

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: 12 March 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR SUBPOENA TO  
GENERAL ZDRAVKO TOLIMIR

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

Witness General Zdravko Tolimir:  
Mr. Aleksandar Gajic, Legal Advisor

The Accused:  
Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 54, for the issuance of a subpoena to General Zdravko Tolimir 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.<sup>1</sup>

#### **Efforts at Voluntary Cooperation**

4. On 19 December 2012, Dr. Radovan Karadzic made a written request to the Office of Legal Aid and Detention requesting to interview General Zdravko Tolimir, who is detained at the United Nations Detention Unit in The Hague.<sup>2</sup>

5. On 4 January 2013, Dr. Karadzic was informed that General Tolimir had declined to be interviewed by Dr. Karadzic and his Legal Advisor.

6. In an oral conversation shortly thereafter at the Detention Unit, General Tolimir informed Dr. Karadzic that he was unwilling to testify as a defence witness at Dr. Karadzic's trial.

7. Dr. Karadzic's Legal Advisor has attempted to confirm General Tolimir's position in writing through correspondence with General Tolimir's Legal Advisor with no results.<sup>3</sup>

8. Therefore, Dr. Karadzic has made efforts to obtain the voluntary cooperation of General Tolimir without success.

#### **Relevance and Necessity**

9. General Tolimir has relevant information for the defence of Dr. Karadzic.

<sup>1</sup> *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

<sup>2</sup> A copy of this form is attached as Annex "A".

<sup>3</sup> See e-mails attached as Annex "B".

10. General Tolimir is expected to testify that he never informed Dr. Karadzic orally or in writing that prisoners from Srebrenica would be, were being, or had been executed. This testimony is directly relevant to Dr. Karadzic's *mens rea* for genocide as charged in Count Two of the indictment.

11. General Tolimir is also expected to testify to the telegram he sent on 9 July 1995 in which Dr. Karadzic authorized the VRS to enter the town of Srebrenica and full protection was to be ensured to UNPROFOR and the Muslim civilian population, with the civilian population and war prisoners being treated in accordance with the Geneva Conventions.<sup>4</sup> He is expected to testify that at that time there was no plan or expectation that Bosnian Muslims would be forcibly transferred or harmed in any way.. This is also directly relevant to Dr. Karadzic's *mens rea* for genocide and his overall responsibility for the Srebrenica events.

12. Therefore, there are reasonable grounds to believe that General Tolimir has information which can materially assist Dr. Karadzic's case.

13. The information from General Tolimir is also necessary to the defence. General Tolimir was Assistant Commander and the Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the VRS. His testimony is necessary to rebut the prosecution's claim that Dr. Karadzic had numerous sources from which he could have learned of the execution of prisoners from Srebrenica, including General Tolimir. In addition to the communication between Dr. Karadzic and General Tolimir which gave rise to the 9 July telegram, the prosecution has introduced evidence from its expert witness Richard Butler that the Republic Communications Center log for 13-17 July 1995 indicates that every day the VRS security organ sent reports to the President. None of these reports were ever located.<sup>5</sup>

14. That log shows reports being received from the VRS Intelligence and Security Organ, of which General Tolimir was Chief, on the following dates and times:

14 July 1995	0410
15 July 1995	0715
16 July 1995	0525, 1620
17 July 1995	0520

<sup>4</sup> P2276

<sup>5</sup> T27613; P2989

15. Therefore, it is essential that Dr. Karadzic obtain the testimony of General Tolimir which describes the nature and content of their oral and written contacts and establishes that General Tolimir never informed President Karadzic, orally or in writing, of the execution of prisoners from Srebrenica.

16. Dr. Karadzic is confident that the testimony of General Tolimir will be of assistance to him because General Tolimir has consistently maintained throughout his own trial that he had no knowledge himself of the execution of the prisoners from Srebrenica.

17. Therefore, Dr. Karadzic has demonstrated that the testimony of General Tolimir is necessary for a fair determination of the issues being tried in his case.

18. General Tolimir has been convicted by the Trial Chamber and sentenced to life imprisonment. He has appealed that judgement. The appeal process will not be completed before Dr. Karadzic's defence case is concluded. Therefore, to the extent that General Tolimir may decline to answer a specific question on the basis of his privilege against self incrimination, Dr. Karadzic would request that the Trial Chamber compel General Tolimir to answer those questions and provide him with the protections against self-incrimination contained in Rule 90(E).

