

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 5 April 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO INTERVIEW:
GENERAL DIRECTOR SADEGHI

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

Government of Iran

The Accused:
Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 54, for the issuance of a subpoena to General Director Sadeghi, an Iranian national who served as General Director of Export of the Iranian Ministry of Defence Logistics Section (MODLEX) in 1994-95, compelling him to submit to an interview by the defence of Radovan Karadzic.

Background

2. On 9 June 2010, the Trial Chamber denied Dr. Karadzic's *Motion for Binding Order: Government of Iran*.¹ The Chamber held that the request for documents pertaining to the shipment of arms to Croatia for the period 1 April 1992 to 31 December 1995 was too broad and of questionable relevance.² It noted that in other decisions on binding order motions it had approved requests for documents pertaining to arms shipments in the period leading up to the July 1995 events in Srebrenica.³

3. After this decision, Dr. Karadzic continued his investigation in an effort to obtain more information by which he could narrow his request. He was able to identify a particular series of transactions involving the shipment of 203mm ammunition from Iran to the Bosnian Muslims in 1995. He requested documentation about this specific series of transactions from Iran on 2 November 2010, but never received a response.

4. Dr. Karadzic's investigation has determined that on 9 November 1994, Belgian arms dealer Jacques Monsieur, doing business as Matimco SPRL, received an order to supply 3000 205mm shells to the Bosnian Muslims via Croatia. On 3 December 1994, Monsieur signed a contract on behalf of his company, Matimco SPRL, with the Iranian Ministry of Defence (M.O.L.D.E.X) for the delivery of 3000 205mm shells in four shipments of 750 each at with delivery at Pula Airport.

5. Three shipments of 300 rounds each were made between December 1994 and April 1995 to the Bosnian Muslims via Croatia. However in June 1995, the government of Iran decided not to issue an export permit for the remaining quantities.

6. Correspondence concerning this shipment obtained during Dr. Karadzic's investigation indicates that the person acting on behalf of the Iranian government was

¹ *Decision on the Accused's Motion for Binding Order (The Islamic Republic of Iran)* (9 June 2010)

² *Id.*, at para. 21

³ *Id.* at para. 22

General Director Sadeghi of the Export Department of the Logistics Section of the Iranian Ministry of Defence.⁴

7. Dr. Karadzic sought a binding order to the government of Iran for production of the specific records pertaining to the above described transaction.⁵ On 11 March 2011, the government of Iran advised the Trial Chamber that it could find none of the requested records.

8. On 15 March 2011, Dr. Karadzic wrote to the government of Iran and requested that it make General Director Sadeghi available for interview. No response to this letter has ever been received.

Argument

9. Rule 54 provides that:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

10. The jurisprudence of the *ad hoc* Tribunals indicates that the proper method for obtaining the testimony of a person who was or is a government employee is by subpoena, rather than an order to the State pursuant to Rule 54 *bis*.⁶

11. The jurisprudence of the *ad hoc* Tribunals also indicates that the Trial Chamber has the power to require a prospective witness to attend at a nominated place and time in order to be interviewed when the requesting party shows that (1) it has made reasonable attempts to obtain the voluntary cooperation of the witness; (2) the witness' information may materially assist its case; and (3) the witness' information may be necessary and appropriate for the conduct and fairness of the trial.⁷

⁴ A copy of that correspondence is attached as Annex "A".

⁵ *Second Motion for Binding Order: Government of Iran* (7 December 2010)

⁶ *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Motion for Subpoena for Douglas Lute and John Feeley* (8 July 2009) at para. 8

; *Prosecutor v Milosevic*, No. IT-02-54-T, *Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schroeder* (9 December 2005) at para. 27; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 4

⁷ *Prosecutor v. Krstić*, IT-98-33-A, *Decision on Application for Subpoenas*, (1 July 2003) at para. 10; *Prosecutor v Halilovic*, No. IT-01-48-AR73, *Decision on the Issuance of Subpoenas* (21 June 2004) at para. 5; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3* (12 July 2006) at para. 9; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame* (19 February 2008) at para. 4; *Prosecutor v Bizimungu et al*, No.

12. When the defence is not fully aware of the nature and relevance of the testimony of a prospective witness, it is in the interests of justice to allow the Defence to meet with the witness and assess his testimony.⁸

13. In this case, as detailed above, Dr. Karadzic has made reasonable efforts to obtain the voluntary cooperation of the Iranian government to conduct the interview of General Director Sadeghi.

14. There are reasonable grounds to believe that Mr. Sadeghi has information which can materially assist Dr. Karadzic's case. He would have firsthand knowledge of the contract for the sale of 203mm ammunition to the Bosnian Muslims and the shipments pursuant to the contract.

