



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 Nos. IT-95-14-R77.5
IT-95-14 & 14/2-R77
Date: 8 June 2006
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 8 June 2006

PROSECUTOR

v.

**STJEPAN ŠEŠELJ,
DOMAGOJ MARGETIĆ, AND
MARIJAN KRIŽIĆ
(IT-95-14-R77.5)
JOSIP JOVIĆ
(IT-95-14 & 14/2-R77)**

**DECISION ON PROSECUTION MOTION
TO AMEND THE INDICTMENTS
AND ORDER ON FILING OF PRE-TRIAL BRIEFS**

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

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 from the Office of the Prosecutor (“Prosecution”) to amend the indictments against Stjepan Šešelj, Domagoj Margetić, Marijan Križić, and Josip Jović and hereby renders a decision thereon.

I. Procedural History

1. On 10 May 2006, this Trial Chamber issued an order requiring the Prosecution to withdraw all previous motions seeking leave to amend the three indictments against the accused Stjepan Šešelj and Domagoj Margetić, Josip Jović, and Marijan Križić, and to file in their place a single motion consolidating all of its prior requests.¹ On 18 May 2006, the Prosecution duly filed a motion to withdraw its previous motions to amend the indictments,² and the next day filed a consolidated motion to amend the three indictments (“Consolidated Motion to Amend” or “Consolidated Motion”). Because there was also a motion for joinder of the three cases pending, the Prosecution attached to its Consolidated Motion (i) a proposed revised version of each individual indictment (in the event that the cases were to remain separate) and (ii) a proposed consolidated indictment (in the event that the three cases were to be joined).
2. On 31 May the Chamber issued a decision partially granting the Prosecution’s motion for joinder. Under the terms of the decision, the case of *Prosecutor v. Stjepan Šešelj & Domagoj Margetić* was joined with the case of *Prosecutor v. Marijan Križić*; but the Chamber denied the application to join the case against Josip Jović with the others, and as a consequence Josip Jović will be tried separately.³ The Prosecution was ordered to file a proposed amended indictment for the unified case against Šešelj, Margetić and Križić (“Proposed Consolidated Indictment”), which the Prosecution did on 2 June 2006.⁴
3. As a result of all these filings and this decision, the Chamber is currently seized of a request to amend two separate indictments—one against Šešelj, Margetić and Križić and one against Jović. The Chamber has examined these requests in conjunction with (i) the Proposed

¹ Order on the Prosecution’s Requests to Amend and Join the Indictments, 10 May 2006.

² Prosecution’s Motion to Withdraw its previous Motions Seeking Leave to Amend the Indictments pursuant to Trial Chamber’s Order of 10 May 2006, 18 May 2006 (“Motion to Withdraw”).

³ See Decision on Prosecution Motion for Joinder, 31 May 2006.

⁴ Prosecution’s Response to the Decision on Motion for Joinder, 2 June 2006.

Consolidated Indictment against Šešelj, Margetić and Križić and (ii) Annex E of the Prosecution's Consolidated Motion to Amend, which contains a proposed amended indictment against Jović.⁵

II. Parties' Submissions

4. According to the Prosecution's Consolidated Motion to Amend, the requested amendments to the language in the original indictments against Šešelj, Margetić and Križić generally fall into two categories: (1) the correction of factual misstatements based on new information that has been gathered since the indictments were originally drafted, notably the fact that Margetić was editor-in-chief of the newspaper *Novo Hrvatsko Slovo* and not *Hrvatsko Slovo*, at the times relevant to the indictment; and (2) clarifications to the charges based on Rule 77, notably the addition of Rule 77(A) to the list of rules that are alleged to have been violated by the accused Šešelj and Margetić.
5. The proposed amendments to the language in the indictment against Jović and to the language in the Proposed Consolidated Indictment that relates to Križić are first, the deletion of any reference to "aiding and abetting" as a mode of liability, and second, the deletion of the words "and Rule 77(A)(iv)" from the list of the rules that are alleged to have been breached by the accused.
6. According to the Prosecution, none of the amendments that it requests constitute new charges against the accused and none of the amendments consist of "new factual allegations" that require the submission of new supporting material.⁶
7. At least two of the accused disagree with this. Križić, for one, argues that the proposed amendments that relate to him are "not supported with adequate reasons and prima facie evidence[]."⁷

⁵ The Consolidated Motion to Amend appends two annexes both labeled "Annex E" but for the purposes of this decision, Annex E refers to the Annex with the title "Proposed Amended Indictment against Accused Jović."

