

False Witness 'L' Goes Back To Sarajevo

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Last week, the Appeals Chamber and later an Appeals Bench rejected Opacic's application for leave to appeal against the Order of Trial Chamber II that he be returned to the custody of the Republic of Bosnia and Herzegovina. Opacic had requested to remain in the Tribunal's custody "at least until the relevant authorities of the republic of Bosnia and Herzegovina have decided upon the revision of the judgement," by which a Sarajevo court had convicted him of genocide and war crimes, and sentenced him to ten years' imprisonment.

Opacic's counsel alleges that Opacic fears mistreatment in a Bosnian prison "because of his [Serb] nationality and his failure as a prosecution witness offered by the Republic of Bosnia and Herzegovina in the Tadic case."

Dragan Opacic (a Bosnian Serb about 20 years of age) appeared in the trial of Dusko Tadic as a protected witness for the prosecution in August and September 1996, under the name witness "L". He said that he had been a guard in the Trnopolje camp, and that he had committed murder and rape together with the accused.

The defence - it claims "accidentally" - came across the family of the protected witness and brought his father (who according to Opacic had been killed) and brother to The Hague. The witness at first asserted that he did not know them, but after they had been left alone with him for half an hour, he finally admitted that they were indeed his father and brother. What they said to him in that half hour remains a mystery, but the prosecution had DNA tests done, just in case, and these proved that the three men were related.

After that, Opacic confessed that he had perjured himself, asserting that the Bosnian authorities, who had imprisoned him, had forced and trained him to do so. On October 25, 1996, the Prosecutor informed the Trial Chamber that she no longer regarded Opacic as a witness of truth and invited the judges to disregard his testimony.

Two investigations followed. The one attempted by Tadic's then defence counsel, Michail Wladimiroff, yielded no results: the Bosnian authorities refused to cooperate. The same authorities, however, were much more forthcoming with the prosecution investigators. The result of their inquiry is summarised in a letter sent on December 2, 1996, by Chief Prosecutor Louise Arbour to the president of the presidency of Bosnia, Alija Izetbegovic.

That letter was published in full in Tribunal Update 6. Arbour's conclusion was as follows: "Based on our brief, but intensive, investigation, we have not discovered anything that would support Opacic's allegations that your authorities forced him to give the false testimony in Tadic's trial or trained him in delivering the false testimony. To the contrary, the information obtained by our investigators suggests that Opacic's allegations against your authorities are false."

The investigation continued, with the expectation that Opacic might be charged with perjury. However, the day after the verdict on Tadic was announced, the Prosecutor informed the Trial Chamber that she "did not consider the case of Dragan Opacic was an appropriate case for prosecution under Rule 91"-false testimony under solemn declaration. Accordingly, she requested his return to the custody of the Bosnian government. That request was granted by the Trial Chamber II Order of May 27, 1997, against which Opacic sought leave to appeal.

The Appeals Chamber determined that the applicant (Opacic) had no standing to appeal to the full Appeals Chamber, which is bound by Rule 25 of the Statute to hear "appeals from persons convicted or from the Prosecutor. However, in the interest of justice it was decided to treat the application as an application for leave to appeal pursuant to Rule 72, whose paragraph B(ii) provides for the constitution of a Bench of three judges from the Appeals Chamber to determine the admissibility of the application.

The Bench (Tribunal president Antonio Cassese and Judges Haopei Li and Saad Saood Jan) notes that "Rule 72 applies to preliminary motions filed by either party," and that the Rules of Procedure and Evidence define the "party" as "the Prosecutor or the accused." So, the Bench concludes that "the detained witness, Dragan Opacic, who has not been indicted, being neither the Prosecutor nor the accused, is therefore not a party. Accordingly, he has no standing to invoke Rule 72."

Furthermore, the Bench made an important comment in view of the development of the jurisprudence about the Tribunal's appeals proceedings: "any other ruling [in the Opacic case] would open up the

Tribunal's appeals procedure to non-parties: witnesses, counsel, amicus curiae, even members of the public who might nurse a grievance against a decision of the Trial Chamber. This could not be. The Tribunal has a limited appellate jurisdiction which categorically cannot be invoked by non-parties."

Location: Bosnia and
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