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06 January 2009

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UNITED
NATIONS

	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 Nos.	IT-08-91-PT IT-95-5/18-PT
		Date:	6 January 2009
		Original:	English

IN THE SPECIALLY APPOINTED CHAMBER

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

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

Decision: **6 January 2009**

PROSECUTOR
v.
MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN

PROSECUTOR
v.
RADOVAN KARADŽIĆ

PUBLIC

DECISION ON STOJAN ŽUPLJANIN'S MOTION FOR JOINDER

The Office of the Prosecutor:

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Mr Tomislav Višnjić and Mr Igor Pantelić for Stojan Župljanin

The Accused:

Mr Radovan Karadžić

I. BACKGROUND

1. This decision of a Specially Appointed Chamber ("Chamber") of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("Tribunal") is in respect of "Stojan Župljanin's Motion for Joinder with the Case of Radovan Karadžić", filed by Counsel for Stojan Župljanin ("Župljanin Defence") on 3 December 2008 simultaneously before Trial Chamber II and Trial Chamber III ("Motion"). On 5 December 2008 the Acting President of the Tribunal issued an order assigning the consideration of the Motion to this Chamber.[1]

2. In the Motion the Župljanin Defence seeks an order pursuant to Article 21 of the Statute of the Tribunal ("Statute") and Rule 48 of the Rules of Procedure and Evidence ("Rules") joining the case of *Prosecutor v Stanišić and Župljanin* with the case of *Prosecutor v. Radovan Karadžić* and a further order to the Office of the Prosecutor ("Prosecution") to consolidate and amend the indictments against the Accused. Counsel for Mićo Stanišić ("Stanišić Defence") and the Prosecution responded on 15 December 2008 opposing the Motion.[2] The Accused Radovan Karadžić ("Radovan Karadžić" or "Karadžić") responded on 15 December 2008 requesting that the Motion be granted.[3] On 22 December 2008, the Župljanin Defence filed a request for leave to reply and a reply to the responses of the Prosecution, the Stanišić Defence and Karadžić.[4] Leave is granted.

3. Mićo Stanišić and Stojan Župljanin were indicted separately. The indictment against Mićo Stanišić was confirmed on 25 February 2005. Mićo Stanišić surrendered and was transferred to the seat of the Tribunal on 11 March 2005. At his initial appearance on 17 March 2005 he entered a plea of not guilty on all charges. The indictment against Stojan Župljanin was confirmed on 14 March 1999. Stojan Župljanin was arrested on 11 June 2008 and transferred to the seat of the Tribunal on 21 June 2008. At his further appearance on 21 July 2008 he entered a plea of not guilty on all charges in the indictment.

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[1] *Prosecutor v Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT; *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-PT, "Order Referring the Joinder Motion", 5 December 2008.
[2] *Prosecutor v Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT; *Prosecutor v Radovan Karadžić*, Case No: IT-95-5/18-PT, "Mićo Stanišić's Response in Opposition to Stojan Župljanin's Motion for Joinder with the Case of Radovan Karadžić", 15 December 2008 ("Stanišić Response") and *Prosecutor v Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT; *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-PT, "Prosecution's Response to Stojan Župljanin's Motion for Joinder with the Case of Radovan Karadžić", 15 December 2008 ("Prosecution Response"), respectively.
[3] *Prosecutor v Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT; *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-PT, "Karadžić Response to Joinder Motion", 15 December 2008 ("Karadžić Response").
[4] *Prosecutor v Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT; *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-PT, "Stojan Župljanin's Reply to the Responses of the Prosecution, Radovan Karadžić and Mićo Stanišić to Župljanin's Motion for Joinder", 22 December 2008 ("Reply").

4. On 16 July 2008 the Prosecution moved for joinder of the case against Mićo Stanišić with that against Stojan Župljanin and for leave to amend and consolidate the indictments against the two Accused. On 23 September 2008 the Trial Chamber joined the cases against Mićo Stanišić and Stojan Župljanin and granted in part the Prosecution's request to amend and consolidate the two indictments.[5] On 29 September 2008, as ordered by the Trial Chamber, the Prosecution filed a consolidated indictment against the two Accused, which is the operative indictment in the *Stanišić and Župljanin* case ("*Stanišić and Župljanin* Indictment").

