UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of former Yugoslavia since 1991	Case No.	IT-05-87-PT
		Date:	11 May 2006
		Original:	English

IN TRIAL CHAMBER III

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

Registrar: **Mr. Hans Holthuis**

Decision of: **11 May 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ,
VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ

DECISION ON MOTION TO AMEND THE INDICTMENT

The Office of the Prosecutor:

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Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 (the "Tribunal") is seized of the "Prosecution's Submission of Second Amended Joinder Indictment with Annexes A, B, D and *Confidential* Annex C and Motion to Amend the Indictment", filed on 5 April 2006 (the "Proposed Indictment" and "Motion to Amend the Indictment", respectively).

BACKGROUND

1. On 22 March 2006, the Trial Chamber filed its "Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment" (the "Decision of 22 March 2006"), which sustained some challenges the Accused had levied against the previous proposed indictment, and gave the Prosecution 14 days to file an indictment which would comply with certain requirements that the Trial Chamber set out.

2. The Prosecution filed the Proposed Indictment now under consideration on 5 April 2006. The Prosecution also filed its Motion to Amend the Indictment, which the Trial Chamber views as replacing the motion of the same name filed on 16 August 2005.[1]

3. On 24 April 2006, the last day for the Accused to file challenges to the Proposed Indictment,[2] the Trial Chamber was in receipt of challenges on behalf of Milan Milutinović,[3] Nikola Šainović[4] and Vladimir Lazarević.[5] A one-page submission filed by Nebojša Pavković, which joined in Milutinović's challenge, was sent to a representative of the Trial Chamber by email on 24 April 2006 along with an explanation of counsel's inability to file the document properly on time, which was remedied the following day. Sreten Lukić filed a challenge to the Proposed Indictment on 26 April 2006,[6] two days late, with neither an explanation nor a request to file a late submission. Consequently, the Trial Chamber will not consider Lukić's challenge.

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[1] *See Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević and Lukić*, Case No. IT-05-87-PT ("*Milutinović et al.*"), Prosecution's Notice of Filing Amended Joinder Indictment and Motion to Amend the Indictment with Annexes, 16 August 2005.

[2] *See* Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment ("Decision of 22 March 2006"), 22 March 2006, para. 33(5).

[3] *See* Mr. Milutinović's Challenge to the Second Amended Joinder Indictment ("Milutinović Challenge"), 24 April 2006.

[4] *See* Defence Motion: In Accordance with the Trial Chamber's "Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment" ("Šainović Challenge"), 24 April 2006.

[5] *See* Defence Motion: In Accordance with the Trial Chamber's "Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment" ("Lazarević Challenge"), 24 April 2006.

[6] *See* Sreten Lukić's Motion, Pursuant to the Trial Chamber's 22 March 2006 Order, Addressing the Proposed Second Amended Joinder Indictment, 26 April 2006.

4. The Prosecution filed its reply to the Defence challenges on 2 May 2006, along with an application for leave to reply which the Trial Chamber will grant.[7] On 5 May 2006, Šainović filed a reply to the Prosecution's reply.[8] Given that there is no provision in the Rules of Procedure and Evidence for such a submission, and that the document essentially repeats Šainović's earlier points, the Chamber will not consider it.

DISCUSSION

Specification of Alleged Physical Perpetrators

5. In the Decision of 22 March 2006, the Trial Chamber ordered the Prosecution to

> identify the alleged physical perpetrator(s) of the charged crimes. An allegation that "at least one MUP unit" was involved at each crime scene will suffice, but if the Prosecution intends to argue at trial that any other forces committed crimes, it must identify either the particular forces involved at each municipality or the facts from which it reasonably can be inferred that the physical perpetrators were the subordinates of one or more Accused.[9]

In its Motion to Amend the Indictment, the Prosecution states that, as

> set forth in previous submissions and for the reasons set out therein, [the Prosecution] is currently not in a position to identify the particular units involved at each municipality separately. However, it is the Prosecution case that at least one unit of the MUP and one unit of the VJ were present and involved at each municipality wherein a crime is charged.[10]

Accordingly, paragraph 20 of the Proposed Indictment alleges that "[a]t least one VJ and at least one MUP unit participated in each of the crimes enumerated in Counts 1 to 5 of this Indictment."[11]

6. Lazarević protests that "such generalized allegations … do[] not provide enough information and facts to the Accused which could help him to adequately prepare his defence."[12] The Prosecution responds that it has "clarified that 'at least one VJ unit' participated at each crime site, thereby applying the pleading standard to the VJ that was found sufficient by the Trial Chamber with regard to the MUP."[13] The Prosecution also states that the VJ "encompasses the 3rd Army (commanded by the Accused Pavković) and the Priština Corps (commanded by the Accused

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[7] *See* Prosecution Application for Leave to Reply and Joint Reply to Defence Submissions on the Second Amended Joinder Indictment ("Prosecution Reply"), 2 May 2006.

