

IT-95-5/18-T  
D85672-D85669  
05 MAY 2014

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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 May 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR BIFURCATED JUDGEMENT

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The Office of the Prosecutor:

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic expects to be acquitted in this case. However, he respectfully moves the Trial Chamber for an order that any sentence in his case, if he is convicted, be imposed in a separate sentencing judgement rather than as part of a single judgement.

2. The reason for this request is based on the extraordinary broad scope of the indictment in Dr. Karadzic's case. The Trial Chamber will have to deliberate on 340 possible verdicts: 263 separate crimes contained in the schedules to the indictment<sup>1</sup> and 77 separate decisions on the mode of liability.<sup>2</sup> If it finds Dr. Karadzic guilty, the Trial Chamber's sentence will necessarily depend on which underlying crimes it finds to have been committed and under what mode of liability it determines Dr. Karadzic responsible for such crimes.

3. Until such decisions are known to the parties, it is impossible to make reasoned submissions on the sentence such a conviction should draw. For example, if Dr. Karadzic is acquitted of the two genocide counts, his sentence ought to be different than if he was convicted on all crimes. If Dr. Karadzic is found liable only as a superior for failure to prevent or punish some crimes, his sentence ought to be different than if he was found to have planned or ordered the crimes.

4. While in a case of more limited scope, the parties might be expected to address all of the contingencies in its closing briefs before a unitary judgement, in this case that task is simply not possible due to the almost infinite number of possible outcomes. If the parties' sentencing submissions are to be meaningful in this case, they should be made after having knowledge of what Dr. Karadzic has been convicted of. This is not only a matter of fairness to the parties, but the Trial Chamber itself would be greatly assisted by such focused submissions.

5. The issuance of a separate sentencing judgement, if there is a conviction in this case, will not require the parties to present any additional evidence. All of the evidentiary matters relevant to sentencing have been presented during the trial. Dr. Karadzic does not even insist on an oral argument on the issue of sentence. All that

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<sup>1</sup> Schedule A—30; Schedule B—32; Schedule C—51; Schedule D—98; Schedule E—21; Schedule F—16; Schedule G—15

<sup>2</sup> 11 counts x 7 modes of liability (planning, instigating, ordering, JCE I, JCE III, aiding & abetting, and superior responsibility) for each count

would be necessary would be simultaneous written submissions from the parties, which could be filed within seven days of the judgement, setting forth the parties' recommendations for an appropriate sentence, and a reasoned basis for those recommendations, in light of the Trial Chamber's findings.

6. This modest proposal will not significantly delay the conclusion of these proceedings. Not having to deal with sentencing issues will in fact allow the Trial Chamber to issue its judgement of conviction or acquittal earlier than a consolidated judgement. If there is an acquittal, the parties will have saved considerable resources by not having to brief issues of sentencing. If there is a conviction, the short delay of seven days to receive the parties' submissions before commencing sentencing deliberations would be negligible in the overall time of this trial.

7. While a unitary judgement has been the practice at this Tribunal, there is nothing in the statute or the rules that preclude the Trial Chamber from issuing a separate sentencing judgement. At one time, Rule 87(C) provided that "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 to each finding of guilt." However, that Rule was amended in December 2000 and no longer contains that mandatory language.<sup>3</sup>

8. International Tribunals that have been created after the ICTY and ICTR have adopted the procedure of issuing a separate sentencing judgement.<sup>4</sup> This reflects 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. Dr. Karadzic's case is certainly one of the more complex cases to be heard by such tribunals.

9. Therefore, Dr. Karadzic respectfully moves for an order that the issue of his sentence, if he is convicted, be determined in a separate sentencing judgement in this case

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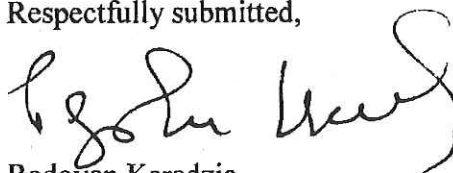
<sup>3</sup> The Rule now provides that: If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

<sup>4</sup> International Criminal Court Article 76(2); Special Court for Sierra Leone Rule 100; Special Tribunal for Lebanon Rule 171(A).

and that the parties be allowed to address the issue of sentencing in submissions filed after any judgement of conviction.

Word count: 922

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic