

IT-95-5/18-T
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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: 6 December 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO
SRDAN FORCA

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 Srdan Forca, 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 Srdan Force by requesting that he testify as a defence witness at his trial. Mr. Forca 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 Srdan Forca voluntarily.

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

6. Mr. Forca was the military judge who issued decisions releasing Danilusko Kaitez, who was charged with the murder of Croat civilians in Sanski Most in 1992.³ On the same day, he signed an order releasing the accused in another case for the same

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. Forca is attached as Annex A.

³ Exhibit P6557

reasons.⁴ The prosecution has alleged that political authorities intervened in order to obtain the release of these individuals as part of a policy not to prosecute crimes against non-Serbs. Mr. Forca is expected to testify that his decisions to release these accused was not the result of such pressure and that he was unaware of any such policy. Mr. Forca can also introduce various documents showing how crimes against non-Serbs were prosecuted in his court.

9. The evidence of Srdan Forca 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.

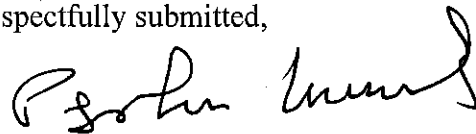
10. The information from Srdan Forca is necessary for Dr. Karadzic's case because he was the very judge who ordered the people released in two cases which have been cited by the prosecution in this trial of examples of such a policy. As such, he is in a unique position to testify to the actual reasons 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. Forca.

11. Therefore, Dr. Karadzic has demonstrated that the information from Srdan Forca 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 Srdan Forca be subpoenaed to testify on 21 January 2014 and the authorities of Bosnia and Herzegovina be requested to serve the subpoena on Mr. Forca.

Word count: 840

Respectfully submitted,



Radovan Karadzic

⁴ Exhibit P3626

ANNEX "A"

Subject:

**Forca Srdjan
Refusal to testify and give statement
Official Notice**

I spent several months attempting to obtain a written witness statement from Srdjan Forca of Banja Luka however to date has not been able to do so.

An appointment was made for a conversation to take place on the 20th of December 2012. Mr Forca was informed that this conversation will be about his duty as a judge in the Military Court of the First Krajina Corps for the period 1992-1995. He potentially had relevant information concerning the work of the Military Court, both in his personal capacity as a judge and as a member of the Trial Chamber, working in criminal cases during the war.

Mr. Forca did not object to making a statement or to testifying, but he requested to be given some additional time to research materials from relevant cases.

Next time contact was made, Mr. Forca asked to have a conversation with one of the legal advisors in Dr. Karadzic's case prior to making a written statement. As a result, Mr Forca had three (3) meetings in total with legal advisers (Goran Petronijevic and Marko Sladojevic) from Dr Karadzic's case. Mr Forca continued to postpone making a final decision about tendering his testimony, and requested further additional time.

Since Mr. Forca's testimony approached, on the 29th and 30th October 2013, I contacted him with a view to hear about his final decision concerning his testimony; that is, whether he would agree to testify or not.

Mr Forca stated conclusively that he did not believe that his evidence would have significant contribution to the case since other witnesses have already testified about the work of the Military Court.

In the end he clarified that he is not willing to testify.

COMMENT BY THE INVESTIGATOR:

Based on the stated above, because of all the effort that was put in convincing Mr. Forca to testify and all the meetings that were scheduled with the legal advisors, I believe that we have done everything necessary.

Because of his involvement in cases of the Military Court, Srdjan Forca could be valuable witness in Dr. Radovan Karadzic's case.

Investigator:
Dragomir Keserovic