

Controversy Over Delic Trial Venue

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Just as General Rasim Delic's case is set to start in The Hague, there are calls for it to be tried in Bosnia.

In a surprise twist last week, the tribunal's prosecutors asked for the case of former Bosnian Army chief, General Rasim Delic, to be referred to Bosnia, just four days before his trial was due to start in The Hague.

Chief Prosecutor Carla Del Ponte issued the last minute motion in response to the judges' decision on July 2 to reduce the number of witnesses the prosecution had planned to call from 75 to 55. They were also given 170 hours to present their case, in approximately 40 trial days.

The indictment charges Delic with murders, cruel treatment and rapes committed by the El Mujahed unit of foreign Islamic volunteers - also known as mujahedin - who fought Bosnian Serb and Croat forces in the area of Ozren and Vozuca in central Bosnia between June 1993 and Septemebr 1995.

These foreign fighters allegedly abused and murdered their prisoners.

The prosecution alleges the unit was established on Delic's orders and then subordinated to the command of the Bosnian Army 3rd Corps.

Delic, 58, who was appointed the commander of the main staff of the Bosnian army in June 1993, is charged on the basis of command responsibility for his failure to prevent or punish the perpetrators of these crimes.

He surrendered voluntarily in February 2005 and was on provisional release until July this year.

In their unexpected request for the referral of this case to Bosnia, the prosecutors argued that the reduced number of witnesses and time allotted to them would not be sufficient to prove all charges in the indictment. That in effect means further reducing the indictment, which is already very limited in scope, and thus the case is no longer appropriate for trial at the tribunal, they claimed.

"The interests of justice demand that this case be referred to the [Bosnian] authorities," said Del Ponte last week.

She also asked the court to suspend the trial until referral judges rule on their request for the transfer of this case to the Bosnian war crimes court.

But the trial chamber dismissed the prosecutors' request only hours after it was filed on July 5 and called it "inappropriate".

The trial chamber led by Judge Justice Bakone Moloto concluded in its decision last week that "it would not

be in the interest of justice to suspend the trial at the present stage of the case and that it would affect the expeditiousness of the trial”.

A day later, on July 6, a special Referral Chamber was appointed by the tribunal’s president Fausto Pocar to consider the prosecutors’ request.

At an urgent hearing held that afternoon, prosecutor Daryl Mundis repeated that the restrictions imposed by the trial chamber forced the prosecution to give up some of the counts in the indictment. As a result, he argued, the case is now suitable to be tried at the Bosnian court.

However, Delic’s lead counsel Vasvija Vidovic opposed the prosecution’s request for referral, saying that it would violate the defendant’s rights.

She said that, due to complicated procedures at the Bosnian court, her client would “have to wait for a long time” for his trial.

She argued that despite the limited scope of the indictment, Delic should stand trial at the Hague tribunal because of his high rank.

“The Hague tribunal was established to try precisely such cases,” she said.

Mundis also appealed to the referral judges not to make the decision before hearing the arguments of the Bosnian government. He said that in the preliminary contacts with the prosecutors, the government expressed a willingness to take on Delic case.

However, president of the Bosnian court Medzida Kreso told Sarajevo daily Avaz on July 7 that “no one from the Hague tribunal contacted the Bosnian court to discuss the referral of Delic case”. She added that she was not aware of any contacts whatsoever between the tribunal and Bosnian government officials on this issue.

“When we receive a request for the referral, then we will send our response to the Hague tribunal,” said Kreso.

Two hours before the Delic trial was due to start in the Hague, the Bosnian state prosecutor’s spokesman, Boris Grubestic, told IWPR that they still hadn’t received any official requests from the tribunal to consider whether the Delic trial would even be possible in Bosnia.

Observers in Bosnia were rather confused by the prosecutors’ sudden request for the referral of this case to the local judiciary, two and a half years after the indictment against him was issued.

A reporter with Avaz daily, Sead Numanovic, who is very familiar with the Delic case, says the prosecution might have some ulterior motives to try to refer this trial to Bosnia at this stage.

“Their case is very weak and they know it” he says, adding that a reduced number of witnesses and time at their disposal make the case even weaker. “They don’t want to risk losing a case against another high-ranking Bosnian army official, so it would be much easier for them to simply send it to Bosnia.”

Delic’s predecessor as Bosnian army chief, Sefer Halilovic, who was indicted by the tribunal for his alleged role in the crimes against Croat civilians in 1993, was found not guilty on all charges in the indictment in November 2005.

Five minutes before Delic trial was due to commence before Hague judges, the referral chamber issued a decision in which it denied the prosecutors’ motion for the case to be transferred to Bosnia.

“While the referral bench has found that the gravity of the crimes is not...incompatible with referral of the case, it is of the opinion that the alleged level of the responsibility of the accused requires that the present case be tried before the tribunal,” the judges said in their decision.

Court officials told IWPR that the proceedings should start on July 9 and continue as planned.

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