



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-98-32/1-PT

Date: 11 May 2006

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 11 May 2006

PROSECUTOR

v.

**MILAN LUKIĆ
and
SREDOJE LUKIĆ**

DECISION ON THE FORM OF THE INDICTMENT

The Office of the Prosecutor

**Mr. Mark B. Harmon
Mr. Frédéric Ossogo
Mr. Fergal Gaynor**

Counsel for the Accused

**Mr. Alan Yatvin for Mr. Milan Lukić
Mr. Đuro J. Čepić for Mr. Sredoje Lukić**

Background

1. On 1 February 2006, the Trial Chamber granted the Prosecution's motion to amend the indictment in this case with respect to the Accused Sredjoje Lukić.¹ On 22 March 2006, the Chamber granted the Prosecution's motion to amend the indictment with respect to the Accused Milan Lukić, thereby making the Second Amended Indictment (the "Indictment") the operative indictment against both Accused.²

2. Sredjoje Lukić filed a preliminary motion alleging defects in the form of the Indictment on 27 February 2006,³ and the Prosecution submitted a response on 3 March 2006.⁴ Ten days later, on 13 March 2006, Sredjoje Lukić filed a reply to the Prosecution's response, along with an application for leave to reply.⁵ The Trial Chamber will not consider Lukić's reply because it was filed after the seven-day deadline⁶ without either an explanation of the lateness or a request to file a late submission. Milan Lukić did not file any challenges to the Indictment; accordingly, the name "Lukić" in this Decision refers to Sredjoje Lukić.

Discussion

3. Paragraph three of the Indictment alleges, in relevant part, that "Milan Lukić and Sredjoje Lukić, acting in concert with Mitar Vasiljević and other uncharged individuals, committed and aided and abetted the execution of a Crime Against Humanity".⁷ Lukić contends that "and other uncharged individuals" is unacceptably vague, and asks that the Prosecution be ordered "to provide particulars, *i.e.*, names or initials or pseudonyms for at

¹ See Decision Granting Prosecution's Motion to Amend Indictment and Scheduling Further Appearance, 1 February 2006.

² See Decision Granting Prosecution's Motion to Amend Indictment with Regard to Milan Lukić, 22 March 2006. Although the Second Amended Indictment was originally filed on 17 November 2005, the Prosecution inadvertently omitted two words from that document. It incorporated the words into another Second Amended Indictment, filed on 27 February 2006, which is, besides the two words, identical in all respects to the 17 November 2005 indictment. See Prosecution's Motion to Amend Indictment, 27 February 2006, para. 2.

³ See Sredjoje Lukić's Defence Preliminary Motion on the Form of the Second Amended Indictment ("Lukić Motion"), 27 February 2006.

⁴ See Prosecution's Response to Sredjoje Lukić's Preliminary Motion on the Form of the Second Amended Indictment ("Prosecution Response"), 3 March 2006.

⁵ See Sredjoje Lukić's Defence Application for Leave to Reply and the Defence Reply to "Prosecution's Response to Sredjoje Lukić's Preliminary Motion on the Form of the Second Amended Indictment", 13 March 2006.

⁶ See Rules of Procedure and Evidence, Rule 126 *bis* ("A reply to the response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber.").

⁷ Second Amended Indictment (the "Indictment"), 27 February 2006, para. 3 (emphasis omitted).

least some of these persons.”⁸ The Prosecution responds that, “[u]nder the jurisprudence of the Tribunal, if the identity of the uncharged co-perpetrators is unknown, this does not render the indictment defective.”⁹

4. Lukić’s challenge on this point, which he makes several times,¹⁰ concerns the specificity with which the Prosecution must plead the crimes in a given indictment. As the Appeals Chamber has stated, the

question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence. . . .

[I]n a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail.¹¹

Given that the case at hand is one in which the Prosecution “alleges that an accused personally committed the criminal acts,”¹² the Prosecution must at least allege the material facts indicated in the quotation above. Although the Appeals Chamber did not state that those enumerated facts are the only ones which the Prosecution must plead in such a case, the Trial Chamber does not consider that the identity of “unknown” persons is a material fact that must be pleaded here to enable Lukić to prepare a defence. The Prosecution has alleged the relevant times, places, methods and victims of the crimes with which Lukić is charged; the Chamber cannot conclude that Lukić’s not being told the identity of “unknown” people with whom he might have acted is a defect that unfairly prejudices his ability to defend himself.

5. Moreover, the Trial Chamber reads the Prosecution’s response to mean that regardless of the terms used – be they “unknown”, “uncharged”, “others”, those who “instructed [70 Bosnians] to spend the night in vacated houses”,¹³ or the members of the “group of armed

⁸ Lukić Motion, para. 11.

⁹ Prosecution Response, para. 17.

