



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: 20 April 2009

Original: English

IN THE TRIAL CHAMBER

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

Acting Registry: Mr. John Hocking

Decision of: 20 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED MOTION FOR SERVICE OF DOCUMENTS

Office of the Prosecutor

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

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 Accused’s “Motion for Service of Documents”, filed on 7 April 2009 (“Motion”), and hereby renders its decision thereon.

I. Background and Submissions

1. In the Motion the Accused seeks a general order directing the Acting Registrar to serve correspondence between the Accused and “States and international organizations” through “diplomatic channels.”¹ The Motion was precipitated by a letter from the Acting Registrar to the Accused on 30 March 2009, informing him that the Tribunal’s Registry has no role in facilitating the delivery of correspondence to diplomatic representatives, unless that correspondence originates from “authorised representatives” of the Tribunal.² The Accused argues that this decision deprives him of adequate facilities for his defence and violates his right to equality of arms.³ He further asserts that the Acting Registrar’s decision not to deliver his correspondence is contrary to prior practice of the Registry in cases involving accused represented by counsel, and to the practice of the International Criminal Tribunal for Rwanda (“ICTR”).⁴ He states that the decision puts him at a procedural disadvantage to the Office of the Prosecutor (“Prosecution”) and will result in delays in his receiving appropriate responses to his correspondence.⁵

2. On 15 April 2009, the Registry made a “Registry Submission regarding Service of Documents” (“Registry Submission”), stating that the Accused’s Motion is supported neither by the Tribunal’s Statute nor its Rules of Procedure and Evidence (“Rules”) and that it “misplaces defence preparatory work onto the Registry.”⁶ It submits that the Rules do not confer responsibility on the Registry to facilitate communication between a party to Tribunal proceedings and a State, as a prelude to obtaining an order under Rule 54 *bis*, and that the Registry does not generally fulfil this role in practice.⁷ It argues that it is for the Accused or his assigned legal associates to correspond with States and international organisations, which has been the prior practice in cases involving

¹ Motion, para. 1.

² Confidential, *Ex parte* Annex B to the Motion.

³ Motion, para. 4.

⁴ Motion, paras. 8–9.

⁵ Motion, paras. 10–11.

⁶ Registry Submission, para. 4.

⁷ Registry Submission, para. 6

accused represented by counsel.⁸ It denies that the Registry has delivered correspondence for an accused in the *Milutinović et al.* case, as asserted by the Accused.⁹ The Registry further submits that it would be inappropriate for the diplomatic pouch to be used for the delivery of documents originating from an accused.¹⁰ It therefore requests the Chamber to deny the Motion.

II. Applicable law

3. It is established that a Trial Chamber may intervene in a matter that is within the primary competence of the Registry where that matter goes to the fairness of the trial.¹¹

4. In *Prosecutor v. Kvočka et al.*, the Appeals Chamber set out the standard, deriving from “general principles of law”, for review by a Trial Chamber of a decision of the Registry.¹² According to this standard, an administrative decision will be quashed if the Registry, in making the decision:

- (a) has failed to comply with the requirements of the relevant legal authorities; or
- (b) has failed to observe the basic rules of natural justice and procedural fairness towards the person affected by the decision; or
- (c) has taken into account irrelevant material or failed to take into account relevant material; or
- (d) has reached a conclusion that is unreasonable, in the sense that it is a conclusion which no sensible person who has properly applied his mind to the issue could have reached.¹³

5. The Appeals Chamber found that “in the absence of established unreasonableness there can be no interference with the margin of appreciation of the facts or merits of that case to which the

⁸ Registry Submission, para. 7.

⁹ Registry Submission, para. 8.

¹⁰ Registry Submission, paras. 10–11.

¹¹ *Prosecutor v. Delalić et al.*, Order on Esad Landžo’s Motion for Expedited Consideration, Case No. IT-96-21-A, 15 September 1999, cited by the Appeals Chamber in *Prosecutor v. Blagojević*, Public and Redacted Reason for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, Case No. IT-02-60-AR73.4, 7 November 2004; see also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Concerning Court-Assigned Counsel’s Terms of Engagement, 8 April 2005, p. 4.

¹² *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigic”, 7 February 2003 (“*Kvočka et al.* Appeal Decision”), para. 13.

¹³ *Kvočka et al.* Appeal Decision, para. 13.

maker of such an administrative decision is entitled”,¹⁴ and that the accused bears the onus of persuading the Trial Chamber conducting the review both “(a) that an error of the nature described has occurred, and (b) that such error has significantly affected the Registrar’s decision to his detriment”.¹⁵

III. Discussion

6. The Chamber is satisfied that, if the Registry were effectively preventing the Accused from corresponding with States, international organisations, or other entities that he needed to communicate with in order to properly prepare his defence, this would affect the fairness of his trial.

7. The Chamber does not consider that the Registry has failed to comply with any “relevant legal authorities” as there are no provisions in the Statute or Rules requiring the Registry to act as a conduit of communication between an accused, or his defence team, and States or international organisations. Whether or not the Registry has done so on an exceptional basis in the past, and the Accused has failed to satisfy the Chamber that it has, this does not require it to do so as a regular practice in this or any other case.

8. Similarly, the Acting Registrar’s letter informing the Accused that it is not the Registry’s practice to facilitate correspondence with States and international organisations does not demonstrate any failure to observe basic rules of natural justice or procedural fairness, particularly as the Accused has other means, either directly or through his legal associates, legal interns, and *pro bono* legal advisers, to send correspondence with such entities. The Accused has not argued that the Acting Registrar has taken into account irrelevant material, or has failed to take into account relevant material, in making this decision.

9. Finally, in light of the practical considerations indicated in the Registry Submission, and the other means of communication available to the Accused, the Chamber does not consider that the Acting Registrar has reached a conclusion that is unreasonable in the circumstances.

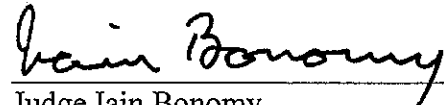
¹⁴ *Kvočka et al.* Appeal Decision, para. 13.

¹⁵ *Kvočka et al.* Appeal Decision, para. 14.

IV. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge Iain Bonyony
Presiding

Dated this twentieth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]