



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: IT-00-41-PT

Date: 7 June 2002

Original: English

IN THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Decision of: 7 June 2002

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

**DECISION ON THE DEFENCE OBJECTIONS ON
CORRECTED AMENDED INDICTMENT**

The Office of the Prosecutor:
Mr. Mark Harmon

Defence Counsel:
Mr. Tomislav Jonjić

TRIAL CHAMBER I (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”);

NOTING the “Decision on Defence Motion on the Form of the Indictment of 15 March 2002 (‘the Decision’), which partially granted the Defence Motion on the Form of the Indictment;

NOTING the “Notice of Filing of Amended Indictment” filed on 5 April 2002 and the “Notice of Filing of Corrected Amended Indictment” filed on 8 April 2002 (“the Amended Indictment);

NOTING the “Scheduling Order Further to the Filing of a New Indictment”, dated 17 April 2002, in which the Pre-Trial Judge instructed that the Accused present observations on the Amended Indictment by 2 May 2002 and that the Prosecution file a response, if any, within seven days of the filing of such observations;

BEING SEIZED by the “Defence Objections on the Corrected Amended Indictment” filed on 30 April 2002 (hereinafter the “Motion”) by the Defence for the accused Paško Ljubičić (the “Accused”);

NOTING the “Prosecution Response to Defence Objections to the Corrected Amended Indictment,” filed on 8 May 2002 (the “Prosecution Response”);

CONSIDERING that, in the Decision, the Prosecution was ordered, *inter alia*, to reorganise the Indictment, to avoid unnecessary cross-references and repetition, and to provide further particulars and clarifications in relation to counts 1-11, in the terms set out in the Decision;

CONSIDERING that in the Motion the Accused objects to the Amended Indictment submitted by the Prosecutor on the grounds that it exceeds the limits of the Decision and that it thus constitutes a “new, significantly different accusatory act”;¹ that he argues that the Prosecution should have sought leave of the Chamber to amend the Indictment pursuant to Rule 50 (A) (i) of the Rules; that, in so arguing, the Accused submits that the Indictment should be returned to the

¹ Motion, para 6.

Prosecutor for corrections or that the Trial Chamber or the Pre-Trial Judge should decide on whether these amendments should be authorised;²

CONSIDERING that Article 18(4) of the Statute of the Tribunal (the “Statute”) provides that “the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute” and that Rule 47(C) of the Rules provides that “[t]he indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged”;

CONSIDERING that the obligation on the Prosecution to provide a concise statement of the facts and crime(s) with which an accused is charged is based on the right of an accused set out in Article 21(4)(a) of the Statute “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him” and the right of an accused set out in Article 21(4)(b) of the Statute “to have adequate time and facilities for the preparation of his defence”;

CONSIDERING that the Defence first complains that the Amended Indictment contains four new counts,³ while the Prosecution responds that the increase in the number of counts is due to a re-organisation of counts 3-6 of the First Indictment and that no new charges have been added;⁴

CONSIDERING that, in relation to counts 3-6, the Decision provided that “no particulars are contained within paragraphs 4.0 and 4.1 with regard to the Accused’s responsibility under counts 3 – 6 in relation to the events at Očenići; that even if the reference in paragraph 4.0, referring to paragraph 3.0, was intended to be understood as including a reference to paragraph 3.2, it is unclear; that therefore the Prosecution must clarify the allegation in respect of Očenići under these counts including the Accused’s responsibility”;⁵ that the Prosecution was further directed to generally “to clarify the Accused’s alleged form of participation”,⁶ and, in particular, “to clarify with regard to count 2, how it is alleged that the Accused “participated” in the attacks alleged in paragraphs 3.1 [*Ahmići and neighbouring hamlets*] and 3.2 [*Očenići*] of the indictment and provide details as to the Accused’s alleged participation in the planning of the attack on the

² Motion, para 4.

³ Motion, para 7.

⁴ Response, paras 5-10.

⁵ Decision, page 9, emphasis added.

