IT-95-14-R77.3
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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-95-14-R77.3 IT-94-14-R77.4 IT-95-14 & 14/2-R77
	Date:	31 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: **31 May 2006**

PROSECUTOR

v.

STJEPAN ŠEŠELJ and
DOMAGOJ MARGETIĆ
(IT-95-14-R77.3)
MARIJAN KRIŽIĆ
(IT-95-14-R77.4)
JOSIP JOVIĆ
(IT-95-14 & 14/2-R77)

DECISION ON MOTION FOR JOINDER

The Office of the Prosecutor:

Mr. David Akerson
Mr. Salvatore Cannata

Counsel for the Accused:

Mr. Željko Olujić for Mr. Stjepan Šešelj
Mr. Domagoj Margetić (unrepresented)
Mr. Krešimir Krsnik for Mr. Josip Jović
Mr. Emil Havkić for Mr. Marijan Križić

I. INTRODUCTION

1. On 10 May 2006, the Prosecution filed a motion seeking to join three cases involving four accused together in one indictment ("Joinder Motion" or "Motion").[1] That same day, the Prosecution filed a motion to amend the three indictments. According to the Prosecution, joinder is justified regardless of whether any or all of the proposed amendments are granted.[2] This decision is therefore made on the basis of the indictments as they currently stand, and the motion for amendments will be addressed in a separate decision.
2. Three of the accused filed a response opposing the Joinder Motion.[3] The Chamber notes that the response of the accused Margetić, filed in the BCS language, was stated to be 43,786 words in length, and that this is a violation of the Tribunal's practice directions. These directions provide that a response to a motion must not exceed 10 pages or 3,000 words, whichever is greater, and that a party seeking authorisation to exceed this limit must do so in advance and "must provide an explanation of the exceptional circumstances that necessitate the oversized filing."[4] The Trial Chamber will in this instance accept the oversized filing of the accused but reminds the accused of his obligation to comply with the rules and practice directions of the Tribunal in future filings.

II. THE STANDARD

3. Rule 48 of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that "[p]ersons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried." A "transaction" is defined in Rule 2 as a "number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan."

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[1] Prosecution's Motion for Joinder Pursuant to Trial Chamber's Order of 10 May 2006, 19 May 2006. The cases are (1) *Prosecutor v. Stjepan Šešelj and Domagoj Margetić*, Case No. IT-95-14-R77.3, (2) *Prosecutor v. Marijan Križić*, Case No. IT-95-14-R77.4 and (3) *Prosecutor v. Josip Jović*, Case No. IT-95-14 &14/2-R77. Unless otherwise indicated, each filing referred to was made in each of the three cases.

[2] Joinder Motion, para. 23.

[3] Response of the Accused Josip Jović to the Prosecution's Consolidated Motion and Prosecution's Motion for Joinder Pursuant to Trial Chamber's Order of 10 May 2006, 26 May 2006 ("Jović Response"); Response of the Accused Marijan Krizić to the Prosecution's Motion for Leave to Amend the Indictments pursuant to Trial Chamber's Order of 10 May 2006 and Motion for Joinder Pursuant to Trial Chamber's Order of 10 May 2006, 25 May 2006 ("Krizić Response"). The Accused Domagoj Margetic's Reply to the Prosecution's Motion for Joinder Pursuant to Trial Chamber's Order of 10 May 2006, dated 26 May 2006. The accused Šešelj has not filed a response to the Motion.

[4] Practice Direction IT/184/Rev. 2 (16 September 2005), para. (C)(5).

