

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: 21 May 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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92nd MOTION FOR FINDING OF DISCLOSURE  
VIOLATION AND FOR ORDER TO PROSECUTION

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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 a statement that contains exculpatory material. He further moves for an order directing the prosecution to review its collection for exculpatory evidence contained within witness statements and to disclose exculpatory material contained therein.

**The Violation**

2. On 15 May 2014 the prosecution disclosed for the first time a statement provided by Islam Selimovic to Bosnian authorities. The statement was taken on 24 July 1995 and has been in the possession of the prosecution since March 2000.<sup>1</sup>

3. The exculpatory nature of the statement is that it contradicts the evidence of Prosecution Witness KDZ065, who claimed to have escaped an execution on the banks of the Jadar River in Konjevic Polje on the morning of 13 July 1995. According to Mr. Selimovic:

Just before we left Urdč, a man...came up to me. He was wounded in the leg and told me that he had survived an execution. He had been captured in Kravica and taken to a grain storage shed where there were other prisoners. The Chetniks took 300 German marks, his driver's license and his passport from him. One of the Chetniks who took his money separated him from the group that was being taken away in an unknown direction. Since he begged him to save his life, the Chetnik put him on a bus with another 16 prisoners. The bus set off for Zvornik and the driver said: "You have been saved." In Kušlat, Zvornik Municipality, policemen stopped the bus, took out the prisoners, lined them up by the side of the Jadar and fired automatic weapons at them. He was wounded and fell into the Jadar and swam some 40 metres downstream, when he was shot at again. He managed to get out and joined us in Udrč...

4. Mr. Selimovic's information supports Dr. Karadzic's case that the Jadar River executions, if they occurred at all, took place after the mutiny at the Kravica warehouse at about 1700 on 13 July, not on that morning as claimed by Witness KDZ065, and were therefore not committed with genocidal intent. The location of the alleged execution in Zvornik municipality as reported by Mr. Selimovic, also contradicts the testimony of Witness KDZ065, who claimed it took place in Konjevic Polje and that Nenad Deronjic of the Bratunac Police took part in the execution.

5. Dr. Karadzic was prejudiced by the prosecution's violation of Rule 68 because

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<sup>1</sup> The statement is attached as Annex "A".

he was unable to locate and interview Mr. Selimovic in time to present his evidence during the defence case, which is now closed.

6. Dr. Karadzic therefore requests that the Trial Chamber make a finding that the prosecution has once again violated its disclosure obligations under Rule 68 by failing to disclose Mr. Selimovic's statement as soon as practicable.

### **The Remedy**

7. The latest disclosure violation is symptomatic of a flaw in the prosecution's approach to disclosure of exculpatory evidence. Recent events have demonstrated that the prosecution has consistently failed to disclose exculpatory information contained in witness statements that may otherwise be seen as consistent with the prosecution's case.

8. In its *Decision on the Accused's Eighty-Ninth and Ninetieth Disclosure Violation Motions* (16 April 2014), the Trial Chamber found that the prosecution had once again violated its obligation under Rule 68. Specifically, the Trial Chamber rejected the prosecution's contention that there was nothing exculpatory in the statements of Ramo Hodzic, Dzevad Lojo, and Safet Avdic. Instead it found that Hodzic's statement that he was not beaten or mistreated in Pale while awaiting a prisoner exchange, Lojo's statement that he never heard Foca KP Dom Warden Milorad Krnojelac using his authority to abuse detainees and that Krnojelac behaved correctly during a meeting, and Avdic's statement that some Bosnian Muslims were released from detention and that detainees' food at the KP Dom Foča improved after he spoke about this issue to Krnojelac, were of an exculpatory nature and should have been disclosed.

9. These three statements never would have come to the attention of the defence were it not for the fact that the prosecution wished to call these witnesses in rebuttal.

10. In its *Decision on the Accused's Eighty-Seventh Disclosure Violation Motion* (10 March 2014), the Trial Chamber rejected the prosecution's contention that material in summary form that duplicates previously disclosed material need not be disclosed.

11. In its *Decision on the Accused's Eighty-Fifth Disclosure Violation Motion* (21 January 2014), the prosecution's contention that evidence that a Bosnian Serb official helped a Bosnian Muslim cross safely from Zvornik to Serbia was not exculpatory because it was consistent with the prosecution's case.

12. In its *Decision on the Accused's Eighty-Second Disclosure Violation Motion*

(7 November 2013), the Trial Chamber rejected the prosecution's contention that evidence that there was no mistreatment of detainees and that the conditions of detention at Manjaca prison from November to December 1992 was better than at other facilities was not exculpatory because it was consistent with the prosecution's case.

13. These recent decisions demonstrate that there is a disconnect between what the prosecution believes is exculpatory and what the Trial Chamber finds to be exculpatory. As a result of this disconnect, there are likely to be many more exculpatory statements in the prosecution's possession that have not been disclosed to Dr. Karadzic.

