

Doubts Cast on Oric Evidence

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Judges warn that they will expect full authentication of prosecution documents submitted against former Muslim commander.

Lawyers presenting the case against former Bosnian Muslim army commander Naser Oric have spent most of this week dealing with serious doubts about the authenticity of their evidence.

Prosecution lawyers have submitted 263 documents to the court, part of the so-called “paperwork of war” referred to in the prosecution’s opening statement – a series of military orders, letters, interrogation notes and soldiers’ diaries – which they believe are to their case.

But defence lawyers have questioned the legitimacy of more than half of those records.

It is the latest development in a trial that has been plagued from the start by controversy surrounding prosecution evidence. Problems first arose during a pre-trial conference on September 28, when defence lawyers asked prosecutors to hand over the original recording corresponding to a transcript that was to be submitted in evidence.

While the prosecution said they knew the transcript had come from a BBC television programme, they were forced to admit that they had no tape to go with it.

Trial judges were unimpressed. “I don’t understand how you can have a transcript that cannot be traced,” said presiding judge Carmel Agius.

The trial chamber subsequently ruled that all prosecution evidence submitted during the trial would have to be accompanied by a witness who could attest to its provenance.

“My first question will be where did you get it from? My second question will be do you have it authenticated?” said Judge Agius, who warned, “I won’t accept ‘I don’t know’ for an answer.”

Matters became more complicated the following day, when the defence protested against prosecution moves to submit three written witness statements in evidence – two from witnesses who were apparently dead and one who was too ill to appear in court.

The court rules allow that statements from witnesses who have died or who are not in a condition to attend court can be presented in written form.

But following doubts expressed by the defence, the prosecution made some phone calls during a break in that day’s session and discovered that one of the witnesses was actually still alive.

Defence lawyers also noted that the identification number on the other “dead” witness’s death certificate didn’t match with their personal identification number, and they expressed a “sincere doubt” as to the authenticity of the document.

“I am extremely baffled,” said Judge Agius. “We need to establish whether this person is dead or alive.”

The trial chamber is still waiting for the results of an investigation into the personal identification number supplied for this witness.

In response to questions by the defence about the status of the witness who is apparently ill, the court ordered that a neutral doctor should be called to verify whether this person is indeed unable to appear before the court.

According to tribunal rules, there are limits on the evidence that can be presented concerning a witness who is unable to appear in person, as this rules out the possibility of cross-examination.

But the controversies dragged on into this week, as prosecution lawyers were forced to spend three days presenting witnesses to defend the latest batch of documents, in line with the judges’ ruling that under the circumstances every exhibit would have to be authenticated.

These included Rasin Manis, an investigator working for the tribunal’s prosecution office who had been involved in seizing the documents in the Bosnian town of Tuzla.

Afterwards came handwriting expert Dr W P F Fagel of the Netherlands Forensic Institute, who spoke about what were claimed to be examples of Oric’s signature on certain documents. Documents specialist Dr Jan de Koeijer, from the same institute, addressed the court last and analysed what were apparently official stamps on some of the documents implicating the defendant.

None of the witnesses were able to draw any clear-cut conclusions concerning the documents’ authenticity. It will now be up to the chamber to assess the situation and decide how much weight to give to the evidence.

Whatever the result, it is clear from comments made early on in the trial that judges are taking the problems very seriously.

“At the end of the day, it is an issue of trust,” said Judge Agius at the pre-trial conference. “If we find that you are not meeting that obligation, you don’t know what will hit you. We will be more rough than you can imagine.”

At the end of the week, the trial chamber heard from the first two witnesses about actual burning and looting by Muslim soldiers. Both witnesses, Drago Duric and Miladin Simic are Bosnian Serbs from the village of Jezestica. They testified about two separate attacks that took place in their village - one on August 8, 1992; the other on January 7, 1993, Serbian Orthodox Christmas. Duric testified under protective status with facial distortion. Simic has yet to be cross-examined.

IWPR will be reporting in detail on their testimonies in the next edition.

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