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**UNITED  
NATIONS**



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-97-25/1-PT  
Date: 21 March 2006  
Original: ENGLISH

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. Hans Holthuis

**Decision:** 21 March 2006

**PROSECUTOR**

v.

**SAVO TODOVIĆ  
MITAR RAŠEVIĆ**

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**DECISION ON TODOVIĆ DEFENCE MOTION ON THE FORM  
OF THE JOINT AMENDED INDICTMENT**

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**Office of the Prosecutor:**

Ms. Hildegard Uertz-Retzlaff

**Counsel for Accused:**

Mr. Vladimir Domazet for Mitar Rašević  
Mr. Aleksandar Lazarević for Savo Todović

### A. 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 “Savo Todović’s Defence preliminary Motion on the form of the joint amended indictment”, filed on 27 June 2005 (“Todović Motion”). In its Motion, the Defence of the Accused Todović (“Todović Defence”) requests the Trial Chamber to order the Office of the Prosecutor (“Prosecution”) to amend alleged defects in the Prosecution’s “Proposed Joint Amended Indictment with Schedules A to E”, filed on 25 May 2005 (“Joint Amended Indictment”).

### B. Procedural history

2. On 17 June 1997, Judge Lal Chand Vohrah confirmed the initial indictment against Milorad Krnojelac, Savo Todović and Mitar Rašević (“Initial Indictment”). On 15 June 1998, Milorad Krnojelac was the first of the three Accused to be transferred to this Tribunal, and a judgement was rendered in his case on 15 March 2002. The case against Krnojelac was finalised when the Appeals Chamber rendered its judgement on 17 September 2003.
3. On 15 August 2003, Mitar Rašević was transferred to the Tribunal, and on 2 December 2003, the Prosecution submitted its first amended indictment (“First Amended Indictment”) against the Accused Rašević;<sup>1</sup> at that time the Accused Todović was still at large. On 12 January 2004, the Defence of the Accused Rašević (“Rašević Defence”) filed a motion stipulating alleged errors in the First Amended Indictment. On 28 April 2004, the Trial Chamber ordered the Prosecution to resolve certain ambiguities in the First Amended Indictment, which the Prosecution did on 12 May 2004 when it filed its [second] amended indictment against the Accused Rašević (“Amended Indictment”).
4. On 1 and 4 November 2004, while the Accused Todović was still at large, the Prosecution filed motions requesting referral to Bosnia and Herzegovina of both the Todović and the Rašević case pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal

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<sup>1</sup> *Prosecutor v. Mitar Rašević*, Case No. IT-97-25/1, Prosecution motion for leave to amend the original indictment with attached Annex A and B and Confidential Annex C and D, 2 December 2003, para. 2.

(“Rules”).<sup>2</sup> On 2 and 5 November 2004, the President of the Tribunal appointed a Referral Bench to consider the two referral motions.

5. On 15 January 2005, the Accused Todović surrendered to the Tribunal. On 10 March 2005, the Todović Defence filed a motion alleging defects in the form of the Initial Indictment.<sup>3</sup> On 23 March 2005, the Trial Chamber stayed its decision on this motion, and ordered the Prosecution to first reconcile the [Initial] Indictment against Todović with the Amended Indictment against Rašević. On 20 April 2005, the Prosecution instead filed an amended indictment against the Accused Todović. On 17 May 2005, the Trial Chamber ordered the Prosecution to reconcile the latter indictment with the Amended Indictment against the Accused Rašević. Finally, on 25 May 2005, the Prosecution filed its Joint Amended Indictment. On 27 June 2005, the Todović Defence filed the Motion of which the Trial Chamber is now seized.<sup>4</sup> The Prosecution responded to the Todović Motion on 4 July 2005 (“Prosecution Response”).<sup>5</sup> On 10 July 2005, the Todović Defence filed a request for leave to reply, alongside with its Reply (“Todović Reply”).<sup>6</sup>
6. On 8 July 2005, the Referral Bench ordered the referral of the Todović and Rašević case to the authorities of Bosnia and Herzegovina (“Decision on Referral”).<sup>7</sup> In order to decide on the merits of the request for referral, the Referral Bench considered the Joint Amended Indictment as the operative indictment. On 25 July 2005, both the Prosecution and the Todović Defence filed a notice of appeal against the Decision on Referral. On 19 September 2005, the Prosecution withdrew its appeal against the Decision on Referral.

