



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-01-51-I  
Date: 22 November 2001  
Original: ENGLISH

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**BEFORE A JUDGE OF THE TRIBUNAL**

**Before: Judge Richard May**

**Registrar: Mr. Hans Holthuis**

**Decision of: 22 November 2001**

**PROSECUTOR**

**v.**

**SLOBODAN MILOŠEVIĆ**

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**DECISION ON REVIEW OF INDICTMENT**

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**Office of the Prosecutor:**

Ms. Carla Del Ponte, Prosecutor

1. On the 12 November 2001 the Prosecutor presented an indictment which was transmitted to me as a Judge of a Trial Chamber for review under Article 19 of the Statute of the International Tribunal and Rule 47 of the Rules of Procedure and Evidence.
  
2. Article 19 requires a Judge to whom an indictment has been transmitted to review it and if “satisfied that a prima facie case has been established by the Prosecutor” to confirm the indictment; and, if not so satisfied, to dismiss it. Rule 47 requires the Judge to examine each of the counts in the indictment and any supporting material the Prosecutor may provide to determine, applying the standard in Article 19, whether a case exists against the suspect. The purpose, therefore, is to determine whether there is a fit case to justify the commencement of proceedings against the accused on the indictment and to ensure that there is material to support the allegations in it, thus preventing the commencement of proceedings for which there is no support. The discharge of this task has been likened to that performed by a grand jury or committing magistrate under the common law or a *juge d’instruction* under some civil law systems.<sup>1</sup>
  
3. The indictment charges the accused Slobodan Milošević, in 29 counts with:
  - (a) Genocide and complicity in genocide under Article 4 of the International Tribunal’s Statute;
  - (b) Crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation and inhumane acts (forcible transfers) under Article 5 of the Statute;
  - (c) Grave breaches of the Geneva Conventions of 1949 involving wilful killing, unlawful confinement, torture, wilfully causing great suffering, unlawful deportation or transfer, and extensive destruction and appropriation of property under Article 2 of the Statute;

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<sup>1</sup> *Prosecutor v. Kordić et al*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 Nov 1995 (Judge Gabrielle Kirk McDonald), at p. 3; *Prosecutor v. Milošević et al*, Case IT-99-37-I, Decision on Review of Indictment and Application for Consequential Orders, 24 May 1999 (Judge David Hunt), at para. 2.

- (d) Violations of the laws or customs of war involving, *inter alia*, attacks on civilians, unlawful destruction, plunder of property, and cruel treatment under Article 3 of the Statute.
4. In very brief, summary form, the allegations are as follows. The indictment is concerned with events which took place in Bosnia and Herzegovina between 1992 and 1995. The Prosecution case is that this accused, together with others, participated in a joint criminal enterprise, the purpose of which was the “forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina.”<sup>2</sup> It is alleged that this criminal enterprise was carried out by means of the commission of numerous crimes during a series of offensives against the non-Serb population.
5. These offensives are alleged to have been carried out by ‘Serb forces’ in attacks on towns and villages in over 40 municipalities in Bosnia and Herzegovina which were taken over by such forces. It is further alleged that during these attacks thousands of Bosnian Muslims and Bosnian Serbs were killed (including the thousands executed after the fall of Srebrenica). Thousands more were imprisoned in over 50 detention facilities such as camps, barracks, police stations and schools: while there, they were subjected to inhuman living conditions and forced labour; many were murdered and others subjected to torture, beatings and sexual assault. Of those not imprisoned, thousands were forcibly transferred and deported from their homes: the total expelled or imprisoned is alleged to have been over a quarter million people.
6. It is further alleged that during the take-overs, and thereafter, there was robbing and plunder of public or private property belonging to the non-Serb population and that the take-overs were accompanied by wanton destruction of homes, religious institutions and historical monuments. In particular, it is alleged that part of the Serb forces conducted a prolonged shelling and sniping campaign against civilians

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<sup>2</sup> *Prosecutor v. Milošević*, Case IT-01-51-I, Indictment, 22 November 2001, at para. 6.

in Sarajevo between April 1992 and November 1995 including 26 incidents of shelling and 47 incidents of sniping which are specified in the indictment.

7. The accused is said in the indictment to have been criminally responsible for the above crimes, firstly, by reason of his individual criminal responsibility under Article 7(1) of the Statute. It is alleged in this connection that he planned, instigated, ordered, committed or otherwise aided and abetted the various crimes. It is not alleged that he physically committed the crimes personally, but that he participated in the joint criminal enterprise, working with or through others in order to achieve the objective of the enterprise, which involved the commission of the crimes.
8. The other participants in the criminal enterprise are alleged to have included members of the political and military leadership of the Socialist Federal Republic of Yugoslavia (SFRY) and later the Federal Republic of Yugoslavia (FRY), Serbia and Republika Srpska (RS); senior members of the Serbian Ministry of Internal Affairs (MUP), the Yugoslav People's Army (JNA) and the Yugoslav Army (VJ), together with the commanders of various police and paramilitary units.
9. It is alleged that as the dominant political figure in Serbia, SFRY and FRY, the accused exercised effective control or influence over the other participants in the joint criminal enterprise and himself participated in it; and that he did so *inter alia*, by controlling, directing or supporting the units of the JNA, VJ, Bosnian Serb Army (VRS), MUP and Serb paramilitaries who carried its objectives out; by assisting the RS leadership in the take-overs of municipalities and participating in the planning of the same; and by manipulating and controlling the Serb state-run media in order to spread false reports, which were intended to create an atmosphere of fear and hatred.
10. It is also alleged that the accused is responsible, as a superior under Article 7(3) of the Statute, for the participation of the JNA, VJ and other units in the crimes alleged in the indictment. In particular it is said that he exercised control by the following means:

