

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: 14 November 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO
NIKOLA TOMASEVIC

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 Nikola Tomasevic, former Military Judge of the VRS in the Banja Luka region, 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 Nikola Tomasevic by requesting that he testify as a defence witness at his trial. Mr. Tomasevic has indicated that he did not want to testify and has now discontinued contact with Dr. Karadzic's defence team.² Therefore, Dr. Karadzic has satisfied the requirement that he make reasonable efforts to obtain the cooperation of Nikola Tomasevic voluntarily.

5. There are reasonable grounds to believe that Nikola Tomasevic has information which can materially assist Dr. Karadzic's case.

6. Mr. Tomasevic's interview with the Office of the Prosecutor, which is available in e-court as 65 ter #1D09195, indicates that in 1992-95, he served as Military Judge in the Banja Luka district. During this interview, Mr. Tomasevic contended that there was

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 Dragomir Keserovic concerning his contacts with Mr. Tomasevic is attached as Annex A.

no national policy to fail to enforce the law when the victims of crimes were Muslims or Croats and explained that decisions he made to release some persons accused of murders of Muslims and Croats were not based upon any policy to condone such crimes.

7. When asked to explain decisions he made in the prosecution of two Serbs for killing of a large group of people in Velagići on 1st June 1992, Mr. Tomasevic indicated that his decision to release the two accused was based upon the fact that the prosecutor indicated that it was not possible to proceed against the two accused while 10 other accused were at large.³

8. When asked to explain decisions to release the accused he made in the prosecution of Miladin and Obrenko Sugic for murders of Bosnian Muslims, Mr. Tomasevic indicated that his decision to release the two accused was based upon their mental capacity and as part of a policy to condone crimes against non-Serbs.⁴

9. The evidence of Nikola Tomasevic is relevant to show that there was no policy or practice to fail to punish crimes committed by Serbs against Muslims and Croats and that any decisions which resulted in the release of suspects in such cases was not as part of some policy or joint criminal enterprise by the State or President Karadzic.

10. The information from Nikola Tomasevic is necessary for Dr. Karadzic's case because he was the very judge who ordered the people released in two cases which have been cited by the prosecution in this trial of examples of such a policy.⁵ As such, he is in a unique position to testify to the actual reasons those people were released. His testimony will directly refute the allegations of the indictment that President Karadzic failed to punish crimes committed by his subordinates, including the individuals ordered released by Mr. Tomasevic.

11. Therefore, Dr. Karadzic has demonstrated that the information from Nikola Tomasevic 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 Nikola Tomasevic be subpoenaed to testify on 20

³ 65 ter #1D09195 at pp. 59-60

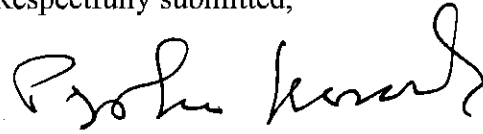
⁴ 65 ter #1D09195 at pp. 72-74

⁵ See Exhibits P3774, P3615-16 (Velagići case); P1798, P3610, P3611, P3612 (*Sugic* case)

January 2014 and the authorities of Bosnia and Herzegovina be requested to serve the subpoena on Mr. Tomasevic.

Word count: 959

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Radovan Karadzic". The signature is written in a cursive style with a large initial 'R' and a long, sweeping tail.

Radovan Karadzic

ANNEX "A"

Subject:**Nikola Tomasevic,
Refusal to testify and give statement
Official Notice**

Starting from February 2013, it was my intention to try and take a written statement from the potential defence witness Nikola Tomasevic from Banja Luka. Mr. Tomasevic was appointed the President of the Military Court and remained in that position until the Law on the Abolishment of Military Courts was adopted.

An interview with Mr. Tomašević was scheduled for the 4th of February 2013. At this time it was decided that Mr Tomasevic may be a potential witness in the Case of Radovan Karadzic. Taking into account that Mr. Tomasevic worked as **judge in the Military Court in the 1st Krajina Corp** for the period 1992-1995, the assumption was that he possesses relevant information about the work of the Military Court, both in his personal capacity as a judge and as a member of the Council working in criminal cases for crimes committed during the war.

Mr. Tomasevic did not object to making a statement or to testifying. He only stated that he wanted to research and read the documents relevant for his testimony, which I provided him with, on the next day, the 5th of February 2013.

Following our initial meeting, we met on the 6th of March, 7th of June, 5th of August and 30th of September (four meetings in total). During our last meeting, I asked him for clarification as to why he is postponing making a final decision about tendering his testimony and statement.

On 29 and 30 October 2013, as the time provided for Mr Tomasevic's appearance approached, I contacted Mr Tomasevic with a view to hear about his final decision concerning his testimony; that is, whether he would agree to testify or not. I made this contact with him on the 7th of October 2013.

His answer was conclusive, making it clear that he does not see how his testimony would help in this case.

Under this set of circumstances, I informed the legal advisers and I suggested they summons Mr Tomasevic through the Court.

After this, one more attempt by one of the legal advisers in the case was made to contact Mr. Tomasevic. I was informed on the 1st of November that he was willing to meet me, to make a statement and to testify. I immediately called him and his personal assistant told me that he was in a meeting, and I would have to call him later. I tried again on a number of occasions over the following 3 days until the 11th of November. However, on each occasion he found different reasons to refuse to converse with me. On the 11th of November 2013, I informed the defence team of this.

COMMENT BY THE INVESTIGATOR:

I could clearly state that I have tried contacting Mr. Tomasevic on a number of occasion, as it can be seen above. He clearly refuses to testify in the case of Dr. Radovan Karadzic.

Nikola Tomasevic is witness with relevant knowledge, who can be of benefit to the case, when speaking about his engagement in many criminal cases before the Military Court.

Investigator:
Dragomir Keserovic