



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-04-79-PT
Date: 19 July 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Order of: 19 July 2005

PROSECUTOR

v.

MIĆO STANIŠIĆ

**DECISION ON DEFENCE PRELIMINARY
MOTION ON THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Anna Richterova

Counsel for the Accused:

Mr. Branko Lukić

I. INTRODUCTION

1. This 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 seized of a “Motion Objecting to the Form of the Indictment” (“Motion”) filed on 4 May 2005 by the Defence of the Accused Mićo Stanišić, whereby it is submitted that the indictment suffers from defects that prevent the preparation of an adequate defence. The Defence submits that in relation to each count there are insufficient facts pleaded regarding: the alleged role played by the Accused; the identities of the victims; the identities of those who committed the crimes; the timing and location of the alleged crimes; and the acts alleged to have been performed by the Accused and other participants in the alleged joint criminal enterprise.

2. On 12 May 2005, the Prosecution filed the “Prosecution’s Response to Defence’s Motion Objecting to the Form of the Indictment” (“Response”) arguing that the Motion should be dismissed.

3. The indictment against the Accused was confirmed on 25 February 2005 (“Indictment”). The Prosecution charges the Accused with persecutions on political, racial and religious grounds under Article 5(h) of the Statute of the Tribunal (“Statute”); extermination under Article 5(b) of the Statute; murder under Articles 3 and 5(a) of the Statute; torture under Articles 3 and 5(f) of the Statute; cruel treatment under Article 3 of the Statute; inhumane acts under Article 5(i) of the Statute; deportation under Article 5(d) of the Statute; and forcible transfer (inhumane acts) under Article 5(i) of the Statute. On 11 March 2005, the Accused was transferred to the seat of the Tribunal. At his initial appearance on 17 March 2005, he pleaded not guilty to all the counts of the Indictment.

II. PLEADING PRINCIPLES

4. Articles 18(4) and 21(2), 21(4)(a) and (b) of the Statute, and Rule 47(C) of the Rules govern the form of the indictment.¹ Article 18(4) of the Statute provides that an indictment must set out “a concise statement of the facts and the crime or crimes with which the accused is charged.” The Prosecution has the obligation to plead the material facts underpinning the charges.² The pleadings in an indictment are sufficiently particular when they concisely set out the material facts with

¹ *Prosecutor v. Kupreškić et al.*, Case No.: IT-95-16-A, Appeals Judgement, 23 October 2001 (“*Kupreškić Appeals Judgement*”), para. 88.

² *Kupreškić Appeals Judgement; Prosecutor v. Hadžihasanović et al.*, Case No.: IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 (“*Hadžihasanović Decision*”), para. 8.

enough detail to inform an accused clearly of the nature and cause of the charges against him to enable him to prepare a defence.³

5. The materiality of a particular fact is dependent on the nature of the Prosecution's case. Materiality cannot be determined in the abstract.⁴ All legal prerequisites to the application of the offences charged must be pleaded in the indictment, in particular the nature of the alleged criminal conduct charged against the accused,⁵ which includes the proximity of the accused to the relevant events.⁶ The Prosecution is not required to plead the *evidence* by which it intends to prove the material facts.⁷

6. The Prosecution may plead alternative forms of criminal responsibility.⁸ Nothing prevents the Prosecution from pleading alternative responsibility under Article 7(1) or 7(3) of the Statute, but the factual allegations must be sufficiently precise to permit the accused to prepare his defence against both alternatives.⁹ Where individual counts in the indictment consist of more than one incident, the Prosecution must "clearly plead with respect to each incident under each count, whether its case is one of Article 7(1) or Article 7(3) responsibility, or both".¹⁰ The Appeals Chamber in *Blaškić* held that when the alleged criminal responsibility of an accused is based on Article 7(3), the Prosecution should also sufficiently identify the subordinates and their conduct for which the accused is alleged to be responsible.¹¹ The massive scale of the alleged crimes may in certain cases make it impracticable to plead such matters with a high degree of specificity.¹² If the

³ Articles 18(4), 21(2) and 21(4)(a) and (b) of the Statute; and Rule 47(C), which essentially restates Article 18(4). See also *Kupreškić Appeals Judgement*, para. 88.

