



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-98-29/1-PT
Date: 12 December 2006
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding Judge
Judge Krister Thelin
Judge Antonie Kesia-Mbe Mindua

Registrar: Mr. Hans Holthuis

Decision of: 12 December 2006

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON AMENDMENT OF THE INDICTMENT AND
APPLICATION OF RULE 73 *BIS* (D)**

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

I. INTRODUCTION

1. Trial Chamber III 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 seised of “Prosecution’s Motion Seeking Leave to Amend the Indictment” (“Motion”) filed on 13 November 2006 by the Prosecution.
2. The Accused was originally indicted jointly with Stanislav Galić.¹ On 19 March 1999, the Pre-Trial Chamber ordered the Prosecution to file an indictment solely against the Accused. This indictment, filed on 26 March 1999 (“Indictment”), charges Dragomir Milošević (“Accused”) with three counts of violations of laws or customs of war (terror, attacks on civilians) and four counts of crimes against humanity (murder, other inhumane acts). The Accused is charged with individual criminal responsibility under Article 7(1) and Article 7(3) of the Tribunal’s Statute. The Indictment contains two Schedules, which list specific incidents that pertain to the courts of terror and sniping (Schedule 1) and terror and shelling (Schedule 2).
3. In the first part of this Decision, the Trial Chamber will address the request for amendment of the Indictment made in the Motion. In the second part, the Chamber will, pursuant to Rule 73 *bis* (D) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) order the Prosecution to reduce the scope of its case.

II. AMENDMENT OF THE INDICTMENT

A. Introduction

4. In the Motion, the Prosecution submits that its proposals for amendment of the Indictment will provide a “more precise, clear and succinct description of the Prosecution’s case”, strike two modes of liability under which the Accused has been charged, and greater specificity as to the material facts of the case.² The Prosecution states that its proposals will not add any charges against the Accused or make any new allegations of fact.
5. The Prosecution sets out its proposed amendments in a Proposed Amended Indictment, two versions of which are contained in Annex A (without tracked changes) and Annex B (with tracked changes) to the Motion.
6. The Prosecution submits that its proposals will:

¹ The confidential version of the indictment was confirmed on 24 April 1998. The indictment was made public on 2 November 2001.

² Motion, para. 2.

- a) Provide greater detail as to the military career of the Accused and the weaponry allegedly used, including the alleged use of air bombs;³
- b) Further explain the applicability of the Additional Protocol I to the Geneva Conventions in this case in light of the *Galić* Trial Chamber Judgement;⁴
- c) Eliminate “instigating” and “committing” as modes of liability under which the Accused is charged;⁵
- d) Provide more detail with regard to material facts, that is, the alleged acts and conduct of the Accused and the subordinates of the Accused;⁶
- e) In line with the *Galić* Trial Chamber Judgement, specify that Count 1(terror) relates to the commission of acts, the primary purpose of which was to spread terror and remove wording relating to the actual infliction of terror;⁷
- f) Specify in greater detail the legal requirements of the crimes charged;⁸ and
- g) Standardise the Indictment with the form used by the Office of the Prosecution through the amendment and alteration of the sequence of sections of the Indictment.⁹

7. The Defence did not object to Prosecution’s proposals for amendment of the Indictment.¹⁰

B. Discussion

8. Article 18(4) of the Tribunal’s Statute and Rule 47(C) of the Rules provide that an indictment shall contain a concise statement of the facts and the crimes with which the accused is charged. These provisions should be interpreted in conjunction with Article 21(2) and Article 21(4)(a) and (b) of the Statute, which provide for the right of an accused to be informed of the nature and cause of the charges against him or her and to have adequate time and facilities for the preparation of his or her defence.¹¹ As stated by the Appeals Chamber in the *Blaškić* Appeal Judgement:

³ Motion, para. 15(a). See also paras 1-3 and 15-17 of the Proposed Amended Indictment.

⁴ *Ibid.* See also para. 28 of the Proposed Amended Indictment.

⁵ Motion, para. 15(b). See also paras 19-20 of the Proposed Amended Indictment.

⁶ Motion, para. 15(c)(i)-(iv). The Prosecution submits that the proposals will provide more detail with respect to those supporting the allegations of the Accused’s effective control, the Accused’s knowledge of the crimes and the existence of an illegal campaign. See also paras 3-5, 12-14 and 19- 24 of the Proposed Amended Indictment.

