

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding  
Judge Christoph Flügge  
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Date Filed: 10 March 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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PRELIMINARY MOTION TO DISMISS PARAGRAPH  
60(k) FOR LACK OF JURISDICTION

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The Office of the Prosecutor:

Mr. Alan Tieger  
Mr. Mark Harmon  
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 72(A)(i), for an order dismissing paragraph 60(k) from the Third Amended Indictment on the grounds that it does not relate to violation of Article 5 of the Statute because it does not charge an act of sufficient gravity to constitute a crime against humanity.

2. The Third Amended Indictment charges Dr. Karadzic in count 3 with persecutions as a crime against humanity. The acts of persecution are enumerated in paragraph 60. In sub-paragraph (k), the enumerated crime is “the imposition and maintenance of restrictive and discriminatory measures including:

- i. the denial of freedom of movement
- ii. the removal from positions of authority in local government institutions and the police and the general dismissal from employment
- iii. the invasion of privacy through arbitrary searches of homes
- iv. unlawful arrest, and/or the denial of the right to judicial process; and/or
- v. the denial of equal access to public services.”

3. In order for the Tribunal to exercise its jurisdiction—which is limited to “serious violations of international humanitarian law”—over an accused for an alleged breach of a rule of international humanitarian law, (a) the violation of that particular rule must entail the imposition of individual criminal responsibility and must constitute a breach of a rule protecting important values, and (b) the breach must involve grave consequences for the victim.<sup>1</sup>

4. For an act not specifically prohibited in Article 5 to constitute a crime against humanity it must be of equal gravity to the conduct enumerated in Article 5.<sup>2</sup> Not every denial or infringement of a fundamental right is sufficiently serious to qualify as a potential crime against humanity.<sup>3</sup>

5. The acts described in paragraph 60(k) are not among the enumerated acts in Article 5. On their face, they do not rise to the level of sufficient gravity as those acts

<sup>1</sup> *Prosecutor v Milutinovic et al*, No. IT-05-88-T, *Judgement* (26 February 2008) vol. 1, para. 131

<sup>2</sup> *Prosecutor v Milutinovic et al*, No. IT-05-88-T, *Judgement* (26 February 2008) vol. 1, para. 170

<sup>3</sup> *Prosecutor v Milutinovic et al*, No. IT-05-88-T, *Judgement* (26 February 2008) vol. 1, para. 178, citing *Kupreškić et al*. Trial Judgement, para. 621; *Krnjelac* Trial Judgement, para. 434; *Naletilić* Trial Judgement, para. 635; *Simić et al*. Trial Judgement, para. 48; *Brđanin* Trial Judgement, para. 995.

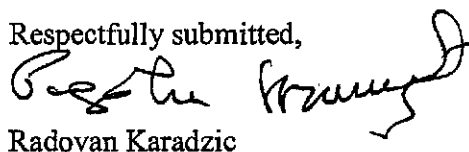
which are enumerated in Article 5. No schedule of those acts is provided in the indictment, the number of people affected by such measures are not specified,<sup>4</sup> nor are any aggravating circumstances described. From the face of the indictment, there is simply no basis to conclude that the acts in paragraph 60(k), individually or cumulatively, meet the sufficient gravity requirement which serves as a predicate for the exercise of the Tribunal's jurisdiction.

6. Alternatively, paragraph 60(k) should be dismissed because it is so devoid of facts that it is impossible for the accused to prepare a defence to these allegations. No acts, victims, perpetrators, locations, or dates are specified.

7. Therefore, it is respectfully requested that paragraph 60(k) of the Third Amended Indictment be dismissed.

Word count: 637

Respectfully submitted,



Radovan Karadzic

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<sup>4</sup> See *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at para.82-83; *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 55; *Prosecutor v Martić*, No. IT-95-11-T, *Judgement* (12 June 2007) at para. 103; (sufficient gravity for acts of plunder depends on number of victims)