



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No.: IT-02-60-PT  
Date: 31 July 2002  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Decision of:** 31 July 2002

**PROSECUTOR**

v.

**VIDOJE BLAGOJEVIĆ  
DRAGAN OBRENOVIĆ  
DRAGAN JOKIĆ  
MOMIR NIKOLIĆ**

**DECISION ON MOTION OF ACCUSED  
BLAGOJEVIĆ TO DISMISS CUMULATIVE  
CHARGES**

**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. Michael Karnavas, for Vidoje Blagojević  
Mr. David Wilson, Mr. Dušan Slijepčević, for Dragan Obrenović  
Mr. Miodrag Stojanović, Ms. Cynthia Sinatra for Dragan Jokić  
Mr. Veselin Londrović, Mr. Stefan Kirsch for Momir Nikolić

**TRIAL CHAMBER II** ("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"),

**BEING SEISED OF** the Accused Blagojević's "Motion to Dismiss Cumulative Charges of Counts 2, 3, 5, 6 in the Amended Joinder Indictment Based on the Legal Findings in *Krstić* Regarding Cumulative Convictions" filed on 2 July 2002 ("the Motion"),

**NOTING** the "Prosecution Response to Accused Blagojević's Motion to Dismiss Cumulative Charges" filed by the Office of the Prosecutor ("the Prosecution") on 16 July 2002 ("the Response"),

**NOTING** that the Motion was filed in accordance with a decision of this Chamber<sup>1</sup>, granting that "... the accused may raise preliminary objections in relation to the form of the anticipated Amended Joinder Indictment in its entirety and will not be restricted to those parts that constitute 'new charges', as would generally be the case pursuant to Rule 50(C)"<sup>2</sup>,

**NOTING** that the Motion was filed within the prescribed time-limit of 36 days<sup>3</sup> after the filing of the Amended Joinder Indictment, which was done on 27 May 2002<sup>4</sup> ("the Indictment"),

**NOTING** that the Defence for the accused Blagojević requests that judicial notice of findings regarding multiple convictions in the *Krstić* trial<sup>5</sup> be taken, and that corresponding cumulative charges in the Indictment be dismissed,

**NOTING** that in addition, the Defence asks the Chamber to enter a summary judgment of acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("the Rules") subsequent to the taking of the judicial notice,

**NOTING** that the Prosecution, in its Response, states that cumulative charging constitutes the usual practice of the Tribunal, and believes that the request for a summary judgment of acquittal is premature since it could only be filed after the close of the Prosecutor's case,

<sup>1</sup> *Prosecutor v. Nikolić and Prosecutor v. Blagojević, Obrenović and Jokić*, Case Nos. IT-02-53 PT and IT-02-56-PT, Decision on the Prosecution's Motion for Joinder, 17 May 2002.

<sup>2</sup> *Ibid.*, para. 19 (4)

<sup>3</sup> *Ibid.*

<sup>4</sup> *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

<sup>5</sup> *Prosecutor v. Krstić*, Case No. IT-98-33.

**CONSIDERING** that the Motion of the Defence concerning the Request of Taking of Judicial Notice<sup>6</sup> of facts adjudicated in the *Krstić* trial has been rejected<sup>7</sup>, thereby litigating also a part of the present Motion,

**CONSIDERING** that the remainder of the complaint made by the Defence regards the multiple charging of offences based upon the same conduct of the accused,

**CONSIDERING** that this issue raises questions as to cumulative charging, as opposed to cumulative convictions,

**CONSIDERING** that Trial Chambers and the Appeals Chamber alike have consistently rejected the complaint that cumulative charging of an accused is impermissible<sup>8</sup>, finding that the existence of cumulative convictions is a matter to be considered only when imposing penalty, but not already at the pre-trial stage,

**CONSIDERING** that a summary judgment of acquittal pursuant to Rule 98 *bis* of the Rules is only to be rendered in a situation that after the Prosecution has closed its case the evidence so far is deemed to be insufficient to support a conviction regardless of any exculpatory evidence the Defence may adduce<sup>9</sup>, this obviously not being the case here,

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<sup>6</sup> *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Request for the Taking of Judicial Notice of Finding of Facts and Request for the Deletion of All Alleged Facts or Omission in the Amended Joinder Indictment that are Inconsistent with Said Findings of Facts, 24 June 2002.

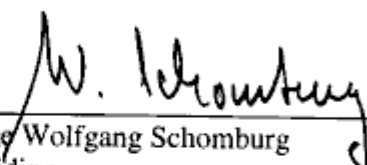
<sup>7</sup> *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Oral Ruling of Trial Chamber II, 19 July 2002.

<sup>8</sup> See, most recently, *Prosecutor v. Kunarac et al.*, Case Nos. IT-96-23 and IT-96-23/1-A, Appeals Judgment, 12 June 2002, para. 167.

<sup>9</sup> *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16, Decision on the Motion of the Accused Vlatko Kupreškić of 23 July 1999 for Judgment of Acquittal, 28 July 1999.

**FOR THE FOREGOING REASONS****PURSUANT** to Rule 72 of the Rules,**HEREBY DISMISSES** the Defence's Motion to Dismiss Cumulative Charges and to enter a summary judgment of acquittal.

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

  
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Judge Wolfgang Schomburg  
PresidingDated this thirty-first day of July 2002,  
At The Hague  
The Netherlands**[Seal of the Tribunal]**