



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-05-87-PT

Date: 2 December 2005

Original: ENGLISH

IN TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Order of: 2 December 2005

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ,
VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ**

**DECISION ON NEBOJŠA PAVKOVIĆ'S MOTION TO DELAY START OF TRIAL
OR IN THE ALTERNATIVE TO RECONSIDER AND GRANT PREVIOUS
MOTION FOR SEVERANCE**

The Office of the Prosecutor:

**Mr. Thomas Hannis
Ms. Christina Moeller
Ms. Carolyn Edgerton**

Counsel for the Accused:

**Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
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,

BEING SEIZED OF a “Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,” filed on 7 November 2005 (the “Motion”) by Nebojša Pavković (the “Accused”),¹ which seeks an order delaying the start of trial in this case until mid-2007 or, in the alternative, an order severing the Accused from the case and delaying his trial until mid-2007,

NOTING the Accused’s argument that he will not be ready for trial before mid-2007 given (1) his continued lack of access to transcripts and exhibits relating to the Kosovo portion of the trial in *Prosecutor v. Milošević*, Case No. IT-02-54-T, which the Accused says were previously ordered to be given to him;² (2) the Prosecution’s non-compliance with Rule 68 of the Rules of Procedure and Evidence (the “Rules”), evident from the Prosecution’s providing the Accused with a summary of certain Rule 68 material in the Prosecution’s possession, rather than the material itself;³ and (3) the length of time required to review the enormous amount of material in this case,⁴

NOTING “Sreten Lukić’s Response in Support of Pavković’s Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,” filed on 8 November 2005, which joins Pavković’s Motion and adds that the Lukić defence team, which lacks co-counsel, had to wait until September 2005 to have two of its investigators approved, which Lukić contends hampered the preparation of his defence,⁵

NOTING the “Prosecution’s Response to Pavković’s ‘Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,’” filed on 21 November 2005, which opposes the Motion as premature in light of the fact that no trial date

¹ The Trial Chamber denied a previous motion of Pavković’s to sever him from the rest of the Accused. See Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005.

² See Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, paras. 5-19.

³ See *ibid.*, para. 20.

⁴ See *ibid.*, paras. 21-36.

⁵ See Sreten Lukić’s Response in Support of Pavković’s Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, paras. 1-9.

has been set yet in this case, and argues that (1) Pavković's estimates of the length of time required to prepare for trial are speculative and unrealistic;⁶ and (2) the Accused's complaints regarding access to certain *Milošević* and Rule 68 materials were addressed at the Rule 65 *ter* meeting presided over by Judge Bonomy on 8 November 2005;⁷

NOTING the "Prosecution's Response to Lukić's Joinder in Pavković's 'Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,'" filed on 21 November 2005, which opposes Lukić's submission on the same grounds as the Prosecution's opposition to Pavković's Motion,⁸

CONSIDERING that a trial date has not been set, that none of the events that indicate the impending start of trial – such as the ordering or filing of the Pre-Trial Brief required by Rule 65 *ter*(E) or the occurrence of the Pre-Trial Conference required by Rule 73 *bis*(A) – has taken place and that the Motion is therefore premature,

PURSUANT TO Rule 54 of the Rules,

HEREBY DISMISSES the Motion.

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



**Judge Patrick Robinson
Presiding**

Dated this second day of December 2005.
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ See Prosecution's Response to Pavković's "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," paras. 3, 5.

⁷ See *ibid.*, para. 4. The Trial Chamber notes its Order Arising from Prosecution's Submission Regarding the Order of Pre-Trial Judge from Status Conference, 21 November 2005.

⁸ See Prosecution's Response to Lukić's Joinder in Pavković's "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," para. 3.