

CASE INFORMATION SHEET

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-04-83)

RASIM DELIĆ


RASIM DELIĆ
Convicted of cruel treatment

From 8 June 1993, Commander of the Main Staff of the Army of Bosnia-Herzegovina (ABiH)

- Sentenced to **three years' imprisonment**
- The case is pending before the Appeals Chamber

*Crimes convicted of:***Cruel treatment** (violations of the laws or customs of war)

- Delić failed to take necessary and reasonable measures to prevent or punish the crimes committed by his subordinates in Livade and the Kamenica Camp located near Zavidovići in central Bosnia and Herzegovina in July and August 1995.

Born	4 February 1949 in Čelić, Bosnia and Herzegovina
Indictment	Initial indictment: 17 March 2005; amended: 30 June 2006
Surrendered	28 February 2005
Transferred to ICTY	28 February 2005
Initial appearance	3 March 2005, pleaded not guilty to all charges
Trial Chamber Judgement	15 September 2008; sentenced to three years' imprisonment

STATISTICS

Trial days	114
Witnesses called by Prosecution	64
Prosecution exhibits	689
Witnesses called by Defence	13
Defence exhibits	657
Witnesses called by Trial Chamber	1
Chamber exhibits	5

TRIAL	
Commenced	9 July 2007
Closing arguments	9 - 11 June 2008
Trial Chamber I	Judge Bakone Justice Moloto (presiding), Judge Frederik Harhoff, Judge Flavia Lattanzi
Counsel for the Prosecution	Daryl Mundis, Matthias Neuner, Kyle Wood, Laurie Sartorio
Counsel for the Defence	Vasvija Vidović, Nicholas David Robson
Judgement	15 September 2008

APPEALS	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mehmet Güney, Judge Liu Daqun, Judge Andréia Vaz and Judge Theodor Meron
Counsel for the Prosecution	Michelle Jarvis
Counsel for the Defence	Vasvija Vidović, John Jones

RELATED CASES <i>by geographical area</i>
HADŽIHASANOVIĆ AND KUBURA (IT-01-47)

INDICTMENT AND CHARGES

An indictment against Rasim Delić was confirmed on 16 February 2005 and unsealed on 24 February 2005. It was subsequently replaced by an indictment dated 17 March 2005. An amended indictment was filed on 14 July 2006 pursuant to a Trial Chamber decision of 30 June 2006.

The amended indictment alleged that, on 8 June 1993, Delić, as Commander of the Main Staff, had overall authority and responsibility for the functioning of the Army of Bosnia-Herzegovina (ABiH). It further alleged that Delić was in charge of planning and directing all ABiH operations and monitoring the activities of all subordinate officers and units to ensure that his orders were implemented. In particular, as Commander of the Main Staff, Delić exercised military command and control of the ABiH throughout Bosnia and Herzegovina. The indictment thus alleged that by holding this position Delić was criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute of the Tribunal.

According to the indictment, on 8 June 1993, the day Delić assumed the post of Commander of the Main Staff, units of the ABiH 3rd Corps, including the 306th Mountain Brigade, 7th Muslim Mountain Brigade and the 'Mujahedin', launched an attack on the village of Maline in Travnik municipality. Following the surrender of the Croatian Defense Council (HVO), more than 200 Bosnian Croat civilians and HVO soldiers were captured and ordered by the Military Police of the ABiH 306th Mountain Brigade to march towards Mehurići, a village several kilometers from Maline. At the village of Poljanice, several hundred metres from Mehurići, a group of approximately 10 'Mujahedin' and local Muslim soldiers ordered the column to stop, removed approximately 35-40 Bosnian Croats and surrendered HVO soldiers, and ordered them to walk back towards Maline. Shortly thereafter, this group met a smaller group who had also been captured in Maline and the combined group proceeded towards Maline. When the group arrived at the junction that led to Bikoši, the 'Mujahedin' then indiscriminately opened fire on the group, executing some of the survivors by shooting them in the head. Delić was put on notice of the murders and woundings in Maline/Bikoši but nevertheless failed to take the necessary and reasonable measures to punish the perpetrators.

The indictment further alleged that in the early hours of 21 July 1995, the 'El Mujahed' Detachment of the ABiH 3rd Corps launched an attack on Krčevine in the Zavidovići municipality. Soldiers from the Bosnian Serb Army (VRS) were captured and taken to Livade village. Two captured VRS soldiers were killed and decapitated by ABiH soldiers. The prisoners were subjected to daily beatings in Livade, and on 23 July 1995 they were taken to the Kamenica Camp in the Gostović valley. In the camp area there was a building which was used as a detention facility for captured VRS soldiers. This detention facility was operated by ABiH soldiers from the 'El Mujahed' detachment. On 24 July 1995, one VRS prisoner was decapitated in the Kamenica Camp and all the other prisoners were forced to kiss the severed head, after which the head was placed on a hook on the wall in the room where the prisoners were held. The VRS prisoners held in Kamenica Camp were tortured and beaten. On 24 August 1995, they were transferred from Kamenica Camp to Zenica KP Dom (prison). Delić was put on notice that ABiH soldiers from the 'El Mujahed' detachment had a propensity to commit crimes, and particularly crimes against captured enemy combatants and civilians, and that the detachment was operating the Kamenica Camp. Nevertheless, he failed to take the necessary and reasonable measures to prevent or punish these crimes.

The indictment further alleged that on 10 September 1995, following a combined offensive approved by the Supreme Command Staff, units under the command of the ABiH 2nd and 3rd corps, units and elements of the 21st Division, 22nd Division and 25th Division of the 2nd Corps, and units and elements of the 35th and 37th Divisions of the 3rd Corps, conducted military operations against VRS forces defending the Mount Ozren-Vozuća salient, causing the VRS-held lines to collapse, resulting in the ABiH conquering territory formerly held by the VRS. On 11 September 1995, approximately 60 people, primarily VRS soldiers and a few civilians, including three females, who had remained after Vozuća was taken, were captured. Two of the VRS soldiers were shot or killed with a knife, and four others were taken away. The women and around 52 of the men were later delivered to the Kamenica Camp (also known as the Gostovići Camp, situated 12 or 13 kilometres from Zavidovići). While detained at the camp, the women were beaten and kicked, hit with metal sticks and rifle butts, and subjected to sexual assaults, including rape. Between 11 and 17 September, ‘El Mujahed’ soldiers murdered most of the approximately 52 captured VRS soldiers. By 17 September, fewer than a dozen of the VRS soldiers remained alive. On or about 17 September 1995 a group of 10 VRS soldiers surrendered to the ABiH forces a few kilometres north-west of Vozuća. Upon surrendering, they were transported to Kamenica Camp and badly beaten throughout the time they remained there. An elderly Bosnian Serb also detained in the same room was beaten, stripped of his clothes and given water mixed with petrol to drink. He died in the camp after a few days. Delić was put on notice that the ABiH soldiers from the ‘El Mujahed’ Detachment had a propensity to commit crimes, and particularly crimes against captured enemy combatants and civilians and that the ‘El Mujahed’ Detachment was operating the Kamenica Camp. Moreover Delić knew or had reason to know that soldiers of the ‘El Mujahed’ Detachment under his command and effective control were about to or had committed these acts and failed to take the necessary and reasonable measures to prevent and punish these crimes.

Rasim Delić was charged on the basis of his superior criminal responsibility (Article 7(3) of the Statute of the Tribunal) with:

- Murder, cruel treatment, and rape (violations of the laws and customs of war, Article 3).

PRE-TRIAL

On 6 May 2005 Delić was granted provisional release. He returned to the UN Detention Unit on 25 June 2007.

REFERRAL IN ACCORDANCE WITH RULE 11*bis*

For a case to be referred pursuant to Rule 11*bis* of the Tribunal’s Rules of Procedure and Evidence, the Referral Bench, comprised of three judges, has to order a referral of its own accord or following a request from the Prosecutor. A decision to refer a case is rendered only if the Bench is fully satisfied that the accused would be tried in accordance with international standards and that neither the level of responsibility of the accused nor the gravity of the crimes alleged in the indictment are factors that would make a referral to the national authorities inappropriate.

