

## **Celebici trial: argument over out-of-court statements only partly resolved**

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However, no new witnesses took the stand, either during public or closed hearings, thus breaking the two-witnesses-per-week "snail's pace" proceedings. In the past seven weeks only 14 out of 75 prosecution witnesses have taken the stand.

Unlike the previous weeks, when the defence kept confusing the judges and the prosecutor with its motions, the eighth week commenced with what appeared to be a confusing prosecution motion. The Prosecutor requested the Bench to make a formal finding on whether the defendant Esad Landzo was (mentally) fit to stand trial.

Presiding Judge Adolphus Karibi-Whyte admitted being confused by such a motion, while Landzo's new co-counsel John Ackerman claimed he was puzzled as to why the Prosecutor should request such a ruling, given that the Defence never claimed that the accused is unfit to stand trial.

The Prosecution attorney Teresa McHenry reminded, however, that the other co-counsel for the accused announced in her pre-trial brief that "the Defence intends to raise the issue of lack of mental responsibility for the crimes alleged requiring a finding of 'not guilty'. The issue is for the defence case in chief and not merely for the use as mitigating evidence in case of sentencing."

The pre-trial brief clearly states that "the absolute defence of lack of mental responsibility will be addressed for all practical purposes as an insanity defence." Because of such a notice, McHenry said, the Prosecutor does not wish "to be surprised in the middle of the trial". Judge Karibi-Whyte stated the Bench would issue a ruling latter.

After that things went back to normal: the defence once again returned to its role of confusing the judges and the general public. Continuing last week's discussions on the introduction of out-of-court statements of the accused, John Ackerman argued that although his defendant Esad Landzo had an attorney present at the time he gave his statement, and although he was advised of his rights, in spite of all these safeguards, his rights had not been protected when his statement was taken.

Mr. Ackerman, further claimed that Ms. McHenry, who was also present at the interview, failed in her professional duty to tell the accused and his lawyer at the time (Mustafa Brackovic from Sarajevo) that they should consult with an attorney from a common law system.

Responding to the Defence allegation, the Prosecutor McHenry rejected, first, that only common law lawyers are competent to appear before the Tribunal, and, second, that "this is a common law Tribunal." She added that it was not her duty or business of the Prosecutor "to give unsolicited advice." In addition, she rejected entirely the notion that the accused or a civil law lawyer cannot understand the Rules of Procedure and Evidence. According to McHenry, Landzo made an informed decision to give the statement.

The Court also heard arguments on a similar motion to exclude out-of-court statements filed on behalf of the accused Delic, and combined both motions.

Finally, The Chamber ruled that the procedural requirements for taking statements have not been violated and the statements could be admitted, as statements of what happened at that time. It ruled that none of the grounds put forward by the Defence suggested fraud, force or coercion, and that the Defence, at the end of the trial, could apply to have the statements excluded from the evidence before the Chamber.

For the accused Mucic, his counsel Michael Greaves alleged that the defendant - who was arrested in Austria - was coerced into making the statement. Greaves said that he was concerned with the procedures which were followed from the time of Mucic's arrest on March 18, 1996. He said that first Austrian law was applied, then the law of the Tribunal, and that he wished to call three witnesses to give evidence on this matter, including an expert on Austrian law.

Presiding Judge Karibi-Whyte said that the allegations made by Mr. Greaves were extremely serious and that the burden was on the Prosecutor to prove that Mucic's statement was properly taken.

Given the zeal and persistency with which the Defence is trying to exclude these statements from the evidence, it can be assumed, that during these interviews the accused revealed far more than they should

have, both to their own disadvantage as well as to the disadvantage of their co-defendants.

The Celebici trial continues on Tuesday, 20 May.

**Focus:** International Criminal Tribunal for the former Yugoslavia

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