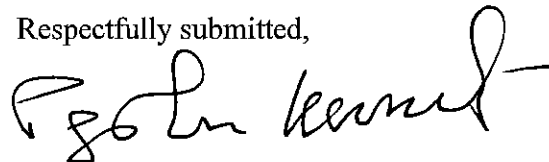
19. Dr. Karadzic is willing to keep the focus of his examination of General Tolimir as narrow as possible to elicit the evidence referred to above.

**Procedural Matters**

20. A subpoena should designate the place and time for the person to appear to testify. Dr. Karadzic requests that General Tolimir be subpoenaed to testify on Tuesday, 7 May 2013.

Word count: 1015

Respectfully submitted,



Radovan Karadzic

# ANNEX "A"

**APPLICATION FOR PERMISSION TO MEET A WITNESS  
AT THE UNITED NATIONS DETENTION UNIT**

**In order for your application to be considered, please ensure that:**

- the completed application, duly filled, signed and accompanied with the information sheet completed and signed by the witness, is submitted at least 10 working days in advance of the requested visiting date;
- in case of high profile (HP) or very important person (VIP) witnesses, the full application needs to be submitted at least 3 weeks in advance;
- a legible copy of the picture page of witness's passport is attached to the information sheet;
- separate applications are submitted for each witness;
- a fixed reservation for the proposed date and time of visit is made with the United Nations Detention Unit (UNDU), at least 10 working days in advance (3 weeks in case of HP or VIP witnesses).

<b>Detainee's first name and surname:</b>	Radovan Karadzic
<b>Date and duration of requested visit:</b>	9 January 2013 1300 to 1400 hrs
<b>4</b>	Zdravko Tolimir
<b>Please provide reasons for the in-person meeting with the witness:</b>	
To interview him as a potential defence witness.	

**Please specify why alternative means of contact (e.g. interview through legal associate and/or investigator, written correspondence, telephone communication, meeting via video-conference link) with the witness are not adequate in lieu of in-person meeting:**

Z dravko Tolimir is detained at the UNDU with me. It would be pointless to require my investigators to travel from Bosnia to The Hague to interview him when I can do it.

**The witness is (please tick the appropriate box):**

- Prosecution Rule 65ter witness  
 Defence Rule 65ter witness  
 Potential Witness  
 Chamber witness

**Additional comments/information:**

**By signing this application form I certify that the information stated above is true and complete.**

Date: 19 Dec 2012 Signature: \_\_\_\_\_

## **ANNEX "B"**



20 January 2013

Dear Professor Gajic,

I hope things are going well for you in Belgrade and you are working well on the appeal.

Dr. Karadzic has requested a meeting with General Tolimir to formally request that he testify as a defence witness.

General Tolimir declined the meeting and told Dr. Karadzic orally that he does not want to testify.

Can you please confirm that with him and then let me know by e-mail? We will be asking for a subpoena and we want to make sure there is no possibility that General Tolimir might testify voluntarily before making such a motion.

Thanks for your help.

Your friend,

Peter

8 February 2013

Dear Professor Gajic,

We haven't had any response to the e-mail below and need to resolve definitively whether General Tolimir is willing to testify voluntarily at Dr. Karadzic's trial.

Therefore, we have scheduled General Tolimir's testimony for Thursday, 7 March. We will request that he be brought over from the UNDU on that day to give his testimony.

Should General Tolimir agree to be proofed before giving his testimony, please let me know and we can schedule some proofing sessions. Should he decline to testify, please also let me know so we can make an application for subpoena.

Otherwise, I look forward to seeing you on 7 March.

Your friend,

Peter

Dear Mr. Robinson,

I will be in The Hague during next week. I will arrive probably on Thursday or Friday so we can discuss the issue.

Please do not plan anything for the beginning of March because we have 11 March as a deadline for submission of a notice of appeal. Any travel arrangement for that week will make a lot of trouble for me.

Regards

Aleksandar

24 February 2013

Dear Professor Gajic,

I hope this e-mail finds you doing well in Belgrade and making good progress on your notice of appeal.

Do you have an answer for me to the question of whether General Tolimir is willing to testify at Dr. Karadzic's trial?

Your friend,

Peter