



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-04-75-I

Date: 19 July 2011

Original: English

BEFORE A JUDGE OF THIS TRIBUNAL

Before: Judge Guy Delvoie

Registrar: Mr. John Hocking

Decision of: 19 July 2011

PROSECUTOR

v.

GORAN HADŽIĆ

CONFIDENTIAL

DECISION ON PROSECUTION MOTION FOR LEAVE TO AMEND THE INDICTMENT

Office of the Prosecutor

Mr. Dermot Groome

I, **Guy Delvoie**, Judge 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”) am seized of the “Prosecution Motion for Leave to Amend the Indictment” filed confidentially on 1 June 2011 (“Motion”), and hereby issue my decision thereon.

I. Background and Submissions

1. On 16 April 2004, the Office of the Prosecutor (“Prosecution”) filed a “Motion for Confirmation of an Indictment under Seal” before Judge Amin El Mahdi. On 21 May 2004, the Prosecution filed an addendum to this motion and, on 28 May 2004, it submitted a revised indictment (“Original Indictment”). On 4 June 2004, Judge El Mahdi issued a “Decision on Review of Indictment and Order for Non-disclosure” confirming the Original Indictment (“2004 Confirmation Decision”).

2. In the Motion, the Prosecution seeks leave to amend the Original Indictment pursuant to Rule 50(A)(i)(b) of the Rules of Procedure and Evidence of the Tribunal (“Rules”). The Prosecution submits that the amendments it proposes will not affect the anticipated length of trial and seek to i) plead individual criminal responsibility under Article 7(1) of the Statute with more specificity; ii) include superior criminal responsibility pursuant to Article 7(3) of the Statute; iii) add towns, villages to the counts of wanton destruction and persecution, as well as crime sites; and iv) make minor stylistic changes to result in a more coherent and precise indictment.¹

3. In support of its submission, the Prosecution filed separately on 1 June 2011 its proposed amended indictment implementing the changes suggested in the Motion (“First Amended Indictment”) and referring both to the material supporting the Original Indictment (“Original Supporting Material”) and to the material filed in support of the Motion, in confidential annex A (“Supporting Material”).

4. The Prosecution further submits that any public decision or disclosure of information related to the Motion may have a negative impact on ongoing efforts to apprehend Goran Hadžić. It therefore requests to be consulted prior to any decision being taken that would render public the First Amended Indictment, or any decision thereon.²

¹ Motion, paras 2–3.

² Motion, paras. 22, 23(b).

II. Applicable Law

5. Rule 50(A)(i)(b) of the Rules provides that “[t]he Prosecutor may amend an indictment between its confirmation and the assignment of the case to a Trial Chamber, with the leave of [...] a Judge assigned by the President.”

6. The Trial Chamber, or the Judge, enjoys a wide discretion to grant leave to amend an indictment as long as the requested amendment meets two cumulative criteria: (a) it must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole; and (b) if the proposed amendment is material, it must be supported by documentation or other evidence meeting the *prima facie* standard set forth in Article 19³ of the Statute of the Tribunal (“Statute”).⁴ The supporting material must provide “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.”⁵

7. In determining whether granting an amendment would cause unfair prejudice to an accused, the Trial Chamber, or the Judge, must ensure that the amendment does not deprive the accused of an adequate opportunity to prepare an effective defence, and second, it must not adversely affect the accused’s right under Article 21 of the Statute to be tried without undue delay.⁶ In assessing whether there is unfair prejudice, the Trial Chamber, or the Judge, will examine whether the accused is provided with sufficient notice of the scope and nature of the new allegations against him.⁷

8. Article 18(4) of the Statute and Rule 47(C) of the Rules both provide that an indictment shall contain a concise statement of the facts of the case and the crimes with which the accused is charged under the Statute. More specifically, Article 21(4)(a) of the Statute states that an accused is entitled to be informed of the nature and cause of the charge against him and Article 21(4)(b) entitles an accused to adequate time and facilities for the preparation of his defence. These entitlements translate into an obligation on the part of the Prosecution to plead the

³ Article 19 of the Statute reads: “The Judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.”

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution Motion to Amend the First Amended Indictment, 16 February 2009 (“*Karadžić Decision*”), para. 29.

⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Motion Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006 (“*Popović Decision*”), para. 36; *Karadžić Decision*, para. 35.

⁶ *Karadžić Decision*, para. 30; *Popović Decision*, paras. 9-10.

