

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 16 July 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO SEVER COUNT ONE

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rules 54 and 73 *bis* (E), for an order severing Count One of the Indictment. A severance is necessary because the proceedings under Count One may be long and complex and could delay the ongoing trial.

2. Rule 54 provides that:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

3. Dr. Karadzic contends that an order severing Count One would be within the power of the Trial Chamber pursuant to Rule 54 as necessary to the conduct of the trial.¹ A severance may be ordered after the trial has commenced.²

4. Rule 73 *bis* (E) provides that:

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.

5. While this Rule is normally applied before the trial commences, nothing on the face of the Rule indicates that it cannot be applied during trial, particularly when the trial has proceeded for nine months into the defence case without Count One. Therefore, the Trial Chamber has the power under this Rule to direct the Prosecutor to proceed on all counts of the Indictment except Count One.

6. A severance of Count One would be in the interest of a fair and expeditious trial.

7. The Appeals Chamber judgement of 11 July 2013 re-instated Count One, but did not make a final determination on Dr. Karadzic's Motion for Judgement of Acquittal. The Appeals Chamber specifically envisioned that the Trial Chamber would consider the

¹ *Prosecutor v Karemera et al.* No ICTR-98-44-AR73 16, *Decision on Appeal Concerning the Severance of Mathieu Ndirumpatse* (19 June 2009)

² *Prosecutor v Karemera et al.* No ICTR-98-44-T, *Decision on Continuation of the Trial* (3 March 2009) at para 41, *Prosecutor v Bagosora et al.* No ICTR-98-41-T, *Decision on Motions by Ntabakuze for Severance and to Establish a Reasonable Schedule for the Presentation of Prosecution Witnesses* (9 September 2003) at para 28

motion anew, taking into account the reversal of the Trial Chamber's findings on *actus reus* and *mens rea*.

8. In declining to address the prosecution's ground of appeal concerning alternative modes of liability under Count One, the Appeals Chamber said that "the relevant analysis, including the analysis of the remaining modes of liability, will necessarily be reconsidered by the Trial Chamber in light of the present Judgement."³

9. In declining to address Dr. Karadzic's principal contention that there was no confluence of *actus reus* and *mens rea* and therefore no genocide in the municipalities of Bosnia in 1992, the Appeals Chamber said that having reversed findings of the Trial Chamber on genocidal intent, serious bodily harm, and conditions of life calculated to destroy, "it would be premature for the Appeals Chamber to consider Karadzic's submissions."⁴

10. In its disposition, the Appeals Chamber remanded the matter for further action consistent with its Judgement.⁵

11. Therefore, the Trial Chamber must further consider Dr. Karadzic's Motion for Judgement of Acquittal on Count One. Dr. Karadzic respectfully requests the opportunity to make further submissions on his motion in light of the Appeals Chamber's judgement. Pursuant to Rule 98 *bis*, those submissions, as well as any decision on the motion, must be oral.

12. Should the Trial Chamber deny Dr. Karadzic's motion for acquittal, Dr. Karadzic will be requesting additional time in which to present his defence case on Count One.

13. Dr. Karadzic expects that before deciding on how much time he should be given for his defence case on Count One, the Trial Chamber would require him to file a list of witnesses and exhibits and summary of facts upon which each witness would testify in his defence to Count One pursuant to Rule 65 *ter* (G).

14. During the defence case, the Trial Chamber repeatedly criticized Dr. Karadzic for providing inadequate summaries of defence witnesses.⁶ The summaries were

³ *Prosecutor v Karadzic*, No IT-95-5/18-AR98bis 1, *Judgement* (11 July 2013) at para 107

⁴ *Prosecutor v Karadzic*, No IT-95-5/18-AR98bis 1, *Judgement* (11 July 2013) at para 112

⁵ *Prosecutor v Karadzic*, No IT-95-5/18-AR98bis 1, *Judgement* (11 July 2013) at para 117

⁶ T28798, T30897, *Decision on Accused's Motion to Vary List of Witnesses* (21 February 2013)

inadequate because Dr Karadzic's defence team did not have sufficient time to interview the witnesses prior to being required to file its witness list. To ensure that this situation is not repeated, Dr. Karadzic would need a minimum of 120 days from the time of the decision on Count One in order to interview the potential witnesses on Count One and to file his Rule 65 *ter* list.⁷

15. Once the list and summaries are filed, the Trial Chamber will be in a position to determine how many hours Dr. Karadzic would be allowed for his defence case on Count One. Thereafter, Dr. Karadzic will decide which of his witnesses to call within the allotted time. It is estimated that it will take a month from the time the Trial Chamber allocates the additional hours before Dr. Karadzic can begin calling his witnesses.

16. In the meantime, Dr. Karadzic will be requesting that the trial be suspended so that his defence team can be deployed to interview witnesses and so that he is able to assess which witnesses to call with the time remaining to him without using up his existing time on witnesses who may be of lower priority than those needed to defend Count One

17. Dr Karadzic estimates that the entire process of reconsidering Count One and putting on his defence case for that Count if his Motion for Judgement of Acquittal is denied will extend the time it will take to complete his trial by approximately 6-7 months.

18. Given the unlikely prospects for conviction on Count One at the end of the case, and the seriousness of the remaining charges, Dr. Karadzic contends that it is in the interests of justice to sever Count One and complete the trial on the remaining counts. The interest of justice in the context of severance has been held to include the right of the accused to be tried fairly and without delay by being tried on narrower allegations.⁸

19. If severance is granted the defence case can proceed uninterrupted to its conclusion later this year. The prosecution can then determine if it wishes to proceed on Count One after the judgement on the remaining counts is delivered.

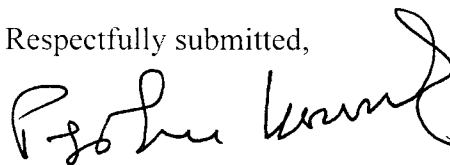
⁷ Dr Karadzic notes that his resources have been reduced so that he would have only 2 full time investigators who could be employed during this period

⁸ *Prosecutor v Karemera*, No ICTR-98-44-T. *Decision on Severance of Andre Rwamakuba and for Leave to File Amended Indictment* (14 February 2005) at para 26

20 For all of the above reasons, it is respectfully requested that the Trial Chamber order that Count One be severed pursuant to Rule 54 or direct the Prosecutor to proceed on all counts of the Indictment except Count One pursuant to Rule 73 *bis* (E).

Word count: 1311

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic