



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: 14 February 2014

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: 14 February 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF “DECISION ON REQUEST BY RADIVOJE
MILETIĆ TO POSTPONE
DATE OF TESTIMONY” ISSUED ON 13 FEBRUARY 2014**

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 “Request of Radivoje Miletić to Postpone his Court Appearance”, filed confidentially on 4 February 2014 (“Request”),¹ and hereby issues its decision thereon.

I. Background and Submissions

1. On 9 May 2013, the Chamber issued the “Decision on Accused’s Motion to Subpoena Radivoje Miletić” (“Decision on Subpoena”), granting the Accused’s request that a subpoena be issued to Radivoje Miletić (“Witness”) directing him to appear before the Chamber to give oral testimony on 9 July 2013.² The Subpoena *Ad Testificandum* was also issued on the same day (“Subpoena”).

2. On 2 July 2013, the Chamber issued an oral order granting the Accused’s oral request of the same day, which sought to postpone the testimony of the Witness until such time as the Appeals Chamber issued its decision on Zdravko Tolimir’s appeal of this Chamber’s decision compelling Tolimir to testify in the present case.³ The main issue in Tolimir’s appeal was whether an accused whose case is still pending before this Tribunal, as is the case with both Tolimir and the Witness, could be compelled to give evidence in another accused’s case before the Tribunal and thus risk giving self-incriminatory evidence.

3. On 13 November 2013, the Appeals Chamber issued its “Decision on Appeal Against the Decision on the Accused’s Motion to Subpoena Zdravko Tolimir” (“*Tolimir* Appeal Decision”), in which it denied Tolimir’s appeal and held that protection against self-incrimination, as provided for the Tribunal’s accused in Article 21(4) of the Tribunal’s Statute, does not preclude the possibility of those accused being compelled to testify in proceedings which do not involve the determination of the charges against them.⁴ It also noted that the immunity from prosecution guaranteed under Rule 90(E) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), which allows the Chamber to compel a witness to make self-incriminating statements, prohibits subsequent use of those statements, “directly or indirectly”, in a case against that witness and thus provides adequate

¹ The English version of the original in French entitled “*Requête de Radivoje Miletić aux fins d’ajournement de sa comparution*” was filed on 7 February 2014.

² Decision on Subpoena, para. 17; Subpoena *ad Testificandum*, 9 May 2013 (“Subpoena”).

³ See T. 40639–40640 (2 July 2013) for parties’ submissions; see T. 40717 (2 July 2013) for the Chamber’s oral ruling.

⁴ *Tolimir* Appeal Decision, para. 36.

protection to the Tribunal's accused if they are compelled to make self-incriminating statements when giving evidence in another case.⁵

4. On 7 January 2014, the Witness was informed that the Accused had scheduled his testimony for 19 February 2014.⁶

5. In the Request, the Witness argues [REDACTED] that it would not be possible for him to testify [REDACTED].⁷ He argues that coming to the Tribunal and testifying could only have a negative effect [REDACTED].⁸ The Witness therefore requests that his appearance before the Chamber be postponed until a later date [REDACTED].⁹ In support, the Witness attaches in confidential annex A ("Annex A") a report [REDACTED] and a specialist report [REDACTED].¹⁰

6. On 6 February 2014, the Accused filed the "Response to General Miletić's Request for Postponement of Subpoena" ("Response"), requesting that the Chamber order that the Registry provide [REDACTED] report by no later than 19 February 2014, indicating whether the Witness is able to testify in these proceedings [REDACTED].¹¹ The Accused adds that, to accommodate the Witness [REDACTED], he is willing to limit his direct examination to a few questions which can be addressed in 15 minutes and expects the cross-examination by the Office of the Prosecutor ("Prosecution") not to last longer than one hour.¹²

7. On 5 February 2014, the Prosecution notified the Chamber by email that it did not intend to respond to the Request.

II. Discussion

8. The Chamber recalls that it takes the issuance of subpoenas very seriously as they involve the use of coercive powers and may lead to the imposition of a criminal sanction.¹³ Throughout these proceedings, and in compliance with Tribunal jurisprudence on the issue, the Chamber has considered subpoenas to be a method of last resort.¹⁴

⁵ *Tolimir* Appeal Decision, paras. 43–45.

⁶ Request, para. 2.

⁷ Request, para. 3.

⁸ Request, para. 7.

⁹ Request, para. 10.

¹⁰ Annex A.

¹¹ Response, paras. 5–6; *see also* T. 46617–46618 (5 February 2014) (private session).

¹² Response, para. 4.

¹³ Decision on Subpoena, para. 11, fn. 19, and references cited therein.

¹⁴ Decision on Subpoena, para. 11.

9. The Chamber notes that the Witness [REACTED] was not an issue when it issued the Decision on Subpoena and Subpoena [REDACTED]. At the time the Chamber decided to subpoena the Witness to testify, the Witness has stated that he would not testify unless subpoenaed but that should the Chamber issue a subpoena, he would comply with it out of respect for the Tribunal and for justice.¹⁵

10. The Chamber has carefully reviewed the [REDACTED] information in the Request and the documents provided in support in Annex A. [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].

11. The Chamber considers that the information before it creates a serious concern as to the impact on the Witness [REDACTED] should he be compelled to come to the Tribunal and to testify in these proceedings. Furthermore, as mentioned above, the Witness had expressed willingness to appear to testify, should a subpoena be issued by the Chamber, which indicates that the Witness is not merely attempting to avoid the obligations upon him which result from the Decision on Subpoena and Subpoena. The Chamber is therefore not of the view that compelling the Witness to testify in these circumstances would serve the interests of justice.

12. For these reasons, the Chamber decides *proprio motu* to vacate its Decision on Subpoena and Subpoena, and thus considers that the Request is moot.

¹⁵ Radivoje Miletić Response to Subpoena, 16 April 2013, with original in French entitled “*Réponse de Radivoje Miletić à la demande de ‘Subpoena’*”, para. 5.

¹⁶ Response, para. 4; Annex A.

¹⁷ Response, para. 5; Annex A.

III. Disposition

13. Accordingly, the Chamber, pursuant to Rule 54 of the Rules, hereby
- i) **VACATES** its Decision on Subpoena and Subpoena issued on 9 May 2013 in relation to the Witness; and
 - ii) **DISMISSES** the Request as moot.

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



Judge O-Gon Kwon
Presiding

Dated this fourteenth day of February 2014
At The Hague
The Netherlands

[Seal of the Tribunal]