

**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 No.: IT-95-14/2-PT
Date: 2 March 1999
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 2 March 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON THE DEFENCE MOTION TO
STRIKE THE AMENDED INDICTMENT FOR VAGUENESS**

The Office of the Prosecutor
Mr. Geoffrey Nice
Mr. Rodney Dixon

Counsel for the accused
Mr. Mitko Naumovski, Mr. Leo Andreis, Mr. David F. Geneson, Mr. Turner T. Smith, Jr.,
and Ms. Ksenija Turković, for Dario Kordić

Mr. Božidar Kovačić, for Mario Čerkez

I. INTRODUCTION

Pending before this Trial Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 ("International Tribunal") is the motion "Defense Motion to Strike the Amended Indictment for Vagueness" filed by counsel for the accused, Dario Kordić ("the Defence") on 22 January 1999, together with the "Prosecutor's Response to Motion to Strike the Amended Indictment for Vagueness" filed by the Office of the Prosecutor ("Prosecution") on 5 February 1999.

THE TRIAL CHAMBER, HAVING CONSIDERED the written submissions and oral arguments of the parties heard on 16 February 1999,

HEREBY ISSUES ITS WRITTEN DECISION.

II. DISCUSSION

A. Arguments of the Parties

1. In its Motion the Defence argues that pursuant to Article 21, paragraph 4(e), of the Statute of the International Tribunal (“Statute”), the accused has a right to be “informed promptly and in detail . . . of the nature and cause of the charges” against him and submits that the Amended Indictment does not contain sufficient factual allegations in support of the charges against the accused, thereby rendering it impermissibly vague and preventing the accused from preparing an adequate defence.

2. The Defence submits that the Prosecutor is attempting to impute criminal liability to the accused by demonstrating the criminal conduct of organisations to which the accused is alleged to have belonged.

3. The Defence submits that the Amended Indictment fails to identify the basis for the accused’s criminal liability, the accused’s alleged role in the criminal activity and how each of the alleged criminal acts was committed. The Defence contends that, instead, each allegation reiterates the language of Article 7, paragraph 1, without specifying a basis for criminal liability. The Defence further submits that it is illogical for the Prosecutor to plead Article 7, paragraph 1, and Article 7, paragraph 3, as alternate bases of criminal liability for the same conduct as the facts required to demonstrate criminal responsibility under Article 7, paragraph 1, are totally distinct from those required to prove criminal liability under Article 7, paragraph 3. The Defence argues that until the Prosecutor specifies a precise basis for liability in each instance, it is virtually impossible for the accused to prepare a defence.

4. Further, the Defence contends that the Amended Indictment fails to identify with specificity the accused’s alleged accomplices, co-conspirators and subordinates. The Defence submits that this is especially problematic where the individual criminal liability of the accused is predicated on the acts of others. Similarly, the Amended Indictment fails to identify the alleged victims or targets of the crimes with any specificity.

5. The Defence submits that Counts 1 and 2 of the Amended Indictment are impermissibly vague, as the factual allegations underlying the charges of persecution comprise acts which do not appear to constitute crimes under either the Statute or customary international law generally.

6. In response, the Prosecution argues that under the Statute and Rules of Procedure and Evidence of the International Tribunal (“Rules”), an indictment need only provide a concise statement of the facts of the case and the crimes with which the accused is charged. Previous decisions of the International Tribunal relating to allegations of vagueness in an indictment have held that the Prosecution is not required to provide a detailed statement of the facts and evidence of the case and the accused’s conduct. In particular, the Prosecution submits that the indictment need not specify precise details as to the names and numbers of victims, the dates and sites of the crimes, nor the identities of any alleged accomplices or subordinates.

7. The Prosecution further submits that it is permissible to charge the accused with many forms of participation in the same offence under Article 7, paragraph 1, if the accused’s conduct in relation to such a charge assumes all such forms. The Prosecution submits that the Amended Indictment specifies certain acts through which the accused is alleged to have participated in the campaign of persecution and violence which forms the basis for the charges in the Amended Indictment. The accused’s liability for the crimes alleged is also based on the nature of his position in the organisations carrying out the persecutory campaigns. Under Counts 1 and 2 the accused is charged for his involvement in the overall campaign of persecution, and in the subsequent counts he is charged separately with each of the components of this persecutory campaign.

8. In response to the Defence’s argument that the acts charged as persecution must constitute crimes within the jurisdiction of the International Tribunal, the Prosecution submits that it has no obligation at this stage to explain in detail the legal foundation for each of the offenses included in the Amended Indictment. The Prosecutor also contends that the jurisprudence of the International Tribunal does not require that the acts underlying a charge of persecution constitute crimes in themselves. Instead, the act need only violate a basic or fundamental right of the victim.

9. At the hearing on the Motion, the Prosecution undertook to provide a pre-trial brief setting out in more detail the particulars of the offences charged in the Amended Indictment and their factual bases¹.

¹ See Transcript of trial proceedings in *Prosecutor v. Kordic et al.*, Case No. IT-95-14/2-PT at p.535:20-21.

B. Analysis

10. The Trial Chamber finds that the contention of the Defence that the Amended Indictment attempts to impute criminal liability to the accused by demonstrating the criminal conduct of organisations of which the accused is alleged to have been a member, does not raise an issue that affects the form of the indictment and that ultimately it will be for the Trial Chamber to determine whether each and every charge is substantiated on the basis of the evidence presented.

11. As for the Defence argument that the Amended Indictment is impermissibly vague in that it fails to identify with specificity the precise basis for liability in respect of each charge, the accused's alleged accomplices and victims, the Trial Chamber reiterates the general position reflected in prior decisions of this International Tribunal that, pursuant to Rule 47(C) of the Rules and Article 18, paragraph 4, of the Statute, what is required at this stage is "a concise statement of the facts of the case and of the crime with which the suspect is charged"².

12. The Trial Chamber has reviewed carefully the arguments of the Defence and finds that the Amended Indictment meets these requirements.

13. As to the Defence contention that Counts 1 and 2 of the Amended Indictment are impermissibly vague in that they include as persecutory conduct acts that do not constitute crimes under either the Statute or customary international law, the Trial Chamber determines that the question of the legal bases for offences is a matter that is best resolved at trial.

² See, e.g., Decision on the Defence Motion on the Form of the Indictment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, T. Ch. II, 14 Nov. 1995; Decision on Motion by the Accused Zejnil Delalić Based on Defects in the Form of the Indictment, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, T. Ch. II, 4 Oct. 1996; Decision of Trial Chamber I on the Defence Motion of 19 June 1997 in Respect of Defects in the Form of the Indictment, *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-PT, T. Ch. I, 3 Oct. 1997; Decision on Defence Challenges to Form of the Indictment, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-PT, T. Ch. II, 15 May 1998.

III. DISPOSITION

For the foregoing reasons

PURSUANT TO Rule 72 of the Rules of Procedure and Evidence of the International Tribunal,
THE TRIAL CHAMBER DISMISSES the Defence Motion to Strike the Amended Indictment for
Vagueness.

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



Richard May
Presiding

Dated this second day of March 1999
At The Hague
The Netherlands

[Seal of the Tribunal]