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**UNITED
NATIONS**

*IT-02-60-PT
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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 CUMULATIVE
CHARGES**

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

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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 Cumulative Charges of Counts 2, 3, 5, 6 in the Amended Joinder Indictment Based on the Legal Findings in *Krstić* Regarding Cumulative Convictions" filed on 2 July 2002 ("the Motion"),

NOTING the "Prosecution Response to Accused Blagojević's Motion to Dismiss Cumulative Charges" filed by the Office of the Prosecutor ("the Prosecution") on 16 July 2002 ("the Response"),

NOTING that the Motion was filed in accordance with a decision of this Chamber¹, granting 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 requests that judicial notice of findings regarding multiple convictions in the *Krstić* trial⁵ be taken, and that corresponding cumulative charges in the Indictment be dismissed,

NOTING that in addition, the Defence asks the Chamber to enter a summary judgment of acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("the Rules") subsequent to the taking of the judicial notice,

NOTING that the Prosecution, in its Response, states that cumulative charging constitutes the usual practice of the Tribunal, and believes that the request for a summary judgment of acquittal is premature since it could only be filed after the close of the Prosecutor's case,

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.

CONSIDERING that the Motion of the Defence concerning the Request of Taking of Judicial Notice⁶ of facts adjudicated in the *Krstić* trial has been rejected⁷, thereby litigating also a part of the present Motion,

CONSIDERING that the remainder of the complaint made by the Defence regards the multiple charging of offences based upon the same conduct of the accused,

CONSIDERING that this issue raises questions as to cumulative charging, as opposed to cumulative convictions,

CONSIDERING that Trial Chambers and the Appeals Chamber alike have consistently rejected the complaint that cumulative charging of an accused is impermissible⁸, finding that the existence of cumulative convictions is a matter to be considered only when imposing penalty, but not already at the pre-trial stage,

CONSIDERING that a summary judgment of acquittal pursuant to Rule 98 *bis* of the Rules is only to be rendered in a situation that after the Prosecution has closed its case the evidence so far is deemed to be insufficient to support a conviction regardless of any exculpatory evidence the Defence may adduce⁹, this obviously not being the case here,

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 See, most recently, *Prosecutor v. Kunarac et al.*, Case Nos. IT-96-23 and IT-96-23/1-A, Appeals Judgment, 12 June 2002, para. 167.

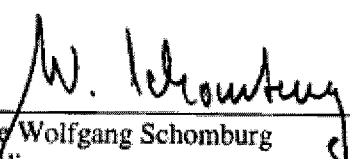
⁹ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16, Decision on the Motion of the Accused Vlatko Kupreškić of 23 July 1999 for Judgment of Acquittal, 28 July 1999.

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FOR THE FOREGOING REASONS**PURSUANT** to Rule 72 of the Rules,**HEREBY DISMISSES** the Defence's Motion to Dismiss Cumulative Charges and to enter a summary judgment of acquittal.

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]