



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-05-87/1-PT
Date: 06 December 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Tsvetana Kamenova
Judge Frederik Harhoff, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 6 December 2007

THE PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON VLASTIMIR ĐORĐEVIĆ'S PRELIMINARY MOTION ON
JURISDICTION**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Dragoljub Đorđević
Mr. Veljko Đurđić

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 seised of “Vlastimir Đorđević’s Preliminary Motion Challenging Jurisdiction”, filed 19 October 2007 (“Motion”), and hereby issues this decision thereon.

A. Preliminary Motion

1. On 19 October 2007, the Defence filed its Motion challenging the Tribunal’s territorial and temporal jurisdiction over the crimes alleged in the Indictment and requested that the Trial Chamber “dismiss the Indictment on the grounds that the ICTY lacks temporal and territorial jurisdiction to prosecute the Accused.”¹

2. With respect to the temporal jurisdiction of the Tribunal, *ratione temporis*, the Defence asserts that Security Council Resolution 827 established the temporal jurisdiction of the Tribunal from 1 January 1991 through a date to be determined by the Security Council upon the restoration of peace in the territory of the former Yugoslavia.² The Defence contends that the Dayton-Paris Agreement, signed 14 December 1995, marked the final establishment of peace.³ Therefore, the Defence submits that the Dayton-Paris Agreement ended the competence of the Tribunal to prosecute persons responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991, but not after 14 December 1995.⁴ The Indictment charges the Accused with crimes beginning on or about 1 January 1999 and continuing until 20 June 1999.⁵ Therefore, the Defence contends that the Indictment charges the Accused with crimes that occurred outside the scope of the Tribunal’s temporal jurisdiction.⁶

3. The Defence also challenges the Tribunal’s territorial jurisdiction, *ratione loci*, arguing that it ended with the termination of the existence of the former Socialist Federal Republic of Yugoslavia (SFRY) and the establishment of the successor states.⁷ To reach this conclusion, the Defence argues that, by 1999, the former SFRY no longer existed, having been replaced by five new, internationally-recognised states, including the Federal Republic of Yugoslavia (FRY), within

¹ Vlastimir Đorđević’s Preliminary Motion Challenging Jurisdiction, 19 October 2007 (“Motion”), para. 20.

² Motion, para. 7, citing Resolution 827 (1993) (adopted 25 May 1993), para. 2.

³ Motion, para. 8.

⁴ Motion, paras. 8–10.

⁵ Third Amended Joinder Indictment, IT-05-87/1, 21 June 2006, counts 1-5.

⁶ Motion, paras. 1, 10.

⁷ Motion, para. 15.

which existed the Republic of Serbia and the province of Kosovo, and that these independent states are not subject to the Tribunal's jurisdiction.⁸ The Defence claims that for the Tribunal to properly exercise jurisdiction over crimes committed on the territory of Kosovo in 1999, a new decision from the Security Council would have to be passed in order to amend the articles providing for the competence *ratione loci* of the Tribunal.⁹ Accordingly, the Defence requests that the Trial Chamber dismiss the Indictment on the grounds that the Tribunal lacks temporal and territorial jurisdiction to prosecute the Accused.¹⁰

B. Prosecution's Response

4. On 1 November 2007, the Prosecution filed its response to the Motion, submitting that the Motion should be dismissed because "(a) the Appeals Chamber has confirmed the Tribunal's temporal jurisdiction for the Indictment period and its territorial jurisdiction over Kosovo; and (b) the Defence failed to establish that the Tribunal's temporal jurisdiction ended after the signing of the Dayton-Paris Agreement on 14 December 1995."¹¹

5. Regarding temporal jurisdiction, the Prosecution asserts that the Tribunal's temporal jurisdiction for the Indictment Period is a matter of settled law.¹² The Prosecution first points to Article 8 (Territorial and Temporal Jurisdiction) of the Tribunal Statute, which provides that the temporal jurisdiction of the Tribunal begins in 1991.¹³ The Prosecution further notes that pursuant to Resolution 827, the Security Council is to determine the termination of the Tribunal's temporal jurisdiction.¹⁴ Because the Security Council has not made this determination, the Prosecution asserts that the Indictment period clearly falls within the scope of the Tribunal Statute.¹⁵

6. In addition, the Prosecution contends that both Trial Chamber and Appeals Chamber decisions have affirmed the Tribunal's temporal jurisdiction for the Indictment Period.¹⁶ The Prosecution notes that in the *Ojdanić* Jurisdiction Decision, the Trial Chamber held that Resolution 827 was both retroactive and prospective in that it related to crimes committed after 1991 and covered the

⁸ Motion, para. 13.

⁹ Motion, para. 18.

