



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: 2 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

Decision of: 2 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUESTS BY THE ACCUSED AND BY
BOSNIA AND HERZEGOVINA**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Bosnia and Herzegovina

via Embassy of Bosnia and Herzegovina 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 “Request for Hearing: Government of Bosnia and Herzegovina” filed on 14 May 2010 (“Accused’s Request”), and a request from the Government of Bosnia and Herzegovina (“BiH”), filed on 18 June 2010 (“BiH Request”), and hereby issues its decision thereon.

1. The Accused filed a “Motion for Binding Order: Government of Bosnia” on 31 August 2009 (“Motion”), seeking an order from the Chamber requiring BiH to produce to him documents he claims to be relevant to and necessary for his case.¹

2. Having been invited to respond to the Motion twice,² and then given an extension of time in which to do so,³ BiH filed, on 26 November 2009, confidential correspondence attaching several “confidential” documents it delivered to the Accused in response to his Motion.⁴

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 acknowledged the receipt of some documents from BiH, but noted that he had not been provided with all the documents he had requested.⁵ The Accused also informed the Chamber that, on 7 January 2010, he had sent a follow up request to BiH, seeking the production of five additional categories of documents.⁶

4. At the Status Conference held on 28 January 2010, the Trial Chamber announced that a hearing pursuant to Rule 54 *bis* would be held on 15 February 2010 (“Hearing”), during which the status of the Motion, as well as the other binding order motions filed by the Accused, would be discussed.⁷ Accordingly, in its “Order Scheduling a Hearing Pursuant to Rule 54 *bis*”, the Chamber invited, *inter alia*, representatives of BiH to attend the Hearing.⁸ On 12 February 2010, three days before the scheduled Hearing, BiH informed the Chamber that its authorities would not be represented at the Hearing due to “technical obstacles in regard with the short notice given, both for the procedures for visa facilitation, as well as the time needed for official

¹ Motion, para. 1.

² Invitation to Bosnia and Herzegovina, 2 September 2009; Second Invitation to the Government of Bosnia and Herzegovina, 13 October 2009.

³ Decision on Request from the Government of Bosnia and Herzegovina, 5 November 2009.

⁴ Confidential Correspondence from Bosnia and Herzegovina, 26 November 2009, p. 29201.

⁵ Accused’s Memorandum, para. 6.

⁶ Accused’s Memorandum, footnote 8. *See also* Annex E to the Accused’s Memorandum.

⁷ Status Conference, T. 710 (28 January 2010).

⁸ Order Scheduling a Hearing Pursuant to Rule 54 *bis*, 29 January 2010.

translation of the case documents.”⁹ The Chamber, therefore, proceeded to hold the Hearing with the representatives of the other invited states, simply noting that BiH was unrepresented and that it would proceed to make a decision on the Motion in due course, without hearing from BiH.¹⁰

5. 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 BiH, as well as some of the documents disclosed by the Office of the Prosecutor, sufficiently covered that category.¹¹

6. On 1 March 2010, in a further effort to ensure that BiH is heard before proceeding to dispose of the Motion, the Chamber invited BiH to respond, by 22 March 2010, to the Accused’s letter of 7 January 2010. The Chamber also invited BiH to address some of the questions it had in relation to the Motion.¹² However, BiH did not respond to this invitation by 22 March. Instead, on 29 April 2010, it filed what appears to be correspondence from BiH’s Ministries of Defence and Internal Affairs to the Ministry of Foreign Affairs (“MFA”), informing the MFA that none of the documents referred to in its memorandum had been found in the state archives.¹³ This filing, however, contained no explanation as to what the contents of this MFA memorandum were, nor which documents were referred to in it. Furthermore, the correspondence from the Ministry of Internal Affairs seems to indicate that some of the searches are still ongoing.¹⁴

7. As a result, on 14 May 2010, the Accused filed the Accused’s Request, noting the ambiguity in BiH’s correspondence, outlining the troubled history he and the Chamber have had with BiH in relation to the Motion, and requesting a hearing at which representatives of BiH could explain to the Chamber the “nature and status of their search for the requested documents.”¹⁵

8. On 17 June 2010, BiH filed the BiH Request, informing the Chamber that the Council of Ministers of BiH has “reached the conclusion that requires the Ministry of Defense of [BiH], Ministry of Security of [BiH], State Prosecutor Office of [BiH] and all other authorities in [BiH]

⁹ Correspondence from Bosnia and Herzegovina, 12 February 2010.