4. If the Chamber decides that the requirements of Rule 48 have been met, it may, based on an evaluation of various factors, decide either to grant joinder or leave the cases to be tried separately.[5] The case law of the Tribunal suggests that the following factors may properly be taken into account in making this determination: (i) avoiding the duplication of evidence, (ii) promoting judicial economy, (iii) minimising hardship to witnesses, (iv) ensuring the consistency of verdicts, (v) avoiding a conflict of interests that might cause serious prejudice to an accused, and (vi) protecting the interests of justice.[6] In deciding whether charges against more than one accused should be joined pursuant to Rule 48, the Chamber should base its determination upon the factual allegations contained in the indictments and related submissions.[7]

III. THE CHARGES

5. Stjepan Mesić, President of the Republic of Croatia, provided a statement to the Prosecution in April 1997. According to the Prosecution, this statement was "leaked to and published by Croatian newspapers" and, as a consequence, the Prosecution requested that the Trial Chamber in the *Blaskić* case order protective measures for the witness.[8] The Trial Chamber did so in a decision dated 6 June 1997 which provided that "the accused, his counsels and their representatives not disclose to the public or to the media the name of ... witnesses residing in the territory of the former Yugoslavia, or any information which would permit [such witnesses] to be identified, unless absolutely necessary for the preparation of [the accused's] defence." Almost a year later, from 16-19 March 1998, Mesić testified for three days in the *Blaskić* trial. The Chamber made an oral order to hear the testimony in closed session.[9]

Charges against the Accused Josip Jović

6. The accused Jović is charged with contempt of the Tribunal on the ground that from 27 to 30 November 2000—almost three years after Mesić's statement to the Prosecution, and almost two years after Mesic's testimony in *Blaskić*—he, as editor-in-chief of a Croatian newspaper named

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[5] *See Prosecutor v. Popović et al,* Case No. IT-02-57-PT, IT-02-58-PT, IT-02-63-PT, IT-02-64-PT, IT-04-80-PT, IT-05-86-PT, Decision on Motion for Joinder, 21 September 2005, para. 8; *Mejakić et al.,* Case No. IT-95-4-PT, IT-95-8/1-PT, Decision on Prosecution's Motion for Joinder of Accused, 17 September 2002, para. 24 and *Prosecutor v. Brđanin and Talić,* Case No. IT-99-36-A, Decision on Defence Request to Appeal, 16 May 2000.

[6] *Id.* and Rule 82 of the Rules. *See also* Articles 20-22 of the Statute (right to fair and expeditious trial) and Rule 75 of the Rules (protection of victims and witnesses).

[7] *Prosecutor v. Mejakić et al., supra* n. 3, para. 23.

[8] Joinder Motion, para. 12.

Slobodna Dalmacija, (i) published Mesić's statement; (ii) revealed Mesić's identity, and (iii) revealed the fact that Mesić testified in March 1998.[10]

7. The day after this publication took place, 1 December 2000, the Prosecution filed a motion for a cease-and-desist order against Jović's newspaper *Slobodna Dalmacija*. The Trial Chamber granted this motion that same day, ordering that the publication of statements and testimony of the protected witness should cease immediately ("2000 Cease and Desist Order"). According to the Prosecution, although this order was served on Jović's newspaper, throughout the month of December the newspaper published, almost daily, the name of the protected witness and closed-session transcripts of his testimony.[11]

Charges against the Accused Šešelj, Margetić and Krizić

8. The Prosecution alleges that on 26 November 2004 a Croatian newspaper named *Hrvatsko Slovo* printed excerpts of Mesić's testimony and revealed his identity. At the time of publication the publisher of the newspaper was the accused Šešelj and its editor-in-chief was the accused Krizić.[12]

9. In response to a motion subsequently filed by the Prosecution, on 1 December 2004 a duty judge of the Tribunal ordered the newspaper to cease publication of Mesić's statement and closed-session testimony ("2004 Cease and Desist Order").[13]

10. According to the Prosecution, on 3 December 2004 *Hrvtsko Slovo* again published excerpts of closed-session testimony. On receipt of the 2004 Cease and Desist Order, however, Šešelj wrote a letter to the Ministry of Justice indicating that his newspaper would comply with the order. In his letter, Šešelj allegedly justifies his newspaper's prior publications on the basis that the testimony transcripts published in *Hrvatsko Slovo* had already been published in Jović's newspaper, *Slobodna Dalmacija*. Despite this letter, however, the Prosecution alleges that on 10 and 17 December 2004, *Hrvatsko Slovo* again published articles identifying the witness by name. The 17 December 2004 issue also allegedly included an interview with Jović titled "I

