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Date Created/ Daté du :	22 July 2016	Date transmitted/ Transmis le :	22 July 2016
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-13-55-A

Date: 22 July 2016

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge William Hussein Sekule
Judge Vagn Prüsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana**

Registrar:

Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

PROSECUTION'S NOTICE OF APPEAL

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Karadžić:

Mr. Peter Robinson

PROSECUTION'S NOTICE OF APPEAL

1. Pursuant to Article 23 of the Statute of the International Residual Mechanism for Criminal Tribunals ("MICT") and Rule 133 of the MICT's Rules of Procedure and Evidence, the Prosecution files this Notice of Appeal setting out its grounds of appeal against the Judgement of Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, dated 24 March 2016 ("Judgement"), and the relief sought.

2. Whenever this Notice of Appeal refers to an error of law, it is one that invalidates the verdict. Whenever reference is made to an error of fact, it is one that occasions a miscarriage of justice.

I. GROUND 1: THE TRIAL CHAMBER ERRED IN LAW AND/OR IN FACT IN FAILING TO FIND THAT THE JCE3 CRIMES FORMED PART OF THE COMMON CRIMINAL PURPOSE AND THAT KARADŽIĆ SHARED THE INTENT FOR THOSE CRIMES

3. The Trial Chamber erred in law and/or in fact in failing to conclude in paragraph 3466¹ that extermination (Count 4), murder (Counts 5 and 6) and persecution by the underlying acts of killings, cruel and/or inhumane treatment (through torture, beatings, physical and psychological abuse, rape and other acts of sexual violence, and the establishment and perpetuation of inhumane living conditions in detention facilities), forced labour at the frontlines and use of human shields, appropriation or plunder of property, and the wanton destruction of private and public property, including cultural monuments and sacred sites (Count 3) ("the JCE3 crimes") were included in the common criminal purpose to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in the Municipalities ("Overarching JCE") and that Karadžić shared the intent for the JCE3 crimes.

4. Had the Chamber not so erred, it would have found Karadžić responsible for the JCE3 crimes pursuant to the first category of joint criminal enterprise ("JCE") liability ("JCE1")²

¹ See also Judgement, paras.563, 569.

² See Judgement, paras.3463-3466, 3524.

rather than the third category of JCE liability (“JCE3”).³ This error also had an impact on the Chamber’s failure to find that Karadžić and other JCE members had genocidal intent with respect to Count 1.⁴

5. This error occurred as a result of the following sub-errors, individually and/or cumulatively:

A. Sub-ground 1(A): The Trial Chamber applied an incorrect legal standard

6. The Trial Chamber erred in law in paragraph 3466⁵ by treating the “reasonable inference” that Karadžić “did not care enough to stop pursuing the common plan” as an inference inconsistent with a finding that the JCE3 crimes formed part of the common criminal purpose and that Karadžić shared the intent for those crimes.

B. Sub-ground 1(B): The Trial Chamber erred in fact in failing to find that the JCE3 crimes formed part of the common criminal purpose and that Karadžić shared the intent for those crimes

7. The Trial Chamber erred in fact by concluding in paragraph 3466 that the JCE3 crimes were not included in the common criminal purpose of the Overarching JCE and that Karadžić did not share the intent for those crimes.⁶ Having regard to the totality of the evidence and the Chamber’s own factual findings, no reasonable trier of fact could have reached such conclusions.

REMEDY

8. The Prosecution requests that the Appeals Chamber:
- a. correct the Trial Chamber’s errors;
 - b. find that the JCE3 crimes were included in the common criminal purpose of the Overarching JCE and that Karadžić shared the intent for the JCE3 crimes;

³ See Judgement, paras.3512-3524.

⁴ See e.g. Judgement, paras.2592, 2595, 2625-2626.

⁵ See also Judgement, paras.563, 569.

⁶ The Trial Chamber made a related factual error in paragraph 3433 by concluding that the fact that Karadžić rewarded or promoted his subordinates whom he knew had committed crimes demonstrated that he was “indifferent to whether they participated in criminal activity directed at non-Serbs during the conflict as long as the core objectives of the Bosnian Serbs were fulfilled”.

