

**UNITED
NATIONS**



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: 18 July 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Melville Baird, Presiding Judge
Judge O-Gon Kwon
Judge Howard Morrison
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Judgement of: 18 July 2013

IN THE CONTEMPT CASE OF RADISLAV KRSTIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF JUDGEMENT ISSUED ON
18 JULY 2013**

Counsel for the Accused:
Mr. Tomislav Višnjić

CONTENTS

I. PROCEDURAL BACKGROUND 1

II. APPLICABLE LAW 4

III. DISCUSSION 5

IV. DISPOSITION..... 8

DISSENTING OPINION OF JUDGE KWON 9

I. PROCEDURAL BACKGROUND

1. On 23 October 2012, the Trial Chamber in *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T (“*Karadžić 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 decided to confidentially issue a subpoena (“Subpoena”) ordering Radislav Krstić (“Accused”) 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 *Karadžić Chamber* issued confidentially an “Addendum to Subpoena ad Testificandum Issued on 23 October 2012” (“Addendum to Subpoena”) ordering that the appearance and testimony of the Accused 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 Accused, through his counsel, filed confidentially an “Urgent Motion Seeking Stay of Enforcement of Subpoena ad Testificandum and Further Medical Review” (“Motion for Stay”), arguing that he did not have the capacity to testify because he was suffering from post traumatic stress disorder (“PTSD”),³ and requesting that the *Karadžić 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 Accused] as well as his ability, capacity, and competence to testify”.⁴

3. On 7 February 2013, the *Karadžić Chamber* denied the Motion and held that the Accused’s mental and physical health was such that he was able to testify.⁵ On 7 February 2013, the Accused refused to testify and the *Karadžić Chamber* heard further submissions as to why he believed he could not testify.⁶ Having heard these submissions, the *Karadžić Chamber* ordered that by 8 March 2013, the Registry provide a more detailed report outlining the Accused’s physical and mental health focusing on whether (1) testifying would indeed be detrimental to his health; and (2) the Accused has the basic capacity to understand the questions put to him and give rational and truthful answers.⁷ On 14 February 2013, pursuant to Rule 33(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the Tribunal’s Deputy Registrar appointed an independent

¹ *Karadžić case*, Public Redacted Version of “Decision on Accused’s Motion to Subpoena Radislav Krstić” Issued on 23 October 2012, 23 October 2012, paras. 12–13; *Karadžić case*, Subpoena ad Testificandum, confidential, 23 October 2012 (“Subpoena”), p. 2.

² *Karadžić case*, Addendum to Subpoena, p. 2.

³ *Karadžić case*, Motion for Stay, para. 9.

⁴ *Karadžić case*, Motion for Stay, para. 4.

⁵ *Karadžić case*, T. 33376–33378 (7 February 2013) (private session).

⁶ *Karadžić case*, T. 33414–33417 (7 February 2013).

medical expert, Dr. Joseph de Man, neuropsychiatrist, to conduct the examination of the Accused as ordered by the *Karadžić* 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 *Karadžić* Chamber found that there were no medical reasons which would amount to good cause for the Accused not to comply with the Subpoena (“13 March 2013 Order”).⁹ Accordingly, the *Karadžić* Chamber ordered that the Accused 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 Accused, through his counsel, filed confidentially “Krstić’s Request for Reconsideration of the Order Dated 13 March 2013” (“Request for Reconsideration”), requesting that the 13 March 2013 Order be reconsidered because the Accused 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 *Karadžić* Chamber found that the Accused did not meet the test for reconsideration because the Request for Reconsideration 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 *Karadžić* Chamber received a confidential “Letter from Radislav Krstić to Trial Chamber” reiterating the Accused’s refusal to testify before the *Karadžić* Chamber. On 22 March 2013, the *Karadžić* Chamber ordered that the Accused appear before it on 25 March 2013.¹³

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

8. On 27 March 2013, the *Karadžić* Chamber issued its “Order in Lieu of Indictment” charging the Accused with contempt of the Tribunal pursuant to Rule 77(A) of the Rules for having refused to

⁷ *Karadžić* case, T. 33422–32423 (7 February 2013).

⁸ *Karadžić* case, The Deputy Registrar’s Notification Concerning the Appointment of an Independent Medical Expert, confidential, 14 February 2013, p. 2.

⁹ *Karadžić* case, T. 35416–35417 (13 March 2013).

¹⁰ *Karadžić* case, T. 35417 (13 March 2013).

¹¹ *Karadžić* case, Request for Reconsideration, paras. 1, 6–10.

¹² *Karadžić* case, T. 35748–35749 (21 March 2013).