⁶ Consolidated Motion to Amend, paras. 7, 9-10, 17.

⁷ Response [*sic*] the Accused Marijan Križić 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, para. 4. Križić's response focuses on language that was used in the consolidated indictment attached to the Prosecution's Consolidated Motion to Amend, however, which is different from the language in the Proposed Consolidated Indictment against Šešelj, Margetić and Križić.

8. And Jović argues that the amendments proposed by the Prosecution “are obviously aimed at the change in the factual basis of the indictment” and as such “it clearly results that the conditions of Rule 50(A)(ii) for the amendment of the indictment to be granted ... have not been met.”⁸
9. Jović also specifically opposes the proposal to insert “Rule 77(A)” into the list of rules that he is alleged to have violated because, he argues, “there are obviously no grounds for [*sic*] charge under the general provision of Rule 77 against the Accused Jović.”⁹ Such an amendment would also, in his submission, constitute a new charge him and as a consequence it “den[ies] the Accused’s right to be familiar with the charges against him and prepare his defence or, in other words, his right to a fair trial.”¹⁰

III. The Law

10. The following provisions of the Rules of Procedure and Evidence (“Rules”) relating to contempt of the Tribunal and to the amendment of indictments are relevant to this decision.

Rule 50 Amendment of Indictment

- (A) (i) The Prosecutor may amend an indictment:

[...]

- (c) after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.

- (ii) Independently of any other factors relevant to the exercise of the discretion, leave to amend an indictment shall not be granted unless the Trial Chamber or Judge is satisfied there is evidence which satisfies the standard set forth in Article 19, paragraph 1, of the Statute to support the proposed amendment.

[...]

- (B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

- (C) The accused shall have a further period of thirty days in which to file preliminary

⁸ 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, para. 5. Margetić filed a response to the joinder motion but did not file a response to the consolidated motion to amend the indictments.

⁹ *Id.* para. 7.

¹⁰ *Id.* para. 8.

motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

Rule 77

Contempt of the Tribunal

- (A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who
- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
 - (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or about to give evidence in proceedings before a Chamber, or a potential witness; or
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

[...]

(E) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

11. A trial chamber has the discretion to decide whether to allow an indictment to be amended. A chamber will “normally exercise its discretion to permit the amendment, provided that the amendment will not prejudice the accused unfairly.”¹¹ Whether an amendment would prejudice the accused unfairly in turn depends on two factors: whether the amendment will affect the accused’s ability to prepare his defence and whether it will cause undue delay.

12. A chamber must also decide whether a proposed amendment constitutes a new charge against the accused; if so, this triggers the accused’s right to enter a plea and file objections to the new charge. A proposed amendment to an indictment results in the inclusion of a new charge if it introduces “a new basis for conviction ... not previously reflected in the indictment ... that is

¹¹ *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution’s Motion for Leave to Amend the Indictment, 27 May 2005, para. 5.

factually and/or legally distinct from any already alleged.”¹² A chamber should not “make new charges out of new allegations that carry no additional risk of conviction by themselves.”¹³ Thus, “an amendment that alleges a different crime under the Statute or a different underlying offence, even without additional factual allegations, is a new charge because it could be the sole legal basis for the Accused’s conviction,” but a new factual allegation that does not in itself expose an accused to additional risk of conviction does would not qualify as a new charge.¹⁴

13. A new charge also triggers the need for the pre-trial chamber to assess whether the Prosecution has established a *prima facie* case for the new charge, as required by Article 19(1) of the Statute. Moreover, even where a proposed amendment does not amount to a new charge, but constitutes a material amendment, the Prosecution must establish a *prima facie* case for that amendment.¹⁵ In the jurisprudence of the Tribunal “a *prima facie* case on any particular charge exists in this situation where the material facts pleaded in the indictment constitute a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge.”¹⁶