On 5 July 2007, the Prosecution submitted a motion requesting the case to be transferred according to Rule 11*bis* to the state court of Bosnia and Herzegovina. The Referral Bench denied the Prosecution’s motion on 9 July 2007, finding that the accused should be tried before the Tribunal.

THE TRIAL

The trial commenced on 9 July 2007.

On 23 November 2007, the Trial Chamber granted Delić provisional release for the period 11 December 2007 to 11 January 2008.

On 19 December 2007, following a Prosecution motion, the Trial Chamber found that Delić had breached the conditions of his release by meeting with Haris Silajdžić, a member of the Presidency of Bosnia and Herzegovina. The Chamber ordered that Delić be placed under house arrest.

The Prosecution completed its case-in-chief on 10 February 2008.

During the Prosecution case, the Chamber held two evidentiary hearings in Sarajevo at the BiH State Court - the first hearing was held on 7 and 8 September 2007, and the second from 8 February until 10 February 2008. These hearings were the first to have been held outside the ICTY courtrooms in The Hague.

The Defence case commenced on 4 March 2008 and lasted until 21 April 2008.

The closing arguments were held from 9 until 11 June 2008.

RULE 98*bis* DECISION

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule on whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charges, it can dismiss those charges and enter a judgement of acquittal before the beginning of the presentation of Defence evidence.

On 26 February 2008, the Trial Chamber issued an oral decision pursuant to Rule 98*bis* and acquitted Delić of the charges in Count 3 of the indictment, namely the charge of superior responsibility for rape as a violation of the laws or customs of war.

TRIAL CHAMBER JUDGEMENT

The judgement was rendered on 15 September 2008.

The evidence showed that after taking control of the village of Maline in the morning of 8 June 1993, ABiH soldiers escorted captured Bosnian Croat civilians and HVO soldiers from Maline towards Mehurići in separate groups. Before reaching Mehurići, on their way through Poljanice, these groups were intercepted by armed foreign and Bosnian Mujahedin. The Mujahedin forcibly seized approximately 30 individuals from these groups, including some wounded soldiers, and ordered them to walk back in the direction of Bikoši. On the way to Bikoši, a lady named Ana Pranješ, who had been joined to the group of captives at one point, was harassed by two foreign Mujahedin and was eventually killed by a volley of gunfire. Ana Pranješ wore a Red Cross armband. When the group reached Bikoši, another captive was shot dead when he attempted to flee. Shortly thereafter, one of the captives started screaming in an epileptic fit. The Mujahedin reacted by opening fire at the entire group. At least 24 people were killed, and a minimum of five were seriously injured by gunfire. The Trial Chamber found that the Prosecution had established beyond reasonable doubt the elements of murder and cruel treatment, as violations of the laws or customs of war, under Counts 1 and 2. However, the Trial Chamber concluded that it was not established beyond a reasonable doubt that the perpetrators were Mujahedin from the Poljanice Camp.

As regards the existence of a superior-subordinate relationship between Delić and the perpetrators of the crimes in Bikoši in 1993, the Trial Chamber recalled its earlier finding that it was not proved beyond reasonable doubt that the perpetrators, as alleged by the Prosecution, had been Mujahedin of the Poljanice group. The Trial Chamber, nonetheless, examined the Prosecution's contention that on 8 June 1993, the Poljanice Mujahedin had been de facto subordinated to the 3rd Corps. In this regard, the Trial Chamber noted that there was no specific evidence concerning orders received by the Poljanice Mujahedin from units of the ABiH. In particular, the evidence only showed that on 8 June 1993, Mujahedin from the Poljanice Camp engaged in the fighting against the HVO in the Bila Valley simultaneously as units of the ABiH. Furthermore, while the evidence showed that the Mujahedin from the Poljanice Camp and the ABiH soldiers were aware of each other's presence, the evidence was unclear whether the two groups were acting in concert. Thus, the Trial Chamber was not satisfied that the Poljanice Mujahedin had been de facto subordinated to Delić.

