



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-08-91-PT  
Date: 28 April 2009  
Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ole Bjørn Støle  
Judge Frederik Harhoff

**Registrar:** Mr John Hocking, Acting Registrar

**Decision:** 28 April 2009

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ  
STOJAN ŽUPLJANIN**

***PUBLIC***

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**DECISION ON MOTION AND SUPPLEMENTARY MOTION  
FOR LEAVE TO AMEND THE INDICTMENT**

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**The Office of the Prosecutor:**

Mr Thomas Hannis  
Ms Joanna Korner

**Counsel for the Accused:**

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

## 1. Background

1. Trial Chamber III (“Chamber”) of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seized of the “Prosecution Motion for Leave to Amend the Consolidated Indictment” filed on 1 December 2008 (“Motion”) and the “Prosecution’s Supplement to the Prosecution Motion of 1 December 2008 for Leave to Amend the Consolidated Indictment, with Confidential and *Ex Parte* Annexes” filed confidentially and partially *ex parte* on 2 March 2009 (“Supplementary Motion”), whereby the Prosecution seeks a number of amendments to the Indictment and Schedules thereto. It also requests leave to exceed the prescribed word limit. On 17 March 2009, the Prosecution filed a “Corrigendum to Prosecution’s Supplement to the Prosecution Motion of 1 December 2008 for Leave to Amend the Consolidated Indictment, With Confidential and *Ex Parte* Annexes” (“Corrigendum to the Supplementary Motion”).

2. On 8 December 2008, in a submission concerning another matter, Counsel for Stojan Župljanin (“Župljanin Defence”) indicated that he declined to make submissions with respect to the Motion until the Trial Chamber ruled on previous Defence challenges to the Indictment.<sup>1</sup> On 15 December 2008, Counsel for Mićo Stanišić (“Stanišić Defence”) filed the “Response Filed on Behalf of Mr Mićo Stanišić Concerning Proposed Amended Consolidated Indictment”, containing a notice similar to the one given by the Župljanin Defence.

3. On 13 March 2009, the Stanišić Defence filed the “Mićo Stanišić Defence Response to Prosecution’s Supplement to the Prosecution’s Motion of 1 December 2008 for Leave to Amend the Consolidated Indictment” (“Stanišić Response to the Supplementary Motion”) requesting that the Supplementary Motion be denied in its entirety, and requesting leave to exceed the prescribed word limit. On 16 March 2009, the Župljanin Defence filed “Stojan Župljanin’s Response to the Prosecution’s Confidential 2 March 2009 Supplement to Its Motion of 1 December 2008 for Leave to Amend the Consolidated Indictment” (“Župljanin Response to the Supplementary Motion”) again declining to make submissions until previous challenges had been ruled upon.

4. At the Status Conference on 20 March 2009, the Defence teams were instructed to file responses to the Prosecution’s Motion by 2 April 2009.<sup>2</sup> The Stanišić Defence filed the “Mićo Stanišić Response to Prosecution Motion for Leave to Amend the Consolidated Indictment” on 30 March 2009 (“Stanišić Response to the Motion”), requesting the Chamber to deny both Prosecution

<sup>1</sup> “Stojan Župljanin’s Reply to the Prosecutor’s Response on the 29 September 2008 Indictment”.

<sup>2</sup> Transcript of hearing, 20 March 2009, p (“T”) 15.

motions for amendment. On 2 April 2009, the Župljanin Defence filed confidentially the “Stojan Župljanin’s Response to the Prosecution’s Motions for Leave to Amend the Consolidated Indictment” (“Župljanin Response to the Motion”), whereby it partially opposes the Motion and the Supplementary Motion. The Chamber notes that, strictly speaking, these Responses were only to address issues raised in the Motion. However, in view of the unusual order of submissions regarding the proposed amendments to the Indictment, the Chamber will also take note of other matters raised in these Responses.

5. On 19 March 2009, the Prosecution filed the “Prosecution’s Motion for Leave to Reply and Proposed Reply to Mićo Stanišić Defence Response to Prosecution’s Supplement to the Prosecution Motion of 1 December 2008 for Leave to Amend the Consolidated Indictment” (“Reply to the Stanišić Response to the Supplementary Motion”), whereby it requests leave to reply and replies to the Stanišić Response to the Supplementary Motion. On 7 April 2009, the Prosecution filed the “Prosecution’s Motion for Leave to Reply and Proposed Reply to Stojan Župljanin’s Response to the Prosecution’s Motions for Leave to Amend the Consolidated Indictment” (“Reply to the Župljanin Response to the Motion”), whereby it requests leave to reply and replies to the Župljanin Response to the Motion. Leave to reply will be granted in both cases.

6. On 14 April 2009, the Župljanin Defence filed “Stojan Župljanin’s Proposed Rejoinder to the Prosecution’s Proposed Reply to Župljanin’s Response to the Prosecution’s Motions for Leave to Amend the Consolidated Indictment” (“Župljanin Rejoinder”). On 17 April 2009 the Stanišić Defence filed “Mr Mićo Stanišić’s Submission to join Stojan Župljanin’s Proposed Rejoinder to the Prosecution’s Proposed Reply to Župljanin’s Response to the Prosecution’s Motion for Leave to Amend the Consolidated Indictment” (“Stanišić Rejoinder”). Such rejoinders are not envisaged by the Rules of Procedure and Evidence (“Rules”). Nor was their submission ordered by the Chamber. The Chamber will not consider them.

## 2. Submissions

### (a) Prosecution’s Motion

7. In its Motion the Prosecution seeks to amend the *mens rea* allegations in the Indictment so as to clarify the *mens rea* for the crimes and modes of responsibility alleged.<sup>3</sup> It further proposes to amend the Indictment to plead expressly that the Accused Župljanin and the Accused Stanišić had “effective control” over their respective subordinates.<sup>4</sup> The Prosecution proposes that the acts described in subparagraph 12(b) of the Indictment constitute material facts which would also

<sup>3</sup> Motion, para 9.

support the modes of liability of ordering, planning and instigating.<sup>5</sup> The Prosecution finally proposes to correct a number of details it designs typographical errors.<sup>6</sup> The Stanišić Defence and the Župljanin Defence refer to a decision given by the Trial Chamber with respect to motions challenging the form of the Indictment,<sup>7</sup> and submit that the Trial Chamber denied previous challenges to the pleading of *mens rea* and effective control. They contend that granting the sought amendments would be inconsistent with the Decision on the Form of the Indictment.<sup>8</sup>

