



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: 2 August 2002

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 2 August 2002

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

DECISION ON MOTION FOR LEAVE TO AMEND THE 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 “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 “Defence Objections on the Corrected Amended Indictment” filed on 30 April 2002 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;

NOTING the “ Decision on Defence Objections on Corrected Amended Indictment” of 7 June 2002;

BEING SEIZED of the Prosecution’s “Motion for Leave to Amend the Indictment” filed on 13 June 2002 (“the Motion”);

NOTING the Defence’s “Response to Prosecution Motion for Leave to Amend Indictment” filed on 25th June 2002 (“the Response”);

CONSIDERING that, in the Motion, the Prosecution requests leave to amend the indictment in order to permit the Amended Indictment to stand as indictment against the accused, on the basis that: (1) the amendments are relatively restricted in nature, do not constitute substantively new charges against the accused, set forth the Prosecution’s case against the accused in a more understandable fashion and will permit the Trial Chamber to ensure that the real issues in the case are determined; (2) there is no prejudice to the accused in the preparation of his case; and (3) there is no suggestion of the Prosecution seeking an unfair tactical advantage;¹

CONSIDERING that, in the Response, the Accused objects to the Amended Indictment submitted by the Prosecution on the grounds that it is a procedural issue, which has already been

¹ The Motion, para. 4.

regulated by the Chamber and requests that the Motion be dismissed;² that it argues that if leave is granted “ the Prosecution would be allowed to have the already ruled issue, regulated in another way which is less favourable for the Accused and that this would be a violation of the Accused’s right to a fair trial”;³

CONSIDERING that Article 50(A)(i) of the Rules of Procedure and Evidence (“the Rules”) provides that “the Prosecutor may amend an indictment: [...] (c) 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 ; (ii) After the assignment of the case to a Trial Chamber it shall not be necessary for the amended indictment to be confirmed”;

CONSIDERING that, pursuant to Rule 50(B) of the Rules, “if the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges”; that Rule 50 (C) of the Rules indicates that, “the accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence”;

CONSIDERING that, in absence of specific standards set out in the Rules, it is a matter of discretion of the Judge or the Chamber seized of the case whether or not to allow an amendment of an indictment; that this discretion must be exercised taking into account the right of the accused to a fair and expeditious trial, to be promptly informed of the charges against him and to have adequate time and facilities for the preparation of his defence;

CONSIDERING that the fundamental issue in relation to granting leave to amend an indictment is whether the amendment will prejudice the accused unfairly;⁴ that to be relevant, the prejudice caused to an accused would ordinarily need to relate to the fairness of the trial;⁵ that there should

² The Response, para. 2.

³ The Response, para. 5.

⁴ *Prosecutor v. Brđanin and Talić*, Case IT-99-36, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 50.

⁵ *Ibid*, para. 50.

be no injustice caused to the accused if he is given an adequate opportunity to prepare an effective defence to the amended case;⁶

CONSIDERING that the Prosecution seeks leave to amend in relation of two issues: (i) the separation of counts 3-6 in the First Indictment into two parts in the Amended Indictment: 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); and (ii) references to the use of detainees as human shields and to forcing detainees to lay land mines;

CONSIDERING that, in relation to the separation of counts 3-6 into two parts in the Amended Indictment, the Prosecution argues to the merits of the Motion that retaining counts 3-10 in this current form benefits the accused by: giving him greater detail of the allegations against him, setting forth these allegations in a clearer fashion so as to assist him in the preparation of his defence; and clearly specifying in counts 7-10 of the Amended Indictment the alleged criminal responsibility of the accused in respect of the attack on Očenići;⁷

CONSIDERING that the facts upon which counts 7-10 of the Amended Indictment were already contained in the First Indictment; that no substantive factual allegations were added to the Amended Indictment to support these counts; that in these counts further detail is provided in relation to the attack on the village of Očenići, and, in particular, the alleged criminal responsibility of the accused in these acts is set out in detail;

CONSIDERING that while the Rule 50(B) and (C) of the Rules expressly address the issue of a new charge, the Rule does not specify that new charges can only be based upon new facts;⁸ that this Rule does not require the Prosecution to seek leave to amend the indictment in relation to new counts only when these contain new facts; that in contemplating that the accused may require additional time to prepare for trial as a result of an amendment that involves adding a further count, the rule is simply concerned to ensure that the accused is not prejudiced in the conduct of his or her defence;⁹ that, in this case, the right of the accused to be promptly informed

⁶ *Ibid*, para. 50.

