



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-05-87/1-PT  
Date: 27 August 2008  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Tsvetana Kamenova  
Judge Frederik Harhoff, Pre-Trial Judge

**Registrar:** Mr. Hans Holthuis

**Decision of:** 27 August 2008

**PROSECUTOR**

v.

**VLASTIMIR ĐORĐEVIĆ**

**PUBLIC**

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**SECOND DECISION ON FORM OF INDICTMENT**

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**The Office of the Prosecutor:**

Mr Thomas Hannis  
Mr Chester Stamp

**Counsel for the Accused:**

Mr Dragoljub Đorđević  
Mr Veljko Đurđić

**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”) is seised of “Vlastimir Đorđević’s Preliminary Motion on the Form of the Fourth Amended Indictment,” filed on 6 August 2008 (“Motion”), and hereby renders its decision thereon.

### I. Brief procedural history

1. The Trial Chamber has already set forth the procedural history of the Indictment in the above-captioned proceedings in its “Decision on Form of Indictment,” issued on 3 April 2008 (“First Decision”). Also in the First Decision, the Chamber dealt exhaustively with the manifold challenges to the form of the Indictment, dismissing the following challenges to the Indictment in their entirety (a) the acts by which the Accused is alleged to have participated in the various forms of responsibility, including his participation in the JCE; (b) the required state of mind for the various forms of responsibility under Article 7(1); (c) the composition of the “forces of FRY and Serbia”; (d) the alleged superior responsibility of the Accused; (e) the alleged crime of murder as a crime against humanity and as a violation of the laws or customs of war; (f) the period during which the Accused allegedly participated in the JCE; and (g) general allegations of an imprecise and vague indictment.

2. On 7 July 2008, the Chamber granted the Prosecution’s motion to amend the Indictment to, *inter alia*, add new charges related to an alleged incident in Podujevo, holding as follows:

[T]he Trial Chamber concurs with the Prosecution’s submission that it is in the interests of justice to include the Podujevo murder incident in the Indictment. The Prosecution should be allowed to present the fullest case against the Accused. It is in the interest of the alleged victims that the Podujevo incident be prosecuted.

When viewed in light of the circumstances of the case as a whole, the Trial Chamber is satisfied that, although a date for the commencement of the trial has been suggested at the Status Conference of 20 June 2008, granting leave to add the Podujevo incident to the Indictment will not deprive the Accused of an adequate opportunity to prepare an effective defence against the charges and allegations included in the Indictment and will not result in undue delay causing unfair prejudice to the Accused.

... The Trial Chamber has reviewed the evidence contained in the supporting material and finds that the Prosecution has established a *prima facie* case with regard to the Podujevo incident.

Considering that the requirements of Article 19 of the Statute and Rule 50 of the Rules have been met, the Trial Chamber grants leave to add the Podujevo incident and Schedule L to the Indictment. Pursuant to Rule 50(B) of the Rules, a further appearance shall be held to enable the Accused to enter a plea on the new charge. In addition, the

Accused shall have a period of 30 days from this decision in which to file preliminary motions pursuant to Rule 72 in respect of the new charge.<sup>1</sup>

3. On 17 July 2008, the Accused made his initial appearance on the new charges and pled not guilty thereto.<sup>2</sup>
4. The Chamber will now turn to the submissions of the parties.

## II. Submissions of parties

5. In the Motion, the Đorđević Defence requests the Chamber to dismiss the Podujevo incident for lack of a *prima facie* case or require the Prosecution to amend the Podujevo charges to provide more notice.<sup>3</sup> In support of this prayer for relief, the Đorđević Defence argues that (a) it is not clear whether the Accused is alleged to be responsible for the Podujevo charges through his participation in a joint criminal enterprise or through his command responsibility; (b) two individuals have already been tried and convicted for the Podujevo charges; (c) there is no evidence of the Accused's individual criminal responsibility for the charges; (d) all the Accused in the *Milutinović et al.* case should have been charged with the Podujevo incident; (e) the new charges "suffer from defect of specificity"; (f) the new charges should have been added earlier in the case and will now preclude the Accused from properly preparing his Defence; and (g) the Accused faces a larger indictment now than the *Milutinović et al.* Accused and yet the Defence Counsel are receiving less pay than the Defence teams in that case.<sup>4</sup>