⁷ Motion, para. 15(c)(vi). See also para. 22 of the Proposed Amended Indictment.

⁸ Motion, para. 15(c)(vii). See also paras 27-28 of the Proposed Amended Indictment.

⁹ Motion, para. 15(d).

¹⁰ Conclusion en Réponse de la Requête du Procureur aux Fins de Modifier l’Acte d’Accusation, 4 December 2006. Note that the Trial Chamber varied the time-limits for the response and reply to the Motion. See Scheduling Order Varying Time-Limits with Regard to the Commencement of Trial and Request to Prosecution to Reduce the Scope of its Case, 23 November 2006. The Prosecution did not file a Reply to the Response.

¹¹ *Prosecutor v. Kupreškić et al.* Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 (“*Kupreškić* Appeal Judgement”), para. 88.

Articles 18(4) and 21(4) of the Statute and Rule 47(C) of the Rules accord the accused an entitlement that translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in an indictment, but not the evidence by which such material facts are to be proven. Hence, 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.

[...]

The materiality of a particular fact cannot be decided in the abstract. It is dependent on the nature of the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularize the facts of its case in an indictment is the nature of the alleged criminal conduct charged. The materiality of such facts as the identity of the victim, the place and date of the events for which the accused is alleged to be responsible and the description of the events themselves necessarily depends upon the alleged proximity of the accused to those events, that is, upon the type of responsibility alleged by the Prosecution.¹²

9. If an indictment fails to plead in sufficient detail the essential aspects of the Prosecution case it suffers from a material defect. The Appeals Chamber has stated that, “a defective amendment, in and of itself, may in certain circumstances cause the Appeals Chamber to reverse a conviction”.¹³

10. Rule 50 of the Rules governs the amendment of an indictment and provides a Trial Chamber wide discretion to allow an indictment to be amended. As the Prosecution notes in the Motion, amendment can be permitted in the late stages of pre-trial proceedings, or after the trial has begun.¹⁴ The test for whether leave to amend will be granted is whether allowing the amendments would cause unfair prejudice to the accused.¹⁵ In determining whether granting an amendment would be unfair to an accused, regard must be given to the circumstances of the case as a whole.¹⁶ The case law of the Tribunal identifies two factors, in particular, that must be considered. The first of those

¹² *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić Appeal Judgement*”), paras 209-10. See also *Kupreškić Appeal Judgement*, para. 88; *Prosecutor v. Mrkšić*, Case No. IT-95-13/1-PT, Decision on the Form of the Indictment, 19 June 2003, (“*Mrkšić Decision*”), para. 7

¹³ *Kupreškić Appeal Judgement*, para. 114. See also *Prosecutor v. Simić*, Case No. IT-95-9-A, Judgement, 28 November 2006, para. 22. The Appeals Chamber set aside the conviction of the Appellant under Article 7(1) of the Statute because the indictment did not plead “joint criminal enterprise” as a mode of responsibility. See para. 74.

¹⁴ *Prosecution v. Popović et al.*, Case Nos. IT-05-88-PT, IT-05-88/1-PT, Decision on Further Amendments and Challenges to the Indictment, para. 8 (“*Popović et al. Decision*”).

¹⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution’s Motion for Leave to Amend the Indictment, 2 June 2005 (dated 27 May 2005) (“*Šešelj Decision*”), para. 5; *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. 22; *Prosecutor v. Brdanin and Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001 (“*Brdanin and Talić Decision*”), para. 50; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-PT, Decision on Vinko Martinović’s Objection to the Amended Indictment and Mladen Naletilić’s Preliminary Motion to the Amended Indictment, 14 February 2001 (“*Naletilić and Martinović Decision*”), p. 7.