¹⁰ See, e.g., Lukić Motion, paras. 11, 14 and 17. The Trial Chamber’s discussion of this challenge applies to all of Lukić’s objections on this point.

¹¹ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, paras. 88-89 (citations omitted). See also *Prosecutor v. Galić*, Case No. IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal, 30 November 2001, para. 15.

¹² See, e.g., Prosecution Response, para. 9 (“Significantly, the accused in this case are not alleged to bear superior responsibility under Article 7.3 of the Statute for the acts of subordinates, nor are they alleged to have participated in a joint criminal enterprise”).

¹³ Indictment, para. 7. See also Lukić Motion, para. 12.

men”¹⁴ – the Prosecution is not aware of the identity of such individuals. Given that Lukić’s not knowing who these others are does not preclude the preparation of a defence, these allegations are not defective and Lukić’s challenge on this point is accordingly without merit.

6. Paragraph 11 of the Indictment alleges that Lukić “caused the death of approximately 70 people”¹⁵ by barricading them in a house which he then set on fire. Lukić notes that Annex B to the Indictment identifies only 16 victims, and he submits that the Prosecution “should be ordered to either supplement the Annex B and provide particulars regarding other persons insofar as such information is available to the Prosecution, or to change the number mentioned in paragraph 11 of the Indictment.”¹⁶ The Prosecution responds that it “has identified the deceased victims . . . to the extent that the Prosecution is currently aware of their identities, in accordance with the Tribunal’s jurisprudence”.¹⁷

7. As the Appeals Chamber has stated,

there may be instances where the sheer scale of the alleged crimes “makes it impracticable to require a high degree of specificity in such matters as the identity of the victims”

Such would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment.¹⁸

Paragraph 11 of the Indictment does not charge Lukić with killing “hundreds of men”, but 70 is unquestionably a large number, and significantly larger than the six victims who the Appeals Chamber indicated, in the case above, should have been identified in the indictment.¹⁹ The fact that not all of the victims are identified is thus not a defect, and the Prosecution need not limit its allegation to the 16 people listed in Annex B.

8. Also with regard to paragraph 11, Lukić contends that its allegations lack adequate evidentiary support.²⁰ The Prosecution responds that Lukić “cannot now attack the

¹⁴ Indictment, para. 7. *See also* Lukić Motion, para. 13.

¹⁵ Indictment, para. 11.

¹⁶ Lukić Motion, para. 15.

¹⁷ Prosecution Response, para. 30.

¹⁸ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, paras. 89-90 (citations omitted).

¹⁹ *See ibid.*, para. 91.

²⁰ Lukić Motion, para. 16.

sufficiency of the supporting material”.²¹ The Indictment in this case has been confirmed and amended, which are both processes that require the existence of adequate supporting material to be verified. The Prosecution is therefore correct in noting that Lukić may not make this challenge at this time.²²

9. Finally, paragraph 15(d) of the Indictment alleges that witness “VG-025 was repeatedly beaten by Milan Lukić at Uzamnica Camp on unknown dates between 16 October 1992 and 8 July 1993.”²³ Sredoje Lukić notes that, “in his statement this witness states that he was in the Uzamnica Camp from 26 November 1992 to 8 July 1993. Nowhere in the supporting material was the Defence [] able to find the basis for the broader time period specified by the Prosecution.”²⁴ The Prosecution correctly notes that this allegation concerns only Milan Lukić, and explains that the allegation is technically correct.²⁵ In any event, this allegation does not unfairly prejudice Sredoje Lukić’s ability to prepare a defence.

Disposition

10. For the reasons above, pursuant to Rules 54 and 72 of the Rules of Procedure and Evidence, Lukić’s Preliminary Motion on the Form of the Second Amended Indictment is **DENIED**.

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



Judge Patrick Robinson
Presiding

Dated this eleventh day of May 2006.
At The Hague,
The Netherlands.

[Seal of the Tribunal]

²¹ Prosecution Response, para. 32.

²² See, e.g., *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2, Decision on Prosecution’s Motions to Amend the Indictment, 7 October 2005, para. 19 (The “judge who reviewed the original Indictment in the present case must have satisfied himself that there was a *prima facie* case for the charges contained in it and it is not for the Trial Chamber to revisit that determination.”).

²³ Indictment, para. 15(d) (emphasis omitted).

²⁴ Lukić Motion, para. 18.

²⁵ According to the Prosecution, see Prosecution Response, para. 38, witness VG-025 was detained on 16 October 1992 and transferred to Uzamnica Camp on 26 November 1992, where he remained until 8 July 1993. Accordingly, because the period of 26 November 1992 until 8 July 1993 falls within the time period of 16 October 1992 until 8 July 1993, the allegation, although imprecise, is technically correct.