



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: 28 January 2011

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: 28 January 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

DECISION ON SITE VISIT

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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”) *proprio motu*, issues this decision in relation to a site visit to Sarajevo, Bosnia and Herzegovina (“BiH”).

I. Background and Submissions

1. During the hearing held on 28 September 2010, the Accused raised the issue of a potential site visit by the Chamber to locations in Sarajevo relevant to the Indictment.¹ The Chamber invited written submissions from the parties as to proposed sites, itinerary, timing, and participants.²

2. On 6 October 2010, the Accused filed his submission opining that a site visit would be beneficial for the Chamber. The Accused further submitted he could provide a list of relevant locations for Sarajevo but that he was not, at that time, in a position to identify locations for the municipalities and Srebrenica parts of the case. Further, the Accused requested to be present at any site visit conducted by the Chamber.³

3. On 7 October 2010, the Office of the Prosecutor (“Prosecution”) filed its submission stating that it did not request a site visit at that stage.⁴ The Prosecution asserted that it was not able to assess which sites should be visited in relation to the Indictment as a whole because the Accused’s position with respect to each of the charges against him was only being revealed on an ongoing basis during the course of his cross-examination.⁵

4. During the hearing of 14 October 2010, the presiding Judge noted that although the Chamber was not currently seized of a motion for a site visit, it was of the view that a site visit to certain locations in and around Sarajevo may be helpful and was being contemplated.⁶

5. On 15 November 2010, the Chamber issued a confidential “Order on Submissions for a Site Visit” (“First Order”), wherein it reiterated that it would be assisted by conducting a site visit to certain locations in and around Sarajevo relevant to the crimes in the Indictment. The Chamber specified that ideally the visit could occur in the spring of 2011 and that it was neither

¹ Hearing, T. 7073 (28 September 2010).

² Hearing, T. 7076– 7077 (28 September 2010) (private session).

³ Submission on Site Visit, confidential, 6 October 2010, paras. 3–4.

⁴ Prosecution’s Submission on Site Visit, confidential, 7 October 2010, para. 1.

⁵ Prosecution’s Submission on Site Visit, confidential, 7 October 2010, para. 2.

⁶ Hearing, T. 7959 (14 October 2010) (private session).

necessary nor appropriate for the Accused to himself participate in the visit.⁷ The Chamber then ordered the parties to file submissions, no later than 16 December 2010, on any relevant matter, including itinerary and participants.⁸

6. The Accused filed his “Second Submission on Site Visit” confidentially on 13 December 2010 (“Second Accused Submission”), wherein he requests that the Chamber reconsider the First Order in as far as the Chamber did not consider it necessary or appropriate for the Accused to himself participate in the site visit.⁹ Alternatively, should the Chamber decline to allow the Accused to participate in the site visit, he requests that his legal associate, Mr. Marko Sladojević, accompany the Chamber on his behalf.¹⁰ The Accused further seeks that all site visit related pleadings be made public, save for final arrangements and the actual date of the visit.¹¹ In Annex A to the Second Accused Submission, the Accused puts forth a list of 65 suggested locations to be visited in and around Sarajevo.

7. The Prosecution filed the “Prosecution’s Second Submission on Site Visit” confidentially on 14 December 2010 (“Second Prosecution Submission”). The Prosecution proposes that Mr. Barry Hogan, investigator, accompany the Chamber on behalf of the Prosecution.¹² The Prosecution further suggests that, due to his knowledge of Sarajevo and experience in organising site visits, Mr. Hogan be closely involved in the preliminary logistical assessments, in co-ordination with members of the Registry and the Defence as the Chamber deems appropriate.¹³ The Prosecution also notes that it is imperative that a detailed record of the Chamber’s visit be maintained and form part of the trial record.¹⁴ Finally, the Prosecution appends a suggested itinerary covering 46 sites.

8. On 14 January 2010, upon the Chamber’s request,¹⁵ the Registry filed the confidential “Registry Submission Pursuant to Rule 33(B) on the Presence of the Accused during a Potential Site Visit” (“Registry Submission”) where it submits that the presence of the Accused during a site visit would jeopardise the security and safety of all persons involved, including that of the

⁷ First Order, paras. 5–6.

⁸ First Order, para. 11.

⁹ Second Accused Submission, para. 2.

¹⁰ Second Accused Submission, para. 3.

¹¹ Second Accused Submission, para. 5.

¹² Second Prosecution Submission, para. 5.

¹³ Second Prosecution Submission, para. 7.

¹⁴ Second Prosecution Submission, para. 8, referring to *Simon Bikindi v. The Prosecutor*, Case No. ICTR-2001-72-A, Judgement, 18 March 2010, para. 97.

¹⁵ The Chamber communicated its request on 17 December 2011 by way of electronic correspondence from one of its legal officers.

Accused himself.¹⁶ The Registry further contends that, should such be the case, all security and logistical preparations necessary to ensure the Accused's safety would be under the responsibility of BiH, which would also have to make appropriate arrangements for the detention of the Accused in a domestic detention facility.¹⁷ The Registry further notes that other self-represented accused before the Tribunal have been represented by their legal associates during site visits.¹⁸

II. Applicable Law

A. Site visits

9. Rule 4 of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that a "Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorised by the President in the interests of justice."

B. Reconsideration

10. The Chamber recalls that the Appeals Chamber of the Tribunal has articulated the legal standard for reconsideration of a decision 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.'"¹⁹ The requesting party is thus under an obligation to satisfy the Chamber of the existence of a clear error in reasoning, or the existence of particular circumstances justifying reconsideration in order to prevent an injustice.²⁰

III. Discussion

11. In the First Order, the Chamber stated that subject to approval by the President of the Tribunal, it would be assisted by conducting a site visit to relevant locations in and around Sarajevo, that the purpose of such a visit would not be to gather evidence or receive any

¹⁶ Registry Submission, paras. 3, 7.

