



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-99-37-PT
IT-03-70-PT
Date: 8 July 2005
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 8 July 2005

**THE PROSECUTOR v. MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ & DRAGOLJUB OJDANIĆ
(IT-99-37-PT)**

**THE PROSECUTOR v. NEBOJŠA PAVKOVIĆ, VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ & SRETEN LUKIĆ
(IT-03-70-PT)**

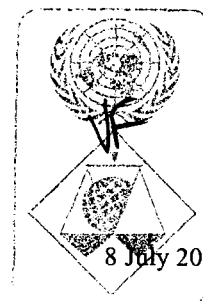
DECISION ON PROSECUTION MOTION FOR JOINDER

The Office of the Prosecutor

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Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrač for Mr. Vladimir Lazarević
Mr. Theodore Scudder for Mr. Sreten Lukić



THIS TRIAL CHAMBER 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”),

BEING SEISED of the “Prosecution Motion for Joinder” (“the Motion”), dated 1 April 2005, seeking to join the three accused in *Prosecutor v. Milan Milutinović, Dragoljub Ojdanić and Nikola Šainović*, Case No. IT-99-37-PT (“*Milutinović et al.*”), with the four persons accused in *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić*, Case No. IT-03-70-PT (“*Pavković et al.*”), and for all seven Accused to be jointly charged and tried under one joint indictment,

NOTING that an amended indictment in the *Milutinović et al.* case was confirmed by Judge David Hunt on 29 June 2001 and, since that time, this Trial Chamber has granted leave to amend the Indictment on 20 October 2001 and on 5 September 2002, and that the Indictment in the *Pavković et al.* case was confirmed by Judge O-Gon Kwon on 2 October 2003,

NOTING that the Indictments in both cases charge each Accused with crimes against humanity (deportation, other inhumane acts, murder and persecutions on political, racial and religious grounds), punishable under Article 5 of the Statute, and with violations of the laws or customs of war (murder), punishable under Article 3 of the Statute, and that all Accused are charged as being individually criminally responsible under Article 7 (1) and on the basis of superior responsibility under Article 7 (3) of the Statute,

CONSIDERING the Trial Chamber is seised of the proceedings in both cases pursuant to an order made on 29 June 2001 with respect to the case of *Milutinović et al.*¹ and an order made on 24 February 2005 with respect to the case of *Pavković et al.*,²

NOTING that the Prosecution submits in the Motion that (i) the legal requirements of Rule 48 of the Rules are met;³ (ii) a joint trial would be in the interests of justice; and (iii) a joint trial would not interfere with the rights of the Accused to a fair and expeditious trial,⁴

¹ *Prosecutor v. Milutinović, Ojdanić & Šainović*, Case No. IT-99-37-I, “Order Assigning a Case to a Trial Chamber”, 29 June 2001.

² *Prosecutor v. Pavković, Lazarević, Đorđević & Lukić*, Case No. IT-03-70-PT, “Order re-assigning a case to a Trial Chamber”, 24 February 2005.

³ Motion, para. 24.

⁴ Motion, para. 4.

NOTING the following with respect to the responses to the Motion filed by the defence in both cases:

- (i) the Defence for Milutinović responded on 8 April 2005, stating that he does not oppose the Motion;⁵
- (ii) the Defence for Ojdanić responded on 11 April 2005, agreeing to the Motion;⁶
- (iii) the Defence for Šainović indicated at the Rule 65 *ter* Conference on 11 May 2005 that no response would be filed on his behalf;⁷
- (iv) the Defence for Lukić responded on 6 June 2005, following the enlargement of time in which to file a response to the Motion granted by the pre-trial Judge,⁸ objecting to joinder on the basis that (i) joinder would be improper as it would prejudice the rights of the Accused, given the substantial differences in the levels of preparation of the two cases, and (ii) joinder would result in a long and difficult to manage trial with 7 defendants which would violate the rights of the Accused to have a fair and expeditious trial;⁹
- (v) no other responses have been received from the defence in the *Pavković et al.* case, the time for the filing thereof having expired,

NOTING that the Prosecution previously filed a Motion for Joinder of the *Milutinović et al.* case and the *Pavković et al.* case on 5 November 2003, which this Trial Chamber denied on 4 December 2003 as being premature, given that the Trial Chamber was not seized of the *Pavković et al.* case and that none of the Accused in the *Pavković et al.* case had surrendered to the International Tribunal at that time,¹⁰

CONSIDERING that subsequently Lazarević surrendered to the International Tribunal on 3 February 2005, Lukić surrendered on 4 April 2005 and Pavković surrendered on 25 April 2005,

⁵ "Response by Mr. Milan Milutinović to the Prosecution Motion for Joinder", 8 April 2005