⁷ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004, para. 23; *Popović Decision*, para. 21.

material facts underpinning the charges in the indictment with sufficient detail to inform the accused clearly of the charges against him so that he can adequately prepare his defence.⁸

9. The materiality of a particular fact depends on the nature of the Prosecution's case and the alleged criminal conduct with which the accused is charged.⁹ For instance, under Article 7(3) of the Statute, the accused needs to know not only what is alleged to have been his own conduct giving rise to his responsibility as a superior, but also what is alleged to have been the conduct of those persons for which he is alleged to be responsible. To that effect, the Appeals Chamber in the *Blaškić* case held that

in a case where superior criminal responsibility pursuant to Article 7(3) of the Statute is alleged, the material facts which must be pleaded in the indictment are:

- (a) (i) that the accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct– and (iv) for whose acts he is alleged to be responsible;
- (b) the conduct of the accused by which he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision, because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue; and
- (c) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.¹⁰

III. Discussion

10. As a preliminary matter, I note the Prosecution's submission that any public decision disclosing the information related to this application may under certain circumstances have a negative impact on continued efforts to apprehend Hadžić.¹¹ I consider that at this stage, and given that Hadžić is still at large, preserving the confidentiality of this Decision and the pleadings related thereto is warranted in the interests of justice.

11. I will now examine each of the categories of amendments sought by the Prosecution.

A. Amendments Related to the Pleading of Individual Criminal Responsibility under Article 7(1) of the Statute

⁸ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement. 19 July 2004 (“*Blaškić* Appeal Judgement”), para. 209 (citing *Prosecutor v. Kupreškić et al.*, Case. No. IT-95-16-A, 23 October 2001, Judgement, para. 88.

⁹ *Popović* Decision, para. 5.

¹⁰ *Blaškić* Appeal Judgement, para. 218 (footnotes omitted).

[i] In relation to Joint Criminal Enterprise (“JCE”)

12. In the First Amended Indictment, the Prosecution seeks to plead JCE with greater specificity and clarity and to bring it “into conformity with the current jurisprudence” by amending paragraphs 6 to 10 of the Original Indictment.¹²

Temporal Scope

13. In relation to the temporal scope of the JCE, paragraph 6 of the Original Indictment reads: “This joint criminal enterprise came into existence no later than 25 June 1991 and continued until at least December 1993.” Paragraph 6 of the First Amended Indictment is proposed to read: “This joint criminal enterprise came into existence no later than 1 April 1991 and continued until at least 31 December 1995. Goran Hadžić’s participation in the JCE began no later than 25 June 1991 and continued until at least December 1993.” With this amendment, the Prosecution submits that it purports to clearly distinguish between the time during which the Prosecution alleges the JCE was in existence and the period during which it alleges Hadžić participated in and contributed to it.¹³

14. In my view, there is no unfair prejudice to Hadžić as a result of this extension as it is pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to the JCE. In addition, given that Hadžić is not yet in the custody of the Tribunal, this extension will not affect his right to be tried without undue delay.

15. I have also carefully reviewed the Original Supporting Material and found that there is sufficient material to support the extension of the temporal scope of the existence of the JCE to between no later than 1 April 1991 and until at least 31 December 1995.

Addition of Known Members to the JCE

16. In paragraph 10 of the First Proposed Indictment, the Prosecution seeks to add the following known members to the JCE: Milan Babić, Veljko Kadijević, Blagoje Adžić, Radmilo Bogdanović, and Mihalj Kerteš.¹⁴

17. In my view, there is no unfair prejudice to Hadžić as a result of these additions as they are pleaded in a way which will enable him to adequately prepare his defence in relation to the

¹¹ Motion, para. 22.

¹² Motion, p. 5.

¹³ Motion, p. 5.

JCE. In addition, given that Hadžić is not yet in the custody of the Tribunal, these additions will not affect his right to be tried without undue delay.

18. I have again carefully reviewed the Original Supporting Material and found that there is sufficient information to support identifying additional known members to the alleged JCE.

