



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-PT
Date: 26 March 2009
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Decision of: 26 March 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION SEEKING DETERMINATION THAT THE
ACCUSED UNDERSTANDS ENGLISH FOR THE PURPOSES OF THE STATUTE AND
THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon
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The Accused

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the 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 (“Tribunal”) is seised of the “Prosecution Motion Seeking Determination That the Accused Understands English for the Purposes of the Statute and the Rules of Procedure and Evidence”, filed on 17 February 2009 (“Motion”), and the Accused’s “Response to the Prosecution Motion Seeking Determination That the Accused Understands English”, filed on 20 March 2009 (“Response”), and hereby renders its decision thereon.

I. Brief background

1. The Accused Radovan Karadžić has thus far elected to represent himself. He is assisted by two legal associates and one investigator assigned by the Registry of the Tribunal and paid in accordance with the Registry Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused (“Scheme”), as well as a number of *pro bono* advisers and interns. On 25 September 2008 the Trial Chamber issued a “Decision on the Accused’s Request that All Materials, Including Transcripts, Be Disclosed to Him in Serbian and Cyrillic Script” (“Decision of 25 September”), in which it reminded the Office of the Prosecutor (“Prosecution”) of its disclosure obligations.¹ The Trial Chamber held that, for the purposes of that Decision, it would proceed on the basis that the Serbian language (the Accused’s native language), known in the Tribunal as “B/C/S”, is the appropriate language in which the Accused should receive documents required under the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence (“Rules”). Neither the Prosecution nor the Registry had at that time made submissions that the Accused could understand English.² Furthermore, the Trial Chamber ruled as follows:

The Trial Chamber notes that insofar as the Motion’s request for “all materials” pertains to material disclosed pursuant to Rule 66(A) of the Rules, the materials supporting the Indictment under Rule 66(A)(i) must indeed be communicated to the Accused in a language he understands. Additionally, statements of all witnesses whom the Prosecutor intends to call to testify at trial must also be provided in a language that the Accused understands within a time-limit prescribed by the Trial Chamber, in accordance with Rule 66(A)(ii). Further, given the importance of this material and the current self-represented status of the Accused, *the Trial Chamber considers that any transcripts disclosed pursuant to Rule 66(A) should be transcribed into a language the Accused understands rather than provided to him in audio format.*³ [emphasis added]

¹ Decision of 25 September, para. 17.

² Decision of 25 September, para. 10.

³ Decision of 25 September, para. 11.

2. Following this Decision, the Accused filed a motion for further disclosure.⁴ In its response thereto, the Prosecution addressed the motion and also requested reconsideration of the Chamber's Decision of 25 September. This request for reconsideration was made on the basis that (i) it had become clear, since the Decision of 25 September was made, that for the purposes of Rule 66(A) the Accused could understand English and had also acquired a fully qualified, English-speaking, lawyer as his legal associate; and (ii) the Decision of 25 September was inconsistent with the case law of the Tribunal, and was "practically infeasible" as transcription into B/C/S would require significant expenditure of time and resources.⁵

3. On 25 November 2008 the Trial Chamber issued a "Decision on the Accused Motion for Full Disclosure of Supporting Material" ("Decision of 25 November"), confirming its Decision of 25 September. The Chamber held that the Prosecution, in fulfilling its obligations under Rule 66(A)(i), must disclose relevant materials to the Accused in B/C/S, in transcribed form, rather than in audio files.⁶ The Chamber stated that it "was cognisant, when making its ruling in the Decision of 25 September as to the format of witness testimony disclosed under Rule 66(A), that it was taking a different approach to that adopted by some other Trial Chambers, *particularly as regards Rule 66(A)(ii)*."⁷ The Chamber also pointed out that the Decision of 25 September "made no final determination as to the language for all materials, but made a determination as to the language for disclosure *under Rule 66(A)* to ensure the expeditious progress of the case."⁸ Finally, the Chamber noted that there was some evidence that the Accused could understand English but that, due to the vague nature of the Prosecution's submission in this respect, it was not prepared to conclude that the Accused could handle legal matters in English.⁹

II. Arguments of the parties

4. In the present Motion, the Prosecution requests the Trial Chamber to determine that English is a language which the Accused understands for the purposes of the Statute and the Rules.¹⁰ The Prosecution claims that it properly seeks this determination by way of a motion since the Chamber, in its earlier Decisions of 25 September and 25 November, stated that it would proceed on the basis that B/C/S was the appropriate language, for the purposes of those Decisions alone. The

⁴ Motion for Full Disclosure of Supporting Material, 7 November 2008.

