

IN TRIAL CHAMBER I

Before:

**Judge Alphons Orie, Presiding
Judge Amin El Mahdi
Judge Joaquín Martín Canivell**

Registrar:

Mr. Hans Holthuis

Order of:

26th November 2003

PROSECUTOR

v.

**PAVLE STRUGAR
and
VLADIMIR KOVACEVIC**

**DECISION ON THE PROSECUTOR'S MOTION FOR SEPARATE TRIAL AND ORDER
TO SCHEDULE A PRE-TRIAL CONFERENCE AND THE START OF THE TRIAL
AGAINST PAVLE STRUGAR**

The Office of the Prosecutor:

Mr. Susan Somers

Counsel for the Accused:

**Mr. Goran Rodic and Mr. Vladimir Petrovic for Pavle Strugar
Mr. Howard Morrison for Vladimir Kovacevic**

TRIAL CHAMBER I 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 SEIZED of the Prosecutor's Motion for Separate Trial ("the Motion"), filed on 18th November 2003, in which the Prosecutor moves to sever the cases against Mr. Pavle Strugar and Mr. Vladimir Kovacevic for the reason that the trial against the two accused may suffer indefinite delay due to the unresolved medical issues relating to Mr. Vladimir Kovacevic's health;

NOTING the Defence Response to Prosecution's Motion for Separate Trial ("the Response"), filed by the Defence Counsel of Mr. Pavle Strugar on 19th November 2003, in which Mr. Strugar's Defence Counsel objects to the severance of the trial against the two accused on the grounds (i) *that* the Motion does not establish that Mr. Vladimir Kovacevic is unfit to stand trial; (ii) *that* severance of the trials will prejudice the defence of Mr. Pavle Strugar, since the latter has a strong interest in being tried together with Mr. Kovacevic as the determination of the latter's role would directly influence the responsibility of Mr. Pavle Strugar; and (iii) *that* severance of the trials against the two accused runs contrary to the Tribunal's completion strategy and will cause unnecessary inconvenience to the witnesses;

CONSIDERING that the Defence Counsel for Mr. Vladimir Kovacevic has indicated orally to the Chamber that he does not object to the severance;

CONSIDERING that the medical examination of Mr. Vladimir Kovacevic is unlikely to be completed within a reasonably short period of time;

CONSIDERING that the trial against Mr. Pavle Strugar has been ready since the submission of his Pre-Trial Brief on 1st October 2003, but will certainly be delayed for an uncertain period of time if it is not severed now from the trial against Mr. Vladimir Kovacevic, which would jeopardize Mr. Pavle Strugar's right to an expeditious trial;

CONSIDERING that the Defence for Mr. Pavle Strugar has not argued that any rule of the Rules or any principle of law opposes the severance of the cases;

CONSIDERING that Rule 82 (B) allows the Trial Chamber to order separate trial if it considers it in the interests of justice;

CONSIDERING also that, pursuant to Rule 48, the decision as to whether cases are tried jointly or separately lies primarily in the hands of the Prosecutor, and that the Defence for Mr. Pavle Strugar has not presented any argument that this position would be different in the subsequent stages of the procedure;

CONSIDERING, furthermore, that the Trial Chamber has a wide discretionary power to order the joinder or severance of cases against accused persons;

CONSIDERING that in particular Rules 72 (A)(iii) and 82 (B) suggest that severance rather than joinder serves the interest of co-accused who have conflicting interests;

CONSIDERING that the Trial Chamber is not convinced by the arguments of the Defence for Mr. Pavle Strugar as separate trials might avoid any undue influence by Mr. Vladimir Kovacevic on the determinations to be made in the case against Mr. Pavle Strugar;

CONSIDERING, finally, that since Rule 82(A) emphasizes that an accused shall be accorded the same rights whether tried jointly or separately, the severance is not in any way prejudicial to the

defence of Mr. Pavle Strugar;

CONSIDERING the Order of 30 November 2001 on provisional release of Mr. Pavle Strugar;

PURSUANT to Rule 54 of the Rules of Procedure and Evidence;

HEREBY GRANTS the Motion; and

ORDERS the Registrar to immediately separate the proceedings against Mr. Pavle Strugar from those against Mr. Vladimir Kovacevic under the Indictment of 17 October 2003 and to file all future submissions relating to these accused under different case numbers;

SCHEDULES a Pre-Trial Conference in the case of Prosecutor v. Pavle Strugar to be held on Monday, 8th December 2003 at 9:00AM in Courtroom III; and

ORDERS that the trial against Mr. Pavle Strugar shall commence on Tuesday, 9th December 2003 at 9:00 AM in a Courtroom to be announced by the Registrar; and

REQUESTS the Government of Serbia and Montenegro to designate and instruct an official to escort Mr. Pavle Strugar directly to a Dutch Airport on Tuesday, 2 December 2003 and to hand him over to the Dutch authorities in that airport for the purpose of transferring him to the United Nations Detention Unit in The Hague; and finally

VACATES the Order of 30 November 2001 on provisional release of Mr. Pavle Strugar.

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

Dated this twenty sixth day of November 2003

At The Hague,

The Netherlands.

Judge Alphons Orié
Pre-Trial Judge

[Seal of the Tribunal]