

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-T
IT-02-54-T

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 27 September 2013

THE PROSECUTOR

THE PROSECUTOR

v.

v.

RADOVAN KARADZIC

SLOBODAN MILOSEVIC

Public

REQUEST FOR APPOINTMENT OF
SPECIAL CHAMBER

Office of the Prosecutor:

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused:

Dr. Radovan Karadzic

1. Dr. Radovan Karadzic hereby requests that the President issue an order *proprio motu* appointing a Special Chamber to consider whether to appoint an *amicus curiae* prosecutor to investigate possible contempt of the Tribunal by former Prosecutor Carla Del Ponte.

2. This motion is based upon a cable authored by Legal Officers of the United States Embassy in The Hague on 16 April 2004 and made available on the web site of Wikileaks. The cable indicates that Prosecutor Del Ponte disclosed confidential information to representatives of the United States of America.¹

3. In the cable, the Legal Officers describe a meeting they had with ICTY Prosecutor Carla Del Ponte on 16 April 2004. The Officers note that on 13 April 2004, President Slobodan Milosevic had filed a confidential defence witness list with the ICTY Trial Chamber. The cable went on to state that:

“Reading directly from a list drawn from the filing, she said that the filing included former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke.”

4. The cable further indicates that Prosecutor Del Ponte “has agreed to keep us informed of developments with respect to Milosevic's witness requests”.

5. This cable provides reason to believe that Prosecutor Del Ponte violated Rule 77(A)(ii) by “disclosing information...in knowing violation of an order of a Chamber.”

6. Rule 77(C) provides that where there is reason to believe that a person may have violated Rule 77(A)(ii) and thereby be in contempt of the Tribunal, a Chamber shall either (i) direct the Prosecutor to investigate; (ii) direct the Registrar to appoint an *amicus curiae* to investigate; or (iii) initiate proceedings itself.

7. Since there is no Chamber presently seized of the *Milosevic* case, the President is respectfully requested to appoint a Special Chamber to consider this matter.

8. Dr. Karadzic recognizes that he does not have legal standing to assert a violation of the rights of Slobodan Milosevic. However, under similar circumstances, the President appointed a Special Chamber to determine whether former UN Detention Unit

¹ A copy of the cable is attached as Annex “A”.

Commander Timothy McFadden should be investigated for disclosing confidential information to the same representatives of the United States of America.²

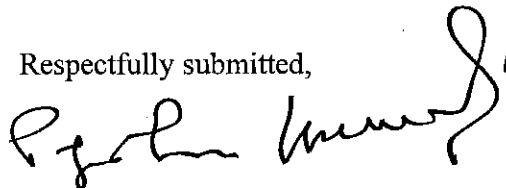
9. Since President Milosevic is deceased, a strict application of the concept of standing would mean that there was no one who could bring this matter to the attention of the appropriate authorities. Given the Tribunal's history of taking the disclosure of confidential information seriously by obtaining eight convictions for contempt,³ Dr. Karadzic believes that the President would want to be informed of this evidence of an apparent violation of the Tribunal's Rules.

10. The victim of the disclosure of confidential information is not only President Milosevic. Dr. Karadzic also has a personal interest in ensuring that mechanisms are in place to hold prosecutors accountable for disclosing confidential information about defence witnesses. He has been ordered to file a confidential revised witness list on 18 October 2013. If a prosecutor can disclose confidential information about defence witnesses with impunity, then Dr. Karadzic can have no confidence that his filings are protected.

11. Therefore, it is respectfully requested that the President appoint a Special Chamber to determine whether appointment of an *amicus curiae* prosecutor to investigate possible contempt of the Tribunal by former Prosecutor Carla Del Ponte is warranted.

