



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-99-36-I
Date: 14 February 2005
Original: English
French

BEFORE A JUDGE OF THE TRIBUNAL

Before: Judge Jean-Claude Antonetti
Registrar: Mr Hans Holthuis
Decision of: 14 February 2005

THE PROSECUTOR

v.

STOJAN ŽUPLJANIN

WARRANT OF ARREST AND ORDER FOR SURRENDER

To: the North Atlantic Treaty Organisation (NATO) presence in Sarajevo

I, Jean-Claude Antonetti, 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 APPOINTED Reviewing Judge in this case in a confidential and *ex parte* Order of the President of the International Tribunal dated 28 September 2004, pursuant to Rule 50(A)(i)(b) of the Rules of Procedure and Evidence (“Rules”);

NOTING United Nations Security Council (“Security Council”) resolution 827 of 25 May 1993, Articles 19(2) and 29 of the Statute of the International Tribunal (“Statute”) and Rules 54 to 61 of the Rules;

NOTING the Second Amended Indictment brought by the Office of the Prosecutor (“Prosecution”) against **Stojan Župljanin** and confirmed by me, a Judge of the International Tribunal, on 5 October 2004, a copy of which is annexed to this warrant of arrest;

NOTING the confidential Prosecution’s Request for Issuance of Warrant of Arrest and Order for Surrender against **Stojan Župljanin**, filed *ex parte* on 29 September 2004 (“Request”);

NOTING the confidential Modification to Prosecution’s Request for Issuance of Warrant of Arrest and Order for Surrender, filed *ex parte* on 30 September 2004;

NOTING the confidential Warrant of Arrest, Order for Surrender and Withdrawal of Previous Warrant of Arrest addressed to the multinational Stabilisation Force (“SFOR”) on 7 October 2004;

CONSIDERING that at the Istanbul Summit of the North Atlantic Treaty Organisation (“NATO”) on 28 June 2004, NATO decided to conclude the SFOR mission in Bosnia and Herzegovina by the end of 2004;¹

CONSIDERING that on 9 July 2004, the Security Council adopted resolution 1551(2004) in which it welcomed the decision of NATO to conclude its current SFOR mission in Bosnia and Herzegovina and the EU’s intention to launch an EU mission to Bosnia and Herzegovina, including a military component, from December 2004;²

¹ NATO Press Release (2004)097 of 28 June 2004.

² Security Council resolution 1551(2004), para. 10.

CONSIDERING that, under the Joint Action of 12 July 2004, the Council of the European Union decided to conduct a military operation in Bosnia and Herzegovina named “ALTHEA”;³

CONSIDERING that, in accordance with the decision of 12 July 2004, the purpose of operation “ALTHEA” is to “to provide deterrence, continued compliance with the responsibility to fulfil the role specified in Annexes 1.A and 2 of the General Framework Agreement for Peace (“GFAP”) in Bosnia and Herzegovina and to contribute to a safe and secure environment in Bosnia and Herzegovina, in line with its mandate, required to achieve core tasks in the Office of the High Representative’s Mission Implementation Plan and the SAP” and is to be “carried out with recourse to NATO common assets and capabilities, on the basis agreed with NATO”;⁴

CONSIDERING that on 2 December 2004, the Council of the European Union launched the military operation “ALTHEA”;⁵

CONSIDERING moreover that NATO decided to maintain a presence in Sarajevo through the establishment of NATO headquarters (“NATO presence in Sarajevo”) in order to continue to assist in the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina in conjunction with operation “ALTHEA”;⁶

CONSIDERING that, as such, one of the tasks of the NATO presence in Sarajevo is to undertake specific operational tasks in co-operation with the European Union such as the fight against terrorism and the arrest of individuals accused of war crimes;⁷

CONSIDERING that NATO and the European Union agreed that the European Union Force (“EUFOR”) responsible for operation “ALTHEA” will play the main part in the peace-keeping operations in Bosnia and Herzegovina;⁸

CONSIDERING that the purpose of EUFOR’s operation “ALTHEA” and the NATO presence in Sarajevo is consistent with Chapter VII of the United Nations Charter;

³ Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union Military Operation in Bosnia and Herzegovina, Official Journal of the European Union, L 252/10.

⁴ *Ibidem*, Article 1 § 1 and §3.

⁵ Council Decision, 2004/803/CFSP of 25 November 2004 on the Launching of the European Union Military Operation in Bosnia and Herzegovina, Official Journal of the European Union, L 353/21.

⁶ Security Council resolution 1575(2004).

⁷ Document of 12 December 2004, NATO.

⁸ *Ibidem*.

CONSIDERING that on 22 November 2004, the Security Council approved resolution 1575(2004) authorising, *inter alia*, “the Member States acting through or in cooperation with the EU to establish for an initial planned period of 12 months a multinational stabilization force (EUFOR) as a legal successor to SFOR under unified command and control, which will fulfil its missions in relation to the implementation of Annex 1-A and Annex 2 of the Peace Agreement in cooperation with the NATO HQ presence in accordance with the arrangements agreed between NATO and the EU [...]” and “the Member States acting through or in cooperation with NATO to establish a NATO Headquarters as a legal successor to SFOR under unified command and control, which will fulfil its missions in relation to the implementation of Annex 1-A and Annex 2 of the Peace Agreement in cooperation with EUFOR in accordance with the arrangements agreed between NATO and the EU [...]”;⁹

CONSIDERING that it follows that in conducting their mission under the General Framework Agreement for Peace in Bosnia and Herzegovina, including the search for and arrest of individuals accused of war crimes before the International Tribunal, EUFOR and the NATO presence in Sarajevo are the legal successors to SFOR;

