



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: 24 February 2004

Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 24 February 2004

**PROSECUTOR**

**v.**

**RADOVAN STANKOVIĆ**

***CONFIDENTIAL***

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**DECISION ON PROSECUTION'S MOTION  
SEEKING LEAVE TO AMEND THE SECOND AMENDED INDICTMENT**

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**Counsel for the Prosecutor:**

**Mr. Jan Wubben**

**Counsel for the Accused:**

**Mr. Milenko Radović**

**TRIAL CHAMBER I** 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 Trial Chamber”) is seised of the “Prosecutor’s Motion Seeking Leave to Amend the Second Amended Indictment” (“the Motion”)<sup>1</sup>, to which the Defence of the Accused Radovan Stanković (“the Defence”) on 15 December 2003 submitted its “Reply on the Prosecution Request for Submitting the Amended Indictment” (“the Reply”)<sup>2</sup>, and hereby renders its Decision.

### RELEVANT PROCEDURAL HISTORY

1. On 1 September 2003, the Pre-Trial Judge in the present case ordered the Prosecution pursuant to Rule 65 *ter* (E)(i) of the Rules of Procedure and Evidence (“the Rules”) to file its pre-trial brief in the present case on Monday 6 October 2003.<sup>3</sup> The same Order required the Defence to file its pre-trial brief on Monday 3 November 2003. The Pre-Trial Conference was scheduled pursuant to Rule 73 *bis* for 24 November 2003.

2. On 25 September 2003, the Prosecution requested, for reasons of internal re-deployment of its staff, an extension of time for the filing of the pre-trial brief until 3 November 2003.<sup>4</sup> On 9 October 2003, the Pre-Trial Judge granted the Prosecution’s request and set the deadlines for the parties’ pre-trial briefs to Monday 10 November 2003 and Monday 1 December 2003, respectively.<sup>5</sup> The Pre-Trial Conference was rescheduled for a later date.

3. On Thursday 6 November 2003, the Prosecution submitted its Motion to Request a Vacating of Scheduling Order of 9<sup>th</sup> October “in light of its intention to file a motion for leave to amend the Second Amended Indictment, in the near future.”<sup>6</sup> The Prosecution explains in its Motion that the reasons behind its request is that in September 2003 it received a written indication from the Defence that the Accused might rely upon the defence of alibi (“the Letter”).<sup>7</sup> Upon receiving this information the Prosecution “undertook further fact finding, generated by the Defence’s possibility of the introduction of alibi evidence”. During the course of this fact-finding, the Prosecution

<sup>1</sup> Prosecutor’s Motion Seeking Leave to Amend the Second Amended Indictment”, 8 December 2003, to which is attached the proposed Third Amended Indictment (Annex A), and supporting material in the form of three witness statements in redacted and unredacted form (Confidential Annex B, and Confidential and *Ex Parte* Annex C, respectively).

<sup>2</sup> Reply on the Prosecution Request for Submitting the Amended Indictment, 15 December 2003.

<sup>3</sup> Scheduling Order for Submission of Pre-trial Briefs and Holding a Pre-trial Conference, 1 September 2003.

<sup>4</sup> Prosecution’s Motion Requesting an Extension of Time to Submit the 65 *ter* E(i)(ii)(iii) Filing, 25 September 2003.

<sup>5</sup> Decision Granting the Prosecutor’s Motion for Extension of Time, 9 October 2003 (“9 October 2003 Decision”).

<sup>6</sup> Dated 6 November 2003.

<sup>7</sup> Prosecution’s Motion to Request a Vacating of Scheduling Order of 9<sup>th</sup> October, para. 2. As later noted by the Prosecution in its 8 December 2003 Motion (para. 2, see below) the letter was dated 30 September 2003.

identified new evidence “that substantially [modified] the allegations contained in the [Second Amended] indictment.”<sup>8</sup>

4. On Friday 7 November 2003, the Prosecution informed the legal office of the Trial Chamber that it would file a request for leave to file an amended indictment that same day. On Monday 10 November 2003, the deadline for the submission by the Prosecution of its pre-trial brief according to the 9 October 2003 Decision, the Trial Chamber granted the Prosecution’s request and vacated the Scheduling Order of 9 October 2003.<sup>9</sup>

5. On 8 December 2003, the Prosecution filed the Motion, which is the basis for the present Decision and to which the Defence on 15 December 2003 submitted its Reply.

### SUBMISSIONS OF THE PARTIES

6. The Prosecution submits in its Motion that as a result of the further investigations undertaken following receipt of the Defence’s Letter, mainly interviews with key witnesses, it uncovered new information regarding the Accused’s alleged conduct, detailed in Annexes B and C to the Motion.<sup>10</sup> This new information became available to the Prosecutor during the months of October and December of 2003. The Prosecutor argues that this new “*prima facie* evidence” because of “due process and fair trial standards must be alleged in the indictment”.<sup>11</sup>

7. The amendments to the Second Amended Indictment proposed by the Prosecution are requested “in order to more precisely set forth the factual basis [of] the charges and to ensure that the Accused is put on sufficient notice of the prosecution’s case, in particular with respect to the Accused[‘s] culpable conduct at Karaman’s house.” The proposed amendments, as explained, aim mainly at clarifying the alleged factual basis underlying the charges, and removing some factual allegations from the factual basis. The Prosecution consequently requests that the Trial Chamber adopt the proposed Third Amended Indictment, attached in Annex A to the Motion.

8. In its Reply, the Defence objects to the proposed amendments on the ground that a further amendment of the Indictment will impact the right of the Accused to a “quick and fair trial.”<sup>12</sup> In this connection, the Defence contends that the Prosecution has had sufficient time, after having conducted investigations, to submit the Indictment.<sup>13</sup> While the Defence does not dispute that Rule

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<sup>8</sup> *Id.*

<sup>9</sup> Decision on Prosecution’s Motion to Request a Vacating of Scheduling Decision of 9th October, 10 November 2003.

<sup>10</sup> Motion, para. 6.

<sup>11</sup> Motion, para. 1.

<sup>12</sup> Reply, para. 6.

<sup>13</sup> Reply, para. 6.

50 does not limit the right of the Prosecution to request amendments of an indictment, it argues that such changes need “be the result of actual established facts” justifying the proposed amendments.<sup>14</sup>

9. In the event that the Trial Chamber were to grant the Prosecution’s Motion, the Defence requests the Trial Chamber to act pursuant to Rule 50 paragraph (C) of the Rules and determine a period of thirty days for the submission of preliminary motions according to Rule 72 of the Rules.

### DISCUSSION AND FINDINGS

10. The Trial Chamber has chosen to issue this Decision as a confidential decision in spite of the public nature of the Motion. The reason is that the subject-matter of the request concerns material from confidential Annex B to the Motion, which should be kept confidential to give full effect to the protective measures granted to the witnesses. The Trial Chamber does not deem this to have an adverse effect on the rights of the Accused as laid down in the Statute and the Rules.

11. Amendment of indictment is a matter regulated by Rule 50 of the Rules. Paragraph (A)(i)(c) of that Rule provides that the Prosecutor may amend an indictment “after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.” This is the situation in the present case.

12. The Trial Chamber considers Rule 50 to provide for two different kinds of amendment of indictment. The kind explicitly regulated by Rule 50 paragraph (B) is the inclusion of new charges, in the French version of the Rules “chefs d’accusation”, against the Accused. The paragraph reads:

If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

The other kind of amendment, which does not include new charges, concerns only modifications to the factual basis underlying the charges brought against the Accused.

13. With regard to the first kind of amendment, Rule 50 paragraph (C) provides that the Accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges. This paragraph also provides that the date for trial may be postponed, when necessary, to ensure adequate time for the preparation of the defence.

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<sup>14</sup> Reply, para. 9.