[8] *See* Defence Request: Seeking Leave to File a Reply to the "Prosecution Application for Leave to Reply and Joint Reply to Defence Submissions on the Second Amended Joinder Indictment", 5 May 2006.

[9] Decision of 22 March 2006, para. 33(3)(a).

[10] Prosecution's Submission of Second Amended Joinder Indictment with Annexes A, B, D and Confidential Annex C and Motion to Amend the Indictment ("Motion to Amend the Indictment"), 5 April 2006, para. 7.

[11] Second Amended Joinder Indictment ("Proposed Indictment"), 5 April 2006, para. 20.

[12] Lazarević Challenge, para. 11.

[13] Prosecution Reply, para. 23.

Lazarević)".[14] The Trial Chamber agrees, in light of its Decision of 22 March 2006,[15] that asserting that at least one VJ unit and at least one MUP unit participated in each of the charged crimes adequately specifies the alleged physical perpetrators.

Alleged Crimes of 1998

7. The Trial Chamber stated, in its Decision of 22 March 2006, that "if the Prosecution intends to rely at trial on the alleged crimes of 1998, the Prosecution must identify the dates and locations of the crimes, the connection to each Accused and supporting material for its allegations."[16] In its Motion to Amend the Indictment, the Prosecution submits that, in

> compliance with this order, the Prosecution added two new paragraphs (paragraphs 95 and 97) to the background section, clarified two further paragraphs (paragraphs 94 and 96) and included references in the JCE section of the proposed Indictment for each Accused. Paragraphs 94 to 97 of the proposed Indictment now contain detailed allegations, including dates, location, victims where known, and the nature of the alleged crimes.[17]

8. Šainović and Lazarević contend that the Prosecution has failed to identify the purported connection between the crimes and each Accused.[18] The Prosecution states that "the alleged individual connection of events in 1998 to each Accused is set forth in detail in the JCE section in the proposed indictment, as it was in previous versions."[19] The paragraphs which the Prosecution cites for this proposition allege generally that the Accused "promoted, instigated, facilitated, encouraged and/or condoned the perpetration of crimes by the forces of the FRY and Serbia during 1998"[20] and had "knowledge of the crimes in Kosovo committed by the forces of the FRY and Serbia in 1998."[21] On a broad reading, then, the Proposed Indictment alleges that all the Accused

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[14] *Ibid.*

[15] *See* Decision of 22 March 2006, paras. 4-10.

[16] *Ibid.*, para. 33(3)(b).

[17] Motion to Amend the Indictment, para. 12.

[18] *See* Šainović Challenge, 24 April 2006, para. 17 (The "Indictment does not contain a single new allegation and/or supporting material, which would point to the requested connection."); Lazarević Challenge, para. 19 (The "Prosecution has not even tried to make a connection between the alleged crimes from 1998 … and each of the Accused.").

[19] Motion to Amend the Indictment, para. 12. *See also* Prosecution Reply, para. 21 ("The Prosecution maintains its submission that all those amendments, additions and references [to the crimes of 1998] now adequately notify the Accused not only of crime-specific allegations concerning 1998 but also of their individual connections to those alleged crimes.").

[20] Proposed Indictment, para. 46(f) (concerning Accused Šainović); s*ee also* paras. 35(e), 51(f), 61(e), 66 (similar paragraphs for Accused Milutinović, Pavković, Đorđević, and Lukić). *But see ibid.*, para. 41(h) (alleging that Accused Ojdanić "promoted, instigated, facilitated, encouraged and/or condoned the perpetration of crimes by the VJ and subordinate forces *during the indictment period*") (emphasis added); *ibid.*, para. 56(d) (alleging that Accused Lazarević "promoted, instigated, facilitated, encouraged and/or condoned the perpetration of crimes by the forces of the FRY and Serbia", with no mention of a specific time period).

