



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: 30 July 2009

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 30 July 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION REGARDING THE ACCUSED'S PRE-TRIAL BRIEF

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”) is seized of an oral motion made by the Office of the Prosecutor (“Prosecution”) on 23 July 2009 (“Motion”) alleging that the Accused has failed to comply with Rule 65 *ter* (F) of the Rules of Procedure and Evidence (“Rules”), and hereby issues its decision thereon.

1. During the status conference of 23 July 2009 (“Conference”), one of the issues discussed was the content of the Accused’s pre-trial brief. It was filed on 29 June 2009, following an extension of time granted to the Accused by the Chamber.¹ At the Conference, the Prosecution voiced its concern, which it had already expressed at an earlier status conference,² that the Accused’s pre-trial brief does not comply with Rule 65 *ter* (F) as it does not explain the basis on which the Accused will challenge the matters raised in the Prosecution’s pre-trial brief. When asked what the suggested relief should be, the Prosecution stated that the Chamber should order the Accused to submit a pre-trial brief that conforms with the Rule. The Prosecution also acknowledged that another potential remedy might be to simply receive assurances from the Chamber that any eventual prejudice arising to it from the Accused’s failure could be remedied at a later stage, as and if it arises. For example, the Chamber could allow the Prosecution to lead witnesses it had dispensed with because of its reliance on the Accused’s pre-trial brief.³

2. The Accused responded to the Prosecution concerns by saying that providing a pre-trial brief which complies with the Rules would amount to him doing the “Prosecution’s job”. He further explained that at this particular stage of the case, bearing in mind the volume of the materials disclosed to him, he does not have the resources to be more specific and provide more than simply a general description of his case.⁴

3. Rule 65 *ter* (F) provides as follows:

(F) After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time-limit set by the pre-trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues, and including a written statement setting out:

¹ See Order Regarding the Accused’s Pre-Trial Brief, 5 June 2009, paras. 4–5.

² Status Conference, T. 332–333 (1 July 2009).

³ Status Conference, T. 390–392 (23 July 2009).

⁴ Status Conference, T. 393–395 (23 July 2009).

- (i) in general terms, the nature of the accused's defence;
- (ii) the matters with which the accused takes issue in the Prosecutor's pre-trial brief; and
- (iii) in the case of each such matter, the reason why the accused takes issue with it.

4. The Accused's pre-trial brief is significantly shorter than that filed by the Prosecution, and addresses mainly legal issues. It states generally that he takes issue with everything raised in the Prosecution's pre-trial brief.⁵ Thus, while it does outline the nature of the Accused's defence in general terms, it does not list the specific matters in the Prosecution's pre-trial brief with which he takes issue. The Chamber expresses its disappointment that this is so since the Accused had earlier assured the pre-trial Judge that he would do his best to comply with the Rules and, on that basis, he sought and received an extension of time for the filing of his pre-trial brief.⁶

5. Nevertheless, while there are many benefits to be had from a pre-trial brief that is in full compliance with Rule 65 *ter* (F), it is also noteworthy that the start of the Accused's trial is imminent and that he must use his resources to the full extent possible to prepare for it. Accordingly, in these particular circumstances, rather than ordering the Accused to submit a revised pre-trial brief, the Chamber considers that the appropriate remedy for the Prosecution is for the Chamber to acknowledge the potential for prejudice to it in the presentation of its case. As a result, if, during the trial, the Accused makes a specific challenge to factual allegations in the Prosecution's pre-trial brief, which was not heralded in his pre-trial brief and which could not have been reasonably anticipated by the Prosecution, the Chamber may view sympathetically an application by the Prosecution to introduce evidence it had not anticipated presenting, for example, by recalling a witness. This is particularly so in relation to adjudicated facts of which judicial notice had been taken prior to the submission of the Accused's pre-trial brief. In addition, the Trial Chamber may, in appropriate circumstances, refuse to allow the Accused to lead certain evidence because no proper challenge to the Prosecution's case has been made in accordance with the Rules.

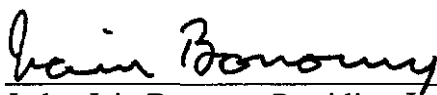
6. Accordingly, the Chamber is of the view that it would not be in the interests of good case management to make any further order in terms of Rule 65 *ter* (F).

⁵ Karadžić Pre-Trial Brief, 29 June 2009, paras. 1–5.

⁶ Status Conference, T. 273–277 (3 June 2009). *See also* Order Regarding the Accused's Pre-Trial Brief, 5 June 2009, paras. 4–5.

7. For those reasons, pursuant to Rules 54 and 65 *ter* of the Rules, the Chamber hereby **DENIES** the Motion on the basis that any prejudice arising to the Prosecution as a result of the Accused's failure to comply with the Rules may be remedied at a later stage, as and if it arises.

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


Judge Iain Bonomy, Presiding Judge

Dated this thirtieth day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]