



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: 22 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: 22 January 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO SUBPOENA SLAVKO BUDIMIR

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 Accused’s “Motion for Subpoena to Slavko Budimir” filed on 27 December 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests the Chamber to issue, pursuant to Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), a subpoena directing Slavko Budimir to appear for testimony in his case on 25 March 2013.¹

2. The Accused argues that he has made all reasonable efforts to obtain the voluntary co-operation of Budimir by requesting that he submit to an interview by his investigator and testify as a defence witness in this case.² The Accused states that Budimir has declined on two occasions to be interviewed and/or to testify, the most recent occasion being 21 November 2012.³

3. The Accused argues that there are reasonable grounds to believe that Budimir has information that can materially assist his case.⁴ In the Motion, the Accused states that in the trial of Milomir Stakić, Budimir testified that during 1992 he served as the “secretary for civilian defence for Prijedor Municipality” and was a member of the Prijedor Crisis Staff.⁵ According to the Accused, Budimir further testified in that case “that in 1991 and early 1992, in the office of the secretariat for national defence, run by a Muslim, the laws on national defence were not being applied” and when individuals did not respond to mobilisation orders, the secretariat failed to enforce the law.⁶ In the Motion, the Accused states that Budimir had previously “testified that the Crisis Staff had neither the authority to prevent crimes or the actions of the Army or police or to punish them”.⁷ In the Accused’s submission, Budimir testified that Stakić and other members of the Presidency in Prijedor wanted the illegal acts occurring in the territory of

¹ Motion, paras. 1–2, 16.

² Motion, para. 4.

³ Motion, para. 4.

⁴ Motion, para. 5.

⁵ Motion, para. 6.

⁶ Motion, para. 7.

⁷ Motion, para. 8.

Prijedor to end and so they had constantly asked the public security station to restore law and order in town and the military to keep their conscripts under control.⁸

4. The Accused contends that the evidence of Budimir is necessary because Budimir was the official in Prijedor responsible for the paperwork and procedures related to the movement of people there.⁹ In the Accused's submission, the "evidence of Slavko Budimir is relevant to show that the authorities in Prijedor were not in favor of mistreatment or expulsion of Muslims and tried to stop it".¹⁰ The Accused argues that Budimir's evidence is relevant because it suggests that the mistreatment and expulsion of Bosnian Muslims were committed by "individuals acting outside of the control of the authorities" and not as part of a plan or Joint Criminal Enterprise ("JCE").¹¹

5. In his submission, the Accused requests that the Motion be served upon the Government of Bosnia and Herzegovina ("BiH") and Budimir and that they both be invited to respond to the Motion.¹²

6. On 7 January 2013, the Office of the Prosecution ("Prosecution") notified the Chamber by email that it did not intend to respond to the Motion.

7. On 15 January 2013, the Chamber ordered the Accused to submit by 16 January 2013, the underlying documents to support the contention that all reasonable efforts have been made to obtain the voluntary co-operation of Budimir. The Chamber warned the Accused that, in the future, "in the absence of the necessary supporting material, the Chamber might be constrained not to entertain such requests".¹³

8. On 16 January 2013, the Chamber received the Accused's "Supplemental Submission: Motion for Subpoena to Slavko Budimir", containing a declaration of the Accused's case manager ("Declaration"). The Declaration states that the defence team investigator had contacted Budimir on 21 November 2012 and explained to him that because of his roles during the conflict it is important for the defence to interview him and include him on the witness list.¹⁴ According to the Declaration, Budimir refused to have any contact with the Accused's defence team, however, during the call the Accused's investigator asked him to reconsider his position.¹⁵

⁸ Motion, paras. 8–9.

⁹ Motion, paras. 10–11, 14.

¹⁰ Motion, para. 13.

¹¹ Motion, para. 13.

¹² Motion, para. 16.

¹³ T. 31845 (15 January 2013).

¹⁴ Declaration, para. 4.

¹⁵ Declaration, para. 5.

