



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-04-74-T
Date: 25 April 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 25 April 2007

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

**DECISION ON DEFENCE MOTION TO STRIKE FROM THE AMENDED
INDICTMENT CERTAIN PARTS ALLEGING CO-PERPETRATION,
INDIRECT CO-PERPETRATION, INDIRECT PERPETRATION AND
AIDING AND ABETTING OF JOINT CRIMINAL ENTERPRISE**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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”);

SEIZED of “Petković’s Submission to the Trial Chamber to Order the Prosecution to Strike from the Amended Indictment Certain Parts Alleging Co-perpetration, Indirect Co-perpetration, Indirect Perpetration and Aiding and Abetting of JCE,” filed by Counsel for the Accused Petković (“Petković Defence”) on 12 February 2007 (“Motion”), in which it requests that certain passages of the Amended Indictment (“Indictment”) be stricken pursuant to Articles 1, 7(1), 20(1), 21(1) and 21(4) of the Statute of the Tribunal (“Statute”) and Rules 54 and 73 of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Joint Defence Joinder to Petkovic's Submission”, filed jointly by the other Defence teams on 19 February 2007,

NOTING the “Prosecution Consolidated Response to Motion to Strike Parts of Amended Indictment Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting JCE”, filed by the Office of the Prosecutor (“Prosecution”) on 7 March 2007 (“Response”), in which it objects to the Motion,

NOTING the Chamber’s Oral Decision of 19 March 2007 granting the request of the Petković Defence to file a reply,¹

NOTING the “Petković Defence Reply to Prosecution Response to its Motion to Strike Parts of Indictment Alleging Co-Perpetration, Indirect Perpetration, Indirect Perpetration, Indirect Co-Perpetration and Aiding and Abetting JCE”, filed by the Petković Defence on 26 March 2007 (“Reply”),

CONSIDERING that in support of the Motion, the Petković Defence argues that the Tribunal case-law has established that co-perpetration, indirect co-perpetration, indirect perpetration and aiding and abetting a joint criminal enterprise are forms of responsibility which fall outside of the Tribunal’s jurisdiction,

¹ Transcript in French, p. 15841.

CONSIDERING that, consequently, the Petković Defence requests that certain portions of paragraphs 218, 224, 225 and 226 be stricken from the Indictment, on the grounds that it would ensure a fair trial and respect the rights of the Accused as enshrined in Articles 21(1) and 4(a), (b), (c) and (d) of the Statute,

CONSIDERING that in its written submissions, the Petković Defence further argues that the purpose of the Motion is to help expedite the trial,

CONSIDERING that, for its part, the Prosecution does not dispute that co-perpetration as alleged in the last two sentences of paragraph 218 of the Indictment was rejected by the Appeals Chamber in the case of *The Prosecutor v. Milomir Stakić*,

CONSIDERING, nevertheless, that the Prosecution argues that a decision on this issue is not necessary at this stage of the trial, since the Chamber will correctly apply the law during its examination of a motion submitted under Rule 98 *bis* of the Rules and at the time of its judgement,

CONSIDERING that the Prosecution maintains that all of the other forms of responsibility alleged in the Indictment do fall within the Tribunal's jurisdiction,

CONSIDERING, furthermore, that the Prosecution submits that the Motion is inadmissible because it was not filed within the time-limits prescribed by Rule 72 of the Rules,

CONSIDERING that, in the Reply, the Petković Defence acknowledges that no provision of the Rules expressly provides for an amendment to the Indictment during the trial, but that it relies on Articles 1, 7(1), 20(1), 21(1) and 21(4) of the Statute and Rules 54 and 73 of the Rules to show that its Motion is well-founded at this particular stage of the trial,

CONSIDERING that the Chamber is of the opinion that the Motion in fact raises a preliminary challenge to jurisdiction, which is provided for in Rule 72(A)(i) of the Rules, and that this motion should have been submitted during the pre-trial phase, within the time-limits prescribed by the said Rule,

CONSIDERING, moreover, that the Petković Defence already attempted to argue a preliminary motion challenging jurisdiction with respect to indirect perpetration

during the pre-trial phase, which preliminary motion was dismissed by the Pre-Trial Chamber on the grounds that it was time-barred,²

CONSIDERING that the Chamber believes that the Accused suffer no prejudice because the Indictment contains allegations which may be dismissed by the Chamber in a decision pursuant to Rule 98 *bis* of the Rules, since the Accused are not required to present their defence case prior to the delivery of such a decision,

CONSIDERING that, consequently, the Chamber does not share the Petković Defence argument according to which a decision at this stage of the trial would help to expedite the trial,

CONSIDERING that, conversely, such a decision at this stage of the proceedings might disrupt the smooth conduct of the trial and unnecessarily drain the resources of the Parties,

CONSIDERING that, as a result, the Chamber will rule on the matter raised in this case when appropriate, i.e., when it renders its decision under Rule 98 *bis* of the Rules,

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 1, 7(1), 20(1), 21(1) and 21(4) of the Statute and Rules 54, 72 and 73 of the Rules,

DENIES the Motion.

² Decision on Milivoj Petković's Application for Certification to Appeal Decision on Motion for Leave to Amend the Indictment and Form of Proposed Amended Indictment, 3 November 2005, p. 5; Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment, 18 October 2005, paras. 35-40 and 53 and 58.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of April 2007

At The Hague

The Netherlands

[Seal of the Tribunal]