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KOVACEVIĆ CASE: **TRIAL COMMENCEMENT DATE SET FOR MONDAY 11 MAY 1998**

Prosecutor notifies her intent to appeal against the denial of her motion to amend the indictment

On Thursday 5 March 1998, Trial Chamber II-*bis* (consisting of Judge May, presiding, Judge Vohrah and Judge Mumba) issued an Order setting the date for the commencement of the trial of Defendant Milan KOVACEVIĆ for **Monday 11 May 1998 at 10 a.m.**

In the same Scheduling Order, the Prosecutor is requested to file by Monday 20 April a pre-trial brief "*clarifying the allegations in the indictment, setting out the details of the case and identifying the points at issue*", and the Defence to file by Monday 4 May "*one or more documents setting out these points, if any, of the indictment and the Prosecution pre-trial brief which are admitted, those which are denied and the grounds for so doing, and setting out in general terms the defence to the indictment*".

The Prosecutor will seek leave to appeal against the denial of her request to amend the indictment

On Thursday 5 March also, Trial Chamber II-*bis* issued the written text of its Decision, initially made on the Bench on Friday 27 February, to reject the Prosecutor's request for leave to amend the indictment against Milan KOVACEVIĆ.

Background

The existing Indictment against the accused, charging him with a single count of complicity in genocide, was confirmed by a Judge of the Tribunal on 13 March 1997.

The Prosecution first indicated its intention to amend the Indictment at the confirmation proceedings on 13 March 1997 and notified the Defence of this intention after the arrest of the accused.

However, the scope of the amendment was only revealed when the Request for Leave to Amend and the draft Amended Indictment were filed on 28 January 1998. The draft Amended Indictment sought to add 14 counts of grave breaches of the Geneva Conventions of 1949, violations of the laws and customs of war and crimes against humanity to the single count of genocide.

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Press and Information Office/ Bureau de presse et d'information:
Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
Tel.: +31 (70) 416-5343 ; 416-5356 **Fax:** +31 (70) 416-5355

The Trial Chamber's reasons to deny the Prosecutor's request:

"(a) The proposed amendment (...) is so substantial as to amount to a substitution of a new indictment; an amendment of this proportion should have been made more promptly (and not nearly a year after confirmation; and seven months after the arrest of the accused).

(b) The amendment sought is not the result of the subsequent acquisition of materials unavailable at the time of confirmation of the Indictment, nor are all the added counts covered by the factual allegations in the original Indictment. (...) The fact remains that the Prosecution knew the whole case against the accused long before it was made known to the accused. (...)

(c) To allow what amounts to the substitution of a new indictment at this late stage in the proceedings would infringe the right of the accused to be informed promptly of the charges against him, thus placing him at a disadvantage in the preparation of his defence. The only way to redress the unfairness suffered by the accused would be to allow the Defence substantial additional time to prepare his defence. (...) The Defence has indicated that it would require another seven months for preparation, a period which does not seem unreasonable. (...)

(d) The accused continues to be held in custody. His application for provisional release was rejected. It is in the interest of justice that his trial should begin.

Finally, the Trial Chamber *"deplores the delay in filing this request and trusts that no Trial Chamber in the future will be faced so late with an application of this kind"*.

The Prosecutor's notice of her intent to apply for appeal

On Friday 6 March 1998, the Prosecutor filed a "notice of intent to apply for leave to appeal" against the above Trial Chamber's Decision.

This application is to be filed within seven days of the date of the written decision, and will be considered by a Bench of three Judges of the Appeals Chamber.
