



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-95-11-PT  
Date: 5 September 2003  
Original: English

**BEFORE THE TRIAL CHAMBER**

**Before:** Judge Alphonsus Orié, Presiding  
Judge Amin El Mahdi  
Judge Joaquín Martín Canivell

**Registrar:** Mr. Hans Holthuis

**Decision of:** 5 September 2003

**PROSECUTOR**

v.

**MILAN MARTIĆ**

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**DECISION  
ON PROSECUTION MOTION TO FILE AMENDED INDICTMENT  
AND ON SECOND MOTION AGAINST THE AMENDED INDICTMENT**

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**The Office of the Prosecutor:**

Ms. Hildegard Uertz-Retzlaff  
Mr. Alex Whiting  
Ms. Sabine Bauer

**Defence Counsel:**

Mr. Predrag Milovančević

## I. INTRODUCTION

1. **TRIAL CHAMBER I** (the “Chamber”) of the International Criminal 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”) is seized of a “Preliminary Motion filed by the Accused Pursuant to Rule 72A(ii) of the Rules on Procedure and Evidence Against the Amended Indictment” filed on 29 July 2003 (the “Second Motion”).
2. The Motion follows the “Decision on Preliminary Motion Against the Amended Indictment” rendered by the Chamber on 2 June 2003 (the “Decision of 2 June 2003”) in response to the “Preliminary Motion against the Corrected Amended Indictment dated 18 December 2002 (the “First Motion”) and the subsequent “Prosecution Motion to File Amended Indictment Pursuant to Trial Chamber’s Decision on Preliminary Motion Against the Amended Indictment” (the “Prosecution Motion to File Amended Indictment”) filed on 14 July 2003 together with an Annex containing the proposed Amended Indictment (the “Second Amended Indictment”).
3. The Prosecution also filed a “Prosecution’s Response to the Accused’s Second Preliminary Motion Filed Pursuant to Rule 72(A)(ii)” (the “Prosecution Response”) on 1 August 2003, providing reasons for rejecting the submissions contained in the Second Motion.
4. The Chamber will consider both the Prosecution Motion to File Amended Indictment and the Second Motion, with the Prosecution Response, in this Decision.

## II. SUBMISSIONS OF THE PARTIES

5. The Prosecution, pursuant to the order contained in the Decision of 2 June 2003,<sup>1</sup> filed the Second Amended Indictment modifying paragraphs 42 and 43 and adding Annex III in order to formulate in greater detail the statistics referred to in paragraph 44. In particular, the newly formulated paragraph 43 clarifies that in the so-called Serbian Autonomous District (SAO) of Krajina and Autonomous Region of Krajina (ARK), within some *predominantly Serb municipalities*, there existed *predominantly non-Serb* towns, villages, hamlets and neighbourhoods. Annex III spells out the statistical data of population from the 1991 census aggregated according to municipalities within the SAO Krajina and the ARK. Moreover, Annex III also sums up the

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<sup>1</sup> The Decision of 2 June 2003 stated, in the relevant portion, “[The Chamber o]rders the Prosecution to file a new Amended Indictment [...] clarifying the apparent inconsistencies in paragraphs 42-44 of the Indictment, with special regard to the ethnic composition of clearly identified topographical locations in Counts 10 and 11, and referred to in Count 1, paragraph 23, sub i.”

composition of the population in some villages referred to in paragraphs 26 to 36 of the Amended Indictment (Counts 2 to 4).

6. The Prosecution finally modified *proprio motu* some names in Annexes I and II to the Amended Indictment better to reflect the current status of the material it gathered during investigations and other proceedings before the Tribunal. As a result of these changes, the total amount of alleged victims in paragraphs 28, 29, 30, 35, and 52 of the Second Amended Indictment are slightly different from that previously contained in the Amended Indictment.

7. In its Second Motion, the Defence claims that the Second Amended Indictment submitted by the Prosecution is prepared contrary to Articles 18(4), 21(2) and 21(4)(a) and (b) of the Statute of the Tribunal and to Rule 47(C) of the Rules of Procedure and Evidence (the “Rules”) for “imprecisions and inconsistencies” contained in the newly formulated paragraphs 42-45.

8. More specifically, the Defence argues that the statement of the Prosecution on surrounding predominantly non-Serb towns, villages, hamlets and neighbourhoods within predominantly Serb SAO Krajina and ARK municipalities is inconsistent with the data provided in paragraph 44 and Annex III, “which indicate a majority of Serbs living there.” The only predominantly non-Serb locations identified in the Second Amended Indictment would be the villages indicated in Section III of Annex III, referring to paragraphs 26 to 36 of the Indictment (Counts 2 to 4). Moreover, the Defence argues that the reference contained in paragraphs 42, 43, 45, and 23 *sub* I, to other “non-Serb population” is specified in Annex III only with reference to Croats and Muslims; a third amended indictment would therefore be needed to specify the ethnic background of the *other* non-Serb population allegedly deported, unlawfully transferred, and persecuted.

