



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-01-48-T
Date: 7 February 2005
Original: English

IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge György Szénási

Registrar: Mr. Hans Holthuis

Decision of: 7 February 2005

PROSECUTOR

v.

SEFER HALILOVIĆ

**DECISION ON DEFENCE MOTION FOR STRIKING OUT OF
PARAGRAPHS IN PROSECUTION PRE-TRIAL BRIEF**

The Office of the Prosecutor:

Mr. Philip Weiner
Ms. Sureta Chana

Counsel for the Accused:

Mr. Peter Morrissey
Mr. Guénaél Mettraux

TRIAL CHAMBER I, SECTION A, (“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”),

BEING SEISED of the “Motion for Striking out of Paragraphs in Prosecution Pre-Trial Brief”, filed by the Defence on 20 January 2005 (“Motion”), in which the Defence requests that the Trial Chamber orders that a number of paragraphs be struck out from the Prosecution Pre-Trial Brief because they allegedly contain allegations which go beyond the scope of the pleadings contained in the Indictment, and allegations which are not supported by any of the supporting material,

NOTING that this case was transferred from Trial Chamber III to Trial Chamber I on 17 January 2005,¹

NOTING that pursuant to an order of the Pre-Trial Judge in these proceedings, filed on 29 September 2004, and pursuant to Rule 65 *ter* (E)(i) of the Rules of Procedure and Evidence (“Rules”), the Prosecution filed its final Pre-Trial Brief (“Prosecution Pre-Trial Brief”) on 13 October 2004, and that on 27 October 2004 the Defence notified Trial Chamber III that its initial Pre-Trial Brief, filed on 22 March 2003, would stand as its final Pre-Trial Brief (“Defence Pre-Trial Brief”),

NOTING that on the same date, 27 October 2004, the Defence filed a “Response concerning Prosecution Amended Pre-Trial Brief”, which included the same allegations contained in the paragraphs laid down in the Motion,

NOTING that in its “Order on Defence Response concerning Prosecution Amended Pre-Trial Brief”, filed on 3 December 2004, Trial Chamber III denied the Defence’s request to submit its Response, by considering, *inter alia*, that the most appropriate means for the Defence to respond to the Prosecution Pre-Trial Brief would have been to file a final Pre-Trial Brief of its own, pursuant to Rule 65 *ter*; and that the appropriate forum for litigating disputes between the Parties about the sufficiency of evidence to support the Prosecution’s allegations is at trial, and not during the pre-trial stage of the proceedings,

NOTING FURTHER that on 22 December 2004, the Prosecution filed the “Prosecution’s Supplementary Explanation to its Pre-Trial Brief”, and that on 14 January 2005, in its “Decision on Prosecution’s Supplementary Explanation to its Pre-Trial Brief”, Trial Chamber III denied the Prosecution leave to file the Supplementary Explanation, by considering, among other things, that since there is no provision in the Rules for filing such a document that purports to explain a Pre-

¹ See President’s “Order Reassigning a Case to a Trial Chamber”, 17 January 2005.

Trial Brief, this Supplementary Explanation was considered as an attempt to amend its Pre-Trial Brief,

NOTING that during the Pre-Trial Conference on 24 and 27 January 2005, the Defence clarified its position, by stating that the Prosecution Pre-Trial Brief may indeed provide some further particulars as to the facts which are being pleaded in the Indictment, but that in the present case the Prosecution is in fact attempting to broaden its case, going “beyond the Indictment through the Pre-Trial Brief”;² that the evidence which will be led by the Prosecution, might go to facts which are not properly or not sufficiently pleaded in the Indictment;³ and that, therefore, the aim of the Motion is to avoid the Defence facing a suggestion that it had adequate notice of those facts at the end of the Prosecution case,⁴

NOTING that during the Pre-Trial Conference, the Prosecution conceded that what is included in paragraph 207 of its Pre-Trial Brief is incorrect and is not to be relied upon (paragraph 39 of the Motion),⁵

NOTING FURTHER, however, that the Prosecution maintained that its case is properly pleaded and the Defence has adequate notice of the material facts, the allegations and all the evidence that the Prosecution intends to lead against the Accused,⁶

CONSIDERING that Articles 21(2) and 21(4)(a) and (b) of the Statute state that, in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence,

CONSIDERING that the primary purpose of a Pre-Trial Brief is to provide each Party with an opportunity to present its theory of the case,

CONSIDERING that the evidence presented by the Prosecution to support the allegations in the Indictment will be disputed at trial, and the Defence will have an adequate opportunity to challenge such evidence,

² Pre-Trial Conference, 27 January 2005, T. 294.

³ Pre-Trial Conference, 27 January 2005, T. 293-294.

⁴ Pre-Trial Conference, 27 January 2005, T. 294.

⁵ Pre-Trial Conference, 24 January 2005, T. 247.

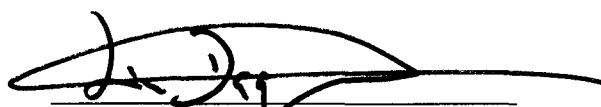
⁶ Pre-Trial Conference, 24 and 27 January 2005, T. 247 and 292.

CONSIDERING FURTHER that, as stated during the Pre-Trial Conference,⁷ the Trial Chamber will base its findings on what has been pleaded in the Indictment, and that the Prosecution Pre-Trial Brief will be used for reference and clarification purposes,

PURSUANT to Rule 54 of the Rules,

HEREBY DENIES the Motion.

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



Judge Liu Daqun
Presiding

Dated this seventh day of February 2005,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁷ Pre-Trial Conference, 27 January 2005, T. 294.