



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: 26 June 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Order of: 26 June 2006

PROSECUTOR

v.

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

**ORDER REPLACING THIRD AMENDED JOINDER INDICTMENT
AND SEVERING VLASTIMIR ĐORĐEVIĆ FROM THE TRIAL**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić 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 (“Tribunal”);

BEING SEIZED of the “Prosecution Motion Requesting Leave to Replace the Third Amended Joinder Indictment and Leave to Sever Vlastimir Đorđević from the Trial in the Present Case”, filed on 21 June 2006 (“Motion”), in which the Prosecution requests the following relief:

- (1) leave to replace the Third Amended Joinder Indictment filed on 12 May 2006 with a corrected version of the same indictment, filed as Annex A to the Motion;
- (2) the severance of Vlastimir Đorđević from the trial of the other Accused in this case; and
- (3) that a redacted and corrected version of the Third Amended Joinder Indictment, filed as Annex B to the Motion, be used as the operative Indictment for the trial against the remaining Accused;

NOTING that this matter was raised and discussed at the last two conferences of the parties held pursuant to Rule 65 *ter*(D),¹ that counsel for the six accused other than Vlastimir Đorđević (“six Accused” and “Accused Đorđević”, respectively) did not object to the Prosecution’s requests for relief,² and that it is therefore unnecessary to await the filing of any response from the six Accused;³

NOTING the procedural history of the Motion, as recounted in paragraphs 2 and 3 therein;

CONSIDERING that Rule 82(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that “[t]he Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice”;

CONSIDERING that, although Rule 72(A)(iii) requires that a motion requesting relief under Rule 82(B) must be brought no later than thirty days after the Prosecution completes disclosure

¹ See *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-05-87-PT, Transcript of Rule 65 *ter* conference, 17 May 2006, T. 244–245; *Milutinović et al.*, Transcript of Rule 65 *ter* conference, 21 June 2006, T. 287–292.

² *Milutinović et al.*, Transcript of Rule 65 *ter* conference, 21 June 2006, T. 291–292 (counsel for Accused Ojdanić raising only the issue of translation of the operative indictment for trial; no other comments from defence counsel).

³ See Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) (providing that a response to a shall be filed within a given time “[u]nless otherwise ordered by a Chamber”); Rule 65 *ter*(B) (providing that “[t]he pre-trial Judge ... shall take any measure necessary to prepare the case for a fair and expeditious trial”).

under Rule 66(A)(i), the instant Motion was filed upon the suggestion of the Pre-Trial Judge, and it is within the Chamber's power to recognise the Motion as validly filed;⁴

CONSIDERING that, as the Motion notes, "the six accused who are available for trial have the right to be tried without undue delay pursuant to Article 21(4)(c) of the Statute of the Tribunal",⁵ and "postponing the trial in this case until Vlastimir Đorđević becomes available could lead to a serious delay which would [also] interfere with ... the interest of justice to have trials conducted and completed expeditiously",⁶

NOTING that the corrections of the inaccurate internal cross-references in the version of the indictment that was filed on 12 May 2006 have resolved those problems;

CONSIDERING that it is in the interests of justice that Accused Đorđević be severed from the trial of the six accused,⁷ and that no decision or judgement of the Trial Chamber in the proceedings against the six accused should be read as a determination of the individual criminal responsibility of Accused Đorđević with respect to the charges against him;

PURSUANT TO Rules 54, 65 *ter*, 82, 126 *bis*, and 127 of the Rules,

HEREBY ORDERS AS FOLLOWS:

1. The Prosecution is granted leave to file the Motion and to replace the Third Amended Joinder Indictment as indicated in paragraphs 3 and 4 below.
2. The Accused Vlastimir Đorđević is severed from the trial of the six Accused, and the Registry shall assign a new case number to any further submissions or proceedings that involve Accused Đorđević.
3. The corrected version of the Third Amended Joinder Indictment attached to the Motion as Annex A shall be filed under the new case number assigned to Accused Đorđević, and shall

⁴ See Rule 127(A)(ii) (permitting a Trial Chamber or Pre-Trial Judge, if "good cause is shown by motion", to "recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired"). The Chamber considers that the procedural history and legal arguments contained in paragraphs 3 to 6 of the Motion constitute good cause for granting this variation of the time limits.

⁵ Motion, para. 4.

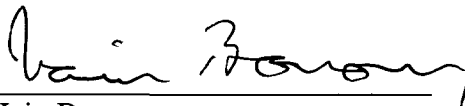
⁶ *Ibid.* para. 5

⁷ See *Milutinović et al.*, Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005, p. 4 (denying motion to sever because a single trial of all co-accused would best serve the interests of justice); accord *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić*, Case No. IT-04-74-PT, Decision on Defence's Motion for Separate Trials and Severance of Counts, 1 July 2005, paras. 23–24. See also *Prosecutor v. Vasiljević*, Case No. IT-98-32-PT, Transcript of Pre-Trial Conference, T. 60 (20 July 2001).

be the operative indictment against him in all future proceedings unless otherwise ordered by a Chamber of the Tribunal.

4. The corrected and redacted version of the Third Amended Joinder Indictment, attached to the Motion as Annex B, shall be the operative indictment for the trial against the six accused, and shall be referred to as the "Redacted Third Amended Joinder Indictment".

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


Iain Bonomy
Presiding

Dated this twenty-sixth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]