

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: 3 February 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO ADMIT TRANSCRIPT
PURSUANT TO RULE 92bis:
NIKOLA TOMASEVIC

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 92 *bis*, for admission of the transcript of the prosecution's interview of Nikola Tomasevic, a Judge of the Military Court of the Army of Republika Srpska in Banja Luka.¹

2. During this interview, Mr. Tomasevic contended that there was no national policy to fail to enforce the law when the victims of crimes were Muslims or Croats and explained that decisions he made to release some persons accused of murders of Muslims and Croats were not based upon any policy to condone such crimes.

3. When asked to explain decisions he made in the prosecution of two Serbs for killing of a large group of people in Velagići on 1st June 1992, Mr. Tomasevic indicated that his decision to release the two accused was based upon the fact that the prosecutor indicated that it was not possible to proceed against the two accused while 10 other accused were at large.²

4. When asked to explain decisions to release the accused he made in the prosecution of Miladin and Obrenko Sugic for murders of Bosnian Muslims, Mr. Tomasevic indicated that his decision to release the two accused was based upon their mental capacity and as part of a policy to condone crimes against non-Serbs.³

5. While the Trial Chamber set a deadline of 27 August 2012 for the submission of Rule 92 *bis* motions, Dr. Karadzic has good cause for not having made such a motion as to Mr. Tomasevic before that date as wished to call Mr. Tomasevic to give oral testimony at his trial. However, Mr. Tomasevic subsequently declined to testify,⁴ and the Trial Chamber declined to issue a subpoena for his testimony.⁵

6. The Trial Chamber has set forth the requirements for admission of evidence pursuant to Rule 92 *bis*. The proposed evidence must be (1) relevant; (2) its probative value must not be substantially outweighed by the need to ensure a fair trial; (3) it must not relate to the acts and conduct of the accused; and (4) it must be capable of meeting the certification requirements.⁶

7. Even where evidence is admissible under Rule 92 *bis*, the Trial Chamber has discretion not to admit it. The main factors in the exercise of this discretion seem to be whether the

¹ The transcript of this interview can be found in e-court at #1D09195. A summary of the interview is attached as Annex "A" to this motion.

² 65 *ter* #1D09195 at pp. 59-60

³ 65 *ter* #1D09195 at pp. 72-74

⁴ *Motion for Subpoena to Nikola Tomasevic* (14 November 2013) at para. 4

⁵ *Decision on Accused's Motion to Subpoena Nikola Tomasevic* (11 December 2013)

⁶ *Decision on Prosecution's Third Motion for Admission of Statements or Transcripts of Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality)* (15 October 2009) at paras. 4-6,9

evidence is of a cumulative nature, whether it involves conduct close to the accused, and whether it touches a live and important issue in the case.⁷

8. The Trial Chamber, upon deciding to admit evidence pursuant to Rule 92 *bis*, may require that the witness appear for cross examination. Many of the same factors used to decide whether to exercise discretion to admit the testimony also apply to the issue of whether a witness should appear for cross examination.⁸

9. An analysis of Mr. Tomasevic's proposed evidence demonstrates that the criteria for admission pursuant Rule 92 *bis* are met and that the Trial Chamber should exercise its discretion to admit the evidence. The evidence may be ordered admitted pending completion of the certification requirements by the Registrar.⁹

10. The evidence of Nikola Tomasevic is relevant to show that there was no policy or practice to fail to punish crimes committed by Serbs against Muslims and Croats.

11. The information from Nikola Tomasevic is of probative value because he was the very judge who ordered the people released in two cases which have been cited by the prosecution in this trial of examples of such a policy.¹⁰ As such, he is in a unique position to provide the actual reasons those people were released. His statements directly refute the allegations of the indictment that Serb authorities failed to punish crimes committed by Serbs against non-Serbs, including the individuals ordered released by Mr. Tomasevic. In its subpoena decision, the Trial Chamber found Mr. Tomasevic's information to be relevant and of material assistance to the defence case.¹¹

11. Mr. Tomasevic's evidence does not go to the acts and conduct of the accused.

12. Mr. Tomasevic's evidence on the judicial system overlaps with that provided by evidence of other defence witness, including Novak Todorovic and Savo Bojanovic. The Trial Chamber, in its subpoena decision, already noted that his testimony would overlap with judicial records already in evidence.¹² Therefore, his evidence would be cumulative.