15. The information from Mr. Sadeghi can be used in two ways. First, to direct the Iranian government to the precise documents concerning this contract, which it seemingly has been unable to locate. And, second, to serve as the basis of a written statement from Mr. Sadeghi which can be used pursuant to Rule 92 *ter* or Rule 92 *bis* so that Dr. Karadzic can provide the Trial Chamber with evidence of these events during the trial.

16. The Trial Chamber has already found that documents relating to arms smuggling in the period leading up to the Srebrenica events are relevant to a live and important issue in the case.⁹ The information sought from Mr. Sadeghi directly relates to that issue.

ICTR-99-50-T, *Decision on Prosper Mugiraneza's Motion to Subpoena Witness RWU* (19 May 2008) at para. 4; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 5; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Motions to Subpoena Witnesses G and AWD for Interview* (10 February 2009) at para. 4

⁸ *Prosecutor v Ndindiyimana et al*, No. ICTR-2000-56-T, *Decision on Nzuwonemeye's Motion Requesting Cooperation from the Government of Belgium Pursuant to Article 28 of the Statute* (7 June 2006) at para. 8; *Prosecutor v Bagosora et al*, No. ICTR-98-44-T, *Decision on Request for Subpoena of Major General Yaache and Cooperation of the Government of Ghana* (23 June 2004); *Prosecutor v Ndindiyimana et al*, No. ICTR-00-56-T, *Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of The Netherlands Pursuant to Article 28 of the Statute* (13 February 2006) at para. 8; *Prosecutor v Ndindiyimana et al*, No. ICTR-00-56-T, *Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of Ghana Pursuant to Article 28 of the Statute* (13 February 2006) at para. 8; *Prosecutor v Ndindiyimana et al*, No. ICTR-00-56-T, *Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of Togo Pursuant to Article 28 of the Statute* (13 February 2006) at para. 8;

⁹ *Decision on Accused's Application for Binding Order Pursuant to Rule 54 bis (Federal Republic of Germany)* (19 May 2010) at para. 22

17. Therefore, Dr. Karadzic has demonstrated that the information from General Director Sadeghi may materially assist his case, and is necessary for a fair determination of the issues being tried.

18. The information is not readily available from other sources. The arms broker between the Iranians and the Bosnian Muslims, Jacques Monsieur, is in prison in the United States and has refused Dr. Karadzic's request to interview him. It is unknown who negotiated this contract or received the shipments on the Bosnian Muslim side.

Procedural Matters

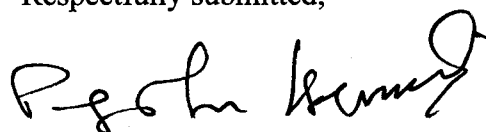
19. A subpoena should designate the place and time for the person to appear for an interview. To minimize any inconvenience to Mr. Sadeghi and the Iranian government, Dr. Karadzic suggests that the interview be held at the Iranian Ministry of Foreign Affairs in Tehran on Friday, 20 May 2011 at 10 am. Dr. Karadzic will be represented by his Legal Advisor Peter Robinson.

20. Dr. Karadzic further suggests that the government of Iran be requested to serve the subpoena on Mr. Sadeghi. States are obligated, when requested by the Tribunal, to effect service of a subpoena, and to provide any assistance that may be requested by the Registry to facilitate the attendance of witnesses.¹⁰

21. Dr. Karadzic requests that this motion be served upon the government of Iran and for further service on Mr. Sadeghi, and that both the government of Iran and the witness be invited to respond to the motion if they wish to do so.

Word count: 1658

Respectfully submitted,



Radovan Karadzic

¹⁰ *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Prosecutor's Request for a Subpoena Regarding Witness BT* (25 August 2004) at para. 8; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for Subpoena for Witness BW* (24 June 2004)

ANNEX "A"

M A T I M C O

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TEL: 32-16.72.00.71.
FAX: 32.16.72.00.78.

In The Name of God

TO: M.O.D.L.E.X.
TEHRAN - IRAN

ATTN: Mr SADEGHI
General-Manager

26 June 1995

Dear Sir,

SUB: Contract no 37827 - 4th phase

We have signed this contract 6½ months ago and till now we have even not shipped a third of the total quantity.

Also on 4th of may our bank has wired you the amount of 126.000 USD + 80.000 USD, covering the total value of the 4th shipment which we haven't received till today.

This is placing us in a difficult position with the client and is jeopardizing our future relation with this client.

Therefore I have to inform you that in case the necessary export authorizations have not been granted on 30th june 1995, we would like you to return the full amount of 206.000 USD or equivalent without any further delay.

Our banking data are as following:

BANK HANDLOWY INTERNATIONAL SA LUXEMBURG
7, Rue du St-Esprit - 1475 LUXEMBURG
TLX NO: 60.161
SWIFT CODE: B H A I L U L L
Account no: 80.010

Please consider this fax as official.

Best Regards,

J. MONSIEUR.
Managing-Director