



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-PT

Date: 25 September 2008

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Iain Bonomy, Pre-Trial Judge
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 25 September 2008

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S REQUEST THAT ALL MATERIALS,
INCLUDING TRANSCRIPTS, BE DISCLOSED TO HIM IN
SERBIAN AND CYRILLIC SCRIPT**

Office of the Prosecutor

Mr. Mark B. Harmon
Mr. Alan Tieger

The Accused

Mr. Radovan Karadžić

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 submission entitled “Appeal against the Registry Decision to provide me with transcripts in the English language only, or as audio recordings”, filed 19 August 2008 (“Motion”), and hereby renders its decision thereon.

Submissions of parties

1. On 5 August 2008, the Accused, Radovan Karadžić, submitted a request to the Registry asking it to send him all materials in his case, including transcripts, in Serbian.¹ In response to the Accused’s request, the Registry informed the Accused by letter dated 6 August 2008 that court session transcripts were not translated into B/C/S but that audiotapes of the simultaneous B/C/S interpretations in the courtroom could be made available to him (“Registry Response to the Request”).² The following day, the Registry filed a submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”) informing Trial Chamber I of its communication with the Accused.³

2. On 19 August 2008, the Accused filed an “appeal” with the present Trial Chamber contesting the Registry Response to the Request, and stating that B/C/S audio recordings of the court session transcripts were unacceptable because the process of listening to them would prove too onerous and impede the preparation of his defence.⁴ Instead, the Accused requested that the Trial Chamber order the Registry to provide him with “all materials, including transcripts of the sessions in [his] case, as well as other transcripts which might be required for [him] to prepare [his] defence, in the Serbian language, and in the Cyrillic script.”⁵ The Trial Chamber notes that, although the Accused’s filing styles itself an “appeal” against the Registry Response to the Request, it is in fact a motion for relief pursuant to Rule 73 of the Rules.⁶

¹ See Registry Submission Pursuant to Rule 33(B) Regarding the Accused’s Representation and the Transmission of Court Documents, 7 August 2008 (“Registry Submission of 7 August 2008”) (attaching as Annex 2 an English translation of the Accused Request).

² See Registry Submission of 7 August 2008, para. 2 (referencing the Registry’s response to the Accused Request).

³ Registry Submission of 7 August 2008, para. 2.

⁴ Original in B/C/S with an English translation entitled “Appeal against the Registry Decision to provide me with transcripts in the English language only, or as audio recordings”, 19 August 2008 (“Motion”), p. 1.

⁵ Motion, p. 1.

⁶ The Registry Response to the Request merely states the practice of the Tribunal with regard to the translation of court session transcripts. The Registry does not represent that it is making any decision on the matter, nor does it cite to any provision enabling it to do so.

3. On 27 August 2008, the Deputy Registrar filed a Rule 33(B) submission with the Trial Chamber in response to the Motion (“Deputy Registrar Submission”).⁷ In its Submission, the Deputy Registrar stated that the distribution of transcripts in one of the official languages of the Tribunal, and the availability of the audio recordings in a language the Accused understands, was consistent with its translation policy and the Tribunal’s jurisprudence.⁸ The Deputy Registrar also noted the practical unfeasibility of translating transcripts into B/C/S and Cyrillic script in light of the Tribunal’s limited resources.⁹

4. On 2 September 2008, the Prosecution filed a response to the Motion, arguing that the relief requested by the Accused was without support in the Statute, Rules, jurisprudence, or practice of this Tribunal and should be denied (“Prosecution Response”).¹⁰ Specifically, the Prosecution argued that, “[a]lthough the transcription of an audio recording may be easier to use, such is a matter of convenience and not of fair trial”, and that similar requests for B/C/S transcriptions have been repeatedly denied by this Tribunal.¹¹ The Prosecution further argued that the Accused failed to provide any justification for a departure from the Tribunal’s usual practice of providing the B/C/S documents an accused does receive in Latin rather than Cyrillic script.¹²