⁷*Id.*, paras. 7-8

⁸*Id.* at para. 10

⁹ See *Decision on Third Motion* at para. 9: It is permissible for a party to propose statements for provisional admission pending their certification under Rule 92 *bis* (B). Dr. Karadzic believes that despite Mr. Tomasevic's unwillingness to give live testimony, he would be willing to certify the transcript of his interview pursuant to Rule 92 *bis*.

¹⁰ See Exhibits P3774, P3615-16 (Velagići case); P1798, P3610, P3611, P3612 (*Sugic* case)

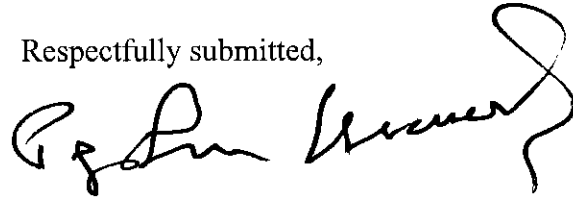
¹¹ *Decision on Accused's Motion to Subpoena Nikola Tomasevic* (11 December 2013) at para. 10

¹² *Decision on Accused's Motion to Subpoena Nikola Tomasevic* (11 December 2013) at paras. 12-13

13. Therefore, it is respectfully requested that the Trial Chamber admit the transcript of the prosecution's interview of Nikola Tomasevic pursuant to Rule 92 *bis*.

Word count: 816

Respectfully submitted,

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

Radovan Karadzic

ANNEX "A"

Rule 92ter Package

Witness Name: Municipality/Category: Time:	504. Nikola TOMAŠEVIĆ Genocidal intent / (92bis witness)
65ter Summary	<p>Nikola TOMAŠEVIĆ was born on 20 October 1960 in Bregovi, Kneževo. He graduated from the College of Law in Banja Luka. During his term in the JNA in 1984-85 he worked at the Military Attorney's Office in Belgrade and in Novi Sad. In 1987 he passed the bar exam in Banja Luka. In August 1992 he started to work at the Military Court in Banja Luka. In 1996 he was appointed President of the Military Court and remained at that position until the Law on the Abolishment of Military Courts was adopted.</p> <p>In August 1992, Nikola TOMAŠEVIĆ received the order to join the Military court in Banja Luka. At first, the Military Court in Banja Luka was called the Military Court of Zagreb with the seat in Banja Luka. As the JNA withdrew from Croatia, Zagreb Military Court was transferred to Banja Luka as well. It functioned in that capacity until the VRS was formed. However, since the judges of that court were Serbian, Macedonian or Slovenian, they left. Prior to and as well as at the time of his arrival, work on the organization of the Military Court continued.</p> <p>The Court was formally established; however it wasn't fully operational due to the lack of staff. Only Mile VIGNJEVIĆ stayed in a capacity of judge and another person in the Prosecutor's office. They dealt just with the urgent matters, such as on-site investigations and interrogations of the people who were brought in.</p> <p>When Nikola TOMAŠEVIĆ came, he was in charge of the briefing of the reports of the investigative judge. Afterwards, the worked as investigative judge and then, after some time, he became President of the Chamber. He became judge with the rank of Captain by the decree of the President. The investigative judge is conducting investigation according to the act which is forwarded to him by the Prosecutor's office and it was called a request for an investigation. The investigative judge is interrogating people who are brought in by the Police on the basis of criminal report and he performs on-site investigation of certain things that occurred. The investigative judge can be a Trial Chamber judge, but not in those cases where he had been working as investigative judge.</p> <p>The jurisdiction of the Military court in Banja Luka comprised military personnel as well as all the crimes committed by the military personnel and all those acts directed towards undermining the state system. The Military court in Banja Luka covered the zone of responsibility of the 1st Krajina Corps.</p> <p>In 1992, there was an enormously big number of cases, and an enormously low number of judges.</p> <p>The units of the armed forces of the VRS were required to abide by the instruction on the application of the international laws of war in the armed forces which was also the policy of the VRS. On several occasions in 1995 and 1996, Nikola TOMAŠEVIĆ held lectures regarding the Geneva conventions and the amending protocols to the members of the VRS who attended the non-commissioned officer's and officer's school. Desertion and war crimes were priority for the court to prosecute.</p>