[21] Proposed Indictment, para. 57(e) (concerning Accused Lazarević). *See also ibid.*, paras. 36(d), 42(d), 47(d), 52(e), 64(a), 67(e) (similar paragraphs for Accused Milutinović, Ojdanić, Šainović, Pavković, Đorđević, and Lukić).

were aware of, and most of them[22] facilitated or condoned, the perpetration of all of the crimes of 1998 identified in paragraphs 94 to 97 of the Proposed Indictment.

9. Those paragraphs span a fairly sizeable expanse of geography and time, as they identify at least 16 different locations where incidents occurred between February and September 1998:

(1) the shelling of towns and expulsion of residents in the Drenica area in February and March 1998;

(2) an attack on the village of Donji Prekaze/Prekazi i Pshtem in early March 1998, during which approximately 50 people were killed, including most of the members of Adem Jashari's family;

(3) the destruction of the old part of the village of Dečani/Deçan around Easter 1998;

(4) heavy shelling and destruction in the area of Dulje/Duhel at the end of July 1998;

(5) heavy shelling and destruction in the area of Blace at the end of July 1998;

(6) heavy shelling and destruction in the area of Junik at the end of July 1998;

(7) heavy shelling and destruction in the area of Mališevo/Malishevë at the end of July 1998;

(8) "operations" in the area of Drenica around 5 and 6 August 1998;

(9) "operations" in the area of Junik around 5 and 6 August 1998;

(10) "operations" in the area of Jablanica around 5 and 6 August 1998;

(11) destruction of most villages along the Peć–Priština/Peja–Prishtina road;

(12) destruction of most villages along the Gornja Klina–Rudnik–Rakoš/Klina e Epërm–Rudnik–Rakosh road;

(13) the shelling and burning of approximately half the villages in the municipality of Dečani/Deçan by the end of September 1998;

(14) the complete destruction of the village of Prilep/Prelep by the end of September 1998;

(15) ongoing shelling and burning of villages in the Suva Reka/Suha Reka valley at the end of September 1998; and

(16) the killing of 21 members of the Delijaj family at its compound in Gornje Dobrinje/Dobrinja e Epërm on 26 September 1998. The allegations regarding these 16 crime bases do not include more general assertions such as that, by mid-October 1998, approximately 285,000 people had been internally displaced within, or had left, Kosovo.[23]

10. This Trial Chamber has previously held that "the test for whether leave to amend [an indictment] will be granted is whether allowing the amendments would cause unfair prejudice to the

[22] *See, e.g., ibid.*, para. 41(h) (alleging that Accused Ojdanić "promoted, instigated, facilitated, encouraged and/or condoned the perpetration of crimes by the VJ and subordinate forces *during the indictment period*") (emphasis added); *ibid.*, para. 56(d) (alleging that Accused Lazarević "promoted, instigated, facilitated, encouraged and/or condoned the perpetration of crimes by the forces of the FRY and Serbia", with no mention of a specific time period).

[23] *Ibid.*, para. 96.

accused",[24] and "[t]wo factors particularly are relevant in determining whether amendment of an indictment would cause unfair prejudice: (1) notice, *i.e.*, whether the Accused has been given an adequate opportunity to prepare an effective defence; and (2) whether granting the amendments will result in undue delay."[25]

11. The Trial Chamber is mindful of the fact that it ordered the Prosecution to provide more detail concerning the crimes of 1998 if it intended to rely on them at trial, and that these particular amendments were made to the indictment in an effort to comply with this order. The Chamber considers that the information provided in the Proposed Indictment about the alleged crimes of 1998 is sufficient "to enable [the Accused] to prepare a defence effectively and efficiently",[26] particularly since the allegations in question do not give rise to separate charges against any of the Accused, but instead are relied upon for purposes of establishing certain elements of the crimes and forms of responsibility that *are* charged in the indictment.[27]

12. Moreover, because the added allegations state the Prosecution's case with regard to the Accused's knowledge and culpable mental states before and during the indictment period with greater specificity, the Trial Chamber is of the view that this "clearer and more specific indictment" will allow the Accused to "tailor their preparations to an indictment that more accurately reflects the case they will meet, thus resulting in a more effective defence."[28] The Accused have been aware of the Prosecution's basic assertions with regard to the alleged commission of uncharged crimes in 1998, albeit with far less precision than they are currently presented, since their initial appearances under earlier indictments in their previously separate respective cases.[29] What has been made clear

[24] *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment ("*Halilović* Decision") 17 December 2004, para. 22.

