



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-T
Date: 14 July 2006
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova

Registrar: Mr. Hans Holthuis

Decision of: 14 July 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

DECISION ON PAVKOVIĆ MOTION TO STAY PROCEEDINGS

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 seized of a “Pavković Objection to Trial Proceeding in Absence of His Lead Counsel”, filed 13 July 2006 (“Motion”), and hereby renders its decision thereon.

1. The Chamber is faced, yet again, with an attempt by Pavković to halt these proceedings. On 7 September 2005, the Chamber denied Pavković’s motion to set aside the joinder of the cases or, in the alternative, to grant severance.¹ On 2 December 2005, the Chamber dismissed as premature a motion by Pavković to delay the proposed date for the start of the trial or, in the alternative, to sever him from the indictment.²

2. On 13 April 2006, Pavković requested the following: “that this Chamber grant him a remedy so that he can have a fair trial before this Tribunal. If the Tribunal is unable, for various considerations, to give him a fair trial the Indictment against him should be dismissed and/or he should be returned to Serbia under the provisions of Rue 11 *bis*”; “[i]f he is to be tried before this Tribunal” and “[i]f there is a determination to try all accused together”, that the Chamber delay the start of the trial until early summer 2007 or sever him from the indictment and set a start date for his trial for early summer 2007. Pavković also seemed, at that time, to request additional resources in order to prepare his defence.³

3. On 28 April 2006, the Chamber denied the above motion, stating that the Chamber was

satisfied that the accused will have adequate time and resources to prepare for the trial scheduled to commence on the date proposed in the work plan.⁴ Throughout the pre-trial phase of the proceedings, the Chamber has been continuously alert so that unfair prejudice will not be caused to the accused due to the lack of adequate time and resources for the preparation of their defences, and the Chamber will continue to monitor the progress of the case throughout the remainder of the pre-trial phase. Moreover, the Prosecution has offered to assist the Defence in relation to some of the issues raised in the motions,⁵ and the Chamber encourages the parties to continue to cooperate in this regard.⁶

¹ Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005.

² Decision on Nebojša Pavković’s Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 2 December 2005.

³ Renewal of and Supplement to 7 November Pavković “Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance”, 13 April 2006, paras 32–34.

⁴ Pre-trial Order and Appended Work Plan, 5 April 2006.

⁵ *E.g.*, Rule 65 *ter* Conference, 30 March 2006, T. 167 (closed session); Rule 65 *ter* Conference, 26 April 2006, T. 203 (closed session).

⁶ Second Decision on Motions to Delay Proposed Date for Start of Trial, 28 April 2006, para. 4 (footnotes included).

4. In the present Motion, Pavković explains that his lead counsel, Mr. Ackerman, is unable to physically attend the trial due to illness and requests that “the trial ... be immediately stopped to resume on or after 1 September 2006”, or alternatively, if this request is denied, “that this objection be treated as a continuing objection throughout the absence of lead counsel”.⁷ Pavković argues that the absence of his lead counsel from the opening stages of the proceedings violates his right to a fair trial.⁸

5. Lead counsel for Pavković also has expressed, in several e-mail exchanges with the Senior Legal Officer of the Chamber, Mr. Boas, his desire (for reasons related to his preparedness for trial and various personal reasons) to delay the commencement of trial. Mr. Ackerman, as recently as 4 July 2006, wrote that due to required medical treatment he would not be available to attend the trial until the start of September 2006. He expressed concern that in his absence evidence crucial to Pavković’s case would be adduced by the Prosecution. Mr. Boas, after discussing the situation with the Chamber, wrote back on the same day to Mr. Ackerman stating that the subject of trying to proceed in a way that would delay the presentation of crucial evidence against Pavković until September 2006 would be discussed with the Prosecution.

6. On 7 July 2006, at the pretrial conference, the Chamber raised this issue with the parties and asked the Prosecution to make submissions thereon, specifically upon the possibility of avoiding the adducement of particularly controversial evidence during the relevant period.⁹ The Prosecution undertook to attempt to do so, and the Chamber urged the Prosecution to communicate directly with co-counsel, Mr. Alekšić, to give him every opportunity to offer his comments upon the order in which the Prosecution chooses to call its witnesses.¹⁰ The Prosecution agreed to this arrangement, noting in addition that it did not intend to call any witnesses in the month of August 2006 who had any face-to-face meetings with Pavković.¹¹

7. The Chamber recalls that, pursuant to Article 20 of the Statute of the Tribunal, it is charged with ensuring that accused are tried in both a fair and expeditious manner. The Chamber considers that Pavković is represented by both a lead counsel and a co-counsel and that this representation arrangement is designed for situations such as the present one, among others. Article 16(C) of the Directive on the Assignment of Defence Counsel provides as follows:

⁷ Motion, para. 6–7.

⁸ Motion, para. 3.

⁹ T. 379–380 (7 July 2006).

¹⁰ T. 380 (7 July 2006).

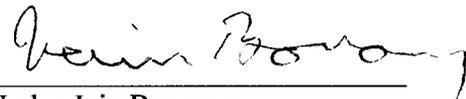
¹¹ T. 381 (7 July 2006).

In the interests of justice and at the request of lead counsel, the Registrar may assign a second counsel to assist with the defence of the suspect or accused. This counsel shall be called the co-counsel. *Acting under the authority of lead counsel, the co-counsel may deal with all stages of the proceedings and all matters arising out of the defence of the suspect or accused.* The co-counsel may also be authorised, in writing, to sign documents on behalf of the lead counsel.¹²

8. The Chamber is guided by the above provision and finds no reason presently to doubt the ability of co-counsel, under the authority of lead counsel, to deal with the proceedings during the physical absence of lead counsel from the trial. The Chamber also notes that lead counsel and co-counsel are in contact with each other, so that co-counsel may continue to act under the authority of lead counsel. The Chamber has carefully monitored this situation for some time in order to ensure that no undue prejudice is caused to Pavković, and will continue to do so.

9. Pursuant to Articles 20 and 21 of the Statute and Rule 54 of the Rules of Procedure and Evidence, the Chamber hereby DENIES the Motion.

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



Judge Iain Bonomy
Presiding

Dated this fourteenth day of July 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² Directive on the Assignment of Defence Counsel (Directive No. 1/94) (IT/73/Rev. 11), as amended 29 June 2006 (emphasis added).