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BOFAXE



**International Criminal Tribunal for the Former Yugoslavia (ICTY):
Dr. Karadžić acquitted of one genocide count**

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Fokus

In the Karadžić-trial a defendant was acquitted of a count of genocide for the first time following the presentation of the Prosecutor's evidence. This could have significant implications for the Mladić-trial.

Latest press releases:

Prosecution's Marked-up
Indictment, Case No. IT-95-
5/18-PT

98bis Hearing on June 28,
2012

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UN in general.

In the Prosecution's marked-up Indictment from October 19, 2009, Dr. Radovan Karadžić was charged with genocide (Art. 4(3)(a) of the Statute of the ICTY (Statute)), crimes against humanity (Art. 5(a), (b), (d), (h), (j) of the Statute), and violations of the laws or customs of war (Art. 3 of the Statute, murder and taking of hostages as recognised by Common Article 3(1)(a) of the Geneva Conventions by the Prosecutor of the ICTY, pursuant to his authority under Art. 18 of the Statute. He was charged with eleven counts in total, which relate to his role as Supreme Commander of the Bosnian Serb Armed Forces and President of the National Security Council of the Republika Srpska (RS). From March 1992 until about July 19, 1996, Dr. Karadžić was the highest civilian and military authority in the RS.

Both Dr. Karadžić and Ratko Mladić, who was the Commander of the Main Staff of the Bosnian Serb Army until 1996 and promoted to the rank of Colonel General in 1994, were key members of an overarching Joint Criminal Enterprise (JCE), whose objective was to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia and Herzegovina. Both were initially indicted by the Prosecution on July 24, 1995.

Acquittal: After the close of the Prosecutor's case against Dr. Karadžić in May 2012, the Chamber deliberated over a judgment of acquittal pursuant to Rule 98bis of the Rules of Procedure and Evidence of the ICTY (Rules). According to that Rule, the Chamber may enter a judgment of acquittal on any count if there is no evidence capable of supporting a conviction. On June 28, 2012, the Judges dismissed the first count of the Indictment, which accused Dr. Karadžić of genocide in seven Bosnian municipalities (Bratunac, Foča, Ključ, Prijedor, Sanski Most, Vlasenica and Zvornik). A second genocide count relating to the 1995 massacre at Srebrenica remains.

Grounds: The Judges found that a reasonable tier of facts could conclude that Dr. Karadžić voluntarily participated in a JCE aimed at removing Bosnian Muslims and/or Bosnian Croats from Bosnian Serb-claimed territory. Art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". Presiding Judge Kwon said that the test for acquittal was whether a "reasonable tier of fact could be satisfied beyond reasonable doubt". He explained that "the test is not whether a Trial Chamber would convict beyond reasonable doubt, but rather, whether it could do so". The Chamber reviewed evidence relating to the municipalities and found that the evidence "indicates that a large number of Bosnian Muslims and/or Bosnian Croats were killed by Bosnian Serb forces in municipalities during and after their alleged take-over and while in detention". Judge Kwon said that "this evidence is capable of supporting a conclusion that Bosnian Muslims and/or Bosnian Croats were killed on a large scale with persecutory intent", meaning that this allegation would fall under the count of persecutions and not genocide. The evidence did not reach the level of a reasonable tier of fact inferring that a significant section of Bosnian Muslims and/or Bosnian Croats was targeted for destruction. On July 3, 2012, the Prosecution noted that it will file an appeal before the Appeals Chamber against the Judgment of Acquittal pursuant to Rule 108 of the Rules.

Prospect: So far there have been sixteen cases with counts of genocide before the ICTY. It has to be emphasised that this is the first time that a defendant has been acquitted of a count of genocide at this stage of proceedings. That makes it even more interesting to follow the tribunal's future reasoning in comparable cases. Ratko Mladić is also charged with genocide in the respective seven Bosnian municipalities. His trial opened on May 16 and 17, 2012, and the Prosecution's evidence commenced on July 9, 2012. It remains to be seen what the Prosecution will present for that particular count and what the Chamber will decide this time.

Verantwortung

Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum unter der Leitung von Prof. Dr. Hans-Joachim Heintze und Charlotte Lülff, M.A. herausgegeben: IFHV, NA 02/33, Ruhr-Universität Bochum, 44780 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Die BOFAXE werden vom Deutschen Roten Kreuz unterstützt. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: ifhv-publications@rub.de.

Für den Inhalt ist der jeweilige Verfasser allein verantwortlich.