



7 July 2000

## ICTY WEEKLY UPDATE – 132

### PROCEDURAL DEVELOPMENTS:

#### **I. OVERVIEW OF COURT PROCEEDINGS**

#### **KVOČKA, KOS, RADIĆ, ŽIGIĆ & PRCAČ CASE (“OMARSKA & KERATERM CAMPS”)**

*Trial Chamber I – Judges Rodrigues (Presiding), Riad and Wald*

Having adjourned on 14 June 2000, the Trial Chamber reconvened on Monday 3 July, entering its seventh week of hearings of the prosecution case-in-chief. The first witness to be called this week was Ms. Zlata Cikota, a former detainee at Omarska camp.

Ms. Cikota testified that she was taken to the SUP for an “informative interview” on 23 June 1992 (her husband had already been taken away on 31 May 1992) and held there until 24 June 1992 when she was transported to Omarska camp.

Ms. Cikota testified that, throughout the 42 days of her detention at the camp (until 3 August 1992), during the night she was held on the first floor of the restaurant building with about 17 other women (about 35 women were detained at the camp as a whole) and, during the day, they were held in the dining room area of the restaurant building from where she was able to see the whole of the pista, the “white house” and part of the “red house”.

Ms. Cikota told the court that she knew Kvočka before the war and recognised him at the camp. She also testified that she saw Drago Prcač at the camp and was able to observe the situation and knew who people were and what kind of influence they had in the camp.

Having been asked to tell the Judges what she observed or heard that led her to conclude that Prcač was a person of influence in the camp, Ms. Cikota concluded that Prcač was the commander in charge of the security of the Omarska camp investigation centre, Željko Meakić and Kvočka had the same position and that those three individuals were in charge of the situation in Omarska camp.

Ms. Cikota told the court of the conditions at the camp for the detainees, how this differed to the conditions for the camp personnel and gave the names of other men and women she knew at the camp. These included: Jadranka Cigelj, Velida Mahmuljin, Jasminka Hadžibegović, Munevera Mesić, Mugbila Beširević, Edna Dautović, Sadeta Medujanin, Sebiha Turković, Sadeta Avdić, Čamil Pezo, Husein Bašić, Husein Crnkić, Nedžad Serić, Eso Mehmedagić, Omer Karenović, Ado and Omer Ekinović, Slavko Ećimović, Burho Kapetanović, Žiko Trnolić and Ago Sadiković.

Upon leaving Omarska she was taken to Trnopolje, where she was held for about 5 days before being escorted to her home in Prijedor.

On Tuesday 4 July, the court heard the testimony of Mr. Fadil Avdagić. Mr. Avdagić testified that, on 26 May 1992, he was arrested by Serb forces and taken to the Keraterm camp where he was detained in a room with about 500 other people for two days and one night.

On the third day they were transferred to the Omarska camp by bus. Initially detained in the administration building, Mr. Avdagić was then put in the garage before being transferred to a room on the upper floor of the hangar building, then later to the pista building, the “white house,” and in the end, the restaurant.

Mr. Avdagić testified about the beatings of Ahil Dedić, Mirsad Alisić, Emir Karabasić, Silvo Sarić, Dalija Hrnjak (the latter being in the presence of Zoran Žigić) and himself, and saw Becir Medunjanin, his son Anes, Dalija Hrnjak and Islam Bahunjić.

The next witness, Mr. Ermin Striković, testified that he was taken to Keraterm camp on 26 May 1992 and subsequently to the Omarska camp the following day.

A status conference in open session followed in which, amongst other things, the Trial Chamber heard the arguments of counsel for Žigić in respect to the defence of alibi.

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**KUNARAC, KOVAČ & VUKOVIĆ CASE (“FOČA”)**

*Trial Chamber II – Judges Mumba (Presiding), Hunt and Pocar*

On Monday 3 July, the Trial Chamber handed down its decision on the motion for judgement of acquittal filed jointly by the three accused on 20 June 2000 (see “Court Documents” below).

