

**UNITED
NATIONS**

International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
former Yugoslavia since 1991

Case No. IT-95-5/18-PT

Date: 27 April 2009

IN TRIAL CHAMBER III

Before:

Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar:

Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO MOTION TO DISMISS FOR
ABUSE OF PROCESS**

The Office of the Prosecutor:

Mr Alan Tieger
Ms Hildegard Uertz-Retzlaff

The Accused:

Mr Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-95-5/18-PT

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO MOTION TO DISMISS FOR ABUSE OF
PROCESS**

1. The Accused Radovan Karadžić's Motion¹ fails to establish any abuse of process or violation of the Accused's rights by the Office of the Prosecutor ("OTP"). In the Motion, Karadžić complains of two allegedly improper searches. The first search did not involve the OTP. The second was conducted by Bosnian authorities, acting pursuant to a search warrant, with the participation of the OTP. Neither search involved a violation of the Accused's rights, let alone a serious or egregious violation of those rights. Consequently, the remedy sought by the Accused is not warranted or necessary.²
2. To dismiss an indictment or stay proceedings based on an abuse of process,³ Trial Chambers have held that "it needs to be clear that the rights of the Accused have been egregiously violated."⁴

¹ Motion to Dismiss for Abuse of Process, 14 April 2009 ("Motion").

² In the Motion, the Accused also seeks an evidentiary hearing. Because the relevant facts and law are contained in the pleadings, an evidentiary hearing is not necessary to decide the Motion.

³ The abuse of process doctrine permits the dismissal of an indictment or a stay of proceedings where "in the circumstances of a particular case, proceeding with the trial of the accused would contravene the court's sense of justice, due to pre-trial impropriety or misconduct." *Baraygwiya v. Prosecutor*, ICTR-97-19-AR72, Decision, 3 November 1999, para. 77. *See also Prosecutor v. Nikolić*, IT- 94-2-PT, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal, 9 October 2002 (hereinafter *Nikolić Decision*), para. 111; *In the Case Against Florence Hartmann*, IT-02-54-R77.5, Reasons for Decision on the Defence Motion for Stay of Proceedings for Abuse of Process, 3 February 2009 (hereinafter *Hartmann Decision*), para. 4; *See also* Status Conference, 2 April 2009, T.184-5 (instructing the Accused that "[I]f you wish to invite the Chamber to take action, you will have to submit a written motion indicating in what respect you consider that there is illegal conduct occurring that amounts to an interference with the interests of justice and invite us to take action on that.").

⁴ *Nikolić Decision*, para. 111; *Hartmann Decision*, para. 4.

3. The first search challenged by the Accused – a 2 December 2008 search of his wife’s residence – was conducted by NATO without any involvement of the OTP. Apart from raw, unsubstantiated allegations of impropriety,⁵ the Accused has offered no evidence of misconduct by the authorities, and the OTP is not aware of any misconduct.
4. The second search challenged by the Accused – a 27 March 2009 search of his sister-in-law’s residence – was conducted by the Republika Srpska Ministry of the Interior (“RS MUP”) acting pursuant to a warrant issued by the State Court of Bosnia and Herzegovina (“BiH”). The OTP participated in the search, during which the RS MUP seized several items. At the time of seizure, the RS MUP provided the residents of the premises a list of the items seized. The RS MUP also provided the residents with a copy of the search warrant. On 21 April 2009, the OTP Field Office in Sarajevo obtained copies of the documents seized during the search. Once the materials from the search are received in The Hague, the OTP will discharge its disclosure obligations.⁶
5. Once again, other than bare allegations of impropriety,⁷ the Accused has offered no evidence of impropriety or misconduct and has failed to establish any violation of his rights. Far from providing a “document indicating illegal conduct” or “any other specific evidence of illegal conduct”,⁸ the Accused attached to the Motion a copy of the warrant pursuant to which the RS MUP authorities acted. An English translation of this warrant is attached as Appendix A to this Response.
6. The Accused’s claim that these two searches, only one of which involved the OTP and which was carried out pursuant to a search warrant, amount to

⁵ See *e.g.*, Motion, para. 11 (citing “distress and alarm” the searches have caused); Motion, para. 13 (alleging “the real and only purpose of these raids is to make it impossible for Dr. Karadžić to mount a defence, and to have a fair trial”); Status Conference, 19 January 2009, T.96 (stating “my family was stormed again by the international forces in Bosnia, mostly NATO forces, with very ludicrous arguments and insulting saying that they’d come to talk to my wife about the mental health of another accused”); Status Conference, 2 April 2009, T.181 (alleging “assaults, completely illegal actions against the homes of my immediate or extended family as they search for documents that are important for my case”).