	<p>During his work as investigative judge, Nikola TOMAŠEVIĆ had to work with the Military Police and other organs of the 1st KK. The cooperation was correct. There hasn't been a single order from his side that was not executed by the police: only unfortunate thing being that the police was not adequately trained or equipped to do that job. Also he had contacts with the Chief of Security of the 1st KK, Stevo BOGOJEVIĆ. When the court was setting up, Assistant for Morale and Legal Affairs of the 1st KK, VUKELIĆ, was in charge of technical part of the thing; procurement and the purchase of office supplies, and all those things that the court needed to start operating. There was always a will from their side to help the work of the Military Court. Also, they could ask the civilian police for help during the investigative phase.</p> <p>General TALJIĆ, Commander of the 1st KK, or anyone else for that matter, couldn't influence the decision of the court. The President of the Military Court was the single person responsible to the President of the Supreme Military Court.</p> <p>However, there were examples of the pressure which were coming from local communities or local politicians. Also, general atmosphere was bad and the people who were employed at the military courts were younger people without much experience, especially in criminal matters, and they would sometimes succumb to such atmosphere they were surrounded by and without any direct pressure.</p> <p>In regards to the release of detainees to go back to their units in cases of lack of manpower, Nikola TOMAŠEVIĆ claims that the people were released only in case of crime of desertion.</p> <p>No investigative judge from the Banja Luka Military court ever went to Manjača to interview the suspect.</p>
<p>Relevant Counts/Paragraphs</p>	<p>1, 3-8</p>

Statement and/or Testimony to be Relied Upon

65ter # in IT-95-5/18-T (if any)	Description	Date	Complete Page Range (Transcripts = Page; Statements = ERN)	Comments
1D09195	Interview with Nikola TOMAŠEVIĆ	6-Jun-2002		

Associated Exhibits

65ter# in IT-95-5/18-T (if any)	Description	Date	Where Referenced (Transcripts = Case - Page; Statements = ERN - Para. or Page)	Comments
1D25632	Report, 1st Krijina Corp. str. Conf. No. 12/1-532, Dated 12-08-1992	12-Aug-1992	Page 9	0129-0217
P4978	Military Prosecutor's Office, Main Staff of the Armed Forces of Republika Srpska, Guidelines for Determining the Criteria for Criminal Punishment	6-Oct-1992	Page 30	0076-0330
00904	Banja Luka Military Court File against Goran AMIDZIC and others (Velagici massacre)		Pages 40, 43, 45, 46, 48, 50, 51, 52, 53, 63, 64	0205-2251, 0205-2233, 0205-2246, 0205-2250, 0205-2228, 0205-2208, 0205-2219, 0205-2222, 0205-2260, 0205-2216, 0205-2214, 0205-2212, 0205-2208 (Not on 65ter List)
P3513	Stamped request by the Assistant Military Prosecutor, addressed to the Banja Luka Military Court Investigating Judge to open investigation of 12 individuals (names listed), charged with the murder of civilians in the village of Velagici, municipality of K	8-Mar-1993	Page 50	0203-4836
P3612	Stamped memo from Milorad TOMIC to Banja Luka Military Court entitled "Submission from accused's defence counsel of an application to end custody" in SUGIC brothers case	26-Jan-1993	Page 66	0200-5781
P3611	Stamped Republika Srpska Ceinac Municipality Popovac Local Community document re: the Obrenko ŠUGIC, Radenko ŠUGIC, and Miladin ŠUGI? case. On the behalf of the ŠUGIC family, the document requests the release of the three accused from the Military...	27-Aug-1992	Page 70	0200-5966
P6578	Ruling of Banja Luka Military Court releasing SUGIC brothers from detention	15-Feb-1993	Page 70	0200-5777