Definition of the term “Serb Forces”

19. In paragraph 11 of the First Proposed Indictment, the Prosecution seeks to include a definition of the term “Serb Forces” so as to make clear who Hadžić is allegedly responsible for through his participation in the JCE.¹⁵

20. I note that the Prosecution has replaced the phrase “other political figures from the (Socialist) Federal Republic of Yugoslavia (“S)FRY”), the Republic of Serbia (“Serbia”), the Republic of Montenegro (“Montenegro”), and Serb politicians from Croatia and Bosnia and Herzegovina” in paragraph 8 of the Original Indictment with the phrase “political leaders from the (Socialist) Federal Republic of Yugoslavia (“S)FRY”) and the Republic of Serbia; members of the Croatian Serb and Bosnian Serb leadership”. I do not consider this proposed amendment to be material and have therefore not examined the supporting material in this respect.

21. In relation to the units which are covered by the term “Serb Forces”, I note that the Prosecution has specified, in paragraph 11(d) of the First Amended Indictment, that the “police forces of the Republic of Serbia” (as described in paragraph 8 of the Original Indictment) covered, more specifically, the “special units of the Republic of Serbia MUP and/or DB” as identified in a non-exhaustive list contained in the same paragraph. I do not consider this proposed amendment to be material and have therefore not examined the supporting material in this respect.

22. Similarly, in paragraph 11(e) and (f) of the First Amended Amendment, the Prosecution seeks to provide more details as to the “police forces” of the Serbian Autonomous Regions of Krajina (“SAO RSK”) and Slavonia, Baranja and Western Srem (“SAO SBWS”). I do not consider this proposed amendment to be material and have therefore not examined the supporting material in that respect.

In Relation to the First Form of JCE

¹⁴ Motion, p. 5.

¹⁵ Motion, para. 5. I note that the definition of “Serb Forces” is also relevant to superior criminal responsibility as set out in paragraphs 15 to 18 of the First Amended Indictment.

23. The Prosecution seeks to add a paragraph 12 to the First Amended Indictment stating that the objective of the JCE was either committed by members of the JCE or, alternatively, by individuals who were not members of the JCE but who were used by members to carry out crimes in furtherance of that objective.

24. I consider that the proposed amendment is entirely consistent with the position adopted by the Appeals Chamber in relation to the first form of JCE in the Appeal Judgement in the case of *Prosecutor v. Radoslav Brđanin*.¹⁶ I am therefore not of the opinion that this proposed amendment is a material change.

In relation to Hadžić's Participation in the JCE

25. In paragraph 13 of the First Amended Indictment, the Prosecution proposes a number of amendments to the description of the manner in which Hadžić “significantly contributed” to the JCE. As a preliminary note, I consider that the proposed addition of having “significantly contributed” to the JCE is entirely consistent with the *Brđanin* Appeal Judgement and is not a material change.¹⁷

26. In paragraph 13(a) to (h)¹⁸, the Prosecution has added ways in which Hadžić is alleged to have contributed to the JCE. These are: i) co-ordination of the development and implementation of SAO SDWS/RSK governmental policies; ii) contribution to meetings with the Serbian and SRFY leadership; iii) direction, coordination, use of the government bodies ruling the SAO SBWS/RSK; iv) use of the SAO SBWS police and the SNB, and issuance of orders to the SNB, whose commanders reported to Hadžić regularly;¹⁹ v) participation in the provision of other substantial assistance and/or support; vi) use of the Serb forces; vii) open espousal of persecutory policies; and viii) failure to uphold his legal duty arising from his position of governmental authority to ensure respect for the law.

27. I find that the proposed additions to paragraph 13(a), (b), (e), (f), do not constitute material changes as they simply specify Hadžić's participation in the JCE. While modes of participation were not explicitly referred to originally, these modes were in fact already covered by the broad formulation of the Original Indictment.

¹⁶ *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, 3 April 2007 (“*Brđanin* Appeal Judgement”), paras. 410-414.

¹⁷ *Brđanin* Appeal judgement, para. 430.

¹⁸ Paragraph 13(d) does not contain any such addition.

¹⁹ In paragraph 13(c), the Prosecution also adds that “[m]embers of the SNB participated in crimes, on some occasions in collaboration with Arkan's men.”

28. As mentioned in paragraph 26 and footnote 19 above, the Prosecution seeks to add an allegation in paragraph 13(c) of the First Amended Indictment that “Goran Hadžić gave orders to the SNB, whose commanders reported to him regularly. Members of the SNB participated in crimes, on some occasions in collaboration with Arkan’s men.” In my view, there is no unfair prejudice to Hadžić as a result of this addition as this allegation is pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to this allegation. In addition, given that Hadžić is not yet in the custody of the Tribunal, this addition will not affect his right to be tried without undue delay. In addition, I have reviewed the Original Supporting Material and I am satisfied that there is sufficient supporting information to include the suggest addition.