⁷ The Motion, para. 11.

⁸ *Prosecutor v Naletelić and Martinović*, Case IT-98-34-PT, Decision on Vinko Martinović's Objection to the Amended Indictment and Mladen Naletilić's Preliminary Motion to the Amended Indictment, 14 Feb 2001, p 4.

⁹ *Ibid*, p 4.

of the charges against him has not been violated, since he was informed from the outset of these charges; that thus the re-organisation of the Indictment in this manner does not cause unfair prejudice to the accused in the preparation of his defence;

CONSIDERING that, in relation to the allegations regarding the use of detainees as human shields and forcing them to lay land mines, the Prosecution argues to the merits of the Motion that no unfair prejudice on the preparation of the Defence case exists; that the new factual allegations are of narrow scope and have taken place at an early stage in the proceedings; that, by including specific reference to them, it is complying with its duty to prosecute to the fullest extent of the law and to bring all relevant issues before the Trial Chamber; that, in this sense, it does not intend to seek an improper tactical advantage by adding these new allegations;¹⁰

CONSIDERING that, in relation to the allegations of the detainees being “used as human shields”, paragraph 62 (counts 14-15, cruel and inhumane treatment of detainees) states that “Members of the 4th Military Police Battalion, on orders of Paško Ljubičić, and with his knowledge, participated in the cruel and inhumane treatment of detainees by arresting Bosnian Muslims civilians and transporting them to detention facilities described in this indictment; by guarding them at these detention facilities; by transporting detainees from these detention facilities to front line positions where they were used as human shields or forced to engage in trench digging and other forms of forced labour; by allowing members of the 4th Military Police Battalion, including Miroslav Bralo and Anto Furundžija, and others to physically abuse detainees in their custody”; that paragraph 62(a) further alleges that this conduct included: “On 27 January 1993, members of the 4th Military Police took 13 Muslim men [...] from the Detention Centre at Kaonik and used them as human shields. These prisoners were tied up in the presence of Zarko Milic, a subordinate of Paško Ljubičić”; that similarly paragraph 33 (count 1, persecutions), in relation to inhumane treatment of civilians, also refers to detainees being “used as human shields”;

CONSIDERING that in relation to the allegations of detainees being forced to engage in other forms of forced labour, “including laying land mines”, paragraph 62(d) states that: “On April 1993, 5 Bosnian Muslims [...] were taken to the area of Kratine where they were placed in the custody of subordinates of Paško Ljubičić, including Anto Furundžija and Miroslav Bralo, and forced to dig trenches for the “Jokers” and for the elements of the HVO. They were also forced

¹⁰ The Motion, para. 17.

to engage in other forms of dangerous forced labour, including laying of land mines. They remained at Kratine until 29 April 1993”;

CONSIDERING that the Chamber notes that the amendments made are not substantial in scope; that admitting these amendments at this stage of the proceedings, when the trial is not yet scheduled to begin, will not deny the accused his right to be tried without undue delay; that it does not appear that the Prosecution has sought an improper tactical advantage by seeking to amend the indictment in this way; that thus these amendments do not unfairly prejudice the accused in the preparation of his defence;

CONSIDERING that the Prosecution has indicated that reference to the forced laying of land mines was contained in the supporting material disclosed to the accused on 30 November 2001; that, however, the testimony supporting the allegation of the use of detainees as human shields has not yet been disclosed pursuant to Rule 66 (A) (ii);¹¹ that the Chamber reminds the Prosecution of its obligation of disclosure under Rule 66 of the Rules in relation to the new allegations;

FOR THE FOREGOING REASONS,

PURSUANT to Rule 50 of the Rules;

GRANTS the Motion and **DECIDES** that the Amended Indictment should stand as an indictment against the accused;

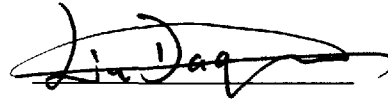
REQUESTS the Registrar to serve the Amended Indictment to the accused in accordance with the relevant provisions of the Rules;

ORDERS that a further appearance should be held as soon as practicable to enable the accused to enter a plea on the new charges;

¹¹ The Motion, para. 16.

REMINDS the Accused that he shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges.

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

A handwritten signature in black ink, appearing to read 'Liu Daqun', written over a horizontal line.

Judge Liu Daqun,
Presiding Judge

Dated this second day of August 2002
At The Hague

[Seal of the Tribunal]