

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: 9 November 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO INTERVIEW:
COLONEL GUY DE HAYNIN DE BRY

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

The Accused:
Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 54, for the issuance of a subpoena to Colonel Guy de Haynin de Bry, former commander of the French *Regiment Parachutists de l'Infanterie de la Marine* (RPIMA) in Bosnia, compelling him to submit to an interview by the defence of Radovan Karadzic.

Background

2. On 30 June 2010, acting on a motion filed by Dr. Karadzic, the Trial Chamber ordered the government of France to deliver certain documents to Dr. Karadzic including:

- (10) All reports of the Gendarmerie special intervention team or other French agencies or departments which tend to indicate that Bosnian Muslims in Sarajevo killed their own people between April 1992 and December 1995.¹

3. On 23 July 2010, the French government produced some documents having nothing to do with what had been requested in item (10). On 10 August 2010, Dr. Karadzic wrote to the government of France requesting clarification and asking if further documents would be produced.²

4. On 8 September 2010, the Trial Chamber issued an invitation to France asking it to indicate whether it had produced all documents in its possession that had been requested by the Chamber.³ On 23 September 2010, the French government responded that "no document of any kind has been found to meet Mr. Karadzic's request."⁴

5. On 30 September 2010, Dr. Karadzic wrote to the government of France in which he stated that:

I am attaching an article from the February 1995 edition of *Soldier of Fortune* magazine in which Colonel Guy de Haynin de Bry, commander of the *Regiment Parachutists de l'Infanterie de la Marine* (RPIMA), is quoted as stating that "you may not read it in the papers, but we've had reports, confirmed reports, of shots aimed at our troops and at civilians which came from the Bosnian side. This may have been the actions of a few radical individuals who wanted to provoke the situation and place the blame on the Serbs."

In light of your government's inability or unwillingness to produce any documents on this matter, I now request that Colonel de Haynin de Bry be made available for questioning, either by my Legal Advisor, or by French judicial officials in the presence of my Legal Advisor, so that we can obtain information

¹ *Decision on the Accused's Binding Order Motion (The French Republic)*(30 June 2010)

² *Letter to the Government of France* (10 August 2010)

³ *Invitation to France* (8 September 2010)

⁴ *Letter from the Government of France* (23 September 2010)

from him concerning this matter. Should you require that the questioning be done by French judicial officials, I will submit a list of written questions.⁵

6. No response to this letter has ever been received from the government of France.

Argument

7. 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.

8. 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 official is by subpoena, rather than an order to the State pursuant to Rule 54 *bis*.⁶

9. 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

⁵ Letter to Government of France (30 September 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. 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

10. 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

11. In this case, as detailed above, Dr. Karadzic has made reasonable efforts to obtain the voluntary cooperation of the government of France to produce Colonel de Haynin de Bry for an interview.⁹

12. There are reasonable grounds to believe that Colonel de Haynin de Bry has information which can materially assist Dr. Karadzic's case.

13. Colonel de Haynin de Bry's own statements, reported in the February 1995 edition of *Soldier of Fortune* magazine, indicates that he has information of Bosnian Muslims shooting at civilians and UNPROFOR in an effort to blame the Serbs.¹⁰

14. General David Fraser, who served as Chief of Staff to French General Andre Soubirou in Sarajevo during the time that Colonel de Haynin de Bry was heading the anti-sniping squad there, testified that The French were in possession of a video showing a Muslim sniper shooting at Muslim civilians.¹¹ In a report of 23 September 1994, the French anti-sniper battalion reported interviewing a Bosniak woman who told them that the sniper fire had come from a Muslim position opposite the PTT building.¹²

15. General Fraser further testified that on 26 September 1994, two shells impacted in the center of Sarajevo. One was determined to have come from the Serb side

⁸ *Prosecutor v Nindliyiimana 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 Nindliyiimana 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 Nindliyiimana 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 Nindliyiimana 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 Dr. Karadzic has not attempted to contact Colonel de Haynin de Bry directly given the French government's policy of not making its soldiers available for interview except through judicial proceedings in France.

¹⁰ Annex "A" to *Letter to Government of France* (30 September 2010)

¹¹ Transcript of 18 October 2010, p. 8051; Exhibit P1762; amalgamated statement at p. 77

¹² Transcript of 18 October 2010, p. 8052-53; Exhibit D770

and one from the Muslim side.¹³ It appeared to him and French General Gobillard that the intent of the Muslims was to inflict more casualties and have it blamed on the Serbs.¹⁴

16. General Fraser also testified that on one occasion, some French soldiers came across a Muslim TV crew filming a staged attack with children. They were preparing to use it on TV against the Serbs.¹⁵

17. In addition, a study commissioned by the government of The Netherlands reported that the French gendarmerie's special intervention team determined that some sniper fire came from ABiH soldiers, who deliberately fired on their own civilian population to be able to blame the Bosnian Serbs.¹⁶

18. A news media report on 1 August 1995 reported that Colonel de Haynin de Bry's unit had concluded that Bosnian Muslim forces were sniping at their own citizens in order to blame the Serbs and had concrete proof of such events, which they had reported to the French government.¹⁷

19. Colonel de Haynin de Bry's information can be used in two ways. First, to direct the French government to the precise documents concerning these events, which it seemingly has been unable to locate. And, second, to serve as the basis of a written statement of Colonel de Haynin de Bry 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.

20. The Trial Chamber has already found that documents relating to Bosnian Muslims sniping at their own citizens in an effort to blame the Serbs is directly relevant to Dr. Karadzic's trial, as it may tend to show that the Serbs, and hence Dr. Karadzic, are not responsible for the crimes charged in the indictment.¹⁸ The information sought from Colonel de Haynin de Bry directly relates to that issue.

21. Therefore, Dr. Karadzic has demonstrated that the information from Colonel de Haynin de Bry may materially assist his case, and is necessary for a fair determination of the issues being tried.

¹³ Exhibit P1762; amalgamated statement at p. 67

¹⁴ Transcript of 18 October 2010, p. 8056

¹⁵ Transcript of 18 October 2010, p. 8051; Exhibit P1762; amalgamated statement at p. 79

¹⁶ Wiebes, *Intelligence and the War in Bosnia* @ 211

¹⁷ See Annex "A" to *Submission on Request to Government of France* (11 March 2010)

¹⁸ *Decision on the Accused's Binding Order Motion (The French Republic)*(30 June 2010) at para. 20

Procedural Matters

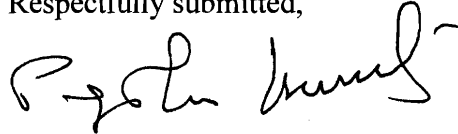
22. A subpoena should designate the place and time for the person to appear for an interview. Dr. Karadzic suggests that the interview be held at the ICTY main building on Friday 3 December 2010. Dr. Karadzic will be represented by his Legal Advisor Peter Robinson.

23. Dr. Karadzic further suggests that the government of France be requested to serve the subpoena on Colonel de Haynin de Bry. 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 the witness.¹⁹

24. Dr. Karadzic requests that this motion be served upon the government of France for its own information, and for further service on Colonel de Haynin de Bry, and that both the government of France and Colonel de Haynin de Bry be invited to respond to the motion if they wish to do so.

Word count: 2011

Respectfully submitted,



Radovan Karadzic

¹⁹ *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)