(b) Prosecution's Supplementary Motion

8. The Prosecution's Supplementary Motion seeks to correct what it terms ambiguities and oversights in the Indictment Schedules, in order to render the crime incidents and sites charged clearer and more complete.<sup>9</sup> Further, the Prosecution seeks to add five new allegations to the Indictment Schedules, which will "conform the crimes charged against the Accused to the evidence the Prosecution intends to present at trial".<sup>10</sup> It submits that although these new factual allegations constitute new charges, they will not place a disproportionately heavy additional burden on the Accused in preparing their respective cases, as these charges are limited in scope, and for the majority of them the Prosecution will not be required to call additional witnesses at trial or to disclose additional materials to the Accused.<sup>11</sup> It also alleges that the Accused were put on notice of these new charges through, *inter alia*, the evidence discussed in the Prosecution's Pre-Trial Brief with respect to the Accused Stanišić.<sup>12</sup> According to the Prosecution, the new charges are important to the Prosecution's case and are closely interrelated with other allegations already existing in the Indictment.<sup>13</sup> Their addition will allegedly provide a more complete and coherent understanding of the Prosecution's case.<sup>14</sup>

9. The Stanišić Defence submits that granting the Prosecution's Supplementary Motion would constitute an impermissible interference with the fair trial rights of the Accused Stanišić, as set out in Articles 20 and 21 of the Statute of the Tribunal ("Statute").<sup>15</sup> In particular, the Stanišić Defence contends that the amendments sought in the Supplementary Motion termed correcting errors and ambiguities are not confined to such correcting, but, rather, they add new charges, new crime sites

<sup>4</sup> Motion, para 10.

<sup>5</sup> Motion, para 12.

<sup>6</sup> Motion, para 13.

<sup>7</sup> *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, "Decision on Mićo Stanišić's and Stojan Župljanin's Motions on Form of the Indictment", 19 March 2009 ("Decision on the Form of the Indictment").

<sup>8</sup> Stanišić Response to the Motion, paras 25, 27; Župljanin Response to the Motion, para 10.

<sup>9</sup> Supplementary Motion, paras 2, 10-16.

<sup>10</sup> Supplementary Motion, paras 2, 17-24.

<sup>11</sup> Supplementary Motion, paras 26, 27; Reply to the Stanišić Response to the Supplementary Motion, para 3.

<sup>12</sup> Supplementary Motion, para 27.

<sup>13</sup> Reply to the Stanišić Response to the Supplementary Motion, para 3.

<sup>14</sup> Supplementary Motion, para 28.

and a broader timeframe, which is inconsistent with the Trial Chamber's previous directions to the Prosecution to restrict the scope of the charges against the Accused.<sup>16</sup> As regards the new allegations, the Stanišić Defence opposes all proposed amendments.<sup>17</sup> The Stanišić Defence submits that, should the proposed amendments be granted, the commencement of the proceedings would have to be postponed to allow the Defence to conduct additional investigations.<sup>18</sup>

10. The Župljanin Defence submits that it has prepared for trial on the basis of the Consolidated Indictment and that any corrections extending the factual basis of the Accused's alleged crimes at this late stage are not consistent with fair trial principles and cause unfair prejudice.<sup>19</sup> As regards the amendments adding new charges to the indictment, the Župljanin Defence refers to the submissions made by the Stanišić Defence.<sup>20</sup> The Župljanin Defence further contends that by requesting the addition of five new charges, the Prosecution appears to ignore the Trial Chamber's previous invitations to reduce the scope of the Indictment.<sup>21</sup>

### 3. Law

11. Pursuant to Rule 50 of the Rules, the Prosecutor may amend an indictment at various stages of the proceedings. After the assignment of the case to a Trial Chamber, leave to amend the indictment is required. Pursuant to the Rule such leave shall not be granted unless the Trial Chamber or Judge is satisfied that there is evidence which satisfies the *prima facie* standard.<sup>22</sup> A Trial Chamber will normally exercise its discretion to permit an amendment where the proposed amendment will facilitate the determination of the issues in the case<sup>23</sup> and not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole.<sup>24</sup>

12. In particular, the amendment must not deprive the accused of an adequate opportunity to prepare an effective defence.<sup>25</sup> When determining the prejudicial effect of the proposed amendment

<sup>15</sup> Stanišić Response to the Supplementary Motion, paras 24-25; 28-31.

<sup>16</sup> Stanišić Response to the Supplementary Motion, para 26.

<sup>17</sup> Stanišić Response to the Supplementary Motion, para 41.

<sup>18</sup> Stanišić Response to the Supplementary Motion, para 49.

<sup>19</sup> Župljanin Response to the Motion, para 15.

<sup>20</sup> Župljanin Response to the Motion, para 16.

<sup>21</sup> Župljanin Response to the Motion, para 21.

<sup>22</sup> Rule 50(A)(ii) of the Rules, in conjunction with Article 19(1) of the Statute.

<sup>23</sup> *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, "Decision on Form of Further Amended Indictment and Prosecution Application to Amend", 26 June 2001 ("*Brđanin Decision*"), para 50; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-PT, "Decision on Prosecution Motion for Leave to Amend the Original Indictment and Defence Motions Challenging the Form of the Proposed Amended Indictment", 1 November 2005, para 7.

<sup>24</sup> *Brđanin Decision*, para 50; *Prosecutor v. Sefer 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.

<sup>25</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Decision on Prosecution Motion for Leave to Amend the Third Amended Joinder Indictment", 7 July 2008, para 9; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, "Decision on the Prosecution's Motion to Amend the Revised Second Amended Indictment"

the Chamber may examine whether the accused received prior notice that the Prosecution considered the facts added by the proposed amendment to be material facts it intended to prove at trial.<sup>26</sup> The Chamber may also look at the time when the amendment was requested: as a general rule, the closer to trial the Prosecution moves to amend the indictment, the more likely it is that the Trial Chamber will deny the motion on the ground that granting such leave would cause unfair prejudice to the accused by depriving him of an adequate opportunity to prepare an effective defence.<sup>27</sup>

13. Another factor for the Chamber to consider is whether granting the proposed amendment would adversely affect the accused's right under Article 21 of the Statute to be tried without undue delay.<sup>28</sup> The possibility of delay in proceedings must be weighed against the benefits to the accused and the Chamber that the amendment may bring, such as the simplification of proceedings, a more complete understanding of the Prosecution's case, and the avoidance of possible challenges to the indictment or evidence presented at trial.<sup>29</sup> In assessing whether undue delay would be caused, a Trial Chamber may consider the course of the proceedings thus far, including the diligence of the Prosecution in advancing the case and the timeliness of the motion, but also the expected effect of the amendment on the overall proceedings.<sup>30</sup>

14. Leave to amend the indictment is more likely to be granted where amendments do not result in the addition of "new charges", as the addition of such charges risks delaying the start of trial by

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(*Stanišić and Simatović Decision*"), 4 July 2008, para 23; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, "Decision on Amendment of the Indictment and Application of Rule 73 bis(D)", 12 December 2006 (*Dragomir Milošević Decision*"), para 10; *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-PT, IT-05-88/1-PT, "Decision on Further Amendments and Challenges to the Indictment", 13 July 2006 (*Popović Decision*"), para 9; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-PT, "Decision on Prosecution's Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-Trial Brief", 26 May 2006 (*Bošković and Tarčulovski Decision*"), para 10; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-PT, "Decision on Motion to Amend the Indictment", 11 May 2006 (*Milutinović Decision*"), para 10; *Halilović Decision*, para 23.

