

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding
Judge Michele Picard
Judge Christoph Flugge

Registrar: Mr. Hans Holthuis

Date Filed: 11 December 2008

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR INTERVIEW OF
DEFENCE WITNESS

The Office of the Prosecutor:

Mr. Allan Tieger
Mr. Mark Harmon

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber for an order directing the Registrar to provide transportation for defence witness Alexa Buha to The Hague to be interviewed by Dr. Karadzic.

Procedural History

2. Alexa Buha is the former Foreign Minister of Republika Srpska. He was one of two representatives of Republika Srpska present on 18-19 July 1996 during negotiations with Richard Holbrooke that led to the resignation of Radovan Karadzic from the Presidency of Republika Srpska and the SDS Party, and withdrawal from public life, in exchange for a promise that he would not be prosecuted in The Hague.

3. Mr. Buha was also a participant in many events which are relevant to the charges in the indictment and has detailed and valuable information about those events. He resides in Belgrade, Serbia.

4. On 19 November 2008, Dr. Karadzic, who is representing himself, sent a letter to the Registrar requesting the ICTY arrange for the transportation to The Hague of Mr. Buha for the purpose of being interviewed by Dr. Karadzic at the United Nations Detention Unit.

5. Dr. Karadzic explained that:

Mr. Buha is the former Foreign Minister of Republika Srpska and is an important witness for my defence at trial, as well as for my preliminary motion to enforce the promise made by Richard Holbrooke that I would not have to face prosecution in The Hague. Mr. Buha was present at the meeting when Mr. Holbrooke made that promise.

Because I am representing myself and in detention, I am unable to secure an interview with Mr. Buha except for his being brought to the UNDU to meet with me. I understand that Mr. Buha is gracious enough to be willing to travel to The Hague for this purpose. I am also without funds to pay for this travel, and request that this expense be borne by the ICTY.¹

6. On 28 November 2008, the Registrar denied this request. He claimed that interviews of potential witnesses should be carried out by defence team members and that a person could not be transported to The Hague until after the defence had filed its Rule 65ter witness list.²

¹ A copy of this letter is attached as Annex "A".

² A copy of the Registrar's letter is Annex "B".

Argument

7. Dr. Karadzic respectfully contends that the Registrar erred in denying him the right, as a self-represented accused, to meet potential witnesses before the commencement of his defence case.

8. Because this is an issue that goes directly to the right of the accused to a fair trial, Dr. Karadzic requests that the Trial Chamber order the Registrar to transport Mr. Buha to The Hague for an interview with the accused.³

9. For purposes of funding, the Registrar has insisted that an accused who represents himself acts as his own counsel,⁴ and that the work of defence counsel is to be performed by the accused himself.⁵ However, the Registrar's own policies recognize that lead counsel will need to personally interview certain witnesses and provide for payment for counsel to travel to meet the witness.

10. In its *Defence Travel and DSA Policy*, the Registrar explicitly provides that during the Pre-Trial Stage, travel by counsel for interviews will occasionally take place "(i.e. to interview key witnesses and witnesses that are scheduled to testify in the case.)"⁶ Therefore, by refusing Dr. Karadzic the right to interview Mr. Buha—an indisputable key witness—the Registrar is denying Dr. Karadzic the same facilities that are afforded to a represented accused.

11. Dr. Karadzic is preparing a preliminary motion to dismiss his indictment on the grounds that he was promised that he would not be prosecuted in The Hague. Mr. Buha is an eyewitness to that promise. By interviewing him personally, Dr. Karadzic can learn the exact words which were said, their context, the identity of others who were

³ *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Appeals Against Decisions of the Registrar of 4 January 2007 and 9 February 2007* (25 April 2007) at para. 12; *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Appeal Against Registry Decision of 19 December 2006* (12 March 2007) at para. 6; *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Motion Seeking Review of the Decisions of the Registry Relating to the Assignment of Counsel* (29 January 2007) at fn. 11; *Prosecutor v Seselj*, No. IT-03-67-AR73.3, *Decision on Appeal Against Trial Chamber Decision on Assignment of Counsel* (20 October 2006) at para. 16; *Prosecutor v Blagojevic*, No. IT-02-60-AR73.4, *Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team* (7 November 2003) at para. 7; *Prosecutor v Milutinovic et al.*, No. IT-99-37-AR73.2, *Decision on Interlocutory Appeal on Motion for Additional Funds* (13 November 2003) at paras. 23-24; *Prosecutor v Knezevic*, No. IT-95-4-PT, *Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel* (6 September 2002)

⁴ *Registrar's Submission Pursuant to Rule 33(B) Regarding Radovan Karadzic's Motion for Adequate Facilities and Equality of Arms* (2 December 2008) at para.

⁵ *Ibid.*, at paras. 21, 27

⁶ *Defence Travel and DSA Policy* at para. (A)(6)

present or who were told about the promise, and his understanding of the actual or apparent authority of the person making the promise.

12. This preliminary motion will be due soon after the Trial Chamber decides the prosecution's motion to amend the indictment. Dr. Karadzic cannot wait until after he files his Rule 65 *ter* witness list, in the middle of his trial, to interview Mr. Buha.

13. Dr. Karadzic will also benefit in his preparation for the prosecution's case by interviewing Mr. Buha about the events in the indictment of which he has knowledge, such as the policies of the Republika Srpska government and the SDS party, as well as the negotiations undertaken with representatives of the international community.

14. Because Mr. Buha is a key witness, this task cannot adequately be undertaken by an investigator. The scope of the information is too great and Dr. Karadzic is far more familiar with the facts of his case than any investigator can be at this stage. In addition, Dr. Karadzic is trusted by Mr. Buha as a result of their long association, and Mr. Buha is likely to be more open in an interview with Dr. Karadzic than with an investigator.

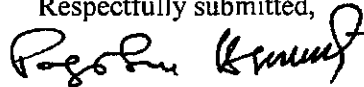
15. It is clear that under these circumstances, the Registrar would pay counsel to travel to Belgrade and interview Mr. Buha. His refusal to pay for Mr. Buha to travel to The Hague to be interviewed by Dr. Karadzic, who cannot travel to Belgrade, is a denial of adequate facilities to Dr. Karadzic's defence.

16. The Appeals Chamber has held that where an accused elects self-representation, the concerns about the fairness of the proceedings are heightened and a Trial Chamber must be particularly attentive to its duty of ensuring that the trial be fair.⁷

17. In order to ensure a fair trial, and avoid delay in the filing of preliminary motions and other proceedings in the case, the Trial Chamber is respectfully requested to order the Registrar to transport Alexa Buha from Belgrade to The Hague to be interviewed by the accused.

Word count: 1309

Respectfully submitted,



RADOVAN KARADZIC

⁷ *Prosecutor v Milosevic*, No. IT-02-54-AR73.6, *Decision on the Interlocutory Appeal by the Amicus Curiae Against Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case* (20 January 2004) at para. 19