



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: 9 November 2012

Original: English

IT-95-5/18-AR98bis.1
A 2107-A2105
09 NOVEMBER 2012

2109
JF

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

Decision: 9 November 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION TO STRIKE
PROSECUTION'S BRIEF**

Office of the Prosecutor:

Mr. Peter Kremer QC

The Accused:

Mr. Radovan Karadžić

Standby Counsel:

Mr. Richard Harvey

1. 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) is seised of the “Motion to Strike Prosecution’s Brief” filed by Radovan Karadžić (“Karadžić”) on 28 September 2012 (“Motion”). On 5 October 2012, the Office of the Prosecutor (“Prosecution”) filed its Response.¹ On 8 October 2012, Karadžić filed his Reply.²

I. BACKGROUND

2. On 28 June 2012, Trial Chamber III of the Tribunal (“Trial Chamber”) rendered a judgement of acquittal of Count 1 of the Indictment³ (“Judgement of Acquittal”).⁴ On 11 July 2012, the Prosecution filed its Notice of Appeal against the Judgement of Acquittal.⁵ The Prosecution filed its Appeal Brief on 24 September 2012.⁶ Karadžić responded to the Prosecution’s appeal on 5 November 2012.⁷

II. APPLICABLE LAW

3. Rule 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that “[a] party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal, setting forth the grounds.” Rule 111(A) of the Rules requires that “[a]n Appellant’s brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 108” of the Rules. Rule 111(B) of the Rules provides that “[w]here the Prosecutor is the Appellant, the Prosecutor shall make a declaration in the Appellant’s brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.”

¹ Response to Motion to Strike Prosecution’s Rule 98bis Appeal Brief, 5 October 2012 (public with confidential appendices) (“Response”).

² Reply to Motion to Strike Prosecution’s Brief, 8 October 2012 (“Reply”).

³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution’s Marked-Up Indictment, 19 October 2009, Appendix A (“Indictment”).

⁴ T. 28 June 2012 pp. 28762-28770, 28774.

⁵ Prosecution Notice of Appeal of Judgement of Acquittal under Rule 98bis, 11 July 2012 (“Notice of Appeal”).

⁶ Prosecution Rule 98bis Appeal Brief, 24 September 2012 (confidential) (“Appeal Brief”). A public and redacted version of the Appeal Brief was filed on 25 September 2012.

⁷ Respondent’s Brief, 5 November 2012 (confidential) (“Response Brief”). A public and redacted version of the Response Brief was filed on the same day.

III. DISCUSSION

A. Submissions

4. Karadžić submits that the Prosecution failed to include a declaration of compliance with its disclosure obligations as required by Rule 111(B) of the Rules (“Declaration”) in the Appeal Brief.⁸ Karadžić accordingly requests that the Appeal Brief be stricken, particularly in light of the Prosecution’s previous disclosure violations,⁹ and contends that the Prosecution ought to be “required to seek leave to re-file a proper brief, including a showing of good cause why [...] it failed to comply with basic requirements of the Rules of Procedure and Evidence.”¹⁰

5. The Prosecution responds that it is “inappropriate and unnecessary” to include a Declaration at this stage of the trial.¹¹ According to the Prosecution, Rule 111(B) of the Rules “is a mechanism for the Appeals Chamber to monitor disclosure when a trial is complete and an appeal has been filed.”¹² The Prosecution contends that there is therefore no need for a Declaration where, as here, there is a discrete appeal filed pursuant to Rule 98*bis* of the Rules in the midst of an ongoing trial.¹³ Further, the Prosecution submits that while the Appeal Brief “[t]echnically” falls within Rule 108 of the Rules, it is more akin to an interlocutory appeal for which no declaration is required.¹⁴ The Prosecution adds that the Trial Chamber has mechanisms in place pursuant to Rules 66 and 68 of the Rules to supervise the Prosecution’s compliance with its ongoing disclosure obligations.¹⁵

6. Alternatively, the Prosecution requests an exemption from the requirements of Rule 111(B) of the Rules.¹⁶ In the event that a Declaration is required and an exemption is denied, the Prosecution submits that the striking of its Appeal Brief would be disproportionate and accordingly seeks leave to file a corrigendum including the appropriate Declaration.¹⁷

7. Karadžić replies that, in light of the final nature of the Trial Chamber’s Judgement of Acquittal, issues related to the disclosure of evidence with respect to Count 1 of the Indictment lie within the jurisdiction of the Appeals Chamber, rather than the Trial Chamber.¹⁸ Karadžić further requests that, if the Appeals Chamber permits the Prosecution to “amend” its Appeal Brief by

⁸ Motion, paras 1-4.