<sup>26</sup> *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Appeal Judgement, 3 May 2006, para 27; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Appeal Judgement, 29 July 2004, para 237, referring to: *Prosecutor v. Zoran Kupreškić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, para 496.

<sup>27</sup> *Dragomir Milošević Decision*, para 10; *Prosecutor v. Rasim 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, para 62.

<sup>28</sup> *Prosecutor v. Édouard 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 13 (*Karemera Decision*"); *Bošković and Tarčulovski Decision*, para 10; *Milutinović Decision*, para 10; *Prosecutor v. Ljubiša 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 23; *Popović Decision*, para 10.

<sup>29</sup> *Popović Decision*, para 10; *Bošković and Tarčulovski Decision*, para 12.

<sup>30</sup> *Karemera Decision*, para 15; *Stanišić and Simatović Decision*, para 25; *Bošković and Tarčulovski Decision*, para 10; *Popović Decision*, para 10. See also *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, "Decision on Prosecution Motion Seeking Leave to Amend the Second Amended Indictment and on Prosecution Motion to Include UN Security Council Resolution 1820 (2008) as Additional Supporting Material to Proposed Third Amended Indictment as well as on Milan Lukić's Request for Reconsideration or Certification of the Pre-Trial Judge's Order of 19 June 2008", 8 July 2008, paras 54 and 62.

triggering the procedural consequences of Rules 50(B) and (C).<sup>31</sup> An amendment adds a new charge when it introduces “a basis for conviction that is factually and/or legally distinct from any already alleged in the indictment.”<sup>32</sup> The requirements of a further appearance and an additional period for filing preliminary motions mean that delay is inevitable if the amendment constitutes a new charge.<sup>33</sup> That delay, when considered in the circumstances of a given case, could cause unfair prejudice to the accused.<sup>34</sup>

#### 4. Discussion

15. The Chamber notes at the outset that some of the proposed amendments relate to the issues discussed in the Decision on the Form of the Indictment. Both the Stanišić and Župljanin Defence contend that the Motion should be considered moot with regard to these issues. The Chamber, however, notes that while in that Decision the Trial Chamber examined whether the Indictment was “pleaded with sufficient particularity”,<sup>35</sup> it will now examine whether the amendments proposed by the Prosecution “will facilitate the determination of the issues in the case”.<sup>36</sup> The Chamber is of the view that it may allow amendments also with respect to facts that are pleaded in the Indictment with sufficient particularity, when the Chamber is satisfied that the proposed amendments will further increase the clarity of pleading and will not result in unfair prejudice to the Accused. The Chamber will thus proceed on the basis that the previous finding of “sufficient particularity” with respect to the pleading of a fact in the Indictment does not preclude the Chamber from allowing an amendment with respect to that fact.

##### (a) Mens rea

16. The Prosecution proposes to amend the Indictment by clarifying the *mens rea* of the Accused required for the charges and modes of responsibility alleged. It asserts that this amendment will provide greater clarity.<sup>37</sup> The Stanišić Defence objects to this amendment and submits that it does not merely clarify the *mens rea*, but rather formulates it differently and “shifts it from *dolus eventualis* to *dolus directus*.”<sup>38</sup> The Župljanin Defence contends that the proposed

<sup>31</sup> *Popović* Decision, para 10. See also *Halilović* Decision, para 24; *Prosecutor v. Ante Gotovina et. al.*, Case No. IT-06-90-PT, “Decision on Ante Gotovina’s Motion Pursuant to Rule 73 Requesting Pre-Trial Chamber to Strike Parts of Prosecution’s Pre-Trial Brief Constituting Effective Amendment of the Joinder Indictment, and on Prosecution’s Motion to Amend the Indictment”, 14 February 2008 (“*Gotovina* Decision”), para 21.

<sup>32</sup> *Halilović* Decision, para 30; *Gotovina* Decision, para 21.

<sup>33</sup> *Halilović* Decision, para 24.

<sup>34</sup> *Popović* Decision, para 10; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, “Decision on the Prosecution’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment”, 30 June 2006 para 22; *Halilović* Decision, para 24.

<sup>35</sup> Decision on the Form of the Indictment, para 7.

<sup>36</sup> See *supra* para 11.

<sup>37</sup> Motion, para 9.

<sup>38</sup> Stanišić Response to the Motion, paras 21-24.

amendments to the pleading of *mens rea* improperly lower the required standard for the third form of joint criminal enterprise (“JCE”).<sup>39</sup>

17. As discussed in the Decision on the Form of the Indictment, the Indictment does not expressly allege the specific *mens rea* with respect to the Accused Župljanin’s responsibility under Article 7(1) of the Statute. However, the allegations regarding the Accused Župljanin’s participation in the alleged JCE and the allegations detailed in paragraphs 12-23 may all serve as evidentiary facts to establish the requisite *mens rea*, and therefore the pleading of *mens rea* was found to be sufficiently clear.<sup>40</sup> The pleading of *mens rea* with respect to the Accused Stanišić is similar.

18. The amendments proposed by the Prosecution add express allegations of *mens rea* with respect to the modes of liability under Article 7(1) of the Statute. In particular, in paragraph 13 of the Indictment, setting out the objective of the alleged JCE, the Prosecution seeks to add a passage to the effect that each Accused had the intent for the commission of the charged crimes. In paragraphs 15 and 16 of the Indictment the Prosecution proposes to add information regarding the Accused’s *mens rea* with respect to the alleged aiding and abetting, instigating, planning and ordering. The Chamber is satisfied that these proposed additions are consistent with the jurisprudence and clarify rather than alter the Prosecution case.<sup>41</sup>

19. The Prosecution also proposes to amend paragraph 14 concerning the third form of JCE. It seeks to replace the following passage:

“... insofar as the crimes enumerated in Counts 1 to 8 of this Indictment were not within the objective of the JCE, those crimes were the natural and foreseeable consequences of the execution of the JCE and Mićo STANIŠIĆ and Stojan ŽUPLJANIN were each aware that such crimes were the natural and foreseeable outcome of the execution of the JCE”

with the following one:

<sup>39</sup> Župljanin Response to the Motion, para 11.