The defence case-in-chief commenced on Tuesday 4 July. After hearing the defence opening arguments, Kunarac started his testimony. His examination-in-chief concluded on Thursday 6 July.

The Trial Chamber will reconvene on Monday 10 July with the cross-examination of Kunarac.

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**KORDIĆ & ČERKEZ CASE (“LAŠVA VALLEY”)**

*Trial Chamber III – Judges May (Presiding), Bennouna and Robinson*

The Trial Chamber continued to hear Kordić’s defence case-in-chief this week.

On Monday 3 July, the Trial Chamber heard the testimony of Mr. Bruce Koenig, an expert in audiotape analysis.

The next witness, Mr. Antonius Broeders, was called by the prosecution in answer to the testimony of Mr. Koenig. The prosecution filed a report compiled by Mr. Broeders on 21 June 2000.

On Tuesday 4 July, Mr. Stjepan Neimarević, a Franciscan priest, testified. Mr. Neimarević lived in the monastery in Guča Gora until the ABiH attacked the area on 8 June 1993 and he was forced to flee with a number of other Croats.

The next witness, Ms. Marijana Vidović, told the court that she lived in the hamlet of Buhine Kuće until the ABiH attack on 9 January 1994, during which everybody who lived in Buhine Kuće, except her, her brother and another man, were killed.

Ms. Vidović told the court that the bodies of her parents, uncle, cousin and of Ankica Grbavac and Mirko Safradin were found buried under snow next to a Muslim house three months after the attack.

The next witness, Mr. Pavao Vidović, testified that he became a refugee in Kiseljak in December 1993 following the ABiH attack on the municipality of Vareš. While he lived in exile he was appointed deputy mayor of the municipality of Vareš. And in 1996, he was elected the president of the Vares branch of the HDZ of Bosnia and Herzegovina. Mr. Vidović completed his testimony on Wednesday 5 July.

The Trial Chamber then heard the testimony of Mr. Ivo Vilusić

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**BLAŠKIĆ CASE (“LAŠVA VALLEY”)**

*Judge Pocar*

On Tuesday 4 July, Judge Pocar held a status conference in open session.

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**SIKIRICA CASE (“KERATERM CAMP”)**

*Judge May*

Following the detention of Duško Sikirica by SFOR on 25 June 2000, the initial appearance hearing was held on Friday 7 July. Sikirica pleaded “not guilty” to the counts charged against him.

**II. OVERVIEW OF COURT DOCUMENTS**

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**KUNARAC, KOVAČ & VUKOVIĆ CASE (“FOČA”)**

DECISION ON PROSECUTION MOTION FOR EXCLUSION OF EVIDENCE AND LIMITATION OF TESTIMONY

On 3 July 2000, Trial Chamber II (Judges Mumba (Presiding), Hunt and Pocar) granted in part a motion to exclude certain defence evidence and limit testimony, filed by the prosecution on 15 June 2000.

The prosecution sought an order limiting the presentation of the defence case in relation to the report of defence expert Dr. Radinović and 18 videotapes.

The Trial Chamber first held that, pursuant to Rule 89(C) of the Rules of Procedure and Evidence, “evidence is inadmissible where it is irrelevant to the charges against an accused or where it has no probative value”. And, “in general, an expert may express an opinion (within the confines of his or her expertise) upon facts which are established in the evidence (either by the expert’s own evidence or independently), if that opinion is relevant to the issues in the case. The Trial Chamber is not bound to accept that opinion. If the Trial Chamber does not accept that the facts upon which the opinion is based have been established, that opinion has no probative value and it is inadmissible for that reason.”

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After having addressed each of the issues raised by the prosecution, Trial Chamber II ruled that certain specified portions of the expert's report are inadmissible and thus the expert's oral testimony was limited accordingly. The remaining relief sought by the prosecution was refused at this stage.