⁶ The OTP responded to the Accused’s letter of 1 April 2009 on 24 April 2009. See Motion, para. 7.

⁷ See *e.g.* Motion, para. 4 (alleging “they [i.e. the OTP] struck again”); Status Conference, 2 April 2009, T.181 (alleging “assaults, completely illegal actions against the homes of my immediate or extended family as they search for documents that are important for my case”).

⁸ See Status Conference, 4 April 2009, T.183 (Judge Bonomy stating “If you were to come into possession of any document indicating illegal conduct, then that’s something you can draw to you are [sic] attention. If you have any other specific evidence of illegal conduct that you think we might have jurisdiction in relation to because it would interference with the interests of justice here, then again that is something you can draw that to our attention.”)

conduct by the OTP “designed to intimidate and discourage his potential witnesses in Bosnia”⁹ is unsubstantiated and baseless. It is also directly contradicted by the search warrant the Accused attached to his Motion, which states that the search in which the OTP participated was designed to gather evidence relevant to ICTY proceedings.

7. The Accused’s allegations of an abuse of process are baseless and unsupported. His right to a fair trial has not been compromised by the searches, and he has not suffered any prejudice. Given the absence of any violation of the Accused’s rights, the Prosecution respectfully requests that the Trial Chamber dismiss the Motion.

Word Count:



Hildegard Uertz-Retzlaff
Senior Trial Attorney

Dated this 27th day of April 2009
At The Hague
The Netherlands

⁹ Motion, para. 1.

Appendix A

IT-95-5/18-PT

Stamp:

BiH Court

Criminal and Appeals

Dept.

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KRN/06/318

3 /Page

27th of March 2008 14:04

Signed /illegible/

COURT OF BOSNIA AND HERZEGOVINA

Number: X-KRN-06/318

Sarajevo, 27th of March 2009

URGENT

STRICTLY CONFIDENTIAL

The Court of Bosnia and Herzegovina, judge Snežana BORUŠAROVA as well as the judge in the previous procedure in the process of offering the legal help to the International Criminal Court for the former Yugoslavia (ICTY), according to the request of the Prosecution of Bosnia and Herzegovina number A – 232/09 from the 27th of March 2009 for the issuing of the search warrant and temporary seizing of objects pursuant the articles 51, item 2., 55. related to the article 63 of the Criminal Procedure of Bosnia and Herzegovina (ZKP BiH) on the 27th of March 2009 is issuing the following

ORDER

to search the following premises in order to find the evidence important for the criminal proceeding at the ICTY for the crimes of genocide, crimes against humanity and war crimes:

I

-Search of the apartment/house of Ljubica KRLETA-ZELEN residing at Dobroslava Jevđevića street 0-9, 71 420 Pale

-Search of the house where the radio station "Sv. Jovan" is located which is the part of Sveti Jovan Institute at Pale. The address is Trifko Grabež street 117, 71 420 Pale.

During the search of all mentioned premises we shall temporarily seize the objects and documents including:

1. Presidential archive of SR BiH, later on Republika Srpska (RS)
2. Logbook of business trips of RS Government
3. RS Official Gazettes
4. Entry correspondence logbook of the President and National Assembly
5. Exit correspondence logbook of President and National Assembly
6. Personal program of work (aide-memoire) of Radovan KARADŽIĆ
7. War notes of Radovan KARADŽIĆ
8. CV /abbreviation unknown/ protocol logbook of the Republic Communications Center
9. Entry and exit telex correspondence logbook
10. Protocol logbook of Ministry of Defense, records and other documents
11. Protocol logbook of the Ministry of the Interior, records and other documents
12. Correspondence of the Ministry of the Interior and official notes
13. Minutes, records, other documents, decisions and conclusions of the National Council for Security
14. Minutes of the RS extended Presidency
15. Notes of Momčilo KRAJIŠNIK
16. Notes of Biljana PLAVŠIĆ
17. Notes of Bogdan SUBOTIĆ