<sup>40</sup> Decision on the Form of the Indictment, paras 44-46.

<sup>41</sup> As regards JCE, see *Prosecutor v. Milan Martić*, Case No IT-95-11-T, Judgement, 12 June 2007, para 439, as approved by the Appeals Chamber, *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Appeal Judgement, 8 October 2008 (“*Martić Appeal Judgement*”), paras 68 and 79; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Appeal Judgement, 3 April 2007 (“*Brđanin Appeal Judgement*”), para 365; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeal Judgement, 15 July 1999, paras 220, 228; as regards aiding and abetting, see *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“*Milutinović Trial Judgement*”), volume 1, para 93; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeal Judgement, 9 May 2007, para 127; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-94-14/1-A, Appeal Judgement, 24 March 2000, para 162; as regards instigating, see *Milutinović Trial Judgement*, volume 1, para 83; *Brđanin Appeal Judgement*, para 269; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-94-14/2-A, Appeal Judgement, 17 December 2004 (“*Kordić and Čerkez Appeal Judgement*”), para 32; as regards planning, see *Milutinović Trial Judgement*, volume 1, para 81; *Kordić and Čerkez Appeal Judgement*, para 31; as regards ordering, see *Milutinović Trial Judgement*, volume 1, para 85; *Martić Appeal Judgement*, paras 221-222; *Kordić and Čerkez Appeal Judgement*, paras 28, 30.

“... insofar as the crimes enumerated in Counts 1 to 8 of this Indictment were not within the objective of the JCE, those crimes were foreseeable consequences of the execution of the JCE and Mićo STANIŠIĆ and Stojan ŽUPLJANIN each willingly took that risk.”

The addition of the words “willingly took that risk” is consistent with the jurisprudence. Similarly, the deletion of the word “natural” relating to the consequences of the execution of the JCE appears consistent with recent judgements of the Appeals Chamber.<sup>42</sup>

20. These proposed amendments do not affect the substance of the allegations against the Accused. They add more clarity to the pleading of *mens rea*. The Chamber is satisfied that the proposed amendments will facilitate the determination of the issues in the case. It will allow these amendments.

21. In addition, the Prosecution proposes to add passages setting out the *mens rea* of the Accused and other members of the alleged JCE in relation to the crime of persecutions, in paragraphs 24 and 25 of the Indictment. The Chamber notes that the newly proposed passages repeat the elements of *mens rea* with respect to participation in JCE set out in paragraphs 13 and 14, only adding that members of the alleged JCE shared the intent to commit the persecutory acts “on political, racial and/or religious grounds”. However, these grounds are already listed elsewhere in the section concerning persecutions<sup>43</sup> and, in addition, another amendment, which the Chamber decided to allow, specifies that each Accused had the intent for the commission of the charged crimes. The Chamber recalls the Appeals Chamber’s ruling that the requirement that participants in a basic or systemic form of JCE must share the required intent of the principal perpetrators applies also to the crime of persecutions, with respect to which “the Prosecution must demonstrate that the accused shared the common discriminatory intent of the joint criminal enterprise”.<sup>44</sup> In view of this ruling, the Chamber finds the amendments to paragraphs 24 and 25 of the Indictment to be repetitive and unnecessary. They will not be allowed.

22. The Prosecution also proposes to add passages setting out the *mens rea* of the perpetrators of the alleged torture. The Chamber, however, notes that no such additional information is added with respect to the other Counts of the Indictment, including those charged under Article 5 of the Statute. For the sake of consistency, the Chamber finds it preferable not to include this information in the Indictment. It will not allow this amendment.

<sup>42</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009, footnote 1738; *Martić* Appeal Judgement, paras 68, 79, 83; *Brđanin* Appeal Judgement, paras 365, 411, 431.

<sup>43</sup> Indictment, para 24.

<sup>44</sup> *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005, para 110.

(b) Effective control

23. The Prosecution proposes to amend the Indictment so that there is an express pleading that both Accused had “effective control” over their respective subordinates.<sup>45</sup> The Župljanin Defence does not object to the proposed amendment, but notes that the Decision on the Form of the Indictment found the current formulation to be sufficiently precise.<sup>46</sup> In that Decision, the Trial Chamber found that while the Prosecution must explicitly allege “effective control”, this can be accomplished by setting out a combination of clear factual allegations and not just by using a particular phraseology.<sup>47</sup> The Chamber is of the view that adding the explicit allegation of “effective control” to the relevant factual allegations already included in the Indictment will further increase the clarity of the pleading of responsibility under Article 7(3) of the Statute. The Chamber will allow this amendment.

(c) Individual criminal responsibility under Article 7(1) of the Statute

24. The Prosecution proposes to amend paragraph 16 of the Indictment by adding reference to paragraph 12(b) and submits that this is aimed at providing “greater clarity to Župljanin”.<sup>48</sup> Paragraph 16 indicates which of the acts set out in subparagraphs 12(a) to (g) give rise to his alleged individual criminal responsibility for ordering, planning, instigating or aiding and abetting. The Indictment alleges that the acts listed in subparagraphs 12(d) to (g) are material to Stojan Župljanin’s responsibility for ordering, planning and instigation. In addition, the Prosecution charges him with aiding and abetting in relation to the acts set out in subparagraphs 12(a) to (g). The Prosecution submits that this is in line with the submission made by the Župljanin Defence in its motion regarding the form of the Indictment, whereby the Defence purportedly contended that the acts set out in paragraph 12(b) “would also support the modes of liability of ordering, planning and instigating”.<sup>49</sup> This is, however, not a proper representation of the position expressed in that motion. The Župljanin Defence argued in its motion that the acts set out in, *inter alia*, subparagraph 12(b) are “more akin to ordering, planning and instigating *than* subparagraphs 12(d) to (g)”.<sup>50</sup> The position of the Defence was thus that the Accused Župljanin should be charged with ordering, planning and instigation in relation to the acts set out in subparagraph 12(b) rather than being charged with aiding and abetting in this connection.

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<sup>45</sup> Motion, para 10.

<sup>46</sup> Župljanin Response to the Motion, para 12.

<sup>47</sup> Decision on the Form of the Indictment, para 58.

<sup>48</sup> Motion, para 12.

<sup>49</sup> Motion, para 12.

