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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-08-91-PT &
IT-95-5/18-PT

IN THE SPECIALLY APPOINTED CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Iain Bonomy
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Date Filed: 15 December 2008

THE PROSECUTOR v. MIĆO STANIŠIĆ
THE PROSECUTOR v. STOJAN ŽUPLJANIN
THE PROSECUTOR v. RADOVAN KARADŽIĆ

PUBLIC

MIĆO STANIŠIĆ'S RESONSE IN OPPOSITION TO STOJAN ŽUPLJANIN'S MOTION FOR JOINDER WITH THE CASE OF RADOVAN KARADŽIĆ

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The Accused
Dr. Radovan Karadžić

PUBLIC
MIĆO STANIŠIĆ'S RESONSE IN OPPOSITION TO STOJAN ŽUPLJANIN'S MOTION FOR JOINDER WITH THE CASE OF RADOVAN KARADŽIĆ

I. Introduction

1. Mićo Stanišić respectfully requests the Specially Appointed Chamber, pursuant to Article 21 of the Statute, to deny Stojan Župljanin's motion for joinder with case of Radovan Karadžić.

II. Procedural Background

2. On 2 December 2008 the Župljanin defence filed a motion for joinder with the case of Radovan Karadžić ("Motion for Joinder").

3. On 5 December 2008, the President of the Tribunal referred the case to the Specially Appointed Chamber ("Referral Order").

4. On 5 December 2008, the Specially Appointed Chamber issued an Order setting a deadline for responses for 15 December 2008 ("Responses deadline Order").

III. Discusion

5. The Župljanin defence asserts and represents *inter alia* that :
   a. The threshold requirement of Rule 48 are satisfied based on the Prosecution allegation that "*accused shared a common criminal purpose..*" and that two indictments "*overlap in several other important respects* ";
   b. The joinder of the accused would serve the interests of justice *inter alia* by preventing of duplication of evidence, promoting of judicial economy, and ensuring consistency in judgments;

6. The defence of Mićo Stanišić strongly oppose the above stated assertions and representations based on the following:

   a. The Župljanin defence failed to establish that the conditions for joinder with Karadžić case have been met;

   b. Even if the conditions for joinder are met, the circumstances pertaining to these two cases militate against the joinder and would require the Chamber to exercise its discretion and deny the application.

A. Failure to Establish Conditions for Joinder

7. There are two preliminary – jurisdictional/procedural – matters which it is submitted are fatal to the Motion for Joinder:

   a. The Župljanin defence seems to refer to the Amended Karadžić Indictment[1], which Motion, as far as it is known, is still pending before the Trial Chamber, and not to Operative indictment in that case. In that sense, the impugned Motion may be said to be misdirected.

   b. Joinder of Accused pursuant to Rule 48 and Joinder of Crimes pursuant to Rule 49 are applications that may only be brought by the Prosecutor. Joinder may not be sought by an Accused. The Rules do not provide for such a possibility and Mr. Župljanin, therefore, has no standing to bring the impugned Motion.

8. Notwithstanding these preliminary matters, for the purposes of this Response, the Stanišić defence will follow the argumentation of the Župljanin defence motion.

9. In addition as a preliminary matter, it should be noted that the Župljanin Defence has not established what prejudice he would suffer unless there is no joinder. Nor, positively, has it demonstrated that the protection of any of his rights depends on

[1] Motion for Joinder, para. 3.

the motion being granted. As for the alleged "advantages" that would lie in the joinder of cases, they are all hypothetical.

10. The Karadžić Indictment and Stanišić and Župljanin Indictment are very distinct in their nature, charges and timeframe of alleged crimes committed. The Karadžić Indictment is significantly broader in nature of charges and time span as well as locations. The two indictments in fact have much more that is not common to one another, than what is common to both. For instance, the Karadžić Indictment, as opposed to Stanišić and Župljanin Indictment, encompasses the charges of Genocide (2 counts); Terror and Unlawful acts (2 counts); Taking hostages (1 count) and much broader charges of a) Persecutions (1 count) and b) Extermination and Murder (3 counts) in respect to municipalities where the alleged crimes took place and time during which alleged crimes were perpetrated. These crimes require proof of facts that (i) will require extensive and detailed evidence and (ii) which are irrelevant to the charges against Messrs Stanišić and Župljanin.

11. The existing overlap in the two Indictments in relation to alleged common criminal purpose is limited to the fact that Stanišić and Župljanin are alleged to have been members of only one JCE from 1 April 1992 until 31 December 1992, while the Karadžić Indictment charges the existence and participation of the accused in several (four) related but different JCE's from 1 July 1991 until 30 November 1995. One of the JCE's is described in Karadžić Indictment as an "overarching JCE" in respect to the other three JCE's alleged in that indictment and, in any case, not in relation to alleged JCE in Stanišić and Župljanin Indictment. If that had been the case, clearly the Prosecution would use the very same characterization.