IV. Discussion

A. Indictment against Šešelj, Margetić and Križić

14. Identifying all of the changes to the indictments proposed by the Prosecution is a complex task in light of the decision to join the original indictment against Šešelj and Margetić with that against Križić. As a consequence of the joinder, and errors made by the Prosecution in the initial indictment concerning the position held by Margetić, the Proposed Consolidated Indictment appears substantially different from the two original indictments against these three accused. The language of the Proposed Consolidated Indictment differs in many respects from that of the original indictment against Šešelj and Margetić, and in some respects follows the

¹² *Prosecutor v. Beara et al.*, Case No. IT-02-58-PT, Decision on Prosecution Motion to Amend the Indictment, 24 March 2005, para. 2, citing *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004 (“*Halilović Decision*”), para. 30.

¹³ *Halilović Decision*, para. 35.

¹⁴ *Id.*

¹⁵ See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Defence Motions Alleging Defects in the form of the Proposed Amended Joinder Indictment, 22 March 2006, para. 31.

¹⁶ See *Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić and Vlatko Stojilković*, Case No. IT-99-37-I, Decision on Review of Indictment and Application for Consequential Orders, 24 May 1999, para. 4.

language of the original indictment against Križić. The Trial Chamber does not consider it necessary to address each of these changes in language in detail, and here discusses only those changes of substance that affect one or all three of the accused.

15. The first point to be noted in this regard is that one count of the original Šešelj and Margetić indictment is no longer brought against the accused Margetić. Rather, his name is replaced in that count by that of Križić, who was originally indicted on a single count that was substantially the same as Count 1 of the Proposed Consolidated Indictment.
16. In addition, it should be noted that throughout the Proposed Consolidated Indictment the protected witness whose identity is at the heart of these contempt cases is identified by name, whereas his name did not appear in the original indictments. This change is as a consequence of a decision rendered by the Appeals Chamber on 24 January 2006, lifting the protective measures granted to the witness during the *Blaškić* case. Adding the name of this witness to the indictment neither results in unfair prejudice to any of the accused, nor in the addition of new charges against them.
17. The next substantive proposed amendment is to add the sentence “punishable under the Tribunal’s inherent power, Rule 77(A) and Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal,” which appears on page 1 of the Proposed Consolidated Indictment. The original indictment against Šešelj and Margetić did not contain this language in its initial statement of the crime committed by the accused, but did state—in the “count” section—that the two accused were charged with “contempt of the tribunal, punishable under the Tribunal’s inherent power and Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal.” The original indictment against Križić did include reference to Rule 77(A) at the beginning and in the “count” section at the end. Thus the relevant change in the language, with regard to Šešelj and Margetić, is the addition of “Rule 77(A)” to the list of rules that are alleged to have been violated by them. A substantially similar amendment is proposed in paragraph 22 of the Proposed Consolidated Indictment.
18. In the Trial Chamber’s opinion, allowing the Prosecution to add “Rule 77(A)” to the language in the indictment that relates to Šešelj and Margetić does not constitute unfair prejudice to either of these accused. The original indictments already characterized the charges against the accused as a violation of “the inherent power of the Tribunal” and this inherent power includes charges that might be brought more specifically by reference to Rule 77(A). In the words of the

Appeals Chamber, “each of the formulations in the current Rules 77(A) to (D) ... falls within – but does not limit – th[e] inherent power [of the Tribunal], as each clearly amounts to knowingly and wilfully interfering with the Tribunal’s administration of justice.”¹⁷ Thus the addition of this language, while unnecessary, does not cause unfair prejudice to the accused. The amendment also does not expose the accused to an additional basis of liability, and thus there is no need for them to enter a new plea to a new charge. The Chamber will allow the amendment.

