



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: 4 October 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: 4 October 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S REQUEST TO RESCHEDULE TESTIMONY OF
JOHN ZAMETICA**

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 “Request to Reschedule Testimony of John Zametica”, filed on 27 September 2013 (“Request”), and hereby issues its decision thereon.

I. Submissions

1. On 27 August 2013, John Zametica was subpoenaed by the Chamber to testify in this case and the date of his testimony was set for 29 October 2013.¹ In the Request, the Accused requests that the Chamber postpone the date of Zametica’s testimony to 14 January 2014.² The Accused attaches correspondence from Zametica in which Zametica informs the Accused that due to being “under time pressure to complete a manuscript” he requests that his testimony be postponed until January 2014.³ In addition to finishing his book manuscript, Zametica submits that testifying on 29 October 2013 would be “most inconvenient” for him because preparing for his testimony would require “another month of preparation, sifting through documents, arriving in The Hague about a week or so before giving testimony, etc” and if the Accused is “unwilling or unable” to meet his request, then he will appear on 29 October 2013 as scheduled but he will not “be able to devote a single day or hour to preparing” his testimony.⁴

2. On 30 September 2013, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Karadžić’s Request to Reschedule Testimony of John Zametica” (“Response”), opposing the request.⁵ The Prosecution submits that the “alleged inconvenience of an uncooperative witness” does not constitute good cause not to comply with a subpoena and that even if Zametica is working on a book manuscript this does not justify a three-month delay of his testimony.⁶ In addition, the Prosecution argues that Zametica, by his own admission, has already spent time preparing his testimony by giving a statement and reviewing documents relevant to his prospective testimony, therefore he should be able to “appear in court and answer questions honestly to the best of his recollection”.⁷

¹ Decision on Accused’s Motion to Subpoena John Zametica, 27 August 2013 (“Subpoena Decision”); Subpoena *Ad Testificandum*, 27 August 2013 (“Subpoena”).

² Request, para. 3.

³ Request, para. 2, Annex A.

⁴ Request, Annex A, pp. 1–2.

⁵ Response, paras. 1, 4. On 30 September 2013, the Chamber, pursuant to Rule 126 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), ordered the Prosecution to file an expedited response by 4 October 2013. The Chamber communicated this *via* email.

⁶ Response, para. 1.

⁷ Response, para. 3.

II. Discussion

3. The Chamber recalls its Subpoena Decision, in which it noted that subpoenas are not issued lightly as they involve the use of coercive powers and may lead to the imposition of a criminal sanction, and that, as such, subpoenas are considered a method of last resort to obtain the testimony of a witness.⁸ With respect to the testimony of Zametica, the Chamber found that all the requirements for the issuance of a subpoena pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence ("Rules") had been met and accordingly issued a subpoena ordering Zametica to appear to testify in this case on 29 October 2013 or to show good cause why the subpoena cannot be complied with.⁹

4. The Accused and Zametica now request that the date of his testimony be postponed for three months due to the fact that Zametica needs to work on his book manuscript. The Chamber finds that this excuse falls far short from a showing of good cause as to why Zametica cannot comply with the Subpoena and the date of testimony identified therein. The Chamber further recalls that it ordered that Zametica testify in these proceedings *viva voce*,¹⁰ which should reduce the time necessary to prepare for his testimony. In addition, Zametica's veiled threat that he will not be a "quality witness" and he "will not be able to devote a single day or hour" to preparing his testimony demonstrates a troubling disregard for the seriousness of these proceedings and the subpoena issued against him by the Chamber. The Chamber reminds Zametica that the failure to comply with a subpoena can lead to serious consequences, including prosecution for contempt of the Tribunal.

⁸ Subpoena Decision, para. 9.

⁹ Subpoena Decision, paras. 10–15; Subpoena, p. 2.

¹⁰ Subpoena Decision, paras. 14–15.

III. Disposition

5. Accordingly, pursuant to Rule 54 of the Rules, the Trial Chamber hereby **DENIES** the Request.

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



Judge O-Gon Kwon
Presiding

Dated this fourth day of October 2013
At The Hague
The Netherlands

[Seal of the Tribunal]