



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

Case No.: IT-95-5/18-PT
Date: 5 November 2008
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Iain Bonomy, Pre-Trial Judge
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 5 November 2008

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED MOTION TO REJECT PROSECUTION MOTION
TO AMEND THE FIRST AMENDED INDICTMENT**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon

The Accused

Mr. Radovan Karadžić

THIS 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”) is seised of the Accused’s “Motion to Reject Prosecution’s Motion to Amend the First Amended Indictment”, filed publicly on 29 October 2008 (“Motion to Reject”), and the “Prosecution’s Response to Karadžić’s Motion to Reject the Prosecution’s Motion to Amend the First Amended Indictment”, filed publicly on 31 October 2008 (“Response”), and hereby issues this decision thereon.

1. On 22 September 2008, the Prosecution filed a “Motion to Amend the First Amended Indictment” (“Motion to Amend”). The Motion to Amend has a word count of 4,077 words, and contains the following request: “In order to provide a comprehensive description and explanation of the proposed amendments, the Prosecution has exceeded the word limit by approximately 1000 words, and seeks leave to do so.”¹

2. The Motion to Amend was intimated to the Accused in B/C/S on 27 October 2008. Pursuant to the Prosecution’s obligations under Rules 50 and 66(A)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), all material supporting the Motion to Amend was disclosed to the Accused in B/C/S by 29 October 2008.²

3. In the Motion to Reject, the Accused requests that the Trial Chamber strike the Motion to Amend on the basis that it is not in conformity with the Practice Directions of the Tribunal. The Accused refers to the “Practice Direction on the Length of Briefs and Motions”³ (“Practice Direction”), which limits the length of motions to 3,000 words, and allows in exceptional circumstances for a party to exceed that limit upon advance application to the Trial Chamber. The Accused observes that the Motion to Amend contains 4,077 words, and notes the Prosecution’s request for leave to exceed the word limit as quoted above. The Accused submits that the Prosecution’s request for leave to exceed the word limit does not comply with the Practice Direction, as it is made within the Motion to Amend, rather than in a separate filing in advance of the substantive motion.

4. In the Response, the Prosecution explains that the reason for including its request for leave within the Motion to Amend was that it did not anticipate exceeding the word limit until shortly before the filing of that motion. The Prosecution asserts that the fact that it sought leave in this manner, rather than in advance, does not justify the relief sought by the Accused in the Motion to Reject.⁴ Further, the

¹ Motion to Amend, para. 37.

² Prosecution Notice of Provision of Supporting Material for the Proposed Second Amended Indictment, 29 October 2008.

³ IT/184/Rev 2/16 September 2005.

⁴ Response, para. 1.

Prosecution submits that the Accused suffered no prejudice as a result of the excess words; moreover, “the lengthier filing was required in order to provide the Trial Chamber and the Accused with a sufficiently comprehensive description and explanation of the proposed amendments”.⁵

5. The Practice Direction stipulates that “motions, responses and replies before a Chamber will not exceed 3,000 words”.⁶ It further provides that:

A party must seek authorization in advance from the Chamber to exceed the word limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing. Upon filing by a party of a motion for an extension of time or word limit, the pre-appeal Judge may dispose of the motion without hearing the other party, unless he/she considers that there is a risk that the other party may be prejudiced.⁷

6. The Trial Chamber recognises that the Prosecution has failed to abide by the letter of the Practice Direction, and exhorts the Prosecution to exercise diligence in this respect in the future. However, the Trial Chamber notes that it has been the practice of the Tribunal in appropriate circumstances to grant leave to exceed the word limit on a retroactive basis where no advance application has been made.⁸ The Trial Chamber has reviewed the Motion to Amend and considers that the oversized filing is necessary under the circumstances, due to the nature and complexity of the proposed amendments, and the desirability of their being explained in a comprehensive manner. The Trial Chamber would therefore have granted the Prosecution’s application to exceed the word limit had it been made in advance. Further, the Trial Chamber considers that this omission by the Prosecution does not in all the circumstances warrant the rejection of the Motion to Amend, since no prejudice is caused to the Accused by the excess words or by the Prosecution’s omission to seek prior authorisation, and rejection of the motion would not advance the proceedings.

⁵ Response, para. 2.

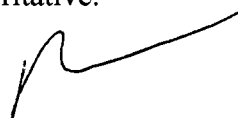
⁶ Para. (C), sub-para. 5.

⁷ Para. (C), sub-para. 7.

⁸ See, e.g., *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, Decision on Prosecution Motion Seeking Leave to Amend the Second Amended Indictment and on Prosecution Motion to Include UN Security Council Resolution 1820 (2008) as Additional Supporting Material to Proposed Third Amended Indictment as well as on Milan Lukić’s Request for Reconsideration or Certification of the Pre-Trial Judge’s Order of 19 June 2008, 8 July 2008, para. 27; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Ojdanić Renewed Motion for Admission of Documents from Bar Table, 21 November 2007, para. 8; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Defence Motions for Admission of Documents from Bar Table, 11 June 2008, para. 5; *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on the Prosecution’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006, paras. 9, 11.

7. Accordingly, the Trial Chamber, pursuant to paragraph (C), sub-paragraph 7 of the “Practice Direction on the Length of Briefs and Motions” and Rules 54 and 73 of the Rules of Procedure and Evidence of the Tribunal, hereby DENIES the Motion to Reject and GRANTS the Prosecution leave to exceed the word limit by 1,077 words in the Motion to Amend.

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



Judge Patrick Robinson
Presiding

Dated this fifth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]