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

was the first one to publish the transcripts of Mesić's testimony in The Hague", as well as a copy of the original *Slobodna Dalmacija* article.[14]

11. Meanwhile, according to the indictment against Margetić, this last accused, a former editor-in-chief of *Hrvatsko Slovo*, received the 2004 Cease and Desist Order because it was mistakenly assumed that he was still affiliated with that newspaper. Having received the order, the Prosecution charges that Margetić proceeded to publish, on 10 December 2004, excerpts of Mesić's closed-session testimony in a newspaper called *Novo Hrvatsko Slovo*.[15]

IV. PARTIES' SUBMISSIONS

Rule 48

12. According to the Prosecution's Joinder Motion, the requirements of Rule 48 are met because all three indictments relate to the same "transaction": a common scheme in which the accuseds' purpose was to use their respective newspapers to publicize the name of a protected witness and information about that witness' testimony before the Tribunal.[16] As a result, the Prosecution alleges, the four accused "have been indicted for the exact same crime: interfering with the administration of justice by disclosing protected information."[17]

13. More specifically, the Prosecution argues that the "same transaction" requirement is met in this case for four reasons: (1) the "contemptuous acts" committed by the four accused are the same in that they all "used their respective newspapers to publish the same protected information"; (2) the information that was published is the same: the identity and testimony of Mr. Mesić; (3) the accuseds' publications were in violation of the same orders issued by the Trial Chamber in the *Blaskić* case, and (4) the accuseds' arguments in response to these charges are inter-related.[18] In support of this last point the Prosecution alleges that "the 2004 contemnors Šešelj and Krizić explicitly justify the publication of protected information ... on the basis that [Jović's newspaper] had previously published the same material in 2000" and that these two accused later published an interview with Jović about his original publication.[19]

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[14] *Id.*
[15] *Id.*
[16] *Id.* at para. 13.
[17] *Id.* at para. 11.
[18] *Id.* at para. 13.
[19] *Id.*

14. The accused who have responded to the Joinder Motion object to the characterisation of their alleged acts as being part of the same transaction, arguing that there is an insufficient factual connection between the cases.

15. The accused Krizić states that the four accused are entirely unconnected journalists working at different newspapers who are accused of publishing information that was published by "many more newspapers and electronic media" as well.[20] In addition, Krizić argues, the various accused acted in "different places, [at different] times."[21] He concedes that all four accused were journalists who "estimated and conclude[d] ... that these ... facts are ... news" but argues that the requisite commonality between their acts does not exist just "because they are journalists and they are able to publish[] something only in their newspapers and nowhere else."[22] Nor does the similarity in the content of the information that was published, or the fact that publication by each accused took place in breach of orders of the Tribunal, mean that there was a single "transaction", because this similarity is "naturally based on the unique content of the witness testimony and the fact that without disclosure [of the] identity of the witness nobody would like to read the articles."[23] Thus the "nature of journalism and [the] strong [p]ublic interest for [the] publication of such information[] [is the] only relevant similarity between" the allegedly contemptuous acts, and this is not sufficient for purposes of Rule 48.[24]

16. Like Krizić, Jović argues that there is no "common scheme or strategy" in the acts ascribed to the four accused because they "obviously acted at different time[s], in different ways and places, in alleged violation of different orders and independent of each other."[25]

17. Finally, Margetić argues that the "Prosecution has failed to prove that there has been a same transaction or a common strategy or plan."[26] The four accused, according to Margetić, "are not connected in any way, they did not work for the same media when the contested information was published, they were not in any way in contact when the contested information was published, or before or after these events."[27] Moreover, Margetić argues, there is no evidence of a single transaction because there is no proof that the accused "coordinated their actions"; "met

