

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: 3 March 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR SUBPOENA TO
WITNESS KDZ584

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

Government of Croatia

The Accused:
Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 54, for the issuance of a subpoena to Witness KDZ584 of Croatia compelling him to testify as a defence witness at the trial of Dr. Karadzic.

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 proper method for obtaining the testimony of a person who was or is a government official is by subpoena, rather than an order to the State pursuant to Rule 54 *bis*.¹

4. The jurisprudence of the *ad hoc* Tribunals also 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 may materially assist its case; and (3) the witness' information may be necessary and appropriate for the conduct and fairness of the trial.²

Efforts at Voluntary Cooperation

5. On 25 February 2013, Dr. Karadzic wrote a letter to the government of Croatia, requesting that it make Witness KDZ584 available to review intercepted conversations which the defence wished to offer into evidence, verify their authenticity, and testify as a defence witness.³

¹*Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Motion for Subpoena for Douglas Lute and John Feeley* (8 July 2009) at para. 8; *Prosecutor v Milosevic*, No. IT-02-54-T, *Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schroeder* (9 December 2005) at para. 27; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Request for a Subpoena* (11 September 2006) at para. 4

²*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

³*Letter to Croatia* (25 February 2013)

6. Having had no response, Dr. Karadzic sent a second letter on 14 May 2013.⁴

7. On 4 June 2013, Dr. Karadzic received a letter from the government of Croatia dated 29 May 2013. The government indicated that it was willing to make Witness KDZ584 available to authenticate the intercepted conversations and testify pursuant to certain Rule 70 conditions.

8. On 11 June 2013, Dr. Karadzic responded to the government of Croatia, indicating that the proposed Rule 70 conditions differed from those granted to Witness KDZ584 by the Trial Chamber when he testified for the prosecution, and requesting that the same conditions apply to his testimony as a defence witness.⁵

9. On 8 July 2013, Dr. Karadzic received a letter from the government of Croatia dated 5 June 2013, indicating that the conditions previously imposed by the Trial Chamber for the testimony of Witness KDZ584 were suitable.

10. On 29 August 2013, Dr. Karadzic sent a letter to the government of Croatia advising it that the testimony of Witness KDZ584 was likely to take place around the beginning of March 2014 and that he would contact the government of Croatia with a more specific date after the New Year.⁶

11. On 21 January 2014, Dr. Karadzic filed his *Notice of Government of Croatia of Date of Testimony of Witness KDZ584*. He advised that the testimony would be heard on 18 February 2014. He enclosed a CD Rom with 30 intercepted conversations which he requested Witness KDZ584 verify and authenticate.

12. On the eve of the date of testimony, 17 February 2014, Dr. Karadzic was notified by the government of Croatia that Witness KDZ584 would not appear on 18 February 2014 to testify as he had not been given the requested 30 days to review the intercepted conversations and had expected to testify at the beginning of March.

13. On 18 February 2014, Dr. Karadzic filed his *Amended Notice of Government of Croatia of Date of Testimony of Witness KDZ584* in which he rescheduled the testimony of Witness KDZ584 for 3 March 2014.

⁴ *Letter to Croatia* (14 May 2013)

⁵ *Letter to Croatia* (11 June 2013)

⁶ *Letter to Croatia* (29 August 2013)

14. On 27 February 2014, Dr. Karadzic received a letter from the government of Croatia dated 26 February 2014 indicating that Witness KDZ584 could testify on or after 24 March 2014.

15. Therefore, Dr. Karadzic has made reasonable efforts to obtain the voluntary cooperation of Witness KDZ584. Given that the voluntary cooperation of Witness KDZ584 has failed to result in his appearance at the Tribunal for testimony on the scheduled dates, a subpoena is necessary to ensure compliance and avoid further delay in the closing of the defence case.

Relevance and Necessity

16. Witness KDZ584 has relevant information for the defence of Dr. Karadzic. His testimony would authenticate approximately 30 intercepted conversations that Dr. Karadzic wishes to have admitted into evidence.⁷

17. The information from Mr. Schindler is necessary to the defence because the Trial Chamber requires authentication of intercepted conversations from an official of the government which intercepted them, and the prosecution has indicated that it does not agree to stipulate to the authenticity of the reports and transcripts of the conversations.

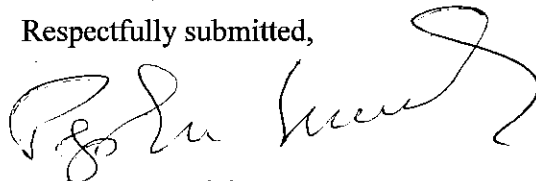
18. Therefore, Dr. Karadzic has demonstrated that testimony of Witness KDZ584 is necessary for a fair determination of the issues being tried in his case.

Procedural Matters

19. A subpoena should designate the place and time for the person to appear for testimony. Dr. Karadzic suggests that, if granted, a subpoena be issued for Friday, 28 March at 9 am.⁸

Word count: 1207

Respectfully submitted,



Radovan Karadzic

⁷ The specific conversations are described in the *Motion to Admit Croatian Government Intercepts Previously Marked for Identification* (18 February 2014) and the *Bar Table Motion: Intercepted Conversations* (3 March 2014)

⁸ This would provide adequate time for access to e-court and proofing following the reopening of the Tribunal's premises on 26 March 2014.