<sup>50</sup> *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, “Stojan Župljanin’s Motion Challenging the Consolidated Indictment (and Motion for Exceeding the Prescribed Word Limit)”, 17 November 2008, para 18 (emphasis added); Župljanin Response to the Motion, para 13.

25. The proposed amendment adds a mode of criminal liability to the three already charged in relation to the set of acts listed in subparagraph 12(b) of the Indictment. The Chamber is of the view that such amendment goes beyond a mere reformulation for the sake of greater clarity, as the Prosecution submits. The Chamber is not satisfied that the amendment will facilitate the determination of the issues in the case. The Chamber will not allow this amendment.

(d) “Minor typographical corrections”

26. The Prosecution proposes to replace the acronym “JCE” in paragraph 9 of the Indictment with the words “common criminal purpose”. The proposed wording is more consistent with the language of the jurisprudence on JCE than the current formulation. The amendment will be allowed.

27. The Prosecution proposes to amend the Indictment by adding the word “and/” before “or” in paragraph 24 listing grounds for the alleged persecutions.<sup>51</sup> With the amendment, the grounds for the alleged persecutions would be “political, racial and/or religious”. The proposed amendment adds clarity to the pleading of grounds for the alleged persecutions in that it clarifies that it is contended that there are cases of persecutions based on more than one of the listed grounds. The Chamber will allow this amendment. It is to be noted, however, that while such amendment is proposed in the paragraph setting out Mićo Stanišić’s responsibility relating to the alleged persecutions, there is no such proposal with respect to Stojan Župljanin. If this is due to an oversight and the Prosecution intends to use the same formulation with respect to both Accused, it is authorised to amend the Indictment accordingly.

28. The Prosecution proposes to correct an error in the numbering of paragraphs of the Indictment, starting with paragraph 25.<sup>52</sup> The Chamber will allow this amendment.

(e) Corrections of errors and ambiguities

29. The Prosecution proposes to correct an error and narrow the time period of commission of the crimes alleged in Schedule D.11.1. The current phrase “At least during May December 1992” is to be replaced with “At least during May and June 1992”.<sup>53</sup> The proposed amendment does not expand or alter the scope of the Indictment with respect to the events in issue. It corrects a typographical error and makes the time frame of the alleged events more specific. The Chamber will allow this amendment.

<sup>51</sup> Annex A to the Supplementary Motion.

<sup>52</sup> Motion, para 13.

<sup>53</sup> Supplementary Motion, para 11.

30. The Prosecution proposes to amend references to the location of Novi Izvor and submits that the current formulation is ambiguous.<sup>54</sup> This location is referred to in three Schedules and the Annex to the Indictment as “the Novi Izvor factory”<sup>55</sup> or the “Novi Izvor company”.<sup>56</sup> The Prosecution proposes to replace each of these references with two references: the “Novi Izvor administration building” and the “Novi Izvor factory”.<sup>57</sup> It submits that in the course of its investigations it became clear that the witnesses whose statements refer to Novi Izvor in fact spoke of two distinct buildings belonging to the Novi Izvor company, the company’s administration building in Zvornik and the company’s factory on the way to the nearby village of Karakaj.<sup>58</sup> The Stanišić Defence contends that as a result of the proposed amendment one location would become two.<sup>59</sup> The Chamber notes that the location or locations in issue are described in the Indictment as a “factory” or a “company”, both of which could be understood as consisting of more than one building, including an administration building. It is true that the way the Novi Izvor facility or facilities are described suggests one location with respect to each crime alleged, rather than two distinct locations. However, the witness statements on which the Prosecution based its allegations relating to Novi Izvor and which have been disclosed to the Defence for each Accused, apparently distinguish two facilities belonging to the company. The Defence has thus been on notice that the name “Novi Izvor” refers to more than one facility. The proposed amendment may prevent confusion and enhance the specificity of pleading. In addition to this amendment, the Prosecution proposes to add to the Annex to the Indictment the name of a victim of the alleged killing at the “Novi Izvor factory”. The Indictment only refers to “persons whose identities at this time are either not known or cannot be confirmed by the Prosecution”. The addition of this name will thus add clarity to the pleading of the alleged killing at Novi Izvor. The Chamber will allow the amendments relating to Novi Izvor.

31. The Prosecution proposes to supplement the reference to the “Vlasenica Civil Defence Warehouse” with the words “Prison next to the Vlasenica SJB building”. It submits that some witnesses referred to the location in issue as the “MUP Prison”, apparently on account of its proximity to the Vlasenica Public Security Station (“SJB”), and that the proposed amendment would prevent confusion.<sup>60</sup> The Chamber notes that the Indictment describes with sufficient clarity the alleged detention facility of “Vlasenica Civil Defence Warehouse”.<sup>61</sup> The fact that some witnesses may refer to that location differently may be explored with them when they appear to

<sup>54</sup> Supplementary Motion, para 12.

<sup>55</sup> Schedule B.14.5.

<sup>56</sup> Schedule C.18.5; Schedule D.17.4.

<sup>57</sup> Supplementary Motion, para 12; Annex A to the Supplementary Motion.

<sup>58</sup> Supplementary Motion, para 12.

<sup>59</sup> Stanišić Response to the Supplementary Motion, para 12.

<sup>60</sup> Supplementary Motion, para 13.

testify. The Chamber is not satisfied that this proposed amendment would facilitate the determination of the issues in the case. It will not allow the amendment.

32. The Prosecution seeks leave to add the names of several non-Serbs allegedly massacred near Nova Kasaba after being taken from the Vlasenica Civil Defence Warehouse.<sup>62</sup> The Chamber notes that the Annex to the Indictment does not identify the victims and only refers to “32 men” allegedly killed at that location. The indication of the names of some of them adds clarity to the pleading of that crime. The Chamber will allow this amendment.

33. The Prosecution proposes to replace in item 8.1 of Schedule B the reference to “the SUP building in Bileća” with “the Bileća SJB building/building behind the SJB building”. It submits that the men killed in Bileća in October 1992 had been brought to die in a building located approximately ten meters away from the Bileća SJB building, where they had previously been detained and severely beaten.<sup>63</sup> The Stanišić Defence contends that this amendment results in adding one location to the Indictment.<sup>64</sup> However, the Prosecution does not suggest that an additional incident of killing occurred in Bileća during the Indictment period.<sup>65</sup> In addition, the Chamber notes that item 8.1 in Schedule C includes “the SJB building in Bileća *and the building behind the SJB*” as one of the three detention facilities in Bileća.<sup>66</sup> Item 8.1 in Schedule D also refers to “the SJB Bileća *and prison behind the SJB building*”.<sup>67</sup> The proposed amendment does not thus result in the addition of a new location or a new crime site to the Indictment. The amended passage describes with greater specificity the location of the killing incident that allegedly occurred in Bileća in October 1992, and makes the allegation consistent with the other allegations relating to the same location contained in Schedules C, and D.<sup>68</sup> The Chamber will allow this amendment.

