



**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-99-37-I

Date: 29 June 2001

Original: English

BEFORE THE CONFIRMING JUDGE

Before: Judge David Hunt

Registrar: Mr Hans Holthuis

Decision of: 29 June 2001

PROSECUTOR

v

**Slobodan MILOŠEVIĆ, Milan MILUTINOVIĆ, Nikola ŠAINOVIĆ,
Dragoljub OJDANOVIĆ & Vljako STOJILJKOVIĆ**

**DECISION ON APPLICATION TO AMEND INDICTMENT
AND ON CONFIRMATION OF AMENDED INDICTMENT**

The Office of the Prosecutor:

**Carla Del Ponte, Prosecutor
Mr Dirk Ryneveld, Senior Trial Attorney**

1. On 24 May 1999, I confirmed an indictment presented by the Prosecutor against Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanović and Vljako Stojiljković, charging each with crimes against humanity (involving persecution, deportation and murder) and with a violation of the laws or customs of war (murder).¹ The Prosecutor has now sought leave to amend that indictment.² The Motion comes before me as the judge who confirmed the original indictment, and in accordance with Rule 50(A)(i)(b) of the Tribunal's Rules of Procedure and Evidence ("Rules"). The interaction between Rules 47 and 50(A)(ii) makes it clear that the amended indictment must also be confirmed.

2. The test for confirmation which I applied in relation to the original indictment was whether I was satisfied that the material facts pleaded established a *prima facie* case and that there was evidence available which supported those material facts.³ I adopted, as the definition of a *prima facie* case, that the material facts pleaded in the indictment in relation to any particular charge constituted a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him on that charge.⁴

3. There has been considerable investigation of what constitutes a *prima facie* case since the Previous Decision, and the definition is now differently expressed, although in my opinion its substance is the same. The way in which the definition is now usually stated is whether there is evidence (if accepted) upon which a reasonable tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question.⁵ That is the test that I have applied in relation to the present application. As leave to amend an indictment by *adding* matters or charges would not ordinarily be granted unless there was *prima facie* evidence available to support those additional matters or charges, the tests for determining the application for leave to amend in this case and for confirming the amended indictment are therefore the same.

¹ Decision on Review of Indictment and Application for Consequential Orders, 24 May 1999 ("Previous Decision").

² Motion for Leave to File an Amended Indictment and Confirmation of the Amended Indictment, 26 June 2001 ("Motion").

³ Previous Decision, par 3.

⁴ *Ibid*, par 4. The definition was that given by Judge McDonald in *Prosecutor v Kordić*, Case IT-95-14-1, Decision on Review of Indictment, 10 Nov 1995, at p 3.

⁵ See, for example, *Prosecutor v Delalić*, Case IT-96-21-A, Judgment, 20 Feb 2001, par 434, adopting statements to that effect in *Prosecutor v Kordić*, Case IT-95-14/2-T, Decision on Defence Motions for Judgment of Acquittal, 6 Apr 2000, par 26; *Prosecutor v Kunarac*, Case IT-96-23-T & 96-23/1-T, Decision on Motion for Acquittal, 3 July 2000, par 3. See, generally, Article 19.1 of the Tribunal's Statute and Rule 47(E).

4. The proposed amended indictment retains the same charges as were pleaded in the original indictment. It rearranges the various sections of the original indictment, and renames some of those sections. As the original indictment was filed before the end of what had been pleaded as an armed conflict within the Autonomous Province of Kosovo within the Federal Republic of Yugoslavia, it pleaded many facts in the continuous present tense. These facts are now pleaded in the past tense. The official position or status held by each of the accused pleaded in the original indictment has been brought up to date. There has also been a minor alteration to the name of a statute, and there are a few minor changes in the way certain facts have been alleged. None of these alterations is significant. There have been no deletions of significance made to the original indictment.

5. Two amendments are of significance: namely, the extension of the time frame covered by the four charges – from the period 1 January to 22 May 1999 (in the original indictment) to the period 1 January to 20 June 1999 – and the inclusion of five further incidents involving the killing of many people at different sites within Kosovo, in addition to the seven incidents pleaded in the original indictment. Most of these incidents are alleged to have occurred within the time frame nominated in the original indictment. Some of them, however, are alleged to have occurred or to have continued after that original time frame. Unrelated to those allegations are two paragraphs (100-101) which plead facts relating to what is described as the resolution of the crisis in Kosovo in June 1999.

6. The structure of the Rules makes it clear that the confirming judge is concerned only with the substance of the indictment, and as to whether it pleads a *prima facie* case in the sense already described. It is no part of my function to consider the form of the indictment, which is the concern of the Trial Chamber to which the case is assigned by the President after the transfer of an accused to the seat of the Tribunal.⁶ There is therefore no occasion for me to consider whether an indictment may be amended to include events which occurred after the original indictment was filed.

7. After reviewing and considering the proposed amended indictment and the additional supporting material forwarded by the Prosecutor, and after hearing the Prosecutor in person and counsel for the prosecution, I am satisfied that the material facts pleaded establish a *prima facie* case in respect of each and every count of that indictment and that there is evidence available which supports those material facts. I will therefore grant leave to the Prosecutor to amend the original

⁶ Rule 72(A).

indictment by substituting for it the proposed amended indictment. I am satisfied that the requirements of Article 19 of the Tribunal's Statute and Rule 47 have been complied with. Accordingly, I will confirm the amended indictment submitted for review.

8. The order made by me on 24 May 1999, that there is to be no public disclosure of the supporting material forwarded by the Prosecutor pursuant to Rule 47(B) until the arrest of all of the accused, will be continued, and it will apply also to the additional supporting material forwarded in relation to the amended indictment.

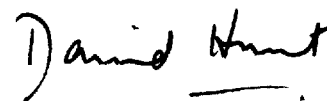
Disposition

9. The following orders are made:

- (i) I grant leave to the Prosecutor to amend the original indictment by substituting for it the proposed amended indictment which is annexed to the Motion.
- (ii) I confirm the amended indictment submitted for review.
- (iii) The order of 24 May 1999, that there is to be no public disclosure of the supporting material forwarded by the Prosecutor pursuant to Rule 47(B) until the arrest of all of the accused, is continued, and it is to apply also to the additional supporting material forwarded in relation to the amended indictment.

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

Dated this 29th day of June 2001
At The Hague
The Netherlands



Judge David Hunt

[Seal of the Tribunal]