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<sup>2</sup> *Prosecutor v. Todović*, Case No. IT-97-25, Motion by the Prosecutor under Rule 11 *bis* (A), filed on 1 November 2004 and *Prosecutor v. Rašević*, Case No. IT-97-25/1, Motion by the Prosecutor pursuant to Rule 11 *bis* (A), filed on 4 November 2004. Although the Prosecution seems to have dealt with the Rašević and Todović case as two separate cases, the Trial Chamber has always considered them as one case, namely, Case No. IT-97-25/1. See also Transcript of initial appearance Savo Todović, T.47-48 (19 January 2005): “Judge Agius: (...) According to the indictment, and to ensure that filings relating to the accused Rašević were not confused with those in the ongoing Krnojelac case, the Registrar decided to assign a new case number to the case of Prosecutor versus Savo Todović and Mitar Rašević, namely case number IT-97-25/1, which is effectively the reference number that we’re using for this case today. The indictment has since been amended with relation to the accused Rašević but the operative indictment against Savo Todović remains the original indictment as confirmed by Judge Vohrah way back on the 17th of June of 1997.”

<sup>3</sup> *Prosecutor v. Savo Todović and Mitar Rašević*, Case No. IT-97-25/1-PT, Savo Todović’s Defence preliminary motion pursuant to the Rule 72, A, ii, 10 March 2005.

<sup>4</sup> *Prosecutor v. Savo Todović and Mitar Rašević*, Case No. IT-97-25/1-PT, “Savo Todović’s Defence preliminary motion on the form of the Joint Amended Indictment”, 27 June 2005. The deadline of 27 June 2005 had been previously set by the Trial Chamber in its order of 17 May 2005.

<sup>5</sup> *Prosecutor v. Savo Todović and Mitar Rašević*, Case No. IT-97-25/1-PT, Prosecution’s Response to Savo Todović’s Defence preliminary motion on the form of the Joint Amended Indictment”, filed on 4 July 2005.

<sup>6</sup> *Prosecutor v. Savo Todović and Mitar Rašević*, Case No. IT-97-25/1-PT, Savo Todović’s Defence application for leave to reply and the Defence reply to “Prosecutor’s Response to Savo Todović’s Defence preliminary motion on the form of the Joint Amended Indictment”, filed on 10 July 2005.

<sup>7</sup> *Prosecutor v. Mitar Rašević and Savo Todović*, Case No. IT-97-25/1-PT, “Decision on Referral of case under Rule 11 *bis* with confidential annexes I and II”, filed partly confidential on 8 July 2005.

7. At a status conference held on 20 October 2005, the pre-trial Judge explained that the Trial Chamber had agreed to stay the decision on the Todović Motion until the appeal on the Decision on Referral had been finalised. The reasons given were, *inter alia*, that it would be more logical for the Prosecutor in Bosnia Herzegovina, once the case was referred to it, and in light of its national laws and regulations regarding the legal qualifications of facts, to take into account the issues raised in the Todović Motion when drafting its own indictment.<sup>8</sup>
8. On 23 February 2006, the Appeals Chamber rendered its Decision (“Appeals Decision”)<sup>9</sup> and found that “due to the fact that the [Decision on Referral] is based on an indictment which is currently subject to a challenge by the [Todović Defence] and yet to be accepted by the Trial Chamber as the operative indictment, this amounts to an error of law which invalidates the [Decision on Referral] (...)”.<sup>10</sup> The Appeals Chamber concluded that the matter should be remitted to the Referral Bench, but that any decision by it should be deferred until this Trial Chamber renders a decision on the Todović Motion.<sup>11</sup>
9. Regarding the Accused Rašević, against whom any discussion on the form of the indictment had been fully settled and who had not appealed the Decision on Referral, which therefore has become final with respect to him, the Appeals Chamber decided that the execution of the Decision on Referral would be suspended “until a decision on the [Todović Motion] has been rendered and a decision confirming the operative indictment is issued”.<sup>12</sup>

