

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: 19 November 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR ORDER TO OBTAIN WITNESS
STATEMENTS AND TESTIMONY FROM NATIONAL COURTS

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 73 and 98,¹ for the assistance of the Trial Chamber in obtaining statements, and recordings or transcripts of the testimony of prosecution witnesses in his case who have testified on the same matters in the courts of Bosnia, Croatia, or Serbia.

2. As the trial moves towards the municipalities component of the prosecution's case, Dr. Karadzic has become aware that many of the same events have been the subject of prosecution in Bosnian courts, and some in courts in Croatia and Serbia. Many prosecution witnesses have given testimony before those courts. From a review of the disclosure he has received so far, it appears to Dr. Karadzic that the ICTY Office of the Prosecutor makes no systematic effort to obtain recordings or transcripts of that testimony.

3. Random internet searches using the names of prosecution witnesses have located media reports indicating that those persons have testified before national courts on the same events. While the prosecution sometimes discloses the prior testimony, there appear to be many witnesses who have testified whose testimony has never been disclosed.

4. Prior statements and testimony of witnesses are required to be disclosed pursuant to Rule 66(A)(ii), but only to the extent that they are in the possession of the prosecution. Dr. Karadzic suspects that the prosecution simply never comes into possession of many of the statements and testimony.

5. Because such prior statements and testimony are crucial for the testing of the credibility of witnesses, Dr. Karadzic seeks the assistance of the Trial Chamber to obtain them.

6. At the ICTR, Trial Chambers have frequently ordered the prosecution to obtain prior statements of its witnesses from Rwandan national courts and to disclose them to the defence.² The Appeals Chamber has held that a Trial Chamber has a clear power – as

¹ Rule 98 provides that, "A Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance."

² *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses* (16 December 2003); *Prosecutor v Karemera et al*, No. ICTR-98-44-PT, *Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records* (14 September 2005) at para. 11; *Prosecutor v Kajelijeli*, No. ICTR-98-44A-T, *Decision on Juvenal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO* (2 November 2001) at paras 20-22; *Prosecutor v Bagilishema*, No. ICTR-95-1A-

part of its duty to ensure that the trial is properly conducted – to direct the prosecution to obtain material which may be relevant to the case of the accused. In such a case, the further material should be produced, not only to the Trial Chamber, but also to the accused.³

7. The rationale behind ordering the prosecution to obtain the prior statements and testimony of its witnesses from national courts is that it has working relationships and superior access to the authorities of those courts. Dr. Karadzic believes that such rationale would also apply in his case, and that the most efficient and expeditious means of obtaining the material is for the Trial Chamber to direct the prosecution to obtain and disclose it.

8. This procedure would have the added advantage of avoiding the wider dissemination of the identities of the prosecution's witnesses in this case, many of whom benefit from protective measures which shield their identity from the public. If the defence were to have to obtain the material from the authorities in each jurisdiction, it would risk disseminating the names of prosecution witnesses to a wider circle of people than if the prosecution could liaise with its counterparts in these courts to obtain the information.

9. The prosecution also can, in a timely manner, conduct systematic interviews of the witnesses in order to elicit as detailed information as possible as to when, where, and by which authority the witnesses have been interviewed, examined and/or testified and make inquiries to the national authorities with reference to the elicited information.⁴

10. Therefore, Dr. Karadzic respectfully requests that the Trial Chamber direct the prosecution to obtain and disclose all prior statements and testimony of its witnesses from national authorities in Bosnia, Croatia, and Serbia.

T, *Judgement* (7 June 2001) at para. 18; *Prosecutor v Bagilishema*, No. ICTR-95-1A-T, *Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witnesses Y, Z and AA* (8 June 2000); *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Defence Motion for Subpoenas to Prosecution Witnesses* (10 May 2007) at para. 15,18; *Prosecutor v Simba*, No. ICTR-2001-76-T, *Decision on Matters Related to Witness KDD's Judicial Dossier* (11 November 2004) at para. 11

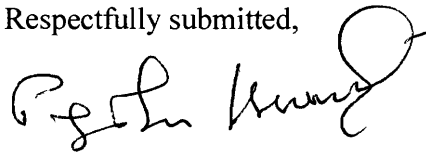
³ *Prosecutor v Bagilishema*, No. ICTR-95-1A-A, *Judgement* (3 July 2002) at para. 66

⁴ *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decisions on Joseph Nzirorera's Motions to Vacate the Decision on Defence Motions for Subpoenas to Prosecution Witnesses, to Exclude the Testimony of Witnesses AMB, ANU, AWD, AWE, FH, and KGV, and to Postpone the Testimony of Witness ANU* (14 June 2007) at para. 18; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Motion to Exclude Testimony of Witness AXA* (11 July 2007) at para. 6

11. Should the Trial Chamber prefer not to place this burden on the prosecution, Dr. Karadzic will make a written request for the statements and recordings of the prosecution witnesses directly to the three States and, absent voluntary cooperation, return to the Trial Chamber for a binding order compelling the States to provide that information. Given the poor cooperation that the states of Bosnia and Croatia have provided to Dr. Karadzic's defence team so far, it could be expected that this process will be lengthy.

Word count: 1047

Respectfully submitted,

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

Radovan Karadzic