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[20] Krizić Response, para. 6.
[21] *Id.* at para. 8.
[22] *Id.*
[23] *Id.* at para. 9.
[24] *Id.* at para. 12.
[25] Jović Response, para. 11.
[26] The Accused Domagoj Margetić's Reply to the Prosecution's Motion for Joinder Pursuant to Trial Chamber's Order of 10 May 2006 ("Margetić Response"), p. 6.
[27] *Id.* at p. 7.

and agreed on the publication of the contested information"; "jointly agreed on a strategy", or "harmonize[d] their plans."[28]

Discretionary Factors

18. According to the Prosecution, joinder would serve the "interests of justice" because the accused in two of the cases "explicitly justify their contemptuous publication of confidential information upon the fact that [Jović, the accused in the third case] had previously published the same information", and thus "evidence of Jović's publication is necessary in the cases of the other three accused."[29] A joint trial in which "the full body of evidence is presented one time would [therefore] avoid the duplication of evidence", and in doing so promote judicial economy.[30]

19. The Prosecution also argues that a joint trial would avoid the danger of "inconsistent results in separate trials based on identical facts" and ensure a consistency in the Chamber's approach to "evidence, findings ... verdicts [and] sentencing in the event of conviction."[31]

20. There is, on the other hand, no danger that a joint trial would prejudice the rights of the accused, according to the Prosecution. Tribunal jurisprudence establishes that a concurrent presentation of evidence by multiple accused in a case does not *per se* cause prejudice to an accused and that the burden of establishing such a conflict lies with an accused faced with joinder in a particular case.[32] This burden, the Prosecution argues, is "a substantial one" which in the past has "rarely" been successfully discharged.[33] And in this case no conflict can be shown to exist because "in the view of the Prosecution" all four accused "bear the same level of criminality."[34]

21. Nor, in the Prosecution's view, would the right of any of the accused to a speedy trial be compromised by joining the cases, because all three cases are still in the pre-trial stage with no scheduled trial date. Finally, the Prosecution adds, joinder does not involve "adding any new evidence" and thus "does not prejudice the Accused in any way because of the need to have time and resources to review and analyze new evidence."[35]

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[28] *Id.*
[29] Joinder Motion, para. 15.
[30] *Id.* at para. 16.
[31] *Id.* at para. 17.
[32] *Id.* at para. 19.
[33] *Id.*
[34] *Id.*
[35] *Id.* at para. 21.

22. In response to these arguments, Krizić argues that joinder "will bring only confusion" and "will unfairly prejudice the accused in his defense."[36] Krizić also states that joinder will cause delay, which "is not according to the interests of justice."[37]

23. Similarly, Jović argues that joinder "would surely have noticeable consequences for the length of the trial and therefore also for the rights of the Accused."[38]

24. And finally Margetić argues that joinder "cannot possibly serve the interests of justice and an expeditious trial."[39]

V. DISCUSSION

Rule 48

25. A prerequisite for joinder of accused is that the accused are charged with crimes committed in the course of the same "transaction." The Trial Chamber finds that this is the case in relation to three of the four accused that are the subject of the present motion.

26. In order for alleged acts to be considered part of the "the same transaction", the Chamber must be satisfied that they were part of a "common scheme, strategy or plan", but it is not necessary for all the facts to be identical. The Chamber finds that there is a sufficient nexus between the alleged acts of three accused—Šešelj, Krizić and Margetić—to hold that their acts formed the same transaction, but the Chamber is not satisfied that sufficient commonality exists between the alleged acts of Jović and those of the other three accused to justify the same conclusion in relation to him.

