

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-AR98bis.1

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

Date: 22 July 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR CLARIFICATION

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Dr. Radovan Karadzic

1. On 11 July 2013, the Appeals Chamber issued its *Judgement* in this case, reversing the Trial Chamber's acquittal of Dr. Radovan Karadzic, reinstating Count One of the Indictment, and remanding the matter to the Trial Chamber for further action consistent with the *Judgement*.¹ Dr. Karadzic now files a motion for clarification after the parties find themselves in disagreement over exactly what the Appeals Chamber intended its disposition to be.

2. In his *Motion to Sever Count One*, Dr. Karadzic interpreted the *Judgement* as one which reversed findings of the Trial Chamber on two aspects of the *actus reus* of genocide and one aspect of *mens rea*, reinstated Count One, and remanded the matter for the Trial Chamber to decide the Motion for Judgement of Acquittal anew, in light of the guidance provided in the *Judgement*.²

3. Dr. Karadzic found support for his interpretation of the *Judgement* from two aspects of its reasoning.

4. First, in declining to address the prosecution's ground of appeal concerning alternative modes of liability under Count One, the Appeals Chamber said that "the relevant analysis, including the analysis of the remaining modes of liability, will necessarily be reconsidered by the Trial Chamber in light of the present Judgement."³

5. Second, in declining to address Dr. Karadzic's principal contention that there was no confluence of *actus reus* and *mens rea* and therefore no genocide in the municipalities of Bosnia in 1992, the Appeals Chamber said that having reversed findings of the Trial Chamber on genocidal intent, serious bodily harm, and conditions of life calculated to destroy, "it would be premature for the Appeals Chamber to consider Karadzic's submissions."⁴

6. In the *Prosecution Response to Karadzic's Motion to Sever*, the prosecution contends that the Appeals Chamber decided the Motion for Judgement of Acquittal itself, denying the motion, and that the references to further action pertain to the decision on Count One to be made by the Trial Chamber in connection with the final judgement.⁵

¹ *Judgement* at para. 117

² *Motion to Sever Count One* (16 July 2013) at paras. 7-11

³ *Judgement* at para. 107

⁴ *Judgement* at para. 112

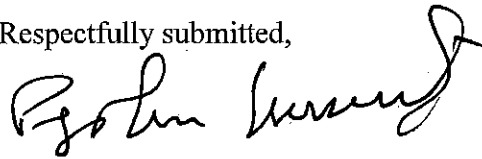
⁵ *Prosecution Response to Karadzic's Motion to Sever* (19 July 2013) at paras. 2-6

7. Because the dispute affects the future course of the proceedings Dr. Karadzic moves for clarification from the Appeals Chamber as to exactly what it meant when remanding the matter for “further action consistent with this Judgement”.

8. The Appeals Chamber has consistently provided clarification of its decisions when requested by a party.⁶ It is respectfully requested to do so in this case,

Word count: 562

Respectfully submitted,



Radovan Karadzic

⁶ *Prosecutor v Prlic et al*, No. IT-04-74-AR65.1, *Decision on Motions for Reconsideration, Clarification, Request for Relief and Applications for Leave to Appeal* (8 September 2004) at paras. 15-17; *Nahimana et al v Prosecutor*, No. ICTR-98-52-A, *Decision on Jean-Bosco Barayagwiza's Motion for Clarification and Guidance...* (8 December 2006) at paras. 11-12; *Niyitegeka v Prosecutor*, No. ICTR-96-14-R75, *Decision on Motion for Clarification* (20 June 2008).