5. On 5 September 2008, the Accused sent a letter to the Registry stating that he was returning two compact discs disclosed by the Prosecution on the basis that they contained material that was not in “Serbian” or in Cyrillic script (“Accused’s 5 September 2008 Letter”).¹³

Applicable law

6. Rule 3(A) of the Rules provides that the “working languages of the Tribunal shall be English and French”. The application of this Rule must be consistent, however, with the right of an accused to a fair trial as enshrined in Article 21(4) of the Statute, which provides, *inter alia*, that:

⁷ Submission of the Deputy Registrar Pursuant to Rule 33(B) Regarding Appeal by Mr. Karadžić of 19 August 2008, 27 August 2008 (“Deputy Registrar Submission”). The Trial Chamber notes that the Accused refused to accept delivery of this filing because it was not written in the “Serbian language”. See Procès-verbal, signed by the Accused and filed 3 September 2008.

⁸ Deputy Registrar Submission, paras 5-7.

⁹ Deputy Registrar Submission, paras 7-8.

¹⁰ Prosecution’s Response to Karadžić’s Submission Regarding the Registry’s Provision of Transcripts in the English Language, 2 September 2008 (“Prosecution Response”), paras 1, 7. The Trial Chamber notes that the Accused refused to accept delivery of this filing because it was not written in the “Serbian language”. See Procès-verbal, signed by the Accused and filed 11 September 2008.

¹¹ Prosecution Response, para. 5.

¹² Prosecution Response, para. 6.

¹³ Original in B/C/S with an English translation entitled “Return of materials on CDs received from the Prosecution”, 5 September 2008 (“Accused’s 5 September 2008 Letter”), p. 1.

[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...]
- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal[.]

7. The jurisprudence of this Tribunal is clear that neither Rule 3 of the Rules nor Article 21(4) of the Statute entitles an accused to receive all documents in a language he understands.¹⁴ Rather, only certain documents, most notably the indictment and those disclosed pursuant to Rule 66(A)(i) and (ii) of the Rules, need be made available to the accused in a language he understands.

8. Further, even where the Rules of this Tribunal do mandate that material be disclosed in a language that the accused understands, that right “does not automatically translate into a right for an accused, regardless of his or her background, education, experience, to come before the Tribunal and demand the production of documents in any language or script that he or she chooses.”¹⁵ The Appeals Chamber recently upheld the Trial Chamber’s oral decision in *Tolimir* denying a self-represented accused’s request to receive all materials disclosed to him in Cyrillic script.¹⁶

9. It is established that, as part of its pre-trial management, a Trial Chamber may exercise its discretion when considering requests for the translation of documents.¹⁷

Discussion

10. The Trial Chamber notes at the outset that the Accused does not contend that he is unable to understand English but only that his “knowledge of English is, in fact, inadequate for [him] to

¹⁴ *Prosecutor v. Tolimir*, IT-05-88/2-PT, Decision on Submission of Tolimir Requesting Translation of Documents and Transcripts, 20 July 2007 (“*Tolimir* Decision of 20 July 2007”), p. 3; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001 (“*Naletilić* Decision of 18 October 2001”), p. 2; *Prosecutor v. Delalić and Delić*, IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996 (“*Delalić* Decision of 25 September 1996”), para. 8.

¹⁵ *Prosecutor v. Tolimir*, IT-05-88/2-AR73.1, Decision on Zdravko Tolimir’s Request for Reconsideration of Appeals Chamber’s Decision of 28 March 2008, 18 June 2008 (“*Tolimir* Decision of 18 June 1008”), para. 11.