[25] *Prosecutor v. Čermak and Markać*, IT-03-73-PT, Decision on Prosecution Motion Seeking Leave to Amend the Indictment, 19 October 2005, para. 35.

[26] *Prosecutor v. Deronjić*, Case No. IT-02-61-PT, Decision on Form of the Indictment, 25 October 2002, para. 4, quoted in *Halilović* Decision, para. 13.

[27] *See* Decision of 22 March 2006, para. 11 (noting that "[t]he Prosecution states that it intends to rely on these 1998 crimes to prove that the Accused were members of the joint criminal enterprise …, that the Accused had the requisite state of mind to commit the charged crimes and '… other purposes …, such as to show knowledge, intent, command ability'" or as background information); *ibid.*, para. 14 ("Even if the allegations regarding the 1998 crimes could in theory provide a legally or factually distinct basis for convicting the Accused, the Prosecution's disavowal of using the alleged crimes for that purpose precludes any such conviction.").

[28] *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, para. 15, quoted in *Halilović* Decision, para. 23.

[29] *See Milutinović, Ojdanić, and Šainović*, Case No. IT-99-37-I, Amended Indictment, 29 June 2001, paras. 85–86 (references in operative indictment at the time of Accused Ojdanić and Šainović's respective initial appearances in April and May 2002); *Milutinović, Ojdanić, and Šainović*, Case No. IT-99-37-PT, Third Amended Indictment, 19 July 2002, paras. 95–96 (references in operative indictment at the time of Accused Milutinović's initial appearance in January 2003); *Prosecutor v. Pavković, Lazarević, Đorđević, and Lukić* ("*Pavković et al.*"), Case No. IT-03-70-I,

now are more specific facts of the incidents from that period upon which the Prosecution will rely to establish certain elements of charged crimes and forms of responsibility at trial.

13. The trial in this case is scheduled to commence on 10 July 2006,[30] one week before the summer judicial recess, which ends in mid-August. With approximately two months before the scheduled start of trial, and over three months before witness testimony is likely to begin, the Chamber is confident that the Accused will have an adequate opportunity to prepare to meet these more precise allegations from the Prosecution, and that no postponement of the trial would be required. Moreover, since none of these allegations result in the inclusion of new charges in the indictment, no automatic procedural consequences requiring delay would flow from granting the Prosecution leave to make these amendments. For these reasons, the Trial Chamber concludes that permitting these amendments to the indictment with regard to the alleged crimes of 1998 would not cause unfair prejudice to the Accused, because they have now been given an adequate opportunity to prepare an effective defence, and because granting the amendments will not result in undue delay.

Joint Command

14. In its Decision of 22 March 2006, the Trial Chamber stated that "if the Prosecution intends to rely at trial on the allegations concerning the Joint Command, it must identify supporting material for such allegations."[31] Šainović, who is alleged to have been the Head of the Joint Command,[32] contends that "[n]owhere in the supporting material … can one find a single word which corroborates th[is] allegation."[33] Additionally, Šainović asserts that "there is not a single piece of evidence which shows that the Accused was indeed a member of the Joint Command in the period relevant to the Indictment."[34] Šainović contends, in fact, that the Joint Command never existed at all.[35] Lazarević states that "the Prosecution did not clearly identify in the supporting material the material facts on the basis of which it can be *prima facie* inferred that the accused Vladimir Lazarević was a member of the so-called Joint Command in any period."[36] The

Indictment, paras. 61–62 (references in operative indictment at the time of Accused Pavković, Lazarević, and Lukić's respective initial appearances in February and April 2005).

[30] *See Milutinović et al.*, Pre-Trial Order and Appended Work Plan, 5 April 2006; *ibid.*, Second Decision on Motions to Delay Proposed Date for Start of Trial, 28 April 2006.

[31] Decision of 22 March 2006, para. 33(3)(c).

[32] *See* Proposed Indictment, para. 10(i) ("NIKOLA ŠAINOVIĆ was Head of the Joint Command.")

[33] Šainović Challenge, para. 10.

[34] *Ibid.*, para. 12.

[35] *See ibid.*, para. 21 (the "Defence wholly remains by its hitherto submitted positions … in which it has claimed that the Joint Command did not exist in the period relevant to the Indictment, or any other period for that matter").

[36] Lazarević Challenge, para. 25.

