

IT-96-23/2-PT  
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**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-96-23/2-PT

Date: 2 April 2003

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Amin El Mahdi  
Judge Alphons Orie

**Registrar:** Mr. Hans Holthuis

**Decision of:** 2 April 2003

**PROSECUTOR**

v.

**RADOVAN STANKOVIĆ**

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**DECISION ON THE DEFENCE'S PRELIMINARY MOTION ON THE FORM  
OF THE SECOND AMENDED INDICTMENT**

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**Office of the Prosecutor**

**Mr Jan Wubben**

**Counsel for the Accused**

**Mr Milenko Radović**

## A. Introduction

1. This Trial Chamber (“the 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”) is seized of Radovan Stanković’s “Defence’s Preliminary Motion on the Form of the Second Amended Indictment”, filed on 12 March 2003 (“the Motion”).
2. The Motion follows the Prosecution’s filing of the Second Amended Indictment (“the Indictment”) on 3 March 2003 pursuant to this Chamber’s decision of 28 February 2003 (“the February Decision”) granting the Prosecution leave to amend the (first) Amended Indictment. The main amendment was the addition of four new counts (numbered 5 to 8) whose foundation is a set of allegations concerning a single alleged victim, “D.B.” The original four counts, while still referenced to circumstances affecting D.B. as part of a group of other alleged victims, have been narrowed to a particular physical location, period of time, and set of alleged actions which overlap but do not coincide with the locations, period of time, and alleged actions to which counts 5 to 8 are referenced.
3. The “Prosecution’s Response to Defence’s Preliminary Motion on the Form of the Second Amended Indictment” was filed on 24 March 2003 (“the Response”).

## B. Discussion

4. The Defence makes three arguments against the Indictment in its current form.

### 1. Cumulation of charges

5. The Defence notes that the paragraphs prefacing counts 1 to 4 make reference to the alleged victim D.B. It submits that the only difference between these counts and counts 5 to 8 in relation to D.B. is that the latter set of counts prolong the time period from “late ... September until November 1992” and specify two locations at which D.B. – but no other alleged victim – was kept.<sup>1</sup> The Defence then refers to arguments in a motion filed by the Defence on 13 December 2002 against an earlier version of the indictment, “[n]amely, the Defence is of the opinion it is inadmissible that for completely the same acts, the accused is charged for totally identical crime (crime where all the elements are

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<sup>1</sup> Motion, par. 4.

identical), which crimes are prescribed in two rules with the same name”.<sup>2</sup> The Defence adds that the Tribunal’s acceptance of this practice “is based on unacceptable opinions” and should be changed to accord with the position of the Defence.<sup>3</sup>

6. The Prosecution responds that “seemingly, the first issue the Defence has raised in the Motion is cumulative charging with respect to the rape charges in Count 6 and 7 of the Second Amended Indictment”.<sup>4</sup> The Chamber agrees that this is the most plausible interpretation of the Defence’s first argument. The Chamber understands the Defence to be making reference to paragraph 19 of its motion of 13 December 2002,<sup>5</sup> where it stated that it is “not possible” to charge an accused with rape cumulatively for the same act pursuant to both Article 5(g) and Article 3 of the Tribunal’s Statute. This position is untenable and has already been dismissed by the Chamber.<sup>6</sup>

## 2. Alleged role of the Accused not specified

7. The Defence submits that the Prosecution has still not met its obligation to state in the Indictment the “exact alleged role played by the Accused in Karaman’s house” – quoting the Chamber’s words from a decision on the form of the indictment dated 15 November 2002 (“the November Decision”).<sup>7</sup> According to the Defence, the fact that the current Indictment distinguishes alleged acts of the Accused directed against D.B. from those directed against other alleged victims “does not represent concretization of the ... role Mr. Stanković had in Karaman’s house”.<sup>8</sup>

8. The Prosecution replies that subsequent to the Chamber’s decision of 15 November 2002 the Prosecution did indeed clarify the role of the Accused at Karaman’s house and the time frame within which the alleged acts were committed.<sup>9</sup>

9. In its November Decision, the Chamber stated:

The Prosecution’s case, as explained, is that both Pero Elez and the Accused ran Karaman’s house and that he, along with Pero Elez and other soldiers in Pero Elez’s

<sup>2</sup> This and other excerpts from the Motion are reproduced verbatim.

<sup>3</sup> Motion, par. 5.

<sup>4</sup> Response, par. 3.

<sup>5</sup> This motion was also entitled “Defence’s Preliminary Motion on the Form of the Second Amended Indictment”.

<sup>6</sup> See *Prosecutor v. Radovan Stanković*, “Decision on the Prosecutor’s Motion Seeking Leave to Amend the Amended Indictment”, 28 February 2003, par. 17.

<sup>7</sup> See *Prosecutor v. Radovan Stanković*, “Decision on the Defence Preliminary Motion on the Form of the Indictment”, 15 November 2002, par. 15.

<sup>8</sup> Motion, par. 6.

