

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*

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MOTION TO COMPEL INTERVIEW:  
GRIFFTHS EVANS

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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 – Hostage Witnesses*, (2 November 2009), the Trial Chamber allowed the evidence of seven witnesses to be admitted into evidence pursuant to Rule 92 *bis* without cross-examination. One of them was Griffiths Evans.

2. 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. Despite several requests over the period 2009-11, Griffiths Evans did not respond.

3. Dr. Karadzic's team interviewed Rule 92 *bis* witness Gunnar Westlund, who had agreed to be interviewed. As a result, he uncovered information favorable to his defence which was admitted through a supplemental statement.<sup>1</sup> However, as a result of the inability to interview Mr. Evans, Dr. Karadzic has not had the opportunity to learn of information from him that may be useful to his case, nor will he have the opportunity to cross examine him in court.

4. While Dr. Karadzic contends that he has the right to interview **all** persons whose evidence is admitted pursuant to Rule 92 *bis*, given the limited information possessed by the hostage witnesses as to the live and important issues in the case, he is not requesting that the Trial Chamber order all of those persons to submit to interviews by his defence team. However, with respect to witness Griffiths Evans, he contends that there is a good chance that this interview will result in the disclosure of information which will materially assist him in his case.

5. Griffiths Evans, a UNMO from Ghana, can likely provide information which will refute the testimony of Janusz Kalbarczyk that General Mladic came to the barracks where UN personnel were detained and participated in the interrogation of Mr. Evans and another UNMO Oldrich Zidlik.<sup>2</sup> Dr. Karadzic is confident that General Mladic was never present at the barracks nor participated in any interrogation of UN personnel detained there. The proximity of the subordinates of Dr. Karadzic who participated in the alleged hostage taking events is a live and important issue in the case.

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<sup>1</sup> *Decision on Accused's Motion for Admission of Supplement to Witness Statement of Gunnar Westlund* (17 December 2009); Exhibit D306

<sup>2</sup> Transcript of 28 January 2011, pp. 10859-60

6. Mr. Evans may also be able to provide information on the use of forward air controllers by NATO/UN in Bosnia—a live issue concerning the status of UN personnel as combatants which is the subject of a credibility dispute between General Rupert Smith and a potential defence witness known as Witness B in Canadian proceedings.<sup>3</sup> In his witness statement, Evans indicated that when questioned by a Serb officer about assistance to NATO by UN personnel on the ground he “gave him half truth and half lies.”<sup>4</sup> Dr. Karadzic believes that if Mr. Evans found it necessary to lie about the assistance to NATO pilots by UN personnel on the ground, he may have information which would corroborate Witness B’s contention, and contradict the testimony of General Smith.

7. 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.

8. Generally, a subpoena is deemed “necessary” for the purposes of Rule 54 where a legitimate forensic purpose for obtaining the information has been shown.<sup>5</sup>

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.<sup>6</sup>

9. 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

<sup>3</sup> Transcript of 15 February 2011, p. 11880; 65 ter #1D2904

<sup>4</sup> Exhibit P690 at p. 5

<sup>5</sup> *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.

<sup>6</sup> *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.<sup>7</sup>

10. 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.<sup>8</sup>

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

12. An order is also necessary to achieve equality of arms, as Mr. Evans has met with the prosecution and provided a detailed statement. The order will simply allow the defence to have the same access as the prosecution to a witness. This is particularly necessary given that Mr. Evans' evidence is already admitted as evidence and will not be subject to cross examination.

13. Dr. Karadzic would welcome any efforts the Trial Chamber may be able to make to obtain Mr. Evans' consent short of the requested order. Absent such consent, he respectfully requests that the Trial Chamber order Griffiths Evans to submit to an

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<sup>7</sup> *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

<sup>8</sup> *Prosecutor v Ndindliyamana 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 Ndindliyamana 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 Ndindliyamana 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 Ndindliyamana 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.

interview by his Legal Advisor Peter Robinson at the Ministry of Foreign Affairs, Accra, Ghana.

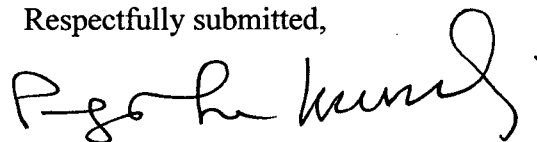
14. In its *Decision on Accused's Motion to Compel Interviews: Sarajevo Rule 92 bis Witnesses* (21 March 2011), the Trial Chamber declined to compel defence interviews of Rule 92 *bis* witnesses because Dr. Karadzic had failed to make a showing that the information to be obtained from the witness would be material to his defence. While Dr. Karadzic believes that he has a right to the process of the Chamber to ensure that he has the same access to all Rule 92 *bis* witnesses as the prosecution, the Chamber's decision is distinguishable because he has made the required showing that there is a good chance that the interview of Griffiths Evans would produce information that he can use in his defence.

15. In its *Sarajevo Witnesses* decision, the Trial Chamber also found that Dr. Karadzic had failed to demonstrate that the information sought from those witnesses was not available from other witnesses.<sup>9</sup> In this instance, given that Mr. Evans was one of two persons allegedly interrogated by General Mladic, and the only one whose statement of the events has been admitted, and the fact that he has indicated that he gave false information to the Serbs concerning the issue of assistance to NATO airstrikes by UN personnel on the ground, the information sought from him is not otherwise available to Dr. Karadzic for use at trial.

16. Therefore, it is respectfully requested that the Trial Chamber take steps to assist Dr. Karadzic in conducting an interview of Griffiths Evans.

Word count: 1725

Respectfully submitted,



Radovan Karadzic

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<sup>9</sup> para. 17