

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 5 April 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR FINDING OF NO CASE TO ANSWER:  
SHELLING INCIDENT G9

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The Office of the Prosecutor:

Mr. Alan Tieger  
Ms. Hildgard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber, pursuant to Rules 54 and 73, for a finding that he has no case to answer for scheduled shelling incident G9—the 22 December 1994 shelling of a flea market in Sarajevo.

2. In the *Dragomir Milosevic* case, the Appeals Chamber held that the evidence was insufficient to establish beyond a reasonable doubt that the Bosnian Serb side was responsible for that shelling.<sup>1</sup> The prosecution in Dr. Karadzic's trial has now presented all of its evidence on that incident and has failed to adduce any additional testimony or exhibit which would warrant a different result. Since this Trial Chamber is bound to follow the Appeals Chamber precedent, it must acquit Dr. Karadzic of this incident. Therefore, for the sake of judicial economy, it should now find that Dr. Karadzic has no case to answer as to scheduled shelling incident G9.

**“No Case to Answer”**

3. Rule 98 *bis* provides:

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 judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

4. The purpose of this rule is judicial economy. If at the end of the prosecution case, the prosecution has failed to adduce sufficient evidence to support a conviction on a count of the indictment, an accused should not have to mount a defence case as to that count. However, by its terms, Rule 98 *bis* applies to a “count”. The relief sought by this motion applies to a scheduled incident. Trial Chambers of the ICTR have held that Rule 98 *bis* applies only to counts and not paragraphs of the indictment.<sup>2</sup>

<sup>1</sup> *Prosecutor v Milosevic*, No. IT-98-29/1-A, *Judgement* (12 November 2009) at paras. 230-31

<sup>2</sup> *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Motions for Judgement of Acquittal* (2 February 2005) at para. 8; *Prosecutor v Mpambara*, No. ICTR-2001-65-T, *Decision on the Defence's Motion for Judgement of Acquittal* (21 October 2005) at para. 6,8; *Prosecutor v Muvunyi*, No. ICTR-2000-55A-T, *Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 bis* (13 October 2005) at para. 39; *Prosecutor v Rwamakuba*, No. ICTR-98-44C-T, *Decision on Defence Motion for Judgement of Acquittal* (28 October 2005) at para. 8; *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Defence Motions Pursuant to Rule 98 bis* (22 November 2005) at para.12; *Prosecutor v Zigiranyirazo*, No. ICTR-2001-73-T, *Decision on the Defence Motion Pursuant to Rule 98 bis* (17 October 2006) at para. 12; *Prosecutor v Zigiranyirazo*, No. ICTR-2001-73-T, *Decision on the Defence Motion Pursuant to Rule 98 bis* (21 February 2007) at para.10; *Prosecutor v Nchamihigo*, No. ICTR-2001-63-T, *Decision on Defence Motion for Judgement of Acquittal* (8 March 2007) at para.16; *Prosecutor v Nindiliyimana et al*, No. ICTR-2000-56-T, *Decision on Defence Motions for Judgement of Acquittal* (20 March 2007) at para. 10; *Prosecutor v Rukundo*, No. ICTR-2001-70-T, *Decision on Defence Motion for*

5. Therefore, it does not appear that Rule 98 *bis* can operate to remove an unproven allegation from an indictment that is not a “count”.

6. Rule 54 provides that:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

7. A plain reading of that Rule would appear to encompass an order for the conduct of the trial which would find that an accused has no case to answer as to a particular scheduled incident.

8. The Appeals Chamber noted in the *Haradinaj* case that Rule 54 includes the power to order that proceedings be adjourned or stayed.<sup>3</sup> At the ICTR, a Trial Chamber has held that Rule 54, along with Articles 19 and 20 of the Statute, allows a Trial Chamber to hold, at the conclusion of the prosecution case, that the accused has no case to answer as to certain paragraphs of the indictment upon which the prosecution has led no evidence.<sup>4</sup>

9. Therefore, the Trial Chamber has the authority to determine that Dr. Karadzic has no case to answer for the shelling of the flea market as alleged in Schedule G9. Because all of the evidence of that shelling has already been presented, and because Dr. Karadzic is not expected to wait until the close of the prosecution’s entire case to begin preparing his defence case to the Sarajevo events, the Trial Chamber should, in the interest of judicial economy, decide the motion at this time.<sup>5</sup>

