

**UNITED
NATIONS**



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-04-83-R.1
	Date: 17 December 2013
	Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding

Judge Patrick Robinson

Judge Mehmet Güney

Judge Fausto Pocar

Judge Liu Daqun

Registrar: Mr. John Hocking

Decision: 17 December 2013

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

DECISION ON DEFENCE MOTION FOR REVIEW

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel on Record for Rasim Delić:

Ms. Vasvija Vidović

Mr. John R.W.D. Jones QC

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);

BEING SEISED of the “Defence Motion for Review” filed with annexes by Defence Counsel for the late Rasim Delić (“Counsel”) on 20 June 2013 (“Motion for Review”), requesting that the Appeals Chamber, in light of a letter written by Judge Frederik Harhoff on 6 June 2013, revise the judgement issued by Trial Chamber I in this case¹ pursuant to Article 26 of the Tribunal’s Statute and Rule 119 of the Tribunal’s Rules of Procedure and Evidence or, in the alternative, that it complete and release the appeal judgement in this case in the interests of justice;²

NOTING that the Motion for Review is brought “both by Counsel on the record at the ICTY for Mr. Delić in his appeal, and on behalf of Mr. Delić by his next-of-kin”;³

NOTING the response filed by the Office of the Prosecutor (“Prosecution”) on 3 July 2013,⁴ submitting, *inter alia*, that the Motion for Review should be dismissed because the Tribunal’s jurisdiction is limited to living accused or convicted persons and “no one else can initiate a review proceeding on behalf of Delić”;⁵

RECALLING that the Tribunal’s jurisdiction *ratione personae* is limited to living accused or convicted persons;⁶

RECALLING that, following the death of Mr. Delić, the Appeals Chamber also determined that, because Mr. Delić’s son “is not and cannot qualify as a party to any existing proceedings before the Tribunal”, he “has no standing to submit a motion before the Tribunal and cannot be represented by Counsel assigned to Delić”;⁷

¹ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Judgement, 15 September 2008 (“Trial Judgement”).

² Motion for Review, paras 1-3, 33, Annex A.

³ Motion for Review, fn. 3. *See also* Annex B, which is a Power of Attorney from Mr. Delić’s next-of-kin giving Counsel the authority to file the Motion for Review.

⁴ Response to Defence Motion for Review, 3 July 2013 (“Response”).

⁵ Response, para. 1. *See also* Response, paras 2-3, where the Prosecution also submits that there is no need to consider the merits of the motion because it is not validly filed, and that the motion is nothing more than a request for reconsideration.

⁶ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on the Outcome of Proceedings, 29 June 2010 (“Decision on the Outcome of Proceedings”), para. 6. *See also* Decision on the Outcome of Proceedings, para. 8; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on Motion for the Continuation of the Appellate Proceedings, 29 June 2010 (“Decision on the Continuation of Appellate Proceedings”), p. 2; *Georges A. N. Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R68, Decision on Rutaganda’s Pending Motions, 27 October 2010, p. 2.

⁷ Decision on the Continuation of Appellate Proceedings, p. 2.

CONSIDERING therefore that Mr. Delić's next-of-kin do not have standing to submit a motion before the Tribunal and cannot be represented by Counsel;⁸

CONSIDERING further that Counsel have no standing in their own right in circumstances where the appellant has died and the appellate proceedings before the Tribunal have been terminated;


NOTING that the alternative request for completion and release of the appeal judgement does not constitute a request for review, but rather a request for reconsideration of the Appeals Chamber's previous decision to declare the Trial Judgement final and terminate the appellate proceedings in this case,⁹ which is a final decision not subject to reconsideration;¹⁰

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion for Review on the basis that neither Mr. Delić's next-of-kin nor Counsel have *locus standi in judicio*.

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

Dated this 17th day of December 2013,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding

[Seal of the Tribunal]

⁸ See Decision on the Continuation of the Appellate Proceedings, p. 2.

⁹ See Decision on the Outcome of Proceedings, paras 8, 15-16.

¹⁰ See *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A, Delivered on 28 February 2005", 26 June 2006, para. 9, where the Appeals Chamber held that it has no power to reconsider a final judgement. See also, e.g., *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber's Decision of 8 December 2009, 22 January 2010, p. 2; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy, 8 December 2009, p. 2; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006, p. 1139/H (Registry's pagination).