

Charges Against Karadzic Questioned

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Judge asks prosecution to explain how all counts in indictment fit into single, “overarching” criminal plan. Prosecutors bringing the case against former Bosnian Serb president Radovan Karadzic at the Hague tribunal came under the spotlight this week when the pre-trial judge questioned them about their formulation of the charges against the defendant.

Judge Iain Bonomy raised concerns relating to the prosecution’s allegations that Karadzic took part in three separate criminal conspiracies, known as “joint criminal enterprises”, in Bosnia between 1992 and 1995.

According to the prosecution’s indictment, these separate plans all fell under an earlier conceived, “overarching plan” aimed at permanently removing Bosniaks and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia.

Judge Bonomy pointed out that in the indictment, the description of the overarching plan – which was alleged to have been conducted in Bosnia from as early as October 1991 until November 30, 1995 – omits three of the 11 counts, as well as two of the three additional alleged criminal conspiracies that Karadzic is accused of.

“It is difficult to see how the initial joint criminal enterprise [which is outlined in the indictment] can be said to be ‘overarching’,” Judge Bonomy told American prosecutor, Alan Tieger.

The prosecution has charged Karadzic with separate criminal conspiracies relating to the siege of Sarajevo between April 1992 and November 1995; the 1995 genocide at Srebrenica when approximately 8,000 Bosniak males were slaughtered; and the taking of United Nations hostages between May and June 1995 to force NATO to refrain from carrying out airstrikes against Bosnian Serb targets.

Karadzic was also part of the “overarching” plan carried out between October 1991 and November 30, 1995, say prosecutors in the indictment.

“[The mention of an ‘overarching’ plan] would tend to indicate that the other three somehow fall within the ambit of this overarching joint criminal enterprise,” Judge Bonomy told the prosecution.

“But a closer reading of the indictment indicates that the [siege of Sarajevo and the UN hostage allegation] do not, on the face of the indictment, fall within the overarching joint criminal enterprise.”

Tieger responded that all forms of joint criminal enterprise charged in the indictment were interlinked.

“The pursuit of these [three separate] objectives was related to the [initial] objective and overarching joint criminal enterprise to permanently remove Bosnian Muslims [from parts of Bosnia Herzegovina],” said Tieger.

“Each of the [three] joint criminal enterprises furthered and were related to the overarching joint criminal

enterprise.”

The discussion – which was held at a meeting between all the parties in court this week – stemmed from a request made by Karadzic for the three separate conspiracies to be removed from the indictment and for him only to be charged with the single “overarching” joint criminal enterprise.

“The prosecutor alleges four separate joint criminal enterprises that took place in Bosnia Herzegovina of which the timeframes, the objectives, the members, and Dr Karadzic’s alleged role in the joint criminal enterprises significantly overlap,” Karadzic wrote to judges on March 19.

“Moreover, the prosecutor pleads that these joint criminal enterprises all share the same common purpose.”

Karadzic has also insisted that charging a defendant with multiple joint criminal enterprises is “unprecedented” at the tribunal. However, Tieger told the court this week that that was not the case.

Clarifying the prosecution’s indictment, Tieger said that without referring to an “overarching” plan, the prosecution would “misleadingly signal” that the three conspiracies were not all related to one another within a single plan to remove non-Serbs from parts of Bosnia.

“The use of the term ‘overarching’ provides greater clarity about the relationship between the four joint criminal enterprises,” said Tieger.

Tieger explained further that in referring to an “overarching” plan, prosecutors were trying to establish Karadzic’s responsibility for every crime he has been charged with. However, this explanation did not appear to satisfy Judge Bonomy.

“That’s just a lot of words to me, Mr Tieger,” replied the judge, who said prosecutors were required to show the nature of the defendant’s involvement in all the alleged crimes.

Asked to speak on the matter, Karadzic expressed his concern that charging him with multiple joint criminal enterprises made his case even more complex.

“This is going to complicate something which is already very complicated and a voluminous case,” he said.

He also appeared confident that judges would ask prosecutors to amend the indictment and said that it should be done promptly.

“I’m sure that this pre-trial chamber and the appeals chamber will recognise and adhere to all of my requests and it would be much better if the prosecution were to accept your well-intentioned proposals and amend the indictment within a few weeks and not have it arrive in December because then these proceedings will be extended a great deal,” he told Judge Bonomy.

Following Karadzic’s arrest in Belgrade in July 2008, prosecutors submitted an amended indictment on

September 22 last year. Although the indictment was confirmed on February 18, 2009, prosecutors were forced to amend it for the third time on February 27.

This was because judges would not support a charge for the killing of up to 140 detainees at the Susica prison camp in the Bosnian town of Vlasenica because prosecutors had mistakenly not submitted the necessary evidence.

Any amendments requested by judges on the back of Karadzic's March 19 request could result in a fourth indictment being filed.

A number of other motions currently before the court, mainly filed by the defendant, were discussed by parties this week as Judge Bonomy seeks to ready the case for trial.

The judge rejected Karadzic's request that, on the basis of equality of arms, the prosecution be given the same limitations in its contact with the media as him.

The court's registry has allowed Karadzic to conduct an interview with a journalist in The Netherlands via written letter. Among other restrictions, the registry has limited the journalist's questions to 500 words and Karadzic's response to 2,000 words and told the defendant not to make any political statements.

"The chamber has carefully considered this and is satisfied that it does not raise an issue of equality of arms," said Judge Bonomy.

"Your motion borders on the frivolous."

The parties also discussed Karadzic's bid to have the whole case against him dropped because, he alleged, the prosecution abused tribunal procedures.

Last month, he said that searches on his relatives' homes in Sarajevo initiated by the prosecution had intimidated potential witnesses in his case and therefore harmed his defence.

The prosecution was, in fact, responsible for only one of the searches, on March 27, and has denied accusations of illegal procedure.

"The accused's allegations of an abuse of process are baseless and unsupported. His right to a fair trial has not been compromised by the searches, and he has not suffered any prejudice," responded the Office of The Prosecutor, OTP, on April 27.

This week, Judge Bonomy wanted to know if the prosecution was able to disclose the documents that police from Bosnia's Serb dominated entity, Republika Srpska, found during their search of Karadzic's sister-in-law's house and handed to OTP in Sarajevo last month.

“We do not yet have the materials in house, although I believe their receipt is imminent,” said Tieger.

“It’s rather surprising that they should arrive in your office in Sarajevo on April 21 and be regarded as not urgent. We are [now] another two weeks down the line and we still don’t have them,” said Judge Bonomy.

“I will always be concerned about what appears to be a lack of urgency in this case.”

Judge Bonomy said that judges would likely rule on the joint criminal enterprise issue and Karadzic’s abuse of process motion next week.

All parties are scheduled to meet in court again on June 3.

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