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**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-08-91-PT  
Case No. IT-95-5/18-PT**

**IN THE SPECIALLY APPOINTED CHAMBER**

**Before:** Judge O-Gon Kwon, Presiding  
Judge Iain Bonomy  
Judge Kevin Parker

**Registrar:** Mr. Hans Holthuis

**Date filed:** 15 December 2008

**PROSECUTOR  
v.  
MIĆO STANIŠIĆ  
STOJAN ŽUPLJANIN**

**PROSECUTOR  
v.  
RADOVAN KARADŽIĆ**

***PUBLIC***

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**PROSECUTION'S RESPONSE TO STOJAN ŽUPLJANIN'S  
MOTION FOR JOINDER WITH THE CASE OF  
RADOVAN KARADŽIĆ**

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**The Office of the Prosecutor:**

Mr. Thomas Hannis  
Mr. Alan Tieger  
Mrs. Hildegard Uertz-Retzlaff

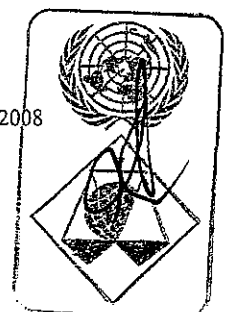
**Counsel for the Accused:**

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić  
Mr. Tomislav Višnjić and Mr. Igor Pantelić for Stojan Župljanin

**The Accused:**

Mr. Radovan Karadžić  
Case No.: IT-08-91-PT  
Case No.: IT-95-5/18-PT

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1. The Prosecution hereby opposes Stojan Župljanin's Motion for Joinder with the Case of Radovan Karadžić filed on 2 December 2008 ("Motion").
  
2. Župljanin argues that his right to a fair trial and the interests of justice require that his case (which has already been joined with that of Mićo Stanišić) be joined with that of Radovan Karadžić as well. Župljanin does not identify any authority that an accused can seek to compel the Prosecution to join accused whom the Prosecutor has chosen to charge separately, and accordingly does not appear to have standing to bring the instant motion.<sup>1</sup> In any event, although there is overlap between crimes charged in the Consolidated Indictment of Mićo Stanišić and Stojan Župljanin (the "Župljanin/Stanišić Indictment") and those in the proposed

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<sup>1</sup> The Prosecution has not found any such authority within the Tribunal's rules or precedent. Rule 48 of the Rules of Procedure and Evidence of the Tribunal ("Rules") is silent as to who has the authority to initiate joinder of separately-charged accused, and nothing in Article 21 grants such a right to the accused. In contrast, Article 16 and Article 18 place in the hands of the Prosecutor the authority to determine which accused should be charged in which indictment. Should the Trial Chamber conclude that Župljanin does have standing to seek joinder, the Prosecution submits its opposition on the merits. Moreover, Rules 48 and 49 are located between rules dealing with the submission and amendment of the indictment by the Prosecutor.

Second Amended Indictment<sup>2</sup> of Radovan Karadžić (the "Karadžić Indictment"), the lack of any other overlap between the two indictments and the vastly different stage of the proceedings of each case demonstrate that they are not good candidates for joinder.

## II. Rule 48

3. The Prosecution agrees that the crimes charged in the Župljanin/Stanišić Indictment and some of the crimes charged in the Karadžić Indictment (those committed as part of an overall persecution campaign in some municipalities, primarily in 1992) were committed in the course of the same transaction<sup>3</sup>, and that the threshold requirements of Rule 48 are met.