29. I do not consider that the proposed change in paragraph 13(g) of the First Amendment Indictment²⁰ is a material change as the Original Indictment already contained an allegation in paragraph 15 which would have covered this proposed addition and I have therefore not examined the Original Supporting Material in that respect.²¹ In relation to the addition of paragraph 13(h), I refer to my discussion below on the amendments related to Article 7(3) of the Statute.²²

[ii] In relation to other modes of responsibility under Article 7(1) of the Statute

30. In paragraph 14 of the First Amended Indictment, the Prosecution seeks to add clarity to paragraph 10 of the Original Indictment by adding references to the fact that responsibility for having aided and abetted and instigated is incurred for both his acts *and* omissions and by setting out Hadžić’s alleged *mens rea* under each of these modes of responsibility. Having reviewed paragraph 14 of the First Amended Indictment, I do not consider that the proposed amendments therein are material changes as they only clarify the way in which the modes of responsibility already included in the Original Indictment were pleaded. Accordingly, I have not reviewed the Original Supporting Material in relation thereto.

[iii] Conclusion in relation to individual criminal responsibility under Article 7(1) of the Statute

²⁰ In paragraph 13(g), the Prosecution proposes to add that Hadžić “openly espoused persecutory policies”.

²¹ Original Indictment, para. 15: “After the take-over, Serb forces in co-operation with the local Serb authorities, including Goran Hadžić, established a regime of persecutions designed to drive the Croat and other non-Serb civilian population from these territories.”

²² See paras. 32–36 *infra*.

31. Therefore, in light of the discretion of the amendments sought, the fact that the proposed amendments are sufficiently supported by the Original Supporting Material and the Supporting Material, and because Hadžić is still at large, I consider that the amendments as a whole sought by the Prosecution in relation to the pleading of individual criminal responsibility under Article 7(1) of the Statute will not cause Hadžić any undue prejudice. More specifically, I do not consider that the proposed additions, as a whole, deprive Hadžić of an adequate opportunity to prepare an effective defence, in light of the notice provided to him by the First Amended Indictment. They also do not affect his right to be tried without undue delay.

B. Amendments Related to the Inclusion of Superior Criminal Responsibility Pursuant to Article 7(3) of the Statute

32. In paragraphs 15 to 18 of the First Amended Indictment, the Prosecution seeks to include the “previously uncharged mode of liability”, namely superior criminal responsibility, pursuant to Article 7(3) of the Statute.²³ The Prosecution submits that this mode of liability arises out of the same factual circumstances and evidence already supporting the Original Indictment. It notes that most of the supporting material for this mode of liability is part of the Original Supporting Material and submits one additional document necessary to establish a *prima facie* case of superior responsibility.²⁴ Given that this is an entirely new allegation against Hadžić, I have looked at whether its addition to the Indictment would result in unfair prejudice to him. More specifically, I have considered whether the proposed addition deprives Hadžić of an adequate opportunity to prepare an effective defence, in light of the notice provided to him by the First Amended Indictment, and whether it affects his right to be tried without undue delay.

33. Having looked at the material facts pleaded in relation to the new mode of responsibility outlined in paragraphs 15 to 18 of the First Amended Indictment, I am of the view that they are pleaded with sufficient detail to inform Hadžić clearly of the charges against him, which will in turn enable him to adequately prepare his defence. These paragraphs (i) allege that Hadžić was in a position of superior responsibility in SAO SBWS; (ii) provide a list of forces or subordinates over which he is alleged to have had effective control and for whose acts he is alleged to be responsible; (iii) specify the circumstances upon which he may be found to have known or had reasons to know that the crimes were about to be committed or had been committed; (iv) identify the related conduct of the forces or subordinates for whom he is alleged to be responsible; and (v) detail the manner in which he may be found to have failed to take the

²³ Motion, paras. 2(b), 10.

²⁴ Motion, paras. 10–11.

necessary and reasonable measures to prevent or punish crimes.²⁵ Accordingly, it is my view that he has been provided with sufficient notice of the scope and nature of this new allegation against him. In addition, given that Hadžić is not in the custody of the Tribunal at this stage, I am also of the view that his right to be tried without undue delay is not affected by this addition.

