



International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of Former Yugoslavia since
1991

Case No. IT-95-14/1-PT

Date: 25 September 1997

English

Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda
Judge Fouad Riad
Judge Mohamed Shahabuddeen

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 25 September 1997

THE PROSECUTOR

v.

ZLATKO ALEKSOVSKI

**DECISION OF TRIAL CHAMBER I
ON THE DEFENCE MOTION OF 19 JUNE 1997
IN RESPECT OF DEFECTS IN THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. Grant Niemann
Mr. Michele Marchesiello
Mr. Anura Meddegoda

Defence Counsel:

Mr. Goran Mikulić

1. On 19 June 1997, Defence counsel for Zlatko Aleksovski (hereinafter “the Defence”) submitted a Motion to the Trial Chamber in respect of the form of the indictment (hereinafter “the Motion”). The Prosecutor, on 8 July 1997, in opposition, responded to the Motion (hereinafter “the Response”). The Trial Chamber heard both parties at a hearing on 1 August 1997.

The Trial Chamber will first analyse the claims and arguments of the parties and then discuss all the disputed points of fact and law.

I. ANALYSIS OF THE CLAIMS AND ARGUMENTS OF THE PARTIES

2. In its Motion, the Defence requested that the Trial Chamber order the Prosecutor to provide additional clarifications in respect of the place and time the alleged crimes were committed, the identity of the victims and the perpetrators of the crimes. Furthermore, it stated that the indictment neither specified nor defined the status of Kaonik.

Moreover, it underscored that *mens rea* relating to the accused’s presumed conduct, specifically, in order characterise command responsibility, was not sufficiently elaborated upon in the indictment.

The accused, for that reason, considered that he was not in a position to prepare a proper defence and that “he [was] in an unfair position and did not know against which crimes exactly he will have to defend himself”.

3. In her response, and at the hearing of 1 August 1997, the Prosecutor asserted that she had satisfied her legal obligations in respect of the presentation of the indictment pursuant to Article 18(4) of the Statute of the Tribunal (hereinafter “the Statute”) and Sub-rule 47(B) of the Rules of Procedure and Evidence (hereinafter “the Rules”). Basing herself both on the Tribunal’s case-law in the cases “*The Prosecutor v. Tadić*”, “*The Prosecutor v. Đukić*”, “*The Prosecutor v. Delić*” and “*The Prosecutor v. Blaškić*” and that of the European Court of Human Rights in the case “*Kamasinski v. Austria*”, the Prosecution maintained that the indictment need supply only a concise description of the crimes charged and of the participation of the accused and his subordinates and that such requirement had been

satisfied. In addition, she emphasised that the accused had been duly informed as to the nature of and reasons for the charges brought against him.

II. DISCUSSION

4. The Trial Chamber will first recall the relevant provisions of the Statute and the Rules. It will then review whether the indictment is insufficiently precise as to the time and place of the commission of the alleged crimes, the identity of the victims and perpetrators of the crimes and the status of Kaonik. Lastly, it will determine whether *mens rea* in the crimes ascribed to Zlatko Aleksovski was adequately stated in the indictment.

A. The provisions of the Statute and Rules and the case-law of the Tribunal

5. The Trial Chamber first points out that Article 18(4) of the Statute provides that:

“Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a *concise statement of the facts and the crime or crimes with which the accused is charged under the Statute*”. (italics added)

Furthermore, it recalls that Article 21(4) of the Statute specifically states that:

“In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (a) to be *informed promptly and in detail in a language which he understands of the nature and cause of the charge against him*.” (italics added)

Lastly, it notes that Sub-rule 47(A)(ii) [formerly Sub-rule 43(B)] of the Rules expresses both these provisions in the following terms:

“The indictment shall set forth the name and particulars of the suspect, and a *concise statement of the facts of the case and of the crime with which the suspect is charged*.” (italics added)

6. The Judges also wish to recall that in their Decision of 4 April 1997 in the case “*The Prosecutor v. Blaškić* (IT-95-14-PT, p. 13) regarding “the preliminary motion raised by the Defence that the indictment be rejected because of defects in form”, they concluded their analysis of the Tribunal’s case-law by stating that:

“an indictment, by its very nature and given the very initial phase in which it is reviewed, is *inevitably concise and succinct*. Such is the meaning, such is the spirit of the texts governing the proceedings of the International Tribunal, themselves inspired by international standards and their interpretation.” (italics added)

The Judges therefore distinguished between the minimum right guaranteed to the accused through a presentation, albeit succinct, of the facts and charges against him and the right to receive more detailed information promptly so that he may organise his defence.

7. As Trial Chamber II affirmed in the case “*The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, Esad Landžo*”, (IT-96-21-T), the principal function of an indictment is to advise the accused concisely of the nature of the crimes with which he is charged and to present the factual basis of such charges. The indictment must include certain information which will permit the accused to prepare his defence (that is, the identity of the victim, the place and approximate date of the alleged crime and the means used to prepare it) and to avoid any surprise which might be prejudicial to him.

