



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: 12 July 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

**Order of:** 12 July 2010

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

**ORDER IN RELATION TO THE ACCUSED'S SUBMISSION ON STATUS OF  
PRODUCTION OF DOCUMENTS BY GOVERNMENT OF CROATIA**

**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Government of Croatia**

via the Embassy of the Republic  
of Croatia to The Netherlands,  
The Hague

**The Accused**

Mr. Radovan Karadžić

**Standby 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 seised of the Accused’s “Motion for Binding Order: Government of Croatia”, filed on 11 September 2009 (“Motion”), and hereby issues this *proprio motu* order in relation thereto.

1. In the Motion the Accused asks the Trial Chamber to issue a binding order to the Republic of Croatia (“Croatia”), pursuant to Article 29 of the Statute of the Tribunal (“Statute”) and Rule 54 *bis* of the Rules of Procedure and Evidence (“Rules”), requesting it to disclose to him documents he claims to be relevant to and necessary for his case.<sup>1</sup>

2. Having been invited to respond to the Motion,<sup>2</sup> Croatia filed a request for an extension of time in which to do so,<sup>3</sup> and shortly thereafter filed a request directed at the Accused for “the additional specification of the documentation required in his Motion.”<sup>4</sup> The Chamber granted the extension of time and invited the parties to consult with each other directly, without involving the Chamber, in an attempt to resolve the issue before a decision on the Motion is made.<sup>5</sup> As a result, on 27 October 2009, Croatia filed a confidential response outlining what steps had been taken by various Croatian authorities to locate the documents requested and indicating that some documents were to be disclosed to the Accused, but that the majority were not found due to the lack of specificity in the Motion.<sup>6</sup>

3. On 8 January 2010, the Accused filed his “Memorandum of Status of Requests to States and International Organisations” (“Accused’s Memorandum”) in which he acknowledges that he received some documents from Croatia but notes that he has not been provided with all the documents he requested and has not been advised that no other requested documents exist.<sup>7</sup> The Accused also informed the Chamber that, on 7 January 2010, he had sent a follow up request to Croatia, seeking a number of additional categories of documents.<sup>8</sup>

4. On 15 February 2010, the Trial Chamber held a hearing pursuant to Rule 54 *bis* to discuss the status of the Motion and various other binding order motions filed by the Accused,

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<sup>1</sup> Motion, para. 1.

<sup>2</sup> Invitation to the Republic of Croatia, 15 September 2009.

<sup>3</sup> Correspondence from the Republic of Croatia, 29 September 2009.

<sup>4</sup> Note Verbale from the Republic of Croatia, 6 October 2009.

<sup>5</sup> Decision on Request from the Republic of Croatia, 9 October 2009.

<sup>6</sup> Confidential Correspondence from Croatia, 27 October 2009.

<sup>7</sup> Accused’s Memorandum, para. 6.

<sup>8</sup> Accused’s Memorandum, para. 6, footnote 9, Annex F.

and to which it invited, among others, the representatives of Croatia.<sup>9</sup> It transpired during the hearing that Croatia had not received the Accused's follow up request of 7 January 2010, and, as a result, its representative asked for further time to allow Croatia to consider this request.<sup>10</sup> Following the hearing, the Accused withdrew his request for one of the categories of documents outlined in the Motion, on the basis that the documents already provided by the Office of the Prosecutor sufficiently covered that category.<sup>11</sup>

5. Having not heard from Croatia following the hearing, the Chamber issued, on 1 March 2010, an invitation to Croatia to file its response to the Accused's follow up request by 22 March 2010. In this invitation, the Chamber also sought further clarification from Croatia as to the nature and the status of the search conducted by Croatian authorities in relation to the Motion.<sup>12</sup> Thus, on 24 March 2010, Croatia filed another confidential response attaching one document relating to the Accused's follow up request and submitting, *inter alia*, that (i) further documents were found broadly relating to one category of documents listed in the Accused's follow up request;<sup>13</sup> (ii) Croatia would "continue trying to find documents requested by the [Accused]" and would inform the Chamber about "any documents that [Croatia] may find at a later date"; and (iii) offering the Accused an option to inspect "a list of materials" belonging to one of its departments.<sup>14</sup>

