



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-04-82-I
Date: 9 March 2005
Original: English

BEFORE THE REVIEWING JUDGE

Before: Judge Patrick Robinson
Registrar: Mr. Hans Holthuis
Decision of: 9 March 2005

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

CONFIDENTIAL AND *EX PARTE*

DECISION ON REVIEW OF THE INDICTMENT

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Ken Scott
Mr. Bill Smith

I, **PATRICK ROBINSON**, Judge of Trial Chamber III 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”, “Tribunal”),

HAVING BEEN ASSIGNED as the Judge of the Tribunal to whom the indictment in the case of *Prosecutor v. Ljube Bošković and Johan Tarčulovski* has been transmitted for review by Order dated 24 January 2005,

BEING SEISED OF the “Prosecutor’s Motion for Confirmation of the Indictment, for Issuance of Arrest Warrants, and Non-Disclosure of Supporting Material Until Further Order”, filed confidentially and *ex parte* by the Office of the Prosecution (“Prosecution”) on 22 December 2004 (“Motion for Confirmation”), to which were attached *ex parte* and confidential Annexes A, B, C and D,

NOTING that the Motion for Confirmation includes a request that that the Indictment be kept confidential until 10 days after its confirmation, and that a warrant of arrest and order for surrender be issued for each of the accused against whom the indictment is confirmed (“Arrest Warrants”),

CONSIDERING that Article 19 of the Statute of the International Tribunal (“Statute”) provides:

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

CONSIDERING that Rule 47(E) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) provides:

The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials 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.

CONSIDERING that the Tribunal has defined a *prima facie* case as “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge”;¹ in other words, the case must be one that is based on evidence which, if accepted, *would* be a sufficient basis on which to convict the accused,²

CONSIDERING that review of an indictment to determine whether it establishes a *prima facie* case has two distinct components: (1) “an assessment of whether, from the face of the indictment, it is alleged that the accused committed acts which, if proven beyond a reasonable doubt, are crimes as charged and are within the subject matter jurisdiction of the International Tribunal”; and (2) an examination of the accompanying material to ensure that it supports the allegations in the indictment,³

HAVING read the Indictment and all the supporting material submitted, I am satisfied that the Indictment establishes a *prima facie* case that Ljube Boškoski and Johan Tarčulovski committed the crimes with which they are charged,

PURSUANT TO Article 19 of the Statute and Rules 47 and 53 of the Rules,

HEREBY CONFIRM each and every count in the Indictment, **ORDER** that the Arrest Warrants be transmitted to the appropriate authorities and **FURTHER ORDER** that there be no public disclosure of the Indictment, supporting materials, or Arrest Warrants until further order.

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



Judge Patrick Robinson

Dated this ninth day of March 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ *Prosecutor v. Kordić et al.*, Case No. IT-95-14-I, “Decision on the Review of the Indictment”, 10 November 1995, p. 3.

² *Prosecutor v. Milošević*, Case No. IT-01-51, “Decision on Review of Indictment”, 22 November 2001, para. 14.

³ *Prosecutor v. Kordić et al.*, *supra* note 1.