



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 DUŠKO KNEŽEVIĆ'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** “Dušan Knežević’s Preliminary Motion Alleging Defects in the Form of the Indictment” filed by the Defence for the accused Knežević (“Defence”) on 20 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”),

**NOTING** “Dušan Knežević’s Reply to Prosecution’s Consolidated Response to Defence Preliminary Motions” filed by the Defence on 31 January 2003 (“Reply Brief”).

***Separation of trials***

**NOTING** the Defence argument that the indictment, which includes the accused Meakić, cannot be “operative” in these proceedings due to the fact that Meakić has not been arrested and therefore requests an order that the accused Meakić be severed from this indictment and tried separately,

**NOTING** the Prosecution submission that this argument should be rejected on the basis that this matter has already been resolved by the Trial Chamber,

**CONSIDERING** that in fact this matter was not addressed by the Trial Chamber either in its Decision of 17 September 2002<sup>1</sup> nor in its Decision of 21 November 2002<sup>2</sup>, and that it is therefore necessary to rule on this issue,

**CONSIDERING** that Rule 82(B) of the Rules of Procedure and Evidence (“Rules”) permits the Trial Chamber to separate accused who have been jointly charged under Rule 48, if it considers this

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<sup>1</sup> *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.

<sup>2</sup> *Prosecutor v Meakić et al*, Decision on the Consolidated Indictment, Case No. IT-02-65-PT, 21 November 2002.

necessary “to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice”,

**CONSIDERING** that neither of these considerations are operative in this case,

***Inhumane Acts***

**NOTING** the argument of the Defence that the accused has been charged with the crime of “inhumane acts” under Count 4 of the indictment, which is not a crime under the Statute, Article 5 (i) of which refers to the phrase “other inhumane acts”,

**NOTING** the Prosecution argument that the accused has been sufficiently informed of the charges against him in this respect,

**NOTING** the Defence Reply that the Prosecution has given another name and a much broader meaning to the crime prescribed by Article 5 (i) of the Statute,

**CONSIDERING** that Count 4 of the Consolidated Indictment charges the accused with “Inhumane Acts”, a Crime Against Humanity, punishable under Articles 5(i) and 7(1) of the Statute of the Tribunal,

**CONSIDERING** that it is sufficiently clear that reference to “inhumane acts” is a reference to the phrase “other inhumane acts” in Article 5 (i) of the Statute, and that he is explicitly charged under Article 5 (i) of the Statute in the indictment,

***Confidentiality***

**NOTING** the Defence argument that Schedules E and F to the indictment should have their confidentiality lifted as they form the main part of the indictment, the text of which is merely a number of phrases that could assist in a better understanding of the content of the Schedules,

**NOTING** the Prosecution submission that this is not a matter relevant to the form of the indictment and that there are compelling reasons why confidentiality of the Schedules should be maintained,

namely the protection of victims and witnesses who have been granted protective measures,

**NOTING** the Defence Reply that it is in fact relevant to the form of the indictment and that no grounds for maintaining confidentiality have been given by the Prosecution,

**CONSIDERING** the Order of the Trial Chamber granting confidentiality and protective measures with respect to witnesses identified in its Rule 66 (A)(i) material,<sup>3</sup> which orders extend to witnesses identified in Schedules E and F of the indictment,

***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 the Defence has copies of the witness statements on which the allegations were 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,<sup>4</sup>

**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,<sup>5</sup>

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<sup>3</sup> "Order on Prosecution's Motion for Protective Measures", 13 June 2002.

<sup>4</sup> *Prosecution v. Kordic*, Decision on Defence Application for Bill of Particulars, Case IT-95-14/2-PT, 2 March 1999, para.8, referred to by Brdanin Decision, para. 33.

<sup>5</sup> *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, para.33

**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 pleadings 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,<sup>6</sup>

**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 to the accused, which includes the proximity of the accused to the relevant events,<sup>7</sup>

**CONSIDERING** that:

- (a) the indictment lists the victims in the attached Schedules and which accused is alleged to have been personally responsible for crimes against them; and
- (b) the crimes alleged to have been committed against these victims are also included 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, due to the scale of the case the Indictment has specified, 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,

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<sup>6</sup> *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 .

<sup>7</sup> *Prosecutor v. Deronjić*, Decision on Form of the Indictment, Case IT-02-61-PT, 25 October 2002 (“*Deronjić* decision”), para.5.

***Mens Rea***

**NOTING** the Defence argument that the specific form of the accused's state of mind is not pleaded in respect of each crime charged in the indictment,

**NOTING** the Prosecution's argument that the state of mind requirement can be pleaded in two ways: (1) by specifically pleading the relevant state of mind necessary for the commission of each crime, or (2) by inferring the state of mind from the facts already pleaded in the indictment, and that in this case the state of mind can be inferred from the facts set out in the indictment,

**CONSIDERING** that all the legal prerequisites to proving the offences charged constitute material facts and must be pleaded in the indictment,<sup>8</sup>

**CONSIDERING** that where those acts of the accused are material facts to be pleaded, so too is the state of mind with which he carried out those acts,<sup>9</sup>

**CONSIDERING FURTHER** that with respect to the relevant state of mind (*mens rea*), either the specific state of mind itself should be pleaded (in which case, the facts by which that material fact is to be established are ordinarily matters of evidence, and need not be pleaded), or the evidentiary facts from which the state of mind is necessarily to be inferred should be pleaded,<sup>10</sup>

**CONSIDERING** the accused is charged under Article 7(1) of the Statute and thus is charged with having planned, instigated, ordered, committed or in whose planning, preparation, or execution they otherwise aided and abetted,

**CONSIDERING** that the Indictment outlines the severe beatings, killings as well as other forms of physical and psychological abuse, including sexual assault at both the Omarska and Keraterm camps, the methods of abuse, the types of victims and the deliberate policy of overcrowding and lack of basic necessities of life,

**CONSIDERING** that the Trial Chamber is persuaded that these facts form the basis upon which the accused's state of mind is necessarily to be inferred and are sufficiently pleaded in the Indictment,

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<sup>8</sup> Hadzihasanovic indictment Decision, para. 10, referred to in Deronjić Decision, para. 8.

<sup>9</sup> Third Brdanin and Talic Decision, para. 33, referred to in Deronjić Decision, para.8.

***Joint Criminal Enterprise***

**NOTING** that the Defence submits the indictment does not reveal the identity of the co-perpetrators in the alleged joint criminal enterprise,

**CONSIDERING** that the “material facts which must be pleaded with respect to an allegation that the accused participated in a joint criminal enterprise are the purpose and period of the enterprise; the identity of the participants in the enterprise, and the nature of the participation of the accused in the enterprise,”<sup>11</sup>

**CONSIDERING** that the Trial Chamber is satisfied that the identities of the other participants of the joint criminal enterprise are included in the indictment,

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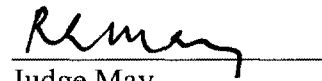
<sup>10</sup> Third Brdanin and Talic Decision, para. 33, referred to in Deronjic Decision, para. 8.

<sup>11</sup> Krnojelac Decision, para.16, referred to in Krajišnik and Plavsić Decision of 4 March 2002, para.13; Third Brdanin & Talic Decision”, paras.21 and 22, referred to in Deronjic Decision.

**PURSUANT TO RULE 72 OF THE RULES**

**HEREBY REJECTS THE MOTION.**

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

  
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Judge May  
Presiding

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