

IN TRIAL CHAMBER II

Before:

**Judge Carmel Agius, Presiding
Judge Jean-Claude Antonetti
Judge Kevin Parker**

Registrar:

Mr. Hans Holthuis

Order of:

31 October 2005

THE PROSECUTOR

v.

**VUJADIN POPOVIC
LJUBISA BEARA
DRAGO NIKOLIC
LJUBOMIR BOROVCANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIC
MILAN GVERO
VINKO PANDUREVIC
MILORAD TRBIC**

ORDER ON THE CONSOLIDATED AMENDED INDICTMENT

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

**Zoran Zivanovic for Vujadin Popovic
John Ostojic for Ljubisa Beara
Jelena Nikolic for Drago Nikolic
Alan Newman and Miodrag Stojanovic for Ljubomir Borovcanin
Natacha Fauveau Ivanovic for Radivoje Miletic
Dragan Krgovic for Milan Gvero
Đorđe Sarapa for Vinko Pandurevic
Colleen Rohan for Milorad Trbic**

TRIAL CHAMBER II 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 SEISED OF the "Prosecution's Motion for Amendments to the Indictments" filed by the Office of the Prosecutor ("Prosecution") on 28 June 2005 ("Motion"), in which the Prosecution seeks to amend the indictments against Vujadin Popovic¹, Ljubisa Beara², Drago Nikolic³, Ljubomir Borovcanin⁴, Zdravko Tolimir⁵, Radivoje Miletic⁶, Milan Gvero⁷, Vinko Pandurevic⁸ and Milorad Trbic⁹ and to join them into one Consolidated Amended Indictment, attached to the Motion;

NOTING the "Decision on Motion for Joinder" rendered by Trial Chamber III on 21 September 2005 ("Joinder Decision"), which granted the "Motion for Joinder of Accused" filed by the Prosecution on 10 June 2005 and seeking to join six cases involving the aforementioned nine accused, namely *Prosecutor v. Vujadin Popovic*, *Prosecutor v. Ljubisa Beara*, *Prosecutor v. Drago Nikolic*, *Prosecutor v. Ljubomir Borovcanin*, *Prosecutor v. Zdravko Tolimir*, *Radivoje Miletic and Milan Gvero*, *Prosecutor v. Vinko Pandurevic and Milorad Trbic*;

NOTING the "Order Assigning a Case to a Trial Chamber" issued by the President of the Tribunal on 26 September 2005, assigning the case of *Prosecutor v. Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Zdravko Tolimir, Radivoje Miletic, Milan Gvero, Vinko Pandurevic and Milorad Trbic*, Case No. IT-05-88-PT, to Trial Chamber II;

NOTING Rule 50(A)(i)(c) of the Rules of Procedure and Evidence of the Tribunal ("Rules") which provides that the Prosecutor may amend an indictment after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties;

NOTING further Rule 50(A)(ii) of the Rules pursuant to which, independently of any other factors relevant to the exercise of discretion, leave to amend an indictment shall not be granted unless the Trial Chamber or Judge is satisfied that there is a *prima facie* basis to support the proposed amendment, in accordance with Article 19.1 of the Statute of the Tribunal ("Statute");

CONSIDERING that the Prosecution and the eight Accused who have been transferred to the Tribunal have been heard, or have had the opportunity to be heard, on the Consolidated Amended Indictment in the course of the proceedings having regard to the Joinder Decision;¹⁰

CONSIDERING further that, on the basis of the supporting material appended by the Prosecution to the Motion in Confidential Annexes B and C, a *prima facie* case against Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Zdravko Tolimir, Vinko Pandurevic and Milorad Trbic in respect of the proposed amendments contained in the Consolidated Amended Indictment, has been established;

NOTING further Rule 50(C) which provides, *inter alia*, that the accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 of the Rules in respect of the new charges;

NOTING that, prior to the Joinder Decision, three Accused had challenged the form of the respective indictments against them and that these motions are still pending, namely

- i. on 16 May 2005, Vujadin Popovic filed a "Preliminary Motion Objecting to the Form of the Indictment" against the indictment of 28 April 2002 ("Popovic Motion on the Form of the Indictment");
- ii. on 13 May 2005, Radivoje Miletic filed an "Exception préjudicielle du Général Miletic relative aux vices de forme de l'acte d'accusation" against the indictment of 8 February 2005 ("Miletic Motion on the Form of the Indictment"); and
- iii. on 31 May 2005, Vinko Pandurevic filed a "Rule 72(A)(ii) Preliminary Motion on the Form of the Indictment" against the indictment of 24 March 2005 ("Pandurevic Motion on the Form of the Indictment");

CONSIDERING that, in light of the specific circumstances of this case resulting from the Joinder Motion, the eight Accused who have been transferred to the Tribunal should have the opportunity to file preliminary motions challenging the form of the entire Consolidated Amended Indictment and not only those parts pertaining to the new charges against them;

PURSUANT TO Article 19.1 of the Statute and Rules 50(A)(i)(c), 50(A)(ii) and 50(C) of the Rules;

HEREBY GRANTS the Prosecution leave to file the Consolidated Amended Indictment under a single case number, namely Case No. IT-05-88-PT and **ORDERS** that

- i. the proposed Consolidated Amended Indictment filed by the Prosecution on 28 June 2005 shall be the operative indictment in the case of *Prosecutor v. Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Zdravko Tolimir, Radivoje Miletic, Milan Gvero, Vinko Pandurevic and Milorad Trbic*, Case No. IT-05-88-PT, with the caveat that;
- ii. the Accused Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Radivoje Miletic, Milan Gvero, Vinko Pandurevic and Milorad Trbic shall have thirty days as of the date of filing of the present Order in which to file any preliminary motion against the form of the Consolidated Amended Indictment pursuant to Rule 72 of the Rules; and that
- iii. the Popovic Motion on the Form of the Indictment, Miletic Motion on the Form of the Indictment and Pandurevic Motion on the Form of the Indictment are moot.

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

Dated this thirty-first day of October 2005
At The Hague
The Netherlands

Judge Carmel Agius
Presiding

[Seal of the Tribunal]

1. *Prosecutor v. Vujadin Popovic*, Case No. IT-02-57-I, Amended Indictment, 28 April 2002.
2. *Prosecutor v. Ljubiša Beara*, Case No. IT-02-58-I, Indictment, 28 March 2002.
3. *Prosecutor v. Drago Nikolic*, Case No. IT-02-63-I, Indictment, 2 September 2002.
4. *Prosecutor v. Ljubomir Borovcanin*, Case No. IT-02-64-I, Indictment, 6 September 2002.
5. *Prosecutor v. Zdravko Tolimir, Radivoje Miletic and Milan Gvero*, Case No. IT-04-80-I, Indictment, 8 February 2005. As of the date of filing of this Order, Zdravko Tolimir has not yet been transferred to the Tribunal.
6. *Ibid.*
7. *Ibid.*
8. *Prosecutor v. Vinko Pandurevic and Milorad Trbic*, Case No. IT-05-86-PT, 24 March 2005.
9. *Ibid.*
10. On 28 June 2005, the Prosecution filed its "Motion for Amendments to the Indictment" against the nine Accused in this case ("Motion"). In particular, Vinko Pandurevic filed his response on 15 July 2005, Vujadin Popovic responded to the Motion on 21 July 2005 and Drago Nikolic responded on 21 July 2005.