⁶ "General Ojdanić's Response to Prosecution Motion for Joinder", 11 April 2005

⁷ Rule 65 *ter* Conference, 11 May 2005, T.421

⁸ "Decision on Sreten Lukić's Motion for Enlargement of Time to File a Response to the Prosecution's Motion for Joinder, and to File a Preliminary Motion", 24 May 2005

⁹ "Defendant, Sreten Lukić's Response Brief in Opposition to Motion for Joinder", 6 June 2005

¹⁰ *Prosecutor v. Milutinović, Ojdanić & Šainović*, Case No. IT-99-37-PT, Decision on Prosecution Motion for Joinder, 4 December 2003

CONSIDERING that Rule 48 gives the Trial Chamber discretion to grant a motion for joinder of, “[p]ersons accused of the same or different crimes committed in the course of the same transaction [...]”,¹¹

CONSIDERING the following with regard to Rule 48:

- (i) that the Accused are charged with the same crimes, allegedly committed during the same period and in the same geographical area;¹²
- (ii) that the indictments demonstrate *prima facie* that the crimes charged against all the Accused were committed in the course of the same transaction,¹³ in that all the Accused are alleged to have participated in one Joint Criminal Enterprise (“JCE”) whose purpose was “*inter alia*, the expulsion of a substantial portion of the Kosovo Albanian population from the territory of the province of Kosovo in an effort to ensure continued Serbian control over the province;”¹⁴
- (iii) that the joinder of the Accused would avoid duplication of the presentation of evidence related to underlying crimes and to some extent to the criminal responsibility of several of the Accused; minimise hardship to witnesses; and would be in the interests of judicial economy,¹⁵ since, on the basis of the Prosecution’s submissions, the length of one joint trial is likely to be significantly shorter than the combined period necessary for two separate trials;¹⁶
- (iv) that no basis has been identified for concluding that joinder would create a conflict of interest or otherwise prejudice the right of any of the Accused to a fair and expeditious trial, and no basis has been advanced to persuade the Trial

¹¹ *Prosecutor v. Dragoljub Kunarac and Radomir Kovać*, Decision on Joinder of Trials, Case No. IT-96-23-PT, 9 February 2000, para. 9; *Prosecutor v. Željko Meakić, Momčilo Gruban, Duško Knezević and Prosecutor v. Dušan Fustar, Predrag Banović and Duško Knezević*, Decision on Prosecution’s Motion for Joinder of Accused, Case No. IT-95-8/4-PT, IT-95-8/1-PT.

¹² *Prosecutor v. Rahim Ademi and Prosecutor v. Mirko Norac*, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004.

¹³ *Prosecutor v. Slobodan Milošević*, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, 18 April 2002, para. 19 (“*Milošević* Appeal Decision on Joinder”). While this Decision ultimately dealt with Rule 49, it was noted that this provision has necessarily to be considered in conjunction with Rule 48 (“Joinder of Accused”), as each is based upon events which must form “the same transaction”. *Ibid.*, para. 13

¹⁴ Indictment, para. 5.

¹⁵ *Prosecutor v. Rahim Ademi and Prosecutor v. Mirko Norac*, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004. See also the reasoning in *Prosecutor v. Brđanin & Talić*, Decision on Motions by Momir Talić for a Separate Trial And for Leave to File a Reply, Case No. IT-99-36-PT, 9 March 2000, paras 24-25, 29.

¹⁶ Motion, para. 26, 32 and 36.

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Chamber that it is not able to manage the conduct of a joint trial adequately; moreover, the Trial Chamber is confident that by applying existing Rules of Procedure and Evidence, it will be able to ensure to the Accused a fair and expeditious trial;

- (v) that there is no indication that a joint trial could not start in December 2005 or January 2006, the anticipated date for the start of trial in the *Milutinović et al.* case; and

CONSIDERING that on the basis of the foregoing factors, when taken together, it is in the interests of justice that the Accused be tried in a single trial,

PURSUANT to Rule 48 of the Rules of Procedure and Evidence,

HEREBY GRANTS leave to the Prosecution to file a Motion which exceeds the regular page limit and **ACCEPTS** the number of pages in the Motion as filed;

GRANTS the Motion for the Accused Milutinović, Ojdanić, Šainović, Pavković, Lazarević, Dorđević and Lukić to be jointly charged and tried on one joint indictment;

ORDERS the Prosecution to submit a consolidated indictment to the Trial Chamber by Monday 15 August 2005, taking into account such decision or order that the Trial Chamber may make in relation to the three separate Preliminary Motions filed by the Accused Lazarević, Lukić and Pavković;

AND REQUESTS the Registry to designate one unified case number to the joined case forthwith.

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

Judge Patrick Robinson
Presiding

Dated this eighth day of July 2005
At The Hague
The Netherlands

Case No. IT-99-37-PT
IT-03-70-PT

[Seal of the Tribunal]



8 July 2005