

IT-95-5/18-AR98bis.1
A2604-A2601
12 September 2013

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**UNITED
NATIONS**



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-AR98bis.1
Date: 12 September 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Khalida Rachid Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

Order of: 12 September 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON APPEAL OF
DECISION ON REMAND OF COUNT ONE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

Standby Counsel:

Mr. Richard Harvey

THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively);

NOTING the Judgement rendered by the Appeals Chamber on 11 July 2013 (“Rule 98 *bis* Appeal Judgement”), which: (i) reversed Trial Chamber III of the Tribunal’s (“Trial Chamber”) decision to acquit Radovan Karadžić (“Karadžić”) of genocide in certain municipalities of Bosnia and Herzegovina;¹ (ii) reinstated the charges against Karadžić under Count 1 of the Indictment;² and (iii) stated that the Trial Chamber should consider relevant evidence “after hearing evidence adduced by Karadžić with respect to Count 1 of the Indictment”;³

NOTING the “Decision on Accused’s Motions for Severance of Count 1 and Suspension of Defence Case” rendered by the Trial Chamber on 2 August 2013 (“Impugned Decision”),⁴ which, *inter alia*, found that the Rule 98 *bis* Appeal Judgement: (i) was “unequivocal in making a final determination on the Rule 98 *bis* Ruling”; and (ii) instructed the Trial Chamber “to take necessary and appropriate action with regard to the defence case, with Count 1 having been reinstated”;⁵

BEING SEISED OF the “Appeal of Decision on Remand of Count One” filed by Karadžić on 7 August 2013 (“Appeal”), in which Karadžić submits that: (i) the Appeals Chamber has jurisdiction to consider the Appeal even if the Trial Chamber does not grant certification to appeal;⁶ (ii) the Rule 98 *bis* Appeal Judgement did not address his arguments with respect to whether there was a confluence between the *actus reus* and *mens rea* elements of the charged crimes;⁷ (iii) the Rule 98 *bis* Appeal Judgement “put the parties back where they were before the Trial Chamber granted the motion for judgement of acquittal”;⁸ and (iv) the Appeals

¹ Rule 98 *bis* Appeal Judgement, para. 117. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution’s Marked-Up Indictment, 19 October 2009, Appendix A (“Indictment”).

² Rule 98 *bis* Appeal Judgement, para. 117.

³ Rule 98 *bis* Appeal Judgement, para. 116.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T.

⁵ Impugned Decision, para. 14.

⁶ Appeal, paras 12-17.

⁷ Appeal, paras 19-26.

⁸ Appeal, para. 27.

Chamber should reverse the Impugned Decision and direct the Trial Chamber to make a new determination on Karadžić's Rule 98 *bis* motion for acquittal;⁹

NOTING the "Prosecution Response to Karadžić's Appeal of Decision on Remand of Count One" filed by the Office of the Prosecutor of the Tribunal ("Prosecution") on 9 August 2013 ("Response"), in which the Prosecution claims that certification to appeal is required¹⁰ but that, in any event, the Appeal should be dismissed on the merits because the Rule 98 *bis* Appeal Judgement: (i) explicitly addresses Karadžić's "confluence" argument;¹¹ and (ii) "leave[s] no scope for the Trial Chamber to conduct additional Rule 98*bis* proceedings";¹²

NOTING the "Reply Brief: Appeal of Decision on Remand of Count One" filed by Karadžić on 13 August 2013 ("Reply"), in which he maintains, *inter alia*, that the Rule 98 *bis* Appeal Judgement did not deny his Rule 98 *bis* motion for acquittal and that the motion remains pending;¹³

NOTING the "Decision on Accused's Application for Certification to Appeal Decision on Remand of Count One" rendered by the Trial Chamber on 3 September 2013, which granted Karadžić certification to appeal;¹⁴

CONSIDERING that the Trial Chamber's certification to appeal renders moot Karadžić's contentions with respect to jurisdiction;

RECALLING that a judgement of acquittal shall only be entered pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal "if there is no evidence capable of supporting a conviction";

NOTING that the Rule 98 *bis* Appeal Judgement explicitly addressed Karadžić's contentions regarding the confluence of genocidal intent and the *actus reus* of genocide;¹⁵

CONSIDERING that the Rule 98 *bis* Appeal Judgement reversed the Trial Chamber's decision to acquit Karadžić of the charges under Count 1 of the Indictment after finding that the Trial Chamber erred in concluding that there was no evidence from which, if accepted, a

⁹ Appeal, para. 28.

¹⁰ Response, paras 1, 3-5.

¹¹ Response, paras 2, 6-7.

¹² Response, para. 8. *See also* Response, paras 2, 9.

¹³ Reply, para. 12. *See also* Reply, para. 13.

¹⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, para. 16.

reasonable trier of fact could find that the alleged underlying genocidal acts occurred and that Karadžić and other alleged JCE members possessed the requisite genocidal intent;¹⁶

CONSIDERING FURTHER that the Rule 98 *bis* Appeal Judgement states that Karadžić's culpability for the crimes charged under Count 1 of the Indictment remains an open question that must be considered by the Trial Chamber after hearing evidence adduced by the defence;¹⁷


FINDING that in these circumstances the Trial Chamber correctly determined that the Rule 98 *bis* Appeal Judgement made a final determination with regard to Karadžić's Rule 98 *bis* motion for acquittal;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Appeal in its entirety.

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

Done this 12th day of September 2013,
At The Hague,
The Netherlands.


Judge Theodor Meron
Presiding

[Seal of the Tribunal]

¹⁵ See Rule 98 *bis* Appeal Judgement, paras 109-112.

¹⁶ Rule 98 *bis* Appeal Judgement, paras 102, 115.

¹⁷ Rule 98 *bis* Appeal Judgement, para. 116.