



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-R77.5
Date: 20 June 2006
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision: 20 June 2006

PROSECUTOR

v.

**STJEPAN ŠEŠELJ
DOMAGOJ MARGETIĆ
MARIJAN KRIŽIĆ**

**DECISION ON THE PROSECUTION MOTION TO
WITHDRAW THE INDICTMENT**

The Office of the Prosecutor:

Ms. Carla del Ponte
Mr. David Akerson
Mr. Salvatore Cannata

Counsel for the Accused:

Mr. Željko Olujić for Mr. Stjepan Šešelj
Mr. Domagoj Margetić (unrepresented)
Mr. Emil Havkić for Mr. Marijan Križić

TRIAL CHAMBER III 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”),

BEING SEIZED of a “Motion for Leave to Withdraw the Indictment against Stjepan Šešelj, Domagoj Margetić, and Marijan Križić,” filed by the Prosecutor of the Tribunal on 15 June 2006 (“Motion”),

CONSIDERING that, in her Motion, the Prosecutor seeks the leave of the Chamber to withdraw the indictment against Stjepan Šešelj, Domagoj Margetić, and Marijan Križić, in the interests of justice and judicial economy,

PURSUANT TO Rules 51 and 73 of the Rules of Procedure and Evidence of the Tribunal,

HEREBY GRANTS leave for the indictment against Stjepan Šešelj, Domagoj Margetić, and Marijan Križić (Case No. IT-95-14-R77.5) to be withdrawn.

A separate opinion by Judge Bonomy is attached to this Decision.

Dated this twentieth day of June 2006
At The Hague,
The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

**UNITED
NATIONS**



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**STJEPAN ŠEŠELJ
DOMAGOJ MARGETIĆ
MARIJAN KRIŽIĆ**

**SEPARATE OPINION OF JUDGE BONOMOY IN THE MOTION
FOR LEAVE TO WITHDRAW THE INDICTMENTS AGAINST
STJEPAN ŠEŠELJ, DOMAGOJ MARGETIĆ, and
MARIJAN KRIŽIĆ**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. David Akerson
Mr. Salvatore Cannata

Counsel for the Accused:

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Mr. Stjepan Šešelj
Mr. Domagoj Margetić
(unrepresented)
Mr. Emil Havkić for
Mr. Marijan Križić

1. In seeking leave to withdraw the Indictments against Stjepan Šešelj, Domagoj Margetić Marijan Križić, the Prosecutor gives two reasons for deciding to exercise her prosecutorial discretion not to proceed with the case against these Accused. I feel bound to express my opinion on these reasons, since I reject the first and have reservations about the second. I nevertheless recognise the authority of the Prosecutor to make the decision she has made, and do not consider that there is any basis on which her motion could be refused.

2. The first reason advanced for her decision is that “the Office of the Prosecutor is under increasing pressure from Chambers to limit the scope of its prosecutions and to exercise greater prosecutorial restraint ... This case is to a large degree duplicative of the case against Jović and all of the evidence that will be adduced against Jović will be adduced a second time ...”.

3. I do not read that as an accusation that this Trial Chamber has placed any pressure on the Prosecutor to limit the scope of the prosecutions of these Accused and Jović, or to exercise greater prosecutorial restraint in relation to these cases. Such a suggestion would be groundless, as is made plain by the indulgent way in which the Trial Chamber has gone to exceptional lengths to ensure that the Indictments identify the issues in the cases with complete accuracy.

4. Rather, I regard the statement as referring to the concern of the judges of the Tribunal that the size and relative lack of focus of certain indictments make the trial process difficult to manage and causes trials to be very long, with the prospect that the Tribunal may not be able to complete its mandate as enjoined by the Security Council.¹ This is a long-standing problem.² However, this issue of limiting the scope of prosecutions or exercising greater prosecutorial restraint has been confined to that situation, which relates exclusively to the prosecution of serious violations of international humanitarian law. The concern does not stem from ancillary prosecution of contempt. Nor is there any basis for such concern in the circumstances of the Indictments against these Accused. As the Prosecutor knows, time has already been set aside in the week beginning 3 July to deal with the case of Jović and the case of these three Accused. The courtroom is available, the bench is available, and the Prosecutor’s staff are available.

5. As it is, these arrangements have been made to no avail. These three Accused will not be prosecuted. The court, the bench and the prosecution staff will not be used for any other purpose. The Prosecutor’s decision will make no contribution whatsoever to achieving the completion of the

¹ SC Resolution 1503 (2003).

² See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 Dec. 2001, p. 6, para. 7.

Tribunal's mandate. I am, therefore, at a loss to understand what contribution the Prosecutor thought her actions would make to that objective. It is an empty gesture.

6. In stating her second ground for her decision, the Prosecutor says "... that only when presented in a joint trial as a continuation of the criminal behaviour initiated by Jović in the year 2000 do the acts in 2004 of Šešelj, Križić and Margetić (which specifically invoke Jović's criminal acts as their justification) display their true colours and full criminality". Having already said that the evidence to be adduced in the case against Šešelj, Križić and Margetić is to a large degree duplicative of the case against Jović, it is not at first glance easy to understand why their criminal behaviour cannot be presented in its "true colours and full criminality" in a trial on their conjoined indictments. While there may be something in this reason, in respect that the Accused Jović is said to be the first of the first to publish in alleged violation of an Order of the Tribunal, it is only right that I should make it clear that there are certain matters which I consider need to be clarified to ensure that justice is done in his case. In light of the approach of the Prosecutor that the most serious case is that against Jović, it may be of some importance to explain in the course of the trial why he was not indicted until 2004 for conduct in 2000, and why indeed he was not indicted until several months after the indictment of Šešelj and Margetić.