27. Šešelj and Krizić worked at the same newspaper and are accused of contempt in relation to the same publications: articles allegedly published in December 2004. These publications took place after the same order—the 2004 Cease-and-Desist Order—was issued by the Tribunal in response to an earlier article published in Šešelj and Krizić's newspaper. Thus these two accused are alleged to be responsible for exactly the same acts (breaching orders of the Blaskić Trial Chamber by disclosing protected information about Mesić), committed at exactly the same time (December 2004), through exactly the same means (articles in the newspaper *Hrvtsko Slovo*). As a result the Chamber finds that the acts of Krizić and Šešelj formed part of a

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[36] Krizić Response, para. 14.
[37] *Id.*
[38] Jović Response, para. 14.
[39] Margetić Response, p. 5. *See also* n. 44, *infra.*

"common scheme, strategy or plan" and thus the "same transaction" and therefore their indictments may be joined.

28. Margetić's alleged actions are also part of this transaction. At the time relevant to his indictment, he was editor-in-chief of the newspaper *Novo Hrvtsko Slovo*, but he used to be editor of the newspaper (*Hrvtsko Slovo*) that Šešelj and Krizić were affiliated with. He received, albeit erroneously, the same order—the 2004 Cease-and-Desist Order—that the other two accused received, and is, like them, alleged to have published one or more contemptuous articles about witness Mesić after this order was issued.

29. Thus the Chamber finds that the acts with which these three accused are charged form part of the same transaction, as required by Rule 48, and that the three accused are therefore eligible for joinder. Of course, since Šešelj and Margetić are already joined, this simply means that under Rule 48, should this Chamber choose to exercise its discretion to do so, Krizić's indictment can be joined with that of the other two.

30. The Chamber's conclusion that the alleged acts of Šešelj, Margetić and Krizić formed the same transaction does not mean, however, that the alleged acts of any journalist charged with publishing the name and testimony of Mesić at any time in any newspaper would automatically be part of this "transaction" as well. Indeed, in the case of the fourth accused, Jović, the Prosecution has not demonstrated that there is a sufficient nexus between his acts and those of his prospective co-accused for purposes of joining these accused in one indictment. Jović worked at a different newspaper. His allegedly contemptuous publication took place four years before that of his prospective co-accused. And his publication is not alleged to be in breach of the 2004 Cease and Desist Order, since this order did not even exist at the time of his alleged acts. The Chamber is aware that acts may form part of the same transaction even if separated in time and place, but the Prosecution has not demonstrated that there was a common purpose[40] or plan behind these disparate acts and thus finds that the requirements of Rule 48 have not been met in relation to Jović.

31. In conclusion, the acts alleged in the indictments against Šešelj, Krizić and Margetić form part of the same "transaction" as defined by the Rules and jurisprudence of the Tribunal and, as a result, the accused Šešelj, Krizić and Margetić may, if the Chamber so chooses, be joined in one indictment. The Chamber finds, however, that the alleged acts of the fourth accused, Jović, do not form part of this transaction and therefore he will be tried separately.

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[40] *Prosecutor v. Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 20.

Discretionary Factors

32. Several discretionary factors have in the past been considered by Trial Chambers when deciding whether a joinder of accused is warranted. Because the Chamber has found that the acts of the accused Šešelj, Krizić and Margetić form part of the same transaction and thus Krizić may be joined to Šešelj and Margetić in one indictment under Rule 48, the Trial Chamber considers these factors, below, and concludes that they militate in favour of joining the two cases.

Avoiding Duplication of Evidence and Promoting Judicial Economy

33. Based on the pre-trial material produced to date, the Chamber finds that a single trial is likely to take less time than two separate ones and that it is therefore in the interest of judicial economy to try the accused together. In the past some Trial Chambers have assumed that joinder would speed up proceedings, while others have predicted that it would slow them down. Here, the scales tip in favour of a single trial because certain evidence could be presented once in a joint trial instead of three times in separate ones. Certain facts common to the two cases—such as the existence and content of the 2004 Cease and Desist Order—would, for instance, in the absence of a joint trial need to be established separately in the two cases.

34. In addition, the Chamber notes that the cases are currently at a similar pre-trial stage, so there is no danger that one case will significantly delay the others from going to trial.

35. In sum, avoiding the duplication of evidence and promoting judicial economy are factors that militate in favour of granting joinder.