The Declaration states that when Budimir was contacted two days later by the Accused's investigator he confirmed that he did not wish to be a witness in this case.¹⁶

II. Applicable Law

9. 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.¹⁷

10. 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.¹⁸

11. 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 obtainable through other means.¹⁹ 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.²⁰

12. Subpoenas should not be issued lightly as they involve the use of coercive powers and may lead to the imposition of a criminal sanction.²¹ A Trial Chamber's discretion to issue subpoenas, therefore, is necessary to ensure that the compulsive mechanism of the subpoena is

¹⁶ Declaration, para. 5.

¹⁷ *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.

¹⁸ *Halilović* Decision, para. 6; *Krstić* Decision, para. 11; *Milošević* Decision, para. 40.

¹⁹ *Halilović* Decision, para. 7; *Milošević* Decision, para. 41.

²⁰ *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.

²¹ *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.

not abused and/or used as a trial tactic.²² In essence, a subpoena should be considered a method of last resort.²³

III. Discussion

13. At the outset, the Chamber finds that it has sufficient information to decide on the Motion without hearing from Budimir or the BiH.

14. The Chamber will now turn to the merits of the Motion. Based on the submissions received by the Chamber, in this specific instance, it finds that the Accused has made reasonable efforts to secure Budimir's voluntary co-operation.

15. As noted above, in order to meet the legitimate forensic purpose requirement for the issuance of the 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 that are relevant to his trial. The Chamber notes that Budimir's prospective testimony is related to the role and responsibility of government authorities in Prijedor in regard to crimes alleged in the Third Amended Indictment ("Indictment") including forcible transfer, destruction of property, and killings. The Chamber thus considers that such prospective testimony relates to live issues in this trial, namely the occurrence of crimes in Prijedor and the Accused's responsibility for such crimes in regard to the alleged JCE to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of BiH claimed as Bosnian Serb territory.²⁴ Furthermore, having considered the Accused's submissions, the Chamber is satisfied that there is a good chance that the evidence of Budimir will materially assist the Accused in the presentation of his defence case. In this instance, the Accused has satisfied the requirement of the legitimate forensic purpose.

16. Nevertheless, 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 obtainable through other means. The Chamber notes that the prospective evidence of Slavko Budimir is similar in nature to witnesses on the Defence Second Revised Rule 65 *ter* Witness List dated 14 December 2012 ("Witness List").²⁵ The prospective evidence

²² *Halilović* Decision, paras. 6, 10.

²³ See *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on the Prosecution's Additional Filing Concerning 3 June 2005 Prosecution Motion for Subpoena, confidential and *ex parte*, 16 September 2005, para. 12. "Such measures [subpoenas], in other words, shall be applied with caution and only where there are no less intrusive measures available which are likely to ensure the effect which the measure seeks to produce."

²⁴ Indictment, paras. 9–14.

²⁵ Defence Second Revised Rule 65 *ter* Witness List, Confidential Annex E, 14 December 2012.

of these witnesses is related to (a) the Prijedor Crisis Staff,²⁶ (b) the absence of any plan to expel Bosnian Muslims from Prijedor,²⁷ (c) crimes committed in Prijedor,²⁸ and (d) efforts undertaken by the authorities in Prijedor to prevent crime.²⁹ As such, the Chamber considers that the information is obtainable through other means. The Accused is again reminded that subpoenas are a method of last resort for obtaining information that is both legally and factually relevant and necessary to his case.³⁰

17. Accordingly, the Chamber finds that the requirements for the issuance of a subpoena have not been met in this case.

IV. Disposition

18. For the reasons outlined above, 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 twenty-second day of January 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁶ *See, e.g.*, Witness List, KW291 and KW334.

²⁷ *See, e.g.*, Witness List, KW093, KW219, KW291 and KW334.

²⁸ *See, e.g.*, Witness List, KW291, KW334 and KW397.

²⁹ *See, e.g.*, Witness List, KW291, KW334 and KW397.

³⁰ Decision on Accused's Motion to Subpoena Prime Minister Milan Panić, 13 December 2012, para. 14; Decision on Accused's Motion to Subpoena President Karolos Papoulias, 23 October 2012 para. 21; Decision on the Accused's Second Motion for Subpoena to Interview President Bill Clinton, 21 August 2012, para. 16.