¹⁰ Hearing, T. 744 (15 February 2010).

¹¹ See Submission on Request to Government of Bosnia and Herzegovina, 11 March 2010, paras. 2–4. See also Hearing, T. 776–778 (15 February 2010); Prosecution Submission Pursuant to Trial Chamber’s Request During Rule 54 *bis* Hearing, 24 February 2010, Appendix A, pp. 1–8.

¹² Invitation to Bosnia and Herzegovina, 1 March 2010.

¹³ Correspondence from Bosnia and Herzegovina, 29 April 2010.

¹⁴ Correspondence from Bosnia and Herzegovina, 29 April 2010, p

¹⁵ Accused’s Request, paras. 5–8.

which may be in possession or which would be able to find [requested] documents to deliver it [*sic*] immediately to the Ministry of Justice of [BiH]”.¹⁶ BiH also notes that, once these documents are delivered to the Ministry of Justice, it would deliver them to the Tribunal and that the Council of Ministers has decided to recommend to the Presidency of BiH to nominate an official representative of BiH in this case.¹⁷ Finally, BiH notes that its authorities are still searching for the documents requested and asks for an extension of time, until 15 September 2010, in which to complete this search.¹⁸

9. On 28 June 2010, the Chamber inquired in court whether the Accused had any response to the BiH Request. The Accused’s legal adviser responded, stating that the Accused’s position was still as outlined in the Accused’s Request, namely that representatives of BiH should be invited to attend an oral hearing pursuant to Rule 54 *bis*. The legal adviser also noted that the Accused and his defence team believe that BiH is in possession of a number of documents that are not being disclosed and that “the best way to resolve that” is to conduct an oral hearing.¹⁹

10. Looking at the Accused’s Request first, the Chamber notes that the co-operation of BiH in this matter has been problematic and fraught with delay. Nevertheless, the Chamber is of the view that, in light of BiH submissions as to the steps it is now finally taking to deal with the Accused’s Motion, an oral hearing pursuant to Rule 54 *bis* would not advance the matter in any way *at this stage*. Even if questioned by the Chamber as to the status and nature of the search conducted so far, the representatives of BiH are likely to simply repeat what has already been outlined in BiH’s Request and in its filing of 29 April 2010. Accordingly, the Chamber finds that this is not the right time for an oral hearing pursuant to Rule 54 *bis*. Instead, in the interest of encouraging voluntary co-operation, the Chamber is minded to give BiH a reasonable extension of time to complete its search for the requested documents and provide a report on its progress. Should BiH fail to act in a timely manner, the Chamber will have to consider what further steps are warranted.

11. In relation to the duration of this extension of time, the Trial Chamber notes that it is important that requests for the production of documents are dealt with expeditiously, especially since the Accused’s trial has now started and he is cross-examining witnesses, on a daily basis, on the issues raised in the Motion. The Chamber also recalls that the completion of the work of the Tribunal within a reasonable time is a matter of great importance which requires that all Governments should take urgent steps to comply with their duty to co-operate with the Tribunal

¹⁶ BiH Request, p. 1.

¹⁷ BiH Request, p. 1.

¹⁸ BiH Request, p. 1.

in its work. Thus, bearing the urgency of the matter in mind, as well as the time that has passed since the Accused filed his original Motion, the Chamber considers that the extension of time requested, namely some two and a half months, is excessive. Accordingly, the Chamber requests the relevant authorities within BiH to act with a greater degree of urgency when conducting the steps BiH has outlined in its Request and to complete the search by the deadline imposed below.

12. For the reasons outlined above, pursuant to Rule 54 of the Rules, the Trial Chamber hereby:

- (a) **DENIES** the Accused's Request;
- (b) **GRANTS** the BiH Request **IN PART** and **INVITES** BiH to, by 15 August 2010, either (i) complete its search and produce the documents found, if any, to the Accused, or, (ii) in case this is not done, report to the Trial Chamber on the steps taken to conduct the search and its progress; and
- (c) **REQUESTS** the Registry to provide this Decision to BiH.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]

¹⁹ T. 4253 (28 June 2010).