Prosecution responds that Šainović "was aware of being charged as the head of the Joint Command since at least 11 July 2004"[37] and that, regarding Lazarević, the supporting material offered for these allegations "contains a Joint Command document, expressly signed by this Accused."[38]

15. The Trial Chamber agrees that the Prosecution has submitted adequate supporting material for the Joint Command allegations with respect to Lazarević, as tab nine of the material is a Joint Command document dated 22 March 1999 and signed by Lazarević. With regard to Šainović, the Prosecution does not respond to his contention that the supporting material lacks documentation linking him to the Joint Command during the indictment period of 1 January to 20 June 1999. Although the Prosecution states that Šainović has long been aware of the allegation that he headed the Joint Command, the relevant inquiry in assessing the sufficiency of supporting material is not whether an accused is on notice of a particular averment, but whether the material contains "evidence which satisfies the [*prima facie*] standard set forth in Article 19, paragraph 1, of the Statute".[39] Here, tab two of the supporting material contains fairly lengthy minutes of what appear to be Joint Command meetings, held between July and October 1998, which indicate that Šainvoić played an arguably important role, especially in light of his position as Deputy Prime Minister of the Federal Republic of Yugoslavia.[40] Although the Prosecution has alleged specifically that Šainović was the Head of the Joint Command, the Prosecution need not prove that allegation now.[41] All that is required at this point in the proceedings is an evidentiary foundation from which the Prosecution can attempt to prove, at trial, the veracity of its allegations. The Trial Chamber is satisfied that the Prosecution has identified such evidence here.

Other Issues

16. Paragraph 13(ii) of the Proposed Indictment alleges that Lazareivć "exercised command authority or control over [certain identified groups] … and other armed groups".[42] Lazarević objects that the reference to "other armed groups" is impermissibly vague, such that he cannot prepare a defence if he does not know the forces that he is alleged to have commanded.[43] The

[37] Prosecution Reply, para. 17.

[38] *Ibid.*, para. 18.

[39] Rules of Procedure and Evidence, Rule 50(A)(ii). *See also* Decision of 22 March 2006, para. 32 ("[A]n accused's mere awareness of material allegations does not satisfy Rule 50(A)(ii)'s requirement that there be evidentiary support for such allegations.").

[40] *See* Proposed Indictment, paras. 2, 9.

[41] *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, para. 88 (There is "an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven.").

[42] Proposed Indictment, para. 13(ii).

[43] Lazarević Challenge, para. 14.

Prosecution does not respond to this complaint, and the Trial Chamber agrees that it is too general an allegation. Accordingly, the words "and other armed groups" must be struck from the indictment.

17. Paragraph 18 of the Proposed Indictment states, in relevant part, that "'[c]ommitting' in this indictment, when used in relation to the accused, refers to participation in a joint criminal enterprise as a co-perpetrator, either directly or indirectly."[44] Milutinović argues that, in light of this Chamber's "Decision on Ojdanić's Motion Challenging Jurisdiction: Indirect Co-Perpetration",[45] the words "either directly or indirectly" must be struck from the indictment.[46] The Prosecution responds that the wording "relates only to two different joint criminal enterprise (hereafter: JCE) scenarios, and not to the [] liability model of 'indirect co-perpetration'. … '[D]irectly' concerns the situation wherein the physical perpetrators are participants in the JCE whereas 'indirectly' covers the situation wherein the physical perpetrators are not participants in the JCE."[47] The Trial Chamber is satisfied with this explanation: the Prosecution is not alleging a novel form of criminal liability, and any further challenges to this allegation can be resolved at trial.[48]

18. Paragraph 19 of the Proposed Indictment alleges that the Accused, to fulfil the purpose of the joint criminal enterprise, acted "individually and/or in concert with each other and others".[49] Milutniović[50] and Lazarević[51] claim that "and others" is unacceptably vague. The Prosecution responds that "the group of 'other participants' in the JCE in paragraph 19 just refers to the participants listed and sufficiently categorized in paragraph 20 of the proposed Indictment."[52] The section of paragraph 20 that is relevant here identifies, either individually or by category, the alleged members of the joint criminal enterprise. This identification is in conformity with the Trial

[44] Proposed Indictment, para. 18.

[45] *Milutinović et al.*, Decision on Ojdanić's Motion Challenging Jurisdiction: Indirect Co-Perpetration, 22 March 2006 ("Decision on Indirect Co-Perpetration").