Protection of Witnesses and Consistency of Verdicts

36. Although the Prosecution does not, in its Motion, make any representation about whether it intends to call witnesses that are common to the two cases,[41] the Chamber finds that if there are common witnesses, they would be better protected in a single trial because they would not need to travel to The Hague, give testimony, and answer questions from judges multiple times.

37. In addition, there is a "fundamental and essential public interest in ensuring consistency in verdicts"[42] and here a joint trial heard by one bench assessing the same evidence is more likely

[41] In their original motion for joinder, the Prosecution argued that "witnesses for all cases are substantially the same and would thus need to be called by the Prosecution for all trials." Motion for Leave to Amend the Indictment of Šešelj and Margetić and Motion for Joinder of all Four Accused, 20 September 2005, para. 25. This argument is not, however, repeated in their latest submission.

[42] *Prosecutor v. Brđanin and Talić, supra* n. 3, at para. 31.

to lead to a consistent assessment of the evidence, and ultimately to consistent verdicts, than if the accused were to be tried separately.[43]

38. In sum, protecting witnesses and ensuring the consistency of verdicts are both factors that militate in favour of granting joinder.

Prejudice to the Accused

39. These factors must, of course, be balanced against the possibility that joinder may adversely affect the rights of one or more of the accused.

Presentation of Prejudicial Evidence

40. Krizić and Margetić argue in their responses to the Joinder Motion that a joint trial would prejudice the accused or affect his rights in some way, but they do not specify exactly which trial-rights are at risk of being compromised.[44]

41. The Chamber holds that prejudice to an accused is not an inevitable consequence of joinder under Rule 48, and therefore that blanket statements alleging that an accused could be prejudiced, unsupported by concrete allegations of specific prejudice that is likely to result, are not compelling. Prejudice will not be presumed just because all evidence adduced may not be germane to all counts against each accused or because some evidence may be more damaging to one accused than others. There must be a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the Chamber from making a reliable judgment about guilt or innocence. Such a risk might occur, for instance, when evidence that

[43] *Cf. id.* ("Nothing could be more destructive of the pursuit of justice than to have inconsistent results in separate trials based upon the same facts. The only sure way of achieving such consistency is to have both accused tried before the same Trial Chamber and on the same evidence — unless (as Rule 82(B) requires) there is a conflict of interests which might cause serious prejudice to an accused, or separate trials are otherwise necessary to protect the interests of justice.")

[44] Krizić mentions only the possibility of "confusion" or an increase in the length of the trial. The effect of joinder on the issue of the length of the trial is discussed at paras. 33-35, *supra*. Margetić argues that joinder "cannot possibly serve the interests of justice and an expeditious trial." Margetic Response, p. 5. If the cases are joined, Margetić argues, he "will have to call more than 20 witnesses to [prove] the lack of existence of 'a common scheme or strategy' alone" and to prove that in "publishing the supposedly secret information, no correlation had ever existed between the four accused journalists." *Id.* This argument appears to be based on a misunderstanding on the part of the accused. Margetić appears to believe that the Prosecution argument that a common "transaction", "scheme" or "strategy" linked the acts of the four accused facing joinder constitutes a new charge against him. Thus he claims that "the Croatian journalists are being accused of joint criminal enterprise in publishing the identity of a supposedly protected witness." *Id.* This is, of course, not correct. The Prosecution alleges that acts of the four accused formed part of the same transaction, which is an argument the Chamber has considered for purposes of joinder; Margetić is not charged with being part of a joint criminal enterprise.

the Chamber should not consider against one accused—and which would not be admissible if that accused were tried alone—is admitted against a co-accused; or conversely, where evidence that exculpates one accused would be unavailable in a joint trial.