## III. Joinder Would Not Serve the Interests of Justice or the Rights of the Accused

4. Once a Trial Chamber determines that the requirements of Rule 48 are met, it has the discretion to join the accused after weighing the impact joinder will have on the interests of justice and the rights of the accused to a fair and expeditious trial.<sup>4</sup> Factors that the Chamber may look to in the interests of justice include: (1) avoiding duplication of evidence; (2) minimizing hardship to witnesses; (3) promoting judicial economy; and (4) ensuring consistency of judgments.<sup>5</sup>
5. In determining the impact joinder would have on the rights of the accused, Trial Chambers consider the need to: (1) prevent unduly delaying the commencement of trial; (2) prevent unduly prolonging and complicating the trial; and (3) avoid conflicts of interest that might cause serious prejudice to an accused.<sup>6</sup>

<sup>2</sup> Although Župljanin bases his analysis on the proposed Second Amended Indictment, the Trial Chamber has not yet ruled on the Prosecution's Motion to Amend First Amended Indictment, and the Amended Indictment of 28 April 2000 remains the operative indictment in that case. Because the Second Amended Indictment is the clearest statement of the Prosecution's charges against Karadžić, and in order to respond to Župljanin's arguments directly, the Prosecution will also base its analysis on the proposed Second Amended Indictment.

<sup>3</sup> *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-PT, Decision on Accused Mario Čerkez's Application for Separate Trial, 7 December 1998, para.10.

<sup>4</sup> *Prosecutor v. Gotovina, et al.*, Case Nos. IT-01-45-AR73.1, IT-03-73-AR73.1, IT-03-73-AR73.2, Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006 ("Gotovina Decision"), para.17.

<sup>5</sup> *Gotovina Decision*, para.17.

<sup>6</sup> *Prosecutor v. Martić, et al.*, Case Nos. IT-95-11-PT, IT-03-69-PT, IT-03-67-PT, Decision on Prosecution Motion for Joinder, 10 November 2005 ("Martić Decision"), para.52.

## A. The Interests of Justice Would Not be Served by Joinder

### (1) Joinder Would Not Significantly Prevent Duplication of Evidence

6. Župljanin contends that because the crimes, crime sites and municipalities with which he is charged overlap with some of the crimes, crime sites and municipalities charged in the Karadžić Indictment, joinder of the two cases is appropriate. His argument is based upon the assumption that similar charges in two indictments will *a fortiori* result in the same evidence being presented to prove those charges at trial.<sup>7</sup> Although no 65ter list has been filed in the Karadžić case, an examination of the two indictments and of the Prosecution's witness list in the Župljanin/Stanišić case demonstrates that Župljanin has over-estimated the amount of duplicative evidence likely to be tendered in the two cases.
7. The Župljanin/Stanišić Indictment is about crimes committed by or involving RSMUP personnel. The witnesses identified for the Župljanin/Stanišić trial were chosen because they offer the most insight into RSMUP organization, structure, hierarchy, personnel and crimes committed between 1 April and 31 December 1992.<sup>8</sup> In contrast, the Karadžić Indictment is not focused on RSMUP but rather encompasses all political, civilian and military organs that participated in the crimes committed against the non-Serb populations in BiH between 1992 and 1995. This different focus means that the witnesses to testify regarding Stanišić's or Župljanin's knowledge of or involvement in crimes may not be the witnesses to testify to matters relevant to Karadžić.
8. Župljanin's argument also focuses heavily on the Prosecution's crime base witnesses identified for the Župljanin/Stanišić trial.<sup>9</sup> These witnesses, however, do not account for the lion's share of testimony anticipated during the Prosecution's case-in-chief in that case. The Prosecution has pared its case against Stanišić and Župljanin down to 118 total witnesses, 44 of whom are

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<sup>7</sup> Župljanin also asserts that "it is obvious that the evidence of a large number of factual and expert witnesses called by the various defence teams would be needlessly duplicated by separate trials." Motion, para.15. However, he fails to identify any witness that all three defence teams intend to call.

<sup>8</sup> The Prosecution identified this focus as a basis to join the Stanišić and Župljanin indictments, noting that joining those Accused in a single trial offered "a unique opportunity for the Tribunal to illuminate and assess the RSMUP's overall responsibility" for atrocities committed against the non-Serb population of Republika Srpska.

