



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-96-23-PT  
Date: 5 January 2000  
Original: English

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**IN THE TRIAL CHAMBER**

Before: Judge Florence Ndepele Mwachande Mumba  
Judge Antonio Cassese  
Judge David Anthony Hunt  
Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh  
Decision of: 5 January 2000

PROSECUTOR

v.

GOJKO JANKOVIĆ  
JANKO JANJIĆ  
ZORAN VUKOVIĆ  
DRAGAN ZELENOVIĆ  
RADOVAN STANKOVIĆ

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ORDER ON PROSECUTOR'S MOTION FOR NON-DISCLOSURE OF 29 DECEMBER 1999

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**Office of the Prosecutor:**

Mr. Dirk Ryneveld  
Ms. Peggy Kuo  
Ms. Hildegard Uertz-Retzlaff

**Counsel for the Accused:**

Mr. Goran Jovanović for the accused Zoran Vuković

1. 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 ("Tribunal") is seised of the Prosecutor's Motion for Non-Disclosure of 29 December 1999 ("Motion"), in which she asks the Trial Chamber to rescind the order made by Judge Wang on 28 December 1999 with regard to the amended indictment against the accused and four other indictees. The reason for this is that the Prosecution had inadvertently asked for the supporting materials and arrest warrants of that entire amended indictment to be disclosed and now requests that the supporting materials and arrest warrants not be disclosed publicly.
2. The Trial Chamber has jurisdiction to hear the Motion with regard to all five accused, although only the accused Zoran Vuković was arrested and made his initial appearance before Trial Chamber II on 29 December 1999. This is evident from Rule 62 of the Rules of Procedure and Evidence, which reads:

"Upon transfer of an accused to the seat of the Tribunal, the President shall forthwith assign *the case* to a Trial Chamber." (emphasis added)

Although the President is required to make the assignment order only once an accused has been transferred, the wording of Rule 62 makes it clear that the assignment covers the whole case of which the accused is part, and not just the individual accused who makes his initial appearance. Thus, in the case of multiple accused and for all subsequent amendments, the Trial Chamber retains the general jurisdiction over the whole case and all accused, although not all of them may have made their initial appearance. There is no need for further assignment orders every time one of the accused is transferred to the seat of the Tribunal.

3. The case against the accused Zoran Vuković is part of an original indictment of 18 June 1996 against the accused Dragan Gagović, Dragoljub Kunarac, Radomir Kovač, Gojko Janković, Janko Janjić, Dragan Zelenović, Radovan Stanković and himself, bearing the case number IT-96-23. That case number was assigned to Trial Chamber II by President McDonald by order of 5 March 1998, although by inadvertently using the name of "*The Prosecutor v. Dragoljub Kunarac*". That Judge McDonald did not intend to assign only the case against Dragoljub Kunarac is clear from the order's cover sheet which mentions all eight accused, and the use of the common case number in the dispositive part of the order. This interpretation is supported by

the Order of Vice-President Shahabuddeen of 15 July 1998, on the composition of Trial Chamber II in this case, which cites the case as "*Prosecutor v. Dragan Gagović et al*". The order of Vice-President Mumba of 28 December 1999, assigning the case relating to the accused Zoran Vuković to Trial Chamber II was therefore merely declaratory.

4. The original indictment was amended on 19 August 1998 by redacting the charges against the accused Dragoljub Kunarac so that there was now a document relating only to him. The same happened with the accused Radomir Kovač, whose charges were redacted from the original indictment and directly merged with those against the accused Dragoljub Kunarac in the second amended indictment of 6 September 1999. The charges against the remaining five accused<sup>1</sup>, including Zoran Vuković, were then redacted and merged into a third amended indictment which was confirmed by Judge Nieto-Navia on 7 October 1999. Judge Nieto-Navia also ordered that the third amended indictment, the supporting materials and arrest warrants not be made public until they had been served on all accused, the primary reason for this, according to the Prosecution, being the fear that the accused Zoran Vuković might go into hiding or interfere with material witnesses once he had learnt of the fact that he had now been correctly identified.
5. The Prosecutor by motion of 28 December 1999 filed a request to the Duty Judge, Judge Wang, to allow public disclosure of the third amended indictment, including the supporting materials and the arrest warrants. Judge Wang by Order of 28 December 1998 granted the request of the Prosecutor in full. In the Motion, the Prosecutor now argues that the request for public disclosure should not have encompassed the supporting materials and arrest warrants, because such disclosure might cause irreparable harm to the safety of victims and witnesses. The Prosecutor has, however, no difficulty with the third amended indictment being made public.
6. The issue had been raised orally in open session at the initial appearance of the accused Zoran Vuković; he and his counsel had raised no objection to the Prosecutor's intention to have Judge Wang's order modified.
7. The Trial Chamber agrees with the Prosecutor that the supporting materials should not be publicly disclosed. Indeed, supporting materials are never disclosed as a rule. However, it serves no purpose to order the non-disclosure of the arrest warrants of the remaining four accused, as the original indictment has always been public and as the amended indictment will now be made public. The accused will infer as a matter of course that the indictment will be followed by

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<sup>1</sup> The accused Dragan Gagović had died in the meantime and the indictment against him had already been withdrawn.

arrest warrants for each of them. Also, the Motion itself mentions the arrest warrants, although it was not filed confidentially, and the issue was discussed in open session at the initial appearance on 29 December 1999. Thus the fact that there are arrest warrants against the remaining accused is already public record. The Prosecutor has not argued in the Motion that the disclosure of the individual contents of the arrest warrants as opposed to the mere fact of their existence might entail any harm to victims and witnesses.

The Motion is therefore

DENIED as far the non-disclosure of the arrest warrants is concerned, and

GRANTED as far as the supporting materials are concerned. The Order of Judge Wang of 28 December 1999 is accordingly amended to the effect that there shall be no public disclosure of the supporting materials underlying the amended indictment confirmed by Judge Nieto-Navia on 7 October 1999.

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



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Judge Mumba

Dated this fifth day of January 2000,  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**