5. Radovan Karadžić was initially indicted for serious violations of international humanitarian law committed in Bosnia and Herzegovina from May 1992 until July 1995 by an indictment confirmed on 25 July 1995. On 16 November 1995 a second indictment against Radovan Karadžić was confirmed charging him with serious violations of international humanitarian law committed in the area of Srebrenica in July 1995. On 11 July 1996, the two indictments were joined.[6] On 18 May 2000, the joined indictment was amended, consolidating the Bosnia and Herzegovina and Srebrenica indictments. This consolidated indictment, dated 28 April 2000, was confirmed on 31 May 2000 and remains the operative indictment in the *Karadžić* case ("*Karadžić* Indictment"). Radovan Karadžić was arrested on 21 July 2008 and transferred to the seat of the Tribunal on 30 July 2008. At his further appearance on 29 August 2008 a plea of not guilty was entered on his behalf. On 22 September 2008 the Prosecution filed a motion seeking leave to amend the indictment against Karadžić.[7] Pending determination of this motion, currently being examined by Trial Chamber III, the scope of the *Karadžić* case remains uncertain. The Chamber will examine the present Motion on the basis of the operative indictment.

II. LAW

6. Pursuant to Rule 48 of the Rules persons accused of the same crime or different crimes committed in the course of the same transaction may be jointly charged and tried. Rule 2 defines the term transaction as "[a] number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan." There is no requirement under Rule 2 or Rule 48 that the events constituting the same

[5] *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.
[6] *Prosecutor v Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, "Review of Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence", 11 July 1996.
[7] *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-PT, "Motion to Amend the First Amended Indictment", 22 September 2008.

transaction take place at the same time or be committed together.[8] It is not necessary for all the facts to be identical.[9] The "same transaction" may be found to exist "even where the alleged crimes of the relevant accused are different, or are carried out in different geographical areas or over different periods of time...so long as there are other factual allegations in the indictments that are sufficient to support a finding that the alleged acts or omissions form a part of a common scheme, strategy or plan".[10]

7. If the requirements of Rule 48 are satisfied, the Trial Chamber may determine in the exercise of its discretion whether to grant joinder or leave the cases to be tried separately. This discretion is exercised in accordance with the provisions of the Statute and the Rules. The jurisprudence of the Tribunal has identified the following factors that may be considered by a Trial Chamber in the exercise of its discretion: (i) protection of the rights of the accused pursuant to Article 21 of the Statute; (ii) avoidance of any conflict of interests that might cause serious prejudice to an accused; (iii) protection of the interests of justice.[11] Factors that a Trial Chamber may look to in assessing the interests of justice include (i) avoiding the duplication of evidence;[12] (ii) promoting judicial economy;[13] (iii) minimising hardship to witnesses and increasing the likelihood that they will be available to give evidence;[14] and (iv) ensuring consistency of verdicts.[15]

III. DISCUSSION

A. Stojan Župljanin's standing to file a motion for joinder

8. The Prosecution and the Stanišić Defence raise a preliminary objection of lack of standing, arguing that the Rules do not provide for a possibility of an accused seeking joinder.[16] The Župljanin Defence submits that a decision on joinder may affect the accused's right to a fair trial

[8] *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR73.1, "Decision on Vinko Pandurević's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused", 24 January 2006 ("*Pandurević and Trbić* Appeals Decision"), para 7; *Prosecutor v Ante Gotovina; Prosecutor v Ivan Čermak and Mladen Markač*, Case Nos. IT-01-45-AR73.1; IT-03-73-AR73.1; IT-03-73-AR73.2, "Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder", 25 October 2006 ("*Gotovina* Appeals Decision on Joinder"), para 16.

[9] *See Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, "Decision on Motions by Momir Talić for a Separate Trial and for Leave to File a Reply", 9 March 2000 ("*Brđanin and Talić* Decision"), paras 20-21; *Prosecutor v. Meakić et al.*; *Prosecutor v. Fuštar et al.*, Case Nos. IT-95-4-PT; IT-95-8/1-PT, "Decision on Prosecution's Motion for Joinder of Accused", 17 September 2002, para 26; *Prosecutor v. Šešelj and Margetić*; *Križić*; *Jović*, Case Nos. IT-95-14-R77.3; IT-94-14-R77.4; IT-95-14 & 14/2-R77, "Decision on Motion for Joinder", 31 May 2006, para 26.

[10] *Pandurević and Trbić* Appeals Decision, para 17.