¹⁷ Registry Submission, para. 4.

¹⁸ Registry Submission, para. 6.

¹⁹ *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis.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.

²⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić's Motion for Reconsideration and Order for Issuance of a Subpoena Duces Tecum, 2 April 2009, p. 2; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber, 26 March 2009, p. 3.

submissions from the parties and therefore that it did not consider it necessary or appropriate for the Accused to himself participate in the site visit.²¹ On 19 January 2011, the President of the Tribunal authorised the Chamber's request to conduct a site visit in these proceedings.²²

12. With regard to the presence of the Accused during the site visit, the Chamber does not consider that it has made a clear error in reasoning in the First Order in considering that it was neither necessary nor appropriate for the Accused to participate in the site visit. The Chamber also does not consider that it is necessary to reconsider the First Order in order to prevent an injustice. The purpose of the site visit will be to provide the Chamber with the opportunity to observe certain landmarks and locations referred to in the Indictment in order to get a tri-dimensional and first-hand impression of these locations and of the general geography and topography of the area. The Chamber has already stated, and reiterates herein, that evidence will not be gathered during the site visit and that the parties will be requested to refrain from making submissions in accordance with the appended protocol. As such, the site visit will not breach the right of the Accused to be tried in his own presence as envisaged in Article 21(4)(d) of the Tribunal.

13. As far as the delegation is concerned, the Chamber takes note of the Prosecution's nomination of Mr. Barry Hogan. While it notes Mr. Hogan's apparent knowledge of Sarajevo and expertise in assisting in the organisation of previous site visits, the Chamber is concerned that Mr. Hogan is currently on the Prosecution's Rule 65 *ter* list of witnesses. The Chamber therefore does not consider it appropriate for Mr. Hogan to accompany the Chamber on the site visit and invites the Prosecution to nominate someone else from its team who is intimately familiar with Sarajevo and the locations therein that are relevant to the Indictment. The Chamber also notes that the Accused has designated Mr. Marko Sladojević to accompany the Chamber on his behalf should the Chamber not allow him to be present during the visit. The Chamber takes no issue with Mr. Sladojević accompanying the Chamber. The Chamber nonetheless considers that to ensure the adequate independence of the preparations and because such preparations necessitate liaising with all parties involved, including the Chamber and the authorities of BiH, the primary responsibility for the visit's preparations should be borne by a staff member employed by the Registry, who will liaise with the Chamber and the parties as required.

14. The Chamber further considers that it is appropriate to request that a Registry representative of the Court Management and Support Section ("CMSS") accompany the

²¹ First Order, paras. 5–6.

²² Internal Memorandum, Request for authorization to conduct a site visit in the *Karadžić* case, 19 January 2011.

Chamber to maintain an accurate and detailed record of the site visit and to ensure that the appended protocol is observed. The record will indicate the locations viewed and/or visited, the date and time at which the locations were viewed and/or visited, and any observations made pursuant to paragraphs 3 and 4 of the appended protocol.

15. In its First Order, the Chamber reminded the parties of the necessity to maintain the confidentiality of any site visit related discussion. Given the extreme security concerns in relation thereto, the Chamber will not publicise any aspect of the site visit preparations. However, upon completion of the site visit, the Accused may re-submit his request that the confidentiality of all site visit related pleadings be lifted.

IV. Disposition

16. Accordingly, the Trial Chamber, pursuant to Rules 4 and 54 of the Rules, hereby **DECIDES** that a site visit to locations in and around Sarajevo shall take place in these proceedings in May 2011, at a precise date to be later determined by the Chamber, and **ORDERS** that:

- 1) A precise itinerary will be prepared by the Chamber, on the basis of Annex A to the First Order, the parties' respective proposed itineraries, and the relevant security and budgetary concerns;
- 2) During the site visit, the Chamber will be accompanied by:
 - a. A staff member employed by the Registry;
 - b. A representative from the Prosecution to be nominated no later than 4 February 2011;
 - c. Mr. Marko Sladojević, on behalf of the Accused;
 - d. Two members of the Chamber's legal support staff;
 - e. One interpreter;
 - f. A representative from CMSS, whose role is limited to that described in paragraph 14 above and paragraphs 4 and 5 of the appended protocol;
 - g. The number of security personnel and drivers required for a delegation of this size;

- 3) The parties shall respect the confidential protocol appended to this decision.
- 4) The confidentiality of all site visit related pleadings shall be maintained until further order of the Chamber.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-eighth day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

CONFIDENTIAL ANNEX A
PROTOCOL ON CONDUCT DURING SITE VISIT

Procedure during the Site Visit

- 1) The parties shall not seek the admission of evidence;
- 2) The parties shall not make submissions;
- 3) Upon the Judges's request, the parties may identify geographical locations, or features thereof, referred to in the Indictment or parties' pre-trial briefs;
- 4) Upon the Judges' request, the parties may make comments about the events alleged to have taken place in these locations only by reference to the Indictment or their pre-trial briefs;
- 5) The parties shall have no contact with the media;

Record of the Site Visit

- 6) During the site visit, a representative of CMSS shall be present in order to maintain a written record of the visit, to ensure that this protocol is respected, and to prepare minutes upon completion of the visit;
- 7) After completion of the visit and upon approval by the Chamber, the minutes of the visit referred to in paragraph 6 above shall be filed.