¹⁰ Motion, para. 20.

¹¹ Prosecution's Response to Vlastimir Đorđević's Preliminary Motion Challenging Jurisdiction, 1 November 2007 ("Response"), para. 3.

¹² Response, para. 6.

¹³ Response, para. 6.

¹⁴ Response, para. 6.

¹⁵ Response, para. 6.

¹⁶ Response, para. 7.

period before and after the adoption of the Statute establishing the Tribunal in 1993.¹⁷ The Prosecution further cites the *Ojdanić* Jurisdiction Decision, in which the Trial Chamber noted that it would be odd if the Security Council's authority in 1991, 1992 and 1993 was lost in 1999 (when the alleged crimes in *Ojdanić* were committed), since the 1999 crimes were part of the same conflict with which the Council was dealing.¹⁸ Similarly, in its decision joining the three indictments in *Slobodan Milošević*, the Appeals Chamber found that the acts alleged in the indictments were part of the same transaction, notwithstanding the fact that the transaction "was put into effect from time to time and over a period of time."¹⁹ Finally, relying on the *Ojdanić* Jurisdiction Decision, the Prosecution submits that the temporal jurisdiction of the Tribunal was left open-ended because the Security Council foresaw the continuation of the conflict.²⁰

7. In relation to territorial jurisdiction, the Prosecution asserts that both statutory authority and the Tribunal's jurisprudence support a finding of jurisdiction involving crimes committed in Kosovo.²¹ Specifically, the Prosecution notes that the Appeals Chamber in the *Ojdanić* Jurisdiction Decision held that pursuant to Article I of the Tribunal Statute (Competence of the International Tribunal), Kosovo is and was at the relevant time, a part of the territory of the former SFRY.²² Additionally, the Prosecution notes that the *Ojdanić* Trial Chamber relied upon on Article 8 of the Tribunal Statute (Territorial and Temporal Jurisdiction), in finding that the Tribunal's jurisdiction extended to the territory of the former SFRY.²³ Furthermore, the Prosecution points to several cases in which the Tribunal has conferred jurisdiction for crimes committed in the territory of Kosovo, including the *Slobodan Milošević*, *Milutinović*, *Limaj*, and *Haradinaj* cases.²⁴

8. The Prosecution also argues that, contrary to the position of the Defence, peace was not established in Kosovo after the signing of the Dayton-Paris Agreement on 14 December 1995.²⁵ In support of this contention, the Prosecution relies upon Security Council Resolution 1199 (1998), which states that the situation in Kosovo represented an armed conflict within the terms of the

¹⁷ Response, para. 7, citing *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case IT-99-37-PT, Decision on Motion Challenging Jurisdiction, 6 May 2003 ("*Ojdanić* Jurisdiction Decision"), para. 46.

¹⁸ Response, para. 7, citing *Ojdanić* Jurisdiction Decision, para. 46.

¹⁹ Response, para. 7, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 19-21.

²⁰ Response, para. 7, citing *Ojdanić* Jurisdiction Decision, para. 61.

²¹ Response, para. 8.

²² Response, para. 8, citing *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-AR72.2, Reasons for Decision Dismissing Interlocutory Appeal Concerning Jurisdiction over the Territory of Kosovo ("*Ojdanić* Decision Dismissing the Jurisdictional Appeal"), 8 June 2004, page 4.

²³ Response, para. 9, citing *Ojdanić* Jurisdiction Decision, para. 47.

²⁴ Response, para. 10.

²⁵ Response, paras. 12-15.

mandate of the Tribunal. In a February 2001 Report, the Secretary General states that decisions of the Security Council make it clear that it “does not consider peace to have been restored to the region”.²⁶ The Prosecution further submits that the Trial Chamber in *Slobodan Milošević* found that the conflict in Kosovo occurred in the former SFRY well after the Dayton Peace Accords and the Trial Chamber in *Limaj* found that an armed conflict existed in Kosovo well after 1998.²⁷ Accordingly, the Prosecution contends that the Tribunal has both temporal and territorial jurisdiction to prosecute the Accused and requests that the Trial Chamber dismiss the Motion.²⁸

C. Deliberation

9. Article 1 of the Statute of the Tribunal (“Statute”) provides that the Tribunal “shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991”. Article 8 states that “[t]he territorial jurisdiction of the ... Tribunal shall extend to the territory of the former [SFRY]” and that its “temporal jurisdiction ... shall extend to a period beginning on 1 January 1991”. Article 8 is read consistently with Security Council Resolution 827, wherein the Security Council adopted the Statute of the Tribunal. Resolution 827 provides that the Security Council:

Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal²⁹

As the Statute and Resolution 827 make clear, an end-date for the Tribunal’s jurisdiction has not yet been determined by the Security Council.

