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| CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) | | DATE 11 March 2013 |
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| <input type="checkbox"/> Trial Chamber I/ Chambre de 1ère instance I | <input type="checkbox"/> Chief of Investigations/ Chef des enquêtes | <input checked="" type="checkbox"/> Legal Advisers/ Conseillers juridiques MR. G. PETRONIJEVIĆ MR. P. ROBINSON MR. M. SLADOJEVIĆ |
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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 March 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes

MOTION TO RECALL PROSECUTION WITNESS KDZ080
AND FOR RECISSION OF PROTECTIVE MEASURES

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber for an order recalling Prosecution Witness KDZ080 and for rescission of the witness' protective measures.

2. On 18 October 2011, Dr. Karadzic filed his *Motion to Modify Protective Measures: Witness KDZ080*. He contended that the protective measures granted to witness KDZ080 should be removed because the witness had publicly revealed that s/he had been a witness in the *Brdjanin* case after having been granted protective measures.

3. On 25 October 2011, there was filed the *Prosecution Response to Motion to Modify Protective Measures: Witness KDZ080*. The prosecution opposed the motion to modify the protective measures. In a confidential annex, the prosecution forwarded the witness' explanation for how the fact of his/her testimony in the *Brdjanin* case had appeared in a news article.

4. On 26 October 2011, the Trial Chamber denied the motion in an oral decision.¹ The witness thereafter testified with protective measures.

5. In 2013, an internationally syndicated interview with Witness KDZ080 appeared in news outlets throughout the world. In the interview, the witness revealed that s/he had testified in this case.²

6. The occurrence of yet another instance where the witness has revealed his/her status as a witness before the Tribunal, despite the existence of an explicit order making such information confidential, calls into question the credibility of the witness' explanation of the earlier interview and the continuing need for the protective measures.

7. While the second offence of disclosure of confidential information could easily warrant the appointment of an *amicus curiae* prosecutor and an investigation for contempt pursuant to Rule 77,³ Dr. Karadzic believes that the more appropriate course of action would be to recall the witness and to allow him to cross examine him/her concerning this issue and allow the Chamber to assess its impact on his/her credibility. At the conclusion of those proceedings, the Trial Chamber would also be in a position to

¹ T20377-79. A confidential portion of this order is excerpted at Confidential Annex "A"

² A copy of one of the articles is attached as Confidential Annex "B".

³ See *Prosecutor v Seselj*, No.03-67-R77.3, *Judgement* (31 October 2011)(Judges Kwon, Hall, and Morrison)

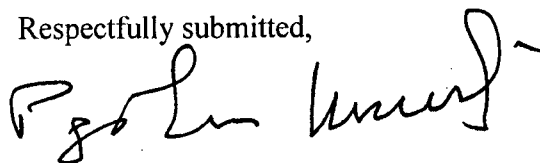
determine whether the protective measures should be rescinded in light of the witness' self-disclosures.

8. Dr. Karadzic has nothing against the witness making public statements about his/her testimony, but continues to object to the unnecessary protective measures granted to the witness in his case.

9. When making the original motion, Dr. Karadzic said, "to continue to afford protective measures to Witness KDZ080 under these circumstances would make a mockery of protective measures at this Tribunal and of the right of the accused to a public trial." The witness has proved Dr. Karadzic right.

Word count: 533

Respectfully submitted,

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

Radovan Karadzic

CONFIDENTIAL
ANNEX "A"

As an aggravating circumstance, the Trial Chamber should recall that it gave the witness the following warning in private session:

“The Chamber would, however, like to warn the witness against making public statements which render her protective measures ineffective. As shown by the accused, there are a number of statements available to the public which would tend to reveal both the substance of her testimony and the fact that she was a witness before the Tribunal. In order for the protective measures in this case to be effective, the Chamber would therefore urge the witness in the future to refrain from mentioning that she testified at the Tribunal.” (T20379)

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ANNEX "B"

Nusreta Sivac, Bosnian Woman, Helped Make Rape A War Crime

By AIDA CERKEZ 03/08/13 07:39 AM ET EST AP



Largely because of Muslim Bosniak woman Nusreta Sivac, people are regularly prosecuted for wartime sexual violence. (AP Photo/Amel Emric)

PRIJEDOR, Bosnia-Herzegovina -- There were days when she prayed for a bullet to end her suffering. When she thought she was dying of a heart attack, she whispered "Thank you God."

A young judge, Nusreta Sivac was one of 37 women raped by guards at a concentration camp in Bosnia. They never discussed the nightly traumas – their pained glances were enough to communicate their suffering. She also witnessed murder and torture by Bosnian Serb guards – and was forced to clean blood from walls and floors of the interrogation room.

