



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-02-65-PT
Date: 4 April 2003
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge May, Presiding
Judge Kwon
Judge Patrick Robinson

Registrar: Mr. Hans Holthuis

Decision of: 4 April 2003

PROSECUTOR
v.
ŽELJKO MEAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
PREDRAG BANOVIĆ
DUŠKO KNEŽEVIĆ

DECISION ON PREDRAG BANOVIĆ'S PRELIMINARY MOTION
ON THE FORM OF THE INDICTMENT

The Office of the Prosecutor:

Ms. Joanna Korner

Counsel for the Accused:

Ms. Sanja Turkalov, for Momčilo Gruban
Ms. Slobodanka Nedić, for Duško Knežević
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Mr. Jovan Babić, for Predrag Banović

THIS 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 (“International Tribunal”),

BEING SEISED OF “Predrag Banović’s Preliminary Motion Alleging Defects in the Form of the Indictment” filed by the Defence for the accused Predrag Banović (“Defence”) on 18 December 2002 (“Motion”),

NOTING the “Prosecution’s Consolidated Response to Defence Preliminary Motions Alleging Defects in the Form of the Consolidated Indictment and Seeking a Separate Trial, Filed by the Accused Momčilo Gruban, Dušan Fuštar, Predrag Banović and Duško Knežević” filed on 24 January 2003 (“Response”),

Form of the Indictment

NOTING the Defence argument that the indictment as a whole is too vague, using phrases that have no substantial content and that the indictment should outline when the events happened, the identity of the victims and the means by which the crimes occurred,

NOTING the Prosecution’s argument that the material facts, including the identity of the victims, the time and place of the event and the means by which the acts were committed, are sufficiently pleaded within the Schedules A to F of the Indictment, and that the Defence has copies of the witness statements on which the allegations are based,

CONSIDERING Article 18(4) of the Statute, requiring the Prosecutor to prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged, but that the indictment need not specify the precise elements of each crime, since all that is required is a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute,¹

¹ *Prosecution v. Kordic*, Decision on Defence Application for Bill of Particulars, Case IT-95-14/2-PT, 2 March 1999, para.8, referred to in *Prosecutor v. Brdanin and Talić*, Decision on Form of Future Amended Indictment and Prosecution Application to Amend, Case IT-99-36-PT, 26 June 2001 (“Brdanin Decision”), para. 33.

CONSIDERING that this obligation must be interpreted in the light of the rights of the accused under Article 21(4)(a) and (b) of the Statute,²

NOTING Rule 47(C) of the Rules, which provides that “the indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged”,

CONSIDERING that the pleading of an indictment will be sufficiently particular when the material facts of the Prosecution case are concisely set out with sufficient detail to inform the accused clearly of the nature and cause of the charges against them, such that he is in a position to prepare a defence,³

CONSIDERING that the materiality of a particular fact cannot be decided in the abstract, it being dependent on the nature of the Prosecution case and that a decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case is the nature of the alleged criminal conduct charged, which includes the proximity of the accused to the relevant events,⁴

CONSIDERING that:

- (a) the indictment lists the victims in the attached Schedules and which accused is alleged to have been personally responsible for them; and
- (b) the crimes alleged to have been committed against these victims are also present as are the dates when the crimes are alleged to have occurred, and also the specific date or date range when the alleged crime took place,

CONSIDERING THEREFORE that the Trial Chamber is satisfied that, having regard to the scale of the case alleged in the Indictment, to the extent possible the identity of the victims, the alleged crimes and the dates of the crimes have been sufficiently pleaded so that the accused is sufficiently informed of the nature and cause of the charges against them, such that he is in a position to prepare a defence,

² Brdanin Decision, para.33

³ *Prosecutor v. Kupreškić*, Case No.IT-95-16-A, Appeal Judgement, 23 October 2001 (“Kupreškić Appeal Judgement”), para. 88, referred to in *Prosecutor v. Krajišnik & Plavsić*, Decision on Prosecution’s motion for leave to amend the Consolidated Indictment, Case No IT-00-39 & 40–PT, 4 March 2002 (“Krajišnik and Plavsić Decision of 4 March 2002”), para.9 (fn3).

⁴ *Prosecutor v. Deronjić*, Decision on Form of the Indictment, Case IT-02-61-PT, 25 October 2002 (“Deronjić decision”), para.5 and cases referred to in footnotes 8 and 9.

Joint Criminal Enterprise

NOTING the Defence submission that the introduction of joint criminal enterprise liability considerably expands the criminal responsibility of Predrag Banović and that he should be excluded from criminal liability for crimes allegedly committed by others in the Omarska camp, where the accused never performed any duties,

NOTING the Prosecution response that the Consolidated Indictment specifies which of the two camps pertains to which of the accused, as follows:

- a) Paragraph 21 of the Indictment informs Predrag Banović of the general role he played within the camps; and
- b) Paragraphs 21(a) and (b) of the Indictment inform Predrag Banović of the specific role he played as a guard within the Keraterm camp and the related Schedules C and F inform him of the acts he committed personally, as an accomplice and as a participant within the joint criminal enterprise,

CONSIDERING that what must be pleaded with respect to an allegation that the accused participated in a joint criminal enterprise is:

- a) the nature or purpose of the joint criminal enterprise;
- b) the time at which or the period over which the enterprise is said to have existed;
- c) the identity of those engaged in the enterprise – so far as their identity is known, but at least by reference to their category as a group; and
- d) the nature of the participation by the accused in that enterprise, and the nature of the participation of the accused in the enterprise,⁵

CONSIDERING that the Trial Chamber is persuaded that the Indictment has satisfactorily pleaded these requirements with respect to the accused's involvement in a joint criminal enterprise,

CONSIDERING FURTHER that, pursuant to Rule 48 of the Rules of Procedure and Evidence ("Rules"), the Trial Chamber has already joined the two separate indictments for the different camps as they form part of the same transaction,⁶

⁵ *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on Form of Second Indictment, 11 May 2000, para. 16.

⁶ *Prosecutor v. Meakić et al.*, Decision on Prosecution's Motion for Joinder of Accused Case Nos. IT-95-4-PT & IT-95-8/1-PT, 17 September 2002.

PURSUANT TO RULE 72 OF THE RULES

HEREBY REJECTS THE MOTION

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



Judge May
Presiding

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