

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: 2 July 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA:
JOHN ZAMETICA

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 John Zametica compelling him to testify 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. A party seeking subpoena must demonstrate that (1) it has made reasonable attempts to obtain the voluntary cooperation of the witness; (2) the witness' information may materially assist its case ("legitimate forensic purpose" requirement); and (3) the witness' information may be necessary and appropriate for the conduct and fairness of the trial.¹

Efforts at Voluntary Cooperation

4. John Zametica provided a signed statement to Dr. Karadzic's defence team² and travelled to The Hague to testify during the week of 17 June 2013. Because the testimony of other witnesses took longer than expected, Mr. Zametica did not testify that week and his testimony was rescheduled for 3 July 2013.

5. On 28 June 2013, Mr. Zametica advised Dr. Karadzic's defence team that he was no longer willing to testify. Despite efforts of Dr. Karadzic's defence team to persuade him to testify, on 29 June 2013, Mr. Zametica repeated his refusal to testify.³ On 30 June 2013 and 1 July 2013, Dr. Karadzic called Mr. Zametica in an effort to persuade him to testify, but Mr. Zametica did not answer his calls. Mr. Zametica informed the Victims and Witnesses Unit of the Tribunal on 1 July 2013 that he would not travel to The Hague to testify.

6. Therefore, Dr. Karadzic has made efforts to obtain the voluntary cooperation of John Zametica without success.

¹ *Prosecutor v. Krstić*, IT-98-33-A, *Decision on Application for Subpoenas*, (1 July 2003) at para. 10; *Decision on Accused's Second Motion for Subpoena to Interview President Bill Clinton* (21 August 2012) at paras. 7-10

² 65 ter #1D09616

³ The e-mail communication between Dr. Karadzic's Legal Advisor and Mr. Zametica is attached as Annex A.

Relevance and Necessity

7. John Zametica has relevant information for the defence of Dr. Karadzic.

8. John Zametica was advisor to President Karadzic from 5 February 1994 through the end of the war. He held a key position and was in close contact with Dr. Karadzic. As to specific events, he is expected to testify that (1) despite his frequent meetings with Dr. Karadzic during the period after the fall of Srebrenica, there was no information that prisoners from Srebrenica had been executed;⁴ (2) the VRS informed President Karadzic that it had not fired the shell that landed on Markale market on 5 February 1994;⁵ (3) there was never any intention to threaten UN personnel once they had been detained in the wake of the NATO airstrikes of 25-26 May 1995⁶

9. This testimony is directly relevant to Dr. Karadzic's *mens rea* for the crimes of genocide as charged in Count 2; terror and unlawful attacks on civilians as charged in Counts 9 and 10, and hostage taking as charged in Count 11 of the Indictment.

16. Therefore, there are reasonable grounds to believe that Mr. Zametica has information which can materially assist Dr. Karadzic's case.

17. The information from Mr. Zametica is also necessary to the defence. Mr. Zametica was in a unique position to know the thinking and knowledge of Dr. Karadzic concerning the crimes charged in the indictment. His evidence goes to points which are central to Dr. Karadzic's defence. While other witnesses have testified that Dr. Karadzic was not informed about the killings of prisoners from Srebrenica, Mr. Zametica's position was such that he can be more authoritative than many of those witnesses. Mr. Zametica is the only witness who is expected to testify about Dr. Karadzic's lack of intention to threaten UN personnel who were detained, as he was closely involved in the matter.

18. Therefore, Dr. Karadzic has demonstrated that the testimony of Mr. Zametica is necessary for a fair determination of the issues being tried in his case.

⁴ Statement, at para. 33

⁵ Statement at para 24

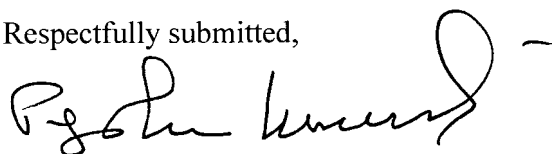
⁶ Statement at para. 28

Procedural Matters

19. A subpoena should designate the place and time for the person to appear to testify. Dr. Karadzic requests that Mr. Zametica be subpoenaed to testify on Tuesday, 27 August 2013 in The Hague.