She told herself to memorize the names and faces of the tormentors so that one day she might bring them to justice.

Today, it's partly thanks to Sivac's efforts to gather testimony from women across Bosnia that rape has been categorized as a war crime under international law. Thirty people have been convicted at the international war crimes tribunal in The Hague and another 30 cases are ongoing. She personally helped put the man who raped her repeatedly during her two months in captivity behind bars.

"Most of the strength I took from the idea that one day this evil would be over," she told The Associated Press this week ahead of International Women's Day on Friday.

The U.N. Special Representative on sexual violence in conflict said Sivac and other victims are helping to make sure wartime rapists pay for their crimes.

"The courage these women have shown coming forward and sharing their stories demonstrates the need to break the silence and stigma surrounding sexual violence in conflict," said Zainab Hawa Bangura. "These survivors are helping to end impunity by making sure perpetrators are brought to justice."

Bosnia's 1992-95 war was the bloodiest in the series of armed conflicts that erupted when the Yugoslav federation fell apart and its republics began declaring independence. It took over 100,000 lives and devastated the region. According to the UN, between 20,000 to

50,000 Bosnian women were raped – many in special rape camps – during the war that was fought between the new country's Serbs, Croats and Bosniaks.

African conflicts have seen even more harrowing figures: Between 250,000 and 500,000 were raped during the Rwandan genocide, and hundreds of thousands more in conflicts in Sierra Leone and the Democratic Republic of Congo.

Sivac's ordeal started in the spring of 1992 when Bosnian Serbs took control over her native Prijedor, in the northwest of Bosnia and threw Muslim Bosniaks and Catholic Croats in concentration camps. Alongside the women were 3,500 male prisoners, hundreds of whom were killed.

Sivac, a Muslim Bosniak, would start the day counting the bodies of the men who were tortured to death overnight. "Their bodies lay there in the grass in front of the building. Sometimes 20, sometimes 30 of them," she recalled outside the factory in Omarska where she was held for two months.

During the long days of forced labor in the camp's restaurant, the women listened to tortured prisoners screaming, calling for help and begging for mercy with voices that would become weaker until they went silent. Then the guards would force the women to clean the interrogation rooms, strewn with bloody pliers and batons. At night, guards would come to take the women away one by one – to rape.

Her captivity ended in August 1992 when a group of foreign journalists found the facility. The images of skeletal prisoners behind a fence and naked bodies beaten black and blue shocked the world and prompted an avalanche of reactions that forced the Serb leadership to release the prisoners.

Sivac's pre-war colleague from the Prijedor court, prosecutor Jadranka Cigelj, was also among the 37 Omarska women. The two escaped to neighboring Croatia, where they began collecting testimonies from hundreds of women who had been raped.

They spent years transcribing testimonies, convincing victims to break their silence and putting together legal dossiers which they then presented to the investigators at the International Tribunal for War Crimes in Former Yugoslavia, based in The Hague.

During this process, she said, "it became obvious how many women from all over Bosnia were affected. But I wasn't surprised by the big number."

For centuries, rape was considered a byproduct of wars – collateral damage suffered by women, horrors often overshadowed by massacres. Even though the Fourth Geneva Convention of 1949 prohibited wartime rape, no court ever raised charges until Sivac and Cigelj presented their overwhelming evidence.

The effort finally paid off in June 1995 when the two traveled to The Hague to take part in preparations for the first indictment by the Yugoslav war crimes court.

Their collected evidence exposed the magnitude of rape which courts could no longer ignore. According to the United Nations, it was a major "turning point" in recognizing rape as a war crime.

Sivac remembers the sunny July day the two realized their work would be soon rewarded. They enjoyed a coffee in an outdoor cafe in The Hague and wrote a few postcards back to their torturers in Prijedor.

"Dear Friends," they wrote. "We hope you will soon join us in this wonderful city."

A year later, the tribunal indicted eight Bosnian Serb men for sexual assault in eastern Bosnia – a verdict based on testimonies collected by Sivac and Cigelj.

It was the first time in history that an international tribunal charged someone solely for crimes of sexual violence.

Nerma Jelacic, spokeswoman for the Yugoslav war crimes court, recalls the "shocking" testimony in subsequent cases where some victims were as young as 12.

"We had cases where both mother and daughter came to testify and both were subjected to same kind of torture and kind of crimes," she told AP.

Sivac who has since testified in several cases, including against Bosnian Serb leader Radovan Karadzic, is satisfied with what she has achieved, although she wishes the ongoing cases would accelerate. "It's slow, very slow," she said. "But it is a start."

One of the Omarska guards she testified against was released in 2005 after he served two-thirds of his seven-year sentence.

Sivac ran into him on the street one day in Bosnia.

"We stared at each other," she said. "He was the first one to lower his head."