



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 November 2008
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 25 November 2008

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED MOTION FOR
FULL DISCLOSURE OF SUPPORTING MATERIAL**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon

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 “Motion for Full Disclosure of Supporting Material”, filed on 7 November 2008 (“Motion”), the “Prosecution’s Response to Karadžić’s Motion for Full Disclosure of Supporting Material and Prosecution’s Request for Reconsideration or Clarification of the Chamber’s 25 September 2008 Decision”, filed on 12 November 2008 (“Response and Request”), and the “Registry Submission Pursuant to Rule 33(B) Regarding Prosecution’s Request for Reconsideration or Clarification of the Chamber’s 25 September 2008 Decision”, filed on 21 November 2008, and hereby renders its decision thereon.

I. Procedural background

1. In July and November 1995, two initial indictments were confirmed jointly against the Accused in this case and one of the two remaining fugitives, Ratko Mladić, charging events in Bosnia and Herzegovina and Srebrenica respectively.¹ On 11 July 1996, the Trial Chamber joined these indictments.² On 18 May 2000, the indictment in respect of the Accused Karadžić was amended, consolidating the Bosnia and Herzegovina and Srebrenica indictments. This consolidated indictment was confirmed on 31 May 2000 and remains the operative Indictment (“First Amended Indictment”).

2. Following the initial appearance of the Accused before the Tribunal on 31 July 2008 and a further appearance on 29 August 2008, the Prosecution informed the Pre-Trial Judge at a status conference held on 17 September 2008 that it had completed disclosure of the supporting material to the First Amended Indictment pursuant to Rule 66(A)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).³ On 22 September 2008, the Prosecution filed a “Motion to Amend the First Amended Indictment” and an accompanying Proposed Second Amended Indictment (“Motion to Amend”).

3. On 25 September 2008, following a number of submissions from the Accused, the Prosecution and the Registry, the Trial Chamber issued a “Decision on the Accused’s Request that All Materials, Including Transcripts, Be Disclosed to Him in Serbian and Cyrillic Script”

¹ *Prosecutor v. Radovan Karadžić and Ratko Mladić*, IT-95-5-I, Review of the Indictment, 25 July 1995; *Prosecutor v. Radovan Karadžić and Ratko Mladić*, IT-95-18-I, Review of the Indictment, 16 November 1995.

² *Prosecutor v. Radovan Karadžić and Ratko Mladić*, IT-95-5-R61 and IT-95-18-R61, Review of Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996.

³ Status Conference, 17 September 2008, T. 59.

(“Decision of 25 September”), in which it reminded the Prosecution of its disclosure obligations.⁴ The Trial Chamber held that, for the purposes of that Decision, it would proceed on the basis that B/C/S is the appropriate “language” in which the Accused should receive documents required under the Statute of the Tribunal (“Statute”) and the Rules to be in a language he understands.⁵ Further, the Trial Chamber ruled 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”.⁶

4. The Motion to Amend was intimated to the Accused in B/C/S on 27 October 2008. At the Status Conference on 28 October 2008, the Prosecution indicated that there remained outstanding some materials supporting the Motion to Amend that had not yet been disclosed to the Accused in B/C/S pursuant to Rule 66(A)(i).⁷ The Prosecution was ordered to provide those materials and to file a notice when this had been accomplished.⁸ On 29 October, the Prosecution filed a “Notice Concerning Provision of Supporting Material for the Proposed Second Amended Indictment” (“Notice”), in which it informed the Trial Chamber that full disclosure of supporting materials to the Motion to Amend had taken place.⁹

II. Submissions

5. In the Motion, the Accused claims that, notwithstanding the Prosecution’s representation in the Notice, full disclosure of supporting materials has not taken place.¹⁰ The Accused seeks an order requiring the Prosecution to disclose the following materials:

- (a) A total of 64 transcripts, in “Serbian”, of the testimony of witnesses which formed part of the supporting material to the Motion to Amend, alleged to have been provided in audio format only;
- (b) “Serbian” translations of three outstanding witness statements;
- (c) the full transcripts of the testimony of a witness in respect of whom an order for delayed disclosure of identity to the accused has been granted in previous proceedings, and transcripts of the testimony of any other such witnesses;

⁴ Decision of 25 September, para. 17.

⁵ Decision of 25 September, para. 10.

⁶ Decision of 25 September, para. 11.

⁷ Status Conference, 28 October 2008, T. 71–72.

⁸ Order on Provision of Supporting Materials for Motion to Amend Indictment, 28 October 2008 (“Order of 28 October”).

