

IT-00-39-R77.1
D13-D6
27 JUNE 2006

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UNITED
NATIONS



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: IT-00-39-R77.1

Date: 27 June 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr Hans Holthuis

Order of: 27 June 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

**WARRANT OF ARREST AND
ORDER FOR SURRENDER OF BRANKO ĐERIĆ**

Office of the Prosecutor

Mr Mark Harmon
Mr Alan Tieger

Government of Bosnia and Herzegovina

per: Embassy of Bosnia and Herzegovina
to the Kingdom of The Netherlands

Counsel for the Defence

Mr Nicholas Stewart, QC
Mr David Josse

Government of the Kingdom of The Netherlands

attn: The Ministry of Foreign Affairs

I, JUDGE ALPHONS ORIE, Presiding Judge in Trial Chamber I (“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”);

RECALLING the *subpoena ad testificandum* issued by the Trial Chamber on 8 June 2006, ordering Branko Đerić to appear as a witness in the case of *Prosecutor v. Momčilo Krajišnik* on Monday 26 June 2006 at 09.00 hours, or to show good cause why he could not comply with the subpoena;

NOTING the report of the Republika Srpska Ministry of the Interior provided to the Registrar of the Tribunal by the Government of Bosnia-Herzegovina, dated 19 June 2006, which documents: i) the attempt of its agent to deliver the subpoena to Branko Đerić at the Faculty of Economics in Pale on 19 June 2006 at 13.30 hours; ii) the oral communication of the agent to Branko Đerić informing him of the contents of the subpoena ordering him to appear as a witness in the case of *Prosecutor v. Momčilo Krajišnik* at 09.00 hours on Monday 26 June 2006; iii) the oral warning of the agent to Branko Đerić that deliberate failure to adhere to the provisions of the subpoena constitutes contempt of the Tribunal which may result in criminal proceedings, the issuance of an arrest warrant, and, if convicted, a term of imprisonment up to seven years, or a fine of up to 100,000 Euros, or both; and iv) the refusal of Branko Đerić to receive the subpoena or sign the memorandum of service;

NOTING that Branko Đerić, having thus reportedly been notified of the subpoena, failed to appear before the Trial Chamber on 26 June 2006, as ordered on 8 June 2006, or to show good cause why he could not comply with the subpoena;¹

NOTING that, pursuant to Rule 77 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), a Chamber may issue an order in lieu of an indictment in a case where there are sufficient grounds to proceed against a person for contempt and prosecute the matter itself;

NOTING the Trial Chamber’s order in lieu of an indictment on contempt concerning Branko Đerić, dated 27 June 2006;

CONSIDERING that, pursuant to Rule 59 *bis* of the Rules, a permanent Judge may order the Registrar to transmit to the appropriate authority a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for the prompt

¹ Transcript of 26 June 2006.

transfer of the accused to the Tribunal in the event that the accused be taken into custody by that authority;

PURSUANT TO Articles 19 (2) and 29 of the Tribunal's Statute and Rules 54, 55, 56, 57 and 59 bis of the Rules;

HEREBY DIRECT AND AUTHORIZE the competent authorities of Bosnia and Herzegovina, to which this warrant is transmitted, to search for, arrest, detain, and surrender to the Tribunal:

BRANKO ĐERIĆ, date of birth unknown, Faculty of Economics, University of Pale, Romanijska 42, Pale 71420, Republika Srpska, Bosnia and Herzegovina, former Prime Minister of Republika Srpska, who is indicted by the Tribunal under Rule 77 of the Rules for knowingly and wilfully interfering with the administration of justice by refusing to receive a subpoena and sign a memorandum of service, and/or failing to comply with an order to attend before the Trial Chamber without just excuse;

REQUEST the competent authorities of Bosnia and Herzegovina to advise Branko Đerić, at the time of his arrest and in a language that he understands, of his rights set forth in Article 21 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules, which are annexed hereto in English and Serbo-Croatian, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence;

REQUEST the competent authorities of Bosnia and Herzegovina, pursuant to Rule 56 of the Rules, to execute this warrant promptly; and, pursuant to Rule 57 of the Rules, to promptly notify the Registrar of the Tribunal of the arrest of Branko Đerić, and to arrange with the Registrar of the Tribunal and the Kingdom of The Netherlands for his transfer to the seat of the Tribunal;

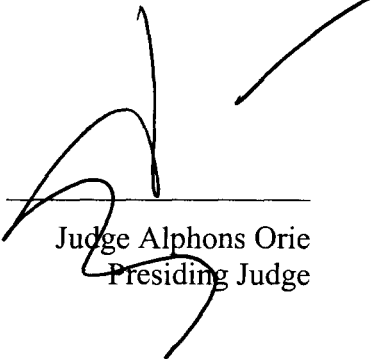
REQUEST the competent authorities of Bosnia and Herzegovina to escort Branko Đerić to an airport in Bosnia and Herzegovina and to escort him on the airplane to an airport in the Kingdom of The Netherlands and to hand him over to the authorities of the Kingdom of The Netherlands pursuant to further agreement with the Registrar of the Tribunal and the authorities of the Kingdom of The Netherlands;

REQUEST the authorities of the Kingdom of The Netherlands to take Branko Đerić into custody at such airport and escort him to the seat of the Tribunal pursuant to further agreement with the Registrar of the Tribunal and the authorities of Bosnia and Herzegovina;

REQUEST the Registrar of the Tribunal to negotiate with the relevant authorities of Bosnia and Herzegovina and the Kingdom of The Netherlands to arrange for the transfer of Branko Đerić to the seat of the Tribunal;

REQUEST the authorities of Bosnia and Herzegovina to report forthwith to the Registrar of the Tribunal if they are unable to execute this warrant of arrest and to indicate the reasons for such non-execution, pursuant to Rule 59 (A) of the Rules.