¹⁶ *Prosecutor v. Beara*, Case No. IT-02-58-PT, Decision on Prosecution Motion to Amend the Indictment, 24 March 2005, (“*Beara Decision*”), p. 2; *Halilović Decision*, para. 22; *Naletilić and Martinović Decision*, p. 5.

factors is whether the accused is given an adequate opportunity to prepare an effective defence.¹⁷ In this regard, the closer to trial the Prosecution makes its motion seeking leave to amend, the more likely it is that the Trial Chamber will deny the motion on the ground that to grant leave to amend would cause unfair prejudice to the accused by, for example, depriving him of an adequate opportunity to prepare an effective defence.¹⁸

11. The second factor that the Trial Chamber must take into account when considering whether to grant a request for amendment of an indictment is whether granting that amendment will adversely affect the Accused's right under Article 21 of the Statute to be tried without undue delay.¹⁹ Undue delay could result if, for example, the amendment constitutes a new charge against the accused, in which case the procedures set out under Rule 50(B) and 50(C) of the Rules must be observed.²⁰

12. Instead, the proposed amendments serve to further specify material facts and other factual matters already set out in the Indictment, such as military career of the Accused and the weaponry allegedly used, provide greater explanation of the applicable legal framework, and remove two modes of liability. In addition, the Prosecution proposes some formatting changes, which will not affect the content of the Indictment.

13. The Trial Chamber is of the view that the proposed amendments will advance the Chamber's and Defence's understanding of the allegations contained in the Indictment, and, far from hindering the Defence, will assist any further preparation of the defence.

14. Moreover, the Trial Chamber notes that the Defence will be on notice regarding the content of the amended indictment before the Christmas recess, thus giving the Defence sufficient time to fully familiarise itself with the operative indictment before the commencement of trial. In this regard, when the Prosecution filed the Motion the case was not scheduled to go to trial and its submission that leave to amend the Indictment was being sought "well in advance of the start of trial" was justified.²¹ This state of affairs has since changed and the trial is now scheduled to begin on 10 January 2007. The Trial Chamber recalls that the Tribunal's case law provides that the closer to trial the Prosecution requests leave to amend, the more likely it is that the Trial Chamber will deny the motion on the ground. However, the Trial Chamber considers that despite the forthcoming

¹⁷ *Halilović* Decision, para. 23; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 ("*Karemera et al.* Decision"), para. 27. See also para. 13.

¹⁸ *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment, 13 December 2005 ("*Delić* Decision"), para. 62; *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; *Halilović* Decision, paras. 22–23; *Brdanin and Talić* Decision, para. 50.

¹⁹ *Halilović* Decision, para. 23, citing the *Karemera et al.* Decision, para. 13. See also *Šešelj* Decision, para. 5; *Beara* Decision, p. 2; *Halilović* Decision, para. 23.

²⁰ See, for example, *Popović et al.* Decision, para. 10.

²¹ Motion, para. 12.

commencement of trial, in view of the timing and type of amendments proposed by the Prosecution the Defence will have an adequate opportunity to prepare its defence. As such, granting leave to amend in the present case will not cause unfair prejudice to the Accused.

15. The Chamber is also convinced that granting the request to amend the Indictment will not result in undue delay. The proposed amendments do not expand the Indictment, but rather narrow it through greater specification. The Trial Chamber considers that the proposed amendments do not add any further charges to the Indictment and, consequently, Rule 50(B) and (C) of the Rules are not applicable to the present case. In particular, the proposed amendment to Count 1 of the Indictment, namely the removal of the requirement of actual infliction of harm, and the clarification that Count 1 is concerned with acts that had the primary purpose of spreading terror among the civilian population in line with the Judgement in the *Galić* case,²² does not introduce a new charge against the Accused. Granting the proposed amendments provides no reason to delay the commencement of trial.

16. Therefore, the Trial Chamber grants the Motion.

²² *Prosecutor v. Galić*, Case No. IT-98-29-T, Judgement and Opinion, para. 133. See also, *Prosecutor v. Galić*, Case No. IT-98-29-A, Judgement, paras 100-104.

III. APPLICATION OF RULE 73 *BIS* (D)

A. Discussion

17. On 23 November 2006, the Trial Chamber invited the Prosecution, pursuant to Rule 73 *bis* of the Rules, to propose means of reducing the scope of its case by at least one-third by reducing (i) the number of counts charged in the Indictment, and/or (ii) the number of crime sites or incidents comprised in one or more charges in the Indictment. In addition, the Prosecution was invited to reconsider the overall number of witnesses and exhibits in support of the charges against the Accused.

18. On 5 December 2006, the Prosecution filed its response.²³ The Prosecution proposes to reduce the scope of its case in two ways:

- a) Not present evidence in respect of 16 incidents currently listed in Schedules 1 and 2 to the Indictment; and,
- b) Amend its Rule 65 *ter* witness list by removing some witnesses and presenting the evidence of others pursuant to Rule 92 *bis* and 92 *ter*.²⁴

19. The Prosecution proposes not to present evidence with respect to eight sniping incidents of listed in Schedule 1 to the Indictment and eight incidents of shelling listed in Schedule 2 of the Indictment. It submits that this would have the effect of decreasing the total required number of hours for the Prosecution case by an estimated 87 hours.