⁶ Decision, page 6.

village of Očenići referred to in paragraph 3.2 of the indictment, including when and where the planning took place”;⁷

CONSIDERING that in the Amended Indictment counts 3-6 (wilful killing and causing serious injury) have been separated into two parts: counts 3-6 (wilful killing and causing serious injury concerning the attack on 16 April 1993 on Ahimići, Nadioci, Pirići and Santići) and counts 7-10 (wilful killing and causing serious injury concerning the attack on 19 April 1993 on Očenići); that as a result, the Accused is now charged with 15 counts;

CONSIDERING that the Trial Chamber notes that counts 7-10 of the Amended Indictment are based upon material facts that were already contained in the First Indictment; that these facts have been pleaded in these counts with more detail in relation to the attack on the village of Očenići; that the Accused has thus been given sufficient notice regarding these allegations of the case he has to meet;

CONSIDERING that, however, in the framework of the charges pleaded in the First Indictment, the Prosecution was not requested nor authorised to lay separate counts in relation to the attack on the village of Očenići; that, by adding these counts in view of re-organising the Indictment, the Prosecution has gone beyond the scope of what was ordered in the Decision; that the Prosecution is thus required to gather counts 3-10 of the Amended Indictment into a single section; that due to the nature of the changes made, and pursuant to Rule 50(A)(i), if the Prosecution seeks to retain these new counts, a request for leave to amend should be filed;

CONSIDERING that the Accused argues that the alleged unlawful conduct of the Accused has been extended to localities and settlements not mentioned in the First Indictment, in particular regarding the forced trench-digging allegations in paragraph 6.2 (counts 10-11) of the First Indictment; that the majority of these locations, referred to in paragraph 63 of the Amended Indictment, have not been mentioned in the supporting material, thus preventing the Accused from preparing his case;⁸

CONSIDERING that in relation to the Accused’s complaint regarding the supporting material, the Prosecution has indicated in its Response that the Defence will receive further notice of those

⁷ Decision, page 8.

⁸ Motion, para 7.

locations not expressly referred to in the confirming material by way of pre-trial disclosure; that only if the Prosecution does not fulfil its obligation of disclosure under Rule 66 of the Rules shall the Accused address the Trial Chamber to request that such information be supplied;

CONSIDERING that in the Decision, in relation to counts 10 – 11 (cruel and inhumane treatment of detainees), the Prosecution was instructed to “provide, where available: details as to the identity and/or approximate number of victims alleged in counts 10 – 11 together with dates and places of detention (by way of schedule, if appropriate); with regard to paragraphs 6.1 and 6.2 of the indictment, further particulars regarding the allegations made, including incidents and dates”;⁹

CONSIDERING that paragraph 6.2 of the First Indictment referred to “Bosnian Muslims civilians and person who were *hors combat* who were detained in HVO detention facilities forced to dig trenches at or near front line positions in the municipalities of Vitez and Busovača”;

CONSIDERING that paragraph 63 of the Amended Indictment provides as follows:

The location where these civilians were forced to dig trenches following the takeover of Busovača in January 1993 and following the HVO offensive operation that commenced on 16 April 1993 included, but are not limited to, Kratine, Kula, Rijeka, Krcevine, Dubravica, Sivirino Selo, Tolovici, Topole, Komare, Bakije, Grdina, Oblice, Krizancevo Selo, Strane, Putis, Prošje, Rovna, an area in the direction of Merdani, an area near Nadioci and Pirici, and an area near Lončari”;

CONSIDERING that by specifying the names of the locations at which forced trench-digging took place, the Prosecution has only complied with the instructions of the Chamber;

CONSIDERING that, however, the Trial Chamber notes that in relation to the counts of cruel and inhumane treatment of detainees (now counts 14-15 of the Amended Indictment), paragraph 62 refers to the detainees being “used as human shields” and forced to engage in other forms of forced labour, “including laying land mines”; that similarly paragraph 33 (count 1, persecutions) in relation to the allegations of inhumane treatment, also refers to detainees being used as “human shields”;

⁹ Decision, page 9-10.

CONSIDERING that there has been an insertion in these paragraphs of new factual allegations in relation to what was pleaded in the First Indictment; that these changes were not instructed by the Decision; that regarding these allegations, should the Prosecution choose to rely on any of these allegations to prove these counts, he should seek leave to amend the Indictment or otherwise reference to them should be removed from these paragraphs;

FOR THE FOREGOING REASONS,

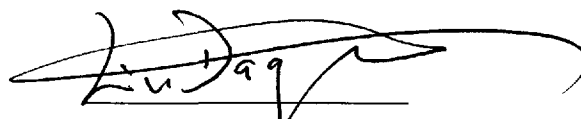
PURSUANT to Articles 18 and 21 of the Statute and Rule 47 (C) of the Rules;

PARTIALLY GRANTS the Motion;

ORDERS that the Prosecution amend the indictment in the terms set out in this order and should file a second amended indictment within fourteen days of the date of this order;

DECIDES that the Accused shall have fourteen days from the date of the Prosecution's filing to submit further observations, if any.

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



Judge Liu Daqun,

Presiding Judge

Dated this seventh day of June 2002

At The Hague

[Seal of the Tribunal]