

**UNITED  
NATIONS**

IT-03-73-1  
D 4769 - D 4767  
24 February 2004

4769  
HB.



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-03-73-I  
Date: 24 February 2004  
Original: English

**BEFORE A JUDGE OF A TRIAL CHAMBER**

**Before:** Judge Kevin Parker  
**Registrar:** Mr. Hans Holthuis  
**Decision:** 24 February 2004

**PROSECUTOR**

**v.**

**IVAN ČERMAK**

**MLADEN MARKAČ**

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***EX PARTE-UNDER SEAL***

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

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**The Office of the Prosecutor:**

Ms. Carla Del Ponte

A handwritten signature in black ink, appearing to be 'CDP'.

I, Kevin Parker, 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 (“International Tribunal”);

**HAVING BEEN DESIGNATED** as the reviewing Judge by the President of the International Tribunal pursuant to Rule 28 of the Rules of Procedure and Evidence (“Rules”) on 23 January 2004;

**BEING SEISED** of an Indictment and supporting material filed on 19 December 2003 by the Office of the Prosecutor (“Prosecutor”) against **IVAN ČERMAK** (born on 19 December 1949) and **MLADEN MARKAČ** (born on 8 May 1955), an accompanying “Motion for Issuance of an Indictment under Seal of Confidentiality and for Orders for Surrender and the Transmission of Arrest Warrants and Orders of Surrender” filed *ex parte* and confidentially on 19 December 2003 and of an Amendment to the above motion dated 17 February 2004 and filed on 19 February 2004;

**CONSIDERING** that pursuant to Article 19 of the Statute of the International Tribunal (“Statute”) the reviewing judge should confirm the indictment if he or she is satisfied that the Prosecutor has established a *prima facie* case;

**CONSIDERING** that while the Statute and the Rules do not define the concept of “a *prima facie* case” I accept the test established by earlier decisions on review of indictment according to which “a *prima facie* case is a “credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge;”<sup>1</sup>

**HAVING HEARD** the Prosecutor pursuant to Rules 47 and 53 of the Rules on 13 February and on 17 February 2004;

**HAVING REVIEWED** a revised version of the Indictment dated 19 February 2004 and filed by the Prosecutor on 19 February 2004 (the “Indictment as revised”);

**CONSIDERING** that the supporting material submitted by the Prosecutor establishes a *prima facie* case against **IVAN ČERMAK** and **MLADEN MARKAČ** with respect to each and every count of the Indictment as revised;

**CONSIDERING** that it is in the interest of justice to prevent public disclosure of the Indictment as revised, this Decision, and the accompanying Warrant of Arrest until further order;

<sup>1</sup> *Prosecutor v. Milošević*, IT-01-51-I; Decision on Review of Indictment, 22 November 2001; *Prosecutor v. Kordić et al*, IT-95-14-I, Decision on Review of the Indictment, 10 November 1995.




**PURSUANT** to Article 19 of the Statute and Rules 47, 53, 55, and 59*bis* of the Rules;

**HEREBY CONFIRM** the Indictment as revised with respect to each and every count therein; and

**ORDER** that:

1. Copies of the Warrants of Arrest for each Accused, which I will issue today, shall be transmitted to the Prosecutor, who may transmit them, respectively, to the authorities of the Republic of Croatia, and to the authorities of any other Member State of the United Nations;
2. With the exception of the authorities of the Republic of Croatia and the authorities of any Member State of the United Nations, there shall be no public disclosure of the Indictment as revised, this Decision, or the Warrants of Arrest until further order;
3. There shall be no public disclosure of the supporting material until further order.

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



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Kevin Parker,  
Judge of the  
International Tribunal

Dated this twenty-fourth day of February 2004  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**