



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: 18 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

Decision of: 18 February 2011

IN THE CONTEMPT CASE OF BERKO ZEČEVIĆ

PUBLIC

DECISION ON MOTION FOR WITHDRAWAL OF ORDER IN LIEU OF INDICTMENT

Counsel for Berko Žečević

Mr. Guenaël Mettraux

**Kingdom of The Government of the
Netherlands**

Attn: The Ministry of Foreign Affairs

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 “Motion for Withdrawal of ‘Order in Lieu of Indictment’ against Berko Zečević” filed confidentially by the Defence of Berko Zečević (“Defence”) on 18 February 2011 (“Motion”), and hereby issues this order thereon.

1. On 20 January 2011, the Chamber issued a subpoena ordering Berko Zečević to appear and testify before the Chamber in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T (“*Karadžić* case”), 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 Dr. Zečević, 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 Dr. Zečević and some medical documentation. These were all translated into English and filed on 1 February 2011. The Chamber discussed the content of the memorandum of service with the parties to the *Karadžić* case during the trial proceedings on 1 February 2011, and again on 3 February 2011, at which time the Prosecution requested that a warrant of arrest for Dr. Zečević be issued.³

3. On 4 February 2011, the Chamber issued an Order in Lieu of Indictment and a Warrant of Arrest and Order for Surrender, charging Dr. Zečević with contempt of the Tribunal punishable under Rule 77(A) and (G) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), and directing the authorities of Bosnia and Herzegovina to search for, arrest, detain, and surrender him promptly to the Tribunal. Dr. Zečević was subsequently arrested and transferred to The Hague on 17 February 2011. Also on 17 February 2011, the presiding Judge of the Chamber issued an Order for Detention on Remand, instructing the Commanding Officer of the United Nations Detention Unit in The Hague to detain Dr. Zečević until further order.

4. In the Motion, the Defence submits that at a meeting held on 17 February, Dr. Zečević informed counsel that he was willing and ready to testify in the *Karadžić* case as a Prosecution

¹ Subpoena *ad Testificandum*, confidential, 20 January 2011, made public on 15 February 2011.

² Order to the Government of Bosnia and Herzegovina Concerning Subpoena, confidential, 20 January 2011, made public on 15 February 2011.

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

witness. The Defence reports that at the same meeting, Dr. Zečević also stated that he was suffering from a serious medical condition.⁴ The Defence therefore requests that the Order in Lieu of Indictment be withdrawn in that it would not be in the interests of justice to proceed with the charge now that Dr. Zečević has expressed his willingness to testify.⁵ The Defence further maintains that Dr. Zečević had no intention to contumaciously interfere with the proceedings and “that any wrong that might have resulted from his conduct was well and truly sanctioned by the period of time in detention”.⁶ Finally, the Defence remarks that it received an indication that neither party would object to the Motion.⁷

5. On 18 February 2011, an initial appearance was held, during which Dr. Zečević stated his willingness to testify in the *Karadžić* case for as long as the Chamber considered it necessary. The Office of the Prosecutor in the *Karadžić* case stated that it did not oppose the withdrawal of the Order in Lieu of Indictment after completion of Dr. Zečević’s testimony. The Defence noted that it would file a public version of the Motion. The Presiding Judge stated that the Chamber considered it prudent to immediately suspend the Order in Lieu of Indictment and the Order for Detention on Remand and added that the Chamber would issue a written order to that effect as soon as practicable.

6. Having considered the submissions of Dr. Zečević and his defence counsel, the Chamber considers that it would not be in the interests of justice to continue with the contempt proceedings against Dr. Zečević as his testimony in the *Karadžić* case will commence on Tuesday, 22 February 2011.

⁴ Motion, para. 5.

⁵ Motion, para. 7.

⁶ Motion, para. 8.

⁷ Motion, para. 10.

7. For the foregoing reasons, pursuant to Rules 54 and 77 of the Rules, the Chamber **HEREBY GRANTS** the Motion and **SUSPENDS** the Order in Lieu of Indictment dated 4 February 2011 until further order. The Chamber also **SUSPENDS** the Order for Detention on Remand dated 17 February 2011, subject to completion of the necessary modalities by the Registry, until further order.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]