34. The Prosecution proposes to correct the dates of crimes allegedly committed in four detention facilities in Donji Vakuf and listed in Schedules B.2, C.2 and D.2 so that they correspond with the dates of which the Chamber took judicial notice in its “Decision on Judicial Notice” of 14 December 2007. The Prosecution submits that it does not intend to lead additional evidence on these crimes unless the Defence challenges these adjudicated facts.<sup>69</sup> The Chamber agrees that the

<sup>61</sup> Schedule B.13.4; Schedule C.15.4; Schedule D.15.4.

<sup>62</sup> Supplementary Motion, para 13.

<sup>63</sup> Supplementary Motion, para 14.

<sup>64</sup> Stanišić Response to the Supplementary Motion, para 26.

<sup>65</sup> The Chamber notes that the Prosecution does not propose to add a new item in Schedule B.

<sup>66</sup> Indictment, p 27 (emphasis added).

<sup>67</sup> Indictment, p 33 (emphasis added).

<sup>68</sup> The Chamber notes that the building in Bileća is referred to in Schedule B as a “SUP building”. However, Schedules C and D refer to what appears to be the same building as an “SJB building”.

<sup>69</sup> Supplementary Motion, para 15.

proposed amendments align the Indictment with the adjudicated facts.<sup>70</sup> It will allow the amendments.

35. The Prosecution proposes to correct dates relating to Luka camp in Brčko. It submits that the supporting material disclosed with the original indictment suggests that the camp began operating by 4 May 1992, and not 7 May 1992 as currently indicated. The Prosecution proposes to change the date on which the alleged killings in the Luka camp began from 8 to 4 May 1992.<sup>71</sup> The Chamber notes that regardless of whether the supporting material suggests otherwise, the Defence could reasonably expect that it was the Prosecution case that the Luka camp began operating and the killings were committed in it on the dates indicated in the Indictment. The proposed amendment may result in the inclusion of killing incidents that are not currently charged and of which the Defence has not received an adequate notice. Such killing incidents may constitute a basis for conviction that is distinct from any already alleged in the Indictment. Having regard to the fact that trial in this case is expected to commence before the summer recess,<sup>72</sup> the Chamber is of the view that this amendment, introducing a new charge, would delay the start of trial and thus result in prejudice to both Accused. The Chamber will not allow this amendment.

(f) Amendments adding new charges to the Indictment

36. The Prosecution seeks to extend in Schedule B.13.1 the time period in which killings were allegedly committed in Šušica Camp in Vlasenica, to 30 September 1992. The current timeframe ends in August 1992, which, the Prosecution submits, excludes the alleged killing of 140 camp detainees at the time of the disbanding of the camp. The Prosecution submits that the omission to include these alleged killings was an “oversight” and asserts that the Accused have had notice of the Prosecution’s intention to lead evidence on the killings. Further, the Prosecution submits that the incident falls within the time period indicated in Schedule C.15.3, listing detention facilities, and evidence of it is therefore admissible under Count 1.<sup>73</sup> The Stanišić Defence observes that the proposed amendment would add a major incident to the charges and that this incident has been known to the Prosecution for four years. It contends that “in the absence of pleadings to that effect in the indictment, evidence pertaining to this incident is not admissible”.<sup>74</sup> The Chamber finds that the proposed amendment does not merely add a new factual allegation, but constitutes a new charge, as it introduces a basis for conviction that is factually and legally distinct from any already alleged in the Indictment. It is of no relevance that the incident allegedly occurred in the time

<sup>70</sup> The Chamber will proceed on the understanding that the building termed “the SJB building” in Schedules C.2.1 and D.2.1 is the same building referred to in adjudicated facts 578-579 as “the SUP building”.

<sup>71</sup> Supplementary Motion, para 16; Schedule B, item 9.1; Schedule C, item 10.2.

<sup>72</sup> Status Conference of 20 March 2009, T 15.

<sup>73</sup> Supplementary Motion, para 18.

period indicated in Schedule C.15.3, as that Schedule only relates to the alleged unlawful detention, a crime underlying the charge of persecutions (Count 1). As regards the Stanišić Defence's argument concerning the admissibility of evidence, the Chamber notes that evidence relating to the alleged killing incident in Šušica camp may also be relevant to other issues in the case and its admissibility does not depend on whether the proposed amendment is allowed or not.

37. The Prosecution proposes to add Banja Luka municipality to Schedules F and G, which would charge the Accused with additional persecutory acts under Count 1. The Prosecution observes that Banja Luka is already included in the allegations under Count 1 of the Indictment and that persecutory acts in two detention facilities, forcible transfer and deportation are already explicitly charged in relation to this municipality. The Prosecution submits that the charged acts of persecution are intertwined with those persecutory acts that it seeks to add. The Prosecution contends that the issue of persecution in this municipality has become significantly more material since the joinder of the Accused Župljanin.<sup>75</sup> The Stanišić Defence contends that the absence of these persecutory acts from the indictment against the Accused Stanišić demonstrates that they have no connection to him. The Stanišić Defence recalls its previous submissions to the effect that the defence of the Accused Stanišić ought not to be prejudiced by the joinder with the Accused Župljanin.<sup>76</sup> The Chamber observes that while other acts underlying the charge of persecutions are alleged with respect to the municipality of Banja Luka, Schedules F and G relate to different acts than those already charged. The Chamber finds that the proposed amendment does not merely add new factual allegations, but constitutes a new charge, as it introduces a basis for conviction that is factually and legally distinct from any already alleged in the Indictment.<sup>77</sup>

38. The Prosecution proposes to include the Krings Hall as an additional detention facility in Schedules C and D. It argues that this detention facility "was inadvertently left off the schedules", and that this amendment is necessary to attain a "complete understanding of the network of detention facilities that had developed in and around Sanski Most" during the Indictment period. The Prosecution submits that detainees were unlawfully held in the Krings Hall between May and August 1992, and that they were severely beaten by Bosnian Serb police officers.<sup>78</sup> The Chamber notes that the Krings Hall is a detention facility entirely distinct from the others alleged to have

<sup>74</sup> Stanišić Response to the Supplementary Motion, para 43.

<sup>75</sup> Supplementary Motion, para 19.

<sup>76</sup> Stanišić Response to the Supplementary Motion, para 43.

