

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: 15 November 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO
DRAGAN KALINIC

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 Dragan Kalinic, former Minister of Health for Republika Srpska, compelling him to testify as a witness on behalf of Dr. Karadzic at his trial.

2. 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.

3. The jurisprudence of the *ad hoc* Tribunals indicates that the Trial Chamber has the power to require a prospective witness to testify 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.¹

4. In this case, Dr. Karadzic has attempted to obtain the voluntary cooperation of Dragan Kalinic by requesting that he testify as a defence witness at his trial. Dr. Kalinic has indicated that he is not willing to testify.² Therefore, Dr. Karadzic has satisfied the requirement that he make reasonable efforts to obtain the cooperation of Dragan Kalinic voluntarily.

5. There are reasonable grounds to believe that Dragan Kalinic has information that can materially assist Dr. Karadzic's case.

6. Dr. Kalinic made the following statement at the Republika Srpska Assembly on 12 May 1992:

"Among all the issues that this Assembly should decide on the most important one is this. Have we chosen the option of war or the option of negotiating? I say this for the reason and I

¹ *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

² A copy of the declaration of investigator Milomir Savcic concerning his contacts with Dr. Kalinic is attached as Annex A.

must instantly add. Knowing who our enemy is and how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crashed which of course implies eliminating and liquidating the key people. I do not hesitate in selecting the first option, the option of war because I believe in our faith, faith of Serbs in BH and I do not link it in any way to the faith of Serbia and Montenegro. I've been saying this before. Our sentimental and national bonds have to be reduced to this respectable pragmatic level and established on the basis of interest. The faith of Serbs in BH cannot be solved in any other way but by war. It is possible within doing this that the faith of us Serbs in BH would be to choose a hundred year of solitude over five hundred years of slavery under some new Turkish empire. We will find ourselves in extreme isolation and we'll have only ourselves to rely on. We must take this option to calculation. Now, I will be the first one to say here that I am ready as probably the most of you are to share this fate with other people.”³

7. The prosecution claims that this speech, and Dr. Karadzic's approval of it, is evidence of genocide as charged in Count One of the Indictment. In its brief on appeal against the Trial Chamber's acquittal on Count One, the prosecution wrote:

The Accused also praised and rewarded others who supported and/or implemented the physical destruction of members of the groups including Dragan Kalinic, the RS Minister of Health who called for the liquidation of the group's leaders...⁴

8. Dr. Karadzic believes that Dr. Kalinic would testify that he never favored the extermination of the Bosnian Muslims n whole or in part and that this is not what he meant by his remarks at the Assembly. When he was interviewed by the Office of the Prosecutor about this statement in 2004, Dr. Kalinic said:

This was not the call for destruction of Muslims nor any other people. But this what I was talking about referred to the fact that there the BiH Army was not formed yet or it was just at the very beginning, that in the town you have different paramilitary units passing by, like "Patriotic League", "Green Berets" and with Croats some other paramilitaries. They were telling me that there were also Serb volunteers who wanted to come to our territory. And in that context, and with my belief that many volunteers from abroad will come to assist Muslims, I think that here I mentioned Libya, Sudan and Iran, so this was the speech of the person who was

³ P956, pp. 17-19

⁴ *Prosecution Rule 98 bis Appeal Brief* (24 September 2012) at para. 65

frustrated in many ways.⁵

9. The evidence of Dragan Kalinic is relevant to show that neither he nor President Karadzic had the intent to destroy the Muslims in whole or in part as charged in Count One of the Indictment.

10. The information from Dragan Kalinic is necessary for Dr. Karadzic's case because absent an explanation from him, the prosecution will continue to claim that the statement is evidence of genocidal intent and Dr. Kalinic is the only one who can explain what he meant when he uttered those words.

11. Dr. Kalinic also has other important evidence for the defence of Dr. Karadzic. As a person with responsibility for ensuring that humanitarian convoys were allowed to reach civilians, he can refute the prosecution's charges that President Karadzic and the Bosnian Serbs deliberately impeded the delivery of humanitarian aid as part of a joint criminal enterprise to expel Muslims and Croats from Serb held areas of Bosnia and as part of the crime of persecution.

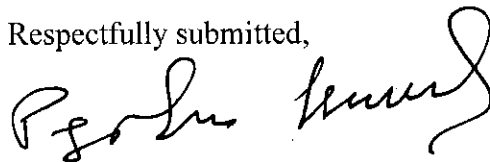
12. In addition, as indicated in President Karadzic's appointment book, Dr. Kalinic met with President Karadzic on 19 July 1995.⁶ Dr. Kalinic can testify that President Karadzic gave no indication that prisoners from Srebrenica had been executed.

13. For all of the above reasons, Dr. Karadzic has demonstrated that the information from Dragan Kalinic may materially assist his case, and is necessary for a fair determination of the issues being tried.

12. A subpoena should designate the place and time for the person to appear to testify. Dr. Karadzic suggests that Dragan Kalinic be subpoenaed to testify on 14 January 2014 and the authorities of the government of Serbia be requested to serve the subpoena on Dr. Kalinic.

Word count: 1305

Respectfully submitted,



Radovan Karadzic

⁵ The interview is 65 ter #1D09199. See p. 76

⁶ Exhibit P2242

ANNEX "A"

Defence team Dr. Radovan KARADZIC (95-5/18-T)

Official notice

My name is Milomir Savcic and I have been employed as an investigator in Dr. Radovan KARADZIC defence team since 2009.

Around June 2012 I worked on identification of potential defence witnesses. Approximately at that time I met the potential defence witness Dragan KALINIC, who worked as a deputy of the Assembly of Bosnia and Herzegovina before the war in Bosnia. At that time he was a member of the 'Savez reformskih snaga' party. Later on he became a member of the SDS. During the war Mr. Kalinic performed duties of Ministry of Health for the Government of RS and after the war, he was a President of 'Narodna Skupstina' People's Assembly of RS and President of SDS.

During the first meeting, I explained to Mr. Kalinic that Dr. Karadzic's defence team would like to call him to testify as a defence witness. I also explained to him that he was supposed to meet Dr. Karadzic's legal advisor, Mr. Marko Sladojevic very soon. In the next fifteen to twenty days, I organized a meeting between Mr. Kalinic and Mr. Sladojevic. During our first meetings, Mr. Kalinic did not want to give his final decision whether or not he accepts to testify before the ICTY in our case. Further on, Mr. Kalinic insisted that in the future we keep in touch through his friend Zeljko Kuntos.

I tried to contact Mr. Kalinic through Mr. Kuntos on several occasions in 2012 and 2013, in order to schedule a meeting for interview. Moreover, during Mr. Marko Sladojevic's visits to BiH and Serbia, I was trying to organize a meeting with Mr. Kalinic in order to conduct the interview. I have not received a single response from him about possible time and place of a meeting.

My attempts to schedule this meeting lasted until the 12th of November 2013, when I received a phone call from Mr. Kuntos around 19:40. During the conversation, Mr. Kuntos explained Mr. Kalinic's position regarding the testimony. He clarified that Mr. Kalinic has health problems such as high blood pressure and others, so that he had to undergo several medical tests. He also told me that there were other factors, which affect his decision not to testify. When I asked Mr. Kuntos to explain this in more details, he refused to do so.

Taking into account the positions Mr. Kalinic held during the war, I am of the opinion that his testimony would be of great importance for Dr. Karadzic's case.

Investigator
Milomir Savcic