<sup>9</sup> Response, par. 8.

group, repeatedly raped and sexually assaulted the detained women. However, the ambiguity of the language in paragraph 8.1 leads to confusion and can hinder the Defence in the preparation of its case, since it is not clear whether these allegations refer to the whole time frame of the Indictment as mentioned in paragraph 4.3 (i.e., April 1992-February 1993) or only to the months of August-October 1992. The Chamber thus considers that more precision is required in this section regarding the exact alleged role played by the Accused in Karaman's house as well as the time frame of these allegations, in particular where it is alleged that the Accused was in charge of Karaman's house after the death of Pero Elez. The Prosecution is directed to amend the Indictment accordingly.<sup>10</sup>

The Chamber finds that the Prosecution through its subsequent amendments to the indictment has adequately addressed this matter.

10. The Chamber moreover recalls that in its November 2002 decision it found that the Accused's mode of responsibility for the alleged crimes in terms of Article 7(1) of the Statute was sufficiently described in the indictment.<sup>11</sup> The Defence attempted to raise the question again with its motion of 13 December 2002,<sup>12</sup> but the Chamber declined to re-examine the matter.<sup>13</sup>

11. The Chamber further fails to find any basis for the Defence's complaint that the Indictment does not "concretize" the role of the Accused. Paragraphs 4.1 to 4.6 and 5.2 to 5.5 of the Indictment contain detailed allegations about the Accused's overall role and concrete actions at Karaman's house and elsewhere. This information gives sufficient notice to the Accused of the case he has to meet.

### 3. Redundancy of new counts

12. The Defence attempts to distinguish this third submission from its first argument directed against cumulative charging. The issue, according to the Defence, is that of "double or multiple charges concerning the performing the acts of *one* crime in the same time period and in the same place in relation to more victims"; and that in the present case the allegations underlying counts 5 to 8 of the Indictment are identical with those underlying counts 1 to 4, so that "the extension of those acts in period of about one month on other two locations only in relation to witness D.B. ... can not justify in any case the classifying of acts towards witness D.B. as separate crimes".<sup>14</sup> The Defence

<sup>10</sup> November Decision, par. 15.

<sup>11</sup> November Decision, par. 13.

<sup>12</sup> See par. 12 of the motion.

<sup>13</sup> See par. 7(g) and 18 of the decision of 28 February 2003 (cited at fn. 6, above).

<sup>14</sup> Motion, paras 9-10.

submits that were this not so the Accused might be charged with a much larger number of counts, e.g. four counts for each alleged victim mentioned in the Indictment.<sup>15</sup>

13. The Prosecution reiterates the justification for the addition of counts 5 to 8, which are concerned exclusively with the Accused's alleged crimes against D.B. It states that the alleged interaction between the Accused and D.B. can be slightly differentiated from that between the Accused and other women and girls at Karaman's house. The different relationship between the Accused and D.B. is illustrated, according to the Prosecution, by the fact that the Accused removed D.B. from Karaman's house and kept her enslaved over a time period and under conditions different from that of the other victims. The four new counts add precision and clarity by reflecting this difference,<sup>16</sup> a point already acknowledged by the Chamber.<sup>17</sup>

14. The Chamber cannot agree with the Defence that its third argument raises an issue different from that of cumulative charging. The Chamber in its decision of 28 February 2003 quoted the established jurisprudence of the Tribunal for endorsing the practice of cumulative charging, namely that "it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence."<sup>18</sup>

15. The Defence appears to be confusing the issues of *cumulative charging* and *cumulative convictions*, two distinct issues governed by distinct sets of rules. A Trial Chamber is clearly under the obligation to avoid improper cumulative convictions through careful application of the legal principles pertaining to convictions. This is not a matter that arises for consideration at this stage.

16. Finally, the Defence is correct to say that the Indictment could have had many more counts (e.g. four counts per alleged victim, the example chosen by the Defence). Yet this does not constitute a valid ground for a motion on the form of the indictment. Within the limits of the rules governing indictments, the Prosecution may choose

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<sup>15</sup> Motion, par. 11.

<sup>16</sup> Response, par. 11.

<sup>17</sup> See par. 14 of the decision of 28 February 2003 (cited at fn. 6, above).

<sup>18</sup> See par. 17 of the decision of 28 February 2003 (cited at fn. 6, above).

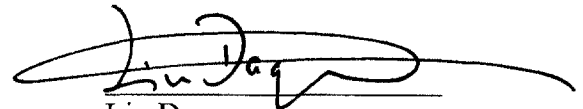
between putting forth multiple detailed counts, or fewer counts combining specific allegations. This is evident from the Prosecution's practices at this Tribunal.

**FOR THE FOREGOING REASONS, THE CHAMBER:**

**PURSUANT TO** Rule 50 of the Rules,

**DENIES** the Motion.

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



Liu Daqun  
Presiding

Dated this second day of April 2003  
At The Hague  
The Netherlands

[Seal of the Tribunal]