- c. substitute the finding that Karadžić is responsible for committing the JCE3 crimes pursuant to JCE3 with a finding that he is responsible for these crimes pursuant to JCE1;
- d. re-evaluate genocidal intent with respect to Count 1 together with the re-evaluation of genocidal intent requested under Grounds 2 and 3 and, in accordance with the overall remedy requested under Ground 3, find that Karadžić and other JCE members possessed genocidal intent;
- e. convict Karadžić of genocide under Count 1 pursuant to Article 7(1) of the Statute based on his participation in and contributions to the Overarching JCE; and
- f. increase Karadžić's sentence accordingly.

II. GROUND 2: THE TRIAL CHAMBER ERRED IN LAW AND/OR IN FACT IN FAILING TO FIND THAT MEMBERS OF THE BOSNIAN MUSLIM AND BOSNIAN CROAT GROUPS WERE SUBJECTED TO DESTRUCTIVE CONDITIONS OF LIFE WITHIN THE MEANING OF ARTICLE 4(2)(C)

9. The Trial Chamber erred in law and/or in fact in finding in paragraphs 2583 to 2587⁷ that the evidence did not establish that conditions of life calculated to bring about physical destruction in whole or in part for the purposes of Article 4(2)(c) of the Statute were imposed on the Bosnian Muslim and Bosnian Croat groups (together “the Groups”) in detention facilities in the municipalities listed in Count 1 of the Indictment⁸ (“the Count 1 Municipalities”).

10. Had the Chamber not so erred, it would have found that the elements of Article 4(2)(c) had been established on the evidence. This error also had an impact on the Chamber's failure to find that Karadžić and other JCE members had genocidal intent with respect to Count 1.⁹

11. This error occurred as a result of the following sub-errors, individually and/or cumulatively:

⁷ See also Judgement, paras.546-548.

⁸ *Prosecutor v. Radovan Karadžić*, Case No.IT-95/5/18-PT, Prosecution's Marked-Up Indictment, 19 October 2009, Appendix A (“Indictment”), para.38.

⁹ See e.g. Judgement, para.2624.

A. Sub-ground 2(A): The Trial Chamber erred in law by failing to provide a reasoned opinion

12. The Trial Chamber erred in law in paragraphs 2583 to 2587 in failing to provide a reasoned opinion when assessing whether the elements of Article 4(2)(c) of the Statute were established in relation to conditions in detention facilities in the Count 1 Municipalities.

B. Sub-ground 2(B): The Trial Chamber erred in law by compartmentalising its analysis of the evidence, including evidence regarding different genocidal acts

13. The Trial Chamber erred in law in paragraphs 2583 to 2587¹⁰ by improperly compartmentalising its assessment of the evidence, including evidence regarding different genocidal acts, when assessing whether the elements of Article 4(2)(c) of the Statute were established in relation to conditions in detention facilities in the Count 1 Municipalities.

C. Sub-ground 2(C): The Trial Chamber erred in fact in finding that the elements of Article 4(2)(c) had not been established

14. The Trial Chamber erred in fact in concluding in paragraphs 2583 to 2587 that the elements of Article 4(2)(c) of the Statute were not established in relation to conditions in detention facilities in the Count 1 Municipalities. Having regard to the totality of the evidence and the Chamber's own factual findings, no reasonable trier of fact could have reached such a conclusion.

REMEDY

15. The Prosecution requests that the Appeals Chamber:
- a. correct the Trial Chamber's errors;
 - b. find that the elements of Article 4(2)(c) of the Statute were met in relation to conditions in detention facilities in the Count 1 Municipalities;
 - c. re-evaluate genocidal intent with respect to Count 1 together with the re-evaluation of genocidal intent requested under Grounds 1 and 3 and, in accordance with the overall remedy requested under Ground 3, find that Karadžić and other JCE members possessed genocidal intent;

¹⁰ See also Judgement, paras.546-548.

- d. convict Karadžić of genocide under Count 1 pursuant to Article 7(1) of the Statute based on his participation in and contributions to the Overarching JCE; and
- e. increase Karadžić's sentence accordingly.

