

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: 11 February 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO COMPEL INTERVIEWS:
SARAJEVO 92 *BIS* WITNESSES

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

The Accused:
Radovan Karadzic

1. In its *Decision on Prosecution's Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92bis – Sarajevo Siege Witnesses*, (5 March 2010), the Trial Chamber allowed the evidence of 20 witnesses to be admitted into evidence pursuant to Rule 92 *bis* without cross-examination.

2. In August and September 2009, at the direction of the Trial Chamber, the Victims and Witnesses Unit contacted each of these witnesses and asked them whether they were willing to be interviewed by Dr. Karadzic's defence team. The following eight individuals declined to be interviewed: KDZ036, KDZ079, KDZ090, Fatima Palavra, Zilha Granilo, Slavica Livnjak, KDZ289, and Tarik Zunic.

3. Dr. Karadzic's team has now completed its interviews of those Sarajevo witnesses who had agreed to be interviewed. As a result, he has uncovered information favorable to his defence which he has sought to be admitted through supplemental statements.¹ However, as a result of the refusal of the eight witnesses to be interviewed, Dr. Karadzic has not had the opportunity to learn of information from them that may be useful to his case, nor will he have the opportunity to cross examine them in court.

4. Based not only upon the success of his interviews of other prosecution Rule 92 *bis* witnesses, but upon the specific role of the eight individuals in the crimes charged in the indictment, there is a good chance that those interviews will result in the disclosure of information which will materially assist him in his case.

5. KDZ036 was in his apartment at Prvomajska Street on 26 May 1995 when the building was hit by a bomb.² This testimony is related to incident G13 in the *Third Amended Indictment*. Like witness Andja Gotovac, this witness may be able to explain what legitimate military targets in the area that the bomb may have been aimed at.

6. KDZ079 was at the community center, working for the Territorial Defence, when it was hit by a bomb on 16 June 1995.³ This testimony is related to incident G15 in the *Third Amended Indictment*. The witness may have information about the use made of

¹ *Partial Response to Fourth Motion for Admission of Statements and Transcripts: Sarajevo Siege Events* (2 November 2009) (Adila Fazlic); *Partial Response to Fourth Motion for Admission of Statements and Transcripts: Sarajevo Siege Events* (30 December 2009)(Sefik Beslic); *Motion for Admission of Supplemental Statement of Rule 92 bis* (7 December 2010)(Andja Gotovac)

² Exhibit P476; Statement of 10 March 1997 at p. 3

³ Exhibit P479; Statement of 12 March 1997 at p. 2

the community center by members of the Territorial Defence or other military personnel, or other legitimate military targets in the vicinity.

7. KDZ090 was shot while riding a tram on 8 October 1994.⁴ This testimony is related to incident F11 in the *Third Amended Indictment*. As the Trial Chamber has heard during the course of the trial, it was impossible for the ballistics experts to determine from where the bullets had been fired because when they arrived on the scene, the tram had been moved. Therefore, the witness may have important information that could lead to a reasonable doubt that the Bosnian Serbs were the source of the fire.

8. Fatima Palavra was in her apartment on H. Kresevljakovica Street on 6 June 1992, when it was hit by a shell.⁵ This testimony is related to incident G2 in the *Third Amended Indictment*. Like witness Andja Gotovac, this witness may be able to explain what legitimate military targets in the area that the bomb may have been aimed at.

9. Zilha Granilo was in her apartment on Bjelave Street on 6 June 1992 when a shell landed on her neighbor's shed about 10-15 meters away from where she was standing outside of her apartment.⁶ This testimony is related to incident G2 in the *Third Amended Indictment*. Like witness Andja Gotovac, this witness may be able to explain what legitimate military targets in the area that the bomb may have been aimed at.

10. Slavica Livnjak was a tram driver whose tram was shot at on 3 March 1995.⁷ This testimony is related to incident F16 in the *Third Amended Indictment*. As the Trial Chamber has heard during the course of the trial, it was impossible for the ballistics experts to determine from where the bullets had been fired because when they arrived on the scene, the tram had been moved. Therefore, the witness may have important information that could lead to a reasonable doubt that the Bosnian Serbs were the source of the fire.