<sup>77</sup> The Chamber also notes that "although persecution often refers to a series of acts, a single act may be sufficient", as long as the necessary requirements are met; *Prosecutor v. Mitar Vasiljević*, Case No.: IT-98-32-A, Appeal Judgement, 25 February 2004, para 113; *Prosecutor v. Milan Martić*, Case No.: IT-95-11-T, Judgement, 12 June 2007, para 117; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, "Decision on Prosecution's Motion for Joinder and for Leave to Consolidate and Amend Indictments", 23 September 2008, footnote 110.

<sup>78</sup> Supplementary Motion, para 21.

existed in the Sanski Most municipality. Moreover, the time period during which persons were allegedly detained at the Krings Hall is wider than the time period for the alleged unlawful detention in the other detention facilities located in that municipality.<sup>79</sup> The Chamber thus finds that this proposed amendment does not merely add a new factual allegation but constitutes a new charge, as it introduces a basis for conviction that is factually distinct from any already alleged in the Indictment, and will expose the Accused to an additional risk of conviction. Moreover, the Prosecution's submission that it "inadvertently" overlooked the Krings Hall when listing the detention facilities located in the Sanski Most municipality militates against allowing the proposed amendment. In this regard, the Chamber reiterates that the diligence of the Prosecution in advancing the case is a relevant factor when assessing whether the delay resulting from a request to amend the indictment would be undue.<sup>80</sup>

39. The Prosecution also proposes to add to Schedule A a killing incident in which members of three non-Serb families were allegedly killed in the city of Bijeljina around 24 September 1992. The Prosecution submits that a further investigation into this killing was initiated upon reception in 2008 of information suggesting that Mićo Stanišić was present in Bijeljina when the killing incident occurred. As a result of the investigation, the Prosecution allegedly received evidence from the authorities of Bosnia and Herzegovina, and subsequently disclosed it to the Stanišić and Župljanin Defence in August and October 2008 respectively.<sup>81</sup> Moreover, the Prosecution contends that the Accused have been put on notice of this crime through the disclosure of a witness statement.<sup>82</sup> The Chamber notes that several alleged killing incidents are listed in Schedule A. However, none of these incidents took place in the Bijeljina municipality. The Indictment only refers to the alleged crime of unlawful detention with respect to this municipality. The Chamber thus finds that this proposed amendment constitutes an entirely new factual allegation. The addition of this killing incident in Schedule A introduces a basis for conviction that is factually distinct from any already alleged in the Indictment and therefore results in the inclusion of a new charge. The Chamber also stresses that the indictment is the primary accusatory instrument.<sup>83</sup> In the circumstances, the mere disclosure of material to the Defence cannot be regarded as adequate notice of a charge against the Accused if that charge is not specifically set out in the Indictment.

<sup>79</sup> Annex A to the Supplementary Motion, Schedule C.6.

<sup>80</sup> See *supra* para 13.

<sup>81</sup> Corrigendum to the Supplementary Motion, para 1. According to the Prosecution, this killing incident is "among the clearest demonstrations of Stanišić's direct authority over the physical perpetrators of crimes", Reply to the Stanišić Response to the Supplementary Motion, para 5.

<sup>82</sup> Supplementary Motion, para 22.

<sup>83</sup> See *Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Appeal Judgement, 7 July 2006 ("*Ntagerura* Appeal Judgement"), para 114.

40. The Prosecution finally proposes to add to Schedule B a killing incident in which five non-Serb detainees were allegedly killed at the SJB building in Gacko between June and July 1992. The Prosecution submits that “although this incident was accidentally left off Schedule B, it was included in the supporting material with the original Indictment and was mentioned in the Prosecution’s pre-trial brief as well as in a Rule 65*ter* witness statement summary included in that brief”. It contends that the Accused thus received sufficient notice of the Prosecution’s intent to lead evidence on this incident. The Prosecution further alleges that this killing incident is already included in Schedules C.12.1 and D.12.1.<sup>84</sup> The Stanišić Defence responds that the Prosecution failed to act with the required diligence when preparing the Indictment.<sup>85</sup> Schedule B lists two other killing incidents that allegedly occurred in the Gacko municipality during the Indictment period. The killing incident which the Prosecution seeks to add to Schedule B is entirely distinct from these other incidents. The Chamber also notes that, while Schedules C and D refer to crimes allegedly committed at the SJB building in Gacko, Schedule C only pertains to the crime of unlawful detention, and Schedule D only pertains to the crime of torture, cruel treatment or inhumane acts committed in detention facilities. The Chamber thus cannot accept the assertion of the Prosecution that the killing incident in issue was already contained in the Indictment. The Chamber is of the view that the addition of this incident in Schedule B introduces a basis for conviction that is factually distinct from any already alleged in the Indictment and results in the inclusion of a new charge. Furthermore, the fact that this incident was referred to in the supporting material to the original indictment and mentioned in the Prosecution’s Pre-Trial Brief with respect to the Accused Stanišić cannot be regarded as adequate notice to the Stanišić and Župljanin Defence that this incident would become a new charge against the Accused. The Chamber emphasises that the pre-trial brief serves the purposes of addressing the relevant factual and legal issues by developing the Prosecution strategy at trial. It does not substitute for an indictment in identifying the charges against an accused.<sup>86</sup>

41. The Chamber notes that allowing the five amendments adding new charges would lead to significant delays in the proceedings, as the procedures envisaged in Rule 50(B) would need to be initiated. This militates against allowing the amendments.<sup>87</sup> The Chamber also finds that these amendments will not facilitate the determination of the issues in the case. Further, the Prosecution’s acknowledgement that it “inadvertently” excluded some charges from the Indictment reveals an undeniable lack of diligence. Finally, it is of great significance that the trial is expected

<sup>84</sup> Supplementary Motion, para 23.

<sup>85</sup> Stanišić Response to the Supplementary Motion, para 47.

<sup>86</sup> See *Stanišić and Simatović* Decision, para 108; see also *Ntagerura* Appeal Judgement, para 32.

<sup>87</sup> See *supra* para 14.

to start before the summer recess.<sup>88</sup> While the new charges are of limited scope, the fact that they are distinct from the allegations already existing in the Indictment will require the Stanišić and Župljanin Defence to start entirely new investigations. In light of the scope of the Indictment as well as the short period of time left for the Stanišić and Župljanin Defence to prepare their defence before the start of the trial, the addition of the five new charges may deprive the Accused of an adequate opportunity to prepare an effective defence.

42. When viewed in light of the circumstances of the case as a whole, the Chamber finds that the addition of the five new charges to the Indictment at this stage would result in unfair prejudice to the Accused. Accordingly, the Chamber declines to examine whether the proposed amendments are supported by material meeting the *prima facie* standard set forth in Article 19 of the Statute. Leave to add the five new charges is denied.