34. Turning next to the second part of the test, namely whether the new allegation is supported by evidence meeting the *prima facie* standard, I have carefully reviewed the Original Supporting Material as well as the additional document included in the Supporting Material²⁶ in order to determine whether this material supports the allegations made in paragraphs 15 to 18 of the First Amended Indictment. Having done so, I am of the view that this material is sufficient to establish a *prima facie* case of Hadžić's superior responsibility in SAO SBWS from at least 25 June 1991, as it provides information on various positions held by Hadžić, starting already in mid-1990 and culminating in his appointment as the president of the government of SAO SBWS on 25 September 1991 (and later his appointment as prime minister of the Republic of Serbian Krajina on 26 February 1992). It also establishes a *prima facie* case of his conduct in relation to acts committed by the "Serb Forces" over which he is said to have had effective control.

35. I have also looked at the offences alleged in Counts 1 to 14 for which Hadžić is allegedly responsible pursuant to Article 7(3) of the Statute. With exception of Counts 5 to 9, I am of the view that the Original Supporting Material and the Supporting Material offer a sufficient basis for a *prima facie* case against Hadžić as a superior under Article 7(3) in relation to those charges.

36. With respect to Counts 5 to 9, they allege that Hadžić is criminally responsible pursuant to Article 7(3) of the Statute for imprisonment as a crime against humanity, torture as a crime against humanity, inhumane acts as a crime against humanity, and torture as a violation of the laws or customs of war. These charges relate to a number of detention facilities listed in paragraph 41 of the First Amended Indictment, including the following five: Stajićevo agricultural farm, agricultural complex in Begejci, military barracks in Zrenjanin, military prison in Sremska Mitrovica, and military prison in Šid. However, I note that these five facilities were located on the territory of the Republic of Serbia, rather than on the territory of SAO SBWS, at the time the alleged offences took place. Given that, according to the Original Supporting Material and the Supporting Material, Hadžić held different official positions in the SAO SBWS government only and thus had no *de jure* authority in the Republic of Serbia, the basis on which

²⁵ When making my determination in relation to (iv), I bore in mind the fact that the Prosecution is not obliged to give extensive particulars in relation to the conduct of Hadžić's subordinates or people for whose acts he is alleged to be responsible. See *above* para. 9.

²⁶ Motion, Annex A, number 1.

it is alleged that he had an effective control over the persons manning the five detention facilities is not entirely clear. The First Amended Indictment does not specifically plead how Hadžić's superior responsibility extends to those five facilities, nor does the Original Supporting Material and Supporting Material shed any light on this issue. In fact, most of the statements and transcripts provided in support of the allegations relating to these facilities make no mention of Hadžić or his effective control over the persons working there. While one of the prospective witnesses, Emil Čakalić, makes a brief mention of being interrogated by Hadžić and another person while detained in Sremska Mitrovica,²⁷ this is not in my opinion enough to show a *prima facie* case of Hadžić exercising effective control over the five detention facilities in question and/or their personnel and thus being responsible pursuant to Article 7(3) for the crimes alleged to have occurred there. Accordingly, in relation to the five facilities in question, I am not satisfied that the Prosecution has presented a *prima facie* case for Hadžić's responsibility under Article 7(3) for Counts 5 to 9. The Prosecution should therefore indicate in the First Amended Indictment that responsibility under Article 7(3) is not being alleged with respect to these five detention facilities or provide further supporting material to the contrary. As far as the other detention facilities listed in paragraph 41 are concerned, I am satisfied that the Original Supporting Material and the Supporting Material offer a sufficient basis for a *prima facie* case against Hadžić as a superior under Article 7(3). I am also satisfied that Hadžić has been provided with sufficient notice of the scope and nature of this new charge against him. In addition, given that he is not in the custody of the Tribunal at this stage, I am also of the view that his right to be tried without undue delay is not affected by this addition.

C. Amendments Related to the Addition of Towns and Villages to the counts of Wanton Destruction and Persecution, Adjustments to Victim Lists and the Inclusion of Crime Sites

[i] Count 1 (persecutions)

37. In paragraph 21(i) of the First Amended Indictment, which alleges destruction of "homes, other public or private property, cultural institutions, historic monuments and sacred sites" of the non-Serb population, the Prosecution adds the names of seven villages to the list of villages where these crimes were allegedly committed. The seven villages in question are Dalj, Dalj Planina, Čelije, Sarvaš, Ernestinovo, Laslovo, and Erdut Planina. The Prosecution submits

²⁷ Original Supporting Material, items III.I.1 and III.I.2.

that these additions reflect more precisely the evidence submitted in the Original Supporting Material.²⁸

38. In my view, there is no unfair prejudice to Hadžić as a result of this addition as the allegations are pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to those seven villages. In addition, given that Hadžić is not yet in the custody of the Tribunal, these additions will not affect his right to be tried without undue delay.

