



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-95-13/1-PT
Date: 9 March 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 9 March 2005

PROSECUTOR

v.

**MILE MRKŠIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN**

**DECISION ON THIRD MODIFIED CONSOLIDATED
AMENDED INDICTMENT**

The Office of the Prosecutor:

Mr. Jan Wubben

Counsel for the Accused Veselin Šljivančanin:

Mr. Novak Lukić
Mr. Momčilo Bulatović

I. APPLICATIONS AND BACKGROUND

1. **TRIAL CHAMBER II** (“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 the “Preliminary Motion in Respect to the Third Modified Consolidated Amended Indictment” (“Šljivančanin Motion”) filed by the Defence for Veselin Šljivančanin (“Accused”) on 13 December 2004 pursuant to Rule 72(A)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), alleging defects in the form of the Third Modified Consolidated Amended Indictment against the Accused.

2. The background to the different indictments in this case has been extensively set out in earlier decisions and the Trial Chamber sees no necessity to repeat it here.¹ It is sufficient to note that, on 29 October 2004, the Trial Chamber ordered the Prosecution to modify the Second Modified Consolidated Amended Indictment and to file it once modified.² As a result, the Prosecution filed the proposed Third Modified Consolidated Amended Indictment on 15 November 2004 (“Prosecution Submission”),³ in relation to which the Accused filed its most recent preliminary motion. The Office of the Prosecutor (“Prosecution”) filed its response on 13 January 2005 (“Response”).⁴

II. THE THIRD MODIFIED CONSOLIDATED AMENDED INDICTMENT

3. The Third Modified Consolidated Amended Indictment charges the three Accused, pursuant to Articles 7(1) and 7(3) of the Statute of the Tribunal (“Statute”), with various offences allegedly

¹ The initial indictment against the Accused was confirmed in 1995: *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case IT-95-13-I, Indictment, 7 November 1995. Mrkšić surrendered to the Tribunal on 15 May 2002, and the Prosecution was given leave to file what it termed the Second Amended Indictment against him alone: *Prosecutor v. Mrkšić*, Case IT-95-13/1, Second Amended Indictment, 29 August 2002. The Trial Chamber decided on Mrkšić’s allegations that it was defective, and ordered the Prosecution to amend it: *Prosecutor v. Mrkšić*, Case IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003 (“First Decision on Form of Indictment”). Radić and Šljivančanin eventually entered into custody of the Tribunal, and the Prosecution sought leave to file a single indictment against all three Accused. They in turn alleged that the Consolidated Amended Indictment was defective, and the Trial Chamber ordered the Prosecution to modify it: Decision on Form of Consolidated Amended Indictment and on Prosecution Application to Amend, 23 January 2004 (“Second Decision on Form of Indictment”); See also, Corrigendum to Decision on Form of Consolidated Amended Indictment and on Prosecution Application to Amend, 26 January 2004. Subsequently, preliminary motions alleging defects in the form of the Modified Consolidated Amended Indictment were filed by Mrkšić and Šljivančanin. The Trial Chamber ordered the Prosecution to modify the Modified Consolidated Amended Indictment and to file it once modified: Decision on Form of Modified Consolidated Amended Indictment, 20 July 2004 (“Third Decision on Form of Indictment”). The Prosecution thus filed the Second Modified Consolidated Amended Indictment on 26 August 2004, resulting in Mrkšić and Šljivančanin filing two preliminary motions again alleging defects in the latest Prosecution proposed Indictment.

² Decision on Form of Second Modified Consolidated Amended Indictment (“Fourth Decision on Form of Indictment”).

³ Prosecution Submission of the Proposed Third Modified Consolidated Amended Indictment Pursuant to the Trial Chamber Decision of 29 October 2004.

committed subsequent to the Serb takeover of the city of Vukovar (Republic of Croatia), namely, with the following eight counts:

- (a) persecutions,⁵ extermination⁶ and inhumane acts⁷ as crimes against humanity;
- (b) cruel treatment⁸ as a violation of the laws and customs of war;
- (c) murder, as both a crime against humanity⁹ and a violation of the laws and customs of war¹⁰ and
- (d) torture, as both a crime against humanity¹¹ and a violation of the laws and customs of war.¹²

III. GENERAL PLEADING PRINCIPLES

4. The Trial Chamber acknowledges that the pleading principles outlined in the First Decision on Form of Indictment, although limited to Mrkšić, were reiterated in the Second and Third Decisions on Form of Indictment and are applicable to the present decision but finds it unnecessary to reproduce them here.¹³

IV. CHALLENGES TO THE FORM OF THE THIRD MODIFIED CONSOLIDATED AMENDED INDICTMENT

5. The Trial Chamber reiterates that preliminary motions alleging defects in the form of an amended indictment are directed to the material added by way of amendment, and not to material present in the original indictment which was not objected to at an earlier stage.¹⁴ In the Šljivančanin Motion, the Defence submits that the Prosecution has yet again failed to comply with the Fourth Decision on Form of Indictment and furthermore introduced new charges in the Third Modified Consolidated

⁴ The Trial Chamber notes that the Prosecution did not respect the time-limit of fourteen days set in Rule 126*bis* of the Rules within which to file its Response but will nonetheless consider it in reviewing Šljivančanin Motion.

⁵ Count 1, Article 5(h) of the Statute.