Word count: 748

Respectfully submitted,



Radovan Karadzic

² See *Prosecutor v Milosevic*, No. IT-02-54-Misc.6, *Decision on the Initiation of Contempt Investigations* (18 July 2011) at para. 3

³ *Prosecutor v Marjadic & Rebic*, No. IT-95-14-R77.2-A, *Judgement* (27 September 2006); *Prosecutor v Margetic*, No. IT_95-14-R77.6, *Judgement on Allegations of Contempt* (7 February 2007); *Prosecutor v Jovic*, No. IT-95-14 &4/2-R77-A, *Judgement* (15 March 2007); *Prosecutor v Haxhiu*, No. IT-04-84-R77.5, *Judgement on Allegations of Contempt* (24 July 2008); *In the Case Against Vojislav Seselj*, No. IT-03-67-R77.2-A, *Judgement* (19 May 2010); *In the Case Against Florence Hartmann*, No. IT-02-54-R77.5-A, *Judgement* (19 July 2011); *Prosecutor v Vojislav Seselj*, No. IT-03-67-R77.3-A, *Judgement* (28 November 2012); *Contempt Proceedings Against Vojislav Seselj*, No. IT-03-67-R66.4-A, *Judgement* (30 May 2013)

ANNEX "A"



1. (C) Summary: Slobodan Milosevic -- in one of his first filings before the International Criminal Tribunal for the Former Yugoslavia (ICTY) -- submitted to the trial chamber on April 13 a confidential document describing the witnesses he may call during his upcoming defense case. While the list itself remains under seal, Embassy Legal officers have confirmed reports that it includes over 1600 individuals, although only 300 or so of them are named in the document. Of these, the list names the following current and former American officials: former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of

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Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke. OTP sources are confident that the trial chamber will permit only a fraction of the 1600 individuals to be called as witnesses. End summary.

2. (C) On April 13, Milosevic filed with the trial chamber a confidential document describing the witnesses he intends to

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call to support various parts of his defense. The document is not strictly speaking a witness list; rather, it is a memorandum divided into sections keyed to the indictments. After each section, the document lists the individuals whose testimony he believes would rebut that particular charge. Most of the 1634 individuals referenced are described with general placeholders, such as their position or role. Only about 300 of them are specifically named.

3. (C) In a meeting with Embassy legal officers on April 16, Chief Prosecutor Carla Del Ponte confirmed that the document included USG officials. Reading directly from a list drawn from the filing, she said that the filing included former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke. She said that it also included a long list of Russian officials, followed by French and British officials, and finally, in the words of a senior adviser, Anton Nikiforov, a number of Chomskyite anti-globalists whose proposed contributions are somewhat mysterious. Nikiforov was perplexed by the Russians listed, noting that a number of them would be damaging rather than helpful to Milosevic. Del Ponte said that the list indicated that Milosevic was planning a primarily political defense.

4. (C) The filing is now with the trial chamber and the prosecution will have an opportunity to respond to it at a May 17 pre-defense phase conference in chambers. Given that

the defense has been allocated 150 days for its portion of the case, it is inconceivable that the trial chamber will approve anything more than a fraction of the list. (NB: By contrast, the OTP called nearly three hundred witnesses during its case, though its witness "wish lists" involved substantially more names and placeholders as well.) Further, any decision with respect to specific witnesses is not likely to occur for some time given that Milosevic has to decide first to call the witness, request that the witness appear, and then justify and pursue a court order if the witness refuses. The USG would have an opportunity to weigh in at the stage a court order is sought, if not sooner, and Del Ponte has agreed to keep us informed of developments with respect to Milosevic's witness requests.

5. (C) Comment. Milosevic's filing does not come as much of a surprise as Milosevic has been saying for over two years that he would call former senior officials of the United States and other governments. While Del Ponte may be right that the list reflects a political rather than a legal defense, the proof of that will be not in the three hundred witnesses identified but in the remaining 1300. Some of these witnesses may be insiders from the Milosevic regime who would be in a position to challenge specific aspects of the prosecution case. Until those witnesses are identified, it will be difficult to characterize the defense phase with any definite degree of certainty. End comment.

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