39. Having examined the Original Supporting Material, I consider that the evidence contained therein provides a sufficient basis for a *prima facie* case against Hadžić with respect to the alleged destruction of “homes, other public or private property, cultural institutions, historic monuments and sacred sites” of the non-Serb population in five of the seven villages, namely Dalj, Dalj Planina, Sarvaš, Ernestinovo, and Laslovo. However, with respect to Erdut Planina and Čelije, the Original Supporting Material does not meet the *prima facie* standard. For example, while Čelije is sporadically referred to in the Original Supporting Material, this is usually in the context of a mass grave allegedly found in that village, rather than in the context of destruction of property. In addition, while the attack on this village is briefly referred to at one point during the cross-examination of witness C-013 in the *Prosecutor v. Slobodan Milošević* case, it is a brief mention and is denied by the witness in question.²⁹ As for Erdut Planina, the Original Supporting Material does not appear to contain any substantive reference relating to destruction of property alleged to have taken place in this village. Accordingly, these two villages should not be included in paragraph 21(i) of the First Amended Indictment. Alternatively, the Prosecution may provide further supporting material in this respect.

[ii] Counts 2 to 4 (extermination and murder) - Velepromet killings

40. In paragraph 31 of the First Amended Indictment, the Prosecution seeks to add the alleged killing of at least 17 people at the Velepromet facility in Vukovar to Counts 2 to 4.³⁰ These killings were not part of the Original Indictment and thus constitute new charges. Having assessed the material facts pleaded in relation to the alleged killings, I am of the view that they are pleaded with sufficient detail to inform Hadžić clearly of the charge against him, which will in turn enable him to adequately prepare his defence. In other words, Hadžić has been provided with sufficient notice of the scope and nature of this new allegation against him. Furthermore, given that Hadžić is not in the custody of the Tribunal at this stage, I am also of the view that his

²⁸ Motion, para. 9.

²⁹ See Original Supporting Material, Item III.B.

right to be tried without undue delay is not affected by this addition. Accordingly, this particular amendment will result in no unfair prejudice to Hadžić.

41. Finally, having also carefully reviewed the evidence contained in both the Supporting Material and the Original Supporting Material, I am of the view that it provides a sufficient basis for a *prima facie* case against Hadžić with respect to the alleged killings. Finally, I have examined that part of Annex I to the First Amended Indictment which lists the Velepromet victims, and find that it too is supported by the Supporting Material and the Original Supporting Material.

[iii] Counts 5 to 9 (imprisonment, torture, inhumane acts, and cruel treatment)

42. In paragraph 41(m) of the First Amended Indictment, the Prosecution seeks to add the Zadruga building in Lovas to the detention facilities in which the crimes alleged in Counts 5 to 9 are said to have occurred. Paragraph 26 of the First Amended Indictment explains the incident related to the minefield near Lovas where the 12 detainees from the Zadruga building are alleged to have been taken. This paragraph repeats paragraph 21 of the Original Indictment. In my view, there is no unfair prejudice to Hadžić as a result of this addition as the allegations are pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to this detention facility. In addition, given that Hadžić is not yet in the custody of the Tribunal, this addition will not affect his right to be tried without undue delay. I have examined the Original Supporting Material in light of the allegations that at least some of the counts of imprisonment, torture, inhumane acts, and cruel treatment occurred in the Zadruga building in Lovas. I am satisfied that there is sufficient supporting information to include the suggest addition.

43. In paragraph 41(h) of the First Amended Indictment, the Prosecution seeks to add the Vukovar hospital and JNA Vukovar barracks to the list of detention facilities in which the crimes alleged in Counts 5 to 9 are said to have occurred. In my view, there is no unfair prejudice to Hadžić as a result of these additions as the allegations are pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to those two detention facility. In addition, given that Hadžić is not yet in the custody of the Tribunal, these additions will not affect his right to be tried without undue delay. I am satisfied that the Original Supporting Material provides sufficient information to include the suggested additions.

