

# Commentary by André Klip on Decisions relating to the false testimony of Opaci

## Citation for published version (APA):

Klip, A. (1999). Commentary by André Klip on Decisions relating to the false testimony of Opaci. In A. Klip, & G. Sluiter (Eds.), *Annotated Leading Cases of International Criminal Tribunals: Volume 1: The International Criminal Tribunal for the Former Yugoslavia 1993-1998* (1 ed., pp. 214-215). Intersentia. *Annotated Leading Cases of International Criminal Tribunals Vol. 1*

## Document status and date:

Published: 01/06/1999

## Document Version:

Publisher's PDF, also known as Version of record

## Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

## General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

[www.umlib.nl/taverne-license](http://www.umlib.nl/taverne-license)

## Take down policy

If you believe that this document breaches copyright please contact us at:

[repository@maastrichtuniversity.nl](mailto:repository@maastrichtuniversity.nl)

providing details and we will investigate your claim.

**Keywords:**

**Perjury, Rule 91 of the Rules of Procedure and Evidence, return of detained witness, prosecution of witness**

Perjury hinders the course of justice and might even lead to miscarriages of justice. Especially in the serious cases pending before the International Criminal Tribunal it is important that the Trial Chamber can rely on those giving evidence. Whenever this trust is abused it deserves a reaction. The Trial Chamber has therefore ordered the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

The investigation of the Prosecutor is also necessary with a view to an assessment of its internal procedures. Are procedures for verifying the testimony of witnesses sufficient? It obviously can not be excluded that perjury will be committed again. Another reason for serious investigation in the matter is that the witness says that his testimony has been prepared by the Bosnian authorities. Should this allegation be true, it would constitute a serious violation of the obligation of all states to cooperate with the Tribunal, and frustrate its work.

In my view it is not desirable that the Prosecutor indicts Opacíc and that the International Criminal Tribunal for the Former Yugoslavia tries him. This is based on both legal and practical arguments. Whatever can be said of the crime of perjury it is certainly not one of the crimes for which the Tribunal was established. Article I of its Statute limits its powers to prosecute "persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991". The crime in this case is not a serious violation of international humanitarian law and it is not committed in the territory of the former Yugoslavia. The Tribunal therefore lacks the competence to deal with it.<sup>1</sup>

Rule 91 on False Testimony under Solemn Declaration which provides a maximum penalty of \$ 10,000 or imprisonment of twelve months or both, should be regarded as not binding upon individuals, being beyond the mandate given to the Tribunal under Article 15 of the Statute.<sup>2</sup> Article 16 of the Statute is completely silent on any powers of investigation or indictment with respect to prosecuting others than those who have committed serious violations of international humanitarian law. Also Article 23, paragraph 1 of the Statute only gives a Trial Chamber the power to "pronounce and impose sentences and penalties on persons convicted of serious violations of international humanitarian law." In my opinion this means that punishment of false testimony does not belong within the so called "inherent powers" of the Tribunal.

This does not entail that perjury could not constitute a criminal offence under national criminal law. The criminal law of the host state may support the Tribunal here. Article 207A of the Penal Code of the Netherlands provides for a penalty with a maximum of nine years imprisonment and a fine of 100,000 Dutch Guilders (approximately \$ 50,000) for those who commit perjury before an international tribunal. However, a Dutch Prosecutor can only begin proceedings against such a witness on request of the Tribunal before which the false testimony was given.

The Prosecutor decided that "the testimony by Dragan Opacíc is not sufficiently material to the proceedings to justify prosecution." There is no evidence that the Tribunal or the Prosecutor took prosecution by the host country into consideration. On 27 May 1997 the Tribunal ordered Opacíc's return to Bosnia-Herzegovina, without responding to his allegations that he might be subject to torture in that country. The Tribunal supposes that Bosnia will respect (legally not binding) Principle 6 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment adopted by the General Assembly of the United Nations on 9 December 1988. An appeal to the District Court in The Hague in which Opacíc argued that hoststate the Netherlands would violate the European Convention on

---

<sup>1</sup> See Julian Schutte, Legal and Practical Implications, from the Perspective of the Host Country, Relating to the Establishment of the International Tribunal for the Former Yugoslavia, 5 Criminal Law Forum 1994, p. 423-450 at 432-433)

<sup>2</sup> See André Klip, Witnesses before the International Criminal Tribunal for the Former Yugoslavia, 67 International Review of Penal Law 1996, p. 267-295 at 277.

Human Rights by enforcing the return was unsuccessful. In its decision of 30 May 1997, the District Court decided that the proceedings before the Tribunal provide sufficient guarantees for due process. In addition, the Netherlands are bound by their obligations as a host state.

*André Klip*