B. Review of the indictment

3. Alleged vagueness as to the time and place of the events and to the identity of the victims and perpetrators

(a) Time and place of the alleged events

8. The Defence emphasised that the time and place of the crimes which the accused is alleged to have carried out were not described with sufficient precision.

9. Basing herself *inter alia* on the Decision "*The Prosecutor v. Tadić*" (IT-94-1-T, 14 November 1995) which states that the Prosecution must "demonstrate very succinctly [...] that the accused committed the alleged offences", the Prosecutor affirmed that "the present indictment describes with sufficient detail the acts, *place and time* of the crime in compliance with the provisions of Article 18(4) of the Statute and Rule 47(B) of the Rules". (italics added)

10. Paragraph 20 of the indictment states that:

"Zlatko Aleksovski was an official *at the Zenica prison from 23 February 1987 until leaving to be the commander of the detention facility at Kaonik near Busovača, on or about 29 January 1993*". (italics added)

Furthermore, paragraph 31 states that:

"*From January 1993 until at least the end of May 1993, Zlatko Aleksovski accepted [...] into his custody at the detention facilities in Kaonik*". (italics added)

11. As regards the date the offence was committed, the Trial Chamber considers that what is essential in the indictment is that certain events occurred in the Kaonik prison while the accused was responsible for it. The exact starting date of the period during which the accused was in charge does not constitute the foundation of the indictment. The time period - the first five months of 1993 - is sufficiently circumscribed and permits the accused to organise his defence with full knowledge of what he is doing. It follows that because it specifies the overall period during which the crimes were allegedly committed, the indictment does not violate the rules governing the presentation of the charges. If the Prosecutor is aware of the precise date, she is free to modify the indictment, conditional on her doing so within seven working days of this Decision; if she is not aware of the date, the indictment need not be amended.

12. In respect of the place where the offences were allegedly committed, the Trial Chamber considers that the indictment is sufficiently clear since it specifies that they were perpetrated in the detention facilities at Kaonik near Busovaca.

The Trial Chamber therefore rejects this request in the Motion.

(b) Identity of the victims and perpetrators of the crimes

13. The Defence maintains that the identity of the persons said to have been implicated in each of the alleged crimes was imprecisely stated as was that of the victims.

14. The Prosecutor replied that the materials attached to the indictment provide sufficiently detailed information about the identity of the victims. In fact, according to the Prosecution, "the supporting material [...] contains numerous names of victims and significant amounts of information detailing the identities of the victims".

15. The indictment states that the detainees were "Bosnian Muslim civilians [...] from a widespread area including, but not exclusive to, Vitez and Busovača municipalities."

16. The Trial Chamber does note that the Prosecutor did not determine the number of the victims and the perpetrators of the crimes.

It considers nonetheless that the victims and perpetrators may be identified by the Defence in the light of evidence which has been - and will be - provided by the Prosecution. It adds, moreover, that, in a case of this sort, the specific identification of each victim and perpetrator is neither possible nor necessary.

The Trial Chamber therefore rejects this request in the Motion.

(c) the status of Kaonik

17. The Defence criticises the Prosecution for not defining the status of Kaonik with sufficient precision. It claims not to know whether what is meant is a prison, a detention camp or a camp for prisoners of war.

The Trial Chamber notes that the concomitant use of these terms is not contradictory and, in fact, considers that, at this stage of the proceedings, the Prosecutor is not obliged to provide further details as to the status of Kaonik.

The Trial Chamber therefore rejects this request of the Motion.

2. Mens rea

18. The Defence maintains that the lack of allegations proving *mens rea* constitutes a defect in the form of the indictment. It asserts that the indictment “is completely silent with regard to facts supporting the theory that the accused is liable for failing to punish the direct perpetrators of the crimes alleged”.

20. Basing itself primarily on the case-law of the Appeals Chamber in the case “*The Prosecutor v. Delić*” (IT-96-21-T, 2 October 1996), the Prosecutor considers that she has provided sufficient details about the conduct underlying the accused’s criminal responsibility.

21. The Trial Chamber recalls that the indictment should be reviewed from the perspective of whether or not the accused has been able to prepare his defence.

As affirmed above, the Trial Chamber notes that the place and time the crimes were committed have been sufficiently identified. Furthermore, it points out that the accused’s position of command responsibility at Kaonik is not discussed. The Judges are of the opinion therefore that the Defence has sufficient elements to challenge the accused’s criminal responsibility - as prison commander.

In any case, the Judges consider that it is more appropriate for the Judges on the merits to determine the legal elements of the offences for which the accused is charged and that it is in the light of the facts that the existence of such elements should be determined.

This request of the Motion is therefore rejected.

III. DISPOSITION

FOR THE FOREGOING REASONS,

Trial Chamber I,

RULING *inter partes* and unanimously,

REJECTS the accused's Motion of 19 June 1997 in respect of defects in the form of the indictment.

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

Done this twenty-fifth day of September 1997
At The Hague
The Netherlands

Claude Jorda,
Presiding Judge, Trial Chamber I

(Seal of the Tribunal)