12. It is respectfully submitted that term "overarching JCE" in Karadžić Indictment appears to suggest the existence of the "same transaction" in relation to other three related JCE's alleged in the same Indictment.

13. There is no allegation, however, that the alleged involvement of Karadžić, on the one hand, and Messrs Stanišić and Župljanin, on the other, in any way "collided" in the context of this alleged JCE. There is no allegation that they either talked to each other about this alleged enterprise, had meetings together in relation to this enterprise or that they planned it together.

14. Additional overlap in respect to approximately 8 months in 1992 and some 13 municipalities, does not give sufficient reason to claim the existence of "*overlap in other important respect*" within the meaning of Rule 48, when taking the Karadžić Indictment as a whole. Furthermore, overlap of the relevant time is of relatively secondary significance when it comes to joinder of indictments.

15. It is clear that acts and omissions alleged to have taken place in Stanišić and Župljanin Indictment are not essentially the same or of same nature as acts and omissions alleged in the Karadžić Indictment.

16. The proposed joinder would not serve the interests of justice, but in fact would serve quite the opposite.

17. The alleged duplication of evidence would be very limited in its scope as opposed to enormous body of evidence that will be led in Karadžić case in respect to charges which are not material and do not in any way touch on the alleged criminal responsibility of Mićo Stanišić.

18. There is no doubt that the proposed Joinder will significantly increase the length and the complexity of the trial. The fact that Mr Karadzic is unrepresented is also likely to be a factor that will delay or slow down the pace of proceedings.

19. Consistency in Judgments cannot be achieved in cases which are so distinct from one another and only distinctly overlap.

20. The Judicial economy principle in case of joinder would actually be defeated as Stanišić and Župljanin and their respective defence teams will be required to sit in the courtroom during presentation of evidence (perhaps as much as 75% of the trial) which has nothing to do with them or charges and case they are to answer. To this end, it would be also unfair to the accused Stanišić to bear the possible consequences of the perception of charges and events which have nothing to do with him. As a result of this, the cost to the Tribunal of the Defence of Messrs Stanisic and Zupljanin will be greatly increased.

B. Other Circumstances Militating Against the Joinder

21. Mr.Stanišić voluntary surrendered to this Tribunal immediately after his indictment was issued in 2005. He has been preparing for trial ever since. His case was joined with the Župljanin case as late as September 2008, after Župljanin was arrested during summer of 2008. The Defence did not oppose the joinder respecting the argumentation that the two cases fell within the letter and the spirit of the Rule 48 despite the fact that it caused a delay of at least 6 months. If joinder with the Karadžić case were now permitted, it would mean another lengthy delay of at least 8 months, if not more, which violates the right to trial without undue delay as guaranteed by Article 21 of the Statute.

22. Furthermore, the defence of Mićo Stanišić respectfully suggests that due to the fact that Dr. Karadžić is not represented by counsel, it is very likely that this will indeed prolong the trial substantially and will further prejudice Mr. Stanišić's right to a trial without undue delay.

23. In addition, Mr. Stanišić wishes to point out that resources for Pre-Trial preparation of Stanišić defence have been exhausted and the request for additional resources, to enable the defence to carry out already existing work in the case, is pending before the Registry. A Decision to join cases with Karadžić will have a

massive impact on the need for new resources, as it would entail an enormous quantity of new disclosure, which would in turn require additional need for preparation, investigation, new witnesses and additional personnel to carry out the tasks.

24. Also, such decision on joinder would create a precedent which would in future enable the parties to ask for further joinder once another accused might be arrested.

25. Finally, insofar as the Župljanin Defence sees benefits where the Stanišić Defence can see none, and considering that a Defence team should not be prejudiced by the tactical decisions of another (see, Stanišić submissions regarding Joinder to Župljanin and Trial Chamber's Decision) to the extent that the Special Chamber would consider granting the Župljanin Motion, the Stanišić Defence submits that it should limit itself, and can only grant the Motion in relation to, Mr Župljanin. In other words, the Defence submits that the Trial Chamber does not have the authority under the Rules, and should not exercise its discretion if it has it, to order the joinder of the Stanišić part of the indictment. Insofar as the Chamber would consider granting the Župljanin Motion, it should regard the present submissions on the part of the Stanišić defence as a motion for separation from the Župljanin case or, in the alternative, as a motion for reconsideration of its decision to grant joinder of the Stanišić and Župljanin indictments.

IV. Conclusion

26. The Defence of Mićo Stanišić reiterates that the Motion for Joinder fails to come within Rule 48 and Rule 49 or to satisfy the criteria for joinder under these provisions. Furthermore, the proposed joinder will not only negate the accused

right to a fair trial, but would clearly violate Article 21(4)(c) which explicitly enshrines the right of the accused to be tried with undue delay.

V. Relief Sought

For the forgoing reasons, the Stanišić defence respectfully asks the Specially Appointed Chamber pursuant to Article 21 of the Statute to deny the Stojan Župljanin Motion for Joinder with Karadžić case.

Word count: 1,898

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