### C. Applicable Law

10. As a general principle of pleading, it is well recognized that each paragraph of an indictment should not be read in isolation from the rest of the indictment, but rather should be considered in the context of the other paragraphs therein.<sup>13</sup>
11. Article 21(4)(a) of the Statute of the Tribunal (“Statute”) provides that an accused shall be entitled to be informed in detail of the nature and cause of the charges against him. This

<sup>8</sup> Transcript, T.177 (20 October 2005).

<sup>9</sup> *Prosecutor v. Todović*, Case No. IT-97-25/1-AR11bis.I, “Decision on 11 bis referral”, filed on 23 February 2006.

<sup>10</sup> Appeals Decision, para. 14.

<sup>11</sup> Appeals Decision, para. 19.

<sup>12</sup> Appeals Decision, paras 18-19.

<sup>13</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on Defence Preliminary Motion Under Rule 72(A)(ii), 18 July 2005, para. 21. See also *Prosecutor v. Mrkšić et al*, IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003, para. 28.

provision therefore applies to the form of indictments.<sup>14</sup> This right translates into an obligation on the part of the Prosecution to plead the material facts underpinning the charges in an indictment.<sup>15</sup> The pleadings in an indictment are sufficiently particular when they concisely set out the material facts of the Prosecution's case with enough detail to inform an accused clearly of the nature and cause of the charges against him, enabling him to prepare a defence effectively and efficiently.<sup>16</sup>

12. The materiality of a particular fact depends on the nature of the Prosecution's case.<sup>17</sup> A decisive factor in determining the degree of specificity with which the Prosecution must particularise the facts of its case in an indictment is the nature of the alleged criminal conduct charged,<sup>18</sup> which includes the proximity of the accused to the relevant events.<sup>19</sup> The precise details to be pleaded as material facts are those regarding the acts of the accused, rather than those persons for whose acts he is alleged to be responsible.<sup>20</sup>

#### D. Discussion

13. In its Motion, the Todović Defence raises a number of alleged defects in the Joint Amended Indictment, as well as a number of issues which in its view should be clarified or supplemented with additional information. The Trial Chamber will deal with each of the arguments raised by the Todović Defence separately.

##### *Requests for further particulars*

14. In paragraphs 2 and 9 (a) of the Joint Amended Indictment, it is alleged that the Accused Todović was "second in command" in the hierarchy of the KP Dom prison staff. The Todović Defence argues that the Prosecution should plead more precisely what the exact set

<sup>14</sup> *Prosecutor v. Kupreškić and Others*, Case No. IT-95-16-A, Judgment, 23 October 2001 ("Kupreškić Appeals Judgment"), para. 88.

<sup>15</sup> *Kupreškić Appeals Judgment* (with reference to Arts. 18(4), 21(2) and 21(4)(a) and (b) of the Statute and Rule 47(C) of the Rules); and *Prosecutor v. Hadžihasanović, Alagić and Kubura*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 ("Hadžihasanović Indictment Decision"), para. 8.

<sup>16</sup> See *Kupreškić Appeals Judgment*, para. 88; Arts. 18(4), 21(2) and 21(4)(a) and (b) of the Statute; and Rule 47(C) of the Rules, which essentially restates Art. 18(4).