III. GROUND 3: THE TRIAL CHAMBER ERRED IN LAW AND/OR IN FACT IN FAILING TO FIND THAT KARADŽIĆ AND OTHER JCE MEMBERS POSSESSED GENOCIDAL INTENT

16. The Trial Chamber erred in law and/or in fact in paragraphs 2588 to 2626¹¹ when it failed to find that Karadžić and other JCE members possessed genocidal intent as charged under Count 1.

17. Had the Chamber not so erred, it would have found that Karadžić and other JCE members possessed genocidal intent with respect to one or more parts of the Groups in the Count 1 Municipalities and that genocide formed part of the common criminal purpose of the Overarching JCE and convicted Karadžić of genocide under Count 1.¹²

18. This error occurred as a result of the following sub-errors, and the errors alleged in Grounds 1 and 2, individually and/or cumulatively:

A. Sub-ground 3(A): The Trial Chamber erred in law by failing to provide a reasoned opinion and/or adjudicate on the Prosecution's allegations on genocidal intent

19. The Trial Chamber erred in law, including in paragraphs 2594, 2605 and 2614 to 2626,¹³ by only assessing genocidal intent in relation to the parts of the Groups in all the Count 1 Municipalities considered cumulatively, thereby failing to provide a reasoned opinion and/or adjudicate on the Prosecution's allegation that the evidence established genocidal intent in relation to one or more parts of the Groups in the Count 1 Municipalities considered individually.

¹¹ See also Judgement, paras.549-555.

¹² See Judgement, para.6071.

¹³ See also Judgement, para.555.

B. Sub-ground 3(B): The Trial Chamber erred in law by concluding that the objective of permanent removal precluded a finding of genocidal intent

20. The Trial Chamber erred in law in paragraphs 2624 to 2625 by concluding that the objective of permanent removal underlying the pattern of crimes in the Count 1 Municipalities precluded a finding of genocidal intent.

C. Sub-ground 3(C): The Trial Chamber erred in law by applying an incorrect legal standard for genocidal intent

21. The Trial Chamber erred in law in paragraphs 2588 to 2626¹⁴ by applying an overly-narrow definition of genocidal intent.

D. Sub-ground 3(D): The Trial Chamber erred in fact in failing to find that Karadžić and other JCE members possessed genocidal intent

22. The Trial Chamber erred in fact in finding in paragraphs 2588 to 2626 that Karadžić and other JCE members did not possess genocidal intent in relation to one or more parts of the Groups in the Count 1 Municipalities. Having regard to the totality of the evidence and the Chamber's own factual findings, no reasonable trier of fact could have reached such a conclusion.

REMEDY

23. The Prosecution requests that the Appeals Chamber:
- a. correct the Trial Chamber's errors together with the errors alleged in Grounds 1 and 2;
 - b. find that Karadžić and other JCE members possessed genocidal intent in relation to one or more of the parts of the Groups in the Count 1 Municipalities, that the crime of genocide was established and that it formed part of the common criminal purpose of the Overarching JCE;
 - c. convict Karadžić of genocide under Count 1 pursuant to Article 7(1) of the Statute based on his participation in and contributions to the Overarching JCE; and
 - d. increase Karadžić's sentence accordingly.

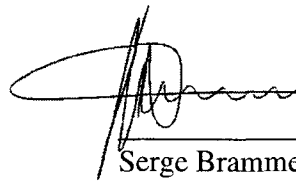
¹⁴ See also Judgement, paras.549-555.

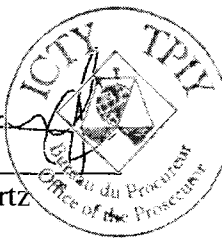
IV. GROUND 4: THE TRIAL CHAMBER ERRED IN LAW AND/OR IN FACT IN IMPOSING A 40-YEAR SENTENCE

24. The Trial Chamber erred in law and/or in fact in paragraphs 6025 to 6072 by imposing a sentence other than a life sentence in light of the Chamber's findings on Karadžić's criminal responsibility and/or by failing to provide reasons for doing so, including by improperly assessing aggravating and mitigating factors.

REMEDY

25. The Prosecution requests that the Appeals Chamber:
- a. correct the Trial Chamber's errors; and
 - b. increase Karadžić's sentence to life imprisonment.


Serge Brammertz
Prosecutor



Dated this 22nd day of July, 2016
At The Hague, The Netherlands.