#### MOTION FOR JUDGEMENT OF ACQUITTAL GRANTED IN PART

On 3 July 2000, the Trial Chamber entered a judgement of acquittal in favour of the accused Dragoljub Kunarac on Count 13 of the third amended indictment, confirmed on 1 December 1999, and held that Zoran Vuković has no case to answer in relation to the allegations made by Witness FWS-48 in support of Counts 33, 34, 35 and 36 of the redacted indictment, filed on 21 February 2000 (see Press Release 516).

The judgement follows a motion for judgement of acquittal filed jointly by the three accused on 20 June 2000.

### **BRĐANIN & TALIĆ CASE ("KRAJINA")**

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#### DECISION ON MOTION BY PROSECUTION FOR PROTECTIVE MEASURES

On 3 July 2000, Trial Chamber II (Judges Hunt (Presiding), Mumba and Pocar) issued its decision on the motion for protective measures filed confidentially by the prosecution on 10 January 2000.

The prosecution sought, amongst other things, a non-disclosure order directed to the two accused and their legal teams and an order allowing the prosecution to make limited redactions to witness statements or prior testimony concerning the identity and whereabouts of vulnerable victims or witnesses.

On 11 January 2000, the prosecution purported to comply with its disclosure obligations under Rule 66(A)(i) of the Rules of Procedure and Evidence by serving on counsel for the two accused copies of the supporting material which had accompanied the indictment when confirmation was sought. Every statement served had been redacted to remove the name and any other material which would identify either the persons who had made the statements or their whereabouts.

Initially stating that the prosecution had not satisfied the requirement, pursuant to Rule 69(A), of "*exceptional circumstances*" for protective measures to be ordered, the Trial Chamber held that the action of the prosecution in redacting the name and identifying features in *every* statement was both "*unauthorised and unjustified*".

Holding that the prosecution must file fresh motions seeking to justify a non-disclosure order in relation to each particular victim or witness, the Trial Chamber went on to address some of the issues which arose in the present motion and which it thought would arise in any fresh motion.

First, as to the likelihood that prosecution witnesses will be interfered with or intimidated once their identity is made known to the accused and his counsel, but not to the public, the Trial Chamber ruled that "*Rule 69(A) applies only to 'the non-disclosure of the identity of a victim or witness who may be in danger or at risk'. Any fears expressed by potential witnesses themselves that they may be in danger or at risk are not in themselves sufficient to establish any real likelihood that they may be in danger or at risk. Something more than that must be demonstrated to warrant an interference with the rights of the accused which those redactions represent.*"

Second, as to the extent to which the power to make protective orders can be used, not only to protect individual victims and witnesses in that particular case, but also to assist the prosecution to have indeterminate witnesses and victims testify on its behalf in future cases, the Trial Chamber held that "[w]hilst the Tribunal must make clear to prospective victims and witnesses in other cases that it will exercise its powers to protect them from, inter alia, interference or intimidation where it is possible to do so, the rights of the accused in the case in which the order is sought remain the first consideration. It is not easy to see how those rights can be properly reduced to any significant extent because of fear that the prosecution may have difficulties in finding witnesses who are willing to testify in other cases".

Third, as to the length of time before the trial at which the identity of the victims and witnesses must be disclosed to the accused, the Trial Chamber did not believe that "*it is possible to lay down in advance any particular period which would be applicable to all cases. Everything will depend upon the number of witnesses to be investigated, and the circumstances under which that investigation will have to take place.*"

In the motion, the prosecution also sought an order which would oblige counsel for the accused to return all statements of witnesses to the Registry at the conclusion of the proceedings. The prosecution would not have access to the documents when they were returned.

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The Trial Chamber did not accept “that the likely risk of either deliberate or unintentional disclosure after the conclusion of the case is of such significance as to justify the unwieldy and possibly unfair consequences of an order that the documents be returned in every case.” But it did accept that such orders may be warranted in a particular case, the merits of which are “better considered at the end of the trial, when the risk involved may more easily be identified.” This order was thus refused, “without prejudice to any further application at a later stage”.