11. KDZ289 was also a tram driver whose tram was shot at on 27 February 1995. There was a soldier on the tram.⁸ This testimony is related to incident F15 in the *Third Amended Indictment*. As the Trial Chamber has heard during the course of the trial, it was impossible for the ballistics experts to determine from where the bullets had been

⁴ Exhibit P482; Statement of 21 February 1996 at p. 2

⁵ Exhibit P496; Statement of 30 October 2008 at p. 2

⁶ Exhibit P498; Statement of 30 October 2008 at p. 2

⁷ Exhibit P494; Statement of 20 November 1995 at p. 2

⁸ Exhibit P485; Statement of 1 March 1995

fired because when they arrived on the scene, the tram had been moved. Therefore, the witness may have important information that could lead to a reasonable doubt that the Bosnian Serbs were the source of the fire as well as facts which may tend to show whether the tram was hit in the crossfire of military battles.

12. Tarik Zunic was shot on 6 March 1995 on Srednik Street.⁹ This testimony is related to incident F17 in the *Third Amended Indictment*. Prosecution witness Patrick van der Weijden indicated that the shooter cannot have completely seen the victim because he was still moving. This would have made it impossible to quickly determine if the victim was a combatant or not.¹⁰ Therefore, the witness may have important information which can call into question whether the shooting was a war crime.

13. Rule 54 provides that:

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

14. Generally, a subpoena is deemed “necessary” for the purposes of Rule 54 where a legitimate forensic purpose for obtaining the information has been shown.¹¹

An applicant for such [...] a subpoena before or during trial would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly defined issues relevant to the forthcoming trial.¹²

15. The jurisprudence of the *ad hoc* Tribunals 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

⁹ Exhibit P495; Statement of 10 November 1995 at p. 2

¹⁰ Exhibit P1621; expert report at p.32

¹¹ *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Accused’s Motion to Compel Interview: General Sir Rupert Smith* (25 January 2011), at para. 5.

¹² *Prosecutor v. Halilović*, Case No. IT-01-48-AR73, *Decision on the Issuance of Subpoena*, 21 June 2004, affirmed in *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Accused’s Motion to Compel Interview: General Sir Rupert Smith* (25 January 2011), at para. 5. (“*Halilović Decision*”), para. 6; *Prosecutor v. Krstić*, Case No. IT-98-33-A, *Decision on Application for Subpoenas*, 1 July 2003 (“*Krstić Decision*”), para. 10 (citations omitted); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, *Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder*, 9 December 2005 (“*Milošević Decision*”), para. 38.

may materially assist its case; and (3) the witness' information may be necessary and appropriate for the conduct and fairness of the trial.¹³

16. When the defence is not fully aware of the nature and relevance of the testimony of a prospective witness however, it is in the interests of justice to allow the defence to meet with the witness and assess his testimony.¹⁴

17. Dr. Karadzic has fulfilled all of the requirements for an order compelling the witnesses to meet with his defence team. He has attempted to obtain their voluntary cooperation, their information may materially assist his case, and access to these witnesses is necessary and appropriate for the conduct and fairness of the trial because their testimony has been admitted without the opportunity for cross examination.

18. An order is also necessary to achieve equality of arms, as the witnesses have met with the prosecution on numerous occasions. The order will simply allow the defence to have the same access as the prosecution to these witnesses. This is particularly necessary given that the witnesses' evidence is already admitted as evidence and will not be subject to cross examination.

19. Dr. Karadzic would welcome any efforts the Trial Chamber may be able to make to obtain the witnesses' consent short of the requested order. Absent such consent, he respectfully requests that the Trial Chamber order each of the witnesses to appear at

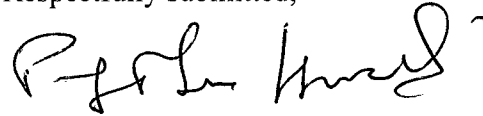
¹³ *Prosecutor v. Krstic*, No. IT-98-33-A, *Decision on Application for Subpoenas* (1 July 2003) at para. 10; *Prosecutor v Halilovic*, No. IT-01-48-AR73, *Decision on the Issuance of subpoenas* (21 June 2004) at para. 5; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZI, 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

¹⁴ *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.

the ICTY Liaison Office in Sarajevo at a given place and time to be interviewed by a member of Dr. Karadzic's defence team.

Word count: 1996

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic¹⁵

¹⁵ The assistance of Legal Intern Eleanor Livingstone of the University of Melbourne (Australia) in the research and drafting of this motion is gratefully acknowledged.