¹³ *Karadžić* case, T. 35926 (22 March 2013).

¹⁴ *Karadžić* case, T. 35931–35932 (25 March 2013).

¹⁵ *Karadžić* case, T. 35932 (25 March 2013).

testify in the *Karadžić* case on several occasions, including on 7 February 2013 and 25 March 2013, and therefore knowingly and wilfully interfering with the administration of justice by refusing to comply with the Subpoena.¹⁶

9. The initial appearance of the Accused took place on 4 April 2013, during which he maintained that he would not testify in the *Karadžić* case and pleaded not guilty to the contempt charge.¹⁷ Judge Melville Baird conducted the initial appearance.¹⁸ On 22 April 2013, the Registrar appointed Tomislav Višnjić (“Counsel”) as counsel for the Accused.¹⁹ On the same day, Counsel communicated via email to the *Karadžić* Chamber that the Defence would be prepared for the trial to commence by 21 May 2013.

10. On 7 May 2013, Judge Baird was designated by this Chamber as the Presiding Judge in these contempt proceedings.²⁰ On the same day, the Chamber ordered that a pre-trial conference be held on 28 May 2013, immediately following which the trial would commence.²¹

11. On 21 May 2013, the Chamber received “Krstić’s Brief for Hearing on 28 May 2013” (“Krstić’s Brief”) and “Radislav Krstić’s Notice of Filing of Expert Report and CV” (“Krstić’s Notice”) both filed confidentially.

12. The pre-trial conference was held on 28 May 2013.²² When given a final opportunity, the Accused maintained his refusal to testify in the *Karadžić* case citing health reasons.²³ During the pre-trial conference, the Defence notified the Chamber that it did not intend to make an opening statement pursuant to Rule 84 and that the Accused would not make an opening statement pursuant to Rule 84 *bis* of the Rules.²⁴ The Chamber addressed Krstić’s Brief and stated that it took no issue with the Defence request for an increased word length for it; however, the Defence request for the Chamber to recuse itself from the proceedings was denied.²⁵

13. The trial proceedings commenced immediately following the conclusion of the pre-trial conference on 28 May 2013.²⁶ The Chamber started by giving a summary of the case against the

¹⁶ Order in Lieu of Indictment, 27 March 2013, para. 10, referring to Subpoena and Addendum to Subpoena.

¹⁷ Initial Appearance, T. 3, 5 (4 April 2013).

¹⁸ Order Designating a Judge for Initial Appearance, 27 March 2013.

¹⁹ Deputy Registrar’s Decision, 22 April 2013. Initially, on 3 April 2013, Tomislav Višnjić was appointed as duty counsel to represent the Accused during the initial appearance, *see* Deputy Registrar Decision, 3 April 2013.

²⁰ Order Designating a Presiding Judge, 7 May 2013.

²¹ Scheduling Order for Commencement of Trial, 7 May 2013.

²² Pre-Trial Conference, T. 8–13 (28 May 2013).

²³ Pre-Trial Conference, T. 9 (28 May 2013).

²⁴ Pre-Trial Conference, T. 10 (28 May 2013).

²⁵ Pre-Trial Conference, T. 12–13 (28 May 2013).

²⁶ T. 13 (28 May 2013).

Accused.²⁷ The Chamber heard the evidence of one witness, the Defence psychological expert, Ms. Ana Najman (“Expert Witness”), called pursuant to Rule 94 *bis* of the Rules, and whose expert report was admitted under seal as exhibit D5 (“Expert Report”).²⁸ The Chamber also admitted into evidence under seal various medical reports related to the health condition of the Accused.²⁹

14. Following the conclusion of the Expert Witness testimony, the Defence presented its closing arguments pursuant to Rule 86 of the Rules and the trial was concluded.³⁰ The Accused made no additional remarks.³¹ The Chamber notified the Defence that the Judgement would be issued at a date to be announced.³²

15. On 27 June 2013, the Chamber issued a scheduling order, ordering that the Judgement would be issued on 18 July 2013.³³

II. APPLICABLE LAW

16. Although contempt of court is not expressly articulated in the Statute of the Tribunal (“Statute”), it is well established that the Tribunal possesses an inherent power, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly bestowed to it by the Statute is not frustrated and that its basic functions are safeguarded.³⁴ The Tribunal therefore possesses an inherent power to deal with conduct interfering with its administration of justice.³⁵

17. Contempt of the Tribunal is described in Rule 77 of the Rules, which provides that:

(A) 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

²⁷ T. 13–15 (28 May 2013).

²⁸ T. 17–21 (28 May 2013), 21–31 (28 May 2013) (private session); D5 (Expert Report) (under seal); D6 (Curriculum Vitae, Ana Najman).

