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REGISTRY

GREFFE

CC/PIO/248-E

The Hague, 9 October 1997

NEW VERSION: PRELIMINARY MOTION HEARING AND STATUS CONFERENCE

KOVAČEVIĆ CASE: UPDATE

On Friday 10 October 1997, Trial Chamber II (Judge Stephen, presiding, Judge Karibi-Whyte and Judge Jan) will hold a public hearing commencing at 10:00 a.m., in order to examine the oral arguments of Defence and Prosecution on the preliminary motion by the Defence summarised below.

Immediately after the motion hearing, the Trial Chamber will hold a closed session status conference at which, *inter alia*, the Prosecution shall report to the Trial Chamber as to its intention to amend the Indictment and the possible timing thereof.

1. On 8 September 1997, counsel for Milan Kovačević submitted the **Defendant's Motions to Overrule the Reviewing Judge's Order of Non-disclosure of the Indictment and Order Provisional Release**. In its motion, the Defence requested the Trial Chamber to:

1. **Overrule** the portion of the decision of Judge Odio Benito that orders non-disclosure of the Indictment prior to arrest; and
2. **Order** provisional release of the defendant under Rule 65;

or in the alternative,

3. **Grant** leave to the Defendant to file an amended or supplemental motion within five days after receipt of the transcript of the discussion between the Prosecutor and Judge Odio Benito relating to non-disclosure of the Indictment.

On 23 September 1997, the Office of the Prosecution filed the **Prosecutor's Response to the Defendant's Motion to Overrule the Reviewing Judge's Order of Non-disclosure of the Indictment and to Order Provisional Release**. In its response, Prosecution requested that the Defence motion be dismissed on the grounds that:

1. The portion of the Defence motion alleging that the order of non-disclosure of the indictment issued on 13 March 1997 operated to the prejudice of the Accused has no basis in fact and should be dismissed;
2. The order of non-disclosure of 13 March 1997 was a lawful and appropriate act of the Confirming Judges in accordance with Rule 53 of the Rules;
3. The Accused has failed to meet the burden of establishing that exceptional circumstances warrant his provisional release.

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2. Counsel for the Accused had also, on 10 September 1997, filed a **Defence Motion to Clarify Standards Implicit in Rule 50 Regarding Amendment of Indictment** in which he requested the Trial Chamber to “*interpret and clarify Rule 50 so as to provide in substance the following standards*”. According to the Motion:

1. All amendments to initial indictments must be made by contested Motion Procedure;
2. The Prosecutor will have a reasonable time after service of the initial Indictment upon the a showing that it was drawn up in haste in order to take advantage of an arrest opportunity;
3. The Prosecutor may amend an initial Indictment at any time for the sole purpose of adding detail to the alleged facts;
4. If the Prosecutor wishes to amend an Indictment to add new charges, he may do so only upon a showing that new information necessary to support those new charges has come into his possession subsequent to the service of the initial Indictment upon the Defendant.

On 24 September 1997, the Office of the Prosecution filed the **Prosecutor’s Response to the Defendant’s Motion to Clarify Standards Implicit in Rule 50 Regarding Amendment of Indictment**. In its Response, the OTP requested the Trial chamber to dismiss the Defence motion on the grounds that it is without merit. According to the OTP :

1. The Defence has no standing to bring these issues before the Trial Chamber or for the Trial Chamber to consider such;
2. The concerns raised by the Defence about the rights of the Accused to a fair trial are all addressed by the Rules and Statute of the Tribunal;
3. The focus on Rule 50 is blurred and the relief sought could lead to situations that are opposite to the result ostensibly intended by the Defence;

Finally, the Prosecution concluded that the above analysis “*raises the issue of whether the intent of the motion is not to improve Rule 50, but rather an attempt to head off the Prosecutor’s stated intent to amend the current indictment in this case*”.

On 1 October 1997, the Trial Chamber, after having examined the above motion and response, rendered a **Decision Disposing of Defence Motion to Clarify Standards Implicit in Rule 50** on the following grounds:

1. Amendment of the Rules of Procedure and Evidence is a matter for plenary and not for a Trial Chamber;
2. The Defence has no standing to request amendment as, according to Rule 6, amendments of the Rules are to be proposed by the Judges, the Prosecutor or the Registrar;
3. According to Rule 50, before the presentation of evidence has commenced it is exclusively for the Judge who confirmed the indictment to grant or refuse leave to amend an indictment.

*The full texts of the above motions and responses are available
upon request at the Press and Information Office*