

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 11 October 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Public and Confidential Annexes

82nd MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(SEPTEMBER 2013)

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for a finding that the prosecution has once again violated Rule 68 by failing to timely disclose exculpatory documents. The documents have been in the possession of the prosecution for many years, but were not disclosed until earlier this year when, in response to continuing violations, the prosecution made its "Rules of the Road" collection of some 30,000 pages of documents available to the defence.

2. Dr. Karadzic's defence team has been reviewing this disclosure and has now identified 4 documents which contain information of an exculpatory nature which had not been previously disclosed.

Document No. 1

3. The first document is a work plan for Kljuc municipality dated 1 December 1992 and signed by Police Commander Milos Tomic and Chief Vinko Kondic. The plan indicates the presence of sabotage and terrorist groups in the municipality and sets out a course of action. First, to find some Bosnian Muslims in the area to act as collaborators, send police patrols to establish good cooperation with the locals and to tighten inspection of those traveling to the area.¹

4. The exculpatory nature of this document is based upon the fact that Dr. Karadzic is charged with genocide, persecution, and underlying acts in Kljuc, yet the document shows that Bosnian Muslims were still living peacefully in Kljuc municipality in December 1992, had not been ethnically cleansed, and that the proposed course of action did not target all persons of Muslim nationality, but sought to collaborate and cooperate with Muslims in the local area to combat those who engaged in terrorist activities.

5. Dr. Karadzic has been prejudiced by the late disclosure of this document because it was only disclosed after the close of the prosecution's case and the information could not be used in cross-examination of any of the witnesses who testified about the events in Kljuc.

Document No. 2

6. The second document is a report by Commander Milos Tomic in February 1993 describing what they in fact did pursuant to that work plan. His report indicates that

¹ This document is attached as Annex "A"

200 Muslims remained in the area, and describes how he obtained the cooperation of two local Bosnian Muslims and negotiated the peaceful surrender of those who had engaged in sabotage activities. The remaining Bosnian Muslim population was not attacked or expelled and the action was taken in conjunction with the VRS.²

7. The exculpatory nature of this document is that it shows the conduct of the authorities in Kljuc was not directed at destroying or persecuting the Muslims as a group and that officials were acting correctly by targeting only those Muslims who were engaged in crimes or acts of sabotage.

8. Dr. Karadzic has been prejudiced by the late disclosure of this document because it was only disclosed after the close of the prosecution's case and the information could not be used in cross-examination of any of the witnesses who testified about the events in Kljuc.

Document No. 3

9. The third document is a report of an interview of a Bosnian Muslim man who had been imprisoned at Manjaca Camp in November 1992. In a statement to the Bosnian State Security Department on 10 March 1993 he stated that:

In the Manjaca camp, he encountered around 2,000 inmates from the area of Bosanska Krajina. The living conditions in Manjaca were far better than they had been in prison in Kotor Varos. The Serbo-Chetnik guards did not beat or mistreat them, as long as the inmates abided by the "house rules" of the camp. The head of the Manjaca camp was Bozidar POPOVIC who was an officer of the former JNA, but he was retired and had been living in Banja Luka for a long time. POPOVIC was fair and did not allow any person who had no reason to be there to enter the camp compound and mistreat or beat the inmates.

In the Manjaca camp, the inmates got food twice a day and could shave and get their hair cut, and members of the International Red Cross often came to see them and gave them food, medicine and clothing. On 13 December 1992, 532 inmates from the Manjaca camp were taken by the Serbo-Chetniks in buses to the camp in Batkovici, where he stayed until 4 March 1993, when he was exchanged and arrived on liberated territory controlled by members

² This document is attached as Annex "B"

of the armed forces of Bosnia and Herzegovina.³

10. The exculpatory nature of this document is obvious as Dr. Karadzic is charged in schedule C1.2 of the Indictment with mistreatment of Bosnian Muslims in Manjaca Camp during the period that the witness was imprisoned there.

11. Dr. Karadzic has been prejudiced by the late disclosure of this document because it was only disclosed after the close of the prosecution's case and the information could not be used in cross-examination of any of the witnesses who testified about the conditions at Manjaca.

