



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-T

Date: 22 May 2014

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 22 May 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION FOR BIFURCATED JUDGEMENT

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 “Motion for Bifurcated Judgement” filed by the Accused on 5 May 2014 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused requests that the Chamber order that in the event he is convicted, the issue of his sentence be determined in a separate sentencing judgement and that the parties be allowed to address sentencing matters in written submissions filed no later than seven days after any judgement of conviction.¹ As a basis for the Motion, the Accused submits that given “the extraordinary broad scope” of the Third Amended Indictment, it is impossible to make reasoned submissions on the sentence until the Chamber has determined which crimes it finds the Accused responsible for and under which mode of responsibility.² He argues that since all the sentencing evidence was already presented during trial and an oral argument on the issue of sentence is not being sought, this approach will not significantly delay the conclusion of the proceedings and will, on the contrary, result in the Chamber saving time and the parties saving considerable resources.³ The Accused further contends that nothing in the Tribunal’s Statute or its Rules of Procedure and Evidence (“Rules”) prevents the Chamber from issuing a separate sentencing judgement and that doing so would reflect “the emerging view that such a procedure is fairer and of more assistance to the Court in the complex cases increasingly heard before international tribunals than the unified judgement procedure”.⁴

2. The Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Karadžić’s Motion for Bifurcated Judgement” on 15 May 2014 (“Response”), opposing the Motion. The Prosecution argues that Rule 87(C) is irrelevant to whether the Chamber should grant a bifurcated proceeding and that Rule 86(C) precludes the remedy requested in the Motion.⁵

3. The Chamber recalls that during the 18th plenary session of the Tribunal’s judges held on 9 July 1998, a number of amendments to the Rules were adopted in order to move to a single judgement on conviction and sentence.⁶ Of particular relevance to the Motion, the Chamber notes

¹ Motion, paras. 5, 9.

² Motion, paras. 2–3.

³ Motion, paras. 5–6.

⁴ Motion, para. 8; *see also* Motion, para. 7, wherein the Accused argues that in 2000, the mandatory language making it compulsory for Trial Chambers to issue a single judgement on conviction and sentence was deleted from Rule 87(C).

⁵ Motion, para. 3.

⁶ The following Rules were thus amended or deleted: Rules 62 *bis*, 85, 86, 87, 88, 88 *bis* (now 108), 100, and 101.

that Rule 87(C) was adopted to read: “If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall at the same time determine the penalty to be imposed in respect of each finding of guilt”.⁷ Accordingly, as of 1998, Trial Chambers of the Tribunal have applied this single procedure, determining the sentence in the judgement on conviction.⁸ This procedure continued to be applied after the subsequent amendment to Rule 87(C) in December 2000,⁹ which resulted in the current formulation of Rule 87(C), namely:

If the Trial Chamber finds that accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

4. In light of the practice of the past 14 years, the Chamber does not consider that the December 2000 deletion of the phrase “at the same time” from Rule 87(C) indicates an intention to return to the initial procedure of first pronouncing on an accused’s guilt before determining the sentence in a subsequent and separate judgement. Furthermore, the Chamber is not satisfied that the single procedure applied since 1998 in all cases before the Tribunal infringes upon the rights of the Accused to a fair trial. The Chamber therefore finds no reason to depart from the settled practice on sentencing before the Tribunal. Thus, in the event that the Chamber issues a judgement of conviction against the Accused, it shall also determine the sentence to be imposed in the same judgement. The parties are expected to address any matters of sentencing they deem necessary in their final briefs that are to be filed by no later than 29 August 2014 and during closing arguments scheduled between 29 September and 7 October 2014.¹⁰

⁷ The Chamber notes that contrary to the Prosecution’s submission in the Response, Rule 86(C) is not relevant to the Motion as it pertains to the presentation of closing arguments and the Accused does not request to be given the opportunity to make a separate closing argument on sentencing. Rather, he requests that the parties be allowed to file written submissions on the issue and that the Chamber issue a separate judgement on sentencing. In that regard, Rule 87 (C) is the most relevant Rule to the Motion.

⁸ The first Trial Chamber to do so was in the case of *Zejnir Delalić et al.*, see *Prosecutor v. Delalić et al.*, Case No. IT. 96-21-T, Judgement, 16 November 1998, para. 83, holding that “[w]hereas previously a separate hearing was held to determine sentencing where necessary, only after the judgement had been rendered as to the accused’s guilt or innocence, the amended Rules provide for simultaneous judgement and sentencing”.

⁹ The first trial Judgement issued after the December 2000 amendment was in the case of *Kordić and Čerkez*. The only reference made to the then recent amendment is the new possibility of imposing “a single sentence reflecting the totality of the criminal conduct of the accused”, see *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001, fn. 1787.

¹⁰ See Order on Filing of Final Trial Briefs, 21 March 2014, pp. 3–4; Order on Closing Arguments, 7 April 2014, pp. 3–4.

5. Accordingly, the Chamber, pursuant to Rule 87(C) of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of May 2014
At The Hague
The Netherlands

[Seal of the Tribunal]