

IT-04-84-T
D23131-D23128
15 OCTOBER 2007

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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-04-84-T
Date: 15 October 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 15 October 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON PROSECUTION'S MOTION SEEKING LEAVE TO AMEND THE
THIRD AMENDED INDICTMENT

Office of the Prosecutor

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1. On 27 September 2007, the Prosecution notified the Trial Chamber and the Defence of the identification of the remains of a victim listed anonymously in the indictment as being those of Sejd Noci.¹ The Prosecution also notified the Trial Chamber and the Defence of its intention to seek leave to amend the Third Amended Indictment in light of this identification.² On 28 September 2007, the Prosecution filed a motion requesting that the Trial Chamber grant it leave to amend the Third Amended Indictment and treat the proposed Fourth Amended Indictment as the operative indictment in this case.³ In an annex to the Motion, the Prosecution provided the Trial Chamber and the Defence with the supporting material.⁴ On 4 October 2007, all three Accused informed the Trial Chamber that they did not object to the Motion.⁵

2. The Prosecution seeks to make one substantive change to the Third Amended Indictment, which is the naming of the previously unidentified victim mentioned above, and the inclusion of certain factual allegations in Counts 21/22 relating to this victim.⁶ The Prosecution submits that the proposed amendments assist in determining the issues in this case and cause no unfair prejudice to the Accused.⁷ It is the Prosecution's view that the proposed amendments do not constitute new charges, because they do not carry an additional risk of conviction.⁸ The Prosecution submits that, should the proposed amendments be granted, it will seek leave to add three witnesses to its witness list.⁹ The Prosecution proposes to call those witnesses under Rule 92 *bis* of the Rules.¹⁰

3. The Trial Chamber set out the legal test for granting leave to amend an indictment in its decision of 5 September 2007.¹¹

4. The Trial Chamber has examined the proposed amendments and considers that they facilitate the determination of the issues in this case by providing greater specificity to the

¹ Notification of the Identification of an Unnamed Victim in Paragraph 89 of the Indictment, 27 September 2007 ("Notification"). Alternative spellings for the first name: Seidë, Seid, Sejdë or Sejdo. See Notification, para. 1 and Prosecution's Motion Seeking Leave to Amend the Third Amended Indictment ("Motion"), 28 September 2007, footnote 1.

² Notification, para. 5.

³ Motion, para. 22.

⁴ Annex A to the Motion.

⁵ T. 8894.

⁶ Motion, paras 3, 5-6, 13-14.

⁷ Motion, paras 4, 19-20.

⁸ Motion, paras 15-18.

⁹ Motion, para. 20; Annex A to the Motion.

¹⁰ Motion, para. 21.

¹¹ Decision on Prosecution's Motion Seeking Leave to Amend the Revised Second Amended Indictment, 5 September 2007, paras 6-7, 10-12.

allegations contained in the Third Amended Indictment. The Trial Chamber also finds that the material submitted in support of the Motion establishes a *prima facie* case for the proposed amendments.

5. The Prosecution proposes to add to Counts 21/22 the allegation that Sejd Noci was killed while in KLA custody and that his remains were found in the Lake Radonjić/Radoniq canal area in September 1998.¹² In the Third Amended Indictment, while there is no explicit reference to the killing of Sejd Noci, there is a reference in paragraph 89 to six unnamed persons whose remains were found in the Lake Radonjić/Radoniq canal area, allegedly killed while in KLA custody.¹³ The Prosecution now alleges that the remains reportedly labelled R21, R24 and R27B belong to Sejd Noci.¹⁴ Five victims allegedly found in the Lake Radonjić/Radoniq canal area remain unidentified.¹⁵

6. The Trial Chamber finds that the proposed amendments merely seek to identify a person from among the unidentified victims allegedly killed while in KLA custody. The proposed amendments therefore do not provide a legally or factually different basis for conviction and do not amount to new charges in the indictment. The Trial Chamber notes that the Prosecution intends to add three witnesses to its witness list.¹⁶ Given the fact that the Prosecution has not requested more time in which to present its case, the Trial Chamber considers it unlikely that a significant delay will result from adding these new witnesses to the Prosecution's case.

7. When the Prosecution files the Fourth Amended Indictment it should, in addition to the proposed inclusion of paragraph 88.2 and the amendment to paragraph 89,¹⁷ include the identification of Mr Noci in paragraph 48 and change the word "six" to "five" in paragraph 49 of the indictment.

8. For the reasons given above, the Trial Chamber finds that the requirements of Rule 50 have been met and pursuant to Article 19 of the Statute and Rule 50 of the Rules:

GRANTS the Motion;

¹² Motion, paras 6, 7, 13.

¹³ Third Amended Indictment, para. 89.

¹⁴ Motion, paras 9, 10; Prosecution's Notification of Clarification of Paragraph 89 of the Indictment and Request for leave to Add a Clarification to the Pre-Trial Brief, 2 March 2007, Annex II.

¹⁵ Motion, paras 6, 14.

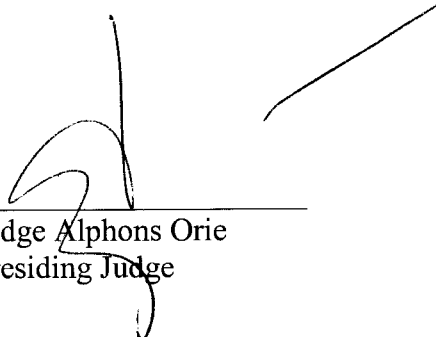
¹⁶ Motion, para. 20; Annex A to the Motion.

¹⁷ Motion, paras 13-14.

ORDERS that the Fourth Amended Indictment shall henceforth be the operative indictment in this case;

ORDERS the Prosecution to file the Fourth Amended Indictment, in accordance with paragraph 7 of this decision, within two days of the filing of this decision.

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



Judge Alphons Orié
Presiding Judge

Dated this 15th day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]