

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-R77.1

Date: 4 February 2011

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Order of: 4 February 2011

IN THE CONTEMPT CASE OF BERKO ZEČEVIĆ

CONFIDENTIAL

ORDER IN LIEU OF INDICTMENT

Office of the Prosecutor in Case IT-95-5/18-T

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Bosnia and Herzegovina

via the Embassy of Bosnia and Herzegovina to
The Netherlands, The Hague

The Accused in Case IT-95-5/18-T

Mr. Radovan Karadžić

Standby Counsel in Case IT-95-5/18-T

Mr. Richard Harvey

The Accused in the Contempt case of Berko Zečević

Mr. Berko Zečević

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of a request from the Office of the Prosecutor (“Prosecution”) concerning the enforcement of the subpoena issued to Berko Zečević on 20 January 2011, and hereby issues this order in lieu of indictment pursuant to Rule 77 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) in relation thereto.

I. Background

1. On 20 January 2011, the Chamber issued a subpoena ordering Berko Zečević (“Witness”) to appear and testify before the Chamber in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, commencing on 2 February 2011.¹ On the same day, the Chamber also requested the government of Bosnia and Herzegovina to serve the subpoena on the Witness, to take all necessary measures to ensure that he appears to testify before the Chamber as indicated in the subpoena, and to provide the Tribunal with a written report on the execution of the subpoena.²

2. On 28 January 2011, the government of Bosnia and Herzegovina submitted the memorandum of service of the subpoena and accompanying documentation, which included a statement signed by the Witness and some medical documentation. These were all translated into English and filed on 1 February 2011. The memorandum of service indicates that Berko Zečević had read the subpoena, is unwilling to appear before the Chamber, and records that he stated that he has made this plainly known to the Prosecutor over the last three years. In the accompanying statement signed by the Witness, he elaborates on his unwillingness to testify before the Tribunal, declaring that he (i) has already been to the Hague five times and testified in four trials; (ii) has had his career suffer detrimentally due to his co-operation with the Tribunal; (iii) has not been treated well by the Prosecution during his co-operation with the Tribunal; and (iv) had a medical operation on his spine in the last year which results in pain during prolonged periods of sitting.³

3. The Chamber discussed the content of the memorandum of service with the parties during the trial proceedings on 1 February 2011,⁴ and the Witness was subsequently contacted by the Tribunal’s Victims and Witnesses Section, to whom he again made clear his unwillingness to testify in these proceedings. The Chamber raised the matter again with the

¹ Subpoena *ad Testificandum*, confidential, 20 January 2011.

² Order to the Government of Bosnia and Herzegovina Concerning Subpoena, confidential, 20 January 2011.

³ Memorandum of service, confidential pp 3-4, 11.

⁴ T. 11068-11072 (private session) (1 February 2011).

parties during the trial proceedings on 3 February 2011, at which time the Prosecution requested that a warrant of arrest for the Witness be issued.⁵

II. Discussion

4. Rule 77(A) of the Rules provides that the Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who without just excuse fails to comply with an order to attend before a Chamber.⁶ When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may initiate proceedings itself and if the Chamber considers that there are sufficient grounds to proceed against a person for contempt, it may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.⁷

5. In light of the Witness's refusal to comply with the subpoena issued by the Chamber, as specified in the memorandum of service, and absent the Witness's showing of good cause preventing him from complying with the subpoena, the Chamber has reason to believe that Berko Zečević may be in contempt of the Tribunal, and that there are sufficient grounds to proceed against Berko Zečević for contempt.

III. Disposition

6. Accordingly, the Trial Chamber, pursuant to Rules 54 and 77 of the Rules, hereby issues this order in lieu of an indictment and **ORDERS** the prosecution for **CONTEMPT OF THE TRIBUNAL**, punishable under Rule 77(A) and (G) of the Rules, of:

Berko Zečević, born 13 December 1949 at Srebrenica, Bosnia and Herzegovina, residing at Vilsonovo šetalište 9, 71000 Sarajevo, Bosnia and Herzegovina, whose prosecution is being pursued for:

having been informed on 28 January 2011 of the contents of a subpoena *ad testificandum* dated 20 January 2011, and of his obligation to appear before the Trial Chamber, failing to appear before the Chamber as ordered, or to show good cause why he could not comply with the subpoena and therefore knowingly and wilfully interfering with the administration of justice by refusing to comply with the Chamber's subpoena of 20 January 2011.

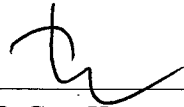
⁵ T. 11291 (private session) (3 February 2011).

⁶ Rule 77(A)(iii).

⁷ Rule 77(C)(iii); Rule 77(D)(ii).

AND DECIDES to prosecute the matter itself.

Done in English and French, the English text being authoritative.



Judge O-Gon Kwon
Presiding

Dated this fourth day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]