted leave to amend the Omarska Indictment as it related to the accused Miroslav Kvočka, Mladen Radić, Milojica Kos and Zoran Žigić and the Keraterm Indictment as it related to the accused Zoran Žigić by way of, *inter alia*, consolidating the charges against the four accused into one single indictment (Case No.: IT-98-30-I), and (2) this indictment was confirmed (the “IT-98-30 indictment”),

NOTING the Prosecutor’s request for leave to amend the Keraterm Indictment and the IT-98-30 Indictment (“the Prosecutor’s Request”) “for the purpose of withdrawing Dragan Kolundžija (Kulundžija) from the Keraterm camp indictment and to join him as an accused to the indictment in the pending trial against Miroslav Kvočka, et al. [Mladen Radić, Milojica Kos and Zoran Žigić]”¹ pursuant to Sub-rule 50(A)(ii) of the Rules of Procedure and Evidence (“the Rules”), filed on 17 June 1999,

CONSIDERING that the main function of the reviewing Judge pursuant to Rules 47 and 50 is to determine whether the Prosecutor has established a *prima facie* case against a suspect or an accused and that this function is performed in *ex parte* proceedings according to the well-settled practice of the International Tribunal,²

¹ Prosecutor’s Request for Leave to Amend Indictments IT-95-8-PT and IT-98-30-PT, p. 3.

² See for instance Order on the Prosecutor’s Requests for the Assignment of a Confirming Judge, The Prosecutor v. Meakic and Others and Sikirica and Others (Case Nos.: IT-95-4-PT, IT-95-8-PT), Judge McDonald, 28 Aug. 1998, p. 3; and various orders pursuant to *ex parte* proceedings in the following cases: The Prosecutor v. Milan Kovačević (Case No: IT-97-24-PT); The Prosecutor v. Blagoje Simić and Others (Case No.: IT-95-9-PT); The Prosecutor v. Goran Jelisić and Ranko Češić (Case No.: IT-95-10-PT); The Prosecutor v. Dragoljub Kunarac (Case No.: IT-96-23-PT); and The Prosecutor v. Tihomir Blaškić (Case No.: IT-95-14-T).

CONSIDERING that the Prosecutor's Request in substance constitutes a request for joinder of accused persons charged in separate indictments,

CONSIDERING that Rule 48 provides that "persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried" and that there is no specific provision in the Rules that sets out the procedure by which accused persons charged in separate indictments may be joined,

CONSIDERING, however, that the practice of the International Tribunal and the International Criminal Tribunal for Rwanda ("the ICTR") has been for the Prosecutor to request by way of motion before the Trial Chambers in *inter partes* proceedings for accused persons charged in separate indictments to be joined,³

CONSIDERING that the case against the accused Miroslav Kvočka, Mladen Radić, Milojica Kos and Zoran Žigić (Case No.: IT-98-30-PT) has reached the stage where a pre-trial conference has been held and a pre-trial brief has been filed pursuant to Rule 73bis, and that the initial appearances of all four accused were held over a year ago,⁴


FINDING, therefore, that I, as the confirming Judge, am not competent to consider the Prosecutor's Request in *ex parte* proceedings pursuant to Sub-rule 50(A),

³ Decision on Motion for Joinder of Accused and Concurrent Presentation of Evidence, Prosecutor v. Kovačević, Kvočka, Radić, Žigić (Case No.: IT-97-24-PT, IT-95-4-PT, IT-95-8-PT) T. Ch. II, 14 May 1998; Decision on Appeal Against Oral Decision of Trial Chamber II of 28 September 1998, Joint and Separate Opinion of Judge McDonald and Judge Vohrah and Dissenting Opinion of Judge Shahabuddeen, Nsengiyumva v. The Prosecutor (Case No.: ICTR-96-12-A), A. Ch. 3 June 1999; Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I, Joint and Separate Opinion of Judge McDonald and Judge Vohrah, Joint Separate and Concurring Opinion of Judge Wang Tieya and Judge Rafael Nieto-Navia and Dissenting Opinion of Judge Shahabuddeen, Kanyabashi v. The Prosecutor (Case No.: ICTR-96-15-A), A. Ch. 3 June 1999. Furthermore, the Rules of Procedure and Evidence of the ICTR were recently amended by the adoption of Rule 48bis, which specifically provides that "[t]he Prosecutor may join confirmed indictments of persons accused of the same or different crimes committed in the course of the same transaction, for the purposes of a joint trial, with leave granted by a *Trial Chamber* pursuant to Rule 73. (Emphasis added.)

⁴ The Prosecution filed its pre-trial brief on 9 April 1999. The Defence is due to file their pre-trial brief by 3 Sept. 1999 and on the same date the Prosecution is due to submit the list of the witnesses it intends to call during trial, see Scheduling Order, Prosecutor v. Miroslav Kvočka and Others (Case No.: IT-98-30-PT), T. Ch. III, 8 June 1999.

For the foregoing reasons **REJECT** the Prosecutor's Request.

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



Lal Chand Vohrah

Dated this sixth July 1999
At The Hague
The Netherlands

[Seal of the Tribunal]