



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-03-73-PT
Date: 9 December
2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge Jean-Claude Antonetti

Registrar: Mr. Hans Holthius

Decision: 9 December 2005

PROSECUTOR

v.

IVAN ČERMAK AND MLADEN MARKAČ

**DECISION ON THE PROSECUTION'S MOTION FOR
MODIFICATION OF THE TRIAL CHAMBER'S DECISION
ISSUED ON 19 OCTOBER 2005**

The Office of the Prosecutor:

Mr. Alex Whiting
Ms. Laurie Sartorio
Ms. Katherine Gallagher

Counsel for the Accused:

Mr. Čedo Prodanović and Ms. Jadranka Sloković
for Ivan Čermak

Mr. Miroslav Šeparović and Mr. Goran Mikuličić
for Mladen Markač

TRIAL CHAMBER II 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 “Chamber” and the “Tribunal”);

BEING SEIZED OF the “Prosecution’s Motion for Modification of the Trial Chamber’s Decision on Prosecution’s Motion Seeking Leave to Amend the Indictment”, filed on 1 November 2005 (the “Motion”);

NOTING the “Decision on Prosecution Motion Seeking Leave to Amend the Indictment” issued on 19 October 2005 (the “Decision”) whereby the Trial Chamber granted the “Prosecution’s Motion Seeking Leave to Amend the Indictment” and ordered the Prosecution to file the Amended Indictment within twenty-one days of the filing of this decision, *i.e.* before 9 November 2005, after further amending the Indictment so as to clarify paragraph 10 of the Amended Indictment and pleading adequately the state of mind alleged in paragraph 40 of the Amended Indictment;

NOTING that the Prosecution attached to the Motion a draft of a further Amended Indictment in which:

- 1) it identified and corrected two typographical errors;¹
- 2) it requested the Chamber to modify its Decision so as to permit the Prosecution to remove paragraph 40 from the Amended Indictment given that the Accused was alleged to have aided and abetted a joint criminal enterprise, a form of liability which was recently rejected by the Appeals Chamber;²

NOTING that pursuant to Rule 126*bis* of the Rules of Procedure and Evidence (the “Rules”), a response, if any, shall be filed within fourteen days of the filing of a motion;

NOTING that the Defence have not filed any response to the Motion;

CONSIDERING that the deadline to file an amended Indictment set out in the Decision shall be extended until such a time that the Chamber gives its ruling on the Motion;

¹ Motion, para 2 (the Prosecution refers to paragraph 26 of the Amended Indictment where the date should read 15 November 1995 and to Count 7 where the text “and Article 5” has inadvertently been included and where the text should read “murder, a violation of the laws or customs of war...”).

² Motion para 4 referring to *Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-A, 28 February 2005, para 91.

CONSIDERING that the amendments suggested by the Prosecution in the further Amended Indictment implement the Chamber's ruling in its Decision, given that the Prosecution has clarified paragraph 10 of the Amended Indictment by referring to paragraph 12 which identifies the members of the alleged joint criminal enterprise and that there is no further need to clarify paragraph 40 as its deletion from the Amended Indictment is requested;

CONSIDERING therefore that the further Amended Indictment is in accordance with the Decision and that it would be proper to grant the Prosecution's requests;

NOTING however that the Prosecution has omitted to attach to the further Amended Indictment the Schedule which was annexed to the Amended Indictment;

For the foregoing reasons, the Trial Chamber

HEREBY GRANTS the Prosecution's Motion and **ORDERS** the Prosecution to file the further Amended Indictment, including the annexed Schedule, before Friday 16 December 2005.

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



Carmel Agius
Presiding Judge

[Seal of the Tribunal]