²⁹ The underlying medical information provided to the Expert Witness was also admitted into evidence as D1 (Krstić’s Medical File) (under seal), D3 (Report of Dr. Gellicum, 30 January 2013) (under seal), and D4 (Report of Dr. de Man, 8 March 2013) (under seal). D1 (Krstić’s Medical File) (under seal) includes the medical report of D.H.M. Lefrandt dated 2 April 2013 and the medical reports of Dr. Petrović dated 25 August to 1 September 2012, 13 to 20 October 2012, and 1 to 8 December 2012; *see also* D5 (Expert Report) (under seal), pp. 2–6.

³⁰ T. 32–33 (28 May 2013), 33–35 (private session).

³¹ T. 37 (28 May 2013).

³² T. 37 (28 May 2013).

³³ Scheduling Order, 27 June 2013.

³⁴ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000 (“*Milan Vujin* Contempt Judgement”), paras. 13–26; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001 (“*Nobile* Appeal Judgement”), para. 36; *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006, para. 13.

³⁵ *Milan Vujin* Contempt Judgement, para. 13; *see also Nobile* Appeal Judgement, para. 30.

(i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;

[...]

18. The Appeals Chamber held that Rule 77(A)(i) imposes a criminal liability where a witness knowingly and wilfully interferes with the Chamber's administration of justice by persistently refusing or failing to answer a question without reasonable excuse while being a witness before the Chamber.³⁶ This includes individuals who have been subpoenaed by a chamber of the Tribunal, who appear before it and then refuse to testify.³⁷

III. DISCUSSION

19. Alive to the fact that it was prosecuting the matter itself, the Chamber addressed the status of the witness called by the Defence, and having considered her CV, the Chamber was satisfied that she could have testified as an expert in psychology pursuant to Rule 94 *bis* of the Rules.³⁸

20. Turning now to the substance of these contempt proceedings, the Chamber notes the Defence submissions that if the Accused were to testify in the *Karadžić* case, there would be a high likelihood that his health would be jeopardised and could deteriorate, resulting in a condition that would be difficult to treat.³⁹ The Defence submits that as a result, the Accused was faced with a dilemma, namely either serving "a short prison sentence due to contempt of court or anxiety, depression, nightmares, flashbacks, and fear that would extend for a period of years".⁴⁰ The Defence submits that this dilemma was a reasonable justification for not testifying.⁴¹ Accordingly, the Defence urged the Chamber to acquit the Accused.⁴²

21. Before determining whether the offence of contempt has been established, the Chamber will provide a brief review of the evidence admitted in these proceedings.

22. [REDACTED].⁴³ REDACTED.⁴⁴ [REDACTED].⁴⁵ [REDACTED].⁴⁶ [REDACTED].⁴⁷

³⁶ *Contempt Proceedings Against Dragan Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, confidential, 25 June 2009 ("Jokić Appeals Judgement"), paras. 27–32; *see Contempt Proceedings Against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 March 2009, para. 12.

³⁷ *See Jokić Appeals Judgement*.

³⁸ D6 (Curriculum Vitae, Ana Najman); *see also* T. 18–19 (28 May 2013).

³⁹ T. 32–33 (28 May 2013).

⁴⁰ T. 33 (28 May 2013).

⁴¹ T. 33 (28 May 2013).

⁴² Krstić Brief, para. 2; *see also* T. 36 (28 May 2013) (private session).

⁴³ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 3; *see also* D1 (Krstić's Medical File), (e-court) pp. 8, 10, 13.

23. [REDACTED].⁴⁸ [REDACTED].⁴⁹ [REDACTED].⁵⁰ [REDACTED].⁵¹ [REDACTED].⁵²

24. On 3 January 2013, Counsel requested a medical report on the general health of the Accused in order to establish whether there were compelling mental health circumstances which would have warranted him not testifying in the *Karadžić* case.⁵³ [REDACTED].⁵⁴

25. Dr. de Man, who as earlier stated was appointed by the Registrar as an independent psychiatrist, examined the Accused on 15 and 28 February, and on 4 March 2013.⁵⁵ Dr. de Man confirmed that the Accused was suffering from PTSD [REDACTED].⁵⁶

[REDACTED].⁵⁷

26. The Expert Witness undertook a psychological assessment of the Accused from 6 to 8 May 2013.⁵⁸ [REDACTED].⁵⁹

27. [REDACTED].⁶⁰ [REDACTED].⁶¹ [REDACTED].⁶²

28. [REDACTED].⁶³ [REDACTED].⁶⁴ [REDACTED].⁶⁵ [REDACTED].