⁵ Prosecution's Response to Karadžić's Motion for Full Disclosure of Supporting Material and Prosecution's Request for Reconsideration or Clarification of the Chamber's 25 September Decision, 12 November 2008, paras. 11, 13–19, 20–22.

⁶ Decision of 25 November, para. 23.

⁷ Decision of 25 November, para. 28 [emphasis added].

⁸ Decision of 25 November, para. 29 [emphasis added].

⁹ Decision of 25 November, para. 29.

¹⁰ Motion, para. 1.

Prosecution claims, therefore, that the two earlier Decisions should be confined only to disclosure under Rule 66(A)(i). It also acknowledges, however, that the Decisions refer more generally to Rule 66(A) and argues that, if the determination is properly sought by a request for reconsideration, the Prosecution's arguments meet the standard required for the Chamber to exercise its discretionary power in this regard.¹¹

5. In support of its Motion, the Prosecution claims that the Accused has been capable of speaking and writing in English since "at least 1974", when he attended Columbia University in the United States for a year, and where his studies included English-language poetry.¹² The Prosecution has gone on to give examples that support its claim, namely the Accused's involvement in complex political negotiations conducted in English during the conflict in Bosnia and Herzegovina from 1992 through 1995, his interaction with foreign politicians and diplomats in his capacity as President of the Republika Srpska, and the "lengthy media interviews" he gave in English. The Prosecution appended eight audio-visual samples of such interviews to its Motion.¹³

6. As a final contention in favour of the relief sought in the Motion, the Prosecution argues that the Accused has conversed with his legal associates, and participated in proceedings held before this Chamber and the Appeals Chamber, all in the English language. In support, the Prosecution refers to a web-log entry authored by the Accused's *pro bono* legal adviser, Kevin John Heller, in which the latter described a meeting with the Accused on 8 January 2009, during which he conversed in English.¹⁴ Since 10 October 2008, the Accused has made submissions in English and has drafted correspondence in English.¹⁵ In addition, the Accused requested a verification of the English translation of one of his own submissions on the very day that he received that translation.¹⁶ The Prosecution further notes that the Accused gave evidence before the Appeals Chamber in the *Krajišnik* case partly in English.¹⁷

7. In the event that the Trial Chamber is unable to reach the conclusion that the Accused understands English for the purposes of the Statute and the Rules, the Prosecution requests a determination that providing B/C/S audio files to him, accompanied by English language

¹¹ Motion, paras. 7–9.

¹² The Accused attended Columbia University in the United States from 1974 to 1975, where his graduate studies included English-language poetry. Motion, paras. 12–13.

¹³ Motion, paras. 12, 14–16, 17, Appendices A, B, C, D, and E.

¹⁴ Motion, paras. 12, 18, Appendix F.

¹⁵ Motion, para. 19. The correspondence in question were letters which the Accused sent to the Head of Chambers as well as to the President of the Tribunal.

¹⁶ Motion, para. 20.

¹⁷ Motion, para. 22.

transcripts, is a form of disclosure that satisfies the requirements of Rule 66(A)(ii).¹⁸ In support, the Prosecution notes that the purpose of Rule 66(A) is to ensure that an accused may make effective use of the material disclosed.¹⁹ The Prosecution goes on to say that the Accused has a sufficient understanding of English to make use of English transcripts and, if unable fully to comprehend parts of the transcripts, he can easily check his understanding against the B/C/S audio, in addition to seeking assistance from language assistants available to him. In addition, the Accused has the assistance of “at least three English-speaking associates.”²⁰

8. In his Response, the Accused argues that, in light of the 25 September and 25 November Decisions, this is the third time that “the Prosecution has sought to evade its responsibility to meet its disclosure requirements under Rule 66(A),” labelling the Motion as one for “re-consideration.”²¹ The Accused then submits that many of the arguments relating to his ability to understand English have already been raised in the Prosecution’s request for reconsideration of the 25 September Decision. The only additional evidence, according to the Accused, is that he spent a year of graduate studies in the United States; that he interacted with the international community in his official capacity, dealing with complex political negotiations; that he gave interviews in English to the international press; and that several individuals, including one of his legal advisers referred to his spoken English as “very good” or “excellent”. However, according to the Accused, save for the information coming from the Accused’s legal adviser, all this evidence was available to the Prosecution at the time of its request for reconsideration of the 25 September Decision.²²

9. As far as his ability to understand English is concerned, the Accused claims that he had no formal training in the English language. According to him, the Prosecution has only managed to show that he resided in the United States more than 30 years ago, and that he conversed in English “from time to time 14 to 17 years ago.” He also claims that the Prosecution has not shown that he has a sufficient understanding of the English language in 2009 and that, from 1996 through 2008, he almost never spoke English. In addition, the Accused argues knowledge of enough conversational English allowing him to communicate with his associates does not equate to a sufficient understanding of the language for the purposes of his trial. The fact that his associates draft pleadings and correspondence on his behalf in English is simply evidence of the delegation of tasks within his defence team.²³ The Accused goes on to claim that he is unfamiliar with English

¹⁸ Motion, paras. 2, 23.