⁹ Notice, para. 1.

¹⁰ Motion, para. 2.

- (d) all supporting material for all previous indictments, including 111 pages of supporting material filed *ex parte* on 24 July 1995 in support of the indictment in case number IT-95-5, an unknown number of pages of supporting material filed on 14 November 1995 in support of the indictment in case number IT-95-18, 717 pages in connection with the Rule 61 procedure on 25–26 July 1996 and further supporting material filed on 28 April 2000 in support of the First Amended Indictment;
- (e) “other *ex parte* representations” made by the Prosecution to the confirming judges in respect of previous indictments, including Prosecution briefs submitted on 24 July 1995 in connection with the confirmation of the indictment in case no IT-95-5, and on 14 November 1995 in connection with the confirmation of the indictment in case no IT-95-18, and oral representations made by the Prosecution to the confirming judge in respect of the First Amended Indictment on 26 May 2000.¹¹

6. The Accused notes that the 14-day time period to respond to the Motion to Amend will not start to run until he has disclosure of all supporting material pursuant to Rule 66(A)(i).¹²

7. In the Response and Request, the Prosecution asserts that it had completed disclosure to the Accused of materials supporting the Motion to Amend by 29 October 2008 as stated in the Notice. In the Prosecution’s submission, this disclosure includes both (i) the material supporting the First Amended Indictment under Rule 66(A)(i) and (ii) additional material supporting amendments contained in the Motion to Amend required under Rule 50(A)(ii), and asserts that “the Prosecution does not rely on any other material in support of the Proposed Second Amended Indictment”.¹³

8. As to the other materials sought by the Accused, the Prosecution clarifies, with particulars, that items (b) and (c) above have in fact been disclosed to the Accused. The Prosecution argues that items (d) and (e) above are not required to be disclosed, submitting that, pursuant to Rules 50(A)(ii) and 66(A)(i), the Accused is not entitled to disclosure of material supporting earlier inoperative indictments against him, and that oral submissions by the Prosecutor to the confirming judge do not constitute “supporting material”.¹⁴

9. As part of its request for reconsideration contained in the Response and Request, the Prosecution requests that the Trial Chamber reconsider its Decision of 25 September in respect of the determination of the appropriate language for disclosure of this material, on the grounds first,

¹¹ Motion, paras. 3–23.

¹² Motion, para. 23.

¹³ Response and Request, para. 8.

¹⁴ Response and Request, paras. 8–9.

that, since that Decision was made it has become clear that : (i) for the purposes of Rule 66(A) the Accused can understand English, and (ii) he now has an English-speaking legal associate who is a fully-qualified attorney;¹⁵ and, second, the Decision of 25 September is inconsistent with the case law of the Tribunal, and is “practically infeasible” as transcription into B/C/S would require significant expenditure of time and resources.¹⁶

10. In the alternative, the Prosecution requests clarification of: (i) who has the obligation to provide B/C/S transcriptions of the audio files, and (ii) whether the commencement of the 14-day period for the Accused to respond to the Motion to Amend depends on the provision of these transcriptions.¹⁷

11. On 21 November 2008 the Registry filed a submission with the Trial Chamber pursuant to Rule 33(B), addressing the onus of disclosing material in a language the Accused understands. The Registry submits that it is for the Prosecution to ensure that its disclosure obligations are fully discharged under Rule 66(A) and that the Registry has no involvement in the disclosure process, other than to facilitate the transmission of the material to a detained self-represented accused at the United Nations Detention Unit.

III. Applicable law

A. Duty to disclose materials supporting an indictment

12. Article 19, paragraph 1, of the Statute provides for the confirmation of an indictment by a Judge of the Tribunal, stating as follows:

The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

13. Rule 47 of the Rules provides for this process in more detail. Under Rule 47(B), the Prosecutor, “if satisfied ... that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal”, shall prepare an indictment and forward it to the Registrar, along with supporting material. Having received these materials from the Registrar, the reviewing Judge, pursuant to Rule 47(E), shall “examine each of the counts in the indictment, and any supporting materials ... to determine,

¹⁵ Response and Request, paras. 11, 13–19.

¹⁶ Response and Request, paras. 20–22.

¹⁷ Response and Request, para. 23.

applying the standard set forth in Article 19, paragraph 1, of the Statute, whether a case exists against the suspect.” The reviewing Judge may then confirm or dismiss each count or may request additional supporting material or adjourn the review for modification of the indictment.

