



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: 23 July 2009  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision of:** 23 July 2009

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION'S REQUEST FOR RECONSIDERATION**

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**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 seised of the “Prosecution’s Request for Reconsideration”, filed on 17 July 2009 (“Request”), and hereby renders its decision thereon.

### Background and Submissions

1. On 29 May 2009, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 *quater*” (“Motion”) in which it sought the admission into evidence of the previous testimony in the *Krajišnik* case of Witness KDZ198, as well as the admission into evidence of associated exhibits.<sup>1</sup>
2. On 10 July 2009, the Accused filed his “Response to Prosecution 92 *Quater* Motion: Witness KDZ198” (“Response”), opposing the Motion for various reasons, including a challenge to the Witness’s reliability. As part of that particular challenge, the Accused provided examples of what he claims to be inconsistencies in the Witness’s testimony, as well as examples of hearsay evidence provided by the Witness.<sup>2</sup>
3. On 14 July 2009, the Prosecution filed “Prosecution’s Request for Leave to Reply to the ‘Response to Prosecution 92 *quater* Motion: Witness KDZ198’” (“Request for Leave to Reply”) wishing to address (i) the law applicable to Rule 92 *quater* and (ii) the Accused’s claims concerning the reliability of Witness KDZ198.
4. On 16 July 2009, the Trial Chamber issued its “Decision on Prosecution Request for Leave to Reply: Rule 92 *quater* Motion (Witness KDZ198)” (“Decision”) in which it denied the Request for Leave to Reply, on the basis that the Prosecution had already addressed the relevant law applicable to Rule 92 *quater*.<sup>3</sup>
5. On 17 July 2009, the Prosecution filed the current Request, asking that the Trial Chamber reconsider its Decision and arguing that it has met the standard for reconsideration. The Prosecution argues that the Chamber erred when denying the Request for Leave to Reply in its entirety, since it did not consider the Prosecution’s wish to address the Accused’s challenge to the

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<sup>1</sup> Motion, para. 1.

<sup>2</sup> Response, paras. 8–14.

<sup>3</sup> Decision, pp. 2–3.

reliability of Witness KDZ198.<sup>4</sup> In addition, the Prosecution argues that it should have an opportunity to reply to the “newly raised factual issues” relating to the reliability of Witness KDZ198 and that preventing it from doing so causes injustice to the Prosecution.<sup>5</sup> Thus, the Prosecution requests that the Trial Chamber reconsider its Decision only in relation to the claims concerning the Witness’s reliability and grant the Prosecution leave to file a reply in relation to these claims.<sup>6</sup>

6. The Accused has indicated at the Status Conference of 23 July 2009 that he does not oppose the Motion.

### Discussion

7. There is no provision in the Rules for requests for reconsideration, which are the product of the Tribunal’s jurisprudence, and are permissible only under certain conditions.<sup>7</sup> However, the Appeals Chamber has definitively articulated the legal standard for reconsideration of a decision as follows: “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’”<sup>8</sup> Thus, the requesting party is under an obligation to satisfy the Chamber of the existence of a clear error in reasoning, or the existence of particular circumstances justifying reconsideration in order to prevent an injustice.<sup>9</sup>

8. The Chamber notes that detailed analysis of the material presented, including identification of inconsistencies, is a matter the Chamber is well placed to deal with and does not generally require a multitude of filings by the parties. However, in view of the failure to specifically address this subject in the original Decision, and having regard to the Witness’s reliability raised in this particular instance, the Chamber accepts that injustice could result if the Prosecution was not permitted to reply.

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<sup>4</sup> Request, paras. 1, 3.

<sup>5</sup> Request, para. 3.

<sup>6</sup> Request, para. 4.

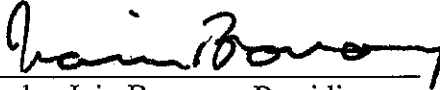
<sup>7</sup> See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber, 26 March 2009 (“Prlić Decision on Reconsideration”), p. 2.

<sup>8</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle”, 14 June 2006, para. 2.

<sup>9</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, p. 2; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić’s Motion for Reconsideration and Order for Issuance of a Subpoena Duces Tecum, 2 April 2009, p. 2; Prlić Decision on Reconsideration, p. 3.

9. Accordingly, pursuant to Rules 54, 126, and 126 *bis*, the Chamber **GRANTS** the Request and **ORDERS** the Prosecution to file a reply addressing specific challenges to the reliability of Witness KDZ198, by no later than 24 July 2009.

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

  
Judge Iain Boney, Presiding

Dated this twenty-third day of July 2009  
At The Hague  
The Netherlands

[Seal of the Tribunal]