

# Kadic v. Karadzic: introduction

Former Yugoslavia





## Defendant Radovan Karadzic

- President of the self-proclaimed Bosnian-Serb republic (*Republika Srpska*), with ultimate command authority over Bosnian-Serb military forces
- One of the chief architects of the “ethnic cleansing” that took place in Bosnia between 1992 and 1995
- Psychiatrist
- Author of (bad) poetry

From a positive review of Karadzic’s poems in *Borba*, Jan. 21, 1972:

. . . Karadzic has overcome the phase of being in love with the created word. . . . His role is no longer related to books and papers. It is not a game of a poet who chases the nuances and shades with lights in words. It is rather a game of fate, of cat and mouse, of executioner and victim . . . .

In the poem "Sarajevo" the poet warns: “I hear the misfortune marching”. . . . The picture of the peaceful times is just an illusion, semblance because: “I know that all this is preparation for whining; what is the black metal in the garage up to?”

## Plaintiffs

- Classes of Croat and Muslim citizens of Bosnia-Herzegovina who fell victim to Karadzic's forces





## Claims

- Genocide, war crimes and crimes against humanity, summary execution, forced disappearance, torture, cruel, inhuman, or degrading treatment, wrongful death, assault and battery, and intentional infliction of emotional distress
- Based on international law, U.S. law, New York law, and Bosnian law

# Kadic v. Karadzic: claims

From Doe v. Karadzic Complaint:

([http://www.ccr-ny.org/v2/legal/human\\_rights/docs/Doev.Kardic.pdf](http://www.ccr-ny.org/v2/legal/human_rights/docs/Doev.Kardic.pdf))

29. Jane Doe I was imprisoned in a Bosnian-Serb concentration camp in the town of Trnopolje. On May 31, 1992, she joined a group of about 15 women on a line for water. A group of soldiers in Bosnian-Serb uniforms approached them, separated out six young women, and led them to a small house across some fields. The soldiers ordered the women to undress and to move around in a circle while the soldiers shouted obscenities at them. The soldiers called the women "Baliya," an anti-Muslim slur. After about 15 minutes, the soldiers began to rape the women, several at a time, while other soldiers pointed guns at them. One soldier held Jane Doe I's arms while another raped her. When she resisted, they hit her several times. She fainted. When she regained consciousness, another soldier was raping her. She was raped by at least eight soldiers. After the rapes, one of the soldiers slashed her breasts with his knife.



(AP PHOTO)

# Kadic v. Karadzic: claims



From Doe v. Karadzic Complaint:

([http://www.ccr-ny.org/v2/legal/human\\_rights/docs/Doev.Kardic.pdf](http://www.ccr-ny.org/v2/legal/human_rights/docs/Doev.Kardic.pdf))

35. In May 1992, Plaintiff Jane Doe IV and her family were living in Kozarac when Serbian and Bosnian-Serb Forces occupied the town. After forcing Bosniaks in Prijedor to post white flags on their houses and wear white arm bands, the Bosnian-Serb Forces arbitrarily arrested and detained the Bosniak citizens of Kozarac. Jane Doe IV and her family were ultimately taken to a concentration camp run by Bosnian-Serb forces in Trnopolje.

36. At Trnopolje, Jane Doe IV was subjected to atrocious conditions and the continuing fear of the regular practice of rape and other sexual abuse of women and girls by Serb guards. Although Jane Doe IV was ultimately released, she last saw her husband alive in Trnopolje in July 1992. At that time, he was terribly thin, beaten, sickly and depressed.

37. On the morning of August 21, 1992, Bosnian-Serb guards loaded many prisoners, including Jane Doe IV's husband and his brothers, onto buses. The guards drove the buses to remote locations, ordered ten Muslim prisoners at a time to get off the bus and stand near a ditch, and then shot them. Jane Doe IV's husband was led off the bus with the second group of ten prisoners. He has never been heard from again despite numerous inquiries concerning his fate.

## **Why is this case being heard in federal court?**

Alien Tort Act (a.k.a. Alien Tort Claims Act), 28 U.S.C. § 1350:

“The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”



## On what basis for territorial jurisdiction do the plaintiffs rely?

- Transient presence. Karadzic was served while visiting New York in the beginning of 1993.

## What are Karadzic's defenses?

1. Immunity from service under the Headquarters Agreement, 22 U.S.C. § 287 note:

### Section 9

(a) The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General.

**Service!!!**



**Service!!!**



**HQ District**



# Kadic v. Karadzic: territorial jurisdiction



Lobby of the Hotel Intercontinental, 111 E. 48<sup>th</sup> St.  
(restored to original Neo-Federal-style architecture)



Russian Consulate, 9 E. 91<sup>st</sup> St.



