



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: IT-01-46-PT

Date: 21 January 2002

Original: English

IN THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orie

Registrar: Mr. Hans Holthuis

Decision of: 21 January 2002

THE PROSECUTOR

v.

RAHIM ADEMI

**DECISION ON THE SECOND DEFENCE MOTION ON
THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:
Mr. Mark Ierace

Defence Counsel:
Mr. Čedo Prodanović

TRIAL CHAMBER I (“the 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 (“the Tribunal”);

NOTING the “Decision on the Defence Motion on the Form of the Indictment” of 12 November 2001 (hereinafter “the Decision”), which partially granted the first Defence Motion on the form of the indictment;

NOTING the “Submission of an Amended Indictment Pursuant to the 12 November 2001 Decision of the Trial Chamber” filed by the Prosecution on 26 November 2001 (hereinafter “the Amended Indictment”);

NOTING the Defence second “Motion on the Form of the Indictment” of 11 December 2001 (hereinafter “the Second Motion”);

CONSIDERING that the Decision ordered the Prosecution (i) to file a list of all material facts it intends to plead under the crime of persecution, (ii) to supplement the Schedule with the name of the 15 victims not yet listed as well as with the place and date of the incidents involving each and all of the victims, (iii) to file additional schedules in relation to the other criminal acts referred to in the Indictment;

CONSIDERING that the Defence objects to the Amended Indictment submitted by the Prosecution on the ground that it merely partially meets the Trial Chamber’s Decision;

CONSIDERING that the Defence first requests that the schedules be more specific in respect of the circumstances, time and area under which the victims have incurred damage; that, in particular, the Prosecution should provide the exact date of each incident, instead of referring to the time period comprised “between 9-17 September”, as the Defence argues that the lack of precision as far as the time is concerned disenables it to distinguish between the various stages of development of the armed conflict in which the incidents took place; that the Prosecution should also indicate the exact place, as opposed to a wide “area”, where these victims have been targeted;

CONSIDERING that the Defence further notes that the second schedule indicates that cruel and inhuman treatment resulted from “shrapnel injuries, grenade injuries and projectile injuries” for some incidents; that it deems such mention to be insufficient to characterise these incidents as war crimes, as the victims could have been injured in the course of legitimate military operations; that more details would thus be needed in respect of the incidents concerned;

CONSIDERING that the Defence requests that additional schedules be filed with respect to counts 4 and 5 of the indictment (plunder of public or private property, wanton destruction of cities, towns or villages), as was ordered by the Chamber; that such schedules identify the property destroyed and name of its owner, as well as the name of the villages or hamlets destroyed and the date the destruction alleged occurred;

CONSIDERING that, pursuant to Article 18(4) of the Statute, “the Prosecution 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”; that, under Rule 47(C) of the Rules of Procedure and Evidence, “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”;

CONSIDERING that the obligation for the Prosecution to provide a concise statement of the facts and crime(s) with which the defendant is charged stems from the right of the accused to “be informed promptly and in detail in a language he understands of the nature and cause of the charge against him” (Article 21(4)(a)) and “to have adequate time and facilities for the preparation of his defence” (Article 21 (4)(b));

CONSIDERING that this requires the Prosecution to plead all material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven;¹

CONSIDERING that the acts covered in the indictment took place within a small geographical area (the Medak pocket is described in the indictment as an area 4-5 km wide to 5-6 km long) and a short period of time (from 9 to 17 September 1993);

¹ *Kupreškić Appeals Chamber Judgement*, 23 October 2001, para. 88.

CONSIDERING that the accused is not charged with having directly committed the crimes alleged;

CONSIDERING that such details as the exact address of the property destroyed, or the name of its owner, are not necessary to be provided, in view of the small area covered in the indictment and the vast number of property allegedly destroyed in that area, and that it is sufficient to indicate the name of the villages, hamlets or areas where the houses or barns concerned were located;

CONSIDERING that the schedules attached to the first amended indictment place each incident into a small area within the Medak pocket and that such information is sufficiently detailed at this stage of the procedure;

CONSIDERING that the schedules attached to the first amended indictment merely indicate that each incident occurred between 9 and 17 September 1993;

CONSIDERING that the Prosecution alleges that the killings and mistreatments charged as crimes against humanity and/or violations of the laws or customs of war were committed against Serb civilians and captured and/or wounded Serb soldiers;

CONSIDERING that the abovementioned facts, if proven, would constitute crimes against humanity and/or violations of the laws or customs of war provided that all the required elements of these crimes are met;

CONSIDERING that the absence of further details as to the exact date of each incident does not impair the Defence in its preparation for trial at this stage of the proceedings;

CONSIDERING that the exact circumstances in which each victim has allegedly incurred damage will be presented and debated at trial; that the purpose of the schedules is only to concisely indicate the type of injury the Prosecution intends to prove at trial;

CONSIDERING that additional information is nevertheless required on the circumstances that lead to the death of Zeljko Čopić, a victim listed in the first schedule;²

² The schedule merely indicates that the cause of the victim's death is unknown.

FOR THE FOREGOING REASONS,

PURSUANT to Article 18 and 21 of the Statute and to Rule 47 (C) of the Rules of Procedure and Evidence of the Tribunal;

PARTIALLY GRANTS the Second Motion of the Defence;

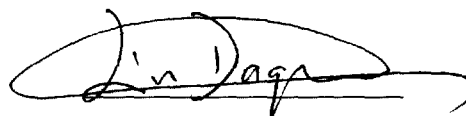
and therefore

ORDERS the Prosecution, within fourteen days of the present decision, to file:

- 1) further details with respect to Zeljko Čopić, a victim listed in the first schedule;
- 2) additional schedules with respect to counts 4 and 5 of the Indictment; such schedules should indicate the villages, hamlets or areas where the houses and barns were allegedly destroyed or plundered;

DECIDES that the Defence shall have fourteen days within the Prosecution's filing, to submit any preliminary motion.

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



Liu Daqun

Presiding Judge

Dated this twenty-first day of January 2002

At The Hague

[Seal of the Tribunal]