



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-95-13/1-PT  
Date: 16 October 2002  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Decision of:** 16 October 2002

**PROSECUTOR**

v.

**MILE MRKŠIĆ**

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**DECISION ON LEAVE TO FILE A REPLY TO THE DEFENCE  
RESPONSE**

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**The Office of the Prosecutor:**

Ms. Hildegard Uertz - Retzlaff  
Mr. Mark J. McKeon  
Mr. Jan Wubben

**Counsel for the Accused:**

Mr. Miroslav Vasić

**TRIAL CHAMBER II** (“the 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 (“the Tribunal”);

**NOTING** that the initial Indictment against Mile Mrkšić (“the Accused”) was confirmed by Judge Fouad Riad on 7 November 1995;

**NOTING** the “Order Granting Leave for Amendment of the Indictment” issued on 28 November 1997;

**NOTING** the Amended Indictment against the Accused issued on 2 December 1997;

— **NOTING** the “Defense Preliminary Motion” filed on 15 July 2002 challenging the defects in the form of the Amended Indictment;

**NOTING** the Prosecution’s “Motion to Hold Pre-Trial Motions in Abeyance” filed on 18 July 2002, requesting the Trial Chamber to order that filings of motions and responses by all parties be held in abeyance;

**NOTING** the “Order to Hold Pre-Trial Motions in Abeyance” issued by the Trial Chamber on 25 July 2002 ordering that filings of motions and responses by all parties be held in abeyance pending the filing of a motion for leave to amend the indictment by the Prosecution;

— **NOTING** the “Prosecution’s Motion for Leave to File an Amended Indictment” (“Prosecution’s Motion”) filed on 29 August 2002:

**NOTING** the “Order for Filing of Motions and Related Matters” (“Motion Filing Order”) issued on 2 September 2002 by the Pre-Trial Judge;

**NOTING** the “Defense Response to “Prosecution’s Motion for Leave to file an Amended Indictment” (“Defence Motion-Response”) filed on 2 October 2002, a Motion challenging the form of the indictment and requesting the Trial Chamber not to allow the proposed amendments in terms of the additional charges as suggested by the Prosecution;

**NOTING** the “Motion to Strike Defense Response to Prosecution Motion for Leave to file an Amended Indictment, or Alternatively for Leave to File a Reply” (“Prosecution Motion to Strike the Defence Response”) filed by the Prosecution on 7 October 2002, requesting that the Trial Chamber strike the Defence Response as it was filed out of time or alternatively be granted leave to file a reply to the Defence Response;

**NOTING** the “Defense Response to “Prosecution’s Motion to Strike Defense Response to Prosecution’s Motion for Leave to File an Amended Indictment, or Alternatively for Leave to File a Reply” (“Defence Response to Prosecution’s Motion”) filed on 8 October 2002, explaining the delay in filing its Response and requesting that the Trial Chamber reject the Prosecution’s Motion to Strike the Defence Motion-Response;

**CONSIDERING** that the Order to Hold Pre-Trial Motions in Abeyance was issued in order to avoid unnecessary filings related to the form of the indictment and to expedite the pre-trial phase in this case;

**CONSIDERING** that the Defence Motion-Response to the Prosecution’s Motion is in substance a Preliminary Motion challenging the form of the proposed indictment under Rule 72(A)(ii) in material terms and that the time prescribed for filing a Motion challenging the form of the indictment is thirty days as prescribed by Rule 50(C);

**CONSIDERING** that the Defence Response to the Prosecution’s Motion ought to have been filed on or before 30 September 2002, i.e. thirty days from the date of filing of the Prosecution’s Motion;

**CONSIDERING** that there is only a delay of two (2) days in filing the Defence Motion Response as the Defence had not received the Prosecution’s Motion that was sent by mail, until the evening of 18 September 2002;

**TAKING INTO ACCOUNT** that under Rule 127 the Trial Chamber can recognise as validly done any act done after the expiration of a time prescribed on good cause being shown;

**CONSIDERING** the assertion of the Defence that it was neither informed nor aware of the Prosecution’s submissions prior to the receipt of the Prosecution’s Motion;

**CONSIDERING ALSO** that the Defence has declared that it has no objection as to the Prosecution's request to be granted leave to file a reply to the Defence Motion-Response to the Prosecution's Motion;

**DESIRING** to regulate the filing of and responses to motions in this matter;

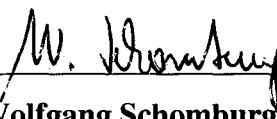
**CONSIDERING** that expediency forms part of the concept of fair trial;

**PURSUANT TO** Rules 50, 54, 72 and 127 of the Rules;

**HEREBY ORDERS** as follows:

- (1) the Defence Response to Prosecution's Motion is considered validly filed;
- (2) the Prosecution is granted leave to file a reply to the Defence Response;
- (3) the Prosecution is granted a period of fourteen days from the date of the receipt of this Decision to file its reply to the Defence Motion-Response; and

The Trial Chamber will rule upon the Prosecution's Motion for leave to amend the indictment upon receipt of the Prosecution's Reply to the Defence Motion-Response, and after hearing the submissions of the parties, if any.

  
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**Wolfgang Schomburg**  
Presiding Judge

Dated this sixteenth day of October 2002,  
At The Hague  
The Netherlands

[Seal of the Tribunal]