[11] *Gotovina* Appeals Decision on Joinder, para 17.

[12] *Gotovina* Appeals Decision on Joinder, para 17.

[13] *Gotovina* Appeals Decision on Joinder, para 17.

[14] *See Gotovina* Appeals Decision on Joinder, para 48.

[15] *Gotovina* Appeals Decision on Joinder, para 17; *Brđanin and Talić* Decision, para 31.

[16] Prosecution Response, para 2; Stanišić Response, para 7.

and, therefore, the Chamber should examine the merits of the Motion.[17] The Chamber notes that Rule 48 of the Rules, regarding joinder of accused, does not indicate which party can seek joinder. While Rule 48 is placed amongst the rules setting out various procedural rights of the Prosecutor in respect of an indictment and deals with a subject of particular interest to the Prosecutor, neither the language of the Rule, nor the subject matter, requires that only the Prosecutor may seek to join accused in the one indictment.[18] The Chamber is of the view that, contrary to the Prosecution's and the Stanišić Defence's submissions, the Accused does have standing to request joinder. Accordingly, the Chamber will examine the merits of the Motion.

B. Are the acts and omissions charged in the *Stanišić and Župljanin* Indictment and in the *Karadžić* Indictment part of the same transaction?

9. The Župljanin Defence submits that the requirements of Rule 48 in the present case are satisfied. It is submitted, in particular, that the *Stanišić and Župljanin* Indictment and the *Karadžić* Indictment allege that each of the three Accused shared the same common purpose, that some of the members of the joint criminal enterprises ("JCEs") alleged in the two Indictments, including the three Accused, are the same, that the timeframes of the JCEs alleged in the two Indictments are the same, that the three Accused are charged with similar crimes committed in furtherance of the alleged JCEs in six (with respect to Stojan Župljanin) and 13 (with respect to Mićo Stanišić) overlapping municipalities, pursuant to both Article 7(1) and Article 7(3) of the Statute, and, further, that each of the three Accused is charged with the same crimes against humanity pursuant to Article 5 of the Statute.[19]

10. The Stanišić Defence submits, however, that the two Indictments are very distinct in their nature, charges and timeframe. It submits, in particular, that the *Karadžić* Indictment, as opposed to the *Stanišić and Župljanin* Indictment, encompasses the charges of genocide, "terror and unlawful acts" (*sic*) and taking hostages, and that it further includes broader charges of persecutions, extermination and murder, which would require extensive evidence irrelevant to the charges against Mićo Stanišić and Stojan Župljanin. It is submitted further that the overlap between the two Indictments in relation to the alleged common purpose of the alleged JCEs is limited, as Mićo Stanišić and Stojan Župljanin are alleged to have been members of the JCE between 1 April 1992

[17] Reply, paras 7-8.
[18] The Chamber also notes that another Trial Chamber examined similar motions filed by an accused. *See Prosecutor v. Dragoljub Kunarac and Radomir Kovać*, Case No. IT-96-23-PT, "Decision on Joinder of Trials", 9 February 2000, and "Decision on Joinder of Trials", 15 February 2000. *See* also decisions of the International Criminal Tribunal for Rwanda concerning defence motions for severance: *Prosecutor v. Aloys Ntabakuze and Gratien Kabiligi*, Case No. ICTR-97-34-I, "Decision on the Defence Motion Requesting an Order for Separate Trials", 30 September 1998; *Prosecutor v. Augustin Bizimana et al.*, Case No. ICTR-98-44-T, "Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvenal Kajelijeli", 6 July 2000.
[19] Motion, paras 9-12.

and 31 December 1992, while Radovan Karadžić is charged for his alleged participation in four different JCEs, from 1 July 1991 until 30 November 1995, and as there are no allegations that Radovan Karadžić on one hand, and Mićo Stanišić and Stojan Župljanin on the other, acted together in the context of the alleged JCE. It is submitted further that the temporal overlap of approximately eight months and the geographical overlap of some 13 municipalities do not amount to an "overlap in other important respects" within the meaning of Rule 48 when taking into account the *Karadžić* Indictment as a whole.[20]

11. The Prosecution agrees with the Župljanin Defence that the crimes charged in the *Stanišić and Župljanin* Indictment and some of the crimes charged in the *Karadžić* Indictment were committed in the course of the same transaction and that the threshold requirements of Rule 48 are met.[21]

12. Karadžić does not make submissions on this issue.[22]

13. Both Indictments allege acts and omissions committed from 1 April 1992 to 31 December 1992 in 19 municipalities common to Radovan Karadžić and Mićo Stanišić[23] and in seven municipalities common to Radovan Karadžić and Stojan Župljanin[24] in support of the charges against the Accused. These acts and omissions include killing of Bosnian Muslims and Bosnian Croats during and after the attacks on and within the municipalities, killings related to detention facilities, acts of serious bodily and mental harm committed in detention facilities, inhumane conditions of detention, forcible transfer or deportation, wanton destruction of Bosnian Muslim and Bosnian Croat villages, and denial of fundamental rights on a discriminatory basis.

14. All three Accused are charged under Article 7(1) and Article 7(3) of the Statute. JCE is alleged in both Indictments. The *Karadžić* Indictment alleges that between 1 July 1991 and 31 December 1992 Radovan Karadžić acted in concert with others, including Momčilo Krajišnik and Biljana Plavšić, to participate in the crimes charged, "in order to secure control of those areas of Bosnia and Herzegovina which had been proclaimed part of the Serbian republic."[25] It further alleges that from 1 January 1993 until 19 July 1996 Radovan Karadžić "acting individually or in concert with others directed and controlled the Bosnian Serb forces and all SDS and government

[20] Stanišić Response, paras 10-15. The Chamber notes that these submissions appear to be based on a proposed amended indictment submitted by the Prosecution on 22 September 2008, which is not the operative indictment in the *Karadžić* case.
[21] Prosecution Response, para 3.
[22] Karadžić Response.
[23] *Stanišić and Župljanin* Indictment, para 11; *Stanišić and Župljanin* Indictment, Schedule C, point 19; *Karadžić* Indictment, paras 9, 17, 34.
[24] *Stanišić and Župljanin* Indictment, para 12; *Karadžić* Indictment, paras 9, 17, 34.
[25] *Karadžić* Indictment, paras 9, 60, 61.

authorities who participated in the crimes alleged in this indictment."[26] The JCE alleged in the *Stanišić and Župljanin* Indictment is alleged to have existed between 24 October 1991 and the signing of the Dayton Accord in 1995, to have had the objective to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the territory of the planned Serbian state by means which included the commission of the crimes charged, and to have included as members Momčilo Krajišnik, Radovan Karadžić and Biljana Plavšić.[27] Mićo Stanišić and Stojan Župljanin are charged for their alleged participation in this JCE between 1 April 1992 and 31 December 1992.[28]

15. The *Karadžić* Indictment, however, includes a number of allegations and charges which are not alleged with respect to Mićo Stanišić and Stojan Župljanin. These include the execution of thousands of Bosnian Muslim men between 11 and 18 July 1995 in and around the Srebrenica enclave in Bosnia and Herzegovina,[29] the forced transfer and deportation of tens of thousands of Bosnian Muslims, Bosnian Croats and other non-Serbs alleged to have taken place between 1 July 1991 and 30 November 1995 from a number of municipalities and the Srebrenica enclave,[30] the protracted campaign of shelling and sniping upon civilian areas of Sarajevo and upon its civilian population between 1 July 1991 and 30 November 1995,[31] and the taking of UN military observers and UN peacekeepers as hostages, following the NATO air strikes on 25 and 26 May 1995.[32] The *Karadžić* Indictment further includes several counts not charged against Mićo Stanišić and Stojan Župljanin, namely genocide (Count 1), complicity in genocide (Count 2), wilful killing (Count 6), unlawfully inflicting terror upon civilians (Count 10), and taking of hostages (Count 11).

16. The two Indictments allege a different timeframe for the Accused alleged criminal responsibility. Radovan Karadžić is charged for his acts and omissions between 1 July 1991 and 19 July 1996,[33] whereas Mićo Stanišić and Stojan Župljanin are charged for their acts and omissions between 1 April 1992 and 31 December 1992.[34]

17. While there are significant differences between the two Indictments, stemming from the fact that the *Karadžić* Indictment charges criminal conduct not alleged in the *Stanišić and Župljanin* Indictment, the Chamber is persuaded that the acts and omissions charged in the *Stanišić and*

[26] *Karadžić* Indictment, para 62.
[27] *Stanišić and Župljanin* Indictment, paras 7, 8.
[28] *Stanišić and Župljanin* Indictment, para 10.
[29] *Karadžić* Indictment, paras 25-28.
[30] *Karadžić* Indictment, paras 37-43. While the *Stanišić and Župljanin* Indictment charges acts of forcible transfer and deportation, these are limited to the period 1 April to 31 December 1992 and to the municipalities listed in paras 11 and 12 of the *Stanišić and Župljanin* Indictment.
[31] *Karadžić* Indictment, paras 44-52.
[32] *Karadžić* Indictment, paras 53-59.
[33] *Karadžić* Indictment, paras 9, 17, 31, 32, 34, 35, 36, 42, 43, 45, 51, 52, 55, 58, 59, 60, 61, 62, 65, and 66.

Župljanin Indictment and some of the acts and omissions charged in the *Karadžić* Indictment are part of the same transaction as this term is understood in the jurisprudence of the Tribunal. In reaching this conclusion the Chamber accepts that although not clearly phrased, the *Karadžić* Indictment appears to allege in part essentially the same common plan as the *Stanišić and Župljanin* Indictment and that a number of acts and omissions alleged in the *Stanišić and Župljanin* Indictment are the same or of the same nature as some of the acts alleged in the *Karadžić* Indictment. The much broader scope of the *Karadžić* Indictment, however, is a factor that the Chamber must consider in the exercise of its discretion in determining whether joinder would be in the interests of justice and fair to the Accused.

C. Is joinder in the interests of justice?

18. The Župljanin Defence submits that joinder would serve the interests of justice as it is likely to prevent significant duplication of Prosecution and Defence evidence and as it would minimize hardship to witnesses as some of the witnesses proposed to be called in the *Stanišić and Župljanin* case are elderly, in poor health or still suffering trauma. It is submitted further that joinder would promote judicial economy as one joint trial is likely to be shorter than two separate trials and that it would ensure consistency in judgements especially in light of the hierarchical relationship between the Accused, alleged in the two Indictments.[35] Alternatively, if the Chamber finds that differences between the two cases in issue are of such significance that a joint trial would not serve the interests of justice, the Župljanin Defence requests that the charges which are unique to Karadžić be severed from the *Karadžić* Indictment and a joint trial be held in respect of the remaining charges, common to all three Accused.[36]

19. Karadžić submits that a joint trial would facilitate the appearance of common defence witnesses who otherwise would have to be called twice if two separate trials are conducted.[37]

20. The Stanišić Defence submits that joinder would not serve the interests of justice as the alleged duplication of evidence would be very limited in scope as opposed to the significant body of evidence that is relevant only to the case against Radovan Karadžić and which would be immaterial for Mićo Stanišić, and as joinder would significantly increase the length and complexity of the trial. It is submitted further that a joint trial would require significant additional preparation and resources, and would require Mićo Stanišić and Stojan Župljanin and their defence teams to spend significant time in court hearing evidence unrelated to the charges against them. Further, the

[34] *Stanišić and Župljanin* Indictment, paras 10, 11, 12, 24, 25, 28, 29, 31, 32, 36, and 38.
[35] Motion, paras 13-22.
[36] Reply, para 16.
[37] Karadžić Response, para 3.

Stanišić Defence submits that consistency in judgements cannot be achieved in cases which are so distinct from each other.[38]

21. The Prosecution submits that the interests of justice would not be served by joinder. It is submitted that the Župljanin Defence has overestimated the amount of evidence likely to be tendered in the two cases and that in view of the different focus of the two Indictments (the *Stanišić and Župljanin* Indictment focusing on acts involving RS MUP (the Serbian Ministry of Internal Affairs in Bosnia and Herzegovina) personnel and the *Karadžić* Indictment encompassing all political, civilian and military organs) witnesses who will be called to testify regarding Stanišić's or Župljanin's knowledge or involvement in crimes may not be called to testify in matters related to Karadžić.[39] It is submitted further that joinder would not significantly promote judicial economy as the *Karadžić* Indictment is much more complex and broader than the *Stanišić and Župljanin* Indictment and, if the cases are joined, Mićo Stanišić and Stojan Župljanin would be confronted with a significant number of witnesses of no relevance to their case. It is submitted further that joinder would reduce judicial economy by reducing the Trial Chamber's ability to utilize adjudicated facts as adjudicated facts which have been or may be judicially noticed in one case may not be in the other case.[40]