In relation to the Mujahedin groups in general, the Trial Chamber was also not satisfied that these groups had been de facto subordinated to Delić. It found that the relationship between any groups of foreign Mujahedin and the ABiH at that time was appropriately characterised as cooperation between separate and independent military entities, rather than subordination of the Mujahedin within a single military structure.

The Trial Chamber also found that the evidence did not establish beyond reasonable doubt that Delić was already the Commander of the ABiH Main Staff when the killings in Bikoši occurred. In this regard, the evidence showed that the incident took place at some time in the afternoon of 8 June 1993, while the RBiH Presidency elected Delić as Main Staff Commander some time after 14:00 hours. Delić did not assume this position until between 19:00 and 21:00. In conclusion, the Trial Chamber found that no superior-subordinate relationship had existed between Delić and the perpetrators of the killings in Bikoši on 8 June 1993. Consequently, Delić, did not incur individual criminal responsibility pursuant to Article 7(3) of the Statute for the crimes committed in Bikoši on 8 June 1993.

The Trial Chamber further found that, on 21 July 1995, following a military operation in the “Vozuća pocket” called “Operation Proljeće II”, Mujahedin captured 12 VRS members, including a doctor and a paramedic, and detained them in a two-storey house in Livade for the next two days. The Trial Chamber was satisfied that the 12 detainees had been held in the custody of the ‘El Mujahed’ Detachment’ (EMD). On two occasions on 21 July 1995, one of the Mujahedin brought to the detainees’ room a severed head from which fresh blood was gushing. These two severed heads belonged to Momir Mitrović and Predrag Knežević. While the detainees did not witness the killing of Momir Mitrović and Predrag Knežević, the Trial Chamber was satisfied that these men had been intentionally killed by the EMD members. The Chamber found that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. Between 21 and 23 July 1995, members of the EMD restrained the 12 VRS detainees in uncomfortable positions, and subjected them to various kinds of maltreatment, including beatings and the display of the freshly severed heads of Momir Mitrović and Predrag Knežević. The Trial Chamber found that this treatment had caused the detainees serious mental and physical suffering, as well as injury, and that it also amounted to serious attacks on human dignity. The Chamber therefore found that the Prosecution had established beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

Regarding the events in Kesten and the Kamenica Camp, it was found that in the afternoon of 11 September 1995, soldiers from the 5th Battalion of the ABiH 328th Brigade along with Mujahedin captured approximately 60 Bosnian Serb soldiers and civilians, including three women (DRW-1, DRW-2 and DRW-3), in the vicinity of the village of Kesten. The captives were ordered to walk in a column towards Kesten. On the way, two captives, Milenko Stanić and Živinko Todorović were shot. The Trial Chamber found that an EMD member had killed Milenko Stanić, and that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. However, the Chamber found that the Prosecution had not proved beyond reasonable doubt that Živinko Todorović had been killed by a soldier of the EMD, as alleged in the Indictment. The Mujahedin and ABiH soldiers then took 52 VRS soldiers to a hall in Kesten. At the hall, ABiH soldiers guarded the detainees. At a certain point, approximately 20 armed Mujahedin barged into the hall, and seized the detainees from the ABiH soldiers at gunpoint. The detainees were transported on two trucks to the Kamenica Camp. At the Kamenica Camp, some or all of the 52 detainees were incarcerated on two floors of a derelict house. Circumstantial evidence, including exhumation evidence, indicated that those 52 detainees were eventually killed. In light of the evidence as a whole, the Trial Chamber was satisfied that the 52 Serb men listed in Annex C to the indictment had been intentionally killed by members of the EMD at the Kamenica Camp between 11 September 1995 and 14 December 1995. The Chamber therefore held that the Prosecution had established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. However, in light of the insufficient evidence regarding the cruel treatment of the detainees, the Trial Chamber found that in relation to the 52 detainees, the Prosecution had not proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

