



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-05-88-PT

Date: 26 June 2006

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 26 June 2006

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ
MILORAD TRBIĆ**

**DECISION ON SEVERANCE OF CASE
AGAINST MILORAD TRBIĆ**

WITH CONFIDENTIAL AND *EX PARTE* ANNEX

Office of the Prosecutor

Ms. Carla Del Ponte

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović for Vujadin Popović

Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara

Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić

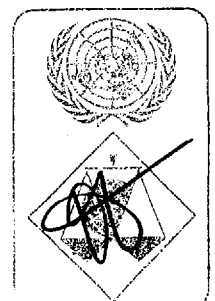
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin

Ms. Natacha Fauveau Ivanović for Radivoje Miletić

Mr. Dragan Krgović for Milan Gvero

Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

Mr. Stéphane Piletta-Zanin for Milorad Trbić



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 (“Tribunal”);

BEING SEISED OF the Prosecution’s “Motion for Severance of the Case against Milorad Trbić”, filed confidentially and *ex parte* the co-Accused on 16 June 2006 (“Severance Motion”), in which the Prosecution requests that the Trial Chamber sever the case of Milorad Trbić (“Accused” or “Accused Trbić”) from that of the other Accused in Case No. IT-05-88 (“co-Accused”), and sets forth a number of arguments purporting to justify severance pursuant to Rule 82(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹

NOTING the “Decision on Motion for Joinder”, issued on 21 September 2005, in which the indictment against the Accused and Vinko Pandurević was joined, pursuant to Rule 48 of the Rules, with those of the other co-Accused;²

NOTING the “Motion by the Prosecutor under Rule 11 *bis* for Referral of the Indictment” and the partly confidential “Request by the Prosecutor under Rule 11 *bis* for Referral of the Indictment to Another Court”, both filed on 4 May 2006 (“Referral Request”), in which the Prosecution requests the Referral Bench of the Tribunal to refer the case against the Accused to the authorities of Bosnia and Herzegovina;³

NOTING that the Trial Chamber is also seized of several confidential submissions relating to the health of the Accused, and that the confidential and *ex parte* Annex to this Decision describes the content of such submissions;

NOTING the Prosecution’s “Notification of Filing of *Ex-Parte* and Confidential Motion for Severance of the Case against Milorad Trbić”, filed publicly on 21 June 2006, in which the Prosecution explains that it filed the Severance Motion “in order to preclude any delay of the trial against the other co-Accused which could arise due to the outstanding [Referral Request] pending

¹ Severance Motion, paras. 2, 5–10.

² *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, and Trbić* (“*Popović et al.*”), Case No. IT-05-88-PT, Decision on Motion for Joinder, 21 September 2005, para. 36.

³ The Referral Bench became seized of Rule 11 *bis* proceedings in respect of the Accused by virtue of an order dated 10 May 2006. See *Popović et al.*, Order Appointing a Referral Bench for the Purpose of Determining whether the Indictment Should Be Referred to Another Court under Rule 11 *bis*, 10 May 2006, p. 2.

before the Referral Bench”,⁴ and that it made this filing on a confidential and *ex parte* basis “due to information of a sensitive and confidential nature” contained therein;⁵

NOTING that the Accused did not file a response to the Severance Motion within the time limit ordered in the “Confidential and *Ex Parte* Scheduling Order” of 20 June 2006;⁶

NOTING the “Scheduling Order for a Status Conference and for Start of Trial”, issued on 6 June 2006, in which the Pre-Trial Judge set 14 July 2006 as the date for the official start of trial in Case No. IT-05-88;⁷

CONSIDERING Rule 82(B) of the Rules, which 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 a Trial Chamber “has wide discretionary power to order the joinder or severance of cases against accused persons”,⁸

CONSIDERING that, notwithstanding the language of Rule 72 of the Rules, a motion requesting relief under Rule 82(B) may be brought at any stage of the proceedings;⁹

CONSIDERING that the Referral Bench has yet to decide on the Referral Request;

CONSIDERING that this Trial Chamber has yet to decide on several outstanding and material submissions relating to the health of the Accused;¹⁰

⁴ *Popović et al.*, Notification of Filing of *Ex-Parte* and Confidential Motion for Severance of the Case against Milorad Trbić, 21 June 2006, para. 2.

⁵ *Ibid.*

⁶ In this order the Pre-Trial Judge, acting pursuant to Rule 127 of the Rules, set the deadline to respond as 23 June 2006. *Popović et al.*, Confidential and *Ex Parte* Scheduling Order, 20 June 2006, p. 2.

⁷ *Popović et al.*, Scheduling Order for a Status Conference and for Start of Trial, 6 June 2006, p. 2.

⁸ *Prosecutor v. Strugar and Kovačević*, Case No. IT-01-42-PT, Decision on the Prosecutor’s Motion for Separate Trial and Order to Schedule a Pre-Trial Conference and the Start of the Trial against Pavle Strugar, 26 November 2003 (“*Strugar and Kovačević* Decision”), p. 3. *Accord Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-AR72.2, Decision on Request to Appeal, 16 May 2000, p. 4 (considering that “sub-Rule 82 (B) is permissive rather than obligatory, thus leaving to the relevant Trial Chamber the power to determine that matter of separate trials in the circumstances of the case before it” and rejecting a request to appeal against the Trial Chamber’s decision denying severance); *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on Prosecution’s Oral Request for the Separation of Trials, 20 September 2002 (“*Brđanin and Talić* September 2002 Decision”), para. 19.

