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CASE/AFFAIRE NO. IT-05-87-PT **DATE** 09 June 2006 D5946

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0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ____/____/____

0 Motion/Request/Application submitted by Prosecution/Defence Counsel on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le ____/____/____

0 Response/reply/brief submitted by Prosecution/Defence Counsel on/
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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

Case No.: IT-05-87-PT
Date: 9 June 2006
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 9 June 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ**

DECISION ON OJDANIĆ MOTION FOR STAY OF PROCEEDINGS

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

**United Nations Interim Administration
Mission in Kosovo**

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 a “General Ojdanić’s Motion for Stay of Proceedings”, filed 1 June 2006 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, Ojdanić requests a stay of the proceedings and explains his Defence team’s efforts to investigate in Kosovo in order to prepare for the trial, including the most recent trip during which the Defence team and United Nations Interim Administration Mission in Kosovo (“UNMIK”) personnel were attacked.¹ Ojdanić argues that his inability to conduct such investigations “violates his right to a fair trial, his right to equality of arms with the prosecution, his right to adequate facilities for the preparation of his defence, and his right to effective assistance of counsel”.² Milutinović, Pavković, Šainović, and Lazarević join the Motion.³

2. Following the attack on the Defence team, Mr. Steven Schook, Principal Deputy Special Representative of the Secretary-General, informed Mr. Tomislav Višnjić, Lead Counsel of the Ojdanić Defence team, of the following:

I am certain that you will understand that due to security concerns and the emotional impact of last week events UNMIK will need to be provided with all the necessary information in order to be able to make sound decisions and to ensure the smooth conduct of any similar visits in the future.

Thus, I would ask you to furnish us with the following details:

1. The purpose of the visit;
2. A detailed itinerary for your planned visit;
3. Details of all the delegation members (full names, citizenship, passport numbers);
4. Exact time and location of your entry into and exit out of Kosovo.

Please note that in order to safeguard proper planning and preparation of future visits, the request for political clearance must be received no later than three full working days before the scheduled entry into Kosovo.⁴

3. UNMIK was established pursuant to United Nations Security Council Resolution 1244, which “[d]emands full cooperation by all concerned, including the international security presence,

¹ Motion, paras 1–11.

² Motion, para. 15.

³ Mr. Milutinović’s Motion to Join General Ojdanić’s Motion for Stay of Proceedings, 6 June 2006 (requesting hearing on Motion); Joinder by Nebojša Pavković in General Ojdanić’s Motion for Stay of Proceedings, 6 June 2006 (suggesting hearing on Motion); Joint Defence Motion: Joining General Ojdanić’s Motion for Stay of Proceedings, 6 June 2006 (Šainović and Lazarević).

⁴ Motion, Annex G.

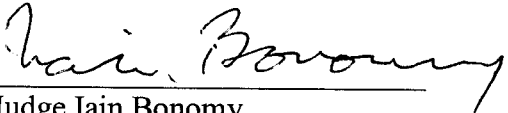
with the International Tribunal for the Former Yugoslavia".⁵ The Chamber considers that this cooperation includes efforts by UNMIK to endeavour to provide assistance to Defence teams of accused before the Tribunal in respect of investigations inside of Kosovo for the preparation of their defences.

4. The Chamber considers that, while, during the Defence team's last visit to Kosovo, UNMIK was unable to provide the security necessary for the team to conduct and complete its investigations, this does not mean that UNMIK will continue indefinitely to be unable to do so. Moreover, UNMIK has contacted the Defence team in order to arrange further visits to Kosovo. The Chamber would expect UNMIK to take the last visit into account when planning future security arrangements for the Defence team in order to avoid a repeat of any such incidents and to ensure that the Defence team is assisted to the greatest extent possible by UNMIK. The Chamber notes, finally, that it is not faced at present with the situation wherein UNMIK has refused the Defence team access to Kosovo or represented to it that it is unable or unwilling to provide security for future visits in order to prepare Ojdanić's defence.

5. In these circumstances, it cannot be said that the Accused will not have a fair trial or that their rights will not be respected. It will be for the Trial Chamber to ensure that the trial is conducted in a manner that is fair to the Accused, having regard to all the circumstances of the trial.

6. Pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rule 54 of the Rules of Procedure and Evidence, the Trial Chamber hereby DENIES the request to have a hearing on this matter, DENIES the Motion, and REQUESTS UNMIK to take all reasonable and necessary measures, as soon as possible, in order to assist the Defence teams of the Accused in their investigations in Kosovo for the preparation of their defence.

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


 Judge Iain Bonomy
 Presiding

Dated this ninth day of June 2006
 At The Hague
 The Netherlands

[Seal of the Tribunal]

⁵ S.C. Res. 1244, U.N. Doc. S/RES/1244 (1999), para. 14. See also *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-AR65.1, Decision on Ramush Haradinaj's Modified Provisional Release, 10 March 2006, para. 14.