43. In addition, the Prosecution submits that the evidence pertaining to the new allegations is relevant to already existing charges under the counts of the Indictment and as evidence of a widespread and systematic attack.<sup>89</sup> In its Reply, the Prosecution expresses its intention to lead evidence related to these new charges even if the Chamber denies that they be included in the Indictment.<sup>90</sup> As discussed earlier, the fact that an amendment has not been allowed does not automatically preclude the admissibility of evidence relating to that amendment. Such evidence may be relevant to other issues in the case.

(g) Other errors

44. The Chamber has itself found a number of errors in the Indictment, which may require amendments by the Prosecution. It observes that the lists of municipalities in which crimes charged in respect of each Accused were allegedly committed do not correspond with the municipalities listed in the Schedules to the Indictment. The municipality of Skender Vakuf features in Schedule B among the municipalities in which killings related to detention facilities are alleged, although it is not listed among “the Municipalities” or “the ARK Municipalities” where crimes with which the Accused Mićo Stanišić and Stojan Župljanin are charged, respectively, were allegedly committed.<sup>91</sup> Similarly, the municipality of Bijeljina is included in Schedule C, but not among “the Municipalities”.<sup>92</sup> In order to harmonise the text of the Indictment with the content of the Schedules, it is necessary to add the municipality of Skender Vakuf to the list of “Municipalities” in

<sup>88</sup> Status Conference of 20 March 2009, T 15.

<sup>89</sup> Supplementary Motion, para 27.

<sup>90</sup> Reply to the Stanišić Response to the Supplementary Motion, para 4.

<sup>91</sup> Indictment, paras 11 and 12.

<sup>92</sup> Indictment, para 11.

paragraph 11 of the Indictment and “ARK Municipalities” in paragraph 12. The municipality of Bijeljina must be added to the list of “Municipalities” in paragraph 11.

45. At the end of paragraph 30 of the Indictment, the legal basis of Count 4 is not fully provided. The words “punishable under Articles 3,” should be added before “7(1) and 7(3) of the Statute”.

46. Paragraphs 37 and 39 of the Indictment refer to “the towns and villages as listed in Schedule G”. However, Schedule G only lists municipalities. The words “in the municipalities” should replace the word “as” before the words “listed in Schedule G”.

47. The Chamber takes note of different references to a location in the Vogošća municipality. In Schedule C.16.1, there is reference to “Plana’s house (Planina Kuča) in Svrake”. In Schedule D.16.1, what appears to be the same location is referred to as “Planjo’s house/Planina Kuča”. These references should be harmonised.

48. In Schedule D, listing alleged “[t]orture, cruel treatment or inhumane acts in Detention Facilities”, it is alleged, in respect of the municipality of Vlasenica, that “[a]t least 32 men were executed in the place called Nova Kasaba after being taken out of the warehouse”. The killing is alleged to have taken place at a location different from the detention facility of the Civil Defence warehouse, to which the entry refers. The Chamber notes that the “killing of a number of men taken away from the Civil Defence Warehouse” in the municipality of Vlasenica is included in Schedule B, listing “[k]illings related to detention facilities”. This would be a more suitable place for the reference to the alleged killing at Nova Kasaba. The last sentence of Schedule D.15.4 should thus be moved to Schedule B.13.4.

## 5. Disposition

For the foregoing reasons and pursuant to Rules 50, 54 and 126*bis* of the Rules, the Chamber

(1) **GRANTS** leave to the Prosecution and the Stanišić Defence to exceed the prescribed word limit in the Supplementary Motion and the Stanišić Response to the Supplementary Motion;

(2) **GRANTS** leave to the Prosecution to reply to the Stanišić Response to the Supplementary Motion and to the Župljanin Response to the Motion;

(3) **DECLINES** to consider the Stanišić and Župljanin Rejoinders;

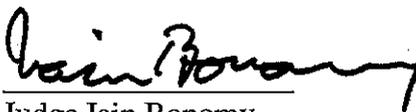
(4) **GRANTS** the Motion and the Supplementary Motion **IN PART** in that it grants leave to amend the Indictment as follows:

- (a) a passage with information about the alleged intent of both Accused in relation to the alleged JCE shall be added in paragraph 13 of the Indictment, as specified in Annex A to the Motion;
- (b) paragraph 14 shall be amended so that it properly pleads the third form of JCE, as specified in Annex A to the Motion;
- (c) passages with information about the alleged *mens rea* of both Accused with respect to aiding and abetting, instigating, planning and ordering shall be added in paragraphs 15 and 16, as specified in Annex A to the Motion;
- (d) a passage containing an express pleading of “effective control” shall be added in paragraph 22, as specified in Annex A to the Motion;
- (e) the acronym “JCE” shall be replaced with the words “common criminal purpose” in paragraph 9, as specified in Annex A to the Motion;
- (f) the word “and/” shall be added before the word “or” in paragraph 24, as specified in Annex A to the Motion, and, if the Prosecution intends to make a similar amendment with respect to Stojan Župljanin, the same shall be done in the sentence concerning that Accused;
- (g) the time period of the alleged commission of crimes shall be amended in Schedule D.11.1, as specified in Annex B to the Supplementary Motion;
- (h) the references to the location of Novi Izvor shall be amended in Schedules B, C and D, and in the Annex to the Indictment, as specified in Annex B to the Supplementary Motion;
- (i) the names of the non-Serbs allegedly massacred near Nova Kasaba shall be added in the Annex to the Motion, as specified in Annex B to the Supplementary Motion;
- (j) the reference to the “SUP building in Bileća” in Schedule B shall be replaced with “the Bileća SJB building/building behind the SJB building”, as specified in Annex B to the Supplementary Motion;
- (k) the time period of the alleged commission of crimes in four detention facilities in Donji Vakuf and listed in Schedules B.2, C.2 and D.2 shall be amended as specified in Annex B to the Supplementary Motion;
- (l) the paragraphs following paragraph 24 shall be re-numbered, as specified in Annex A to the Motion;

- (5) **ORDERS** the Prosecution to file the amended indictment as authorised in this Decision within three days of the filing of this Decision;
- (6) **ORDERS** the Prosecution to incorporate in the amended indictment the amendments identified by the Chamber in the section "Other errors" above; and
- (7) **DENIES** the Motion and Supplementary Motion in all other respects.

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

Dated this twenty-eighth day of April 2009  
At The Hague  
The Netherlands

  
Judge Iain Bonomy  
Presiding

[Seal of the Tribunal]