⁴ *Kupreškić Appeals Judgement*, para. 89.

⁵ *Ibid.*

⁶ *Prosecutor v. Krnojelac*, Case No.: IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 11 February 2000, ("Second *Krnojelac* Decision"), para. 18; *Prosecutor v. Brđanin and Talić*, Case No.: IT-99-36-PT, Decision on Objections by Momir Talić, 20 February 2001, para. 18 (First *Brđanin & Talić* Decision); *Prosecutor v. Brđanin & Talić*, Case No.: IT-99-36-PT, Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 Feb 2001 ("Second *Brđanin & Talić* Decision"), para. 13.

⁷ *Kupreškić Appeals Judgement*, para. 88.

⁸ *Prosecutor v. Mrkšić*, Case No.: IT-95-13/1-PT, Decision on Form of Indictment, 19 June 2003, para. 21 ("*Mrkšić* Decision"); *Prosecutor v. Brđanin & Talić*, Case No.: IT-99-36-PT, Decision on Form of Third Amended Indictment, 21 September 2001, para. 22.

⁹ *Prosecutor v. Blaškić*, Case No.: IT-95-14-PT, Decision on Defence Motion to Dismiss the Indictment Based Upon Defects in the Form Thereof (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997 (English version filed on 21 April 1997), para. 32; See also *Prosecutor v. Krnojelac*, Case No.: IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999 ("*First Krnojelac* Decision"), para. 13, footnote 21.

¹⁰ *Prosecutor v. Deronjić*, Case No.: IT-02-61-PT, Decision on Form of Indictment, 25 October 2002 ("*Deronjić* Decision"), para. 26.

¹¹ *Prosecutor v. Blaškić*, Case No.: IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić Appeals Judgement*"), paras 216, 218.

¹² *Kupreškić Appeals Judgement*, 23 October 2001, para. 89; *Prosecutor v. Martić*, Case No.: IT-95-11-PT, Decision on Preliminary Motion Against the Amended Indictment, 2 June 2003, para. 6.

Prosecution is unable to identify those directly participating in the alleged crimes by name, it is sufficient to identify them by their “category” or as a group.¹³

7. The material facts to be pleaded will vary according to the particular form of liability charged under Article 7(1) of the Statute.¹⁴ The Appeals Chamber stated in *Aleksovski* that “[t]he practice by the Prosecution of merely quoting the provisions of Article 7(1) in the indictment is likely to cause ambiguity, and it is preferable that the Prosecution indicate in relation to each individual count precisely and expressly the particular nature of the responsibility alleged”.¹⁵ In the more recent *Blaškić* case, the indictment had merely repeated the wording of Article 7(1) of the Statute in relation to each count without providing details as to which acts it alleged the accused had committed which gave rise to his criminal responsibility. The Appeals Chamber considered that “[t]his manner of pleading does not clearly inform the accused of the exact nature and cause of the specific allegations against him” and that the Prosecution “should have pleaded the particular forms of participation under Article 7(1) with respect to each incident under each count”.¹⁶ However, it is settled that the Prosecution may charge all modes of liability under Article 7(1) of the Statute, provided that the material facts relied on to support each of these modes are pleaded in the Indictment.¹⁷

8. In the *Kvočka* Appeals Judgement, the Appeals Chamber found the indictment vague and defective since the Prosecution had failed to plead the material facts necessary, despite pleading “ordering” as a mode of responsibility, as the indictment did not include any material facts which alleged that any accused ordered the commission of any particular crime on any occasion.¹⁸

9. When an accused is charged with committing the crimes by participating in a Joint Criminal Enterprise (“JCE”), the existence of a JCE is a material fact which must be pleaded. The Prosecution must plead the *actus reus* and *mens rea* corresponding to the form(s) of JCE and the specific conduct upon which it intends to rely to infer each of the requisite *actus reus* and *mens rea*.¹⁹ However, where the Prosecution chooses to plead the specific state of mind required, the

¹³ *Blaškić* Appeals Judgement, para. 217; First *Krnojelac* Decision para. 46.