9. The Defence has not objected to the new formulation of Annexes I and II and to paragraphs 28, 29, 30, 35, and 52 of the Second Amended Indictment.

10. The Prosecution responds that the Second Amended Indictment clearly states that Serbs were a majority in the SAO Krajina, in each of the municipalities that comprised the SAO Krajina and in the four identified municipalities in the ARK. However, it submits that *within those Serb-majority areas, there were non-Serb towns, villages, hamlets, and neighbourhoods, overtaken by Serb forces as alleged in paragraph 43.* Some of these areas are identified in Section III of Annex III and form the basis for Counts 10-11, even though are explicitly referred to under Counts 2-4. In addition, the complete 1991 Croatia and Bosnia-Herzegovina censuses were provided to the Defence by the Prosecution. Finally, the Prosecution states that the primary focus of the Prosecution’s case will be the deportation and forcible transfer of Croat and Muslim populations from the SAO Krajina and the ARK municipalities; with regard to the *other* non-Serb nationalities, the data is also contained in the 1991 censuses.

### III. DISCUSSION

11. The Chamber has set forth the law on whether an indictment is pleaded with sufficient details and particularity in its Decision of 2 June 2003, and has applied those standards carefully reviewing the submissions of the parties in respect to the Amended Indictment. In particular, the Chamber wishes to recall that the Prosecution is under the obligation to set out the *nature and cause of the charges against the Accused*, so that the Accused may prepare his or her case; however, in the indictment *the Prosecution does not need to provide, or make specific reference to, the evidence by which it intends to prove the charges at trial.*<sup>2</sup>

12. In applying the above-mentioned standard to the Second Amended Indictment annexed to the Prosecution Motion to File Amended Indictment, the Chamber finds that the amendments to the Indictment pursuant to the Decision of 2 June 2003 accurately address the concerns of the Chamber. It is evident that inconsistencies of paragraphs 43 and 44 have been clarified; the addition of Annex III to the Second Amended Indictment shows the allegation that, on the one side, most municipalities in the region were predominantly Serb, and that, on the other side, that *the case of the Prosecution refers to predominantly non-Serb areas within those municipalities*. This, as well as the updated information contained in Annexes I and II, sets out the “material facts” with enough detail; the Accused is therefore sufficiently put on notice in relation to the charges against him.

13. In relation to the “other non-Serb” populations, a more thorough description of the ethnical background of these populations is not required in the Second Amended Indictment as a material fact; this information may be legitimately disclosed under the relevant Rules relating to the production of evidence.

14. With regard to the new formulation of Annexes I and II to the Second Amended Indictment, and to paragraphs 28, 29, 30, 35, and 52 of the Second Amended Indictment, the Chamber deems it appropriate to allow them, taking into account that the Defence did not raise objections in this respect and in view of the fact that more precise information on the alleged victims may better assist the Defence in the preparation of its case.

15. The Chamber draws the attention of the Defence to the standards of seriousness that should be respected in all submissions. The Chamber wishes to emphasize the fact that the Defence, in writing and filing the Second Motion, appeared not to read and interpret in good faith the amendments made by the Prosecution in order to comply with the Chamber’s requests for clarification.

**THEREFORE** for the foregoing reasons

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<sup>2</sup> See, in particular, paras 4-6 of the Decision of 2 June 2003.

**PURSUANT TO** Articles 18 and 21 of the Statute and Rules 72, 50(A) and 46(C) of the Rules;

**HEREBY**

**GRANTS** the Prosecution Motion to File Amended Indictment, and thereby

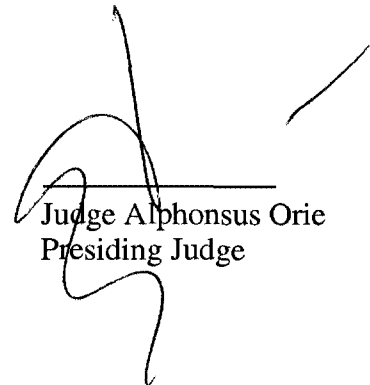
**ORDERS** the Prosecution to file the Second Amended Indictment (to be known as “Second Amended Indictment”) attached to the Prosecution Motion to File Amended Indictment with the Registry within one week;

**REJECTS** the Second Motion by the Defence and **DECLARES** it frivolous;

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

Dated this fifth day of September 2003,

At The Hague,  
The Netherlands



Judge Alphonsus Ori  
Presiding Judge

[Seal of the Tribunal]