

**UNITED
NATIONS**

International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
former Yugoslavia since 1991

Case No. IT-95-5/18-PT
Date: 17 February 2009

IN TRIAL CHAMBER III

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

Acting Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL APPENDIX

**PROSECUTION MOTION FOR RECONSIDERATION OF THE
TRIAL CHAMBER'S DECISION TO AMEND THE FIRST
AMENDED INDICTMENT AND URGENT REQUEST FOR A
STAY OF THE TRIAL CHAMBER'S ORDER TO FILE A
SECOND AMENDED INDICTMENT**

The Office of the Prosecutor:

Mr Alan Tieger
Mr Mark B. Harmon
Ms Hildegard Uertz-Retzlaff

The Accused:

Mr Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-95-5/18-PT

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL APPENDIX

**PROSECUTION MOTION FOR RECONSIDERATION OF THE TRIAL
CHAMBER'S DECISION TO AMEND THE FIRST AMENDED
INDICTMENT AND URGENT REQUEST FOR A STAY OF THE
TRIAL CHAMBER'S ORDER TO FILE A SECOND AMENDED
INDICTMENT**

Introduction

1. The Prosecution requests the Trial Chamber to reconsider its finding that Incident 18.2 of Schedule B of the Proposed Second Amended Indictment (the killing of up to 140 detainees in Sušica camp) was not adequately supported.¹ Supporting material satisfying the *prima facie* standard exists for this incident; however, the Prosecution failed to provide this material due to a clerical mistake. As this incident is an important part of the Prosecution's case against the Accused, the Prosecution should be permitted to correct this oversight in order to prevent injustice.

Motion for Reconsideration

2. The Prosecution inadvertently linked the same transcript extract in support of Incident 18.1 of Schedule B to Incident 18.2 of the Schedule B. A different transcript extract, from the same witness, should in fact have been linked to

¹ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution Motion to Amend the First Indictment, 16 February 2009, para. 54.

Incident 18.2. That seven page extract is attached in English and B/C/S as Confidential Appendix A.²

3. Incident 18.2 is an important scheduled killing. In addition to the large number of victims, as the attached supporting material indicates, this mass killing was carried out hours after the Accused delivered a speech³ at a funeral in Vlasenica before an “embittered” and “emotional” crowd.
4. The Prosecution has satisfied the standard for reconsideration; allowing the Prosecution to rectify this oversight would prevent injustice.⁴ The Chamber should not be deprived of determining the Accused’s responsibility, if any, for this scheduled killing on account of a clerical mistake by the Prosecution. Similarly, allowing the Prosecution to correct this mistake would prevent injustice towards the many victims of this incident who deserve an accounting of the Accused’s responsibility, if any, for this incident.
5. Moreover, reconsideration would not cause any unfair prejudice to the Accused. The supporting material is simple, consisting of just seven transcript pages of testimony of a witness whose testimony already supports confirmed killing incident 18.1. The Prosecution intends to call this witness whether or not incident 18.2 forms part of the charges against the Accused. This request for reconsideration is straightforward and could be determined on an expedited basis. Any resulting delay would be short, and, in the context of these proceedings as a whole, negligible.

Urgent Request for a Stay of the Trial Chamber’s Order to File a Second Amended Indictment

6. The Prosecution urgently requests the Chamber to stay its order to the Prosecution to file a Second Amended Indictment without Incident 18.2 of Schedule B by 18 February 2009 at noon while this motion for reconsideration is pending. The Prosecution recognizes that, as the Accused is self-represented, he may not have an opportunity to respond to this request for a stay before it would have to be issued by the Chamber. As such, as an interim measure, the Prosecution seeks an immediate temporary stay in order to

² This witness is the subject of a delayed-disclosure order. Decision on Protective Measures for Witnesses, 30 October 2008, par. 34(d).

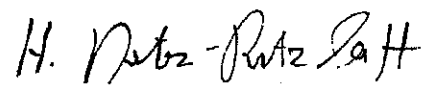
³ A copy of this speech was disclosed to the Accused as a potential exhibit on 13 February 2009.

⁴ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused Motion for Full Disclosure of Supporting Material, 25 November 2008, para. 22.

provide the Accused with adequate time to respond to the Prosecution's request for a stay of the order for the period during which its motion for reconsideration is pending.

7. For these reasons the Prosecution requests the Chamber to:
 - a. reconsider its decision that Incident 18.2 of Schedule B of the Proposed Second Amended Indictment was not adequately supported on the basis of the material attached in Confidential Appendix A;
 - b. allow the Prosecution to include this incident in the Second Amended Indictment;
 - c. on an urgent basis, stay its order to the Prosecution to file a Second Amended Indictment by 18 February 2009 at noon while the Prosecution's motion for reconsideration is pending; and
 - d. immediately issue a temporary stay of its order to the Prosecution to file a Second Amended Indictment by 18 February 2009 at noon for an adequate period to allow the Accused to respond to the Prosecution's request for a stay of the order for the period during which its motion for reconsideration is pending.

Word Count: 712



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Dated this 17th day of February 2009
At The Hague
The Netherlands