



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: 22 July 2009

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 22 July 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER TO THE PROSECUTION UNDER RULE 73 *BIS* (D)

Office of the Prosecutor

Mr. Alan Tieger
Ms Hildegard Uertz-Retzlaff

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”), in the exercise of its powers under Rule 73 *bis* (D) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), hereby issues this order *proprio motu*.

1. During a Status Conference held on 1 July 2009, the pre-trial Judge raised the issue of the application of Rule 73 *bis* in the present case. The Office of the Prosecutor (“Prosecution”) and the Accused were asked to comment on ways in which the trial could be more focused in light of this Rule, and to identify ways in which the overall length of the trial might be reduced. While the Accused expressed a general desire that the trial should be more focused and that the Prosecution should “shorten and eliminate certain things”, the Prosecution opined that the components of the case identified in the Third Amended Indictment (“Indictment”), namely “the alleged ethnic cleansing of 1992 through 1995, the siege of Sarajevo, the events in Srebrenica”, are fundamental issues and, as such cannot be dispensed with.¹ Also during this discussion, the Prosecution indicated that its estimate for the examination in chief of the *viva voce* witnesses listed in its Rule 65 *ter* list is approximately 490 hours.²

2. The relevant part of Rule 73 *bis*, provides as follows:

(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.

(E) Upon or after the submission by the pre-trial Judge of the complete file of the Prosecution case pursuant to paragraph (L)(i) of Rule 65 *ter*, the Trial Chamber, having heard the parties and in the interest of a fair and expeditious trial, may direct the Prosecutor to select the counts in the indictment on which to proceed. Any decision taken under this paragraph may be appealed as of right by a party.

¹ Status Conference, T. 330–336 (1 July 2009).

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

3. The Trial Chamber notes that these provisions allow for four forms of direct or indirect action by a Chamber, namely:³

- (a) the Chamber can invite the Prosecution to reduce the number of counts charged;
- (b) the Chamber can fix the number of crime sites;
- (c) the Chamber can fix the number of incidents; and
- (d) the Chamber can direct the Prosecution to select the counts upon which to proceed.

The first three of these are derived from paragraph (D), while the fourth is derived from paragraph (E) of Rule 73 *bis*. With regard to all four, the Chamber is to be guided by the interests of a fair and expeditious trial. When fixing the number of crime sites and/or incidents (options (b) and (c)), the Chamber also needs to bear in mind the requirement that they need to be reasonably representative of the crimes charged. In addition, Rule 73 *bis* (D) gives examples of factors that, in light of the relevant circumstances, may be considered by the Chamber in reaching this decision.⁴ Although the wording of Rule 73 *bis* (D) suggests that the “reasonably representative” requirement does not apply to option (a),⁵ this would be the case only when the Prosecution is willing to remove counts pursuant to the Chamber’s invitation, thereby obviating the need for the Chamber to get involved in fixing the crime sites and/or incidents. The last option, option (d), also does not incorporate the “reasonably representative” requirement.

4. The Chamber notes that the Indictment in this case encompasses 11 counts and that the underlying crimes are alleged to have occurred in 27 municipalities in Bosnia and Herzegovina, as well as in Srebrenica and Sarajevo. The Prosecution intends to call over 500 witnesses and modestly estimates that examination in chief alone of its *viva voce* witnesses would take 490 hours.

5. The Trial Chamber retains the power, under Rule 73 *bis* (C), to determine both the number of witnesses that the Prosecution will be permitted to call, and the time available to it to present its case. Before determining whether to exercise that power, and to ensure that the trial of the Accused is conducted in a fair and expeditious manner, the Chamber issues this order directing the Prosecution to make a written submission concerning the application of Rule 73 *bis* (D). The Prosecution should consider, in particular, which of the counts of the Indictment might be removed, should it be invited by the Chamber to do so, and which of the crime sites and/or

³ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Application of Rule 73 *bis*, 11 July 2006 (“*Milutinović Decision*”), para. 6.

⁴ *Milutinović Decision*, para. 6.

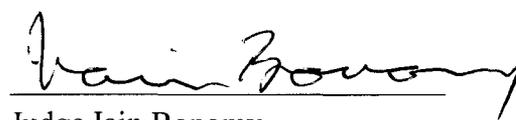
⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on the Application of Rule 73 *bis*, 8 November 2006, paras. 7, 10.

incidents might not be included in its presentation of evidence. With regard to the latter, the Prosecution should take into account the need to ensure that the remaining crime sites and/or incidents are reasonably representative of the crimes charged in the Indictment.

6. In the opinion of the Chamber, now is the time at which the Prosecution must give serious consideration to this issue with a view to identifying ways in which the scope of the Indictment, and the trial, might be reduced. In order to encourage helpful submissions, the Chamber attaches as Appendix A to this order a working document setting out an outline of the crimes and/or incidents charged in the Indictment. Should the Prosecution not provide assistance in identifying specific counts and/or crime sites or incidents, the removal of which would be in the interests of a fair and expeditious trial, the Chamber may fix the crime sites and/or incidents itself, bearing in mind the requirement that these crime sites and/or incidents should be reasonably representative of the crimes charged.

7. Accordingly, pursuant to Rules 54 and 73 *bis* of the Rules, the Trial Chamber hereby **ORDERS** the Prosecution to propose, in writing, ways in which the scope of the trial may be reduced by the application of Rule 73 *bis* (D), by no later than 14 August 2009.

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


Judge Iain Bonomy
Presiding

Dated this twenty-second day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]