



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-R77.3

Date: 27 March 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

Order of: 27 March 2013

IN THE CONTEMPT CASE OF RADISLAV KRSTIĆ

PUBLIC

ORDER IN LIEU OF INDICTMENT

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

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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 Radislav Krstić

Mr. Radislav Krstić

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”) issues this Order in Lieu of Indictment pursuant to Rule 77 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) against Radislav Krstić (“Witness”) in relation to the “Subpoena ad Testificandum” the Chamber issued confidentially on 23 October 2012 (“Subpoena”).

I. Background

1. On 23 October 2012, the Chamber in *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T (“Chamber” and “*Karadžić* case”, respectively), issued the “Public Redacted Version of ‘Decision on Accused’s Motion to Subpoena Radislav Krstić’ Issued on 23 October 2012” in which it found it necessary to issue the Subpoena ordering the Witness to appear and testify in the *Karadžić* case on 15 January 2013, or to show good cause why the Subpoena could not be complied with.¹ On 7 November 2012, the Chamber issued confidentially an “Addendum to Subpoena ad Testificandum issued on 23 October 2012” (“Addendum to the Subpoena”) ordering that the appearance and testimony of Radislav Krstić be postponed until 4 February 2013, or that good cause be shown as to why the Subpoena could not be complied with.²

2. On 6 February 2013, the Witness, through his counsel, filed confidentially an “Urgent Motion Seeking Stay of Enforcement of Subpoena ad Testificandum and Further Medical Review” (“Motion”), arguing that he does not have the capacity to testify because he is suffering from Post Traumatic Stress Disorder,³ and requesting that the Chamber stay the enforcement of the Subpoena “until such time as a further medical review can be completed to assess the medical and mental health conditions of the [Witness] as well as his ability, capacity, and competence to testify”.⁴

3. On 7 February 2013, the Chamber denied the Motion and held that the Witness’s mental and physical health is such that he is able to testify.⁵ On 7 February 2013, the Witness refused to testify and the Chamber heard further submissions as to why the Witness believed he could not testify.⁶ Having heard these submissions, the Chamber ordered that the Registry provide to the Chamber by 8 March 2013, a more detailed report outlining the Witness’s physical and

¹ Public Redacted Version of “Decision on Accused’s Motion to Subpoena Radislav Krstić” Issued on 23 October 2012, 23 October 2012, para. 12; Subpoena, p. 2.

² Addendum to the Subpoena, p. 2.

³ Motion, para. 9.

⁴ Motion, p. 4.

⁵ T. 33375–33378 (7 February 2013) (private session).

⁶ T. 33414–33422 (7 February 2013).

mental health focusing on whether (1) testifying would indeed be detrimental to the Witness's health; and (2) the Witness has the basic capacity to understand the questions put to him and give rationale and truthful answers.⁷ On 14 February 2013, the Tribunal's Deputy Registrar appointed an independent medical expert to conduct the examination of the Witness ordered by the Chamber.⁸

4. On 8 March 2013, "[t]he Deputy Registrar's Submission Concerning Independent Medical Expert Report" ("Medical Report") was filed confidentially. On 13 March 2013, having reviewed the Medical Report, the Chamber found that there were no medical reasons which would amount to good cause for the Witness not to comply with the Subpoena ("13 March 2013 Order").⁹ Accordingly, the Chamber ordered that the Witness comply with the Subpoena and reminded him that failure to do so would constitute contempt of the Tribunal pursuant to Rule 77 of the Rules.¹⁰

5. On 19 March 2013, the Witness, through his counsel, filed confidentially "Krstić's Request for Reconsideration of the Order dated 13 March 2013" ("Request"), requesting that the 13 March 2013 Order be reconsidered because the Witness was not given the opportunity to make submissions as to the meaning and impact of the Medical Report.¹¹ In an oral ruling on 21 March 2013, the Chamber found that the Witness did not meet the test for reconsideration because the Request did not demonstrate a clear error of reasoning or that reconsideration was necessary in order to prevent an injustice.¹²

6. On 22 March 2013, the Chamber received a confidential "Letter from Radislav Krstić to Trial Chamber" reiterating the Witness's refusal to testify before the Chamber. On 22 March 2013, the Chamber ordered that the Witness appear before it on 25 March 2013.¹³

7. On 25 March 2013, the Witness appeared before the Chamber and persisted in his refusal to testify.¹⁴ The Chamber informed the Witness that it would proceed to issue an order in lieu of indictment and will schedule an initial appearance.¹⁵

⁷ T. 33422–32423 (7 February 2013).

⁸ Confidential Deputy Registrar's Notification Concerning the Appointment of an Independent Medical Expert, 14 February 2013.

⁹ T. 35416–35417 (13 March 2013).

¹⁰ T. 35417 (13 March 2013).

¹¹ Request, paras. 1, 6–10.

¹² T. 35748–35749 (21 March 2013).

¹³ T. 35926 (22 March 2013).

II. Discussion

8. 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 being a witness before a Chamber, contumaciously refuses or fails to answer a question.¹⁶ 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.¹⁷

9. The Witness has refused to comply on several occasions with the Subpoena and the Addendum to the Subpoena issued by the Chamber. On 13 March 2013, having reviewed the Medical Report, the Chamber found that there were no medical reasons which would amount to good cause for the Witness not to comply with the Subpoena.¹⁸ Following the Witness's continued refusal to testify on 25 March 2013, and absent any showing of good cause preventing him from complying with the Subpoena and Addendum to the Subpoena, the Chamber has reason to believe that Radislav Krstić may be in contempt of the Tribunal, and that there are sufficient grounds to proceed against him for contempt.

¹⁴ T. 35931–35932 (25 March 2013).

¹⁵ T. 35931–35933 (25 March 2013).

¹⁶ Rule 77(A)(i).

¹⁷ Rule 77(C)(iii); Rule 77(D)(ii).

¹⁸ T. 35416–35417 (13 March 2013).

III. Disposition

10. Accordingly, the 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:

Radislav Krstić, whose prosecution is being pursued for:

having refused to testify in the *Karadžić* case on several occasions, including on 7 February 2013 and 25 March 2013, therefore knowingly and wilfully interfering with the administration of justice by refusing to comply with the Chamber's Subpoena and the Addendum to the Subpoena.

AND DECIDES to prosecute the matter itself.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]