



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-02-60-PT
Date: 31 July 2002
Original: English

IN TRIAL CHAMBER II

Before: Judge Wolfgang Schomburg, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Carmel Agius

Registrar: Mr. Hans Holthuis

Decision of: 31 July 2002

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN OBRENOVIĆ
DRAGAN JOKIĆ
MOMIR NIKOLIĆ**

**DECISION ON MOTION OF ACCUSED
BLAGOJEVIĆ TO DISMISS COUNT 1B**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas, for Vidoje Blagojević
Mr. David Wilson, Mr. Dušan Slijepčević, for Dragan Obrenović
Mr. Miodrag Stojanović, Ms. Cynthia Sinatra for Dragan Jokić
Mr. Veselin Londrović, Mr. Stefan Kirsch for Momir Nikolić

TRIAL CHAMBER II ("the 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 ("the Tribunal").

BEING SEISED OF the Accused Blagojević's "Motion to Dismiss Count 1B – Complicity to Commit Genocide in the Amended Joinder Indictment on the Grounds that it Offends the Principle of *Nullum Crimen Sine Lege*" filed on 2 July 2002 ("the Motion"),

NOTING the "Prosecution Response to Accused Blagojević's Motion to Dismiss Count 1B of the Amended Joinder Indictment" filed by the Office of the Prosecutor ("the Prosecutor") on 16 July 2002 ("the Response"),

NOTING that the Motion was filed in accordance with a decision of this Chamber¹, which states that "... the accused may raise preliminary objections in relation to the form of the anticipated Amended Joinder Indictment in its entirety and will not be restricted to those parts that constitute 'new charges', as would generally be the case pursuant to Rule 50(C)"²,

NOTING that the Motion was filed within the prescribed time-limit of 36 days³ after the filing of the Amended Joinder Indictment, which was done on 27 May 2002⁴ ("the Indictment"),

NOTING that the Defence for the accused Blagojević submits that the charge of complicity in genocide as alleged in Count 1B of the Indictment violates the principle of *nullum crimen sine lege*, as recognised in international law,

NOTING that in support, the Defence argues the following:

- (i) that on the basis of the facts set forth in the Indictment the Chamber could not infer that the accused had formed an intention to "destroy, in whole or in part" the Muslim population of Srebrenica, as would be required under Article 4(2) of the Statute since it is alleged in the Indictment that women and children from the Srebrenica area were transported to safety,
- (ii) that during the *Krstić* trial⁵ testimony was given to the effect that the treatment of the Muslim population was correct, that to "ethnically cleanse" a region was not equivalent to destroying a population in a physical sense, and that the targeted group of Muslim men, i.e.

¹ *Prosecutor v. Nikolić and Prosecutor v. Blagojević, Obrenović and Jokić*, Case Nos. IT-02-53 PT and IT-02-56-PT, Decision on the Prosecution's Motion for Joinder, 17 May 2002.

² *Ibid.*, para. 19 (4)

³ *Ibid.*

⁴ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

⁵ *Prosecutor v. Krstić*, Case No. IT-98-33.

those actually or potentially able to be military combatants, was not a "stable group" as required for the commission of genocide,

NOTING that for these reasons, the Defence requests the Chamber to find that the alleged acts and omissions in the Indictment do not support the charge of complicity in genocide and that Count 1B of the Indictment should therefore be dismissed,

NOTING that the Prosecution, in its Response, argues:

- (i) that the principle of *nullum crimen sine lege* is not offended because the alleged acts of the accused were, without doubt, punishable at the time of their commission;
- (ii) that a motion under Rule 72 is not an appropriate platform to challenge legal theories the Prosecution presumably will use in order to prove the charges set forth in the Indictment at trial,

CONSIDERING that, in general, indictments contain allegations that must be proved at trial,

CONSIDERING that the Defence's Motion concerning the Request of Taking of Judicial Notice⁶ of facts adjudicated in the *Krstić* trial has been rejected⁷,

CONSIDERING that this Chamber is in no way bound by findings made by another Trial Chamber⁸, and neither is the Prosecution in its pleading,

CONSIDERING that, pursuant to Article 21(4) of the Statute, the main function of an indictment is to inform the accused of the nature and cause of the charge against him, and for that purpose, the indictment must contain a concise statement of facts of the case and the alleged crimes, as provided for in Article 18(4) of the Statute and in Rule 47(C) of the Rules of Procedure and Evidence ("the Rules"),

CONSIDERING FURTHER that it is the consistent jurisprudence of the Tribunal that, in order to meet these requirements, all material facts upon which the Prosecution relies for its case must be pleaded, however not the evidence⁹,

⁶ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Request for the Taking of Judicial Notice of Finding of Facts and Request for the Deletion of All Alleged Facts or Omission in the Amended Joinder Indictment that are Inconsistent with Said Findings of Facts, 24 June 2002.

⁷ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, Oral Ruling of Trial Chamber II, 19 July 2002.

⁸ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Appeals Judgment of 24 March 2000, para. 3.

⁹ See, *inter alia*, *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, paragraph 18.

CONSIDERING that the principle of *nullum crimen sine lege* states that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed”¹⁰.

CONSIDERING that in its pleading, the Prosecution is bound by the principle of legality, which encompasses, *inter alia*, the principle of *nullum crimen sine lege*, and at the same time, is obliged to comply with the above-mentioned requirements concerning specificity,

FINDING that the arguments brought forward by the Defence appear not to pose questions under the *nullum crimen* principle, since no argument has been made that the crimes ascribed to the accused were not punishable at the relevant time, but rather raise an issue as to pleading standards as concerns specificity,

FINDING that the information given in the Indictment appears to be concise and does not show defects of the above-mentioned nature; in particular, read as a whole, paragraphs 34 – 54 of the Indictment provide the material facts that need to be pleaded in order to charge the accused with complicity in genocide,

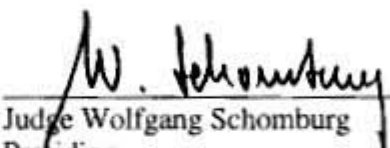
FINDING FURTHERMORE that the arguments put forward by the Defence do not provide a reasonable basis to dismiss the charge of complicity in genocide as alleged in the Indictment, and therefore they would most appropriately be dealt with at trial,

¹⁰ Article 7(1) of the European Convention on Human Rights (1950) and Article 15(1) of the International Covenant on Civil and Political Rights (1966).

FOR THE FOREGOING REASONS**PURSUANT** to Rule 72 of the Rules,**HEREBY DISMISSES** the Defence's Motion to Dismiss Count 1B of the Amended Joinder Indictment.

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

Dated this thirty-first day of July 2002,
At The Hague
The Netherlands


Judge Wolfgang Schomburg
Presiding

[Seal of the Tribunal]