



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-T

Date: 11 January 2013

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

Decision of: 11 January 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO SUBPOENA RANKO MIJIĆ

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 the “Motion for Subpoena to Ranko Mijić”, filed on 15 November 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests, pursuant to Rule 54 of the Tribunal’s Rules of Evidence and Procedure (“Rules”), that the Chamber issue a subpoena compelling Ranko Mijić, a former Chief of the Criminal Department of the Prijedor Police (“Criminal Department”), to testify as a defence witness on 25 February 2013.¹ The Accused states that he attempted to obtain Mijić’s voluntary co-operation by contacting Mijić on two separate occasions—once requesting that he submit to an interview and testify as a defence witness, the other again requesting that he testify as a defence witness—and that Mijić declined both times.² The Accused appends to the Motion a letter dated 13 October 2012 requesting Mijić to testify in his defence case, as well as a transcript of a suspect interview that Mijić gave to the Office of the Prosecutor (“Prosecution”) on 3 December 2003 (“Transcript”) in which Mijić discusses, *inter alia*, his presence at Omarska Camp in 1992 and the events which occurred there.³

2. The Accused contends that there are reasonable grounds to believe that Mijić has information which will materially assist his defence case, given that Mijić served as Chief of the Criminal Department from 1992 to 1995 and, in this capacity, worked from May to August 1992 at the Omarska Camp in Prijedor, where he was the highest-ranking police officer.⁴ The Accused maintains that there were 10 other people working at Omarska from the Criminal Department and that Mijić oversaw the interrogations for the purposes of identifying individuals responsible for crimes committed in Prijedor.⁵ In the Accused’s submission, Mijić had no control over the prison guards who were physically abusing the prisoners, warned the camp commander to stop such abuse, and advised on the release of prisoners.⁶ Thus the Accused maintains that Mijić’s testimony is relevant to show that mistreatment of prisoners occurred not pursuant to a policy or a joint criminal enterprise (“JCE”) in which the Accused participated but instead was carried out by

¹ Motion, paras. 1, 18.

² Motion, para. 4, Annex A.

³ Motion, Annex A, Annex B.

⁴ Motion, paras. 5–17.

⁵ Motion, paras. 7–9.

⁶ Motion, paras. 10–15.

individuals acting outside of the authority of high-level individuals.⁷ The Accused also argues that Mijić's testimony is necessary because Mijić was at Omarska Camp during the time of the alleged crimes and was the highest-ranking police official there, and is thus in the best position to explain that there were legitimate reasons for establishing Omarska Camp and conducting interrogations there, and that "those in the highest position" had "good intentions".⁸

3. On 15 November 2012, the Prosecution notified the Chamber *via* e-mail that it would not respond to the Motion.

II. Applicable Law

4. Rule 54 of the Rules provides that a Trial Chamber may issue a subpoena when it is "necessary for the purpose of an investigation or the preparation or conduct of the trial". A subpoena is deemed "necessary" for the purpose of Rule 54 where a legitimate forensic purpose for having the information has been shown:

An applicant for such [...] a subpoena before or during the trial would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to the forthcoming trial.⁹

5. To satisfy this requirement of legitimate forensic purpose, the applicant may need to present information about such factors as the positions held by the prospective witness in relation to the events in question, any relationship that the witness may have had with the accused, any opportunity the witness may have had to observe those events, and any statements the witness has made to the Prosecution or to others in relation to the events.¹⁰

6. Even if the Trial Chamber is satisfied that the applicant has met the legitimate purpose requirement, the issuance of a subpoena may be inappropriate if the information sought is

⁷ Motion, para. 15.

⁸ Motion, para. 16.

⁹ *Prosecutor v. Halilović*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoena, 21 June 2004 ("*Halilović* Decision"), para. 6; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003 ("*Krstić* Decision"), para. 10 (citations omitted); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder, 9 December 2005 ("*Milošević* Decision"), para. 38.