¹⁶ *Prosecutor v. Tolimir*, IT-05-88/2-PT, Oral Ruling of 11 December 2007, T. 113-116; *Prosecutor v. Tolimir*, IT-05-88/2-AR73.1, Decision on Interlocutory Appeal Against Oral Decision of the Pre-Trial Judge of 11 December 2007, 28 March 2008 (“*Tolimir* Decision of 28 March 2008”), para. 14; *Tolimir* Decision of 18 June 1008, para. 11.

¹⁷ *Tolimir* Decision of 28 March 2008, para. 6.

understand legal matters”.¹⁸ There is material which indicates that the Accused has a good understanding of the English language.¹⁹ Further, the Accused does not represent that he is better placed to understand legal matters in this Tribunal in B/C/S rather than in English. Nevertheless, the Trial Chamber makes no determination at this stage that English qualifies as a language the Accused understands for purposes of the Statute or the Rules. The Trial Chamber notes that neither the Prosecution nor the Registry has submitted that the Accused understands English. Thus, for purposes of this Motion, and solely therefor, the Trial Chamber will proceed on the basis that B/C/S is the appropriate “language” in which he should receive documents which the Statute or the Rules require to be in a language that he understands. As noted by the Appeals Chamber, in coming to terms with disputes on the proper qualification of the languages used in the region of the former Yugoslavia, and in particular in the Republics of Bosnia-Herzegovina, Croatia, and Serbia, the Tribunal has often adopted the acronym “B/C/S” to identify the Bosnian, Croatian, and Serbian languages.²⁰

11. The Trial Chamber notes that insofar as the Motion’s request for “all materials”²¹ pertains to material disclosed pursuant to Rule 66(A) of the Rules, the materials supporting the Indictment under Rule 66(A)(i) must indeed be communicated to the Accused in a language he understands.²² Additionally, statements of all witnesses whom the Prosecutor intends to call to testify at trial must also be provided in a language that the Accused understands within a time-limit prescribed by the Trial Chamber, in accordance with Rule 66(A)(ii). Further, given the importance of this material and the current self-represented status of the Accused, the Trial Chamber considers that any transcripts disclosed pursuant to Rule 66(A) should be transcribed into a language the Accused understands rather than provided to him in audio format.

12. The Trial Chamber also notes that it is the Registry’s existing practice to translate for the Accused all motions filed before the Trial Chamber, as well as orders or decisions issued by the Trial Chamber, and that it is content that this practice should continue.

¹⁸ Motion, p. 1.

¹⁹ The Trial Chamber notes, for example, that news articles report that the Accused spent a year of graduate studies at Columbia University in 1974-75. *See e.g.*, “Conversations – Radovan Karadžić: Understanding, and Letting Loose, Historic Hatreds in the Balkans”, John F. Burns, *New York Times*, 17 May 1992.

²⁰ *Tolimir* Decision of 28 March 2008, para. 14, fn 32 (noting that in the region of the former Yugoslavia, the terms “*hrvatskosrpski*” and “*srpskohrvatski*” were used, with the Cyrillic script prevalent in Serbia, the Latin script in Croatia and both used in Bosnia-Herzegovina).

²¹ Motion, p. 1.

²² *See* Rule 66(A)(i), which provides that, subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands within 30 days of the initial appearance of the accused copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor.

13. The Motion's request is overbroad, however, insofar as it seeks the wholesale translation of all documents disclosed to the Accused, including the transcripts of court proceedings that fall outwith Rule 66(A) of the Rules, into his preferred language (Serbian) and script (Cyrillic). The jurisprudence of this Tribunal is clear that an accused's rights pursuant to Article 21(4) of the Statute do not include a right to the translation of transcripts of proceedings into B/C/S.²³ The Prosecution is thus not required to disclose to the Accused in a language that he understands transcripts of proceedings in other cases that fall outwith Rule 66(A) of the Rules. Moreover, the Accused is receiving a real-time interpretation of the hearings in his case and also has access to this interpretation via audio format following the hearings. The Accused's right to a fair trial is satisfied by this arrangement and, the right to a fair trial does not require that an accused be provided, in addition, with the transcripts of the hearings in his case in a language he understands.²⁴

