

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: 22 November 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO STRIKE SCHEDULED SARAJEVO
SHELLING AND SNIPING INCIDENTS

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

The Accused:
Radovan Karadzic

Standby Counsel:
Mr. Richard Harvey

1. Dr. Radovan Karadzic respectfully moves for an order, pursuant to Rule 54, that the Trial Chamber strike Scheduled Sarajevo shelling incidents G5, G9, G11, and G12 and sniping incidents F2, F6, F7, F8, F10, and F15 from the Third Amended Indictment in the interests of a fair and expeditious trial.

2. On 22 July 2009, the Trial Chamber ordered the prosecution to make a submission on the reduction of the scope of its case.¹ The prosecution made its submission on 31 August 2009, proposing modest reductions, including the elimination of a handful of Sarajevo shelling and sniping incidents, and contending that a further reduction of the scope of its case would not be in the interests of justice.²

3. In a decision of 8 October 2009, the Trial Chamber expressed its disappointment by “the prosecution’s reluctance to identify further crime sites and incidents that might be omitted from this particular trial”, but declined to order any further reductions.³

4. The prosecution’s evidence on the Sarajevo component of the case lasted approximately one year. Dr. Karadzic likewise plans to call a large number of witnesses to challenge the prosecution’s Sarajevo evidence.

5. On 18 November 2011, there was filed the *Prosecution Submission on Reduction of the Indictment Pursuant to Rule 73 bis (D)* in the case of General Mladic. In that submission, the prosecution offered not to lead evidence on the four Sarajevo shelling incidents and six sniping incidents which are the subject of this motion. The prosecution represented that:

The Prosecution, relying on the applicable jurisprudence of the Galić and Dragomir Milošević Appeals Chambers, considers that it can meet its burden on counts 9 and 10 with a selection of the specific crimes in Schedules F and G of the Indictment. The Prosecution has selected ten sniping incidents and ten shelling incidents which it believes appropriately reflect the overall unlawful attack on the people of Sarajevo and the participation of the Accused in that attack.⁴

6. Dr. Karadzic contends that if the prosecution has concluded that 10 shelling and 10 sniping incidents appropriately reflects the Sarajevo component of its case for

¹ *Order to the Prosecution Under Rule 73 bis (D)*

² *Prosecution Submission Pursuant to Rule 73 bis*

³ *Decision on the Application of Rule 73 bis* (9 October 2009) at para. 5

⁴ para. 11

General Mladic, there is no reason for any different conclusion to be reached in his case. If it is in the interest of justice and an expeditious trial not to proceed on the above listed incidents in General Mladic's case, why should this Chamber waste its precious time and resources hearing defence evidence on those incidents?

7. Dr. Karadzic realizes that in some situations, it may make sense to lead certain evidence in General Mladic's case and not in Dr. Karadzic's case, and *vice versa*. For example, in the municipalities component of the case, the prosecution has chosen to adduce evidence in General Mladic's case in municipalities where the army was most active, and not to adduce evidence in some municipalities where the local authorities may have been responsible. Dr. Karadzic does not request any similar reduction orders with respect to the municipalities portion of his case for that very reason.

8. However, for the Sarajevo component of the case, it is alleged that the army was doing all the shelling and sniping. The prosecution has not reduced the shelling and sniping incidents based upon factors that could distinguish between the culpability of General Mladic and Dr. Karadzic. Rather, it seems to have weeded out incidents for which its evidence was weak or for which other similar incidents exist.

9. For example, in the *Mladic* case, the prosecution has proposed not to lead evidence of the 22 December 1994 shelling of the Flea Market—an incident which it failed to prove in the *Dragomir Milosevic* and *Perisic* cases. Does it really make sense to retain this incident and require the defence to lead evidence to rebut it?

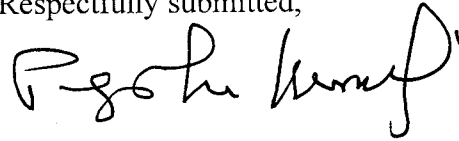
10. Another shelling incident removed in the *Mladic* case is the 12 July 1993 shelling of the water queue in Dobrinja. The prosecution has not led evidence about that shelling in the *Karadzic* trial, preferring to rely entirely upon adjudicated facts. Since the presumption created by these adjudicated facts will disappear once the defence elicits evidence as to this incident, does it really make sense to require the defence to lead such evidence?

11. Other incidents such as snipings on trams and buses and shellings by modified air bombs have been eliminated from the *Mladic* case presumably because other tram snipings and modified air bomb shellings remain. If, as the prosecution has represented in the *Mladic* case, the remaining incidents appropriately reflect the overall unlawful attack on the people of Sarajevo, what is the point of continuing to insist that they be included in the *Karadzic* case?

12. The prosecution's submission in the *Mladic* case provides the Trial Chamber with an opportunity to shorten the length of the remaining portions of the trial and the length of its deliberation and judgements by eliminating incidents which are superfluous to the prosecution's case. The Trial Chamber is respectfully requested to take this opportunity and strike the incidents listed above from Dr. Karadzic's indictment.

Word count: 955

Respectfully submitted,

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

Radovan Karadzic