CONSIDERING thus that two new separate warrants of arrest should be issued, one to EUFOR and the other to the NATO presence in Sarajevo, and that these should replace the confidential Warrant of Arrest and Order for Surrender addressed to SFOR on 7 October 2004;

CONSIDERING moreover that since EUFOR and the NATO presence in Sarajevo have the means and legal capacity to act, the warrants of arrest are addressed to them for execution;

CONSIDERING that the execution procedure for the warrants of arrest does not require that they be transmitted through the Prosecutor;

CONSIDERING, however, that it is necessary that the operation leading to the arrest of **Stojan Župljanin** be co-ordinated in order to prevent any risk of flight; that as part of this co-ordination, the Prosecutor must be in a position to assist the military based on the information which she should normally have in her possession after the investigations carried out by the Office of the Prosecutor for almost 6 years; that to this end, Rule 53(D)

⁹ Security Council resolution 1575(2004), paras. 10 and 11.

of the Rules provides that the Prosecutor may disclose an indictment or part thereof to an appropriate authority where the Prosecutor deems it necessary to prevent an opportunity for securing the possible arrest of an accused from being lost;

CONSIDERING that Rule 37 of the Rules sets out that the Prosecutor shall perform all the functions provided for by the Statute;

CONSIDERING that Article 16 of the Statute states with regard to the Prosecutor's authority that the Prosecutor shall be responsible for the investigation and prosecution of persons;

CONSIDERING that Article 29 of the Statute provides that States shall co-operate with the International Tribunal in the arrest of persons accused of committing serious violations of international humanitarian law;

CONSIDERING moreover that Rule 55 of the Rules sets out that the warrant of arrest may be transmitted to the person or authorities to which it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the accused resides, or was last known to be;

CONSIDERING that neither the Statute nor the Rules provide that the Prosecutor shall execute a warrant of arrest; that this responsibility falls to the authorities to whom the warrant of arrest is addressed;

CONSIDERING thus that, pursuant to Rules 55 and 59 of the Rules, the warrants of arrest were addressed to the authorities of the States concerned and to SFOR for execution;

CONSIDERING that Rule 55(G) of the Rules provides that when a warrant of arrest issued by the Tribunal is executed by the authorities of a State, or an appropriate authority or international body, a member of the Office of the Prosecutor may be present as from the time of the arrest;

CONSIDERING that this procedure is supplemented by Rule 59 *bis* of the Rules, which provides for the transmission by the Registrar to an appropriate authority or international body or to the Prosecutor of a copy of a warrant for the arrest of an accused;

CONSIDERING that the same Rule may allow the Prosecutor to have a copy of the warrant of arrest;

CONSIDERING that there is no reason why the Prosecutor should not have a copy of this warrant of arrest;

CONSIDERING that the warrant of arrest is now addressed to the NATO presence in Sarajevo and that this institution must execute the warrant; that the practical arrangements of the execution may be agreed upon with the Prosecutor;

CONSIDERING that for reasons relating to the efficient implementation of the warrant of arrest addressed to SFOR, it was decided that it should not be made public until 1 December 2004;

CONSIDERING that, to date, that is almost 6 years after his indictment, **Stojan Župljanin** has still not been arrested;

CONSIDERING that this warrant of arrest should therefore be made public;

FOR THE FOREGOING REASONS,

HEREBY DIRECT the NATO presence in Sarajevo to search for, arrest and surrender to the International Tribunal:

Stojan Župljanin, born in 1951, in the village of Maslovare, Kotor Varoš Municipality, in Bosnia and Herzegovina; graduated from law school in Sarajevo and employed by the Banja Luka Secretariat of the Interior (SUP); from 1991 on he served as the head or commander of the Regional Security Services Centre (CSB) in Banja Luka; in 1992, he was a member of the Autonomous Region of Krajina (ARK) Crisis Staff and later served as a special advisor to the President of *Republika Srpska*;

Who is alleged to have committed in the territory of Bosnia and Herzegovina, between 1 April 1992 and 31 December 1992, crimes against humanity punishable under Article 5 of the Statute and violations of the laws or customs of war punishable under Article 3 of the Statute;

And to advise the said **Stojan Župljanin** at the time of his arrest, in a language that he understands, of all his rights as set forth in Article 21 of the Statute and, *mutatis mutandis*, Rules 42 and 43 of the Rules, which are annexed hereto, of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence, and to bring to his attention in a language which he understands the second

amended indictment and authorisation to amend the amended indictment (as well as all other documents annexed to the present warrant of arrest);

REQUEST that, upon the arrest of **Stojan Župljanin**, the NATO presence in Sarajevo promptly notify the Registrar of the International Tribunal for the purpose of his transfer to the seat of the International Tribunal pursuant to Rule 57 of the Rules;

REQUEST also that the NATO presence in Sarajevo report forthwith to the Registrar of the International Tribunal if it is unable to execute the present warrant of arrest indicating the reasons for its inability, pursuant to Rule 59(A) of the Rules;

CALL UPON the Registrar of the International Tribunal to provide the NATO presence in Sarajevo with copies of this warrant of arrest and order for surrender, of the Second Amended Indictment and of all other documents attached to this warrant of arrest;

CALL UPON the Registrar of the International Tribunal to ensure that **Stojan Župljanin** is brought without delay before a Trial Chamber or a permanent Judge, pursuant to Rule 62 of the Rules;

SUBSTITUTE the confidential Warrant of Arrest and Order for Surrender addressed to SFOR on 7 October 2004 with this warrant of arrest;

REQUEST the Registrar of the International Tribunal to inform the pre-trial Judge of any difficulty relating to the execution of this warrant of arrest;

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

/signed/

Jean-Claude Antonetti

Judge of the International Tribunal

Dated this fourteenth day of February 2005
At The Hague
The Netherlands

[Seal of the Tribunal]