14. On 22 April 2014, Dr. Karadzic requested that the prosecution review its collection using proper criteria for exculpatory evidence, particularly looking for exculpatory material in witness statements that might otherwise be considered consistent with the prosecution's case.<sup>2</sup> On 16 May 2014, the prosecution declined for the most part to do so.<sup>3</sup>

15. Dr. Karadzic recognizes that the Appeals Chamber has held that the initial assessment of what is exculpatory is one properly left to the prosecution,<sup>4</sup> and that there exists a rebuttable presumption that the prosecution is operating in good faith in the fulfillment of its disclosure obligations.<sup>5</sup> However, given the pattern described above, the prosecution in this case has consistently failed to disclose all of the exculpatory evidence in its possession, despite given numerous warnings and opportunities to do so.

16. Therefore, Dr. Karadzic respectfully requests that the Trial Chamber order the prosecution to conduct a search of all undisclosed witness statements in its possession and to disclose to Dr. Karadzic all statements containing exculpatory material.

17. Because of the late stage of the proceedings in this case, and the need for the Chamber to be sure that it has considered all exculpatory material before delivering its judgement, it is requested that the Trial Chamber order that the search be completed and all exculpatory material disclosed no later than 15 August 2014. It is further requested

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<sup>2</sup> Dr. Karadzic's letter is attached as Annex "B".

<sup>3</sup> The prosecution's letter is attached as Annex "C".

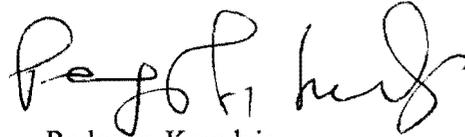
<sup>4</sup> *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at para. 183

<sup>5</sup> *Prosecutor v Mladic*, No. IT-09-92-AR73.2, *Decision on Defence Interlocutory Appeal Against the Trial Chamber's Decision on EDS Disclosure Methods* (28 November 2013) at para. 24

that the prosecution be required to certify on that date that the searches have been completed and that all exculpatory material has been disclosed.<sup>6</sup>

Word count: 1342

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic

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<sup>6</sup> Dr. Karadzic has filed this motion at this time, rather than waiting until one month before the closing briefs are due as required by the Trial Chamber's *Decision on Accused's Ninety-First Disclosure Violation Motion* (7 May 2014) at para. 19, because he considers that an urgent remedy is required.

**ANNEX "A"**

Republic of Bosnia and Herzegovina  
 Ministry of the Interior  
 State Security Service  
 SDB /State Security Service/ Sector Tuzla

/handwritten: +  
 A/

Number: /handwritten: 15 – 63 / 95 /  
 Date: /handwritten: 24 July 1995 /

#### Record of Interview

On 23 July 1995 citizen Islam SELIMOVIĆ, son of Abdulah and Pemba, née HASANOVIĆ, born on 10 November 1956 in Donja Kamenica, Zvornik Municipality, worker, used to work for the *Trudbenik* GP /construction company/ from Belgrade, married with four children, member of the BH Army 284<sup>th</sup> Brigade, permanent residence in Donja Kamenica, currently residing as a refugee in the family home of Ibrahim BEČIĆ in Gnojnica, Lukavac Municipality, gave authorised employees of the State Security Service the following

#### Statement

I arrived in Donja Kamenica as a worker of the *Trudbenik* GP from Belgrade on the eve of the war, i.e. on 1 April 1992, and soon joined the armed resistance. Following the fall of Zvornik, the Serbian authorities in Kamenica kept making promises about not being cruel to the inhabitants, but they kept taking individuals away and many of them never returned. In late /?January/ 1993 we were forced to leave Kamenica and most of the inhabitants went to Konjević Polje, while some left for Tuzla. Because of an attack carried out by the Chetniks against Konjević Polje in March of that same year, I left for Srebrenica with my family. My wife was wounded on that occasion and lost her right arm. We found accommodation with Rahman KASUMOVIĆ from Gostilj, Srebrenica Municipality.

When Srebrenica was declared a protected area and demilitarised, I know that the UN forces seized two tanks, one howitzer, one *Praga* self-propelled anti-aircraft gun, two or three mortars and many rifles of various kinds from us. Those of us who were deployed along the defence lines did not dare to show that we had any weapons because UN members would seize them. They did this until the moment when KARADŽIĆ's Serbs took them prisoner in and around the Sarajevo area. After that they were more tolerant towards us since they too were afraid of the Chetniks. I do not recall the exact date, but in early July the Chetniks attacked the demilitarised zone, starting with the Zeleni Jadar area, and about five or six thousand inhabitants, mostly refugees from the camp, fled to the UNPROFOR base in Donji Potočari. The Chetniks took around 30 UN members prisoner, and one Dutch soldier was killed. They seized two or three APCs with full equipment. The Chetnik soldiers then put on UN uniforms and posed as UN members before the scared population. The Chetnik encirclement grew tighter and the whole civilian population went mostly towards Potočari, where I took my family as well. Then I joined the able bodied inhabitants who had decided to break through the encirclement and head for Tuzla.