<sup>17</sup> *Kupreškić Appeals Judgment*, para. 89.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Hadžihasanović Indictment Decision*, para. 10; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001 ("First *Brđanin & Talić* Decision"), para. 18. It is essential for the accused to know from the indictment just what that alleged proximity is: *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 February 2001 ("Second *Brđanin & Talić* Decision"), para. 13.

<sup>20</sup> Second *Brđanin & Talić* Decision, para. 10.

of tasks of the Accused was, and whether or not he is alleged to have been in command in the absence of the commander of the prison staff, Milorad Krnojelac.<sup>21</sup> However, concerning this request for details with regard to the Accused's *de jure* and *de facto* authority, precise details of such material facts are generally a matter of evidence to be presented at trial.<sup>22</sup> The Trial Chamber considers that the Prosecution has sufficiently pleaded the duties and responsibilities of the Accused in paragraph 9 of the Joint Amended Indictment.

15. Similarly, the Defence argued that the alleged position of the Accused as a "senior member" of the KP Dom prison staff is insufficiently clear.<sup>23</sup> In its Response, the Prosecution stated that "after August 1993, the Accused while losing his official position as deputy commander remained a senior official in the prison management although in a legally unspecified position."<sup>24</sup> If, after August 1993, the Accused was to be held responsible pursuant to Article 7 (3) of the Statute, the above description would not have been sufficiently precise. Namely, in a case based upon superior responsibility, one of the crucial elements to be pleaded in the indictment is a clear description of the *de jure* and *de facto* authority of a superior over his subordinates.<sup>25</sup> However, paragraph 11 of the Joint Amended Indictment clearly states that the Accused is *only* held criminally responsible pursuant to Article 7 (3) of the Statute for the period that he is alleged to have been deputy commander of the KP Dom from April 1992 until at least August 1993. Therefore, the Trial Chamber considers that the position and role of the Accused in the alleged Joint Criminal Enterprise have been sufficiently pleaded in the Joint Amended Indictment.

16. It has been argued by the Todović Defence that several 'authorities' or organs specified in the Joint Amended Indictment have not been defined in a clear manner. It specifically refers to terms such as: "external authorities",<sup>26</sup> "external military authorities",<sup>27</sup> and "outside authorities".<sup>28</sup> These are very general allegations. If they reflect all that is known to the Prosecution, then in their particular context in the Joint Amended Indictment, the references to these "authorities" can be accepted as providing sufficient particularity for the Accused to

<sup>21</sup> Todović Motion, para. 14.

<sup>22</sup> *Prosecutor v. Strugar*, IT-01-42-PT, Decision on Defence Preliminary Motion Concerning the Form of the Indictment, 28 June 2002, para. 18.

<sup>23</sup> Todović Motion, para. 13.

<sup>24</sup> Prosecution Response, para. 12.

<sup>25</sup> *Prosecutor v. Brđanin*, Case No. IT-99-36-PT, Decision on objections by Momir Talić to the form of the amended indictment, 20 February 2001, para. 19.

<sup>26</sup> Joint Amended Indictment, paragraph 9 (c).

<sup>27</sup> Joint Amended Indictment, para. 52.

adequately prepare his case. However, *if* the Prosecution is in possession of more detailed information about any of the aforementioned “authorities,” fairness and the efficient conduct of the trial would be better served by amendment to provide further specificity in the Joint Amended Indictment. The Prosecution should either provide further specificity, or confirm that it is not in a position to do so, in respect of each of the alleged “authorities”.

