



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-95-14-R77.4
Date: 21 December 2005
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Moloto
Registrar: Mr Hans Holthuis
Decision: 21 December 2005

PROSECUTOR

v.

MARIJAN KRIŽIĆ

**DECISION TO DENY THE ACCUSED MARIJAN KRIŽIĆ'S
PRELIMINARY MOTION TO CHALLENGE JURISDICTION**

The Office of the Prosecutor:

Mr David Akerson

Counsel for the Accused:

Mr Emil Havkić for Mr Marijan Križić

1. **TRIAL CHAMBER I** (“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 Mr. Marijan Križić’s (“the Accused’s”) Preliminary Motion challenging the Tribunal’s jurisdiction, filed on 9 October 2005, (“the Motion”).¹

I. INTRODUCTION

2. On 29 August 2005, the Prosecution filed an indictment against the Accused, which charged the Accused with having committed and aided and abetted in the contempt of the Tribunal under the Tribunal’s inherent power and Rules 77(A), 77(A)(ii) and 77(A)(iv) of the Rules of Procedure and Evidence (“the Rules”).

3. On 6 September 2005, the confirming judge, Judge Alphons Orie, confirmed the indictment against the Accused.

4. On 20 September 2005, the Prosecution filed a motion to join the Accused’s case with the cases of three other accused (“Motion for joinder”).² On 3 October 2005, the Accused filed a response to the Motion for joinder (“the Response”). On 6 October 2005, the Prosecution filed the “Prosecution Notification in Relation to Marijan Križić’s Response to the Prosecution’s “Motion for leave to Amend the Indictment of Šešelj and Margetić and Motion for Joinder of All Four Accused” (“the Prosecution Notification”).

5. On 13 October 2005, the Prosecution filed the “Prosecutor’s Response to Preliminary Motion of Defendant Marijan Križić to Challenge Jurisdiction”, (“the Response”).

6. In the Motion, the Accused challenges the Indictment on the ground that the Tribunal has no jurisdiction over the Accused.

II. THE RULE

7. The Accused brings the Motion under Rules 72(A)(i) and (ii), which identify motions challenging the Tribunal’s jurisdiction and form of the indictment as preliminary motions. Rule 72(D) states that for the purposes of Rules 72(A)(i) and 72(B)(i), a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:

¹ Preliminary Motion of Defendant Marijan Križić to Challenge Jurisdiction (Rule 72(A)(i) and (ii) Rules of Procedure and Evidence of the Tribunal).

(i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute;

(ii) the territories indicated in Articles 1, 8 and 9 of the Statute;

(iii) the period indicated in Articles 1, 8 and 9 of the Statute;

(iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute.

8. The Chamber notes that although the Accused indicated in the title of the Motion that he was bringing the motion on the basis of Rule 72(A)(i) and 72(A)(ii), the Motion does not challenge the form of the indictment.

III. JURISDICTION

9. The Accused submits that the Statute of the Tribunal has priority over its Rules and that the Statute only authorises jurisdiction of persons accused of grave violations of the Geneva Conventions of 1949, violations of the laws and customs of war, Genocide and Crimes against Humanity as defined in Articles 2-5 of the Statute and that, consequently, the Tribunal has no jurisdiction over him.³ The Prosecution argues that the Accused does not clearly identify whether he is raising the issue of subject matter or personal jurisdiction but that it is irrelevant as the Tribunal's jurisprudence clearly establishes that the Chamber has both personal and subject matter jurisdiction over the Accused, despite the absence of any reference to such authority in the Tribunal's Statute.⁴

10. The Chamber notes that the Tribunal's Statute does not deal with contempt, but that contempt is provided for in Rule 77 of the Rules. The Appeals Chamber, in the *Tadić*⁵ and *Aleksovski cases*,⁶ held that although the Tribunal's Statute does not deal with contempt, the Tribunal does possess an inherent jurisdiction, which derives from its judicial function, to ensure that its exercise of the jurisdiction, which is expressly given to it by that Statute, is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal must, therefore, possess the inherent power to deal with conduct which interferes with its administration of justice. The Appeals Chamber held that the content of the Tribunal's inherent power to prosecute contempt could be discerned by reference to the usual sources of international

² Motion for leave to amend the indictment of Šešelji and Margetić, Case Nos IT-95-14-R77.3, IT-95-14-R77.4 and IT-95-14 & 14/2.

³ The Motion at paras. 6 and 11-13.

⁴ The Response at para 4.

⁵ *Prosecutor v Tadić*, Judgment on allegations of contempt against prior counsel, Milan Vujin, Case No IT-94-1-A-R77, 31 January 2000.

⁶ *Prosecutor v Aleksovski*, Judgment on Appeal by Anto Nobile against finding of contempt, Case No IT-95-14/1-AR77, 30 May 2001.

law and not by reference to Rule 77, although the formulations of contempt provided for in Rule 77 fall within, but do not limit such inherent power.⁷ The Chamber followed these findings in the *Beqaj case*.⁸ In the *Milošević case*,⁹ the Appeals Chamber held further that “Rule 72(D) is clear and unambiguous in its terms” and that the Tribunal’s jurisdiction in contempt cases cannot be challenged under Rule 72.¹⁰

11. The Tribunal’s inherent power to prosecute contempt is, therefore, well-founded in the Tribunal’s jurisprudence. If the Tribunal has the subject matter jurisdiction to prosecute contempt, it clearly has the personal jurisdiction to prosecute persons who are accused of contempt of the Tribunal. Personal jurisdiction to prosecute contempt is the natural corollary of the Tribunal’s subject matter jurisdiction to prosecute contempt of the Tribunal. The Tribunal finds no reason to distinguish between subject matter jurisdiction and personal jurisdiction with regards to the non-applicability of Rule 72 in contempt cases. The Tribunal, therefore, has both the subject matter and personal jurisdiction to prosecute contempt. The issue of whether conduct which is alleged to constitute contempt of the Tribunal does in fact amounts to such is a matter to be adduced at trial.

12. The Chamber, therefore, dismisses the Motion.

VI. Disposition

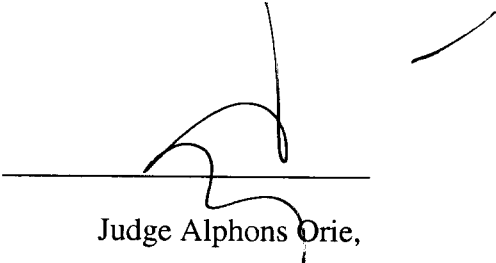
FOR THE FOREGOING REASONS:

PURSUANT TO Rule 72, the Chamber hereby:

DISMISSES the Motion.

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

Dated this 21st day of December 2005
At The Hague, The Netherlands



Judge Alphons Orie,
Presiding Judge, Trial Chamber I

[Seal of the Tribunal]

⁷ *Prosecutor v Tadić*, note 10 above, at para 13; *Prosecutor v Aleksovski*, note 11 above, at para 30.

⁸ *Prosecutor v Beqa Beqaj*, Judgment on contempt allegations, Case No IT-03-66-T-R77, 27 May 2005 at paras. 8-11.

⁹ *Prosecutor v Slobodan Milošević Contempt Proceedings against Kosta Bulatovic*, Decision on Contempt of the Tribunal; Case No IT-02-54-A-R77.4, 13 May 2005.

¹⁰ *Ibid* at para 35.