Document No. 4

12. The fourth document is a report of interview of a Bosnian Muslim from Ilidza. In a statement to the Bosnian Ministry of Interior on 8 September 1992, the individual stated that:

A large number of Arkan's men and a few *White Eagles* came to Ilidza on 1 May. Arkan's men immediately carried out a coup, and as far as I know, the only local they kept was Nedeljko PRSTOJEVIC. From then on, while I was in Ilidza, Arkan's men ran the show.⁴

13. The exculpatory nature of this document is based upon the fact that crimes in Ilidza are charged against Dr. Karadzic and evidence that they were committed by paramilitary groups outside of the control of the authorities undermines the prosecution's case that he is responsible for those crimes.

14. Dr. Karadzic has been prejudiced by the late disclosure of this document because it was only disclosed after the close of the prosecution's case and the information could not be used in cross-examination of any of the witnesses who testified about the events in Ilidza.

Remedy

15. It is respectfully requested that the Trial Chamber make a finding that the prosecution has violated Rule 68 by failing to timely disclose these four documents.

³ The statement is attached as Confidential Annex "C". Some annexes are being filed confidentially as a precaution as Dr. Karadzic cannot be sure if the persons making the statements do not benefit from protective measures or were promised confidentiality.

⁴ The statement is attached as Confidential Annex "D" (see p. 3)

16. These violations demonstrate that the prosecution had not disclosed all of the exculpatory information in its possession despite repeated admonitions by the Trial Chamber and despite all of the mechanisms it claimed to have put in place to detect and disclose exculpatory material.

17. This motion represents the defence's review of only a fraction of the recent Rules of the Road disclosure and additional violations are expected to be uncovered as the remaining material is reviewed.

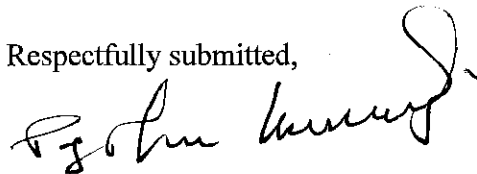
18. Dr. Karadzic requests that each of the documents listed above be admitted into evidence as a remedy for the violation of disclosure and his inability to use those documents during the prosecution's case.

19. Dr. Karadzic further requests that he be granted an additional 4 hours for his defence case to remedy the prejudice by the non-disclosure.

20. Finally, Dr. Karadzic renews his request that the Trial Chamber order that the defence be given open-file disclosure, as the violations of the prosecution's disclosure obligations continue to be uncovered. Only full disclosure can ensure a fair trial.

Word count: 1380

Respectfully submitted,



Radovan Karadzic⁵

⁵ The assistance of Pro Bono Legal Assistant Melani Veranes of Iceland and Legal Intern Beatris Spasova of Bulgaria on the research for this motion is gratefully acknowledged.

ANNEX "A"

Translation

/handwritten: K – 105/

Republika Srpska
MINISTRY OF THE INTERIOR
SECURITY SERVICES CENTRE
BANJA LUKA
Public Security Station
Ključ

Strictly Confidential

No: /handwritten:/ Strictly confidential 3/93

Date: 1 December 1992

In view of the fact and the assessment of the situation in /our/ area, where it has been realistically assessed that there are DTG /sabotage and terrorist groups/ on the terrain of the Golaja forest, Jabukovac and possibly beyond, and in accordance with the instructions and dispatches of the Banja Luka Security Services Centre, I hereby submit the following

WORK PLAN

to locate the sabotage and terrorist groups in the Golaja (Krasulje) area.

There are justified grounds to believe that in the Golaja forest area in our municipality sabotage and terrorist groups which have broken away during the fighting are now active.

Translation

This plan includes the method of work to liquidate groups of renegades in the area of Golaja, local commune Peći, and the task is as follows:

1. The hamlet of Kalaba in the village of Krasulje, Peći local commune, needs to be visited without delay in order to find persons of Muslim ethnicity for collaborators on the basis of personal assessment.
2. Visit the checkpoint by the municipal staff in Krasulje and meet with the commander */komandir/* in charge of the troops stationed there.
3. Visit the checkpoint in Peći held by militia employees and an army platoon stationed in that area.

Establish close cooperation with the employees and commanders */komandiri/* of the said checkpoints with a view to the Golaja region and the information that they already have in this regard.

In gathering information, it is necessary to send police patrols in that direction every day so that they can establish cooperation with the locals.