/signed/

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The members of my family, as well as some other citizens who survived this Golgotha, told me that the Chetniks themselves organised the evacuation of the population and excluded UNPROFOR members and the ICRC from these activities. They say that the ICRC head, who was German, was furious and stated her strong dissatisfaction with the way the Chetniks treated the displaced persons, but that she too was powerless. I heard that a woman called Emira, daughter of Hasan from Nova Kasaba, who was an ICRC interpreter, managed to reach the free territory. They also told me that they saw many people who had been killed near the houses close to the UNPROFOR base and that most of them had had their throats slit. I would also mention that the Chetniks stopped vehicles, trucks and buses en route to free territory as the population was being transported, sought gold and money and took out girls, young women and able bodied men who had managed to board the vehicles. Around 12,000 of us, mostly able bodied men, some women and a few older children, found ourselves in Šušnjari, which is above Jagličići and Buljim in Srebrenica Municipality, which the aggressor had already occupied. We decided to go all together via Konjević Polje, Cerska, Kamenica and Snagovo to reach free territory in N/ezuk. As we reached the woods above Sandići and Pobuđe and were going in the direction of Jadrići and Buljin in Bratunac Municipality, between two and three kilometres to the right of Kravica and two to two and a half kilometres to the left of Konjević Polje, we came under a fierce artillery attack. They fired from all available weapons and the group broke up with people fleeing in several directions. From the barracks in Konjević Polje they used a megaphone to call on us to surrender and I could see some people doing that. They said that we should turn in our weapons and offered to transport us to an area controlled by the BH Army. Most of us refused to surrender and an even fiercer attack ensued. Then, after first surrounding us, some of the Chetniks then got in among the crowd and started killing us with automatic rifles, *OSAs* /hand-held anti-tank rocket launcher/, *Zoljas* /hand-held rocket launcher/ and all available weapons. Some people were caught alive and taken in an unknown direction. Together with another 15 people I managed to cross the Jadar and reach Udrč near Cerska, where I stayed for almost 24 hours. Some other citizens arrived until there were around 250 of us, after which we continued moving towards the free territory. Just before we left Urdč, a man of around 30 years of age from Bačuta near Pale in Srebrenica Municipality came up to me. He was wounded in the leg and told me that he had survived an execution. He had been captured in Kravica and taken to a grain storage shed where there were other prisoners. The Chetniks took 300 German marks, his driver's license and his passport from him. One of the Chetniks who took his money separated him from the group that was being taken away in an unknown direction. Since he begged him to save his life, the Chetnik put him on a bus with another 16 prisoners. The bus set off for Zvornik and the driver said: "You have been saved." In Kušlat, Zvornik Municipality, policemen stopped the bus, took out the prisoners, lined them up by the side of the Jadar and fired automatic weapons at them. He was wounded and fell into the Jadar and swam some 40 metres downstream, when he was shot at again. He managed to get out and joined us in Udrč, as I have already explained. The column that I was leading had seven or eight armed men and headed for Drinjača, where we were joined by a group of about 100 people. The Chetniks intercepted us two or three times, but we mostly managed to go around them, having discovered them in time.

0100-7171-0100-7173-ET/Translation

/signed/

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I estimate that around 2,000 people were killed in the area I mentioned where the Chetniks attacked us with artillery (the woods above Sandići and Pobuđe). In a field along the road just past the village of Martići, we came across a man from Sandići, Bratunac Municipality. He was around 52 years of age and seriously wounded. He asked us to take him with us, but as we were very exhausted and had a large stretch of the route before us, we could not do that because he had been seriously wounded in the leg and the abdominal area. Later we found two dead men in Maričići. One was around 45 and had sustained an entry–exit wound to the chest, while the other was somewhat older and had been hit in the area around the waist. I cannot give any other identifying details because it was night time. I travelled for six days and six nights before reaching the free territory, and we ate mushrooms, leaves, fruit, roots and the like in order to survive. I had taken only four cans of food with me which I distributed en route. I also had one kilogramme of sugar and salt and we used that as a kind of makeshift infusion.

I have nothing more to add. The text of the statement was read back to me and I helped in its formulation, which I confirm with my signature.