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



Judge Alphons Orié
Presiding Judge

Dated this 27th day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

STATUTE OF THE TRIBUNAL

**Article 21
Rights of the accused**

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

RULES OF PROCEDURE AND EVIDENCE OF THE TRIBUNAL

Rule 42 Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43 Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be audiorecorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or videorecording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
- (v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
- (vi) the tape shall be transcribed if the suspect becomes an accused.

ANEKS
STATUT
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU

Član 21
Prava optuženog

1. Sve su osobe ravnopravne pred Međunarodnim sudom.
2. Prilikom rješavanja po optužbama protiv njega optuženi ima pravo na pravično i javno suđenje, uz ograde predviđene članom 22 Statuta.
3. Optuženi se smatra nevinim dok mu se ne dokaže krivica u skladu s odredbama ovog Statuta.
4. Prilikom rješavanja po svim optužbama na osnovu ovog Statuta, optuženom se, uz puno poštovanje načela ravnopravnosti, garantuju sljedeća minimalna prava:
 - (a) da bude pravovremeno i detaljno obaviješten, na jeziku koji razumije, o prirodi i razlozima optužbi protiv njega;
 - (b) da ima odgovarajuće vrijeme i uslove za pripremu obrane i komunikaciju s pravnim zastupnikom po vlastitom izboru;
 - (c) da mu se sudi bez nepotrebnog odgađanja;
 - (d) da mu se sudi u njegovom prisustvu i da se brani lično ili putem pravnog zastupnika po vlastitom izboru; da se, ako nema pravnog zastupnika, obavijesti o tom pravu; te da mu se, kad god to zahtijevaju interesi pravde, dodijeli pravni zastupnik, a da pritom ne snosi troškove odbrane ako za to nema dovoljno sredstava;
 - (e) da ispita ili da se u njegovo ime ispituju svjedoci koji ga terete, kao i da se svjedoci odbrane dovedu i ispituju pod istim uslovima kao i svjedoci koji ga terete;
 - (f) da ima besplatnu pomoć prevodioca ako ne razumije ili ne govori jezik koji se koristi na Međunarodnom sudu;
 - (g) da ne bude primoran svjedočiti protiv sebe ni priznati krivicu.

**PRAVILNIK O POSTUPKU I DOKAZIMA
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU**

**Pravilo 42
Prava osumnjičenog za vrijeme istrage**

- (A) Osumnjičeni kojeg tužilac bude ispitivao ima sljedeća prava, o kojima tužilac mora da ga obavijesti prije ispitivanja na jeziku koji osumnjičeni govori i razumije:
- (i) pravo na branioca po vlastitom izboru ili na besplatnu pravnu pomoć koja će mu biti dodijeljena ako nema materijalnih sredstava da je sam plati;
 - (ii) pravo na besplatnu pomoć prevodioca ako ne razumije niti govori jezik na kojem se vrši ispitivanje;
 - (iii) pravo da ne daje nikakve izjave i pravo da bude upozoren da će svaka izjava koju bude dao biti zabilježena i da može biti korištena kao dokaz.
- (B) Ispitivanje osumnjičenog ne vodi se bez prisustva branioca, osim ako se osumnjičeni nije dobrovoljno odrekao svog prava na branioca. Ako se osumnjičeni odrekao tog prava, a kasnije ipak izrazi želju da ima branioca, ispitivanje se odmah prekida i nastavlja se tek kada osumnjičeni angažuje branioca ili mu se on dodijeli.

**Pravilo 43
Snimanje ispitivanja osumnjičenog**

Kad god tužilac ispituje osumnjičenog, to se ispitivanje snima na audio ili video traku, u skladu sa sljedećom procedurom:

- (i) osumnjičeni će na jeziku koji govori i razumije biti obaviješten da se ispitivanje snima na audio ili video traku;
- (ii) u slučaju prekida u ispitivanju, ta činjenica, kao i vrijeme kad je do prekida došlo, zabilježiti će se prije prekida snimanja na audio ili video traku, a zabilježiti će se i vrijeme kada je ispitivanje nastavljeno;
- (iii) po završetku ispitivanja, osumnjičenom će se dati prilika da razjasni sve što je rekao i da doda šta god želi da doda i zabilježiće se vrijeme kad je ispitivanje završeno;
- (iv) kopija snimljene trake ili, ako je korišteno više uređaja za snimanje, jedna od originalnih snimljenih traka dostavit će se osumnjičenom;
- (v) nakon što je, ako je to potrebno, napravljena jedna kopija trake, originalna snimljena traka ili jedna od originalnih traka biće zapečaćena u prisustvu osumnjičenog, uz potpis tužioca i osumnjičenog; i
- (vi) ako osumnjičeni postane optuženi, izradiće se transkript trake.