14. The Trial Chamber notes that the Statute affords the Accused the right "to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal."²⁵ Thus, if the Accused requires such language assistance to facilitate his defence preparations when using the English or French transcripts in conjunction with the B/C/S audio recordings, he is free to request this additional assistance with respect to the non-B/C/S documents made available to him. The Trial Chamber notes, for example, that the Accused can contact the Registry to discuss the facilities and assistance at his disposal, including the possibility of using a language assistant. The Accused might also reconsider whether to engage counsel of his choice who is proficient in one of the working languages of the Tribunal.²⁶ In that regard, the Trial Chamber notes that it would retain the discretion to permit the Accused to play an active role in the preparation and presentation of his defence, even where the Accused has counsel available to assist in his case.

15. In addition, the Trial Chamber finds that the Accused has failed to put forth sufficient reasons for why he is unable to accept B/C/S documents in the Latin rather than Cyrillic script. As stated in the Accused's 5 September 2008 Letter, his objections to Latin script are based upon "national, personal and family reasons and obligations to respect the Serbian language and the

²³ *Tolimir* Decision of 20 July 2007, p. 4; *Krajišnik* Oral Ruling of 30 July 2004, T. 4998-4999; *Delalić* Decision of 25 September 1996, para. 14.

²⁴ *Cf. Prosecutor v. Popović et al.*, IT-05-88-PT, Decision on Joint Defence Motion Seeking Certification of the Trial Chamber's Decision on the Joint Defence Motion Seeking the Trial Chamber to Order the Registrar to Provide the Defence with BCS Transcripts of Proceedings in Two Past Cases Before the International Tribunal, 23 March 2006 ("*Popović* Decision of 23 March 2006"), p. 2.

²⁵ Statute, Article 21(4)(f).

Cyrillic script.”²⁷ The Trial Chamber notes that the Accused does not argue that he is unable to understand B/C/S in Latin script — indeed, the Accused has himself made filings written in B/C/S in Latin script.²⁸ Instead, the Accused appears to be expressing a mere preference for Cyrillic script, which is an insufficient justification to depart from the standard practice of providing an accused with B/C/S documents in Latin script.²⁹

16. The Trial Chamber stresses that none of the foregoing should be understood to exclude the possibility that, going forward, it may authorise the translation of specific documents where the Accused has provided good cause for doing so.

Disposition

17. Accordingly, pursuant to Article 21 of the Statute and Rules 3, 54, and 66 of the Rules, the Trial Chamber hereby:

- (a) **ALLOWS** the Registry to continue to make available to the Accused all motions filed with the Trial Chamber, as well as all orders and decisions issued by the Trial Chamber, in a language he understands;
- (b) **REMINDS** the Prosecution of its obligations to make available to the Accused material in a language he understands, where mandated by the Statute and the Rules; and
- (c) **DENIES** the Motion in all other respects, without prejudice to any future motion submitted by the Accused as referenced in paragraph 16.

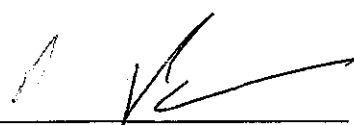
Done in English and French, the English text being authoritative.

²⁶ See Rule 44(A)(ii) of the Rules (stating that counsel engaged by an accused must have written and oral proficiency in one of the two working languages of the Tribunal, unless the Registrar deems it in the interests of justice to waive this requirement).

²⁷ Accused’s 5 September 2008 Letter, p. 1.

²⁸ See e.g. Original in B/C/S with an English translation entitled “Irregularities linked to my arrival before the Tribunal”, 1 August 2008.

²⁹ *Tolimir* Decision of 28 March 2008, para. 15.



Judge Patrick Robinson
Presiding

Dated this twenty-fifth day of September 2008
At The Hague
The Netherlands

[Seal of the Tribunal]