¹⁰ *Halilović* Decision, para. 6; *Krstić* Decision, para. 11; *Milošević* Decision, para. 40.

obtainable through other means.¹¹ Finally, the applicant must show that he has made reasonable attempts to obtain the voluntary co-operation of the potential witness and has been unsuccessful.¹²

7. Subpoenas should not be issued lightly as they involve the use of coercive powers and may lead to the imposition of a criminal sanction.¹³ A Trial Chamber's discretion to issue subpoenas, therefore, is necessary to ensure that the compulsive mechanism of the subpoena is not abused and/or used as a trial tactic.¹⁴

III. Discussion

8. The Chamber first considers that the Accused has made reasonable efforts to obtain the voluntary co-operation of Mijić but has been unsuccessful.¹⁵

9. As stated above, in order to meet the necessity requirement for the issuance of a subpoena, the applicant must show that he has a reasonable basis for his belief that there is a good chance that the witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to his trial.¹⁶ The Chamber notes that Mijić is expected to testify about events in the Omarska Camp between May and August 1992, including: (i) the number of police present; (ii) the actions of the police, including their conduct of prisoner interrogations; (iii) the relationship between the police and the guards; (iv) the actions of the guards, particularly in relation to their treatment of the prisoners; (v) the reasons and intentions behind his activities and that of other high-ranking officials at the camp; and (vi) the conditions at Omarska Camp generally. The Chamber thus considers that such prospective testimony relates to live issues in this trial, namely the occurrence of crimes at Omarska Camp and the Accused's responsibility for such crimes pursuant to the alleged overarching JCE to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of Bosnia and Herzegovina claimed as Bosnian Serb territory.¹⁷ The Chamber is therefore satisfied that there is a good chance that Mijić will be able to materially assist the Accused in the presentation of his defence with respect to those clearly identified issues which are relevant to his case and thus that the Accused has satisfied the requirement of the legitimate forensic purpose.

¹¹ *Halilović* Decision, para. 7; *Milošević* Decision, para. 41.

¹² *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on a Prosecution Motion for Issuance of a Subpoena ad Testificandum, 11 February 2009, para. 7; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for a Subpoena for Witness SHB, 7 February 2005, para. 3.

¹³ *Halilović* Decision, para. 6; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal, 11 December 2002, para. 31.

¹⁴ *Halilović* Decision, paras. 6, 10.

¹⁵ See Motion, para. 4, Annex A.

¹⁶ *Krstić* Decision, para. 10; *Halilović* Decision, para. 6. See also *Milošević* Decision, para. 38.

¹⁷ Third Amended Indictment, paras. 9–14.

10. However, the Chamber recalls that a subpoena cannot be issued if the information sought is obtainable through other means.¹⁸ By the Accused's own admission, there were approximately 10 other police officers working at Omarska Camp from May to August 1992.¹⁹ The Chamber also notes that in the Transcript, Mijić states that there were "about 10 people" from the Criminal Department present at Omarska Camp during his time there, that these police officers conducted interrogations of the prisoners, and that they worked alongside an inspector from the State Security Service and members of the Military Security Service.²⁰ Furthermore, he notes that such police officers were present at various meetings in Prijedor during this period and that such meetings included other high-level military and political officials.²¹ The Chamber thus considers that this information is obtainable through other means and that the Accused should investigate further whether any of these individuals could provide comparable information relevant to his defence case, and in so doing obviate the need to subpoena Mijić.

11. Accordingly, the Chamber finds that the requirements for the issuance of a subpoena have not been met in this case. Once again, the Chamber reminds the Accused that subpoenas will not be issued lightly, and that their use should be limited and used sparingly as a method of last resort for obtaining information that is both legally and factually relevant and necessary to his case.²²

IV. Disposition

12. Accordingly, the Chamber, pursuant to Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this eleventh day of January 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ See Decision on Accused's Motion to Subpoena President Karolos Papoulias, 23 October 2012 ("Papoulias Decision"), para. 9.

¹⁹ Motion, para. 7.

²⁰ Motion, Annex B, pp. 10, 54.

²¹ See, e.g., Motion, Annex B, pp. 13–14, 15–16.

²² Decision on Accused's Motion to Subpoena Prime Minister Milan Panić, 13 December 2012, para. 14; Papoulias Decision, para. 21; Decision on the Accused's Second Motion for Subpoena to Interview President Bill Clinton, 21 August 2012, para. 16.