14. As noted above, the Defence requests the setting of a time period pursuant to Rule 50 paragraph (C) should the Trial Chamber grant the Motion. The Defence is of the opinion that the amendments proposed by the Prosecution include new charges against the Accused. The Trial Chamber does not share this view. The proposed amendments only concern the factual basis underpinning the charges and the Trial Chamber agrees with the Prosecution that the amendments are proposed in order to permit the Accused to respond accurately to the charges brought.<sup>15</sup> Consequently, Rule 50 paragraph (C) is inapplicable and the Defence's request for the determining of a time period for preliminary motions pursuant to this provision is unfounded.

15. The Prosecutor is under the obligation according to the Statute and the Rules to produce an indictment, which is a concise statement of the facts of the case and the crime or crimes with which the Accused is charged under the Statute, so that the Accused is provided with sufficient detail to prepare his defence.<sup>16</sup> The Trial Chamber is of the opinion that clarifications of the underlying factual basis, such as those requested in the Motion, are in line with the rights of the Accused as laid down in Article 21 of the Statute, in the sense that they convey to him the Prosecution's case with more precision, which may be beneficial to the preparation of the Defence.

16. In considering the proposed amendments, the Trial Chamber will assess whether the material submitted by the Prosecution justifies the amendments, in order to ensure that a balance is maintained between the interests of justice and the rights of the accused. In other words, to maintain the right balance between, on the one hand, the Prosecution's responsibility to prosecute the Accused to the full extent of the law and, on the other hand, the rights of the Accused to an expeditious and fair trial, and to adequate time and facilities for the preparation of his Defence.

17. As a point of departure, the Trial Chamber notes that according to the material submitted by the Prosecution, the interviews in the Annexes to the Motion were carried out on 11-12 October and 6 December 2003 (Witness D.B.), 20-22 October 2003 (Witness FWS-75), and 21-22 October and 5 December 2003 (Witness FWS-87). The Trial Chamber sees no reason to doubt the veracity of this information and finds that as the material post-dates the Defence's Letter it is formally relevant for determining whether the proposed amendments are sufficiently justified.

18. The Trial Chamber notes that in its Reply the Defence has not raised objections to or commented on the substance of either the proposed amendments or the material purportedly

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<sup>15</sup> The Trial Chamber notes here that it is only as a result of the Defence's statement in its Letter to the Prosecution of 30 September 2003 that the Prosecution undertook the further investigation into the case.

<sup>16</sup> *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeals Chamber Judgment, 23 October 2001, paras 88-89. See also, *Prosecutor v. Hadžihasanović, Alagić and Kubura*, Case No. IT-01-47-PT, Decision on Form of the Indictment, 7 December 2002, para. 8.

justifying them. Instead (as noted previously), the Defence has chosen to restrict itself to stating that any changes must “be the result of actual established facts”.<sup>17</sup> The Trial Chamber interprets this as a statement concerning the applicable standard of proof, a matter which is relevant at the stage of trial but which falls outside the Trial Chamber’s current evaluation pursuant to Rule 50.

19. The next step in the Trial Chamber’s assessment is to consider whether the material submitted as justification for the proposed amendments actually justify the amendments. The Trial Chamber has evaluated the material and finds it to provide justification for the proposed amendments.

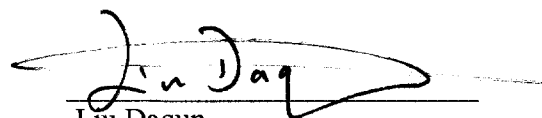
20. In view of the fact that the commencement of the Accused’s trial has not yet been scheduled, the Trial Chamber sees no prejudice to the Accused’s rights in accepting the amendments to the Second Amended Indictment proposed by the Prosecution.

### DISPOSITION

The Trial Chamber finds that the materials submitted by the Prosecution as justification for the proposed amendments support the amendments. The Trial Chamber therefore accepts the proposed amendments and decides that the Second Amended Indictment be replaced by the Third Amended Indictment as found in Annex A to the Motion.

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

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

  
Liu Daqun  
Presiding

[Seal of the Tribunal]

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<sup>17</sup> Reply, para. 9.