18. Original documents/letters from Miloš VUKAŠINOVIĆ
19. Original document/ letters from Aleksandra a k a Saška PAVIĆEVIĆ
20. Decisions, conclusions, minutes and notes of the Presidency and SRBiH and RS National Assembly
21. Personal correspondence of Radovan KARADŽIĆ
22. Photographs and memories of Radovan KARADŽIĆ
23. Documents seized during the search of the Pink house at Pale in 2004 and 2005 returned in the 2004 and missing in the 2005
24. Computer hard discs
25. Floppy discs
26. CD's
27. Computer process units
28. Laptops
29. Military orders, daily combat reports as well as monthly and yearly reports
30. Other documents of RS Army Command
31. Orders of the Ministry of Interior, daily combat reports as well as monthly and yearly reports
32. Other correspondence, other evidence and documents indicating the plan or conspiracy to hide or destroy the RS official documentation.

Except the above mentioned documents, the other identified objects which can be linked with the activities related to the missing presidential archive shall be seized during the search.

II

The search and seizing of the documents shall be carried out by the following employees of the RS Ministry of the Interior (RS MUP):

- Ranko KARANOVIC, High Inspector and RS MUP Head of War Crimes Department
- Goran GVERO, Inspector in the RS MUP Special War Crimes Department
- Milanko KARIŠIK, High Inspector in RS MUP Special War Crimes Department

- Predrag GRUBOR, Inspector in the RS MUP Special War Crimes Department
- Saša STUPAR, Inspector in the RS MUP Special War Crimes Department
- Goran BALABAN, High Inspector in RS MUP Special Police Unit
- Branislav KOVAČEVIĆ, Junior Inspector in RS MUP Special Police Unit
- Dragan ŠUKUR, Junior Inspector in RS MUP Special Police Unit
- Goran BOŽIČKOVIĆ, Junior Inspector in RS MUP Special Police Unit
- Jovan MIČIĆ, Sergeant in RS MUP Special Police Unit
- Vedran SIMIĆ, Junior Inspector in RS MUP Special Police Unit
- Saša JAPUNDŽA, High Police Officer in RS MUP Special Police Unit
- Siniša BRBOROVIĆ, High Police Officer in RS MUP Special Police Unit
- Duško OPAČIĆ, High Police Officer in RS MUP Special Police Unit
- Darko MILIĆ, Police Officer in RS MUP Special Police Unit

Search and seizing of objects shall be carried out pursuant the article 59 of BiH Law on Criminal Procedure in time period of 15 days upon the issuance of this order. The order shall be carried out in any chosen time according to the article 55, item 2 of BiH Law on Criminal Procedure since we suspect that the search could not be carried out from 06 am to 9 pm, that the searched object shall be removed or destroyed if the order is not immediately carried out and that the person that we are looking for shall run away or commit other criminal act or endanger the safety of the official in charge or other person if the order is not immediately carried out or carried out in the period from 09 pm to 6 am.

Pursuant the article 55, item 2 of the Law on Criminal Procedure, the official in charge can carry out the order without previously handing in the order since there is a suspicion that the objects that we are looking for could be easily and quickly destroyed if not immediately seized, that the handover of the order could endanger the safety of the official or other person and that the person that we are looking for shall commit other criminal act or endanger the safety of the official or other person.

IV

During the seizing of the objects, we shall indicate where they were found and they shall be described and if necessary, we shall establish their identity in other manner. The certificate on the temporary seizing of the objects pursuant the article 63 of the Law on the Criminal Procedure shall be handed over to the persons who's objects have been seized and the minutes according to the decisions of the article 62 BiH Law on Criminal Procedure shall be made.

V

Temporarily seized objects shall be delivered to the BiH Court in order to be registered as Court exhibits. They will be then archived and kept in the premises of BiH Prosecution for their possible use in the criminal procedure.

VI

The procedure report on all activities concerning this order shall be made and sent to the Court i.e. BiH Prosecution.

VII

BiH International Prosecutor Thierry PONS with the support of the officials of the Prosecutor's Office of the International Criminal Tribunal and the Prosecutor Julian NICHOLLS and Investigator Paul GRADY shall be in charge of the coordination of the implementation of the order.

PREVIOUS PROCEDURE JUDGE

Snežana BOTUŠAROVA

/stamped and signed/

Kraljice Jelene street 88, 71 000 Sarajevo, Bosnia and Herzegovina, Tel: 033 707 100 Fax:
033 707 225

