

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: 29 October 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS:
COUNT ONE

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rule 94, for judicial notice of the following adjudicated facts relevant to Count One:

1. The Chamber does not find, however, that any of these acts were committed with the intent to destroy, in part, the Bosnian-Muslim or Bosnian-Croat ethnic group, as such.¹
2. The Chamber finds that in no instance are the killings themselves sufficient to make a conclusive finding on whether the perpetrator had a genocidal intent.²
3. The Chamber has considered the surrounding circumstances, including words uttered by the perpetrators and other persons at the scene of the crime and official reports on the crimes, in order to establish the mens rea. Considering the evidence as a whole, the Chamber can make no conclusive finding that any acts were committed with the intent to destroy, in part, the Bosnian-Muslim or Bosnian-Croat ethnic group, as such.³
4. The evidence does not show that the Accused {Krajisnik} or other members of the JCE had the mens rea of genocide.⁴
5. The evidence does not show that the crime of genocide formed part of the common objective of the JCE in which the Accused [Krajisnik] participated.⁵
6. Even the more extreme statements of the Accused [Krajisnik], such as his speech at the Bosnian-Serb Assembly session of 8 January 1993, do not enable the Chamber to conclude that his intent went further than the removal of Muslims and Croats from territories in Bosnia-Herzegovina. The discriminatory remarks uttered by the Accused [Krajisnik] at that time, and the Assembly resolution adopted in this connection, served, as the Chamber explained above, to retrospectively legitimize the forcible removal. They did not reveal an intent to destroy an ethnic group in whole or in part.⁶
7. Considering all the evidence, the Chamber does not find that the evidence supports a finding beyond reasonable doubt that at any time during the indictment period the common objective of the JCE came to include the crime of genocide.⁷
8. Given the significant difference in numbers between those forcibly displaced from the ARK and those subjected to acts envisaged in Article 4(2)(a) to (c), the

¹ *Krajisnik* judgement at para. 867 referring to acts contained in Schedules A1, A3, A5, A9, A10, A12, A16, B1, B2, B4, B5, B8, B12, B13, B14, B15, B16, B17, B18, B19, B20 of the Indictment in the *Karadzic* case

² *Krajisnik* judgement at para. 868

³ *Krajisnik* judgement at para. 869

⁴ *Krajisnik* judgement at para. 1091

⁵ *Krajisnik* judgement at para. 1092

⁶ *Krajisnik* judgement at para. 1092

⁷ *Krajisnik* judgement at para. 1094

existence of an intent to destroy alongside the intent to forcibly displace is not the only reasonable inference that may be drawn from the evidence.⁸

9. During much of the period relevant to the Indictment, and certainly as from summer 1992, the Bosnian Serb forces controlled the territory of the ARK, as shown by the fact that they were capable of mustering the logistical resources to forcibly displace tens of thousands of Bosnian Muslims and Bosnian Croats, resources which, had such been the intent, could have been employed in the destruction of all Bosnian Muslims and Bosnian Croats of the ARK.⁹
10. The Prosecution submits that, no later than the 12 May 1992 SerBiH Assembly Meeting, a decision was made to escalate the Strategic Plan to genocide, and that this decision can be inferred from the statements of the Bosnian Serb leadership and from the increase in the intensity of the violence against Bosnian Muslims and Bosnian Croats. The Trial Chamber has not found evidence of this alleged escalation into genocide in the territory of the ARK.¹⁰
11. In his utterances, the Accused [Brdjanin] openly derided and denigrated Bosnian Muslims and Bosnian Croats. He also stated publicly that only a small percentage of them could remain in the territory of the ARK. Some of the Accused's utterances are openly nasty, hateful, intolerable, repulsive and disgraceful. On one occasion, speaking in public of mixed marriages, he remarked that children of such marriages could be thrown in the Vrbas River, and those who would swim out would be Serbian children. On another occasion, he publicly suggested a campaign of retaliatory ethnicity based murder, declaring that two Muslims would be killed in Banja Luka for every Serbian killed in Sarajevo. Whilst these utterances strongly suggest the Accused's discriminatory intent, however, they do not allow for the conclusion that the Accused harboured the intent to destroy the Bosnian Muslims and Bosnian Croats of the ARK.¹¹
12. The Prosecution makes much of the speech made by the Accused [Brdjanin] following Dragan Kalinic's speech during the 16th session of the SerBiH Assembly, held on 12 May 1992. Dragan Kalinić, a delegate from Sarajevo and later SerBiH Health Minister, is recorded as stating: "Have we chosen the option of war or the option of negotiation? I say this with a reason and I must instantly add that knowing who our enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which of course implies eliminating and liquidating their key people. I do not hesitate in selecting the first option, the option of war." The Accused began his own speech by applauding the speech made by Dragan Kalinic: "I would like to say a heart-felt bravo to Mr. Kalinic. In all my appearances in this joint Assembly, it has never crossed my mind that though he seems to be quiet, while I seem hawkish,

⁸ *Brdjanin* judgement at para. 977

⁹ *Brdjanin* judgement at para. 978

¹⁰ *Brdjanin* judgement at para. 982

¹¹ *Brdjanin* judgement at paras. 986-87

his opinions are the closest to mine. I believe that this is a formula and we should adhere to this formula." This speech is not unequivocal. The most that can safely be gleaned from it is that the Accused ultimately endorsed the war option, as suggested by Dragan Kalinic, and not the negotiation option. His response to Kalinić does not allow the finding that he had genocidal intent.¹²

13. On the basis of the evidence presented in this case, the Trial Chamber has not found beyond reasonable doubt that genocide was committed in the relevant ARK municipalities, in April to December 1992.¹³
14. 549. There is insufficient evidence in this case to prove that a genocidal campaign was being planned at a higher level.¹⁴
15. While the Trial Chamber is satisfied that the common goal of the members of the SDS in Prijedor municipality, including Dr. Stakic as President of the Municipality, was to establish a Serbian municipality, there is insufficient evidence of an intention to do so by destroying in part the Muslim group.¹⁵
16. Had the aim been to kill all Muslims, the structures were in place for this to be accomplished.¹⁶
17. Statements made by Dr. Stakic do not publicly advocate killings and while they reveal an intention to alter the ethnic composition of Prijedor, the Trial Chamber is unable to infer an intention to destroy the Muslim group.¹⁷
18. Simo Drljaca, head of Prijedor SJB, clearly played an important role in establishing and running the camps, and was portrayed by the evidence as being a difficult or even brutal person, but the Trial Chamber is not satisfied that Drljaca pulled the Crisis Staff into a genocidal campaign.¹⁸
19. The Trial Chamber is unable to conclude that Dr. Stakic committed acts causing serious bodily or mental harm to Muslims with the intention to destroy the Muslim group.¹⁹
20. The *dolus specialis* has not been proved in relation to "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."²⁰

¹² *Brdjanin* judgement at para. 988

¹³ *Brdjanin* judgement at para. 989

¹⁴ *Stakic* judgement at para. 549

¹⁵ *Stakic* judgement at para. 553

¹⁶ *Stakic* judgement at para. 553

¹⁷ *Stakic* judgement at para. 554

¹⁸ *Stakic* judgement at para. 555

¹⁹ *Stakic* judgement at para. 556

²⁰ *Stakic* judgement at para. 557

21. The Trial Chamber was not satisfied beyond a reasonable doubt that anyone, including any subordinates of Dr. Stakic in the Municipality of Prijedor, had the *dolus specialis* [for genocide].²¹
22. On the basis of the evidence in this case, the Trial Chamber has not found beyond a reasonable doubt that genocide was committed in Prijedor in 1992.²²
23. On the whole, the number of Bosnian Muslims and Bosnian Croats detained in the Keraterm Camp and who were victims within the terms of Article 4 (2)(a),(b), and (c), is negligible.²³
24. The Chamber concludes that the intent to destroy in part the Bosnian Muslim or Bosnian Croat group cannot be inferred on the basis of the evidence with reference either to the criterion of the intent to destroy a significant number of the group relative to its totality or to the intent to destroy a significant section of the group such as its leadership.²⁴
25. The evidence has not established that Dusko Sikirica possessed the very specific intent required by Article 4(2) to destroy in part the Bosnian Muslims or Bosnian Croats as a group, even though it may establish the mistreatment of the members of that group on political, racial, or religious grounds, in which event the relevant crime is persecution, not genocide.²⁵
26. The specific intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such cannot be inferred.²⁶

2. Dr. Karadzic contends that the above facts meet the criteria for judicial notice of adjudicated facts. The facts are (A) relevant; (B) distinct, concrete, and identifiable; (C) do not differ from the fact as formulated in the judgement; (D) not unclear or misleading; (E) identified with adequate precision; (F) do not contain an essentially legal characterization; (G) not based on an agreement in the original proceeding; (H) not related to the acts, conduct or mental state of the accused; and (I) not subject to pending appeal or review.²⁷

3. Dr. Karadzic has preferred to introduce evidence which can be tested by both sides in this trial and considers the taking of judicial notice of adjudicated facts

²¹ *Stakic* judgement at para. 559

²² *Stakic* judgement at para. 561

²³ *Sikirica* Rule 98 bis judgement at para. 74

²⁴ *Sikirica* Rule 98 bis judgement at para. 85

²⁵ *Sikirica* Rule 98 bis judgement at para. 90

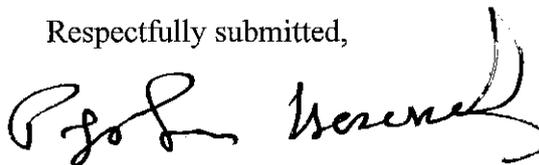
²⁶ *Sikirica* Rule 98 bis judgement at para. 97

²⁷ *Decision on First Prosecution's Motion for Judicial Notice of Adjudicated Facts* (5 June 2009) at para. 9

fundamentally unfair when used against a party who did not participate in the underlying trial. However, given the modest amount of time allocated to him to defend against Count One, he believes that it is necessary to seek judicial notice of the above adjudicated facts.

Word count: 1845

Respectfully submitted,

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

Radovan Karadzic