



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-04-83-PT

Date: 6 July 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 6 July 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON PROSECUTION NOTICE OF
COMPLIANCE WITH COURT ORDER**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

TRIAL CHAMBER I (“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 “Prosecution Notice of Compliance with Court Order”, filed on 15 June 2007 (“Notice”), by which the Prosecution submits to have discovered “an inadvertent omission” in the Indictment in relation to a change ordered by the Trial Chamber on 13 December 2005 and expresses its intention to comply with that order by placing the Defence on notice that paragraph 17 of the Indictment should be read as including the word “Mujahedin” in the list of formations provided for therein;¹

NOTING the Defence Response to the Notice, filed on 20 June 2007 (“Response”), whereby the Defence requests that the Trial Chamber reject the proposals contained in the Notice, and argues that the Notice “amounts to a disguised attempt to amend the Indictment” in contravention of Rule 50 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) as well as “the ethos of a fair trial enshrined in the Statute of the Tribunal and the right of the accused to be informed promptly and in detail of the nature and cause of the charge”;²

NOTING the “Prosecution Request for Leave to Reply and Reply to Defence Response to Prosecution’s Notice of Compliance with Court Order”, filed on 21 June 2007 (“Reply”), by which the Prosecution submits that it did not seek to amend the Indictment via the Notice but that it intended to address a “simple issue”, that is “how to ensure compliance with a previous Order of the Chamber”;³

NOTING that on 13 December 2005, by its Decision on Defence Motion Alleging Defects in the form of the Indictment and Order on Prosecution Motion to Amend the Indictment (“Decision”), the Trial Chamber ordered the Prosecution to amend paragraph 17 of the Indictment to refer to the “Mujahedin” among the units which were subordinate formations under the command and effective control of the Accused;⁴

NOTING that the Decision, in its relevant part, reads as follows:

¹ Notice, paras 5-9. The Prosecution further submitted that, in alternative to the notice, and at the Trial Chamber’s direction, it could re-file the Amended Indictment with this correction to reflect the Pre-trial Chamber’s ruling, *ibid.*, para. 9.

² Defence Response to Prosecution’s Notice of Compliance with Court Order (“Response”), paras 5-6.

³ Reply, pp 1-2.

⁴ Paragraph 17 reads as follows: “At all times relevant to this Indictment, the following units were under the subordination of the ARBiH corps, which were subordinate formations under the command and effective control of the Accused Rasim Delić: a. 21st Division (2nd Corps) b. 22nd Division (2nd Corps) c. 25st Division (2nd Corps) d. 306th Mountain brigade (3rd Corps) e. 328th Mountain brigade (3rd Corps) f. 35th Division (3rd Corps) g. 37th Division (3rd Corps) h. 7th Muslim Mountain Brigade (3rd Corps) i. El Mujahed Detachment (3rd Corps)”.

With respect to the proposed amended paragraph 17 of the Indictment suggested by the Prosecution in its Response, the Trial Chamber notes that there is reference to the El Mujahedin unit, but that there is no mention of the Mujahedin. Although the subordination of the Mujahedin to the units of the ARBiH 3rd Corps, including the 7 Muslim Mountain Brigade of the ARBiH 3rd Corps, is pleaded in paragraph 13 of the Indictment, and while the proposed amended paragraph 17 pleads that the Accused exercised military command and control over the ARBiH 3 Corps, the Trial Chamber notes that it is necessary to add reference to the Mujahedin in the proposed amended paragraph.⁵

CONSIDERING that the Trial Chamber in the Decision was of the view that paragraph 17 should not be read in isolation and ordered the amendment for the purpose of harmonising paragraph 17 with paragraph 13 of the Indictment;⁶

CONSIDERING therefore, that paragraph 17 must be read in combination with paragraph 13 of the Indictment and that, if so read, paragraph 17 clearly pleads that the Accused only had command and effective control over the “Mujahedin” who were both incorporated into *and* subordinated to the ARBiH 3rd Corps;

CONSIDERING that this interpretation of the Indictment is further confirmed by the Prosecution Pre-Trial Brief and by way of a letter sent by the Prosecution to the Defence;⁷

NOTING that the Defence submits that the Indictment should be interpreted as alleging that the Accused is responsible only for the crimes alleged to be committed by Mujahedin who were incorporated into and subordinated to the ARBiH 3rd Corps;⁸

REJECTING therefore the Defence submission in the Response in which it argues that the Notice is a “disguised attempt to amend the Indictment”, as the introduction of the word “Mujahedin” is in compliance with the Decision and only has the effect of enhancing the clarity of the Indictment without introducing new allegations;

PURSUANT to Rule 54 the Rules,

⁵ Defect Decision, para. 36.

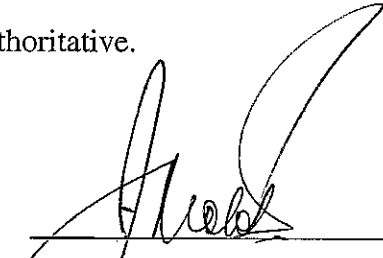
⁶ Para. 13 of the Indictment reads in its relevant part: “After its formation on 19 November 1992, the 7th Muslim Mountain Brigade of the ARBiH 3rd Corps incorporated and subordinated “Mujahedin” within its structure, as did other units of the ARBiH 3rd Corps. The “Muhajedin” were involved in the combat activities of units of the ARBiH 3rd Corps, including the 7th Muslim Mountain Brigade, and occasionally spearheaded ARBiH 3rd Corps combat operations. By early June 1993, at least 60 Bosnian Muslim males had joined a group of foreign “Mujahedin” commanded by Abu Haris aka Abul Haris aka Dr. Abul Harith al Liby at their base near Poljanice, Travnik Municipality.”

⁷ Prosecution Pre-Trial Brief, filed on 31 Oct 2006, paras 13-17; Response, para. 10, referring to a letter sent by the Prosecution on 15 June 2007 where it stated that “[a]s to the 1993 crime base, we will present evidence that the Mujahedin were present in the 7th Muslim Mountain Brigade, in the 306th Mountain Brigade and in other units in the Army of Bosnia and Herzegovina (ABiH)”.

⁸ Response, paras 8-18.

ACCEPTS the Notice that paragraph 17 of the Indictment should be read as including the word "Mujahedin" among the subordinate formations under the command and effective control of the Accused.

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



Judge Bakone Justice Moloto
Presiding

Dated this sixth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]