On or about 17 September 1995, a new group of ten Bosnian Serb captives arrived at the Kamenica Camp and were detained on the ground floor in the derelict house. EMD members subjected them routinely to maltreatment amounting to serious mental and physical suffering, including beatings and the infliction of electric shocks. Furthermore, Nenad Jović, who had been brought to the Kamenica Camp several days after 17 September, died either as a result of beatings or of drinking unsuitable water, or a combination of both in conjunction with the conditions of detention at the Kamenica Camp. As regards Nenad Jović, the Trial Chamber was satisfied that the Prosecution had proved beyond reasonable doubt the elements of murder as a violation of the laws or customs of war under Count 1. The Trial Chamber further found that the Prosecution had proved beyond reasonable doubt, in relation to the ten detainees listed in Annex D to

the indictment, the elements of cruel treatment as a violation of the laws or customs of war under Count 2.

In relation to Count 4, the Trial Chamber made the following findings: On 11 September 1995, the three Bosnian Serb women – DRW-1, DRW-2 and DRW-3 – were brought to the Kamenica Camp independently of the 52 VRS soldiers mentioned above. The women were detained at the Kamenica Camp in a wooden shed and routinely subjected by EMD members to acts amounting to serious mental and physical suffering, including beatings, as well as the infliction of electric shocks. The Trial Chamber therefore found that the Prosecution had proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war under Count 4.

Turning to the issue of whether a superior-subordinate relationship existed between Delić and the EMD members who committed the crimes between July and September 1995, the Trial Chamber recalled that the EMD had come into existence as unit of the ABiH 3rd Corps by virtue of an order of 13 August 1993 signed by Delić. The Trial Chamber was satisfied that from the time of its establishment in August 1993 until its disbandment in December 1995, the EMD had been a unit *de jure* subordinated to the ABiH 3rd Corps or to one of the units that had been subordinated in turn to the ABiH 3rd Corps. Since Delić was the *de jure* superior of the 3rd Corps, it follows that the EMD was *de jure* subordinated to Delić.

The Trial Chamber was then confronted with one of the salient questions in this case, namely, whether the EMD had been “under the command and effective control” of Delić, as alleged in the Indictment. The majority, Judge Moloto dissenting, found beyond reasonable doubt that Delić had effective control over the EMD in the period from July to December 1995. Consequently, the majority was satisfied that a superior-subordinate relationship had existed between Delić and the EMD perpetrators of the crimes committed in July, August and September 1995, as charged in the Indictment. Judge Moloto, in his dissenting opinion, held the view that Delić did not have effective control over the EMD at any time from the time of his assumption of duties as the Commander of the Main Staff of the ABiH on 8 June 1993, until the EMD was disbanded in December 1995.

Turning to the issue of whether Delić had knowledge or had reason to know that the crimes of murder and cruel treatment were about to be or had been committed by members of the EMD between July and September 1995, the evidence showed that information concerning the capture of the VRS soldiers by the EMD in July 1995 was reported to the Main Staff Security Administration. These reports formed the basis for Bulletin 137, which was sent to the Command Post in Kakanj on 22 July 1995 with the instruction to forward it to Delić. The bulletin informed Delić that VRS detainees were held by the EMD and that no one was being allowed access to these detainees. However, it did not make any reference to crimes committed by EMD members against the detainees. The majority was not satisfied that Delić had knowledge of the crimes in July and August 1995 as there was no evidence, either direct or circumstantial, from which to infer that Delić was actually aware that EMD members were about to commit or had committed such crimes.

