

IN THE TRIAL CHAMBER

Before:

Judge Liu Daqun, Presiding

Judge Amin El Mahdi

Judge Alphons Orié

Registrar:

Mr. Hans Holthuis

Decision of:

28 May 2003

PROSECUTOR
v.
PAVLE STRUGAR
MIODRAG JOKIC
VLADIMIR KOVACEVIC

DECISION ON THE DEFENCE'S THIRD PRELIMINARY MOTION

Office of the Prosecutor

Ms Susan Somers

Counsel for the Accused

Mr Goran Rodic

Mr Zarko Nikolic

1. On 17 March 2003 this Trial Chamber (“the 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 (“the Tribunal”) issued its “Decision on the Prosecutor’s Amended Indictment and Application for Leave to Amend” (“the March Decision”), granting the Prosecution’s application and – having considered the related submissions of the Defence for Pavle Strugar and the Defence for Miodrag Jokic – ordering the Prosecution to make three further amendments before filing a new indictment, to be known as the Amended Indictment, which the Prosecution did on 31 March 2003.¹

2. The March Decision closed the second round of litigation over the indictment, the first having been decided in June 2002.²

3. On 21 April 2003 the Defence for Pavle Strugar opened a third round, with its “Defence Third Preliminary Motion” (“the Motion”), which drew a reply from the Prosecution (“the Reply”),³ a rejoinder from the Defence,⁴ and another reply from the Prosecution.⁵ Despite the largely frivolous content of this exchange, the Chamber will briefly address the Defence’s complaints for the sake of finality.

4. According to the Defence, the three sets of changes ordered by the Chamber in its March Decision were not properly implemented by the Prosecution. Specifically, the responsibility of Pavle Strugar pursuant to Article 7 of the Tribunal’s Statute was not sufficiently clarified;⁶ the revised third schedule to the Amended Indictment does not describe in sufficient detail the military structure allegedly under the command of the Accused;⁷ and the new fourth schedule, which lists civilian objects that were allegedly damaged or destroyed by forces under the command of the Accused, is inappropriate for inclusion in an indictment because it constitutes “evidence”.⁸

5. The March Decision observed that the Prosecution “has still not clearly specified the provisions of Article 7(1) which it pleads”, and ordered it “to define more precisely its position on the Accused’s alleged participation in the crimes”.⁹ In response, the Prosecution has narrowed the sense of “committed” to exclude the suggestion that the Accused himself perpetrated any of the crimes alleged (with his own hands, as it were), and has struck the word “instigated” as a form of alleged responsibility.¹⁰ Insofar as the Prosecution intends to prove the forms of responsibility which remain in the Amended Indictment, it is entitled to plead them.

6. The second order in the March Decision called for greater precision in the third schedule, “as it does not include all the categories of units which according to the [proposed] Amended Indictment are said to have been commanded by the Accused”.¹¹ The Prosecution responded by eliminating apparent inconsistencies between the third schedule and the body of the indictment, and by increasing overall specificity, so that all *categories* of units are now shown, even if not all units are named.¹² In the Chamber’s opinion, this pleading gives the Accused adequate notice of the case against him.

7. The March Decision’s third order responded to the Defence’s request that the Prosecution be asked to state, where possible, the institutions dedicated to charity, education, the arts and sciences as well as the historic monuments and works of art and science which are alleged to have been wilfully destroyed or damaged.¹³ The new fourth schedule to the Amended Indictment adequately complies with the Chamber’s order. The Chamber notes that while the list is long, it is not intended to be exhaustive (as stated in paragraph 32 of the Amended Indictment), so if it does not mention certain buildings referred to in the body of the indictment, this does not constitute a defect, as alleged by the Defence.¹⁴ The Defence’s complaint that the fourth schedule represents an attempt “to include evidence” is incomprehensible.¹⁵

8. Since the Prosecution acknowledges that some information was accidentally left out of parts of the fourth schedule,¹⁶ it should supply it, but rather than re-file the whole schedule it should only file corrected versions of the four pages referred to in footnote 7 of the Motion, and of any other pages requiring correction.

9. In summary, the Chamber finds nothing to criticize about the Prosecution’s implementation of its March Decision orders.

10. Other complaints raised by the Defence in its Motion, which have nothing to do with the

implementation of the three orders, are not only unfounded,¹⁷ they are out of time,¹⁸ and are hereby dismissed. The Chamber would advise the Defence for Pavle Strugar to refrain from addressing the Chamber in submissions that do not meet expected standards of seriousness .

FOR THE FOREGOING REASONS,

PURSUANT TO RULES 72 AND 46 OF THE TRIBUNAL'S RULES OF PROCEDURE AND EVIDENCE ,

THE CHAMBER:

DENIES the Motion.

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

Liu Daqun
Presiding

Dated this 28th day of May 2003
At The Hague
The Netherlands

[Seal of the Tribunal]

1 - "Prosecution's Submission in Response to the Trial Chamber's Decision of 17 March 2003".

2 - See "Decision on Defence Preliminary Motion Concerning the Form of the Indictment", filed 28 June 2002.

3 - "Prosecution's Response to the Accused Strugar's Third Preliminary Motion on the Form of the Indictment", filed 6 May 2003.

4 - Filed 13 May 2003.

5 - Filed 14 May 2003.

6 - Motion, paras 14-19.

7 - Id., paras 22-27.

8 - Id., paras 28-34.

9 - March Decision, para. 8.

10 - See paras 12, 18, 25, 28, and 35 of the Amended Indictment.

11 - March Decision, para. 16.

12 - See para. 16 and Schedule III of the Amended Indictment.

13 - March Decision, para. 28.

14 - Motion, para. 31.

15 - Id., paras 33-34.

16 - Reply, para. 12.

17 - In particular, the comment at paragraphs 43-44 of the Motion is simply frivolous; and the answer to the complaint at paragraphs 37 to 42 is obvious, as noted by the Prosecution (Reply, paras 9-11).

18 - See, for example, *Prosecutor v. Krnojelac*, IT-97-25-PT, "Decision on Preliminary Motion on Form of Amended Indictment", filed 11 February 2000, para. 15; *Prosecutor v. Ljubicic*, IT-00-41-PT, "Decision on the Defence Motion on the Form of the Amended Indictment", filed 13 December 2002, para. 14; and *Prosecutor v. Blagojevic et al.*, IT-02-60-PT, "Decision on Motions Challenging the Form of the Amended

Joinder Indictment”, filed 2 August 2002, para. 2 (allowing an exception).