⁹ Motion, paras 1, 4-5.

¹⁰ Motion, para. 6. *See also* Reply, paras 4, 6.

¹¹ Response, para 1. *See also* Response, paras 3-4.

¹² Response, para. 1.

¹³ Response, paras 1, 3-4.

¹⁴ Response, para. 3.

¹⁵ Response, para. 4.

¹⁶ Response, paras 2, 6, 9.

¹⁷ Response, paras 2, 7-9.

¹⁸ Reply, para. 3.

including a Declaration, he should be granted an extension of time to file his response to the “amended” Appeal Brief.¹⁹

B. Analysis

8. The Appeals Chamber considers that the Prosecution’s appeal against the Judgement of Acquittal is an appeal against a final judgement. In this respect, the Appeals Chamber observes that the Prosecution has generally complied with the Rules governing an appeal of a final judgement. Specifically, the Prosecution filed its Notice of Appeal within 30 days of the Judgement of Acquittal pursuant to Rule 108 of the Rules,²⁰ and filed the Appeal Brief within 75 days of the filing of the Notice of Appeal, in accordance with Rule 111(A) of the Rules.²¹ Similarly, the Prosecution filed a book of authorities in accordance with the time-limit set out in Rule 111(A) of the Rules.²² Moreover, the Appeals Chamber observes that the Prosecution argued before the Trial Chamber that the procedure applicable to an appeal of a final judgement should be applied to its appeal of the Judgement of Acquittal.²³ The Appeals Chamber therefore considers that the Prosecution cannot now justify the absence of a Declaration by arguing that an appeal of a judgement of acquittal is more akin to an interlocutory appeal.

9. Accordingly, and notwithstanding the existence of other mechanisms that permit the Trial Chamber to verify the Prosecution’s ongoing compliance with its disclosure obligations, the Appeals Chamber considers that the Prosecution was required to include a Declaration in the Appeal Brief attesting to its compliance with the disclosure obligations in relation to evidence concerning Count 1 of the Indictment. The Prosecution has failed to demonstrate that an exemption from this requirement is warranted.

10. While the Prosecution should have included a Declaration pursuant to Rule 111(B) of the Rules in the Appeal Brief, the Appeals Chamber does not consider that Karadžić has demonstrated any prejudice as a result of the absence of this Declaration. Similarly, the Appeals Chamber does not consider that the addition of a Declaration will change the content of the submissions in the Appeal Brief. In these circumstances, and in light of Karadžić’s filing of his Response Brief, the Appeals Chamber dismisses as moot Karadžić’s request for an extension of time to file his response to an “amended” Appeal Brief.

¹⁹ Reply, para. 6.

²⁰ See Judgement of Acquittal (rendered 28 June 2012); Notice of Appeal (filed 11 July 2012).

²¹ See Notice of Appeal (filed 11 July 2012); Appeal Brief (filed 24 September 2012).

²² Notice of Filing Book of Authorities for Prosecution Rule 98bis Appeal Brief, 25 September 2012.

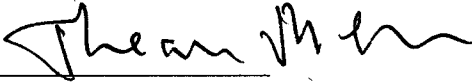
²³ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution Request for Certification to Appeal Judgement of Acquittal under Rule 98bis, 3 July 2012, para. 3.

IV. DISPOSITION

11. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion, in part, and **ORDERS** the Prosecution to file a corrigendum to its Appeal Brief, including a Declaration pursuant to Rule 111(B) of the Rules in relation to evidence concerning Count 1 of the Indictment, within ten days of the date of this decision.

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

Done this 9th day of November 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding

[Seal of the Tribunal]