

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: 6 April 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public With Confidential Ex Parte Annexes*

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MOTION FOR SERVICE OF DOCUMENTS

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The Office of the Prosecutor:  
Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:  
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber, pursuant to Rules 54 and 73, for an order directing the Registrar to serve his communication with States and international organizations through diplomatic channels.

2. On 20 March 2009, Dr. Karadzic requested that the Registrar serve a copy of a letter to the representative of a State through diplomatic channels. In the letter, he requested that his Legal Advisor be authorized to interview one of that State's officials about the Holbrooke Agreement.<sup>1</sup>

3. On 3 April 2009, Dr. Karadzic received a reply from the Acting Registrar in which he stated:

I would like to inform you that the Tribunal's official correspondence is only that originating from its authorized representatives. Hence there is no role for the Tribunal in facilitating the delivery of your correspondence and it will not approach a diplomatic representative on your behalf.<sup>2</sup>

4. This decision deprives Dr. Karadzic of adequate facilities for his defence and violates his right to equality of arms.

5. As the Trial Chamber is well aware, a pre-requisite to a request for binding order to a State pursuant to Rule 54 *bis* is that the party has made sufficient efforts to obtain the cooperation of the State prior to applying for such an order.<sup>3</sup> In addition, the Appeals Chamber has held that States should be given an opportunity to cooperate through the provisions of Rule 70(B) prior to a binding order being issued.<sup>4</sup>

6. Therefore, it is necessary for Dr. Karadzic to have official communication with States and international organizations such as the Office of High Representative for Bosnia and the North Atlantic Treaty Organization to comply with his obligations prior to seeking a binding order.

7. However, the Registry refuses to facilitate that communication.

8. This misguided policy is contrary to the practice of the Registrar when an accused is represented by counsel. For example, in the *Milutinovic et al* case, the

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<sup>1</sup> A copy of this letter is provided to the Trial Chamber and Registrar as Confidential Ex Parte Annex A. There is no reason to provide it to the Prosecution at this time.

<sup>2</sup> A copy of this letter is Confidential Ex Parte Annex B.

<sup>3</sup> *Prosecutor v Milutinovic et al*, No. IT-05-87-PT, *Decision on Second Application of Dragoljub Ojdanic for Binding Orders Pursuant to Rule 54 bis* (17 November 2005) at para.18

<sup>4</sup> *Prosecutor v Milutinovic et al*, No. IT-05-87-AR108bis.2, *Decision on Request of United States of America for Review* (12 May 2006)

Registrar served requests for disclosure of General Ojdanic's intercepted conversations on some 28 Embassies and NATO.<sup>5</sup> This is just one more example of how the Registrar continues to penalize an accused for exercising his right to represent himself.

9. The Registrar's policy is also contrary to that of its sister Tribunal, the International Criminal Tribunal for Rwanda, which regularly serves correspondence from the defence to States and international organizations through diplomatic channels.

10. The Registrar's policy also puts the accused at a distinct procedural disadvantage with the prosecution, which has diplomatic channels at its disposal for its own communication with States and international organizations.

11. In addition, the Registrar's policy will result in delays in getting appropriate responses to private correspondence sent through the post from the United Nations Detention Unit to representatives of these various States and organizations.

12. This is a problem that is likely to recur throughout these proceedings as Dr. Karadzic seeks to obtain information he needs for pre-trial motions and trial evidence. For example, at the Status Conference of 2 April 2009, Dr. Karadzic referred to raids in Bosnia on members of his family. In order to properly present the Trial Chamber with the factual basis for a motion to enjoin such tactics, or to stay the proceedings, he needs to obtain information from the entities carrying out these activities.

13. Rule 54 provides:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

14. This provision authorizes the Trial Chamber to direct the Registrar to serve the correspondence of Dr. Karadzic upon States and international organizations through diplomatic channels, as it is necessary for the purposes of Dr. Karadzic's investigation and for his trial preparation.

15. The Trial Chamber expects the parties to be diligent in preparing for legal challenges through pretrial motions and for trial. The policy of the Registrar obstructs

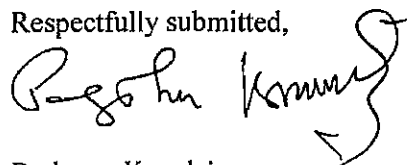
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<sup>5</sup> *Prosecutor v Milutinovic et al*, No. IT-05-87-PT, *Decision on Second Application of Dragoljub Ojdanic for Binding Orders Pursuant to Rule 54 bis* (17 November 2005)

that goal. The Trial Chamber is needed to exercise its powers under Rule 54 to remove this impediment to a fair and expeditious trial.

Word count: 875

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a large, stylized flourish extending from the end of the signature.

Radovan Karadzic