

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 Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Date Filed: 2 March 2009

THE PROSECUTOR

v

RADOVAN KARADZIC

Public

RESPONSE TO REGISTRAR'S SUBMISSION
ON ACCESS TO CONFIDENTIAL INFORMATION AND
MOTION FOR RECONSIDERATION OF
DECISION ON ADEQUATE FACILITIES

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. On 23 February 2009, there was filed the *Registrar's Submission Pursuant to Rule 33(B) on Access by the Accused's Defence Team to Confidential Information*. The submission was served on Dr. Karadzic on 27 February 2009. Dr. Karadzic now responds, and seeks reconsideration of the Trial Chamber's *Decision on Accused Motion for Adequate Facilities and Equality of Arms: Legal Associates* (28 January 2009).

2. The Registrar complains that because there is no lead counsel in Dr. Karadzic's defence team, there is no person whom it can hold accountable for disclosure of confidential information to other persons assisting the Accused.¹

3. This is a direct result of the erroneous and unwise decision of the Registrar to remunerate the legal associates of a self-represented accused at support staff rates.

4. Prior to the Registrar's decision, there was no problem. As recognized in the *Seselj* decision, the Registrar required that one of the legal associates meet the qualification requirements of Rule 45.² The Registrar reasoned that such associates would be required to respect the protective measures granted to witnesses and documents.

5. The Registrar represented that "associates who do not meet the requirements of Rule 45 will be able to perform other tasks within the team and be paid as such."³

6. The Trial Chamber in *Seselj* accepted this argument and required that the self-represented accused designate one legal associate who satisfied the conditions of Rule 45.⁴

7. By subsequently eliminating this requirement in the Remuneration scheme in order to justify restricting remuneration of all legal associates to that of support staff, the Registrar shot himself in the foot and has created the problem that he now raises before this Trial Chamber.

¹ *Submission* at para. 8

² *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 28, quoting from *Registry Submission Pursuant to Rule 33(B) of the Rules Regarding Vojislav Seselj's Motion for a Decision by the Trial Chamber on Financing his Defence* (27 June 2007) at para. 79

³ *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 30 quoting from *Registry Submission Pursuant to Rule 33(B) of the Rules Regarding Vojislav Seselj's Motion for a Decision by the Trial Chamber on Financing his Defence* (27 June 2007) at paras. 88-89

⁴ *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 61

8. Dr. Karadzic suggests that the solution to this problem is simple. He has already designated a legal associate, Peter Robinson, who fully meets all of the criteria under Rule 45. The Registrar should remunerate this associate at a rate commensurate with his experience and responsibilities and he can then take on the responsibility of ensuring that all defence team members comply with the protective measures.

9. The Registrar's refusal to allow access to defence team members to confidential material has crippled any efforts of Dr. Karadzic to begin preparing for trial. The Registrar has refused to allow access to the Electronic Disclosure System to anyone but the two legal associates it has assigned to Dr. Karadzic's defence team. These legal associates simply cannot afford to devote their full time to Dr. Karadzic's case if remunerated at support staff rates. Therefore, there is no one who can access and review the prosecution's disclosures besides Dr. Karadzic.

10. Dr. Karadzic has a number of legal interns and law professors working on his defence team. Each has submitted his or her CV to the Registrar and has signed an undertaking of confidentiality. There is no reason why they cannot be given access to confidential information if the Registrar designates and remunerates the legal associate qualified under Rule 45 to supervise their work and be responsible and accountable for their obedience to protective measures.

11. Dr. Karadzic joins the Registrar in urging the Trial Chamber to resolve this problem as soon as possible. The Registrar's refusal to allow his defence team members access to confidential information will have a serious impact on when Dr. Karadzic can be adequately prepared to commence his trial. Therefore, it is in the interest of all parties to solve this problem expeditiously.

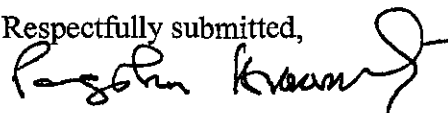
12. The Trial Chamber can solve this problem by reconsidering its decision on adequate facilities. The Registrar's reluctance to provide access to confidential information to defence team members in the absence of an accountable team member is a new fact which was not considered by the Trial Chamber when making that decision. It is well established that a Trial Chamber may reconsider a decision if the existence of a clear error of reasoning has been demonstrated or if reconsideration is necessary in order

to prevent an injustice.⁵ Here, the new fact raised by the Registrar demonstrates that the decision should be reconsidered to prevent the injustice of inadequate facilities being provided to the Accused.

13. Therefore, the Trial Chamber can accomplish a solution by ordering that Dr. Karadzic's legal associate who meets the Rule 45 requirements be responsible for the disclosure of confidential information to other defence team members, and that he be----- remunerated accordingly.

Word count: 814

Respectfully submitted,



Radovan Karadzic

⁵ *Nikolic v Prosecutor*, No. IT-02-60/1-A, *Decision on Appellant's Urgent Motion for Reconsideration of Decision on Second Defence Motion to Enlarge Time for Filing of Replies Dated 1 April 2005* (6 April 2005) at page 4; *Prosecutor v Seselj*, No. IT-03-67-AR72.1, *Decision on Motion for Reconsideration of the "Decision on the Interlocutory Appeal Concerning Jurisdiction Dated 31 August 2004* (15 June 2006) at para. 9; *Prosecutor v Delic*, No. IT-04-83-PT, *Decision on the Prosecution Motion for Reconsideration* (23 August 2006) at pg. 3; *Prosecutor v Milutinovic et al*, No. IT-05-87-T, *Decision on Prosecution Motion Requesting Reconsideration of Trial Chamber "Decision on Evidence Tendered Through Witness K-82" Issued 3 October 2006 and Leave to Recall Witness K-82* (13 March 2007) at para. 14