<sup>9</sup> See Motion at para.14, noting that "45 prosecution witnesses previously identified against Župljanin/Mičo Stanišić had previously testified against Krajišnik" and asserting that "proceeding with two separate trials will clearly result in significant and needless duplication of prosecution evidence." Assuming that Župljanin is referring to the Prosecution's Proposed List of Witnesses filed on 20 May 2008 in the Stanišić case, 38 of the 45 witnesses identified by Župljanin are crime base witnesses.

proposed to testify *viva voce* and 28 of whom are proposed as Rule 92*ter*.<sup>10</sup> As the Prosecution noted in its Motion for Joinder of the Stanišić and Župljanin indictments, linkage and expert evidence makes up the majority of witnesses and documents on its proposed Rule 65*ter* witness and exhibit lists, and the vast majority of it is anticipated *viva voce* and Rule 92*ter* testimony.<sup>11</sup> Those linkage and insider witnesses are common and relevant to Župljanin and Stanišić, but there is no indication that all or even most of them will be relevant to Karadžić. As a result, any reduction in duplication that would result from joinder is not likely to be significant.

(2) Joinder Would Not Significantly Promote Judicial Economy

9. The Karadžić Indictment is plainly more complex than the Župljanin/Stanišić Indictment and will require considerably more evidence, a wider variety of witnesses and a lengthier trial. In addition to the crimes committed in a number of municipalities, primarily in 1992, Karadžić is charged with crimes related to the campaign of sniping and shelling of Sarajevo from 1992 through 1995, crimes committed to eliminate the Bosnian Muslims in Srebrenica in 1995, and taking UN personnel hostage in 1995. The Prosecution has not charged either Stanišić or Župljanin with any of those crimes, and Župljanin seems to acknowledge that none of the evidence the Prosecution will produce to prove those crimes will overlap with his case in any meaningful way. As a result, were the cases joined significant parts of the evidence would have no relevance to either Stanišić or Župljanin.
10. With regard to the common persecution campaign in the municipalities, the Karadžić Indictment alleges responsibility for crimes committed from at March 1992 until 30 November 1995. Stanišić and Župljanin are charged only with crimes committed between 1 April 1992 and 31 December 1992 – a significantly shorter time period. More (and different) witnesses will likely be needed to establish the nature and duration of Karadžić's involvement in the crimes than to establish Stanišić's or Župljanin's liability.

<sup>10</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79, Prosecution's Response to Trial Chamber's Invitation Pursuant to Rule 73*bis*(D), With Confidential Annexes, 20 May 2008 ("Rule 73*bis*(D) Response"), Confidential Annex A. The Prosecution has given notice that these numbers might change somewhat in response to Župljanin's joinder to the Stanišić case. Stanišić/Župljanin Rule 65*ter* Conference, T.11-12.

<sup>11</sup> See Prosecution's Motion for Joinder and for Leave to Consolidate and Amend Indictments, With Confidential Annexes, 15 July 2008, para.19.

