

Oric

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Prosecutors admit to “oversight” which could have serious consequences for the trial.

Prosecutors in the trial of Naser Oric, the Bosnian Muslim commander charged with war crimes, have admitted failing in their duty to disclose material in their possession which might have helped the defence case.

Prosecutor Gramsci Di Fazio said “human failure” was to blame for the fact that Oric’s lawyers were not told about a Serb soldier who admitted ambushing, shooting and decapitating Muslim civilians in eastern Bosnia during the early stages of the war.

The man’s confession could boost defence claims that Oric was forced to operate under impossible conditions in the Srebrenica area at the time and should not be held responsible for crimes committed by local Muslim fighters.

Presiding Judge Carmel Agius described the prosecution oversight as a “very serious error” which could have significant consequences for the rest of the case.

The evidence in question came from a drunken interview given by former Serb combatant Slobodan Mistic to the Serbian newspaper Vranjske Novine in November 1997, later re-published under the headline “How I Killed Croats and Muslims”.

Under tribunal rules, prosecutors are required to provide the defence with any material that could “suggest the innocence” of the accused.

Judge Carmel Agius chastised the prosecution for failing to meet their obligation in this instance. “The defence have enough to deal with on a day-to-day basis without going through tens of thousands of documents for something that could have been disclosed under [the relevant rules],” he said.

Judge Agius also expressed concern that defence lawyers had missed out on the opportunity to use Mistic’s evidence to challenge the testimonies of prosecution witnesses earlier in the trial.

Defence counsel John Jones, for his part, criticised the prosecution’s “typically defensive and unrepentant response” to their failure to disclose material which he said was “clearly exculpatory”.

He claimed that the interviews with Mistic – in which he describes how Serb forces in the Fakovici area killed women and murdered Muslim civilians searching for food – demonstrated that Oric and his fellow fighters were “under the constant attack of a merciless enemy”.

Such descriptions of Serb aggression, Jones argued, strengthen the defence case that attacks by Muslim fighters allegedly under Oric’s command in villages around the Drina basin were a “military necessity”, rather than wanton acts of violence.

Jones also pointed to suggestions made by Mistic that he and fellow Serbs were fighting starving villagers rather than an organised Muslim army.

Prosecutors say that Oric, as commander of Muslim forces in the Srebrenica area during the early stages of the Bosnian war, should be held responsible for crimes committed by his subordinates.

But Jones has argued throughout the trial that his client had little influence over what was really no more than a rag-tag collection of local village militias.

Jones claimed that the prosecution's failure to disclose important material presented a "very real risk of a miscarriage of justice".

"In the unfortunate event of our client being found guilty," he added, "there would be very strong grounds for appeal."

The following day, after a hurried archive search, prosecutor Di Fazio reluctantly admitted that his team was indeed guilty of violating the relevant tribunal rules. He presented the court with a document confirming that prosecutors had been aware of Mistic's remarks and had requested an interview with him in December 1997, while he was being tried for war crimes in his home town of Vranje, in Serbia.

In response to the interview request, Mistic apparently replied, "I have committed no crime. I was drunk when I went to the offices of the Vranjske Novine newspaper. While volunteering at the front I killed no civilians or prisoners of war."

Di Fazio said he had not yet found any evidence to suggest that the prosecutors had continued to investigate him after that point.

Judge Agius and defence counsel alike expressed scepticism that enquiries should have been dropped after such a feeble denial.

Di Fazio also said that even if defence lawyers had used Mistic's interview in cross-examination during the prosecution stage of the trial, it is very unlikely any prosecution witnesses would have changed their testimony because of it.

"I cannot stand here and say I know what [Serb witnesses] would have said if the defence had put [the Mistic] documents to them," he told judges. "But it is not silly... to assume that they would have denied these allegations."

Jones wasted no time putting the Mistic articles to use with this week's defence witness, however.

Bosnian Muslim Ibro Alic told the court how his village of Jagodnja, in the hills above Fakovici, was attacked by Serb soldiers in May 1992. His evidence appeared to be backed up by Mistic's statement that his own unit, which was stationed in Fakovici, went to surrounding villages and "cleansed them one by one".

Mistic estimated in his interview that he personally had murdered between 70 and 80 Muslim villagers during the war and that a total of 4,000 to 5,000 Muslims had been killed by Serb forces in the Bratunac

area.

When asked if Serb soldiers were punished for killing Muslim prisoners, Misis reportedly answered, "Who will punish you? You could kill as much as you liked."

Alic said he "never heard of a single case of a Serb being punished for killing Muslims", though prosecutors were quick to point out that, as a Bosnian Muslim fighter, he wasn't particularly well-placed to follow such developments.

Jones also highlighted agreement between the accounts given by Alic and Misis concerning the equipment used by Muslim fighters in the area at the time.

Alic said his own group of fighters in the village of Jagodnja had consisted of ten to 15 men armed with just six or seven rifles.

In his published statements Misis recalled that, far from fighting an organised army, Serb units had been engaged in combat with "civilians, villagers in most cases, inadequately armed with double-barrelled guns and similar rifles".

Prosecutors are due to file a written submission in which they will provide their own account of how and why the Misis evidence was not disclosed to defence lawyers.

Judges will then come to a decision next week about whether further action should be taken in relation to the matter.

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