10. With respect to temporal jurisdiction, the Trial Chamber considers it settled jurisprudence that the jurisdiction of the Tribunal extends past 14 December 1995. In the past, Chambers confronted with this issue have construed the absence of a termination date determined by the Security Council to mean that the Tribunal’s temporal jurisdiction is open-ended.³⁰ The Appeals Chamber in *Boškoski* affirmed that the Tribunal’s temporal jurisdiction extended to allegations of serious violations of international law occurring as recently as after 2001.³¹ The Trial Chamber in

²⁶ Response, para. 14.

²⁷ Response, paras. 14–15.

²⁸ Response, para. 17.

²⁹ U.N. Doc. S/RES/827 (1993), para. 2 (emphasis in original).

³⁰ *Prosecutor v. Boškoski*, Case No. IT-04-82-AR72.1, Decision on Interlocutory Appeal on Jurisdiction, 22 July 2005, para. 10; *Ojdanić* Jurisdiction Decision, para. 61.

³¹ *Prosecutor v. Boškoski*, Case No. IT-04-82-AR72.1, Decision on Interlocutory Appeal on Jurisdiction, 22 July 2005, para. 10.

Ojdanić remarked upon the unusual result that would occur if the Security Council's authority in 1991, 1992 and 1993 was somehow lost in 1999 – particularly where the later crimes were part of the same conflict with which the Council was dealing.³² Accordingly, the Trial Chamber in *Ojdanić* observed that the Tribunal's temporal jurisdiction was left open-ended because the Security Council foresaw the continuation of the conflict."³³

11. With respect to territorial jurisdiction, the Trial Chamber considers that the jurisprudence of the Tribunal unequivocally extends jurisdiction to the territory of Kosovo. In *Boškoski*, the Appeals Chamber held that the Statute "extends the Tribunal's jurisdiction to those entities that were a part of the former Yugoslavia prior to its dissolution".³⁴ More specifically, the Appeals Chamber has confirmed that Kosovo is, and was, at the relevant time, a part of the territory of the former Yugoslavia, and that, pursuant to the Article 1 of the Statute, the Tribunal has jurisdiction for crimes allegedly committed in the territory of Kosovo.³⁵ In the *Ojdanić* Jurisdiction Decision, the Trial Chamber found that the jurisdiction of the Tribunal is applicable to any country that was a part of the former SFRY, irrespective, *inter alia*, of its United Nations membership at the time of the commission of the crime.³⁶ In this same vein, this Trial Chamber rejects the notion that the existence of new, internationally-recognised states in 1995 would preclude the Tribunal from exercising jurisdiction over the territory that was formerly part of the SFRY.

12. Finally, the Chamber notes cases where the Tribunal has exercised jurisdiction for alleged crimes committed in Kosovo after 1995, such as *Limaj* and *Haradinaj*.³⁷ The Chamber further notes that while neither *Prosecutor v. Slobodan Milošević* nor *Prosecutor v. Milutinović et al.*, share the appellate disposition of *Limaj*, they do share identical temporal and territorial jurisdiction with the instant case. These facts and jurisprudence support the Trial Chamber's conclusion that the Tribunal possesses both temporal and territorial jurisdiction over the alleged crimes committed in Kosovo in 1999.

³² *Ojdanić* Jurisdiction Decision, para. 61.

³³ *Ojdanić* Jurisdiction Decision, para. 61.

³⁴ *Prosecutor v. Boškoski*, Case No. IT-04-82-AR72.1, Decision on Interlocutory Appeal on Jurisdiction, 22 July 2005, para. 10.

³⁵ *Prosecutor v. Milutinović, Šainović, and Ojdanić*, Case No. IT-99-37-AR72.2, Reasons for Decision Dismissing Interlocutory Appeal Concerning Jurisdiction over the Territory of Kosovo, 8 June 2004, p. 4.

³⁶ *Ojdanić* Jurisdiction Decision, para. 62.

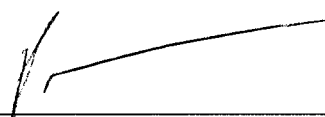
³⁷ The Chamber considers that, in *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, and *Prosecutor v. Haradinaj et al.*, Case No. IT-03-66-T, the Tribunal has exercised jurisdiction for crimes committed in the territory of Kosovo in 1998.

D. Disposition

For the reasons stated above,

The Trial Chamber, pursuant to Articles 1 and 8 of the Statute and Rule 72 of the Rules of Procedure and Evidence of the Tribunal, **HEREBY DENIES** the Motion.

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



Judge Patrick Robinson
Presiding

Dated this sixth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]