



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-98-30/1-R.1
Date: 10 November 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 10 November 2006

PROSECUTOR

v.

MLAĐO RADIĆ

**DECISION ON PROSECUTOR'S REQUEST TO TRANSFER MODEL OF OMARSKA
CAMP TO PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

Counsel for Mlado Radić:

Mr. Toma Fila

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Ann Sutherland

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THE APPEALS 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 (“Appeals Chamber” and “International Tribunal”, respectively),

BEING SEISED OF the “Prosecutor’s Request to Transfer Model of Omarska Camp to Prosecutor’s Office of Bosnia and Herzegovina” filed on 13 October 2006 (“Request”), in which the Prosecution seeks an order from the Appeals Chamber to transfer the model of the Omarska camp (“Model”), which is listed as an exhibit in the *Kvočka et al.* case,¹ to the Prosecutor’s Office of Bosnia and Herzegovina (“BiH”) for use in the *Mejakić et al.* trial before the State Court of BiH;²

NOTING that no response to the Request was filed by Counsel for Mlađo Radić;

NOTING the “Deputy Registrar’s Submission Regarding the Prosecutor’s Request to Transfer Model” filed pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”) on 26 October 2006 (“Deputy Registrar’s Submission”);

NOTING the Deputy Registrar’s submissions that: (a) the Model is large, fragile, and could easily be damaged in transit;³ (b) it is not practically possible for the Registry to make a copy of the Model and thus releasing this particular exhibit will result in an incomplete record in the *Kvočka et al.* and *Tadić* cases;⁴ (c) while the Registry can take photographs and/or video recordings of the Model, this will not constitute a copy;⁵ (d) if the Appeals Chamber should grant the release of the Model, that the transfer be made from the Registry of the International Tribunal to the Registry of the State Court of BiH and that a chain of custody be established through the State Court;⁶ and (e) the Model should be returned to the International Tribunal once the *Mejakić et al.* trial before the State Court of BiH has become final, or alternatively, upon further order;⁷

¹ Case No. IT-98-30/1-T, Prosecution Exhibit 3/16.

² Request, paras. 1, 6. The Appeals Chamber notes that it is properly seized of the present Request as it was filed prior to the rendering of its decision on a request for review filed by Mlađo Radić, one of the co-accused in the *Kvočka et al.* case. See Decision on Defence Request for Review, 31 October 2006.

³ Deputy Registrar’s Submission, para. 8.

⁴ *Ibid.*, para. 6 (The Model was also previously admitted as Prosecution Exhibit P130 in *Prosecutor v. Tadić*, Case No. IT-94-1-T).

⁵ *Ibid.*

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*, para. 8.

NOTING the Deputy Registrar's further submission that pursuant to Article II, Section 4 of the Convention on the Privileges and Immunities of the United Nations,⁸ the Registry of the International Tribunal is under a duty to protect the integrity of the archives of the International Tribunal, including original exhibits, which form part of the official record of the International Tribunal;⁹

CONSIDERING that under Rule 81(A) of the Rules, the Registry "shall cause to be made and preserve a full and accurate record of all proceedings [. . .]" before the International Tribunal;

CONSIDERING further Articles 8(1) and 8(2)(e) of the Directive for the Registry Judicial Department Court Management and Support Services with respect to the Registry's responsibility for maintaining the judicial archives of the International Tribunal;¹⁰

CONSIDERING however that Rule 81(C) of the Rules provides that the "Registrar shall retain and preserve all physical evidence offered during the proceedings subject to any Practice Direction *or any order which a Chamber may at any time make* with respect to the control or disposition of physical evidence offered during proceedings before that Chamber";¹¹

RECALLING the Decision of the Referral Bench in the *Mejakić et al.* case,¹² which was subsequently confirmed on appeal,¹³ to refer the case to the authorities of the State of BiH and ordering the Prosecutor to "hand over to the Prosecutor of Bosnia and Herzegovina [...] the material supporting the Indictment against th[e] Accused, and all other appropriate evidentiary material";¹⁴

⁸ 1 UNTS 15, 13 February 1946 ("The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located").

⁹ Deputy Registrar's Submission, para. 7.

¹⁰ IT/121, 1 March 1997 (Article 8(1): "The Registry is responsible for maintaining the judicial archives of the Tribunal"; Article 8(2)(e): "The judicial archives shall contain exhibits").

¹¹ Emphasis added.

¹² *Prosecutor v. Mejakić et al.*, Case No. IT-02-65-PT, Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11bis, 20 July 2005 (*Mejakić et al.* Decision).

¹³ *Prosecutor v. Mejakić et al.*, Case No. IT-02-65-AR11bis.1, Decision on Joint Defence Appeal Against Decision of Referral Under Rule 11bis, 7 April 2006. (The Appeals Chamber vacated the order of the Referral Bench to the effect that if arrangements for monitoring and reporting should prove ineffective, the Prosecution should seek further direction from the Referral Bench and dismissed the appeal in all other respects).

¹⁴ *Mejakić et al.* Decision, p. 44.

NOTING the Prosecution's submission that because the Model is "evidentiary material" relevant for the *Mejakić et al.* trial before the State Court of BiH, it should be handed over to the Prosecutor of BiH;¹⁵

NOTING that the Prosecution further states that it does not intend to use the Model in future trials before the International Tribunal;¹⁶

NOTING further that the Prosecution submits that the Prosecutor of BiH may bring indictments relating to the Omarska camp in the future;¹⁷

CONSIDERING Security Council resolutions 1503/2003 and 1534/2004, which emphasise that national institutions prosecuting violations of international humanitarian law in the former Yugoslavia are to be assisted in their work;

ON THE BASIS OF THE FOREGOING and pursuant to Rule 81(C) of the Rules, **HEREBY GRANTS** the Prosecution's Request, subject to the following conditions, and **ORDERS** the Registry:

- 1) to take photographs and video recordings of the Model; and
- 2) to transfer the Model to the Registry of the State Court of BiH and to establish a chain of custody through that Court;

INVITES the Prosecutor of BiH, upon completion of the *Mejakić et al.* trial before the State Court of BiH, to request through the Prosecution of the International Tribunal, that the Model remain with the Registry of the State Court of BiH for use in other specific trials pending before the State Court of BiH and, where there are no such pending trials, **ORDERS** the Registry of the International Tribunal to arrange for the return of the Model to its custody.

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

Done this 10th day of November 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]

¹⁵ Request, paras 3, 6.

¹⁶ *Ibid.*, para. 5.

¹⁷ *Ibid.*