20. Further in this regard, the Prosecution states that its proposals for the removal of the identified incidents from the Schedules are made on the basis of “the understanding that because the Indictment alleges a *campaign* of shelling and sniping in the various counts, that the campaign had the primary purpose of spreading terror among the civilian population, and that the sniping and shelling campaign was widespread and systematic, it will necessarily rely on evidence of attacks outside of the scheduled sniping and shelling incidents in order to prove the charges”.²⁵

21. With regard to the proposal to amend its Rule 65 *ter* witness list, the Prosecution submits that it will remove 54 witnesses from the list, which will reduce the time required for *viva voce* evidence

²³ Prosecution Response to Pre-Trial Chamber’s “Invitation to Prosecution to Reduce the Scope of its Case”, 5 December 2006 (“Response”).

²⁴ The Prosecution filed, also on 5 December 2006, the Confidential Motion Seeking Leave to Amend Rule 65 *ter* Witness List. The Trial Chamber will issue a separate decision addressing the matters raised in that motion in due course, which include the implementation of the Prosecution’s proposals set out above regarding amendment of its witness list as a consequence of efforts to reduce its case.

²⁵ Response, para. 4. Emphasis in original. The Prosecution submits that this approach was recently affirmed by the Appeals Chamber in the *Galić* Appeals Judgement, para. 217. See *Prosecutor v. Galić*, Case No. IT-98-29-A, 30 November 2006.

by 98 hours. It is noted that “approximately” 53 of these witnesses would be removed from the witness list as a result of not presenting evidence with respect to the 16 scheduled incidents that the Prosecution proposes removing from the Schedules.²⁶ In addition, the Prosecution proposes to reduce the number of hours required for 26 witnesses on its Rule 65 *ter* witness list by 55.5 hours.²⁷

22. The Prosecution submits that its proposals will result in a reduction in the number of hours required for the presentation by the Prosecution of *viva voce* evidence from an estimated 330.5 hours to 215 hours.

23. The Defence did not file a response to the Prosecution’s proposals by the required date.²⁸

B. Discussion

24. Rule 73 *bis* of the Rules provides various means by which a Trial Chamber may set constraints on the presentation of the Prosecution’s case-in-chief. Of relevance to the instant case is Rule 73 *bis*(D), which reads:

(D) After having heard the Prosecutor, the Trial Chamber, in the interest of a fair and expeditious trial, may invite the Prosecutor to reduce the number of counts charged in the indictment and may fix a number of crime sites or incidents comprised in one or more of the charges in respect of which evidence may be presented by the Prosecutor which, having regard to all the relevant circumstances, including the crimes charged in the indictment, their classification and nature, the places where they are alleged to have been committed, their scale and the victims of the crimes, are reasonably representative of the crimes charged.

25. As such, Rule 73 *bis*(D) permits the Trial Chamber to invite the Prosecutor to reduce the number of counts charged and fix the number of crime sites or incidents in an indictment. The Chamber’s discretion under Rule 73 *bis*(D) to extend this invitation to the Prosecutor must be exercised in the interest of a fair and expeditious trial.

26. After hearing the Prosecutor, the Trial Chamber may reduce the number of counts charged and fix, on the basis of the criteria set out in Rule 73 *bis*(D), crime sites or incidents that are “reasonably representative of the crimes charged” and for which evidence will be presented. The corollary of fixing the number of crime sites or incidents in respect of which evidence will be

²⁶ Response, para. 3.

²⁷ See Response, para. 3. In addition, the Prosecution proposes adding 15 witnesses to its witness list, who will require 42 hours to present their evidence. See Response, para. 8. These two proposed amendments are addressed in more detail in the Prosecution’s “Confidential Motion Seeking Leave to Amend Rule 65 *ter* Witness List”, 5 December 2006.