6. On 7 July 2010, upon an invitation by the Chamber,<sup>15</sup> the Accused filed his "Submission on Status of Production of Documents by Government of Croatia", filed on 7 July 2010 ("Submission") in which he notes that there has been no further disclosure from Croatia and that he has had no contact with Croatia since 24 March 2010.<sup>16</sup> The Accused also submits that he finds it "difficult to accept that the requested documents could not be located by [Croatia]" and that the best way to proceed is for the Chamber to proceed making a decision on his Motion. Finally, the Accused notes that he "remains willing to meet with Croatian government officials, inspect archives, and take any other [necessary] steps."<sup>17</sup>

<sup>9</sup> See Status Conference, T. 710 (28 January 2010); Order Scheduling a Hearing Pursuant to Rule 54 *bis*, 29 January 2010. See also Correspondence from the Republic of Croatia, 11 February 2010.

<sup>10</sup> Rule 54 *bis* Hearing, T. 777-778 (15 February 2010).

<sup>11</sup> Submission on Request to Governments of Croatia and Iran, 11 March 2010.

<sup>12</sup> Invitation to Republic of Croatia, 1 March 2010.

<sup>13</sup> The documents referred to relate to category (vii) in the follow-up request but it would appear from the correspondence that, unlike the one document attached to it, these were not delivered to the Accused.

<sup>14</sup> Confidential Correspondence from Croatia, 24 March 2010, pp. 3-4. This offer to inspect had been made by Croatia even earlier, in its confidential filing of 27 October 2009. See also Rule 54 *bis* Hearing, T. 791-792 (15 February 2010).

<sup>15</sup> See T. 4762 (6 July 2010).

<sup>16</sup> Submission, paras. 3-4.

<sup>17</sup> Accused's Submission, paras. 7-8.

7. The Chamber recalls that before issuing a Rule 54 *bis* order, instructing a state to produce documents to one of the parties in a case before the Tribunal, it needs to be satisfied that the applicant has first approached the state said to possess them. Rule 54 *bis* (A) (iii) requires the applicant to explain the steps that have been taken to secure the state's co-operation and the implicit obligation is to demonstrate that, prior to seeking an order from the Trial Chamber, the applicant made a reasonable effort to persuade the state to provide the requested information voluntarily.<sup>18</sup> Thus, only after a state declines to lend the requested support should a party make a request for a Trial Chamber to take mandatory action under Article 29 and Rule 54 *bis*.<sup>19</sup>

8. Having considered the history of this Motion, the Chamber is not satisfied that it should proceed, at this stage, to dispose of it, as it seems that the Accused has not exhausted all his avenues in relation to voluntary co-operation by Croatia. As stated above, Croatia has indicated that it located a number of documents going to category (vii) of the follow up request and that it is prepared to work with the Accused and allow his legal advisers to inspect a list of materials in one of its archives. However, in his Submission, the Accused fails to address whether or not he has acted upon this offer to inspect the archives, and also seems to imply that he has not pursued the delivery of documents going to category (vii) which were found by Croatia. In fact, he seems not to have been in touch with Croatia since its last filing of 24 March 2010, even though it is his responsibility to secure Croatia's voluntary co-operation in the provision of documents requested by him, if possible. Thus, before proceeding to dispose of the Motion, the Chamber directs the Accused to either (i) engage the Croatian authorities in immediate discussions to ensure that the documents found but not yet delivered to him are produced and organise the inspection of the materials as offered to him by the Croatian authorities; or (ii) indicate to the Chamber that he does not wish to do so, in which case the Chamber will proceed to dispose of the Motion.

9. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby:

- (a) **ORDERS** the Accused to either (i) make contact with Croatia to discuss the matters referred to in paragraph 8 above, and to report back to the Chamber concerning the progress or outcome of those discussions by 10 August 2010, or (ii) inform the Chamber that he does not wish to pursue these matters further; and

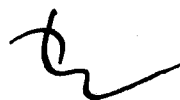
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<sup>18</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Sreten Lukić Amended Rule 54 *bis* Application, 29 September 2006, para.7.

<sup>19</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108*bis*.2, Decision on Request of the United States of America for Review, 12 May 2006, para. 32.

- (b) **REQUESTS** Croatia to communicate with the Accused and his legal advisers if approached by them in relation to the matters referred to in paragraph 8 above.

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



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Judge O-Gon Kwon  
Presiding

Dated this twelfth day of July 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**