22. The proposition advanced by the Župljanin Defence is based on the assumption that there is a significant overlap between the *Stanišić and Župljanin* Indictment and the *Karadžić* Indictment. As it is apparent from the discussion in the preceding paragraphs, while the acts and omissions charged in the *Stanišić and Župljanin* Indictment are sufficiently part of the same transaction as acts and omissions charged in the *Karadžić* Indictment, the latter Indictment is much broader and charges significant criminal conduct not alleged against Mićo Stanišić and Stojan Župljanin. This criminal conduct includes the killing of several thousands of Bosnian Muslim men at Srebrenica in July 1995, and a protracted campaign of shelling and sniping upon civilian areas of Sarajevo and upon its civilian population. The conduct is alleged to have occurred years after the acts and omissions alleged in the *Stanišić and Župljain* Indictment and appears to be of no material relevance to that Indictment. It is clear that the case against Stanišić and Župljanin is but a small part of the case against Karadžić. It will be natural in these circumstances, and it is submitted by the Prosecution, that significant evidence relevant to the charges against Karadžić will be of no relevance to the *Stanišić and Župljanin* Indictment. It will be reasonable in these circumstances to accept that a joint trial would disadvantage the Stanišić and Župljanin Defences by requiring them to participate in a much longer trial and to deal with numerous issues of little or no relevance to

[38] Stanišić Response, paras 16, 17, 18, 19, 20.
[39] Prosecution Response, paras 6-8.
[40] Prosecution Response, paras 9-14.

their respective cases. While the Chamber accepts that some evidence may be called in both trials, the benefit of preventing duplication of this evidence would be significantly outweighed by the burden associated with participation in a longer and more complex trial involving charges not relevant to the case against the two Accused.

23. For the same reason the Chamber cannot accept the Župljanin Defence argument that joinder would ensure consistency in judgements. Considering that the allegations in the *Stanišić and Župljanin* Indictment are only a limited part of the allegations in the *Karadžić* Indictment, the benefit of seeking to ensure this limited consistency of judgements will be outweighed by the need to protect the rights of the Accused and to protect otherwise the interests of justice.

24. The Župljanin Defence submits further that a joinder will promote judicial economy as a joint trial is likely to be shorter than two separate trials. The Chamber notes that the *Karadžić* Indictment is significantly broader and more complex than the *Stanišić and Župljanin* Indictment and that, therefore, the trial in the former case is likely to last much longer than in the latter. Further, by virtue of the markedly different stages of pre-trial preparation in the two cases joinder will inevitably delay the date by which a case of the three Accused could be ready for trial, much beyond the anticipated date of trial readiness of the case against Mićo Stanišić and Stojan Župljanin if they are tried together but separately from Radovan Karadžić. A joinder of the two trials can be anticipated to delay considerably the reaching of a decision in respect of the guilt or innocence of Mićo Stanišić and Stojan Župljanin.

25. The Chamber accepts the argument advanced by the Župljanin Defence and in part by Karadžić that a single joint trial of all three Accused would lessen hardship to some witnesses, who may be called in both cases. However, this is not the case for the majority of witnesses. This benefit does not outweigh the significant impediments to the Accused and to the interests of justice if joinder is granted.

26. As indicated earlier, the Župljanin Defence makes an alternative request for joinder, in respect of a reduced case against Karadžić, which, it submits, would only include those charges against Karadžić that are common to all three Accused.[41] Leaving aside procedural issues, the Chamber notes that such a partial joinder would require, in due course, a separate trial in respect of the remaining charges against Radovan Karadžić. Any advantage to be anticipated from a joint trial of the three Accused would be at the significant cost of disrupting the completeness and order of the case against Radovan Karadžić. It is also to be anticipated that two separate trials involving Radovan Karadžić would take longer than a single trial on his present Indictment, and it must be

expected that some witnesses would be required to give evidence at the two separate trials. For these reasons the Chamber is not persuaded that it should take the most unusual course of ordering a joint trial of Radovan Karadžić with Mićo Stanišić and Stojan Župljanin on some of the charges presently alleged against Radovan Karadžić in the present *Karadžić* Indictment.