¹⁴ *Kupreškić* Appeals Judgement, para. 89.

¹⁵ *Prosecutor v. Aleksovski*, Case No.: IT-95-14/1-A, Judgement, para. 171, footnote 319; *Krnojelac* Appeals Judgement, para. 134. See also *Prosecutor v. Delalić et al.*, Case No.: IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeals Judgement”), paras 350-351.

¹⁶ *Blaškić* Appeals Judgement, para. 226.

¹⁷ *Prosecutor v. Kvočka*, Case No.: IT-98-30/1-A, 28 February 2005 (“*Kovčka* Appeals Judgement”), para. 29.

¹⁸ *Ibid.*, para. 41.

¹⁹ *Prosecutor v. Krnojelac*, Case No.: IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000 (“Third *Krnojelac* Decision”), para. 16.

facts by which that state of mind is to be established are to be regarded as matters of evidence that need not be pleaded.²⁰

10. Regarding superior responsibility pursuant to Article 7(3) of the Statute, the Appeals Chamber recently held in the *Blaškić* case that:²¹

In accordance with the jurisprudence of the International Tribunal, the Appeals Chamber considers that in a case where superior criminal responsibility pursuant to Article 7(3) of the Statute is alleged, the material facts which must be pleaded in the indictment are:

(a) (i) that the accused is the superior²² of (ii) subordinates sufficiently identified,²³ (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct²⁴ – and (iv) for whose acts he is alleged to be responsible,²⁵

(b) the conduct of the accused by which he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates,²⁶ and (ii) the related conduct of those others for whom he is alleged to be responsible.²⁷ The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision,²⁸ because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue;²⁹ and

(c) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.³⁰

Further, the Appeals Chamber stated that even though the Indictment alleged that Blaškić was the Commander of the HVO forces, which in principle is a sufficient basis for asserting the material fact that “he was in a position of superior authority”, the indictment did not “set out individuals and units subordinated to him, or material facts regarding acts committed and individuals who committed [the crimes]” and it therefore held that the indictment had failed to plead material facts.³¹ Further, in *Blaškić*, the Appeals Chamber held that where the Prosecution case is based on “superior

²⁰ *Prosecutor v. Brđanin & Talić*, Case No.: IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001 (“Third *Brđanin & Talić* Decision”), para. 33.

²¹ See *Blaškić* Appeal Judgement, paras 228, 245, where the Appeals Chamber found that while the Second Amended Indictment clearly identified the command position of the Appellant, it did not set out the individuals and units subordinated to him, or the material facts regarding the acts committed and the individuals who committed them.

²² *Deronjić* Decision, para. 15.

²³ *Ibid.*, para. 19.

²⁴ *Čelebići* Appeals Judgement, para. 256.

²⁵ First *Krnjelac* Decision, para. 18; First *Brđanin & Talić* Decision, para. 19; *Prosecutor v. Krajišnik*, Case No.: IT-00-39-PT, Decision Concerning Preliminary Motion on the Form of the Indictment, 1 August 2000 (“*Krajišnik* Decision”), para. 9; *Hadžihasanović* Decision, paras 11, 17; *Mrkšić* Decision, para. 10.

²⁶ First *Krnjelac* Decision, para. 18; *Krajišnik* Decision, para. 9; First *Brđanin & Talić* Decision, para. 19; *Hadžihasanović* Decision, para. 11; *Mrkšić* Decision, para. 10.

