



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-T

Date: 13 May 2011

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 13 May 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR FINDING OF NO CASE TO ANSWER:
SHELLING INCIDENT G9**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL 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 (“Tribunal”) is seised of the Accused’s “Motion for Finding of No Case to Answer: Shelling Incident G9” filed on 5 April 2011 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused requests the Chamber to issue a decision, pursuant to Rules 54 and 73 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), finding he has no case to answer with respect to the alleged shelling of a flea market in Sarajevo on 22 December 1994, described in Schedule G.9 of the Indictment (“Scheduled Shelling Incident G.9”).¹ In support, the Accused cites *Prosecutor v. Dragomir Milošević*, in which the Appeals Chamber held there was insufficient evidence to prove beyond a reasonable doubt that the Bosnian Serb side was responsible for that particular shelling.² He contends that, because the Chamber is bound to follow the Appeals Chamber precedent,³ and because the Office of the Prosecutor (“Prosecution”) has concluded its presentation of evidence relating to Scheduled Shelling Incident G.9,⁴ which is less than in the *Dragomir Milošević* case,⁵ there is insufficient ground for the Chamber to reach a different conclusion with respect to that incident than that reached by the Appeals Chamber in the *Dragomir Milošević* case.⁶ The Accused notes that previous Tribunal decisions finding no case to answer under either Rule 98 *bis* or Rule 54 of the Rules with respect to certain portions of an indictment have occurred after the conclusion of the Prosecution case.⁷ Nevertheless, the Accused asks the Chamber, in the “interest of judicial economy”, to decide this Motion now.⁸

2. On 13 April 2011, the Prosecution filed the “Prosecution Response to Accused’s Motion for Finding of No Case to Answer: Shelling Incident G9” (“Response”). The Prosecution asks the Chamber to dismiss the Accused’s Motion because it “does not comply with the requirements of Rule 98 *bis*”, which the Prosecution contends is the applicable Rule for a motion for finding no case to answer.⁹ This is so primarily because the Prosecution has not yet reached the close of its case.¹⁰ The Prosecution concedes that it has “elected to present evidence

¹ Motion, para. 1.

² *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009, paras. 230–231.

³ Motion, para. 2.

⁴ Motion, para. 2.

⁵ Motion, paras. 10–11.

⁶ Motion, para. 12.

⁷ Motion, paras 4, 8.

⁸ Motion, para. 5.

⁹ Response, para. 1.

¹⁰ Response, para. 3.

relating to the shelling and sniping campaign in Sarajevo in the first phase of its case-in-chief” but it notes that it may still tender additional Sarajevo-related evidence until the conclusion of its case-in-chief.¹¹

3. The Chamber is of the opinion that it would be premature for it to consider the question of sufficiency of evidence in respect of any of the charges in the Indictment before the conclusion of the Prosecution’s evidence in chief. The Chamber holds the view that, notwithstanding the fact that the Prosecution has chosen to present its evidence sequentially, commencing with the Sarajevo-related charges, it would still be open to it to present evidence relevant to any part of the Indictment, including the Sarajevo-related charges, at any time before the conclusion of its case-in-chief.

4. Accordingly, the Trial Chamber hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this thirteenth day of May 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Response, para. 3.