

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 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

RESPONSE TO PROSECUTION'S
MOTION TO RE-OPEN ITS CASE

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully requests that the *Prosecution's Motion to Re-Open its Case* (4 March 2014) be denied without prejudice.

2. Dr. Karadzic recognizes that the discovery of the mass grave at Tomasica is an important development. Discovery and identification of the bodies of persons who died during the war in Bosnia plays an important role in the grieving and healing process for the families and communities. It also plays an important role in judicial proceedings, allowing for certainty in identifying and segregating victims of crimes as well as persons who died in battle.

3. The prosecution's motion acknowledges that its investigation concerning the Tomasica mass grave is incomplete. The evidence of three witnesses the prosecution intends to call has not yet become available.¹ Identification of the bodies is only partly completed. No conclusions as to the cause of death have been reported. As a result, the nature and scope of the link between the bodies found in the Tomasica mine and the criminal responsibility of Dr. Karadzic remain uncertain at this time.

3. In addition, incomplete disclosure prevents Dr. Karadzic and the Trial Chamber from accurately assessing at this time whether the evidence sought to be presented by the prosecution could have been obtained during its case-in-chief. We know from the partial disclosure provided that the prosecution had evidence that the bodies of persons killed in the Biscani area had been buried at the Tomasica mine.² We know that some bodies and body parts were already found buried at the Tomasica mine site in 2004 and 2006.³ We also know that as early as 2004, the prosecution had identified the bodies in a mass grave at Jakarina Potok as having been originally buried at Tomasica.⁴ And we know that DNA identification had been made on 28 of the bodies before the prosecution rested its case.

4. The only evidence that did not exist at the time the prosecution rested its case is that an additional 62 persons have been identified as having been buried at Tomasica mine.

5. What we don't know is where those people died, whether in battle or detention, and whether they are victims of the crimes charged in the indictment against Dr.

¹ para. 10

² See Rule 65 ter #26082, Exhibit P706

³ See Rule 65 ter #26081 at paras. 5,9

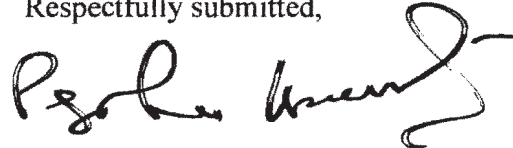
⁴ See Rule 65 ter #26081 at para. 8

Karadzic. We also do not know what information the prosecution had in its possession prior to resting its case, that, with reasonable diligence, may have led to the discovery of the location of the Tomasica mine.⁵

6. While Dr. Karadzic understands the prosecution's motivation in bringing the motion at the earliest possible time, the motion should be denied without prejudice pending the completion of the prosecution's investigation and satisfaction of its disclosure obligations.⁶

Word count: 610

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic

⁵ *Motion for Extension of Time to Respond to Motion to Re-open Prosecution Case and 89th Disclosure Violation Motion* (13 March 2014) at paras. 13,16,19,24,29,31

⁶ Should the Trial Chamber grant the re-opening of the prosecution's case, it is requested to set a deadline for disclosure of all Rule 66(A)(ii) material and that the re-opening case not commence until at least 30 days after the disclosure has been completed.