²⁷ Second *Krnjelac* Decision, para. 38; *Hadžihasanović* Decision, para. 11; *Mrkšić* Decision, para. 10.

²⁸ First *Krnjelac* Decision, para. 18; First *Brđanin & Talić* Decision, para. 19; *Hadžihasanović* Decision, para. 11; *Mrkšić* Decision, para. 10.

²⁹ First *Krnjelac* Decision, para. 18; First *Brđanin & Talić* Decision, para. 19; *Prosecutor v. Kvočka et al.*, Case No.: IT-98-30-PT, Decision on Defence Preliminary Motions on the Form of the Indictment, 12 April 1999 (“*Kvočka* Decision”), para. 17; *Krajišnik* Decision, para. 9; *Hadžihasanović* Decision, para. 11; *Mrkšić* Decision, para. 10.

³⁰ First *Brđanin & Talić* Decision, para. 19; Second *Krnjelac* 2000 Decision, para.18; *Krajišnik* Decision, para. 9; *Hadžihasanović* Decision, para. 11; *Deronjić* Decision, para. 7; *Mrkšić* Decision, para. 10.

³¹ *Blaškić* Appeals Judgement, para. 228.

responsibility”, the Prosecution must plead, *inter alia*, that the accused knew or had reason to know that the alleged crimes were about to be committed or had been committed by his subordinates.³² The basis for such an allegation, however, is not a material fact which must be pleaded.³³

11. While each of the material facts should be expressly pleaded, it may be sufficient in some circumstances that they can be deduced by necessary implication.³⁴ It is not enough, however, for the pleading merely to assume the existence of a material fact or legal pre-requisite.³⁵ The Appeals Chamber in *Kordić* held that a persecution count is to be read as an “umbrella count” which, even if the description of the count in itself in the indictment is vague, may be sufficiently precise if read in the context of the whole indictment.³⁶

III. DISCUSSION

12. The Defence first claims that the Indictment suffers numerous defects by not providing sufficient details in relation to the various alleged crimes.³⁷ The Prosecution responds that the language of the Indictment adequately puts the accused on notice of the specific crimes, including time and location.

Count 1 – Persecutions

13. The Trial Chamber accepts from paragraph 15 of the Indictment that the offences under Count 1 are alleged to have occurred between 1 April 1992 and 31 December 1992, in the Autonomous Region of Krajina (“ARK”) and in the identified municipalities (“Municipalities”). The Trial Chamber, however, finds that paragraph 16 of the Indictment suffers from a number of defects.

14. Subparagraph 16(a) is not clear whether the “deportation and forcible transfers” are distinct from and additional to the “attacks on villages and non-Serb areas”, and whether Schedule A lists only the former or both. The use of the semi-colon in subparagraph 16(a) does much to create this confusion. If the two are intended to be distinct, it is not apparent which are alleged to be attacks on villages and non-Serb areas, and which are deportations and forcible transfers.

³² *Ibid.*, paras 216, 218.

³³ *Hadžihasanović* Decision, para. 21.

³⁴ *Ibid.*, para. 10; *Prosecutor v. Brđanin & Talić*, Case IT-99-36-PT, Decision on Form of Fourth Amended Indictment, 23 November 2001, para. 12; First *Brđanin & Talić* Decision, para. 48.

³⁵ *Hadžihasanović* Decision, para. 10; First *Brđanin & Talić* Decision, para. 48.

³⁶ *Prosecutor v. Kordić & Čerkez*, Case No.: IT-95-14/2-A, Appeals Judgement, 17 December 2004, paras 132-172.

³⁷ Motion, para. 3.

