

IT-01-47-R
D 4-1/6224 bis
26 November 2003

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HB

**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-01-47-PT
Date: 18 November 2003
Original: English
French

BEFORE TRIAL CHAMBER II

Before: Judge Carmel Agius
Judge Florence Ndepele Mwachande Mumba
Judge Jean-Claude Antonetti

Registrar: Mr Hans Holthuis

Decision of: 18 November 2003

THE PROSECUTOR

v.

**ENVER HADŽIHASANOVIĆ
AMIR KUBURA**

DECISION ON FORM OF INDICTMENT

The Office of the Prosecutor:

Mr Ekkehard Withopf
Mr David Re

Defence Counsel:

Ms Edina Rešidović and Mr Stéphane Bourgon
for Enver Hadžihasanović
Mr Fahrudin Ibrišimović and Mr Rodney Dixon
for Amir Kubura

1. Trial Chamber II (“Trial 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 seised of a preliminary motion alleging a defect in the form of the indictment filed by the Defence of the Accused Amir Kubura (“Accused”) on 7 November 2003 (*Defence Motion of Amir Kubura on Form of Indictment in Respect of New Charges Concerning Miletići*) and the Prosecution’s response to the Defence’s motion filed on 12 November 2003 (*Prosecution Response to Defence Motion of Amir Kubura on Form of Indictment in Respect of New Charges Concerning Miletići*).

2. The motion seeks the withdrawal of the new charge brought against the Accused in the third amended indictment (“indictment”) filed by the Prosecution on 26 September 2003, that is, the withdrawal of the new charge relating to the four killings in Miletići contained in count 1, on the ground that this new charge is defective in its form.

3. The Defence’s objection concerns the identity of the perpetrators of the four killings committed in Miletići in April 1993. The Defence submits that, in paragraph 39(b) of the indictment, the Prosecution fails to specify, either in terms of individuals or units, who perpetrated the acts of brutality since, in that paragraph, the Prosecution states only that the acts committed in Miletići took place “after troops of both the 7th Muslim Mountain Brigade and the 306th Mountain Brigade had launched the attack on Miletići”. The Defence therefore maintains that the indictment lacks precision and that it is unable to prepare its defence for trial.

4. In its response, the Prosecution submits that the Trial Chamber has already ruled on the issue of the late inclusion of the new charges pertaining to the village of Miletići in its Decision on Form of Indictment rendered on 17 September 2003 and that the Defence’s assertion that it is unable to prepare its case because of the late inclusion of the new charges should therefore be disregarded.¹ The Prosecution additionally points out that the issue of the identification of the troops from the 7th Muslim Mountain Brigade and the 306th Mountain Brigade does not affect the form of the indictment.

5. Pursuant to Articles 18(4), 21(2) and 21(4)(a) and (b) of the Statute of the Tribunal (“Statute”) and Rule 47(C) of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

¹ Paragraph 10 of the Defence motion.

the pleadings in an indictment are sufficiently particular when it concisely sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the nature and cause of the charges against him to enable him to prepare a defence.

6. In this instance, the Trial Chamber is satisfied that the indictment presents the material aspects of the Prosecution case in sufficient detail.

7. The Trial Chamber has already ruled in this case that the fact that the relevant counts do not mention any specific brigade does not make the indictment defective.²

8. The Trial Chamber considers that paragraph 39(b) of the indictment must not be read in isolation but in the light of paragraphs 51 to 58 of the Prosecution's Pre-Trial Brief pursuant to Rule 65 *ter*(E)(i) of the Rules ("Prosecution Pre-Trial Brief") filed on 10 October 2003.

9. Paragraphs 56 and 57 of the Prosecution Pre-Trial Brief state that men from the 1st Battalion of the 7th Muslim Mountain Brigade arrived at the village of Miletići and attacked it. They also specify that several soldiers from the 7th Muslim Brigade took the villagers off towards Mehurići, leaving four captured Croatian HVO soldiers, mentioned by name, in the custody of the other 3rd Corps soldiers. Paragraph 58 then sets out that "the 3rd Corps soldiers murdered the four men". The wording of the above paragraphs thus provides the Defence with sufficient information as to the identity of the brigades that purportedly committed the alleged crimes.

10. In conclusion, the Trial Chamber considers that when paragraph 39(a) of the indictment and paragraphs 56, 57 and 58 of the Prosecution Pre-Trial Brief are read together, the only reasonable inference to be drawn is that the forces which attacked the village in question also committed the alleged crimes.

11. The Chamber thus finds that the indictment provides the Defence with sufficiently detailed information in order for it to be able to prepare for trial and that it meets the requirements of Articles 18(4), 21(2) and 21(4)(a) and (b) of the Statute and Rule 47(C) of the Rules.

² Decision on Form of Indictment of 17 September 2003, paragraph 14.

PURSUANT to Rules 50 and 72 of the Rules, this Trial Chamber,

DISMISSES the Defence's objection and, hence, the motion,

Done this eighteenth day of November 2003
At The Hague
The Netherlands

(signed)

Presiding Judge
Trial Chamber II