



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-98-33-PT

Date: 10 September 1999

English  
Original: French

**IN THE TRIAL CHAMBER**

**Before:** Judge Claude Jorda, Presiding  
Judge Fouad Riad  
Judge Almiro Simões Rodrigues

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Decision of:** 10 September 1999

**THE PROSECUTOR**

**v.**

**RADISLAV KRSTIĆ**

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**DECISION ON THE SECOND PRELIMINARY DEFENCE  
MOTION ON THE FORM OF THE INDICTMENT**

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**The Office of the Prosecutor:**

**Mr. Mark Harmon  
Mr. Peter W. McCloskey  
Mr. Alberto E. Perduca**

**Defence Counsel:**

**Mr. Nenad Petrušić**

**TRIAL CHAMBER I** 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 (hereinafter “the Tribunal”);

**NOTING** the Decision on the Defence Preliminary Motion on the Form of the Indictment of 6 May 1999 (hereinafter “the Decision of 6 May 1999”);

**NOTING** the Memorandum Filed Pursuant to the Trial Chamber’s 6 May 1999 Decision on the Defence Preliminary Motion on the Form of the Indictment dated 7 June 1999 (hereinafter “the Memorandum”);

**NOTING** the Preliminary Motion of the Defence on the Form of the Indictment dated 6 July 1999 (hereinafter “the Motion”);

**NOTING** the Prosecutor’s Response of 2 August 1999 to the Defence Motion;

**PURSUANT** to Article 21 of the Statute and Rule 72 of the Rules of Procedure and Evidence (hereinafter “the Rules”);

**CONSIDERING** that the Defence alleges that the indictment is vague, undefined and contradictory on two grounds;

**CONSIDERING** that according to the Defence the charges brought against Radislav Krstić are dispersed amongst three distinct documents; that, moreover, the indictment filed on 10 June 1999 is not fully identical to the text presented to the Accused upon his arrest on 4 December 1998 nor does it contain the information provided in the Memorandum filed by the Prosecutor on 7 June 1999; that the lack of a single text unnecessarily complicates the reading and understanding of the charges brought against Radislav Krstić and thereby constitutes a violation of Article 21(4) of the Statute;

**CONSIDERING** also that according to the Defence the indictment of 10 June 1999 neither indicates precisely the functions and responsibilities that the Accused exercised at the time of the facts with which he is charged nor the role and functions of the co-accused; that, consequently, the indictment does not comply with the Decision of 6 May 1999, which

ordered the Prosecutor “to specify or clarify the indictment in respect of the points relating to the responsibility of the accused and his co-accused and to their share of responsibility without, however, disclosing the names of the co-accused”;

**CONSIDERING** furthermore that the Defence is of the opinion that the Prosecutor cannot comply with the Decision of 6 May 1999 by simply presenting a memorandum such as the one submitted on 7 June 1999 and that the explanations provided in the aforesaid Memorandum are in any case insufficient;

**CONSIDERING** that, according to the Prosecutor, the Defence Motion is based upon a misunderstanding; that the indictment filed on 10 June 1999, and on which the Defence relies, was not intended to be a response to the Decision of 6 May 1999; that the demands of the Trial Chamber have been satisfied apart by the Memorandum;

**CONSIDERING** that, according to the Prosecutor, the explanations provided in the aforesaid Memorandum are sufficient and satisfy the Decision of 6 May 1999;

**CONSIDERING** that the differences between the official indictment and the document read out to the Accused at the time of his arrest on 4 December 1998 are essentially typographical and result from the redaction of information regarding the co-accused and do not concern the contents of the charges brought against the Accused;

**CONSIDERING** that the indictment filed on 10 June 1999 corresponds to the indictment as read out to the Accused during his initial appearance;

**CONSIDERING** that the Prosecutor explained in her Memorandum the reasons why she could not disclose the exact ranks of the co-accused at this stage of the proceedings whilst specifying that the co-accused were officers subordinate to the Accused at the time of the facts with which he is charged;

**CONSIDERING** that at the present stage of the proceedings this information is sufficient to determine upon what basis the Accused might be held responsible for their acts;

**CONSIDERING** moreover that the Prosecutor undertook to transmit to the Defence the information redacted from the initial indictment when, in compliance with Rule 73 *bis* of the Rules, the pre-trial brief was filed;

**CONSIDERING** that, at this stage, it is not necessary to include the information regarding the co-accused in the indictment against Radislav Krstić;

**CONSIDERING** that the Memorandum also specifies the status and the responsibilities of the Accused at the time of the facts with which he is charged, explanations which do not constitute an amendment of the indictment within the meaning of Rule 50 of the Rules;

**CONSIDERING** that, taking into account the responsibilities of the Accused at the time of the facts, the Defence cannot claim that the Accused is not in a position to understand the nature and scope of the crimes with which he is charged;

**CONSIDERING** however that the interests of justice require that the grounds and the charges brought against any person be submitted in a single document;

**CONSIDERING** furthermore that it appears appropriate to the administration of justice, in particular to a more expeditious conduct of the trial, that this single text clearly sets out the military structure within which General Krstić allegedly exercised his responsibilities; that in this regard it would be proper to indicate his relationship both to his superiors and subordinates – without its being necessary however for them to be mentioned by name - and to all of the units and sub-units, whether military or para-military, constituting the Drina Corps; that moreover it is important to specify the geographic zone in which the Accused exercised his authority by indicating *inter alia* the link existing between “the territory under the control of the Drina Corps” and “the Srebrenica Enclave area”;

**CONSIDERING** that under these conditions, there is reason to organise a pre-trial conference to allow *inter alia* the Prosecution to produce a definitive document after having heard the submissions of the Defence;

**FOR THE FOREGOING REASONS,**

**REJECTS** the Preliminary Motion on the form of the indictment;

**ORDERS** the Prosecutor to combine the indictment, the Memorandum and the above-mentioned explanations into a single document;

**STATES** that the new document will be entitled "Updated Indictment";

**REQUESTS** the Prosecutor to submit a draft updated indictment to the Trial Chamber and the Defence by 23 September 1999 with a view to the pre-trial conference scheduled for 30 September 1999.

Done this tenth day of September 1999,

At The Hague,

The Netherlands.

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

(signed)

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Judge Claude Jorda

Presiding Judge, Trial Chamber I

[Seal of the Tribunal]