29. Turning now to the elements of contempt, the Chamber notes that the Accused was subpoenaed in the *Karadžić* case and it is not disputed that he has persistently refused to testify before the *Karadžić* Chamber.⁶⁶ The Accused has consistently contended however that he was refusing to testify because he was suffering from PTSD and if he were to testify there would be a high

⁴⁴ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 3.

⁴⁵ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 5.

⁴⁶ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 3.

⁴⁷ D1 (Krstić's Medical File) (under seal), p. 14.

⁴⁸ D1 (Krstić's Medical File) (under seal), (e-court) p. 9; D5 (Expert Report) (under seal), p. 3.

⁴⁹ D1 (Krstić's Medical File) (under seal), (e-court) p. 9; D5 (Expert Report) (under seal), pp. 3–4, 10, 13.

⁵⁰ D1 (Krstić's Medical File) (under seal), pp. 13–14; *see also* D5 (Expert Report) (under seal), p. 4.

⁵¹ D1 (Krstić's Medical File) (under seal), p. 14; *see also* D5 (Expert Report) (under seal), pp. 4–5.

⁵² D1 (Krstić's Medical File) (under seal), p. 14; *see also* D5 (Expert Report) (under seal), p. 5.

⁵³ D2 (Request for Medical Report) (under seal).

⁵⁴ D3 (Report of Dr. Gellicum, 30 January 2013) (under seal).

⁵⁵ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 2; T. 16–17 (28 May 2013); *see supra* paras. 3–4.

⁵⁶ D4 (Report of Dr. de Man, 8 March 2013) (under seal), p. 6; D5 (Expert Report) (under seal), p. 5.

⁵⁷ D4 (Report of Dr. de Man, 8 March 2013) (under seal) p. 7; *see also* D5 (Expert Report) (under seal), p. 5.

⁵⁸ T. 19–21 (28 May 2013); D5 (Expert Report) (under seal), pp. 5–7, 11, 14–17, Attachments 1–3.

⁵⁹ T. 22–23 (28 May 2013) (private session); D5 (Expert Report) (under seal), pp. 13.

⁶⁰ T. 24–25 (28 May 2013) (private session); *see* D1 (Krstić's Medical File) (under seal), (e-court) p. 9; *see also* D5 (Expert Report) (under seal), p. 3.

⁶¹ D5 (Expert Report) (under seal), p. 13; T. 25 (28 May 2013) (private session).

⁶² T. 31 (28 May 2013) (private session).

⁶³ D5 (Expert Report) (under seal), pp. 13–14, 18; T. 25, 31 (28 May 2013) (private session).

⁶⁴ D5 (Expert Report) (under seal), pp. 14, 17, 18; T. 27–30 (28 May 2013) (private session).

⁶⁵ T. 28 (28 May 2013) (private session); D5 (Expert Report) (under seal), pp. 2, 18–19.

⁶⁶ *See supra* paras. 2–3, 5–7, 9; Krstić Brief, paras. 2, 35–36.

likelihood that his health would be jeopardised and it could deteriorate to such an extent that it would be difficult to treat.⁶⁷ The Chamber will now consider whether the Accused's refusal to testify was "without reasonable excuse".

30. The Chamber ordered that the Accused be examined and that the Chamber be furnished with a report of that examination. This was done. During the trial, the Defence also examined the Expert Witness and supplied the Chamber with her report. Accordingly, from the medical testimony and reports before it, the Chamber is satisfied that the Accused is suffering from PTSD. The Chamber also considers that the evidence of the Expert Witness supports the Medical Report of Dr. de Man in material particulars.⁶⁸ But above and beyond supporting his report, the testimony of the Expert Witness transcends it in demonstrating that since the Accused has received the Subpoena requiring him to testify in the *Karadžić* case, his mental state has deteriorated [REDACTED].⁶⁹ The Chamber is of the opinion therefore, by majority, Judge Kwon dissenting, that the additional evidence, set against the backdrop of the other evidence, reveals the existence of a reasonable excuse. Thus, on a consideration of the entirety of the evidence before it the Chamber is of the opinion, by majority, Judge Kwon dissenting, that the severity of the medical condition of the Accused and the possible aggravation of that medical condition testifying before the *Karadžić* Chamber might occasion, would amount to a reasonable excuse for the refusal of the Accused to so testify.⁷⁰ Put in the converse, having regard to the evidence in its plenitude, the Chamber by majority, Judge Kwon dissenting, cannot be satisfied beyond reasonable doubt that the above mentioned factors do not amount to a reasonable excuse for the refusal by the Accused to testify before the *Karadžić* Chamber.

