



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-00-39-AR98bis.1

Date: 4 October 2005

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Florence Mumba
Judge Mehmet Güney
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Order of: 4 October 2005

THE PROSECUTOR

v.

MOMČILO KRAJIŠNIK

DECISION ON APPEAL OF RULE 98 BIS DECISION

Office of the Prosecutor

Mr. Mark B. Harmon

Mr. Alan Tieger

Mr. Thomas Hannis

Counsel for the Accused:

Mr. Nicholas Stewart QC

Mr. David Josse

1. Momčilo Krajišnik (“Appellant”) has purported to file before the Appeals Chamber an appeal against the Trial Chamber’s decision on a Rule 98*bis* application.¹ The Appellant claims that his appeal is filed as of right pursuant to Rule 108 of the Rules of Evidence and Procedure (“Rules”).²

2. It has been the practice in this Tribunal that appeals against decisions of a Trial Chamber denying an accused’s Rule 98*bis* motion require certification of the Trial Chamber for the Appeals Chamber to be properly seised.³ Motions to the Trial Chamber to acquit an accused at the end of the Prosecution case are other motions falling within the purview of Rule 73 of the Rules.

3. In this Appeal, however, the Appellant says that the amendment to Rule 98*bis* removes the requirement of certification.⁴ The Appellant grounds this argument on the removal of the word “motion” from Rule 98*bis*. He says that under the previous Rule the accused would move the Trial Chamber by way of motion to enter a judgement of acquittal. The amended version of the Rule does not require the submission of a motion by a party. Instead it places an obligation on a Trial Chamber, “after hearing the oral submissions of the parties, to enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction”.⁵ The Appellant claims that the practical effect of the amendment is that any appeal pursuant to the amended version of Rule 98*bis* falls within the scope of Rule 108.⁶ That Rule states:

A party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgment was pronounced, file a notice of appeal, setting forth the grounds. The Appellant shall also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by the motion, authorise a variation of the grounds of appeal.

¹ Appeal Against Judgment Pursuant to Rule 98*bis*, 16 September 2005 (“Appeal”); *Prosecutor v Momčilo Krajišnik*, Case No.IT-00-39, oral decision of 19 August 2005, T. 17112-17133.

² *Ibid*, para.3.

³ *Prosecutor v Brđanin*, Case No: IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004.

⁴ Prior to the amendment adopted on 8 December 2004, the Rule read: (A) An accused may file a motion for the entry of judgement of acquittal on one or more offences charged in the indictment within seven days after the close of the Prosecutor’s case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85(A)(ii). See Rules, IT/32/Rev.32.

⁵ Amended Rule 98*bis*, as amended on 8 December 2004: At the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgment of acquittal on any count if there is no evidence capable of supporting a conviction; Appeal, para. 7.

⁶ Appeal, para.8.

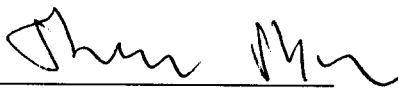
4. The Appellant further relies upon a statement made by a Trial Judge that there is a right of appeal from decisions taken on a Rule 98*bis* motion as further support for his claim that this appeal is of right and falls within the scope of Rule 108.⁷

5. The amendment to Rule 98*bis* was not intended to impinge upon the already established practice of the Tribunal that appeals against judgements denying acquittal require certification of a Trial Chamber. The Appellant is correct to point out that under the old Rule 98*bis* the accused was required to submit a motion to the Trial Chamber to enter a judgement of acquittal and that there is no such requirement under the amended Rule. However, the logical extension of the Appellant's argument is that every time a Trial Chamber acts (or declines to act) *proprio motu* an accused would have a right to appeal. That is clearly not the case. Under the Rules of the Tribunal the only time a party has a right of interlocutory appeal is under the specific grounds identified in Rule 72 or when another rule specifically so provides. All other interlocutory appeals have to go through the certification procedure set forth by Rule 73.

6. The Appeals Chamber will not entertain appeals of accused pursuant to Rule 98*bis*, unless those appeals have been certified by the Trial Chamber.

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

Done this 4th day of October 2005,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding

[Seal of the Tribunal]

⁷ *Ibid*, para.11.