

UNITED
NATIONS



**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-01-47-PT

Date: 12 June 2002

Original: English

IN TRIAL CHAMBER II

Before: Judge Florence Ndpele Mwachande Mumba, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 12 June 2002

PROSECUTOR

v

**Enver HADŽIHASANOVIĆ
Mehmed ALAGIĆ
Amir KUBURA**

**DECISION ON JOINT DEFENCE MOTION SEEKING LEAVE TO REPLY TO THE
PROSECUTION'S REPLY TO DEFENCE RESPONSES TO THE PROSECUTION'S
BRIEF CONCERNING ISSUES RAISED IN THE JOINT CHALLENGE TO
JURISDICTION ARISING FROM THE AMENDED INDICTMENT**

The Office of the Prosecutor:

Mr. Ekkehard Withopf
Mr. David Re
Mr. David Hackney
Ms. Cynthia Fairweather
Mr. José Doria

Counsel for accused:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Mr. Vasvija Vidović and Mr. John Jones for Mehmed Alagić
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura

I, FLORENCE MUMBA, Judge 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 (the “International Tribunal”),

HAVING BEEN DESIGNATED pre-trial Judge in the present matter by the “Order Appointing a Pre-Trial Judge” issued by Trial Chamber II of the International Tribunal on 28 November 2001,

BEING SEISED of the Defence’s “Joint Motion Seeking Leave to Reply to the Prosecution’s Reply to Defence Responses to the Prosecution’s Brief Concerning Issues Raised in the Joint Challenge to Jurisdiction Arising from the Amended Indictment”, (the “Motion”), filed 6 June 2002,

NOTING that the Office of the Prosecutor (“Prosecution”) filed a Response on 7 June 2002, “Prosecution’s Response to Joint Motion Seeking Leave to Reply to the Prosecution’s Reply to Defence Responses to the Prosecution’s Brief Concerning Issues Raised in the Joint Challenge to Jurisdiction Arising from the Amended Indictment”, (the “Response”), in which it states that it does not oppose the filing of such an additional reply by the Defence,

NOTING the “Further Order on Filing Motions” issued on 9 November 2001 which states that a party seeking leave to file a supplement to a previous filing must seek leave prior to filing such a supplement, providing reasons for seeking such leave, and that such leave shall be sought within three working days from the date of the filing of the response,

NOTING the Scheduling Order issued on 25 March 2002 and the second Order on this matter issued on 4 April 2002,

NOTING that in the Motion, the Defence state that the Prosecution addressed a “number of issues” raised by the Accused in their briefs filed on 10 May 2002 only in the Prosecution’s Reply¹ filed on 31 May 2002, and not in their Response² filed on 24 May 2002, thereby “pre-empting” the Accused from replying to these arguments, as the Prosecution submitted arguments out of sequence,

NOTING that the procedure for filings with regard to this issue was that of concurrent filings,

¹ Prosecutor’s Response to Defence Written submissions on Joint Challenge to Jurisdiction Arising from the Amended Indictment, 24 May 2002 (“Prosecution’s Response”)

² Prosecution’s Reply to Defence Responses to the Prosecution’s Brief Concerning Issues Raised in the Joint Challenge to Jurisdiction Arising from the Amended Indictment (“Prosecution’s Reply”)

NOTING that the purpose of filing a response is to address the submissions of the other party and the purpose of a reply is to address issues raised in the other party's response,

CONSIDERING that generally leave to file a reply or a supplement to a previous filing will only be granted where the response – or in this case the Prosecution's Reply – goes beyond the issues raised in the motion itself³ and not simply to provide an opportunity for a party to repeat and elaborate submissions in their original motion,⁴

CONSIDERING that it is in the interest of justice that the Defence have the opportunity to fully address the issues now raised in the Prosecution's Reply, as identified in the Motion, having been omitted in the Prosecution's Response, as conceded by the Prosecution,

CONSIDERING that the Trial Chamber will benefit from receiving as exhaustive as possible written submissions on this issue,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY GRANT the Joint Defence Motion and **ORDER** that:

1. The Defence may file an additional joint reply only on the two issues cited in their Motion, in a submission not exceeding five pages; and
2. That such submission must be filed by 4:00pm on 17 June 2002.

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

Done this twelfth day of June 2002
At The Hague
The Netherlands



Florence Ndepele Mwachande Mumba
Pre-Trial Judge

[Seal of the Tribunal]

³ *Prosecutor v. Brdanin and Talić*, Case IT-99-36-PT, Decision on Filing of Replies, 7 June 2001 at para. 1.

⁴ *Prosecutor v. Brdanin*, Case IT-99-36-PT, Further Decision on Petition for a Writ of Habeas Corpus on Behalf of Radoslav Brdanin, 9 Dec. 1999 at paras. 3-4.