Visit the police employees in the Velagići and Pudín Han checkpoint and warn them to carefully monitor the passing of locals from Krasulja and to inspect the baggage of the same.

This plan should be added to as needed in the course of work, depending on the situation and information gathered in the course of action.

WORK PLAN COMPILED BY: WORK PLAN APPROVED BY:

Translation

Assistant Commander */komandir/* CHIEF:
of the Police Station

Milan TOMIĆ
/signed/

Vinko KONDIĆ

ANNEX "B"

Translation

REPUBLIKA SRPSKA
MINISTRY OF THE INTERIOR
BANJALUKA SECURITY SERVICES CENTRE
Public Security Station
KLJUČ

Strictly confidential

REPORT
on the activities of police officers of the Ključ SJB /Public Security Station/ in
discovering DTG /sabotage and terrorist groups/ in the Golaja area

Ključ, February 1993

Translation

R E P O R T

on the activities of police officers of the Ključ SJB in discovering DTG in the Golaja area

Pursuant to the Work Plan concerning the matter above, on 1 December 1992 I was assigned a task together with officer Željko DRAGIĆ from the Criminal Investigation Service to gather data for the purpose of discovering and eliminating a DTG. Immediately, that is on 1 December 1992, I drew up a Work Plan and did the following:

1. At the very start, DRAGIĆ and I disagreed on how to approach this problem, so I worked on it on my own, of course, in cooperation with the sector head for the MZ /local communes of/ Peći and Velegići (Dušan ČUTURA), SJB assistant commander Stevan KARACĆ and finally with the 2nd KK /Krajina Corps/ Command from Drvar.

2. On 2 December 1992, the sector head and I visited the Peći MZ, namely the military checkpoint in Krasulje and Peći, as well as the hamlet of Kalabe near Golaja hill. At the military checkpoint in Krasulje, platoon commander Nedo MALEŠEVIĆ told me he did not have any useful information about that group. During the visit to the Peći MZ together with the sector head, that same day we talked with platoon commander Zoran PETROVIĆ who said he did not have any specific information about the outlaws, but that there had been sporadic shooting from the direction of Golaja and that his men were not going there because there were no such orders. During our visit to Kalabe hamlet, several locals, all Muslims, gathered around us, so the sector head and I stayed for a while and talked with the locals. We discreetly left summons for three local Muslims to report to us at the Ključ SJB the next day for an interview.

It was arranged with the SM /police station/ commander to have police patrols dispatched as often as possible to Kalabe hamlet, the only unvacated Muslim settlement where about 45 households with about 200 people have remained to live, in order to instil the confidence of the local population in the police, which later bore fruit.

3. On 3 December 1992 those two men came to the Ključ SJB for an interview and I interviewed them separately so that they did not know about each other. We talked for quite a while and I realised that they could be used as informants and they accepted the terms of cooperation that were offered to them. I assigned the younger informant the codename Žučo and the older one the codename Aco. The same day both informants gave me the information they had about the DTG, because during the conversation with them I got the impression that they too were eager for that group to be located and eliminated, fearing for their own people in Kalabe.

I had a total of 14 contacts with the informant Žučo (from 2 December 1992 to 9 February 1993), of which officer Stevan KARACĆ had five, which took place while I was on the Bihać-Petrovac front. Each new meeting brought new and more concrete facts and information. Just before I went to the Bihać-Petrovac front for a second time

Translation

from 26 January 1993 to 3 February 1993, on the day of my departure, 26 January 1993, the informant Žučo informed me of some very important facts, so I told him to continue the work with officer KARAC' from then on. In the meantime I had contacted the Regiment Command in Lanište and spoke to Major Duško PETROVIĆ, of which I also informed officer KARAC', and they in turn informed the 2nd KK Command in Drvar and continued the work. Following the information received, on 29 January 1993, while I was on the Bihać front, comrades from the 2nd KK Command Drvar (Lieutenant Colonel Milan ATLAGIĆ and Captain Rajko NINKOVIĆ) came for a visit and we exchanged opinions on this information. At their suggestion, we agreed to wait until I returned, while they were to continue the work on their own if something urgent happened. After returning from the front, I contacted officer Stevan KARAC' as well as the officers from the 2nd KK Command Drvar who informed me that the operation was going very well and was nearing an end. The informant Žučo informed us that he had made contact with the outlaws and that some of them wanted to surrender. According to the information he gave us, there were about 17 of them in Golaja, including two women. Based on the information received, a plan was made to meet with the outlaws at a hunter's lodge in Golaja at 1000 hours on 6 February 1993 and that those wishing to surrender without a fight should come there. Backed by a number of troops who were to secure the wider area, I went to the agreed location together with Major Duško PETROVIĆ, Captain Rajko NINKOVIĆ, the informant Žučo and Lieutenant Colonel Milan ATLAGIĆ. We did not believe that the remaining Muslim fighters would surrender that way, when we saw from the woods a fairly large group of 15 people, including two women, appear at the agreed location. They laid down their weapons at the agreed location, and we found four AP /automatic rifles/, a Thompson /submachine gun/, a hunting rifle, two pistols, two hand grenades and some ammunition. We immediately searched those people and identified them as follows:

1. Mumin EGRLIĆ, son of Saif, born 29 September 1965, from Ključ,
2. Ferid HUKANOVIĆ, son of Atif, born 21 September 1954, from Vrhpolje, Sanski Most,
3. Čerim JUSIĆ, son of Osman, born 24 February 1960, from Vrhpolje,
4. Elvedin KERANOVIĆ, son of Said, born 15 December 1973, Sanski Most,
5. Tehvid BALTIĆ, son of Huso, born 26 August 1966, Vrhpolje,
6. Saif HUKANOVIĆ, son of Ibrahim, born 17 October 1950, Vrhpolje,
7. Ibrahim KERANOVIĆ, son of Atif, born 3 August 1968, Vrhpolje,
8. Sakib KERANOVIĆ, son of Hasan, born 22 October 1973, Vrhpolje,
9. Rasim JELEČEVIĆ, son of Rešid, born 27 May 1957, Hrustovo,
10. Hajrudin JELEČEVIĆ, son of Husein, 15 July 1955, Vrhpolje,
11. Derviš DUBICA, son of Safet, born 4 April 1968, Vrhpolje,
12. Omer HUSKIĆ, son of Mujo, born 18 November 1936, Vrhpolje,
13. Duda HUSKIĆ, wife of Omer, about 50 years old, Vrhpolje,
14. Hasan HUSKIĆ, son of Omer, born 8 June 1967, from Vrhpolje, and
15. Azra FAZLIĆ, daughter of Muharem, 9 November 1974, Donja Sanica, married to Hasan HUSKIĆ.

These people were escorted to the Kamenica state prison near Drvar where the military took charge of them.

Translation

On 9 February 1993 the area where the outlaws had been located was searched. Dugouts were found and destroyed, and a certain quantity of hidden weapons was also found. The weapons were handed over to the military. As can be seen, Husein JELEČEVIĆ, about 66 years old, from Vrhpolje, and Rezak HUKANOVIĆ remained in the woods.

Two days later, a group of irresponsible fighters—residents of the village of Peći, went to the Golaja area on their own initiative, without anyone's permission, and located and arrested Husein JELEČEVIĆ. They also herded back 15 of his sheep and a goat, which the outlaws had used for food. The sheep and the goat were later handed over to the Regiment Command in Lanište.

Rezak HUKANOVIĆ, son of Hasan, also known as Pekar /baker/, born in 1953, from Vrhpolje, remained in the woods and refused to surrender. He had told the other outlaws that he was not going to surrender because he was going after his son in the direction of Bihać, which means that there are still other outlaws in the Golaja area.

As can be seen from the above, this operation was conducted in close cooperation with the 2nd KK Command Drvar (Lieutenant Colonel Milan ATLAGIĆ and his associates), and on several occasions I received information from other people as well. I checked the information and intelligence with Milan IVANIĆ, commander of the Šanski Most SJB, and it turned out that the information was the same although the source was different.

Police officers from the Ključ SJB continue their work on this matter because we do not believe that all of them surrendered, and we think that in addition to Rezak HUKANOVIĆ there are other outlaws in Golaja or in the woods towards Hrustovo. Our service knows from before that also hiding in the Golaja area is the extremist Nail KALABIĆ, son of Smajil, who was involved in the murder of a resident of the village of Pištanice by the last name of DEVIĆ at the start of fighting in our municipality. This extremist has not been located to date.

Ključ, February 1993

REPORT FILED BY:

/signed/
Milan TOMIĆ