14. With regard to subparagraph 16(c) of the Indictment, the Prosecution alleges that the crimes occurred “during and after attacks on towns and villages”. The Indictment, however, does not indicate when and where these attacks occurred. It is unclear, for example, whether the Prosecution alleges that all villages in the ARK and the Municipalities were attacked constantly throughout the mentioned period. The Prosecution also alleges that the crimes in subparagraph 16(c) occurred “during deportation and forcible transfer”. However, neither subparagraph 16(c) nor paragraph 21 relating to “deportation and forcible transfer” provide any details as to where and when this deportation and forcible transfer occurred. Further, it is unclear whether the alleged “torture, physical and psychological abuse, sexual violence and forced existence under inhumane living conditions” is intended to particularize only what follows the semi-colon in subparagraph 16(c) or the whole of the subparagraph. If the latter is intended, no particulars of the cruel and inhumane treatment have been alleged.

15. In subparagraph 16(d) of the Indictment, the Prosecution refers to unlawful detention in places listed in Schedule D. The Trial Chamber considers that Schedule D provides ample detail of the mistreatments but notes that Schedule D does not include any reference to dates. The Prosecution refers only to the general time period of 1 April 1992 and 31 December 1992. It is unclear, however, whether it is alleged that the incidents listed in Schedule D were on-going throughout the entire period.

16. Subparagraphs 16(c) and (d) may be read to intend to mirror the same conduct as described in paragraph 19 (Counts 5, 6, 7 and 8). However, if this is so, the Prosecution uses the terms “cruel or inhumane treatment” to describe the conduct in relation to Count 1, while in relation to Counts 5, 6, 7 and 8 the Prosecution refers to it as “torture, cruel treatment and inhumane acts”. If it is the Prosecution’s case that the conduct described in subparagraphs 16(c) and (d) mirrors that described in paragraph 19, this should be made clear and the language standardized to avoid confusion.

17. With regard to subparagraphs 16(e) and (f) of the Indictment, the Indictment refers to Schedule C. Schedule C, however, does not include any references to dates. It is not sufficiently clear whether the Prosecution alleges that the unlawful detention and establishment of inhumane living conditions occurred in all the places listed in Schedule C throughout the entire time period of 1 April 1992 through 31 December 1992 or something less.

18. Subparagraph 16(g) of the Indictment includes no details of the alleged forcible transfers and deportations. Although the alleged crimes are further detailed in paragraph 21 of the Indictment, it is not clear as to where and when these forcible transfers and deportations occurred. The Trial Chamber also notes that the charges in paragraph 21 of the Indictment refer to “on other

occasions” and describes a scenario which does not appear to be linked to the “attacks”. The Prosecution should provide further details in this respect.

19. With regard to subparagraphs 16(h), 16(i), and 16 (j) of the Indictment, the Trial Chamber notes that apart from the general reference in paragraph 15 to the ARK and the Municipalities and the timeframe of 1 April 1992 through 31 December 1992, the Indictment fails to identify when or where these alleged crimes occurred. The Trial Chamber considers it impermissibly vague and requires the Prosecution to provide further details in this respect.

20. The Trial Chamber appreciates that it may not be possible to provide detailed or exhaustive particularities of matters alleged.³⁸ However, it is still necessary – both to inform the Defence of the case which is to be answered and for the efficient conduct of the trial – that there be particularization to the extent that the Prosecution is reasonably able to do so.³⁹

21. With regard to particulars, the degree of detail that is required presents a special difficulty. The Trial Chamber recognizes that the massive scale of the crimes alleged to have occurred – and in a time of armed conflict in which there was a breakdown of the ordinary social structures of the community – limits the capacity of the Prosecution to provide particulars to the same degree as would be usual in a domestic criminal law system. For example, it may not be possible to give particulars of all persons alleged to have been killed during a particular incident even though there is credible evidence of the incident and that many were killed during the incident. The fact that there may be difficulties, however, does not excuse the Prosecution from making due efforts to provide particulars of the crimes it alleges, to the extent at least that it is in a position to do so. In the present case, for example, while it may not be in a position to provide exhaustive lists of such matters as the names of all towns and villages allegedly attacked, or the details of all alleged victims, and the exact total number, it is reasonable to expect that it is able to provide some particulars of such matters. Just what can be provided by way of particulars will depend greatly on the circumstances of each incident.