17. Similarly, the Todović Defence has argued that several entities mentioned in the Joint Amended Indictment, such as “unidentified guards,”<sup>29</sup> “unidentified soldiers,”<sup>30</sup> “a KP Dom guard,”<sup>31</sup> “two guards”, “an unknown number of detainees”,<sup>32</sup> “other unidentified detainees”,<sup>33</sup> or on the other hand, “thousands” of Muslims and other non-Serbs<sup>34</sup> are imprecise and “impede efficient preparation of the Defence”.<sup>35</sup> However, the Trial Chamber notes that the Prosecution cannot be required to perform the impossible. Obviously, some witnesses may not know by which guards they were mistreated, and in some cases the number of victims cannot possibly be known due to the long period over which the alleged mistreatments took place. An inability to provide better particulars will inevitably reduce the value of the evidence of the witnesses who are unable to be more specific, but it does not affect the form of the indictment.<sup>36</sup> The Trial Chamber, specifically in light of the detailed schedules attached to the indictment, considers that the Prosecution has pleaded with sufficient detail the respective charges in the indictment wherein the above entities are so described.

18. The Todović Defence has argued that several paragraphs in the Joint Amended Indictment are “unsubstantiated,” or lack particularity. Examples of issues raised by the Todović Defence are: whether the KP Dom was overcrowded,<sup>37</sup> how many detainees in the KP Dom were mentally handicapped, disabled or ill,<sup>38</sup> or how many of them were Serbs;<sup>39</sup> whether the Accused was responsible for the punishment of detainees; the type of work that was

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<sup>28</sup> Joint Amended Indictment, para. 53.

<sup>29</sup> Joint Amended Indictment, para. 23.

<sup>30</sup> Joint Amended Indictment, para. 23.

<sup>31</sup> Joint Amended Indictment, para. 25.

<sup>32</sup> Joint Amended Indictment, para. 45.

<sup>33</sup> Joint Amended Indictment, para. 31.

<sup>34</sup> Joint Amended Indictment, para. 15.

<sup>35</sup> Todović Motion, para. 24.

<sup>36</sup> *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000, para. 57.

<sup>37</sup> Joint Amended Indictment, para. 17.

<sup>38</sup> Joint Amended Indictment, para. 18.

<sup>39</sup> Regarding the request of the Todović Defence for the Prosecution to plead in paragraph 17 how many Serbs were detained at the KP Dom, the Trial Chamber briefly notes paragraph 17 equally states that amongst the detainees in the KP Dom there were “a few Serbs who had tried to avoid military service”.

performed by each detainee mentioned in Schedule E to the Joint Amended Indictment; and exactly how many persons were detained at the KP Dom, what their respective names or pseudonyms are and the length of time that they were detained.<sup>40</sup> The Trial Chamber considers that such issues involve evidentiary matters which should be left to be determined at trial.

*Paragraphs 2, 4, 39 and 55 of the Joint Amended Indictment (timeframes)*

19. The Todović Defence asserts that the timeframes as mentioned in paragraphs 2, 4, 39 and 55 of the indictment should be clarified,<sup>41</sup> to which the Prosecution has responded that it believes that the indictment is “sufficiently precise”.<sup>42</sup> The Trial Chamber notes that these timeframes involve, *inter alia*, the periods indicating when the Accused held different positions at KP Dom as alleged in the Joint Amended Indictment. Especially in light of the allegations against the Accused Todović pursuant to Article 7 (3) of the Statute, the Trial Chamber considers that it is critical for the Accused to know exactly from which date he is alleged to be criminally responsible for the acts of his subordinates and at which date that alleged superior responsibility ended. The Prosecution is therefore instructed to further clarify, *in as much detail as possible*, the timeframes mentioned in paragraphs 2, 4, 39 and 55.

*Paragraph 7 of the Joint Amended Indictment (Joint Criminal Enterprise)*

20. With regard to the alleged Joint Criminal Enterprise (“JCE”), the Prosecution alleges in paragraph 7 of the Joint Amended Indictment that amongst the individuals participating in the JCE were “Milorad Krnojelac and *other known and unknown members of the prison staff* (...). Concerning this particular group, namely members of the prison staff which were allegedly proximate to the Accused, the Trial Chamber considers that where the names of such members are *known*, the Prosecution is ordered to plead them specifically in the Joint Amended Indictment.