11. The geographic scopes of the indictments are also different. The Župljanin/Stanišić Indictment charges crimes in only 13 of the 27 municipalities charged in the Karadžić Indictment.<sup>12</sup> Župljanin is only charged with crimes in 6 of the 13 overlapping municipalities.<sup>13</sup> If the cases were joined, considerable evidence would need to be adduced that related only to one or the other of the indictments or the accused. In light of the considerable amount of evidence relating to the charges that will have no relevance to Župljanin or Stanišić, the lack of greater municipality overlap within the common JCE minimizes any potential judicial savings.
12. The Prosecution has identified 118 witnesses for its case against Stanišić and Župljanin. It is reasonable to assume that relatively similar numbers of witnesses will be needed to prove the charges unrelated to the overlapping municipalities in the Karadžić Indictment. Thus were the cases joined, each Accused – but primarily Župljanin and Stanišić – would be confronted with significant numbers of witnesses of no relevance to their case. As noted by Trial Chamber III:
- "these figures speak for themselves. They show that although joinder will decrease to a limited extent the total number of witnesses which the Prosecution would call against the four accused, it will also increase considerably the number of witnesses called by the Prosecution against each accused, and, as a consequence, the length of the trial of each accused. This, in turn, means that it is questionable whether there would be any saving in the overall costs incurred in the event of a joinder."<sup>14</sup>
13. Moreover, joinder would actually reduce judicial efficiency by reducing the Trial Chamber's ability to utilize adjudicated facts. On 14 December 2007, the Trial Chamber in the Stanišić case took judicial notice of 752 adjudicated facts.<sup>15</sup> Several hundred of those facts relate to the concept of a Greater Serbia, the rise of the SDS, the creation of separate Serbian entities within BiH, implementation of Variant A and B, the proclamation of Republika Srpska, the role of the armed forces in the disintegration of the former Yugoslavia and the arming of local Serbs, and the role Karadžić played in these events. In order to make full use of adjudicated facts the Prosecution in the Župljanin/Stanišić case has removed a number of witnesses from its witness list (relying instead on the judicially noticed adjudicated facts to establish the facts to which

<sup>12</sup> The municipalities common to both indictments are: Banja Luka, Brčko, Donji Vakuf, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Vlasenica, Višegrad, Vogošća and Zvornik. In relation to the operative indictment the difference is even more significant, namely 13 of 41 municipalities.

<sup>13</sup> These municipalities are Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor and Sanski Most.

<sup>14</sup> *Martić* Decision, para.41.

<sup>15</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice ("Judicial Notice Decision"), 14 December 2008. The Prosecution has noticed its intention to request that the Trial Chamber apply the 14 December Decision to Župljanin as well. *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Rule 65ter Conference, 19 November 2008 ("Stanišić/Župljanin Rule 65ter Conference"), T.5.

those witnesses would have testified), and has proposed that the testimony of a considerable number of other witnesses be introduced via Rule 92bis.<sup>16</sup>

14. However, facts relating to acts, conduct or mental state of an accused cannot be judicially noticed<sup>17</sup>, nor may testimony involving such acts or conduct be tendered via Rule 92bis.<sup>18</sup> As a result, should the Župljanin/Stanišić and Karadžić cases be joined the Prosecution would no longer be able to utilize the judicially noticed adjudicated facts that relate to Karadžić's acts, conduct or mental state, nor would it be able to offer via Rule 92bis the testimony of witnesses who speak to those matters.<sup>19</sup> As some of these witnesses have testified for several days in prior cases, presentation of their testimony in a joint trial would reasonably be expected to add weeks to the trial.

## B. Joinder Could Prejudice the Rights of the Accused

### (1) Joinder Would Unduly Delay the Commencement of Trial

15. Although a trial date has not yet been set in either case, they are in vastly different procedural postures. In the Karadžić case the Prosecution has filed the Second Amended Indictment, is in the process of completing Rule 66(A)(i) disclosure and has begun to make Rule 66(A)(ii) disclosure. The Župljanin/Stanišić case is substantially farther along in the pre-trial process:

- Rule 66(A)(i) disclosure has been completed<sup>20</sup>;
- Challenges to the form of the indictment have been made by both accused;
- Rule 66(A)(ii) disclosure has been substantially completed<sup>21</sup>;
- The Prosecution has filed a Rule 65ter exhibit list and witness list;<sup>22</sup>

<sup>16</sup> See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79, Prosecution's Response to Trial Chamber's Invitation to Reduce the Scope of Its Indictment, With Confidential Annexes, 24 April 2008, paras.8-12, 18-20; Rule 73bis(D) Response, paras.7, 13.

<sup>17</sup> Judicial Notice Decision, para.44.

<sup>18</sup> Rule 92bis(A).