⁶ Count 2, Article 5(b) of the Statute.

⁷ Count 6, Article 5(i) of the Statute.

⁸ Count 8, Article 3 of the Statute.

⁹ Count 3, Article 5 (a) of the Statute.

¹⁰ Count 4, Article 3 of the Statute.

¹¹ Count 5, Article 5 (f) of the Statute.

¹² Count 7, Article 3 of the Statute.

¹³ First Decision on Form of Indictment, paras 7-14; *See also* Second, Third and Fourth Decisions on Form of Indictment.

¹⁴ Third Decision on Form of Indictment, para. 25; Fourth Decision on Form of Indictment, paras 5-6; *See also* *Prosecutor v. Krnojelac*, Case No. IT-95-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000, para. 15.

Amended Indictment. The Prosecution responds that it has followed the Trial Chamber's directions in clarifying the Third Modified Consolidated Amended Indictment and that, in doing so, it did not add new charges to the Indictment. The Trial Chamber addresses below the different challenges raised by the Defence, all going to the nature of the alleged responsibility of the Accused.

6. The Defence submits that the Third Modified Consolidated Amended Indictment is still unclear as to the superior responsibility of the Accused with regard to i) the span of the "evacuation operation"¹⁵; ii) the identification of those forces over which the Accused allegedly exercises superior responsibility¹⁶ and; iii) the identification of the forces who allegedly participated in the commission of the crimes charged in the Third Modified Consolidated Amended Indictment¹⁷.

7. The Prosecution responds that paragraph 17 of the Third Modified Consolidated Amended Indictment ("paragraph 17") clearly defines the "evacuation operation" and identifies the forces over which the Accused allegedly exercised superior responsibility and who allegedly participated in the commission of the crimes charged in the Indictment.¹⁸

8. Firstly, paragraph 17 specifies that the "evacuation operation"

began at the Vukovar Hospital; continued with the detention of the detainees at the JNA barracks, and; extended to the transfer of the detainees to the Ovčara farm where the detainees were mistreated by Serb forces and eventually shot and killed by Serb forces at a nearby ravine.

The Trial Chamber considers that paragraph 17 is a just implementation of the Trial Chamber order to further specify the "evacuation operation".¹⁹

9. Secondly, in the Third Modified Consolidated Amended Indictment, the Accused's alleged subordinates are defined as "Serb forces", by reference to paragraph 7 of the Third Modified Consolidated Amended Indictment ("paragraph 7"), which include "members of the JNA, the Territorial Defence ("TO") of the so-called "Serbian Autonomous District/*Srpska autonomna oblast*/ Slavonia, Baranja and Western Srem" ("SAO SBWS"), TO of the Republic of Serbia ("Serbia"), and volunteer and paramilitary units including those organised by Vojislav Šešelj, all acting under the command of the JNA". The Prosecution alleges that the Accused first held *de facto* authority over a particular "military police battalion subordinated to the 1st gmtbr" and subsequently held *de facto* and *de jure* authority over the Serb forces as defined in paragraph 7. The Trial Chamber considers that paragraph 17, read in conjunction with paragraph 7, defines the totality of

¹⁵ Šljivančanin Motion, para. 16.

¹⁶ Šljivančanin Motion, paras 8-11.

¹⁷ Šljivančanin Motion, para. 12.

¹⁸ Response, paras 13, 15.

¹⁹ Fourth Decision on Form of Indictment, para. 11.

the forces over which the Accused is alleged to hold superior responsibility in enough detail and is thus in conformity with the Fourth Decision on Form of Indictment.

10. Thirdly, regarding the crimes with which the alleged subordinates of the Accused are charged, paragraph 17 is clear in charging all Serb forces over which the Accused had superior authority with all the crimes committed during the evacuation operation. The Trial Chamber thus considers that the Prosecution has identified the alleged crimes in enough detail for the Accused to be informed of the nature and cause of the case before it goes to trial.

11. The Trial Chamber further dismisses the Defence submission that the Prosecution introduced new charges in the Third Modified Consolidated Amended Indictment. Indeed, the Third Modified Consolidated Amended Indictment does not introduce “a basis for conviction that is factually and/or legally distinct from any already alleged in the indictment”²⁰ but merely clarifies the charges already contained in the previous indictments and complies with the Fourth Decision on Form of Indictment.

12. Additionally, the Trial Chamber notes that the Prosecution, pursuant to the order of the Trial Chamber of 29 October 2004, provided sufficient evidence, on a *prima facie* basis, to support the amendment that discussions concerning the evacuation of Vukovar Hospital took place between Mrkšić, Šljivančanin and the hospital staff.²¹

²⁰ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004, para. 30.

²¹ In its Fourth Decision on Form of Indictment, the Trial Chamber had directed the Prosecution to provide it with the witness statement of Dr. Vesna Bosanac, Vlado Franić and Neda Friber so that it could verify that there is evidence to support this amendment on a *prima facie* basis.

V. DISPOSITION

For the foregoing reasons,

PURSUANT to Rule 72 of the Rules

TRIAL CHAMBER II HEREBY GRANTS the Prosecution Submission and **ORDERS** that the Third Modified Consolidated Amended Indictment filed by the Prosecution on 15 November 2004 is the operative Indictment against Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin.

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

Dated this ninth day of March 2005,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]