6. The Prosecution responds to the Motion, asking that it be dismissed due to the fact that it does not raise any new issues that merit a renewed consideration of the matter.<sup>5</sup>

## III. Applicable law

7. The form of an indictment is governed by Articles 18 and 21 of the Statute and Rule 47(C) of the Rules.<sup>6</sup> Pursuant to Article 18(4) of the Statute, the indictment must set out "a concise statement of the facts and the crime or crimes with which the accused is charged," an obligation that must be interpreted in the light of the terms of Article 21 of the Statute, which provide that, in

<sup>1</sup> Decision on Prosecution Motion for Leave to Amend the Third Amended Joinder Indictment, 7 July 2008, paras. 26–29.

<sup>2</sup> T. 69 (17 July 2008).

<sup>3</sup> Motion, para. 26.

<sup>4</sup> Motion, paras. 10–25.

<sup>5</sup> Prosecution's Response to Vlastimir Đorđević's Preliminary Motion on the Form of the Fourth Amended Indictment, 20 August 2008, paras. 2–4.

<sup>6</sup> *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("Kupreškić Appeal Judgment"), para. 88.

the determination of charges against him or her, the accused shall be entitled to a fair hearing and, more specifically, to be informed of the nature and cause of the charges against him or her and to have adequate time and facilities for the preparation of his or her defence. Likewise, Rule 47(C) of the Rules provides that the indictment must set out not only the name and particulars of the suspect, but also “a concise statement of the facts of the case and of the crime with which the suspect is charged.”

8. This right translates into an obligation on the Prosecution to plead in the indictment the material facts underpinning the charges.<sup>7</sup> The pleadings in an indictment will, therefore, be sufficiently particular when they concisely set out the material facts of the Prosecution case with enough detail to inform an accused clearly of the nature and cause of the charges against him or her, enabling the accused to prepare a defence effectively and efficiently.<sup>8</sup> The Prosecution is not required to plead the evidence by which it intends to prove the material facts.<sup>9</sup> The materiality of a particular fact is dependent upon the nature of the Prosecution case.<sup>10</sup>

#### IV. Discussion

9. The Chamber notes that many of the arguments raised by the Đorđević Defence are not relevant to the applicable legal test to be applied to the Motion and to that extent are rejected.

10. The Chamber has already addressed—in paragraphs 14–24 and 31–34 of the First Decision—the Đorđević Defence’s arguments in relation to the forms of responsibility through which he is said to be liable for the underlying offences in the Indictment.

11. The Chamber has already held in its “Decision on Prosecution Motion for Leave to Amend the Third Amended Joinder Indictment,” issued on 7 July 2008, that the addition of the Podujevo incident will not deprive the Accused of an adequate opportunity to prepare an effective defence against those charges and will not cause him any unfair prejudice. Also in that Decision, the Chamber stated that it had reviewed the evidence contained in the supporting material and found that the Prosecution had established a *prima facie* case with regard to the Podujevo incident. The Chamber is therefore of the view that the Podujevo charges are pleaded in sufficient particularity because they set out the material facts of the Prosecution case with enough detail to inform the

<sup>7</sup> Kupreškić Appeal Judgment; *Prosecutor v. Hadžihasanović, Alagić, and Kubura*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001, para. 8.

<sup>8</sup> See Kupreškić Appeal Judgment, para. 88.

<sup>9</sup> *Ibid.*

<sup>10</sup> Kupreškić Appeal Judgment, para. 89.

Accused clearly of the nature and cause of the charges against him, thus enabling him to prepare a defence effectively and efficiently.

#### V. Disposition

12. For all the foregoing reasons, the Trial Chamber, pursuant to Rule 72 of the Rules of Procedure and Evidence of the Tribunal, hereby DENIES the Motion.

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



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Judge Patrick Robinson  
Presiding

Dated this twenty-seventh day of August 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**