Statement given by:  
/signed:  
Islam SELIMOVIĆ

Recording clerk:  
/a signature/

Authorised official(s)  
/a signature/  
/signed: Fuad KOVAČEVIĆ/

# ANNEX “B”

Radovan Karadzic  
International Criminal Tribunal for  
the former Yugoslavia

22 April 2014

Ms. Hildegard Uertz-Retzlaff  
Office of the Prosecutor

Dear Ms. Uertz-Retzlaff,

In its *Decision on the Accused's Eighty-Ninth and Ninetieth Disclosure Violation Motions* (16 April 2014), the Trial Chamber found that the prosecution had once again violated its obligation to provide me with exculpatory material.

Specifically, the Trial Chamber rejected the prosecution's contention that there was nothing exculpatory in the statements of Ramo Hodzic, Dzevad Lojo, and Safet Avdic. Instead it found that Hodzic's statement that he was not beaten or mistreated in Pale while awaiting a prisoner exchange, Lojo's statement that he never heard Foca KP Dom Warden Milorad Krnojelac using his authority to abuse detainees and that Krnojelac behaved correctly during a meeting, and Avdic's statement that some Bosnian Muslims were released from detention and that detainees' food at the KP Dom Foča improved after he spoke about this issue to Krnojelac, were of an exculpatory nature and should have been disclosed.

These three statements never would have come to the attention of the defence were it not for the fact that the prosecution wished to call these witnesses in rebuttal.

I am seriously concerned that there are many more exculpatory statements in the possession of the prosecution that have not been disclosed to me.

The disconnect between what the prosecution considers exculpatory and what the Trial Chamber and I think is exculpatory, as evidenced by the *Decision on the 90<sup>th</sup> Disclosure Violation Motion*, demonstrates that the prosecution's searches for exculpatory evidence have been conducted with criteria which is too narrow.

The situation where the prosecution's view of what is not exculpatory is not consistent with the Trial Chamber and my view is not limited to the most recent disclosure violation.

In the *Decision on the Accused's Eighty-Seventh Disclosure Violation Motion* (10 March 2014), the Trial Chamber rejected the prosecution's contention that material in summary form that duplicates previously disclosed material need not be disclosed.

Ms. Hildegard Uertz-Retzlaff

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In the *Decision on the Accused's Eighty-Fifth Disclosure Violation Motion* (21 January 2014), the prosecution's contention that evidence that a Bosnian Serb official helped a Bosnian Muslim cross safely from Zvornik to Serbia was not exculpatory because it was consistent with the prosecution's case.

In the *Decision on the Accused's Eighty-Second Disclosure Violation Motion* (7 November 2013), the Trial Chamber rejected the prosecution's contention that evidence that there was no mistreatment of detainees and that the conditions of detention at Manjaca prison from November to December 1992 was better than at other facilities was not exculpatory because it was consistent with the prosecution's case.

In light of these decisions, I am requesting that the OTP go back through its collection and review whether additional disclosures should be made to me based upon applying proper criteria for exculpatory material. By learning from these decisions, your staff can now include material that may appear to be consistent with your case, but have exculpatory elements—a common error that appears to have been made in your searches to date.

While a second pass through your large collection of material may be burdensome, since the duty to disclose exculpatory evidence is as important as the duty to prosecute, I believe that you are obligated to undertake such a task. Alternatively, as I have offered on many occasions, my defence team would be happy to conduct the searches for you and there would be no further disclosure violation issues if open file disclosure is permitted.

Please let me know whether you are willing to undertake a search of your collection for exculpatory material using the criteria for exculpatory material established by the Trial Chamber in its recent decisions. If you are not willing to do so voluntarily, I intend to ask the Trial Chamber to order you to do it.

Thank you very much for your consideration of this request.

Yours truly,



Radovan Karadzic

**ANNEX “C”**



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the Former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

Office of the  
Prosecutor

Bureau du  
Procureur

Case No. IT-95-5/18

15 May 2014

**Your letter dated 22 April 2014 requesting second review**

Dear Mr. Karadžić,

In your letter you refer to a disconnect between what the Prosecution considers exculpatory and what you and the Trial Chamber think is exculpatory and conclude that the Prosecution's searches have been conducted with criteria which are too narrow.

The Prosecution notes that in its disclosure report dated 27 July 2011, in particular paragraphs 41-44, the Prosecution has detailed its Rule 68 assessment process. As you can see from these details, the Prosecution is aware that there are differences of opinion between the parties as to the exculpatory nature of particular items and that as a result the Prosecution does not take a narrow but rather a broad approach.

As you have seen from the language in a large number of disclosure letters the Prosecution does not only disclose to you materials that it considers to be exculpatory but also materials that you might consider exculpatory or relevant for which disclosure may not ultimately be found to be required by the Rules.

Therefore, the Prosecution declines your request to revisit its entire disclosure.

However, as the Prosecution had not disclosed the items referred to in your letter related to some specifically alleged crime-base incidents, the Prosecution will search for similar material and disclose consistent with the practice of broad disclosure mentioned above.

Yours sincerely,

Hildegard Uertz-Retzlaff  
Senior Trial Attorney

