



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-T

Date: 8 April 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 8 April 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON MOTION FOR STAY OF PROCEEDINGS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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 seized of the “Motion for Stay of Proceedings: Violation of Burden of Proof and Presumption of Innocence”, filed by the Accused on 1 April 2010 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused requests the Trial Chamber to stay the trial proceedings, scheduled to resume on 13 April 2010, on the basis that the cumulative effect of the Chamber’s decisions on the admission of evidence and judicial notice of adjudicated facts, pursuant to Rules 92 *bis* and 94(B), respectively, of Tribunal’s Rules of Procedure and Evidence (“Rules”), has been to render the trial already unfair.

2. On 7 April 2010, the Office of the Prosecutor (“Prosecution”) filed its “Response to Motion for Stay of Proceedings” (“Response”), opposing the Motion. The Prosecution submits that the Accused has already argued before the Trial Chamber that the cumulative effect of the decisions on judicial notice of adjudicated facts and the admission of Rule 92 *bis* evidence is to violate his right to a fair trial, and the Trial Chamber has dismissed this argument. The Prosecution also states that the remedy of a stay of proceedings is reserved for exceptional cases involving serious violations of human rights, and this is not such a case. It concludes that the Motion has no reasonable prospect of success and requests that it be dismissed as frivolous and vexatious.

3. The Trial Chamber notes that the Accused appears to be requesting an indefinite stay of the proceedings, rather than a temporary one pending some further decision from the Trial or Appeals Chamber. His argument is thus similar to one raised in his motion challenging jurisdiction on the basis of the alleged Holbrooke Agreement, in which he invoked the doctrine of abuse of process in support of his argument that the Tribunal should decline to exercise jurisdiction in his case, and in his previous Motion to Dismiss for Abuse of Process.¹ In relation to both of these motions, the Trial Chamber found that the Accused had failed to demonstrate that there had been an abuse of process, and, in relation to the former, the Appeals Chamber subsequently found that, even if the Accused’s factual allegations were proved, they would not trigger the doctrine of abuse of process, justifying a stay of the proceedings against him.²

¹ Holbrooke Agreement Motion, 25 May 2009; Motion to Dismiss for Abuse of Process, 14 April 2009.

² Decision on the Accused’s Holbrooke Agreement Motion, 8 July 2009; Decision on Motion to Dismiss for Abuse of Process, 12 May 2009; Decision on Karadžić’s Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement, 12 October 2009.

4. It is undoubtedly the case that a Chamber has the power to stay the proceedings in a case where the circumstances are such that a fair trial for the accused is impossible. The right to a fair trial is a fundamental one and it is the duty of the Trial Chamber to ensure that it is protected. However, the Prosecution correctly observes that the jurisprudence on indefinite stays of proceedings is that there must be found to have been a serious violation of human rights justifying such an extreme measure.³ The Trial Chamber would therefore need to be satisfied that (1) its decisions on judicial notice of adjudicated facts and on the admission of certain evidence pursuant to Rule 92 *bis* together result in a violation of the Accused's right to a fair trial, and (2) that this violation is of such an egregious nature that the Chamber should stay the proceedings.

5. As noted by the Prosecution, the Trial Chamber has already considered, and rejected, the Accused's arguments concerning the cumulative effect of its decisions on judicial notice of adjudicated facts and on the admission of Rule 92 *bis* evidence.⁴ The Chamber remains unconvinced by any of the Accused's submissions in the Motion concerning the effect of judicial notice of adjudicated facts and of admitting evidence pursuant to Rule 92 *bis*, either individually or cumulatively, and both in the abstract and in the concrete circumstances of the Trial Chamber's decisions to date under Rules 92 *bis* and 94(B). Indeed, in these decisions, and others concerning the application of Rule 92 *quater* and the taking of judicial notice of documentary evidence, the Trial Chamber has made every effort to ensure that the fair trial rights of the Accused are protected. In the Motion, the Accused merely repeats arguments that he has already raised before the Trial Chamber and cites, in addition, a scholarly article critical of the Tribunal's use of these provisions.

6. The Chamber notes that the European Court of Human Rights cases referred to in the Motion are fully consonant with the Tribunal's jurisprudence to the effect that a Chamber cannot enter a conviction of an accused based solely on the evidence of a witness who has not been subject to cross-examination.⁵ Moreover, the Accused will have ample opportunity to bring evidence to rebut those adjudicated facts which are the subject of judicial notice. He argues, nonetheless, that the amount of "untested evidence" already admitted in the present case is such

³ Decision on Karadžić's Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement, 12 October 2009, paras. 45–47; *Prosecutor v. Nikolić*, Case No. IT-94-2-AR73, Decision on Interlocutory Appeal Concerning Legality of Arrest, 5 June 2003, paras. 28–33.

⁴ Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*, 20 August 2009, para. 10; Decision on Accused's Application for Certification to Appeal Decision on Rule 92 *quater* (Witness KDZ198), 31 August 2009; Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 October 2009, para. 53.

⁵ See *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008, fn. 486.

that the Chamber will have to base its final decision upon it to a “decisive extent”.⁶ The Chamber rejects this argument as wholly unfounded. Until the final Judgement is issued in this case, the parties can only speculate as to what evidence the Chamber will admit, how that evidence will be evaluated, and what conclusions will be drawn from it. Should the Chamber base any conviction of the Accused solely on witness evidence that has not been subject to cross-examination, it will be for the Accused to raise that issue on appeal at the appropriate time.

7. For these reasons, the Chamber is not satisfied that there has been any violation of the Accused’s right to a fair trial which would justify a stay of the proceedings.

Disposition

8. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this eighth day of April 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ Motion, para. 22.