31. In light of the above finding, the Chamber will not address the remaining legal requirement under Rule 77(A)(i) of the Rules.

⁶⁷ T. 32–33 (28 May 2013); *see supra* paras. 2–3, 5–7, 9; Krstić Brief, paras. 2, 35–36.

⁶⁸ T. 23–24, 29 (28 May 2013) (private session). [REDACTED], *see* D4 (Report of Dr. de Man, 8 March 2013) (under seal), pp. 6, 7; D5 (Expert Report) (under seal), pp. 19–20.

⁶⁹ D5 (Expert Report) (under seal), pp. 14, 17–18; T. 27–30 (28 May 2013) (private session).

⁷⁰ Jurisprudence of the Tribunal has held that where a witness suffering from PTSD has provided medical documentation indicating that exposure to a stressful event may have "grave consequences", the witness can be considered "objectively unavailable" for the purposes of Rule 92 *quater* of the Rules and therefore, not able to give evidence in court, *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 pursuant to Rule 92 *quater*, 9 May 2013 ("*Hadžić* Decision"), para. 101; *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting in Part Prosecution's Motion for Admission of Evidence of ST020 Pursuant to Rule 92 *quater*, 19 January 2011, para. 17. Anything short of PTSD, such as a sleeping disorder, nightmares, anxiety, depression, mental suffering or the increased possibility of hospitalisation was not considered sufficient, *Hadžić* Decision, paras. 98–101.


IV. DISPOSITION

32. For the foregoing reasons, the Chamber finds by majority, Judge Kwon dissenting, Radislav Krstić **NOT GUILTY** of contempt of the Tribunal pursuant to Rule 77(A)(i) of the Rules.

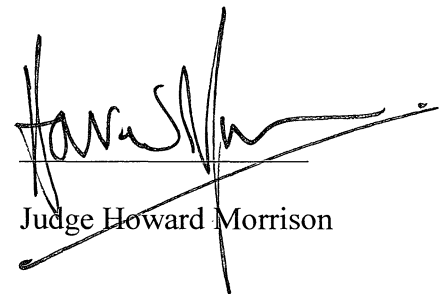
Done in English and French, the English text being authoritative.



Judge Melville Baird
Presiding



Judge O-Gon Kwon



Judge Howard Morrison

Dated this eighteenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

DISSENTING OPINION OF JUDGE KWON

1. With all due respect, I do not agree with the majority decision to find the Accused not guilty of contempt of the Tribunal pursuant to Rule 77(A)(i) of the Rules.
2. Contrary to the majority, I am not satisfied that the Expert Witness's Expert Report adds substantially new information to the Medical Report prepared by Dr. de Man. When the Chamber decided on 13 March 2013 that there were no medical reasons which would amount to good cause for the Accused not to comply with the Subpoena⁷¹, it already considered the Medical Report by Dr. de Man which reported on the possibility that testifying may result in considerable distress to the Accused and cause a heightening of PTSD symptoms. This information was also available to the Chamber when it denied the Accused's Request for Reconsideration and when it issued the Order in Lieu of Indictment. In my view, the Expert Report simply corroborates the Medical Report. The Expert Report does not add much more to the medical information already available in the Medical Report which the Chamber itself found did not rise to the level that would amount to good cause for not complying with the terms of the Subpoena.
3. The Majority finds that the evidence of the Expert Witness provides "additional evidence" with respect to the Accused's PTSD symptoms, which reveals the existence of a reasonable excuse that would preclude the Accused from testifying as a witness in the *Karadžić* case.⁷² However, if the "additional evidence" of the Expert Witness, as interpreted by the Majority, is such that it leads to the conclusion that the medical condition of the Accused is so severe that there is now a reasonable excuse which would preclude him from testifying as a witness in the *Karadžić* case, further independent expert evidence would have been necessary, before the Chamber could rely upon the Expert Report to reach that conclusion. Given that the Chamber had decided to prosecute this contempt trial itself, in the absence of the Prosecution to test the evidence presented by the Accused, it was incumbent on the Chamber to test that evidence thoroughly.

⁷¹ *Karadžić* case, T. 35416–35417 (13 March 2013).

⁷² See para. 30 *supra*.

4. Finally, I observe that many victims who suffer from PTSD are called to testify as witnesses before the Tribunal and are expected to re-live their traumatic experiences in order for their stories to be tested and the truth to be determined. With that in mind the Chamber should be cautious and carefully assess whether the potential impact of testifying on a witness's health is so serious that it would constitute a reasonable excuse which would preclude that witness from testifying.



Judge O-Gon Kwon