D. Will joinder of the *Stanišić and Župljanin* Indictment and the *Karadžić* Indictment be unfair to the Accused?

27. The Župljanin Defence submits that the joinder of the two Indictments would further Stojan Župljanin's right to fair trial. It is submitted in particular that were Stojan Župljanin to be tried separately from Radovan Karadžić, this would cause a heavy burden for the Župljanin Defence because it would need to devote a significant amount of its resources to monitor the trial of Radovan Karadžić and it would be more difficult for the Župljanin Defence to secure the cooperation of witnesses. It is submitted further that it will be unfair for Stpjan Župljanin if he is accused of participating in a JCE at the highest level but tried separately from Radovan Karadžić, and that a joint trial will give the Trial Chamber an opportunity to better understand the relevant historic events.[42]

28. Karadžić submits that a joint trial would facilitate his ability to conduct his defence as it would allow a division of labour which would not be possible if he is tried alone.[43]

29. The Stanišić Defence submits that joinder would cause another lengthy delay of the start of the trial of Mićo Stanišić which would violate his right to trial without undue delay guaranteed by Article 21 of the Statute. It is submitted further that the fact that Radovan Karadžić is not represented by counsel would substantially prolong the trial and thus would further prejudice Mićo Stanišić's right to trial without undue delay. The Stanišić Defence also submits that a joint trial would be unfair to Mićo Stanišić as he will have to bear the consequences of potential perceptions of charges and allegations which are unrelated to him.[44]

30. The Prosecution submits that joinder could prejudice the rights of the Accused as the *Stanišić and Župljanin* case is significantly farther along in trial preparation than the *Karadžić* case. It is submitted that in view of the greater number of charges and wider scope of criminal conduct charged in the *Karadžić* Indictment, a joint trial would be expected to last significantly longer than

[41] Reply, para 16.
[42] Motion, para 23.
[43] Karadžić Response, para 2.
[44] Stanišić Response, paras 18, 20, 21, 22, 23.

a separate trial in the *Stanišić and Župljanin* case and would greatly increase the complexity of both cases.[45]

31. The Župljanin Defence submission regarding the burdens it will face if Radovan Karadžić is tried separately from Stojan Župljanin is based on the understanding that the two trials will cover essentially the same factual allegations. As is evident from the discussion above,[46] while some allegations in the *Stanišić and Župljanin* Indictment are included in the *Karadžić* Indictment, the *Karadžić* Indictment is much broader. A significant part of the *Karadžić* Indictment is dedicated to criminal conduct which is unrelated to the charges against Mićo Stanišić and Stojan Župljanin. In these circumstances it would not be necessary for the Župljanin Defence to monitor closely the entirety of the *Karadžić* trial and the related evidence.

32. In assessing the fairness of the proposed joinder to the Accused, the Chamber takes into account that Mićo Stanišić has been awaiting trial since March 2005. The proceedings in the *Stanišić and Župljanin* case are in very advanced stages of pre-trial preparation and it is likely that this trial will commence in the coming months. In contrast, the proceedings against Karadžić are in a noticeably less advanced stage of preparation for trial. A motion to amend the Indictment is still pending before the Trial Chamber and cannot be determined until all the supporting material has been translated. Joinder, therefore, can be anticipated to lead to a significant delay of the start of the trial of Mićo Stanišić and Stojan Župljanin. Taking this fact into account and considering the complexity and the scale of the *Karadžić* Indictment, which is likely to lead to a lengthier and more complex trial, the Chamber is persuaded that joinder would adversely affect Mićo Stanišić's and Stojan Župljanin's right to be tried without undue delay.

33. With respect to Karadžić's submission that a joint trial would facilitate his defence by allowing him a division of labour which will not be possible if he is tried alone, the Chamber is not persuaded that this would be a significant advantage and, in any event, notes that joinder has no bearing on an accused's ability to prepare his defence and reiterates that in joint trials each accused shall be accorded the same rights as if being tried separately.

For the foregoing reasons and pursuant to Rules 48, 54, 82 and 126*bis* of the Rules, and Article 21 of the Statute the Chamber:

[45] Prosecution Response, paras 15, 16, 17, 18.
[46] *See supra*, paras 13-16.

- **GRANTS** leave to the Župljanin Defence to reply to the Responses and takes note of the content the Reply,

- **DENIES** the Motion.

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

Dated this sixth day of January 2009
At The Hague
The Netherlands

Judge O-Gon Kwon
Presiding

[Seal of the Tribunal]