²⁸ In accordance with the Scheduling Order Varying Time-Limits with Regard to the Commencement of Trial and Request to Prosecution to Reduce the Scope of its Case, 23 November 2006, the Defence had to file its response, if any, by 8 December 2006.

presented is that the Prosecution shall not present evidence in respect of other crime sites or incidents that are not included in the fixed number.²⁹

27. In the Response, the Prosecution notes the concerns of the Prosecutor regarding Rule 73 *bis* (D) and states that “in the event the Trial Chamber orders a reduction of the Prosecution’s case by one-third... then the Prosecution would comply with this order”. That the Prosecution is required to comply with an order of the Trial Chamber is unquestionable and by this Decision the Trial Chamber orders the Prosecution to reduce the scope of its case in light of the proposals set out in the Motion.

28. The Prosecution wishes to retain all seven counts in the Indictment. The Trial Chamber is of the view that the manner in, and extent to, which the Prosecution has proposed to reduce its case means that it is unnecessary to remove any of the counts. Therefore, the Chamber will focus on the Prosecution’s proposals for the reduction of the number of incidents in the Indictment.

29. As noted above in paragraph 2 of this Decision, the Accused is charged with three counts of violations of laws or customs of war (terror, attacks on civilians) and four counts of crimes against humanity (murder, other inhumane acts) in relation to his alleged conduct of a campaign of sniping and shelling upon the civilian areas of Sarajevo and upon the civilian population. According to the Prosecution the incidents listed in the Schedules to the Indictment are “specific instances” of the alleged sniping and shelling attacks, which are representative of the campaign.³⁰

30. The Prosecution proposes not presenting evidence in respect of eight incidents listed in Schedule 1 and eight incidents listed in Schedule 2. This, therefore, meets with the Chamber’s requirement to reduce the Prosecution case by one-third.

31. The sniping incidents listed in Schedule 1 cover the time period 8 October 1994 to 25 May 1995. The incidents in respect of which the Prosecution proposes not to present evidence allegedly took place on 9 November 1994 (incident no. 4), 8 December 1994 (incident no. 9), 11 December 1994 (incident no. 11), 13 December 1994 (incident no. 12), 6 March 1995 (incident no. 16), 18 March 1995 (incident no. 17), 13 May 1995 (incident no. 19), and 25 May 1995 (incident no. 20). They concern the wounding or killing of men and women and children as a result of being shot while travelling in a car, walking on the streets of Sarajevo, entering or sitting in apartments in Sarajevo, and collecting firewood.

²⁹ See *Prosecutor v. Šešelj*, Case No. IT-06037-PT, 8 November 2006, para. 12. Cf. *Prosecutor v. Milutinović*, Case No. IT-05-97-T, Decision on Application of Rule 73 *bis*, 11 July 2006, para. 10.

³⁰ See Indictment, para. 15 and the first paragraphs under heading “Counts 2 to 4” and “Counts 5 to 7”. See also the proposed Amended Indictment, paras 23, 25 and 29.

32. Therefore, the incidents in respect of which evidence will be presented allegedly took place on 8 October 1994 (incident no. 1), 24 October 1994 (incident no. 2), 8 November 1994 (incident no. 3), 18 November 1994 (incident no. 5), 21 November 1994 (incident no. 6), 22 November 1994 (incident no. 7), 23 November 1994 (incident no. 8), 10 December 1994 (incident no. 10), 27 February 1995 (incident no. 13), 3 March 1995 (incident no. 14), 6 March 1995 (incident no. 15), and 3 May 1995 (incident no. 18). These incidents, although involving different people, concern similar events and happenings as those noted in paragraph 31 above. They contain allegations of the killing or wounding of men and women as a result of being shot while travelling on trams in Sarajevo, walking on the streets of Sarajevo, and collecting water and firewood.

33. With regard to the shelling incidents in Schedule 2, the incidents in respect of which the Prosecution proposes not to present evidence allegedly took place on 30 October 1994 (incident no. 1), 17 November 1994 (incident no. 3), 12 December 1994 (incident no. 4), 12 April 1995 (incident no. 7), 28 June 1995 (incident no. 16), 29 June 1995 (incident no. 17), 1 July 1995 (incident no. 18) and 19 July 1995 (incident no. 20). These incidents describe instances of shelling that injured or killed people both inside their homes and outside in Sarajevo or caused damage to areas in Sarajevo, such as streets and a pharmacy.