42. None of the accused have demonstrated that such a concrete risk of prejudice exists here and the Chamber sees no reason to conclude otherwise. Moreover, Chambers of the Tribunal are made up of "'professional judges [who are] able to exclude ... prejudicial evidence from their minds'" when it comes to determining the guilt of a particular accused in a way that, for instance, juries in certain domestic systems may not be able to do.[45] Thus in the *Brđanin* case, for instance, the Trial Chamber concluded that:

> [t]he fact that [in a joint trial] evidence will be brought relating to one accused (and not to another) is a common feature of [such] trials. On the basis of the submissions and the allegations in the indictment the Trial Chamber is of the view that this *in itself* will not cause serious prejudice to [the accused].[46]

Conflicts of Interest

43. Although certain accused refer in their responses to the fact that their rights will be adversely affected by joinder, none point to any specific conflicts of interest that are likely to arise.[47]

44. Trial Chambers have in the past held that conducting joint trials where co-accused may testify against each other does not *per se* constitute a conflict of interests between accused[48] and that the mere "'*possibility* of mutually antagonistic defences' does not constitute a conflict of interests capable of causing serious prejudice" because "trials in this Tribunal are conducted by professional judges who are necessarily capable of determining the guilt of each accused individually."[49]

45. Ultimately, the burden is on an accused facing possible joinder to demonstrate that joinder will result in a conflict of interest or otherwise cause him prejudice. This burden has not been discharged in relation to the accused in these two cases and, as a result, the Trial Chamber concludes that there is no risk of prejudice that should prevent the cases from being joined.

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[45] *Prosecutor v. Mejakić, supra* n. 3, para. 29, citing *Prosecutor v. Milošević, supra* n. 35, at para. 29.

[46] *Prosecutor v. Brđanin and Talić, supra* n. 3, at para. 20 (emphasis added).

[47] *See* n. 44, *supra.*

[48] *Cf. Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Defence Motion for a Separate Trial, 25 April 2001, para. 11.

[49] *Prosecutor v. Brđanin and Talić,* Case No. IT-99-36-T, Decision on Prosecution's Oral Request for the Separation of Trials, 20 September 2002, para. 21 (emphasis added), citing *Prosecutor v. Simić et al.*, Case

46. In sum, the Trial Chamber believes that a single trial—by avoiding the duplication of evidence (para. 33), promoting judicial economy (paras. 33-34), protecting witnesses (para. 36), and ensuring consistency of verdicts (para. 37)—will better protect the interests of justice. The rights of the accused will also, in the Chamber's view, be better protected in a joint trial which is likely to be more expeditious (paras. 33-34) than if the three cases were to proceed independently. Moreover, the Chamber is not convinced that the accused are likely to suffer prejudice if a joint trial is ordered (paras. 40-45).

No. IT-95-9-PT, Decision on Defence Motion to Sever Defendant and Counts, 15 March 1999. *Prosecutor v. Brđanin and Talić*, *supra* n. 3, at para. 32.

VI. DISPOSITION

47. For these reasons, pursuant to Rules 48 and 54 of the Rules, this Trial Chamber **GRANTS** the Joinder Motion in part and **ORDERS** that:

(a) the case of *Prosecutor v. Stjepan Šešelj and Domagoj Margetić*, Case No. IT-95-14-R77.3 and the case of *Prosecutor v. Marijan Križić*, Case No. IT-95-14-R77.4 are joined;

(b) The Registry shall designate one unified case number to the joined cases forthwith; and

(c) The Prosecution shall file, by 2 June 2006, (1) a proposed consolidated indictment that joins the indictment against *Stjepan Šešelj and Domagoj Margetić* with the indictment against *Marijan Križić* and (2) a "track changes" or "blackline" version of the indictment that highlights *any* language in the proposed consolidated indictment that differs in any way from the language in the original indictments against *Stjepan Šešelj and Domagoj Margetić* and against *Marijan Križić*.

48. The remaining requests for relief in the Motion are **DENIED**.

49. The Trial Chamber *proprio motu* **GRANTS** leave to the accused Margetić to file a response to the Joinder Motion that exceeds the word-limit imposed by the practice directions of the Tribunal.

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

Judge Patrick Robinson
Presiding

Dated this thirty-first day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]