22. The Trial Chamber notes that although the Prosecution is not required to provide exhaustive particulars, the particulars which it does provide in the Indictment may limit the scope of the evidence it may lead at the trial – in the absence, that is, of notice of additional evidence. The Defence is entitled to proceed on the basis that the details pleaded are the only case which it has to

³⁸ See *Hadžihasanović* Decision, para. 43.

³⁹ See *Kvočka* Decision, para. 18.

meet in relation to the offences charged, unless there has been adequate notice of additional incidents.⁴⁰

Counts 2, 3 and 4 – Extermination and Murder

24. The Defence objects to the charges in Counts 2, 3 and 4 and submits that the Indictment suffers from numerous defects given that it fails to mention “the names of the victims at all, let alone other facts like when the crimes were committed, who specifically committed the crimes, where the crimes were committed, participants, means or anything like that”.⁴¹

25. The Trial Chamber finds that paragraph 17 of the Indictment suffers from the difficulty that it relies on Schedules A and B to provide particulars, but while those Schedules identify detention facilities, they leave unclear whether the others named places are alleged to be the locations of “attacks on towns and villages”, the “deportations or forcible transfers”, or both. Further, none of the alleged victims have been identified. If their identities are not known at this stage, that should be specified. Otherwise, or to the extent known, the victims should be identified.

Counts 5, 6, 7 and 8 – Torture, Cruel Treatment and Inhumane Acts

26. With regard to Counts 5, 6, 7 and 8 of the Indictment, the Trial Chamber finds that paragraph 19 provides no particulars of the alleged attacks on villages and the forcible transfer and deportation relied on. The Trial Chamber refers to the discussion above and orders the Prosecution to provide the further details.

Counts 9 and 10 – Deportation and Inhumane Acts

27. With regard to Counts 9 and 10 of the Indictment, the Trial Chamber finds that paragraph 21 provides no particulars of the villages and towns alleged to have been subjugated. The Trial Chamber refers to its discussion above and orders the Prosecution to provide further details.

Modes of responsibility

28. The Defence argues that the Indictment should identify the role played by the Accused in each incident, the type of acts he is alleged to have performed, and if alleged to have been performed in concert with others, the identity of the others.⁴² The Defence further submits that in relation to the alleged criminal responsibility of the Accused under Article 7(3) of the Statute, the

⁴⁰ See *Hadžihasanović* Decision, para. 43; *Prosecutor v. Stanšić & Simatović*, Case No.: IT-03-69-PT, Decision on Defence Preliminary Motions, 14 November 2003, p. 5.

⁴¹ Motion, para. 3.

⁴² *Ibid.*, paras 4-9.

Prosecution should provide details regarding the perpetrators of the alleged crimes. The Prosecution responds that it has provided sufficient details and that the case-law of the Tribunal allows indictments to identify perpetrators by groups or categories.

29. The Trial Chamber notes that paragraph 3 of the Indictment refers to “all subordinates”. It is not clear, however, whether this is intended to allege that all members of the Republika Srpska police forces were the subordinates of the Accused, or all the subordinates of the other forces, units and bodies referred to in paragraph 3. Further, paragraph 3 is not clear whether the “Security Service Centres” are alleged to be a component of the Republika Srpska police forces.

30. With regard to superior responsibility under Article 7(3), paragraph 13 of the Indictment provides that the Accused “exercised *de jure* and *de facto* command and control over the police forces that participated in the crimes alleged in this indictment”. It is the view of the Trial Chamber that the reference to “police forces” without any further specification is impermissibly vague. The Indictment, describes the Accused’s criminal responsibility pursuant to Article 7(1) of the Statute as “commanding and directing members and agents of the RS MUP”.⁴³ The Trial Chamber considers that if the Indictment is understood to mean that under Article 7(3), “police forces” refer to “members and agents of the RS MUP”, the pleading would be sufficiently precise. The Trial Chamber therefore requires the Prosecution to clarify this point.

