



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-02-54-T-R77.2  
Date: 7 April 2003  
Original: English

**BEFORE A JUDGE OF A TRIAL CHAMBER**

**Before: Judge Carmel Agius**

**Registrar: Mr. Hans Holthuis**

**Date filed: 7 April 2003**

**PROSECUTOR**

**v.**

**DUŠKO JOVANOVIĆ**

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**DECISION ON REVIEW OF INDICTMENT  
AND ORDER FOR NON DISCLOSURE OF  
SUPPORTING MATERIAL**

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**The Office of the Prosecutor:**

Ms. Carla del Ponte

**I, JUDGE CARMEL AGIUS**, 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 (“Tribunal”):

**BEING SEISED OF** the confidential “Presentation of an Indictment for Review and an Application for Arrest Warrant and an Order for Non Disclosure” (“Indictment”),<sup>1</sup> including supporting material, filed on 8 October 2002 by the Prosecutor against DUŠKO JOVANOVIĆ, born on 10 February 1964 in the town of Podgorica in the Republic of Montenegro, Director of a media company publishing the Montenegrin newspaper DAN;

**CONSIDERING** that on 10 October 2002 the Prosecution withdrew its request for an Order for Arrest and Surrender, not intending to interfere with the inherent power of the Trial Chamber under Rule 77 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) to consider the appropriate course of action;<sup>2</sup>

**RECALLING** that on 3 October 2002, Trial Chamber III, pursuant to Rule 77(D) of the Rules, considered the content of the Prosecution’s Second Report on K32, filed on 1 October 2002,<sup>3</sup> and found that there are sufficient grounds to proceed against DUŠKO JOVANOVIĆ for a violation of Rule 77(A)(ii) of the Rules;<sup>4</sup>

**CONSIDERING** that Article 19(1) of the Statute of the Tribunal (“Statute”) requires a Judge to whom an indictment has been transmitted to review it and, if “satisfied that a *prima facie* case has been established by the Prosecutor”, to confirm the indictment;

**CONSIDERING** that Rule 47(E) of the Rules requires a Judge to “examine each of the counts in the indictment, and any supporting material the Prosecutor may provide, to determine, applying the standard set forth in Article 19, paragraph 1 of the Statute, whether a case exists against the suspect”;

**NOTING** that, according to the Indictment, DUŠKO JOVANOVIĆ is alleged to have disclosed to the general public the identity of a protected witness in the case *Prosecutor v. Slobodan Milosević* in knowing violation of an order of a Trial Chamber, constituting contempt of the Tribunal pursuant to Rule 77(A)(ii) of the Rules;

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<sup>1</sup> Prosecutor v. Slobodan Milošević, Case IT-02-54-T-R77.2, Presentation of an Indictment for Review and an Application for Arrest Warrant and an Order for Non-Disclosure, 8 October 2002.

<sup>2</sup> Prosecutor v. Slobodan Milošević, Case IT-02-54-T-R77.2, Prosecution’s Corrigendum of the Presentation of an Indictment for Review and Application for Arrest Warrant and an Order for Non-Disclosure, 10 October 2002.

<sup>3</sup> Prosecutor v. Slobodan Milošević, Case IT-02-54-T-R77.2, Prosecution’s Second Report on K32, 1 October 2002.

<sup>4</sup> Prosecutor v. Slobodan Milošević, Case IT-02-54-T-R77.2, Order to Prosecution Concerning the Confidential Second Report on K32, 3 October 2002.

**CONSIDERING** that I have carefully examined the Indictment and considered the supporting material provided by the Prosecution, including an article entitled, “DAN Revealed the Identity of The Hague’s Tribunal Protected Witness [...] K32”, published on page 5 of the 30 August 2002 edition of DAN, plus the cover page of this newspaper and an extract from page 2 setting out the editorial board, as well as the statements of three witnesses and of DUŠKO JOVANOVIĆ;

**FINDING** that, on the basis of the above material, a *prima facie* case for contempt pursuant to Rule 77(A)(ii) of the Rules against DUŠKO JOVANOVIĆ has been established;

**CONSIDERING** that the Indictment satisfies the formal requirements of Rule 47(C) of the Rules;

**CONSIDERING** that in the present circumstances I do not find it necessary to issue a warrant of arrest against DUŠKO JOVANOVIĆ;

**CONSIDERING** further that according to the material supporting the Indictment, witness K32 has received death threats since his identity was made public;

**CONSIDERING** that pursuant to Rule 53(A) of the Rules, “[i]n exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non disclosure to the public of any documents or information until further order”;

**FINDING** that it is in the interests of justice that there be no public disclosure of the material supporting the Indictment against DUŠKO JOVANOVIĆ;

**PURSUANT TO** Article 19 of the Statute and Rules 47, 53, 53bis(B), 54 and 77(E) Rules;

**HEREBY CONFIRM** the Indictment

**AND ORDER** that:

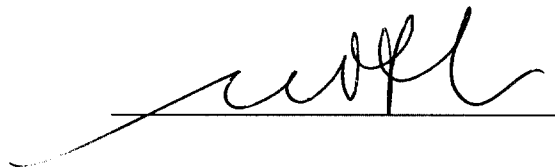
1. two copies of the Indictment shall be transmitted to the Registrar, one of which shall be forwarded by the Registrar to the authorities of Serbia and Montenegro;
2. the authorities of Serbia and Montenegro shall serve the Indictment on DUŠKO JOVANOVIĆ following the practice of the Tribunal;
3. the authorities of Serbia and Montenegro serving the Indictment shall inform DUŠKO JOVANOVIĆ of his legal obligation to surrender himself into the jurisdiction of the Tribunal and to be present in The Hague for the purpose of the contempt proceedings against him on a date to be fixed by a Trial Chamber and to be communicated to him in due course. DUŠKO JOVANOVIĆ shall further be informed that in case of his failure to appear for the proceedings, a Trial Chamber will order his arrest and have him transferred to The Hague according to Rules 47(H) and 55 of the Rules;
4. there shall be no public disclosure of the material supporting the Indictment until further order;

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

Dated this seventh day of April 2003,

At The Hague

The Netherlands



**Carmel Agius**

**Presiding Judge**

**[Seal of the Tribunal]**