Trial Chamber II did however, order that, “if a member of the Brdanin and Talić defence team withdraws from the case, all the material in his or her possession shall be returned to the lead defence counsel” on the basis that the member of the team no longer has any need for the documents.

The prosecution also sought an order which would oblige counsel for the accused to maintain a log indicating the names, addresses and position of each person or entity receiving any of the non-public information in the materials provided by the prosecution.

Considering that the order “appears to be intended specifically to provide the basis for ‘appropriate’ action against only those persons responsible for maintaining the log. The ‘appropriate’ action could well include prosecution for contempt of the Tribunal”, the Trial Chamber did not accept that it was appropriate to require such a log to be maintained by the defence team for the purpose contemplated by the order and thus refused this part of the motion.

The Trial Chamber then itself questioned the action of the prosecution in filing its motion on a confidential basis. Stating that there is a “public interest in the workings of the courts generally (including this Tribunal) – not just in the hearings, but in everything to do with their working – which should only be excluded if good cause is shown to the contrary”, the Trial Chamber ordered that the prosecution motion for protective measures, the filings by the parties in relation to the motion and the transcript and video-recording of the oral hearing on the motion held on 24 March 2000, be made public.

The Trial Chamber added that nothing in the decision precludes any party from seeking any other or additional protective orders or measures considered appropriate for a particular witness or other evidence.

***Corrigendum***

In the decision on the application of Miroslav Tadić to provisionally leave his residence for medical examinations rendered by Trial Chamber III (Judges Robinson (Presiding), Hunt and Bennouna) in the Simić case and summarised in *Weekly Update 131*, the application was denied “without prejudice to any further application, supported by a second opinion, for the specified examination in a different location”.

**COURTROOM SCHEDULE: 10 JULY – 14 JULY \***

**MONDAY 10 JULY**

Courtroom I 09:30, **Kunarac/Kovac/Vukovic**, Trial  
14:30, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30, **Kordic/Cerkez**, Trial  
14:30, **Kordic/Cerkez**, Trial  
Courtroom III 09:30, **Kvočka et al./Prcac**, Trial  
16:00, **Galic**, Status Conference

**TUESDAY 11 JULY**

Courtroom I 09:30, **Kunarac/Kovac/Vukovic**, Trial  
14:30, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30, **Kordic/Cerkez**, Trial  
14:30, **Kordic/Cerkez**, Trial  
Courtroom III 09:30, **Kvočka et al./Prcac**, Trial  
16:00, **Kvočka et al./Prcac**, Status Conference

**WEDNESDAY 12 JULY**

Courtroom I 09:30, **Kunarac/Kovac/Vukovic**, Trial  
14:30, **Kunarac/Kovac/Vukovic**, Trial  
Courtroom II 09:30, **Kordic/Cerkez**, Trial  
14:30, **Kordic/Cerkez**, Trial  
Courtroom III 09:30, **Kvočka et al./Prcac**, Trial

**THURSDAY 13 JULY**

Plenary Session

**FRIDAY 14 JULY**

Plenary Session

Coverage of the proceedings in Courtroom II will be broadcast in the viewing area in the lobby.

\*The courtroom schedule is provisional and you are invited to check for last minute changes with the Public Information Services. Unless otherwise indicated, all sessions are open.

**PRESS RELEASES ISSUED SINCE 3 JULY**

DATE	NO.	TITLE	E	F	B/C/S
03/07/00	514	WRITTEN JUDGEMENT RENDERED IN CONTEMPT CASE AGAINST MILAN SIMIĆ AND HIS COUNSEL BRANISLAV AVRAMOVIĆ	E		B/C/S
04/07/00	515	DUŠKO SIKIRICA'S INITIAL APPEARANCE SCHEDULED FOR FRIDAY 7 JULY 2000	E		B/C/S
05/07/00	516	DEFENCE MOTION FOR JUDGEMENT OF ACQUITTAL DISMISSED IN PART AND GRANTED IN PART	E		B/C/S
05/07/00	517	EXHUMATIONS IN BOSNIA AND HERZEGOVINA	E		B/C/S

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