<sup>19</sup> For example, in the Župljanin/Stanišić case the Prosecution has offered the testimony of Robert Donia, Ewan Brown, Herbert Okun, Charles Kirudija and a Rule 70 witness via Rule 92bis.

<sup>20</sup> *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Status Conference, T.6-7 (20 November 2008) ("Stanišić/Župljanin Status Conference").

<sup>21</sup> *Id.* (noting that only the statements of a handful of delayed disclosure witnesses remain to be provided).

<sup>22</sup> The Prosecution has served notice of its intention to utilize the witness list previously filed in the Stanišić case against both accused. *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Prosecution Notice and Request Regarding Rule 92bis, 92ter and 92quater Evidence, 19 November 2008 ("Notice"); *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Prosecution Amended Notice and Request Regarding Rule 92bis, 92ter and 92quater Evidence, 9 December 2008 ("Amended Notice"); Stanišić/Župljanin Rule 65ter Conference, T.11-12 (Prosecution confirmed that the 65ter Witness List already filed with regard to Stanišić is "the substantial witness list that we will be working from" in the consolidated case).

- The Prosecution has filed Rule 92bis, 92ter and 92quarter motions and a Rule 94bis notice;<sup>23</sup>
- The Trial Chamber has taken judicial notice of 752 adjudicated facts;<sup>24</sup>
- The Prosecution and Stanišić have reached agreement on 114 agreed facts and the Prosecution has begun discussions with Župljanin about agreeing to those facts as well.<sup>25</sup>

16. The Župljanin/Stanišić case is thus substantially farther along in trial preparation, and indeed is ready for trial to commence once defence counsel have had sufficient time to prepare. Given the procedural status of the Karadžić case, joinder of the two cases could result in considerable delay of the start of the Župljanin/Stanišić trial. Although by filing the instant Motion Župljanin has waived any objections to any resulting delay, the Prosecution is concerned that such delay could impact Stanišić's rights to an expeditious trial.<sup>26</sup>

(2) Joinder Would Significantly Increase the Length and Complexity of Trial

17. The greater number of charges and the wider scope of criminal conduct captured in the Karadžić Indictment necessarily mean that the Karadžić Indictment will take longer to try, require a greater number of witnesses and involve production of a larger number of exhibits than will the Župljanin/Stanišić Indictment. It is reasonable to assume that the amount of time needed to conclude a combined trial would be significantly longer than the Župljanin/Stanišić case alone. Although by filing the instant Motion Župljanin has waived any objections to a longer trial, the Prosecution is concerned that such a longer trial could impact Stanišić's rights to an expeditious trial.<sup>27</sup>

18. Furthermore, there can be no doubt that joinder would greatly increase the complexity of both cases. The charges in the Karadžić Indictment that are not charged against Župljanin or Stanišić, the different time frames charged in the indictments with regard to the overlapping JCE, the larger number of witnesses required to testify in relation to the varying and disparate charges in the two indictments, the partial overlap of crimes, crime sites and municipalities -- and the resulting crimes, crime sites and municipalities that are relevant to only one or two of

<sup>23</sup> The Prosecution has served notice of its intention to have these motions considered as applicable to both accused. *See Notice and Amended Notice.*

<sup>24</sup> Judicial Notice Decision; *see* fn27 *supra*...

<sup>25</sup> Stanišić/Župljanin Rule 65ter Conference T.13-15.

<sup>26</sup> *See Martić* Decision, paras.48-52.

<sup>27</sup> *See Martić* Decision, paras.48-52.




the three accused -- would all require complicated compartmentalization of evidence and would result in a much more complex trial than if the two indictments were tried separately.

#### IV. Relief Sought

19. For the foregoing reasons, the Prosecution respectfully requests that the Trial Chamber deny the relief sought in the Motion.

Word Count: 2,991



Thomas Hannis  
Senior Trial Attorney

Dated this 15<sup>th</sup> day of December 2008

At The Hague, Netherlands