³⁰ Motion, paras. 13–16.

44. In paragraph 41 (b) of the First Amended Indictment, I note that the Prosecution seeks to replace the term of “military barracks in Begejci” with “agricultural complex in Begejci”. I do not consider that this is a material change but rather that it reflects the evidence more accurately.

[iv] Counts 12 to 14 (wanton destruction and plunder)

45. In paragraph 47 of First Amended Indictment, which alleges wanton destruction and plunder of public or private property, the Prosecution adds the names of three villages to the list of villages where these crimes were allegedly committed. The three villages in question are Sarvaš, Ernestinovo, and Laslovo. The Prosecution submits that these additions reflect more precisely the evidence submitted in the Original Supporting Material.³¹

46. In my view, there is no unfair prejudice to Hadžić as a result of this addition as the allegations are pleaded in a way that clearly informs him of the charges against him, which will in turn enable him to adequately prepare his defence in relation to those three villages. In addition, given that Hadžić is not yet in the custody of the Tribunal, these additions will not affect his right to be tried without undue delay.

47. Having examined the Original Supporting Material, I consider that the evidence contained therein provides a sufficient basis for a *prima facie* case against Hadžić with respect to the alleged wanton destruction and plunder of property of the non-Serb population in the three villages in question.

[v] Adjustment of victim lists

48. Under Counts 5 to 9, I note that the Prosecution has made amendments to the wording of paragraph 23 of the Original Indictment, now paragraph 29 of the First Amended Indictment, to more precisely reflect the Original Supporting Material. I note also that the Prosecution has made amendments to the wording of paragraph 24 of the Original Indictment, now paragraph 32 of the First Amended Indictment, in order to more precisely reflect the original supporting evidence, and also to reflect the findings of the Trial Chamber in the *Prosecutor v. Mrkšić* case. I do not consider these proposed amendments to be material, as they merely explain in greater detail factual allegations already included in the Original Indictment. I have therefore not examined the supporting material in respect of these amendments.

49. In paragraph 41(1) of the First Amended Indictment, the Prosecution has increased the number of detainees held at the detention facility in Borovo Selo from approximately 80 to

³¹ Motion, para. 9.

approximately 92. Having reviewed the Original Supporting Material, I am of the view that it provides a sufficient basis for a *prima facie* case that approximately 92 detainees were held in the stable or workshop at Borovo Selo. I also consider that this increase in the number of victims does not cause unfair prejudice to Hadžić.

50. In paragraph 32 of the First Amended Indictment, the Prosecution seeks to clarify the events surrounding the alleged killings at the Ovčara Farm by specifying that “hundreds of Croats and other non-Serbs” were taken from the Vukovar Hospital, that some were killed en route and that approximately 260 were killed at the Ovčara Farm. The Prosecution further identifies in Annex I the names of the 194 identified victims exhumed from mass graves around Ovčara. I consider that this clarification is not a material change and does not cause unfair prejudice to Hadžić. Accordingly, I have not reviewed the Original Supporting Material and the Supporting Material in this respect.

D. Amendments Related to Minor Stylistic Changes

51. As indicated by the Prosecution in the Motion, I note that numerous stylistic changes have been made throughout the First Amended Indictment. I have reviewed them carefully and find that they are minor changes that only purport to clarify the Original Indictment. As a result Hadžić will not suffer unfair prejudice from these minor amendments.

E. Impact of the Motion on the Length of the Proceedings

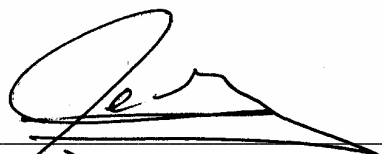
52. Having considered the Motion and examined each of the proposed amendments extensively, I do not find that these amendments would have a significant impact on the length of the proceedings.

IV. Disposition

53. Accordingly, pursuant to Article 19(1) of the Statute and Rule 50 of the Rules, I hereby **GRANT** the Motion in part, and **ORDER** the Prosecution to file confidentially the First Amended Indictment, with the caveats indicated in paragraphs 35 and 38 above, as the operative indictment in this case by 8 August 2011.

54. Should the Prosecution wish to provide further supporting material as indicated in paragraphs 35 and 38 above, it should do so by 8 August 2011.

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



Judge Guy Delvoie

Dated this nineteenth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]