

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: 18 March 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR DISCLOSURE OF RECORDS
PERTAINING TO MILAN BABIC

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Dr. Radovan Karadzic

1. Dr. Radovan Karadzic hereby moves, pursuant to Rule 54 of the Rules of Evidence and Procedure and Rule 34(D)(ii) of the Rules of Detention, for disclosure of all psychological evaluations conducted of Milan Babic. This information is relevant and necessary for the Trial Chamber's evaluation of the credibility of Mr. Babic, whose evidence has been admitted in Dr. Karadzic's trial at the request of the prosecution.

Legal Provisions

2. Rule 54 provides that:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

3. Rule 34 of the Rules of Detention provides that:

- A. Each detainee shall be examined by the medical officer or his deputy on the day of admission.
- B. The medical officer shall have the care of the physical and mental health of detainees and shall see, on a regular basis or as is necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.
- C. Information related to the physical and mental health of detainees shall be kept confidential by the Registrar.
- D. Information contained in the detainee's medical records may be consulted or disclosed:
 - i. for medical reasons only with the consent of the detainee, or
 - ii. in the interest of justice and the good administration of trial, by order of a Judge or Chamber of the Tribunal, after consultation with the medical officer.
- E. The Judge or Chamber ordering disclosure of medical records shall respect the confidentiality of the information and guard against further disclosure.

Milan Babic

4. On 26 November 2003 Milan Babic surrendered to the Tribunal and was incarcerated at the United Nations Detention Unit ("UNDU"). Mr. Babic pleaded guilty to persecution and was sentenced to 13 years imprisonment.

5. On 19 September 2005 Mr. Babic was transferred from UNDU to another country to serve his sentence. On 13 January 2006, Mr. Babic was transferred back to

UNDU to give evidence as a prosecution witness, in the case of *Prosecutor v. Milan Martić*. Mr. Babic testified in that case in late February and early March 2006. In the midst of his testimony, Mr. Babic committed suicide at the UNDU.

6. An investigation into Mr. Babic's death was undertaken by the Tribunal under the auspices of its Vice President, Judge Kevin Parker. According to Judge Parker's report, his inquiry included an interview of the UNDU psychiatrist who had treated Mr. Babic prior to his death and that psychological evaluations of Mr. Babic by the UNDU psychiatrist had been reviewed.¹

7. Portions of the testimony of Milan Babic in the *Milosevic*, *Krajisnik*, and *Martić* trials were admitted into evidence in Dr. Karadzic's trial at the request of the prosecution pursuant to Rule 92 *quater*.²

8. On 22 February 2013, Milan Martić was transferred to The Hague to give evidence as a defence witness in Dr. Karadzic's case. Mr. Martić suggested to Dr. Karadzic's Legal Advisor Peter Robinson that Dr. Karadzic should obtain the psychological evaluations of Mr. Babic done while he was at the UNDU. Mr. Martić indicated that he had been informed that the diagnosis of Mr. Babic had revealed a personality disorder that would undermine Mr. Babic's credibility.

9. On 13 March 2013, Dr. Karadzic requested this information from the prosecution and Registrar.³ On 15 March 2013, he was advised by the prosecution that it had no such information in its possession.⁴ On 14 March 2013, Dr. Karadzic received a letter from the Deputy Registrar declining to voluntarily provide the requested information.⁵

Argument

10. The Trial Chamber has the power pursuant to Rule 54 to order the Registrar to provide the psychological evaluations of Mr. Babic to Dr. Karadzic. Indeed, the Appeals Chamber has held that a Trial Chamber must "provide every practicable facility it is

¹ *Report to the President: Death of Milan Babic* (8 June 2006) at pp. 4,7,8,13

² *Decision on Prosecution's Motion for Admission of Evidence of KDZ172 (Milan Babic) Pursuant to Rule 92 quater* (13 April 2010)

³ See Annexes "A" and "B".

⁴ See Annex "C".

⁵ See Annex "D".

capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.”⁶

11. The Trial Chamber has the authority to order the release of confidential information on the mental health of a detainee pursuant to Rule 34(D)(ii) when in the interests of justice. Dr. Karadzic contends that it is in the interests of justice to make this information available to him given that it goes to the credibility of a prosecution witness who he is unable to otherwise cross examine, and given the diminished interest in confidentiality of the records now that Mr. Babic is deceased.

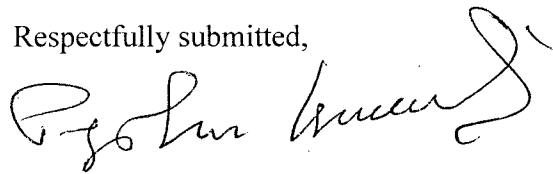
12. Dr. Karadzic notes that this same confidential information has already been made available to Judge Parker and those assisting him in the investigation into Mr. Babic’s death, including an investigator from the Office of the Prosecutor.⁷

13. Dr. Karadzic remains willing to abide by whatever ancillary orders are deemed necessary by the Trial Chamber to minimize disclosure of otherwise confidential information, such as admitting the records under seal or referring to them in closed session.

14. Therefore, Dr. Karadzic respectfully requests that the Trial Chamber order that records of psychological evaluations of Milan Babic conducted in connection with his detention by this Tribunal be disclosed to him.

Word count: 1018

Respectfully submitted,



Radovan Karadzic

⁶ *Prosecutor v Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para. 52

⁷ *Report to the President: Death of Milan Babic* (8 June 2006) at p.1

ANNEX "A"

Radovan Karadzic
International Criminal Tribunal for
the former Yugoslavia

13 March 2013

Ms. Hildegard Uertz-Retzlaff
Office of the Prosecutor

Dear Ms. Uertz-Retzlaff,

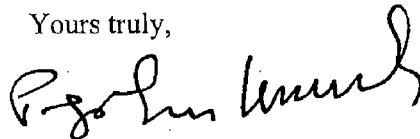
I am writing, pursuant to Rule 66(B), to request that you provide me inspection and disclosure of any reports or information on the psychological condition or state of Milan Babic in the possession of the prosecution.

This information is relevant to my efforts to impeach the credibility of Mr. Babic, whose testimony as a prosecution witness has been admitted pursuant to Rule 92 *quarter*. The upcoming testimony of defence witness Milan Martić is expected to touch on the credibility of Mr. Babic and these reports would be useful for me to have prior to his testimony.

I note that in the report prepared by Judge Kevin Parker on the death of Mr. Babic, the existence of psychological and psychiatric evaluations of Mr. Babic was noted. The report indicates that Judge Parker was assisted by Robert Reid, OTP's Deputy Chief of Investigations at the time, which is why I believe that these documents might be in the possession of the prosecution.

Thank you very much for your cooperation,

Yours truly,



Radovan Karadzic

ANNEX “B”

Radovan Karadzic
International Criminal Tribunal for
the former Yugoslavia

13 March 2013

Mr. John Hocking
Registrar

Dear Mr. Hocking,

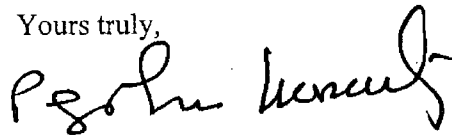
I am writing to request that the Registry provide me copies of any reports or information on the psychological condition or state of Milan Babic in the possession of the Registry and its organs, including the United Nations Detention Unit.

This information is relevant to my efforts to impeach the credibility of Mr. Babic, whose testimony as a prosecution witness has been admitted pursuant to Rule 92 *quarter*. The upcoming testimony of defence witness Milan Martić is expected to touch on the credibility of Mr. Babic and these reports would be useful for me to have prior to his testimony.

I note that in the report prepared by Judge Kevin Parker on the death of Mr. Babic, the existence of psychological and psychiatric evaluations of Mr. Babic having been conducted while he was at the United Nations Detention Unit was noted.

Thank you very much for your cooperation,

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-T

15 March 2013

Subject: Your letter of 13 March 201 regarding inspection or disclosure of any reports or information on the psychological condition or state of Milan Babić pursuant to Rule 66 B

Dear Mr Karadžić,

With reference to the above request the Prosecution informs you that it is not in possession of any such materials.

Yours truly,

Hildegard Uertz-Retzlaff
Senior Trial Attorney

ANNEX “D”



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

14 March 2013

Dear Mr. Karadžić,

I refer to your letter to the Registrar dated 13 March 2013, by which you request copies of any reports or information on the psychological condition or state of a former detainee Mr. Milan Babić, now deceased.

In said correspondence, you indicate that Mr. Babić's testimony as a prosecution witness has been admitted into your case pursuant to Rule 92 *quarter* of the Rules of Procedure and Evidence, and therefore request this information for purposes of your case before the Tribunal. You further note that the report prepared by former ICTY Judge Kevin Parker following the death of Mr. Babić suggests the existence of psychological and psychiatric evaluations of Mr. Babić at the UNDU.

Having carefully considered your request, I wish to inform you that the Registrar is not in a position to disclose any information related to another detainee to you. Pursuant to Rule 11 of the Rules of Detention,¹ "[a]ll information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar." Further, whilst medical information, where available, rests in the custody of the Medical Officer of the UNDU, the confidentiality of such information is further provided for in Rule 34(C) the Rules of Detention.

Should you have any questions regarding this issue, feel free to contact the Legal Coordinator for Detention Matters.

Yours sincerely,

Kate Mackintosh
Deputy Registrar

To: Mr. Radovan Karadžić
UNDU

Cc: Messrs. Peter Robinson and Marko Sladojević, Legal Associates

¹ Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev.9 ("Rules of Detention").