



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: 8 October 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 8 October 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON THE APPLICATION OF RULE 73 BIS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

During the Pre-Trial Conference held on 6 October 2009, 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”), rendered an oral decision, pursuant to Rule 73 *bis* (C) and (D) of the Tribunal’s Rules of Procedure and Evidence (“Rules”). The Chamber then indicated that a written determination would be forthcoming¹ and hereby issues the following decision.

I. Background and Submissions

1. The operative indictment in the proceedings against Radovan Karadžić (“Accused”) is the Third Amended Indictment, filed on 27 February 2009 (“Indictment”). The Indictment contains 11 counts, which charge the Accused with genocide, persecution as a crime against humanity, extermination as a crime against humanity, murder as a crime against humanity, murder as a violation of the laws or customs of war, deportation as a crime against humanity, inhumane acts as a crime against humanity, terror as a violation of the laws or customs of war, unlawful attacks on civilians as a violation of the laws or customs of war, and taking of hostages as a violation of the laws or customs of war. The Office of the Prosecutor (“Prosecution”) filed its list of witnesses and exhibits, pursuant to Rule 65 *ter* (E) of the Rules on 18 May 2009, and subsequently indicated that it would need approximately 490 hours for the oral presentation of its case in chief.²

2. In light of the scope of the Indictment and the time estimated by the Prosecution for its case in chief, on 22 July 2009, the Chamber ordered it to make a written submission on the potential application of Rule 73 *bis* (D) to reduce the size of the trial and ensure that it is conducted in a fair and expeditious manner.³ The Prosecution filed its first Rule 73 *bis* submission on 31 August 2009. In that submission, it designated 66 of its proposed witnesses as “reserve witnesses”⁴ and also revised the mode and/or time of testimony for a further 152 witnesses.⁵ The Prosecution also revised the time estimate for its examination-in-chief to 293 hours.⁶ In addition, should the Chamber consider it necessary to order a reduction of the scope of its case, the Prosecution proposed to remove eight municipalities in their entirety from the presentation of evidence, as well as individual incidents or crime sites connected to the remaining municipalities, Srebrenica enclave,

¹ Pre-Trial Conference, T. 468 (6 October 2009).

² Status Conference, T. 334–335 (1 July 2009).

³ Order to the Prosecution Under Rule 73 *bis* (D), 22 July 2009, para. 5.

⁴ Prosecution Submission Pursuant to Rule 73 *bis* (D), 31 August 2009 (“First Submission”), paras. 4 and 6.

⁵ First Submission, para. 7.

⁶ First Submission, para. 8.

and Sarajevo siege.⁷ According to the Prosecution, the implementation of this proposal would result in the removal of an additional 62 of its listed witnesses.⁸

3. At the status conference held on 8 September 2009, the pre-trial Judge noted that even with the Prosecution's additional proposed removal of evidence, its total case, including time for cross-examination, would take a minimum of approximately 725 hours, and, on a conservative estimate, could last until the end of 2012.⁹ Therefore, the Chamber invited the Prosecution to propose further reductions.¹⁰ In its second Rule 73 *bis* submission filed on 18 September 2009, the Prosecution declined to propose any further reductions, arguing that the removal of additional counts, crime sites, or incidents would have an adverse impact on its ability to fairly present its case.¹¹ The Prosecution did, however, revise its estimate of the total number of hours required for the presentation of its case in chief to 251.75 hours.¹² On 30 September 2009, the Accused filed a written response without making any specific proposals or submissions in relation to the matter.¹³

II. Applicable Law

4. Rule 73 *bis* provides in relevant part:

(C) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(i), the Trial Chamber, after having heard the Prosecutor, shall determine

- i. the number of witnesses the Prosecutor may call; and
- ii. the time available to the Prosecutor for presenting evidence.

(D) After having heard the Prosecutor, the Trial Chamber, in the interest of a fair and expeditious trial, may invite the Prosecutor to reduce the number of counts charged in the indictment and may fix a number of crime sites or incidents comprised in one or more of the charges in respect of which evidence may be presented by the Prosecutor which, having regard to all the relevant circumstances, including the crimes charged in the indictment, their classification and nature, the places where they are alleged to have been committed, their scale and the victims of the crimes, are reasonably representative of the crimes charged.

⁷ See First Submission, para. 10. The municipalities removed in their entirety are Bosanska Krupa, Bosanski Petrovac, Čajnice, Donji Vakuf, Ilijaš, Kalinovik, Kotor Varoš, and Višegrad (noting that there does remain one incident in Schedule A 14.2 that is alleged in the Indictment as having occurred in Višegrad, whereas this incident in fact took place in Sokolac municipality). First Submission, note 14.

⁸ First Submission, para. 11.

⁹ Status Conference, T. 449–450 (8 September 2009).

¹⁰ Status Conference, T. 451 (8 September 2009).

¹¹ Prosecution Second Submission Pursuant to Rule 73 *bis*(D), 18 September 2009, (“Second Submission”) para. 1.

¹² Second Submission, para. 19.

¹³ See Response to Prosecution's Second Rule 73 *bis* Submission, 30 September 2009.

III. Discussion

5. As stated during the Pre-Trial Conference, the Chamber remains gravely concerned about the scope of the Prosecution's case and the potential effect that this will have on the fair and expeditious conduct of the trial and the administration of justice. It is disappointed by the Prosecution's reluctance to identify further crime sites and incidents that might be omitted from this particular trial. The Chamber reiterates that the preclusion of evidence pertaining to certain crime sites or incidents is not meant to suggest that the associated charges are of lesser importance than others.¹⁴ On the contrary, keeping the trial manageable is simply necessary to ensure that justice is done in a fair and expeditious manner, which is in the interests of all the parties.

6. The Chamber, therefore, accepts each of the proposals for reduction made by the Prosecution in its First Submission. In particular, the Chamber accepts the Prosecution's proposal not to lead evidence in relation to the crimes alleged in the Indictment to have taken place in the municipalities, or other specific locations or incidents, identified in Appendix B to its First Submission. Pursuant to Rule 73 *bis* (D), the Prosecution may not present evidence in respect of these crime sites and incidents.

7. Additionally, the Chamber will exercise its power under Rule 73 *bis* (C) to determine the time available to the Prosecution for the presentation of its evidence. In light of the various proposals made by the Prosecution and the Chamber's own time calculations, the Chamber determines that the Prosecution should lead all of its evidence within a total of 300 hours. This figure is to include its examination-in-chief and any re-examination of its *viva voce* and Rule 92 *ter* witnesses, including any witnesses whose evidence is denied admission under Rule 92 *bis*. It also includes time for any witnesses who have been placed on the Prosecution's reserve witness list and who the Prosecution determines during the course of its case-in-chief that it needs to call.

8. In the interests of clarity, the Prosecution should file a marked-up version of the Indictment and its Schedules, based on Appendix B to its First Submission and this Decision, with each of the municipalities, crime sites, or incidents that will not be the subject of evidence at trial struck-through. Where the crime site or incident that has been thus removed is not the subject of a specific Schedule, or is subsumed within a Scheduled site or incident that remains part of the trial, the Prosecution should use footnotes to explain those charges that have been removed and those that

¹⁴ Status Conference, T. 450-451, (8 September 2009).

remain part of the trial. This marked-up version of the Indictment should be filed publicly by 19 October 2009.

9. The Chamber further notes that attached as Confidential Appendix A to its Second Submission, the Prosecution filed its revised Rule 65 *ter* witness list, grouping together all of its proposed witnesses who would be dropped should the Chamber accept its proposal for reduction of the scope of the trial. The Chamber considers that these 62 witnesses have been removed from the witness list and that the remaining listed witnesses now comprise the Prosecution's complete Rule 65 *ter* witness list.

10. In addition, the Prosecution should file a revised Rule 65 *ter* exhibit list, after removing those exhibits that are no longer relevant in light of this Decision. This revised Rule 65 *ter* exhibit list should be filed by 19 October 2009.

IV. Disposition

11. Accordingly, the Trial Chamber, pursuant to Rule 73 *bis* of the Rules, hereby decides as follows:

- a. The Prosecution may not present evidence in respect to the crime sites and incidents proposed to be removed in the Prosecution's First Submission.
- b. The Prosecution shall lead all of its evidence within a total of 300 hours.
- c. The Prosecution shall file a marked-up version of the Indictment in accordance with this Decision by 19 October 2009.
- d. The Prosecution shall file a revised Rule 65 *ter* exhibit list by 19 October 2009.

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



Judge O-Gon Kwon, Presiding

Dated this eighth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]