<sup>40</sup> Joint Amended Indictment, para. 19 (a).

<sup>41</sup> Todović Motion, para. 31.



*Paragraph 19 (a) of the Joint Amended Indictment*

21. With regard to paragraph 19 (a) of the Joint Amended Indictment, the Todović Defence has argued that the difference in the terms “imprisonment” and “confinement” should be clarified. The Trial Chamber finds that the Defence request regarding the distinction of these terms is more a search for the Prosecution’s view of the applicable law than a solicitation of particular facts in the Prosecution’s possession; therefore, it believes that this issue is best left to be argued by the parties at trial.

*Paragraph 31 of the Joint Amended Indictment*

22. The first sentence of paragraph 31 of the Joint Amended Indictment reads: “On 8 July 1993, Savo Todović informed all detainees that, as a collective punishment for E.Z.’s escape, all food rations would be halved *and that work and medical treatment would be forbidden.*”<sup>43</sup> The Trial Chamber concurs with the Todović Defence that the italicized parts of this phrase, especially in light of the charges contained in counts 11 and 12 pertaining to enslavement, should be clarified by the Prosecution.

*Paragraph 44 of the Joint Amended Indictment*

23. Regarding paragraph 44 of the Joint Amended Indictment, the Todović Defence requests clarification of whether this allegation should be read only in conjunction with the charge of “wilful killings and murder”, or whether it should be read in combination with other charges. This Trial Chamber believes that the particular information contained in paragraph 44 of the Joint Amended Indictment, which appears in no other section than the section dealing with wilful killings and murder (count 6 and 7), can *only* be read in correspondence with the charges contained in that section. The Prosecution is not required to clarify paragraph 44 any further.

*Paragraph 52 of the Joint Amended Indictment*

24. With regard to paragraph 52 of the Joint Amended Indictment, the Todović Defence has questioned why the Prosecution alleges in the first sentence that “20 to 45 detainees with

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<sup>42</sup> Prosecution Response, para. 13.

<sup>43</sup> Emphasis added.

special skills were subjected to forced labour within and outside of the prison”, while in the last phrase of paragraph 52 it makes reference to Schedule E of the Joint Amended Indictment, which is a list that contains the names of 41 detainees. The Trial Chamber agrees that the discrepancy between the first sentence of paragraph 52 and the information contained in Schedule E could lead to uncertainty and orders the Prosecution to resolve this ambiguity.

#### *Cumulative charging*

25. Regarding the permissibility of cumulative charging, this Trial Chamber concurs with the *Brđanin* Trial Chamber, which concluded that “there is no readily identifiable prejudice to an accused in permitting cumulative charging, when the issues arising from an accumulation of offences are determined after all of the evidence has been presented, whereas the very real possibilities to the prosecution in restricting such charging are manifest. From a practical point of view, therefore, the argument for permitting cumulative charging to continue is an overwhelming one”.<sup>44</sup> No action in respect of the cumulative charges alleged is justified.

#### *Clerical errors*

26. In its Response, the Prosecution has acknowledged the fact that the Joint Amended Indictment contains certain typographical errors, and that it is willing to correct them.<sup>45</sup> *Proprio motu*, the Trial Chamber would add to the Defence observations that the current paragraph references (“20 to 43”) in paragraph 49 appear to be incorrect. The Trial Chamber allows the Prosecution to address and correct these clerical errors in an amended indictment.