19. The next substantive proposed amendment is in the first paragraph of the section of the Proposed Consolidated Indictment headed “the Accused,” which gives additional detail about Šešelj’s job title.¹⁸ The Trial Chamber does not find that the addition of this language causes unfair prejudice to the accused, nor that it is a new charge against the accused to which he must enter a plea.
20. The Chamber reaches the same conclusions in relation to the next two amendments proposed: (i) the addition, in the next paragraph, of the words “the Zagreb-based weekly publication”; and (ii) the alteration of the paragraph after that, to read: “At all times relevant to this indictment, MARGETIĆ was editor-in-chief of *Novo Hrvatsko Slovo* and the former editor-in-chief of the Zagreb-based weekly publication *Hrvatsko Slovo*.”¹⁹
21. The next set of proposed amendments is more difficult to untangle, as they appear in the section of the Proposed Consolidated Indictment containing the actual charges against the accused, and therefore combine language from the original *Šešelj and Margetić* and *Križić* indictments, in addition to removing Margetić altogether from the first count. Paragraphs 1 and 2 of this section of the Proposed Consolidated Indictment, along with paragraph 4, are entirely new additions. The text in paragraph 3, though similar to language in the original indictments, has been altered in light of these additions.

¹⁷ *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 26. In January 2000, when the Vujin Judgement was rendered, the forms of commission of contempt were found in Rule 77(A)-(C), and Rule 77(D) covered incitement and attempts to commit contempt, which is now in Rule 77(B)

¹⁸ It reads: “He [Šešelj] was a member of the editorial board of *Hrvatsko Slovo* and the director of HKZ – Hrvatsko Slovo D.O.O., a business entity which manages the administration of *Hrvatsko Slovo*. He was also a founder and the principle [sic] director of the Croatian Cultural Foundation, the business entity responsible for publishing *Hrvatsko Slovo*.”

¹⁹ The original indictment against Margetić stated “[a]t all times relevant to this indictment, MARGETIĆ was editor-in-chief of the Zagreb-based weekly publication *Hrvatsko Slovo* or editor-in-chief of *Novo Hrvatsko Slovo*.”

22. These additions and changes must be considered alongside the new proposed language in paragraph 7 of the indictment, the addition of the phrase “and by violating both the 2000 and 2004 Cease & Desist Orders” in paragraphs 15 and 21, and the addition of paragraph 20.
23. Each of these proposed changes seeks to add detail regarding the specific orders of the *Blaškić* Trial Chamber that were allegedly breached by the accused. In the Chamber’s view, this additional language would not cause undue prejudice and does not constitute a new charge. As this Chamber has previously found in a similar context, this type of amendment simply provides further specification of the basis for the *existing* charges against the accused; it does not add any new ones.²⁰ Nor need the Trial Chamber, at this stage, examine the content of the particular orders alleged to be violated by the accused and specified in the Proposed Consolidated Indictment to determine whether a *prima facie* case against the accused is established. When the original indictments were confirmed, the confirming Judge must have been satisfied that the Prosecution had established a *prima facie* case against the accused for the contempt charges as originally formulated, and it is not for this Trial Chamber to revisit his decision. The Trial Chamber will therefore allow these amendments.
24. The next substantive proposed amendment is the correction of a date in paragraph 10 of the Proposed Consolidated Indictment.²¹ None of the accused have challenged this amendment and the Chamber finds that no unfair prejudice would be caused by allowing it. Nor, in the Chamber’s view, does it constitute a new charge to which any of the accused must plead, as the new date is simply substituted for the old one. The Trial Chamber will therefore allow the amendment.
25. The next proposed amendment appears at paragraphs 12–13 of the Proposed Consolidated Indictment and consists of a description of two allegedly contemptuous publications that were made in *Hrvatsko Slovo* on 10 and 17 December 2004. Although these allegations existed in the original indictment against Križić, they did not appear in the original indictment against Šešelj. They have never been made in relation to Margetić.

²⁰ *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2, Decision on Prosecution’s Motions to Amend the Indictment, 7 October 2005.

²¹ In the original *Šešelj and Margetić* indictment, the date was given as 2 December 2004, whereas in the original *Križić* indictment, it was given as 3 December 2004, which is the date given in the Proposed Consolidated Indictment.

26. The Chamber finds that allowing this amendment would cause unfair prejudice to the accused Šešelj. Each separate publication that an accused is charged with can constitute a basis of liability for contempt, and allowing the indictment to be amended in this manner, at this late stage in the pre-trial proceedings, would compromise the accused's right to prepare his defence. The Chamber will therefore not allow this amendment with regard to Šešelj, although the allegations may remain with regard to Križić in the slightly modified form that they appear in paragraphs 12 and 13 of the Proposed Consolidated Indictment.