¹⁹ Motion, para. 24.

²⁰ Motion, paras. 26–27.

²¹ Response, paras. 2–10.

²² Response, paras. 14–17.

²³ Response, paras. 19–24.

legal terms and, therefore, cannot confidently handle legal matters in English. The Accused then states that he has “a far better understanding of legal terms in Serbian than in English” since it is “common sense that one absorbs the meaning of legal terms in one’s native language over a lifetime of being immersed in it.”²⁴

10. Addressing the Prosecution’s alternative argument, the Accused points to the Chamber’s Decision of 25 September and notes that the Prosecution has not demonstrated any change in circumstances justifying a different conclusion by the Chamber. He further claims that this relief would result in the transfer of the Prosecution’s burden—“which it can fulfil with many staff members”—on to the Accused, who is preparing for the trial on his own.²⁵

III. Applicable law

11. Rule 3(A) of the Rules provides that the “working languages of the Tribunal shall be English and French”. The application of this Rule must be consistent, however, with the right of an accused to a fair trial as enshrined in Article 21(4) of the Statute, which provides, *inter alia*, that:

[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...]
- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal[.]

12. The jurisprudence of this Tribunal is clear that neither Rule 3 of the Rules nor Article 21(4) of the Statute entitles an accused to receive all documents in a language he understands.²⁶ Rather, only certain documents, most notably the indictment and those disclosed pursuant to Rule 66(A)(i) and (ii) of the Rules, need be made available to the accused in a language he understands.

13. Rule 66(A)(i) and (ii) requires the following:

- (A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands

²⁴ Response, paras. 25–26.

²⁵ Response, paras. 28–31.

²⁶ *Prosecutor v. Tolimir*, IT-05-88/2-PT, Decision on Submission of Tolimir Requesting Translation of Documents and Transcripts, 20 July 2007, p. 3; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, p. 2; *Prosecutor v. Delalić and Delić*, IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 8.

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and

(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.

14. The legal standard for reconsideration of a decision has been articulated by the Appeals Chamber as follows: “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’”²⁷

IV. Discussion

A. Reconsideration

15. The Chamber notes that, in its Decisions of 25 September and 25 November, it purposefully declined to make any findings about the Accused’s ability to understand English on the basis that the Prosecution submissions in that respect were vague.²⁸ In addition, the current Motion is based on an accumulation of circumstances, many of which were never raised before the Chamber, that are said to indicate the Accused’s understanding of the English language. Accordingly, the Chamber does not consider this part of the Motion to be a request for reconsideration.

16. However, the same cannot be said for the Prosecution’s alternative ground. In the Chamber’s view, if it is determined that English is not a language which the Accused understands, the submission that Rule 66(A)(ii) obligations are fulfilled by disclosure in audio-format, in B/C/S, is clearly an application to reconsider both the Decision of 25 September and the Decision of 25 November.

B. Does the Accused understand English for the purposes of the Rules and the Statute?

²⁷ *Prosecutor v. Milošević*, Case No. IT-02-54-AR108*bis*.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); *see also* *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle”, 14 June 2006, para. 2.

²⁸ Decision of 25 November, para. 29.

17. The Chamber has carefully examined the materials submitted to it by the Prosecution, including a number of video clips of the Accused, which are meant to show that he has a good understanding of the English language.

18. Addressing the video clips first, it is notable that all of them show the Accused giving interviews in English, some of which are quite lengthy, to various prominent international media, including the television presenter David Frost and the current affairs programme, 60 Minutes. These interviews took place in the period from 1992 through 1995. While giving them, the Accused was exposed to a number of questions from his interlocutors, some of which were lengthy and convoluted, requiring a good understanding of the English language in order to comprehend and respond to them.²⁹ The questions were also often fired at the Accused in quick succession, and posed as allegations, accusing him, for example, of being a war criminal. As such they required a quick response, which was without fail provided by the Accused.³⁰ Accordingly, in the Chamber's view, even though the Accused's answers and arguments offered in those interviews were not made in perfect English, the video clips still show that he was at that time capable of conversing and debating in English on serious topics, including the accusations of war crimes levelled against him. This is further confirmed by various international officials who were involved in complex political negotiations with the Accused and later gave evidence before this Tribunal in other cases. They testified about the meetings they attended involving the Accused and referred to his ability to speak "excellent English."³¹