The majority therefore turned to the issue of whether Delić “had reason to know”, namely, whether he had information available that was sufficiently alarming to put him on notice of the risk that crimes might be committed by his subordinates. In relation to the crimes in Bikoši, the evidence showed that in October 1993, Delić initiated an investigation into the alleged execution of a group of Croats by Mujahedin after he was requested to do so by President Izetbegović. As result of the investigation, Delić was informed that 25 Bosnian Croat civilians died in combat activities around 8 June 1993. The Prosecution contended that the investigation was not “real” and that Delić was, in any case, personally informed of the crimes by one of his deputies in early summer 1993. The majority dismissed the Prosecution’s contention and noted that no substantiated claims regarding the killings had been brought to the attention of Delić after the investigation. In addition, even assuming that the allegations raised by the deputy would have called into question the reliability of the investigation, the information available to Delić indicated that the perpetrators of the crimes in question were “the Mujahedin” and did not allow for the conclusion that they were the men who later formed the EMD. The majority therefore concluded that Delić’s knowledge of the allegations raised in respect of the crimes committed by the Mujahedin in 1993 did not constitute information which would have qualified the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to justify further enquiry as to whether EMD members were about to commit or had committed crimes in Livade and Kamenica in July and August 1995.

In light of the entire evidence, the majority was satisfied beyond reasonable doubt that Delić had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against these detainees. However, the majority found that the information available to Delić about the propensity of EMD members to commit crimes had not been sufficiently alarming to put him on notice that the crime of murder might be committed by such members. The majority also found that Delić had failed to take the necessary and reasonable measures to prevent the crimes in July and August 1995 and, after the commission of those crimes, to punish the perpetrators thereof. In this regard, the majority was satisfied that there was no evidence to indicate that Delić had reacted in any way to the information contained in Bulletin 137 of 22 July 1995 about the capture of VRS soldiers by the EMD. Nor was there any other piece of evidence which would suggest that Delić attempted to find out more about the fate of the detainees in the custody of the EMD.

As regards the crimes committed in Kesten and the Kamenica Camp in September 1995 by EMD members, the evidence showed that the Main Staff Security Administration received a report from the Security Service of the 3rd Corps on 16 September 1995. This report forwarded an intercepted fax from the EMD stating that "the Mujahedin gained ground and entered a group of Serbian villages, and took 60 prisoners after the killing." However, this information was not included in the bulletins sent to Delić. Rather, the report of 16 September 1995 was eventually deposited with the Counter-Intelligence Department of the Security Administration. There was no evidence that Delić had information in his possession that the EMD had taken captives, much less that any crimes were committed against them. Contrary to the Prosecution's contention, the majority was not satisfied that the Security Administration of the Main Staff, or any other source had informed Delić of the capture and killing of the captives. The majority noted that, unlike the bulletins which had been provided specifically to Delić, there was no evidence that information in the possession of the 3rd Corps and contained in two articles published in ABiH gazettes was available to Delić, or that the information contained therein was brought to his attention.

Finally, the majority examined a number of bulletins received by Delić during the period from August to September 1995 containing information on criminal behaviour of EMD members. However, the majority found that, in the absence of evidence that Delić had known that Bosnian Serb soldiers and civilians were detained by the EMD, the information contained in the bulletins alone was insufficiently alarming to put him on notice of the risk of the crimes committed in Kesten and the Kamenica Camp in September 1995. The majority found that it could not be concluded beyond reasonable doubt that Delić had reason to know that the EMD was about to commit or had committed the crimes of murder and cruel treatment against Bosnian Serb soldiers and civilians in Kesten and the Kamenica Camp in September 1995.

On 15 September 2008, the Trial Chamber rendered its judgement convicting Rasim Delić, on the basis of superior criminal responsibility (Article 7(3) of the Statute of the Tribunal), with:

- Cruel Treatment, in relation to the events in Livade and the Kamenica Camp in July and August 1995 (Violation of the Laws or Customs of War pursuant to Article 3 of the Statute)

He was acquitted of charges on all other counts.

Sentence: three years' imprisonment.

Delić was entitled to credit for time spent in detention, namely 488 days.

APPEALS PROCEEDINGS

The Defence and the Prosecution filed their notices of appeal on 14 and 15 October 2008 respectively.

On 14 November 2008, the Prosecution filed its appeal brief, and on 7 January 2009, the Defence filed its appeal brief.

On 11 May 2009, Rasim Delić was granted provisional release pending the hearing of his appeal.

The appeals hearing was held on 19 January 2010.