## What are Karadzic's defenses?

1. Immunity from service under the Headquarters Agreement, 22 U.S.C. § 287  
note:

### Section 15

- (1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,
- (2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,
- (3) every person designated by a Member of a specialized agency, as defined in Article 57, paragraph 2, of the Charter, as its principal resident representative, with the rank of ambassador or minister plenipotentiary, at the headquarters of such agency in the United States, and
- (4) such other principal resident representatives of members to a specialized agency and such resident members of the staffs of representatives to a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned, shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staff of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries.



## What are Karadzic's defenses?

1. Immunity from service under the Headquarters Agreement, 22 U.S.C. § 287  
note:

### Section 11

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials, (2) experts performing missions for the United Nations or for such specialized agencies, (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

## **What are Karadzic's other defenses?**

2. Immunity from service under federal common law

## **What are Karadzic's other defenses?**

3. Tag jurisdiction in these circumstances is unreasonable under DPC

# Kadic v. Karadzic: territorial jurisdiction

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## **C. Service of Process Based On The Transitory Presence Of Defendant In New York Solely To Participate In Peace Negotiations Is Invalid Because It Is Unreasonable And Violates Due Process of Law**

This action presents an extreme case of “tag jurisdiction,” . . . .

None of the parties have any connection with New York or the United States. The events that are the subject of the action are unconnected with New York or the United States. Neither plaintiffs, defendant nor his government have any contact with the United States. Defendant’s presence in the United States was transitory not only in fact, but de jure by official by U.S. mandate imposed upon his admission. . . .

Under international law, “tag” jurisdiction is not generally acceptable. . . .

Measured by U.S. Constitutional standards the service of process plaintiff’s rely on must fail. Defendant lacks the “minimum contacts” with New York that due process requires. . . .

Appellants’ reliance on Burnham . . . and Filartiga . . . is misguided. Neither case, nor others cited by plaintiffs, address the special immunity from service and absence of personal jurisdiction possessed by a United Nations invitee who is an essential participant in crucially important peace negotiations.

. . . .

. . . .

. . . [D]efendant’s admission to the United States and his participation in peace talks at the United Nations was possible only because the Headquarters Agreement effectively removes the U.N. Headquarters and related areas from the jurisdiction of the United States and is dependent on the legal fiction that the U.N. Headquarters is not really U.S. territory at all . . . . Service cannot tag a person who is not there.

## Ungrateful Invitee? Karadzic's U.N. hostages:



Two of the French peacekeeping soldiers captured and paraded on television by the Bosnian Serbs.  
Picture: ITN

## Ungrateful Invitee? The remains of the U.N. defenses at Zepa:



# Postscript: Karadzic's whereabouts

From the Institute for War and Peace Reporting:

## **Cutting Karadzic's Financial Lifeline** ([http://www.iwpr.net/index.pl?archive/bcr3/bcr3\\_200302\\_404\\_2\\_eng.txt](http://www.iwpr.net/index.pl?archive/bcr3/bcr3_200302_404_2_eng.txt))

Economic measures may assist efforts to capture the wartime Bosnian Serb chief.

By Aldin Arnautovic in Sarajevo (BCR No 404, 6-Feb-03)

Western officials hope that a new plan to restrict the money flow that funds Radovan Karadzic's support network and pays for his fugitive lifestyle may finally bring the ex-Bosnian Serb leader to justice.

Karadzic is wanted by The Hague tribunal on charges of genocide, but despite the might of NATO's military and intelligence network he has managed to evade international justice for more than six years. Tribunal chief prosecutor Carla Del Ponte has said several times that Karadzic and his bodyguards are hiding in the remote and inaccessible mountains of eastern Bosnia-Herzegovina, close to the border with Serbia and Montenegro.

Paddy Ashdown, the West's High Representative in Bosnia and its most senior official, recently announced the plan to disrupt the finances of Karadzic's supporters. However, Oleg Millisic, spokesman for the Office of the High Representative, OHR, refused to reveal concrete details on how this will be implemented.

....

The arrest of Karadzic is increasingly seen as an important step towards the normalisation of Bosnia. Along with Bosnian Serb military leader General Ratko Mladic, Karadzic is one of The Hague's two most wanted indictees. By continuing to elude the strongest military force in the world, he is exposing NATO and its Stabilisation Force, SFOR, in Bosnia-Herzegovina and the rest of the international community to ridicule.

SFOR has already tried and failed to capture Karadzic. In the first and only publicly confirmed operation of its kind, SFOR troops supported by helicopters and armoured vehicles descended on the small eastern town of Foca before dawn on February 28, 2002. The operation finished the same afternoon without results. SFOR has several times since blocked roads and checked traffic in an attempt to find the former Bosnian Serb leader, but without success.