29. The Trial Chamber in *Deronjić* held that where individual counts in the indictment consist of more than one incident, the Prosecution must “clearly plead with respect to each incident under each count, whether its case is one of Article 7(1) or Article 7(3) responsibility, or both.”⁴⁴ The present Indictment consists of several incidents under each count, but the Trial Chamber has understood the Prosecutions allegation to be that it alleges responsibility under both Article 7(1) and Article 7(3) for each incident mentioned in the indictment or listed in one of the Schedules attached to the Indictment. The Trial Chamber requires the Prosecution to clarify only in the event the Trial Chamber’s understanding is incorrect and expects the Prosecution to provide further details in this regard in the Pre-Trial Brief in order to assist the proceedings.

Cumulative charging

30. The Defence also objects to the fact that the Accused “is charged with two forms of criminal responsibility, which exclude one another.”⁴⁵ The Indictment currently pleads criminal responsibility under Article 7(1) – instigating, committing/JCE, and aiding and abetting – and

⁴³ Indictment, para. 8(a).

⁴⁴ *Deronjić* Decision, para. 26.

⁴⁵ Motion, para. 13.

superior responsibility under Article 7(3) in relation to each and every count. The Trial Chamber points out that it is settled case-law of this Tribunal that cumulative charging is permissible,⁴⁶ while cumulative conviction is not under certain circumstances. The Trial Chamber therefore allows the Prosecution to charge the Accused under both Articles 7(1) and 7(3) of the Statute.

IV. DISPOSITION

For the foregoing reasons, pursuant to Rule 72 of the Rules of Procedure and Evidence, the Trial Chamber hereby,

GRANTS the Motion, in part and **ORDERS** the Prosecution to amend the indictment in the following way

in paragraph 3, clarify whether “all subordinates” refers to Republika Srpska police forces, and whether the “Security Service Centres” are a component of the Republika Srpska police forces;

in paragraph 13, clarify whether “police forces” refers to “members and agents of RS MUP”;

in subparagraph 16(a), clarify whether the “deportation and forcible transfers” are distinct from the “attacks on villages and non-Serb area”, and clarify which event(s) Schedule A refers to;

in subparagraph 16(c), specify the time and location of the attacks and the and forcible transfers; and clarify which event(s) the inhumane treatment refers to;

in subparagraphs 16(c) and (d), clarify or harmonize the language used with that of paragraph 19;

in subparagraph 16(d), add dates to Schedule D;

in subparagraphs 16(e) and 16(f), add dates to Schedule C;

in subparagraph 16(g), specify the time period and location, and specify the circumstances of the “on other occasions”;

in subparagraphs 16 (h), 16 (i) and 16 (j), specify the time period and location;

in paragraph 17, clarify whether the named locations relate to “attacks on town and villages”, “forcible transfers”, or both; specify the identity, to the extent known of the victims;

⁴⁶ *Čelebići Appeals Judgement*, para. 400.

in paragraph 19, add dates to Schedule D (*cf.* subparagraph 16(d)) and specify the time and location of the attacks and the deportations and forcible transfers (*cf.* subparagraph 16(c));

in paragraph 21, specify the time period and location (*cf.* subparagraph 16 (g)); and

clarify whether the Trial Chamber correctly understood the Indictment to mean that each incident under each count is charged under both Article 7(1) and Article 7(3), and if not specify;

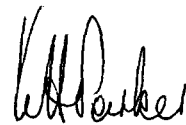
and to file an amended indictment no later than 2 August 2005;

ORDERS that the Defence file objection to the amended indictment, if any, no later than 16 August 2005;

DENIES all other aspects of the Motion.

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

Dated this nineteenth day of July 2005,
At The Hague,
The Netherlands



Kevin Parker
Presiding Judge

[Seal of the Tribunal]