[46] Milutinović Challenge, paras. 4–7.

[47] Prosecution Reply, para. 10.

[48] *See* Decision on Indirect Co-Perpetration, para. 23 ("Like challenges relating to the contours of a substantive crime, challenges concerning the contours of a form of responsibility are matters to be addressed at trial.") (citations omitted).

[49] Proposed Indictment, para. 19.

[50] *See* Milutinović Challenge, para. 9.

[51] *See* Lazarević Challenge, para. 15.

[52] Prosecution Reply, para. 15.

Chamber's "Decision on Vladimir Lazarević's Preliminary Motion on Form of Indictment",[53] and the Chamber accordingly rejects the assertion that it is too vague.

19. Paragraph 20 of the Proposed Indictment alleges, in relevant part: "In addition, and/or in the alternative, [the Accused and other identified individuals] implemented the objectives of the joint criminal enterprise through members of the forces of the FRY and Serbia, whom they controlled, to carry out the crimes charged in this indictment."[54] Milutinović submits that the "law of the Tribunal does not recognize the 'additional and/or alternative' form of JCE"[55] and that the allegation must consequently be deleted. The Prosecution responds that "[a]lternative or additional pleading of different modes of liability is permissible in the jurisprudence of the Tribunal".[56] The Trial Chamber considers this a challenge to the contours of joint criminal enterprise liability, and notes that "[l]ike challenges relating to the contours of a substantive crime, challenges concerning the contours of a form of responsibility are matters to be addressed at trial."[57] Milutinović's challenge is therefore dismissed.

20. Šainović complains of a lack of evidentiary support for four allegations regarding his supervisory powers:[58] his *de facto* authority over Ojdanić and Vlajko Stojiljković,[59] his authority over the officials of the FRY and Serbia in Kosovo, including the Temporary Executive Committee,[60] and his role as "political head of the Serbian delegation at Rambouillet."[61] The Prosecution responds that supporting material in Confidential Annex C indicates "Šainović's prominent role in negotiations and meetings with internationals".[62] As already stated, the Prosecution is not required at this time to prove every allegation or assertion in the indictment; it must simply provide an adequate evidentiary base from which the allegations can be proven at trial. It has done so here.

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[53] *See Prosecutor v. Pavković et al.*, Case No. IT-03-70-PT, Decision on Vladimir Lazarević's Preliminary Motion on Form of Indictment, 8 July 2005, p. 21 (ordering the Prosecution, if it could not identify every individual member of the joint criminal enterprise, to at least "specify the category to which they belonged").

[54] Proposed Indictment, para. 20.

[55] Milutinović Challenge, para. 11.

[56] Prosecution Reply, para. 16.

[57] Decision on Indirect Co-Perpetration, para. 23 (footnotes omitted).

[58] *See* Šainović Challenge, paras. 13–15.

[59] *See* Proposed Indictment, para. 48.

[60] *See ibid.*, para. 47(k).

[61] *Ibid.*, para. 99.

[62] Prosecution Reply, para. 17.

21. Finally, Lazarević objects to the "confusion"[63] over the fact that the Proposed Indictment states that he was aware of the alleged crimes of 1998, despite the fact that it is said that he "took up the position of commander of the Priština Corps only in January 1999."[64] The indictment also alleges, however, that Lazarević was the Chief of Staff of the Priština Corps during 1998,[65] and Lazarević does not explain why his knowledge of the alleged crimes of 1998 would depend on his being the commander of the Priština Corps. In any event, this objection is without merit.

DISPOSITION

22. For the reasons above, pursuant to Rules 50 and 54 of the Rules of Procedure and Evidence, the Trial Chamber **ORDERS** as follows:

(1) the Prosecution Application for Leave to Reply is **GRANTED** and the Chamber accepts the Reply as filed;

(2) Lazarević's request to strike the words "and other armed groups" from paragraph 13(ii) of the Second Amended Joinder Indictment is **GRANTED**;

(3) the Motion to Amend the Indictment is **GRANTED** in all other respects;

(4) the Prosecution shall file, within one (1) day of this Decision, a final copy of the Second Amended Joinder Indictment that reflects the above order to strike certain words. That final copy will serve as the operative indictment in this case.

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

Judge Patrick Robinson
Presiding

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

[Seal of the Tribunal]

[63] Lazarević Challenge, para. 21.
[64] *Ibid.*
[65] *See* Proposed Indictment, para. 13.