- (a) from March 1991 until June 1992 the accused effectively controlled the 'Serbian Bloc' within the Presidency of the SFRY (which exercised the powers of the Presidency including that of collective Commander-in-Chief of the JNA).
- (b) from April 1992 the Supreme Defence Council (of which the accused was a member and over which he had substantial influence and control) had *de jure* control over the JNA and VJ;
- (c) the accused also had *de facto* control over the JNA and VJ; and
- (d) the accused exercised control over the agents of the Serbian MUP and State Security who directed and supported the actions of special forces and Serb paramilitaries in Bosnia and Herzegovina.

11. The above is a summary of the crimes alleged in the indictment and of the way in which it is alleged that the accused was connected to them; and, having reviewed the indictment, I have to consider whether a *prima facie* case has been established by the Prosecutor. As noted, Article 19 of the Statute requires the reviewing Judge to be satisfied that a *prima facie* case has been established by the Prosecutor before confirming it. The test to be applied in determining whether a *prima facie* case has been established has been the subject of decisions by reviewing Judges of the International Tribunal. For instance, in the leading case on this topic in 1995, when reviewing the indictment in *Kordić et al.*,<sup>3</sup> Judge Kirk McDonald adopted the test formulated by the International Law Commission in its Draft Statute for an International Criminal Court:

“a *prima facie* case for this purpose is understood to be a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.”<sup>4</sup>

12. This test was followed by Judge Hunt in 1999 when reviewing the indictment in *Milošević et al.*,<sup>5</sup> albeit slightly re-formulated; to the effect that a *prima facie* case

<sup>3</sup> *Prosecutor v. Kordić et al.*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 November 1995.

<sup>4</sup> *Kordić*, pp 2-3. See Report of the International Law Commission on the work of its 46<sup>th</sup> Sess., U.N. GAOR, 49<sup>th</sup> Sess., at 95, U.N. Doc. A/49/10(1994).

<sup>5</sup> *Prosecutor v. Milošević et al.*, Case IT-99-37-I, Decision on Review of Indictment and Application for Consequential Orders, 24 May 1999.

exists “where the material facts pleaded in the indictment constitute a credible case [...].”<sup>6</sup>

13. When determining whether to grant leave to the Prosecutor to amend the same indictment in 2001, Judge Hunt said that there had been investigation of what constitutes a *prima facie* case since the earlier decision and the definition was now differently expressed, *i.e.* 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.<sup>7</sup> However, this formulation is based on the test to be applied in determining a motion under Rule 98 *bis* for judgement of acquittal after the close of the Prosecution case, a later stage of the proceedings than the present review. On the other hand, Judge Hunt also said that the substance of the test was the same;<sup>8</sup> and, indeed, both formulations contain the essential concept that the Prosecutor must provide sufficient evidence which, if it is accepted, would be sufficient for a conviction of the accused.
14. Accordingly, I adopt the test for review as formulated by Judge Kirk McDonald as the more appropriate for this stage of the proceedings. In adopting the test, I would add a caveat; the case must be one which is based on evidence, which if it is accepted by a Trial Chamber, would be a sufficient basis for conviction. Therefore it would appear more appropriate to speak of a *prima facie* case being a credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused. It is for a Trial Chamber to determine whether to accept the facts pleaded in the indictment: this is not the task for the reviewing Judge.
15. In reviewing this indictment I have examined each count and considered the supporting material provided by the Prosecutor. I have heard counsel for the Prosecution. I requested the Prosecutor to submit additional material and also adjourned the review to give her the opportunity to modify the indictment. I apply the standard set out in Article 19, as explained above. I am now satisfied that the

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<sup>6</sup> *Milošević*, at para. 4 (footnote omitted).

<sup>7</sup> *Prosecutor v. Milošević et al*, Case IT-99-37-I, Decision on Application to Amend Indictment and on Confirmation of Amended Indictment, 29 June 2001, at para. 3.

Prosecutor has established a *prima facie* case on each count and that there is material to support the counts. The requirements of both Article 19 and Rule 47 have been met.


16. For the foregoing reasons,

I CONFIRM all the counts in the indictment presented by the Prosecutor.

And ORDER, further, that the annotated indictment attached to the Prosecutor's presentation be not considered part of the supporting materials for the purposes of disclosure to the accused.

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

Dated this 22<sup>nd</sup> day of November 2001  
At The Hague  
The Netherlands

  
Richard May  
Judge  
International Tribunal

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<sup>8</sup> *Ibid.*