19. The Chamber notes the Accused's argument that these clips merely show that he conversed in English "from time to time 14 to 17 years ago" and that there is no evidence that he has a sufficient understanding of English at present. While the Chamber has no direct knowledge of the Accused's ability to use English at the time he was at Columbia University, his capacity for English, as demonstrated in these clips, is consistent with what the Chamber would expect of someone studying at an English language university. It is clear on the evidence presented to the Chamber that, in the intervening 14 years, that capability for English has not disappeared or been diminished. For example, the Accused's own *pro bono* legal adviser, Kevin John Heller, made assertions to that effect when he recounted a meeting with the Accused during which they talked about world politics as well as "more substantive matters" relating to the case, all in the English language.³² In addition, during his testimony in the *Krajišnik* Appeal hearing, the Accused was

²⁹ See e.g., Motion, Appendix E, Video 4: NBC Interview.

³⁰ See e.g., Motion, Appendix E, Video 4: NBC Interview; Video 5: Interview with David Frost; Video 6: 60 Minutes Interview.

³¹ See Motion, Appendices A, B, C, and D

³² Motion, Appendix F.

capable of reading out a number of excerpts in English, and even chose to comment on one of them in that language, exhibiting immediate and perfect understanding of what those excerpts meant.³³ Having listened to the audio recording of the Accused's testimony in that case, the Chamber is satisfied that he can read and comprehend English well.

20. Further evidence indicating to the Chamber that the Accused is capable of conversing and understanding the English language, even in the context of a complex criminal trial, is his ability to communicate with his legal associates and advisers, such as Peter Robinson and Kevin John Heller, both of whom are native English speakers. As shown by the various motions submitted on behalf of the Accused, where he often expresses gratitude to the person involved in a particular motion, most of these advisers and associates are either native English speakers, or are proficient in English and are conducting their work in that language. Indeed, most of the Accused's motions and responses have been filed in the English language, drafted in whole or in part by his English-speaking advisers, associates, and/or interns. All these documents have then been signed by him, indicating his approval of their terms.

21. Yet another indication of the Accused's current proficiency in English is his submission requesting verification of the English translation of one of his early motions. On the same day that he received the English translation of that motion, which he originally filed in B/C/S, the Accused requested that it be corrected so as to ensure that the translation accurately reflected the B/C/S version.³⁴ Accordingly, the Accused is even capable of identifying minor mistakes made by the Tribunal's interpreters and translators.

22. The Chamber is cognisant of the Accused's argument that he is unfamiliar with English legal terms, whereas he has a far better understanding of those terms in Serbian. This may simply be one example of the difficulties that go with self-representation, which the Tribunal's Scheme for providing assistance, including legal support and language assistance, to self-represented accused can solve. This solution does not lie in the translation of every part of every document falling under Rule 66(A) where it is clear that the Accused understands English for the purposes of the Rule.

23. Accordingly, the Chamber is of the view that the Accused understands English for the purposes of the Rules and the Statute. This in turn means that the requirements of disclosure under Rule 66(A)(ii) in relation to transcripts will be satisfied by the Prosecution providing the Accused, as it offered to do, with the relevant materials *via* audio-format tapes, accompanied by English

³³ Motion, Appendix G. *See also Prosecutor v. Krajišnik*, Case No. IT-00-39-A, T. 585-586 (5 November 2008).

³⁴ Request for Verification of Translation, 15 August 2008.

transcripts. Of course, any witness statements or transcripts falling under Rule 66(A)(ii), and already available in B/C/S, should be disclosed to the Accused in that language also. The Chamber also notes that this decision affects only written materials. Any oral exchanges in the course of the case will be simultaneously interpreted into B/C/S whenever another language is used.

24. It is for the Registry to decide whether or not to follow its existing practice of translating filings into B/C/S for the Accused. If the Registry decides to continue with this practice, it nevertheless follows from the foregoing that the date of the filing of a document in English will henceforth be the operative date from which any time limit will run. In other words, this decision will only apply to time limits relating to documents filed after the date on which the B/C/S version of this decision is communicated to the Accused.

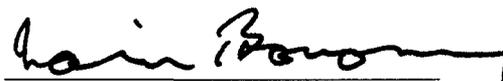
25. For the reasons outlined above, the Chamber need not consider the Prosecution's alternative request relating to Rule 66(A)(ii).

V. Disposition

26. For the reasons outlined above, pursuant to Rules 54 and 66(A) of the Rules, the Chamber, hereby:

- (a) GRANTS the Motion; and
- (b) NOTIFIES the Prosecution and the Registry that English is a language that the Accused understands for the purposes of the Rules and the Statute, and in particular, for the purposes of the Chamber's Decisions of 25 September and 25 November.

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


Judge Iain Bony, Presiding

Dated this twenty sixth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]