Word count: 1584

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a horizontal line extending to the right.

Radovan Karadzic

ANNEX "A"

From: **john zametica**
Date: 2013/6/28
Subject: Message for Mr Robinson

Please pass on the following message to Mr Robinson:

Dear Mr Robinson,

You may have been informed by Mr Vujić about my complete disappointment at the treatment which the defence team extended to me during my recent stay in the Hague. I had been told in advance of my trip that three days would be devoted to preparations in connection with my appearance as a witness, but there had been no preparations whatsoever - I had been left to my own devices in the hotel. Furthermore, I discovered only by chance from a lowly UN official that my scheduled appearance in court on 20 June had been postponed - no one from the defence team even bothered to inform me about the postponement.

I now realize, however, that the defence team have let me down in a far more substantial way. Earlier today I was listing through a pile of documents, made available to the defence by the prosecution, which an intern had brought to me after (repeat: after) I had signed my statement. One of those documents flatly contradicts a central claim that I make in my statement (a claim that I sincerely believed was true when I wrote the statement), and the prosecution would have no problem in ripping apart this claim. Both you and Dr Karadžić had read my statement and neither of you drew my attention to the folly of making a claim when documentation exists to the contrary.

In the light of this particular problem, but also in the light of the team's generally nonchalant and irresponsible attitude which potentially creates other traps and problems during a cross-examination, I feel unable to appear as a witness, and it is already clear that my appearance would do far more harm than good. I therefore demand that you withdraw my statement.

Please confirm the receipt of this message.

Yours sincerely,

John Zametica

From: Peter Robinson
To: jzametica
Sent: Friday, 28 June 2013, 16 55
Subject: Your message

Dear Mr. Zametica,

I received your e-mail just now.

I apologize for the deficiencies in your preparation. The reality is that the Tribunal does not give us sufficient resources to do the kind of job we would like to do. Dr. Karadzic, Marko, and I are in court all day and preparing for the next day as soon as we leave the courtroom. Our case managers are busy trying to supply us with what we need in the courtroom and taking care of other logistical issues. Each of us work at least 10 hours a day 7 days a week. We are simply forced by necessity to have unpaid interns helping us with searching for additional documents that might be used during the cross examination of our witnesses. Unfortunately, that is part of the inequality of arms that Dr. Karadzic and we face every day in his case and something we cannot change.

It would be a shame for Dr. Karadzic to be further disadvantaged by your not coming to testify.

Can you explain to me what the document is that contradicts your statement? Where I noticed contradictions or omissions in your statement, such as concerning Patrick Rechner or the Holbrooke agreement, I thought we had rectified them. I thought your statement was excellent and that your testimony would be very good--in fact essential for Dr. Karadzic.

In any event, you are free to correct your statement at any time and can even inform the Trial Chamber when you commence your testimony about any corrections that you noticed needed to be made to your statement.

Our case manager Sasha has told me that he and Marko have been planning on meeting with you on Tuesday when you arrive and working with you for as long as you would like. We informed the Trial Chamber that you will be testifying at 9 am on Wednesday and set aside that day so that you would not have to wait around again. Since these arrangements are in place and since your testimony is so important for Dr. Karadzic, I hope you can accept our apology and come and testify as scheduled.

Yours truly,

Peter

Dear Mr Robinson,

Thank you for your message.

After careful consideration I have decided I no longer wish to give evidence.

As a result of further disclosure of documentation I am now deeply uncomfortable with the prospect of giving evidence on a number of matters set out in my statement.

The statement was prepared from memory and without any recourse to contemporaneous material. I believe I am now vulnerable to hostile cross-examination, a situation which has been created as a result of a chaotic preparatory process.

I regret the situation, but my decision is final and I will not attend next week.

Yours sincerely,

John Zametica