

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: 16 December 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REQUEST FOR ORAL TESTIMONY
DURING SENTENCING CASE

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully requests that the Trial Chamber receive oral testimony during the sentencing phase of his case.

2. Rule 85(A) provides that:

Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

- (i) evidence for the prosecution;
- (ii) evidence for the defence;
- (iii) prosecution evidence in rebuttal;
- (iv) defence evidence in rejoinder;
- (v) evidence ordered by the Trial Chamber pursuant to Rule 98; and
- (vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.

3. Dr. Karadzic has included 14 persons on his Rule 65 *ter* witness list whom he wishes to call during the sentencing phase of the case, as provided for in Rule 85(A)(vi), following the testimony of any witnesses called by the Trial Chamber pursuant to Rule 85(A)(v).¹ Dr. Karadzic's witnesses will offer testimony concerning the alleged "Holbrooke Agreement" and Dr. Karadzic's subsequent resignation and withdrawal from public life. The Appeals Chamber has already stated that this may be considered as a mitigating factor for sentencing.²

4. Dr. Karadzic has noted that the Trial Chamber has recently turned its attention to the management of the proceedings subsequent to the close of the defence case, and has not expressly included the sentencing phase as one of the expected phases remaining in the case.³

5. On its face, Rule 85(A)(vi) speaks of "relevant information" rather than "evidence" when referring to sentencing issues. In the *Krajisnik* case, the Trial Chamber

¹ The identity of the witnesses, and the e-court # for their respective written statements, are contained in the "Sentencing Witnesses" section at the end of Dr. Karadzic's witness list.

² *Decision on Karadzic Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement* (12 October 2009) at para. 55

³ T44682 concerning the mandate of standby counsel

declined to hear oral evidence during the sentencing phase, preferring to admit written evidence.⁴ Dr. Karadzic respectfully requests that his Trial Chamber hear oral evidence relevant to sentencing in his case.

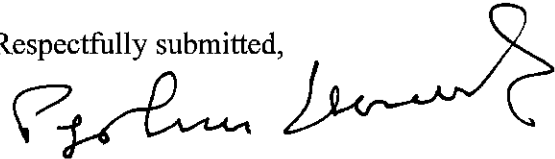
6. The Tribunal's jurisprudence has held that written evidence which is not subject to cross examination is of lower probative value than evidence subject to cross examination.⁵ Dr. Karadzic has endeavored to present as much of his evidence in the courtroom so that it can be fully tested and fully relied upon by the Trial Chamber.

7. Therefore, Dr. Karadzic respectfully requests that the "relevant information" during the sentencing phase be heard orally and that such evidence be heard upon the conclusion of the testimony of any witnesses called by the Trial Chamber.

8. Because some of the proposed sentencing witnesses are officials of the United States government who may be reluctant to testify on behalf of Dr. Karadzic, the Trial Chamber is respectfully requested to decide on this request in sufficient time to allow Dr. Karadzic to arrange for the testimony of such witnesses.

Word count: 672

Respectfully submitted,



Radovan Karadzic

⁴ *Prosecutor v Krajisnik*, No. IT-00-39-T, *Decision on Defence Motion Pursuant to Rule 85(a)(iv)*(24 August 2006)

⁵ *Prosecutor v Martić*, No. IT-95-11-T, *Judgement* (12 June 2007) at para. 27; *Prosecutor v Delić*, No. IT-04-83-T, *Judgement* (15 September 2008) at para.36; *Prosecutor v Dordjević*, No. IT-05-87/1-T, *Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 quater* (5 February 2009) at para. 9; *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Decision on Prosecution's Motion for Admission of the Evidence of Milenko Lazic Pursuant to Rule 92 quater...*(9 January 2012) at para. 20