#### *New materials*

27. The Trial Chamber considers *proprio motu* that, when it reformulated the charges contained in the Initial Indictment to those contained in the Joint Amended Indictment, the Prosecution has provided additional factual details which were not contained in the Initial Indictment. Confidential Annex B to the Joint Amended Indictment sets out on which factual findings of

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<sup>44</sup> *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 40 (emphasis omitted). See also *Prosecutor v. Delalić et al*, Case No. IT 96-21-A, Appeals Judgment, para. 400; Separate and Dissenting Opinion by Judge Hunt and Judge Bennouna, par 12.

the *Krnojelac* Trial Chamber such additional factual details are based. It is necessary that the Prosecution demonstrate that it has evidence which can establish what is pleaded. Given the nature of the findings relied on here, and the evidence on which those findings were based, the references in the present Annex B adequately demonstrate the evidence on which it relies.<sup>46</sup> However, the Trial Chamber notes that, in some instances, neither the *Krnojelac* Judgement nor the *Krnojelac* Appeals Judgement provide any reference to the alleged acts and conduct of the Accused relied on in the Joint Amended Indictment. For example, paragraph 19 (f) (i) alleges that:

(...) SAVO TODOVIĆ saw off this last group of detainees who were exchanged from Foča. The bus with detainees selected for exchange was stopped in Kula and directed to a motel in Miljevina. SAVO TODOVIĆ, together with the then head of KP Dom, Zoran Sekulović, participated in talks at that motel in Miljevina whereupon the bus was re-directed to Kula.

and paragraph 19 (f) (ii) continues:

In late August 1992, SAVO TODOVIĆ personally saw off a group of 55 detainees to a destination in Montenegro and instructed them not to look out of the windows of the bus or else something would happen to them (...).

This information, regarding specific acts and conduct of the Accused Todović, can neither be found in the *Krnojelac* Judgement nor the *Krnojelac* Appeals Judgement.<sup>47</sup> Although, in principle, efforts to particularise the charges against the Accused are commendable, the Trial Chamber has not received any materials that support such additional factual allegations. Therefore, the Prosecution should provide the Trial Chamber with material to establish a *prima facie* case in these regards.

#### E. Disposition

28. For the foregoing reasons, and pursuant to Rule 72 of the Rules, the Trial Chamber

**GRANTS** the Motion in part, and

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<sup>45</sup> Prosecution Response, para. 18.

<sup>46</sup> The Trial Chamber further notes that the Todović Defence has not made any objection to the way in which the Prosecution has supplemented the Initial Indictment with additional factual allegations.

<sup>47</sup> The Trial Chamber notes that the transport of the 55 detainees mentioned in paragraph 19 (f) (ii) has been described by the *Krnojelac* Trial chamber in paragraph 482 of its Judgement; however, Todović's personal involvement in this transport has *not* been mentioned by the Trial Chamber.

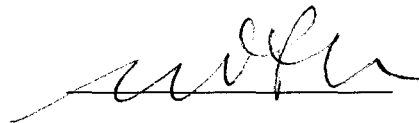
**ORDERS** the Prosecution to:

- clarify the timeframes mentioned in paragraphs 2, 4, 39 and 55 of the Joint Amended Indictment
- resolve the ambiguities in paragraphs 31 and 52 of the Joint Amended Indictment
- add the names of other known members of the KP Dom prison staff which were within the alleged Joint Criminal Enterprise, as alleged in paragraph 7 of the Joint Amended Indictment
- submit to the Trial Chamber the supporting materials in relation to additional factual allegations that were neither mentioned in the Initial Indictment, nor established by either the *Krnojelac* Trial Judgement or the *Krnojelac* Appeals Judgement
- correct the clerical errors in the indictment
- either amend the Joint Amended Indictment to provide better specification of each of the “authorities referred to in paragraph 16 of this Decision, or confirm that it is not in a position to do so

and **DENIES** all remaining requests in the Motion.

The Prosecution shall file an amended indictment, as well as supplemental supporting materials, within 7 days of the filing date of this Decision. After both the supporting materials and the amended indictment have been filed, the Trial Chamber will render a decision on the indictment, which thereafter will become the operative indictment for the Accused Todović and the Accused Rašević.

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



Judge Carmel Agius  
Presiding

Dated this 21st day of March 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**