⁹ See, e.g., *ibid.*, paras. 23–29 (entertaining a motion for relief under Rule 82(B) of the Rules at the trial stage of the proceedings).

¹⁰ These submissions are described in the confidential and *ex parte* Annex to this Decision.

CONSIDERING FURTHER that current permanent counsel for the Accused was appointed to replace former permanent counsel only on 1 June 2006;¹¹ that preparing for proceedings in relation to the Referral Request and the outstanding health issues will likely involve considerable effort on the part of the Accused and his counsel; and that having also to prepare for trial in Case No. IT-05-88, in light of the scheduled start date of 14 July 2006, would impose a significant burden on the Accused;

CONSIDERING that these matters are unlikely to be resolved within a short period of time, and that a delay in the start of trial will place in jeopardy the right of the co-Accused to an expeditious trial;¹²

CONSIDERING, therefore, that the interests of justice are best served by severing the Accused's case from that of his co-Accused;¹³

¹¹ *Popović et al.*, Decision [of the Deputy Registrar], 1 June 2006, p. 2.

¹² See Article 20(1) of the Statute (providing that “[t]he Trial Chambers shall ensure that a trial is fair and expeditious”); Article 21(4) of the Statute (providing that an accused has the right to be tried “without undue delay”). Cf. *Strugar and Kovačević* Decision, *supra* note 8, p. 2 (considering that a medical examination of Kovačević was “unlikely to be completed within a reasonably short period of time”, that the trial against Strugar was ready to begin, that trial would “certainly be delayed for an uncertain period of time” if Strugar’s trial were not severed from that of Kovačević, and that such delay would “jeopardize Mr. Pavle Strugar’s right to an expeditious trial”); *Brđanin and Talić* September 2002 Decision, *supra* note 8, paras. 26–29 & p. 9 (considering that further delays in the continuation of trial due to the ill health of Talić would impinge the “fundamental right to an expeditious trial” of Brđanin, and that “[t]he interests of justice ... would be clearly best served by separating the trial from the present moment”) (quotation at para. 26).

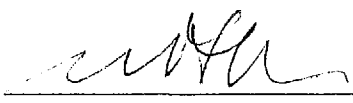
¹³ Cf. *Strugar and Kovačević* Decision, *supra* note 8, pp. 2–3 (granting the Prosecution’s motion to sever the case of Kovačević from that of Strugar because the delay in the start of trial caused by outstanding medical issues in relation to Kovačević would cause prejudice to Strugar); *Brđanin and Talić* September 2002 Decision, *supra* note 8, para. 26 & p. 9 (granting the Prosecution’s motion to sever the case against Talić because further delays in the trial would cause prejudice to Brđanin and be contrary to the interests of justice). The majority of motions for severance before Chambers of the Tribunal have been denied on the basis that continuing with joined proceedings would best protect the interests of justice. See, e.g., *Prosecutor v. Simić, Simić, Tadić, Todorović, and Zarić*, Case No. IT-95-09-PT, Decision on Motion for Separate Trial for Simo Zarić, 3 February 2000, p. 4 (also denying the accused’s motion to sever on the grounds that no conflict of interest existed between the co-accused); *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-05-87-PT, Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005, p. 4; *Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, 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; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motions by Momir Talić for a Separate Trial and for Leave to File a Reply, 9 March 2000, paras. 24, 29, 30, 33, 36. See also *Prosecutor v. Vasiljević*, Case No. IT-98-32-PT, Transcript of Pre-Trial Conference, T. 60 (20 July 2001).

PURSUANT TO Rules 54 and 82 of the Rules,

HEREBY ORDERS AS FOLLOWS:

1. The Severance Motion is granted with immediate effect.
2. The Registry shall assign a new case number to any further submissions or proceedings that involve the Accused Trbić.
3. Without prejudice to the orders contained in paragraphs 1 and 2 above, the Prosecution shall file two new versions of the Second Consolidated Amended Indictment in this case, one redacting all charges against the Accused Trbić and bearing the case number IT-05-88, and the other redacting all charges against the co-Accused and bearing the case number assigned by the Registry, by the later of the following:
 - a. seven days after the Trial Chamber issues its decision on all motions relating to the implementation of the "Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules" of 31 May 2006; or
 - b. the time limit specified in the decision on those motions.
4. The corrected version of the Second Consolidated Amended Indictment, with the charges against the Accused Trbić redacted, shall be the operative indictment for the trial in Case No. IT-05-88, and shall bear the title "Indictment".
5. The corrected version of the Second Consolidated Amended Indictment, with the charges against the co-Accused redacted, shall be the operative indictment against the Accused Trbić, and shall bear the case number assigned by the Registry and the title "Indictment".

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


Carmel Agius
Presiding

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

[Seal of the Tribunal]

