

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-55-A

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prusse Joensen
Judge Jose Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Date: 29 April 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR DISCLOSURE
OF RECORDING

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Radovan Karadzic:

Mr. Peter Robinson

1. Dr. Radovan Karadzic respectfully requests, pursuant to Rules 71(B) and 73, that the Appeals Chamber order the prosecution to disclose to him a recording of the intercepted conversation of 13 July 1995 between him and Miroslav Deronjic.

2. In its judgement, the Trial Chamber's finding that Dr. Karadzic was a member of the expanded joint criminal enterprise to kill the men of Srebrenica was based primarily on the inferences it drew from a transcript of this telephone conversation.

3. In paragraph 5772 of the Judgement, the Trial Chamber reproduced the transcript of this conversation:

: I'm waiting for a call to President Karadžić. Is he there?
 B: Yes.
 : Hello! Just a minute, the duty officer will answer now, Mr. President.
 B: Hello! I have Deronjić on line.
 : Deronjić speak up.
 D: Hello! Yes. I can hear you.
 : Deronjić, the President is asking how many thousands?
 D: About two for the time being.
 : Two, Mr. President. (heard in the background)
 D: But there'll be more during the night.
 [...]
 D: Can you hear me, President?
 : The President can't hear you, Deronjić, this is the intermediary.
 D: I have about two thousand here now by [...]
 : Deronjić, the President says: "All the goods must be placed inside the warehouses before twelve tomorrow."
 D: Right.
 : Deronjić, not in the warehouses over there, but somewhere else.
 D: Understood.
 : Goodbye.

4. The Trial Chamber went on to conclude that "during the intercepted conversation described above, the Accused conveyed to Deronjić the direction that the detainees should be transferred to Zvornik."¹ The Chamber found that this conversation, in addition to subsequent acts "demonstrate beyond reasonable doubt the Accused's agreement to the expansion of the objective to encompass the killing of the Bosnian

¹ *Judgement*, para. 5773

Muslim males.”² It further found that “the Accused’s order to move the Bosnian Muslim males of Srebrenica enabled their transfer to Zvornik, where they were ultimately killed,” constituted a substantial contribution to the joint criminal enterprise.³

5. This interpretation of the transcript of this telephone conversation, which serves as the foundation for Dr. Karadzic’s conviction for genocide, is highly unsafe. Deronjic himself testified in the *Milosevic* trial that he understood Dr. Karadzic to mean that the prisoners should be transported to the military prison at Batkovic.⁴ This was confirmed by Police Commander Dragomir Vasic, who met with Deronjic after this conversation, in his testimony in the *Perisic* trial.⁵

6. Therefore, the actual recording of this conversation, as opposed to the transcript that was relied upon by the Trial Chamber, is critical.

7. The person who intercepted the conversation and wrote the transcript testified that the conversation was recorded.⁶ And during his testimony in the *Milosevic* case, Mr. Deronjic testified that the prosecutors had informed him that they had listened to the recording.⁷ In his testimony in the *Blagojevic* case, Mr. Deronjic testified that:

I asked the prosecution to measure if there are lapses and how long they are in the intercepts. They told me they would do that. They said that the intercept was not continuous, there are breaks, and the transcript would reflect that.⁸

8. Therefore, Dr. Karadzic has reason to believe that the recording of the conversation exists and that it may be in the possession of the prosecution.

9. Rule 71(B) provides that:

The Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs, and tangible objects in the Prosecutor’s custody or control, which are material to the preparation of the defence...

² *Judgement*, para. 5805

³ *Judgement*, para. 5818

⁴ *Prosecutor v Milosevic*, No. IT-02-54-T, T29708-09 (26 November 2003)

⁵ *Prosecutor v Perisic*, No. IT-04-81-T, T6481-82 (25 May 2009)

⁶ *Prosecutor v Karadzic*, No. IT-95-5/18-T, T26403 (15 March 2012)

⁷ *Prosecutor v Milosevic*, No. IT-02-54-T, T29785 (27 November 2003)

⁸ *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, T6443-44 (22 January 2004)

10. Rule 73(A) provides that:

The Prosecutor shall, as soon as practicable, disclose to the Defence any material that in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence

11. The recording of the 13 July 1995 conversation is material to the preparation of the appeal, as Dr. Karadzic intends to vigorously challenge the Trial Chamber's findings based upon the transcript of this conversation. It is also likely that it may suggest the innocence of Dr. Karadzic by containing words or phrases that can confirm his contention that he never ordered the prisoners to be taken to Zvornik, where they were executed, but ordered them to be taken them to the ICRC-inspected Batkovic prison near Bijeljina where they would be safe.

12. Technical enhancements that were not available in 1995 when the conversation was intercepted may now enable the parties to better hear what was actually said on the recording.

13. Counsel for Dr. Karadzic recalls asking for the recording during the trial and being advised by the prosecution that they did not have it. However, a more thorough search in response to this motion is warranted due to the significance attached by the Trial Chamber to this conversation. The prosecution has been found to have violated its disclosure obligations in this case on more than 80 separate occasions by the Trial Chamber.

14. For all of the above reasons, it is respectfully requested that the Appeals Chamber order the prosecution to make an exhaustive search for the recording, to disclose it to the defence if and when located, and if not located, to provide a detailed explanation of its efforts to locate the recording and the reasons it is not available.

Word count: 1028

Respectfully submitted,

A handwritten signature in black ink, reading "Peter Robinson". The signature is written in a cursive, flowing style with large, connected loops.

PETER ROBINSON

Counsel for Radovan Karadzic