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*Judgement of Acquittal Pursuant to Rule 98 bis* (22 March 2007) at para. 5; *Prosecutor v Bikindi*, No. ICTR-2001-72-T, *Decision on Defence Motion for Judgement of Acquittal* (26 June 2007) at para. 12; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera and Edouard Karemera’s Motions for No Case to Answer* (19 March 2008) at para. 3; *Prosecutor v Ntawukulilyayo*, No. ICTR-05-82-T, *Decision on Defence Motion for No Case to Answer* (2 July 2009); *Prosecutor v Nizeyimana*, No. ICTR-2000-55C-T, *Decision on Defence Motion for Judgement of Acquittal* (16 March 2011) at para. 6

<sup>3</sup> *Prosecutor v Haradinaj et al*, No. IT-04-84-A, *Judgement* (19 July 2010) at para. 36

<sup>4</sup> *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera and Edouard Karemera’s Motions for No Case to Answer* (19 March 2008) at para. 3

<sup>5</sup> Should the Trial Chamber postpone its consideration of this issue, Dr. Karadzic will be forced to deploy resources of his investigators and ballistics experts to rebut the evidence of this shelling incident since the scope of his case is so great, and the period between the end of the prosecution case and the expected commencement of the defence case is not expected to be long enough for him to delay his preparation of the Sarajevo component of the case.

## The Facts

10. In the *Dragomir Milosevic* case, the Appeals Chamber analyzed the evidence concerning the flea market shelling. It noted that the evidence clearly showed that both shells were fired from the direction of south-east.<sup>6</sup> The same evidence of this was introduced in Dr. Karadzic's case.<sup>7</sup>

11. The Appeals Chamber concluded that this evidence was insufficient to establish that the source of fire was the Bosnian Serb side, rather than Bosnian Muslim side, as both armies had positions south-east of the flea market and it was impossible to determine the distance from which the shell was fired.<sup>8</sup> No additional evidence of the distance was introduced in Dr. Karadzic's case.<sup>9</sup>

12. Therefore, there is no basis upon which this Trial Chamber can conclude, consistent with the Appeals Chamber jurisprudence, that the Bosnian Serbs were responsible for the shelling which is the subject of incident G9.

## Conclusion

13. In its *Decision on Accused's Motion to Strike Scheduled Shelling Incident on Grounds of Collateral Estoppel* (31 March 2010), the Trial Chamber held that the prosecution was not estopped from presenting evidence of the flea market shelling by virtue of the Appeals Chamber decision in the *Milosevic* case and that "in the trial of an individual who has not been tried before, both the Prosecution and the defence should be able to present their best evidence in relation to all the issues relevant to the case, including those that may have been touched upon or adjudicated by other Chambers."<sup>10</sup>

14. The prosecution has now had the opportunity to introduce its best evidence concerning the flea market shelling. It has failed to introduce any new evidence as to the distance which the shells traveled. Therefore, the Trial Chamber should now hold that Dr. Karadzic has no case to answer on scheduled incident G9 so that he can focus his

<sup>6</sup> *Prosecutor v Milosevic*, No. IT-98-29/1-A, *Judgement* (12 November 2009) at para. 229

<sup>7</sup> Adjudicated fact #3032; Exhibit P1276; Amalgamated witness statement of Ekrem Suljevic at paras. 45,47

<sup>8</sup> *Prosecutor v Milosevic*, No. IT-98-29/1-A, *Judgement* (12 November 2009) at para.230

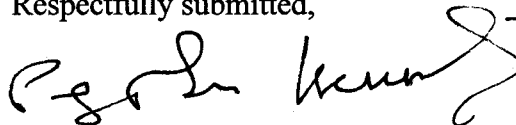
<sup>9</sup> In fact, even less evidence was introduced in Dr. Karadzic's case than in the *Milosevic* case, which featured the testimony of Witness W-12 that from the sound of the shell, he concluded that it must have been fired from Bosnian Serb controlled territory. See *Prosecutor v Milosevic*, No. IT-98-29/1-A, *Judgement* (12 November 2009) at para.230.

<sup>10</sup> para. 8

limited resources on defending allegations for which he may possibly be held responsible.

Word count: 1495

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic<sup>11</sup>

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<sup>11</sup> The assistance of Legal Intern Kejia Guo of China and The Netherlands in the research for this motion is gratefully acknowledged.