27. The next proposed amendment is a reference in paragraph 14 of the Proposed Consolidated Indictment to the fact that at the time relevant to the indictment "the publisher of *Hrvatsko Slovo* was ŠEŠELJ and the editor-in-chief was KRIŽIĆ." The original indictment against Šešelj and Margetić stated that Margetić was the editor-in chief of *Hrvatsko Slovo*, but the Prosecution apparently later discovered that this was not the case. Križić's indictment, filed later, correctly charged *him* as being the editor-in-chief of the newspaper. This amendment therefore does not affect Križić, because he has since his original indictment been charged for alleged crimes committed in his capacity as editor-in-chief of *Hrvatsko Slovo*. The amendment also does not adversely affect Margetić. He was originally charged both for his actions as editor-in-chief of *Hrvatsko Slovo* and for his actions as editor of *Novo Hrvatsko Slovo*, but is now only charged with acts committed in his capacity as editor-in-chief of *Novo Hrvatsko Slovo*. The amendment therefore results in *fewer* charges and factual allegations regarding Margetić, and as a result is not at all prejudicial to this accused. The Chamber will therefore allow the amendment.

28. The next proposed amendment is the use of the verb "publishing" instead of the verb "disclosing" in paragraph 21 of the Proposed Consolidated Indictment. This simply serves to clarify the form that the alleged unlawful disclosure of information took; it does not expose the accused to new charges or cause unfair prejudice in the preparation of their defence. The Trial Chamber will therefore allow the amendment.

B. Jović Indictment and Alterations in the Proposed Consolidated Indictment Pertaining only to Križić

29. The Prosecution requests the same amendments to the language in the indictment against Jović, and the language in the Proposed Consolidated Indictment that relates only to Križić. They consist of (1) the deletion of the reference to "Rule 77(A)(iv)" in the list of applicable Rules and (2) the deletion of "aiding and abetting" as a form of liability with which the accused are charged. Neither of these deletions causes unfair prejudice nor results in the inclusion of new

charges against them. Indeed, these amendments have the effect of reducing or narrowing the charges against these accused, and are therefore beneficial to them. The Trial Chamber will therefore allow these amendments.

V. Disposition

30. Pursuant to Rule 50 of the Rules, the Trial Chamber hereby **GRANTS** the Motion to Amend in part, and allows all of the proposed amendments contained in the Proposed Consolidated Indictment (Šešelj, Margetić, and Križić) and Annex E to the Prosecution's Consolidated Motion to Amend (Jović), with the exception of the text contained in paragraphs 12 and 13 of the Proposed Consolidated Indictment insofar as it relates to the accused Šešelj.

31. Pursuant to Rule 54, the Trial Chamber *proprio motu* **ORDERS** that:

- (1) The Prosecution shall correct the spelling of "principle" on the first page of the Proposed Consolidated Indictment.

32. Pursuant to Rules 50, 77 and 54, the Trial Chamber also **ORDERS** that:

- (2) The Prosecution shall file an amended Indictment against Stjepan Šešelj, Domagoj Margetić and Marijan Križić within two days of the date of this decision, which shall be the operative indictment against them. This amended indictment will be a copy of the Proposed Consolidated Indictment, except that it must implement the findings in paragraphs 30 and 31, above, and "hide" the track changes; and
- (3) The Prosecution shall file an amended Indictment against Jović within two days of the date of this Decision. This amended indictment will be a copy of the indictment attached to the Consolidated Motion to Amend at Annex E and shall be the operative indictment against Jović.

33. Pursuant to Rule 54, the Trial Chamber further **GRANTS** the Motion to Withdraw.

34. Pursuant to Rule 65 *ter* (E), the Trial Chamber **ORDERS** the Prosecution to file its pre-trial briefs, along with the lists of witnesses and exhibits that it intends to call at trial, replacing the pre-trial brief filed by it on 22 March 2006, by 14 June 2006.
35. Pursuant to Rule 65 *ter* (F), the Trial Chamber **ORDERS** the Defence for all of the accused to file their pre-trial briefs by 22 June 2006.

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



Judge O-Gon Kwon

Dated this eighth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]