34. The incidents in respect of which evidence will be presented are those that allegedly took place on 8 November 1994 (incident no. 2), 22 December 1994 (incident no. 5), 7 April 1995 (incident no. 6), 24 May 1995 (incident no. 8), 24 May 1995 (incident no. 9), 26 May 1995 (incident no. 10), 16 June 1995 (incident no. 11), 16 June 1995 (incident no. 12), 16 June 1995 (incident no. 13), 18 June 1995 (incident no. 14), 28 June 1995 (incident no. 15), 1 July 1995 (incident no. 19), 23 July 1995 (incident no. 21), 22 August 1995 (incident no. 22) and 28 August 1995 (incident no. 23). These incidents concern alleged shelling attacks that caused death or injury to people in Sarajevo, including children and the elderly, and damage to infrastructure in Sarajevo.

35. The Trial Chamber is of the view that the shelling and sniping incidents for which evidence will be presented, following the reductions proposed by the Prosecution, illustrate similar and comparable events to those in respect of which evidence will not be presented.

36. Furthermore, while the consequence of the reduction of incidents in respect of which evidence will be presented will be the "removal" of some of the locations where these alleged incidents of shelling and sniping took place from the body of Prosecution evidence, evidence will be presented in respect of events that allegedly occurred in numerous other locations around Sarajevo. The Trial Chamber considers that the geographical distribution of the alleged crimes will not be affected by the proposed reduction of the number of incidents for which evidence will be presented.

37. The Trial Chamber has also considered the scale of the alleged crimes and the victims of those crimes in the context of this reduction of the Prosecution's case. The Trial Chamber notes that the scheduled incidents are not intended by the Prosecution to demonstrate the full scale of the alleged crimes or present all the victims of the alleged crimes. On the contrary, as noted earlier, the Prosecution's position is that the scheduled incidents are only representative of the alleged campaign of shelling and sniping and were provided for specificity of pleading. Notwithstanding that, the Chamber must make its own determination as to the representativity set out in the Rule. So far as representativity in terms of the scale of the crimes and the victims is concerned the Chamber notes that the number, gender and age of the victims, the type of injuries inflicted, and the weaponry used are fairly evenly represented across the various incidents. The proposed reduction leaves undisturbed that fairly even representation.

38. On the basis of the above, the Trial Chamber is convinced that the incidents in respect of which evidence will be presented are "reasonably representative of the crimes charged" and finds that evidence shall not be presented in respect of those shelling and sniping incidents identified by the Prosecution and noted above in paragraphs 31 and 33.

39. The Trial Chamber notes that the Prosecution submission that the removal of witnesses from the Prosecution Rule 65 *ter* witness list as a consequence of no longer presenting evidence in respect of the identified incidents would lead to an "approximately 98 hours of reduced courtroom time for *viva voce* evidence". However, it appears from a review of the Prosecution Rule 65 *ter* witness list that the removal of these witnesses would result in a reduction of 93 hours of time required to present the case in chief. Therefore, the estimated time for the Prosecution case-in-chief, taken together with the other proposed changes to the Prosecution Rule 65 *ter* witness list, will be 220 hours rather than 215 hours.

40. The Trial Chamber stresses that it understands that the Prosecution's estimate, which it has slightly revised, of 220 hours for its case covers the presentation of its case-in-chief, including the presentation of evidence regarding unscheduled incidents and cross-examination.

IV. DISPOSITION

For the foregoing reasons, and pursuant to Rules 50 and 73 *bis*(D) of the Rules, the Trial Chamber hereby,

GRANTS the Motion, and

ORDERS THAT:

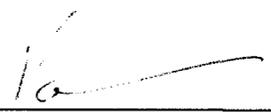
1. The Prosecution will file an Amended Indictment containing all the amendments proposed by the Prosecution in the Motion and set out in Annexes A and B to the Motion by 18 December 2006;
2. The Prosecution shall not present evidence in respect of the incidents listed in Schedule 1 to the Indictment dated 9 November 1994, 8 December 1994, 11 December 1994, 13 December 1994, 6 March 1995, 18 March 1995, 13 May 1995 and 25 May 1995, and shall not present evidence in respect of the incidents listed in Schedule 2 to the Indictment dated 30 October 1994, 17 November 1994, 12 December 1994, 12 April 1995, 28 June 1995, 29 June 1995, 1 July 1995 and 19 July 1995.

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

Dated this twelfth day of December 2006

At The Hague

The Netherlands



Patrick Robinson
Presiding Judge

[Seal of the Tribunal]