14. Once an indictment has been confirmed pursuant to this standard in accordance with Rule 47 of the Rules, the Prosecutor may apply for leave to amend it under Rule 50(A)(i)(b) or (c). Rule 50(A)(ii) requires that “leave to amend an indictment shall not be granted unless the Trial Chamber or Judge is satisfied that there is evidence which satisfies the standard set forth in Article 19, paragraph 1, of the Statute to support the proposed amendment”.

15. Once an accused has been arrested and brought before the Tribunal, Rule 66(A)(i) of the Rules requires the Prosecutor to “make available to the defence in a language which the accused understands ... within thirty 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 from the accused”. The materials supporting a proposed amendment to an Indictment are disclosed to the Accused as part of the procedure pursuant to Rule 50(A), so as to ensure that he is fully informed of the charges against him in accordance with the fair trial guarantees set out in Article 21(4)(a) of the Statute.

(i) Disclosure of transcripts in audio format

16. As noted above, in its Decision of 25 September, this Trial Chamber decided, for the sole purpose of determining the underlying motion, to proceed on the basis that when the Statute or Rules require material to be disclosed in “a language the accused understands”, that “language” is B/C/S.¹⁸ The Trial Chamber reminded the Prosecution of its obligation to make such disclosure in a language the Accused understands,¹⁹ and held that “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”.²⁰

17. The Appeals Chamber has held that decisions relating to pre-trial management, and specifically those in relation to the language and translation of documents, are discretionary in nature.²¹ A number of Trial Chambers have dealt with the issue of whether disclosure of witness

¹⁸ Decision of 25 September, para. 10.

¹⁹ Decision of 25 September, para. 17.

²⁰ Decision of 25 September, para. 11.

²¹ See *Prosecutor v. Tolimir*, Case No. IT-05-88/2-AR73.1, Decision on Interlocutory Appeal against Oral Decision of the Pre-Trial Judge of 11 December 2007, para. 6; *Prosecutor v. Šešelj*, Case No. IT-03-67-AR73.5, Decision on

testimony in audio format is sufficient to discharge the Prosecutor's obligations under Rule 66(A)(ii). In particular, Trial Chambers in the *Perišić, Prlić, Ljubičić, Popović* and *Krajišnik* cases have held that disclosure of Rule 66(A)(ii) statements in B/C/S audio format is sufficient.²² Only one Trial Chamber, in *Popović*, has dealt with Rule 66(A)(i), holding that this Rule "can be satisfied by a disclosure of the specified material in audio format".²³ In making this determination, the *Popović* Trial Chamber considered in particular that the Prosecution had proposed to identify in the English transcripts the direct evidence linking various Accused to the crimes charged, and also to provide B/C/S indexes of the English transcripts to enable the accused more readily to locate relevant testimony in the recordings.²⁴ These decisions all relate to accused represented by counsel before the Tribunal.

18. There is no consistent practice in this matter in relation to *pro se* accused. In *Prosecutor v. Šešelj*, the Trial Chamber considered that all Rule 66(A) and Rule 68(i) materials must be disclosed to the accused in hard-copy and in B/C/S, especially in light of the fact that the accused in that case was self-represented and did not wish to use a computer, preferring to examine the hardcopy documents.²⁵ In its reasoning, that Trial Chamber adhered to the principle originally articulated in *Prosecutor v. Brđanin*, that "the raison d'être behind the disclosure rules is undoubtedly to permit the accused to make effective use of that material".²⁶ Although there was no issue as to transcripts, the *Kvočka* Appeals Chamber made a similar determination that Mr. Zigić, an accused in that case, was entitled to translation of certain documents relating to his appeal into B/C/S on an exceptional basis because he was self-represented.²⁷

Vojislav Šešelj's Interlocutory Appeal against the Trial Chamber's Decision on Forms of Disclosure, 17 April 2007, para. 14.

²² *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Order for the Prosecution to Provide Documents to the Defence in a Language the Accused Understands, 8 July 2008, p. 2; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order for the Translation of Documents, 17 January 2006; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on the Defence Counsel's Request for Translation of All Documents, 20 November 2002; *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on 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 Tribunal, 6 March 2006 ("*Popović* Decision"), p. 5; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Oral Ruling, 30 July 2004, T. 4993–4999.

²³ *Popović* Decision, p. 5; affirmed in *Prosecutor v. Popović et al.*, 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 Tribunal, 23 March 2006, p. 3.

²⁴ *Popović* Decision, p. 6.

²⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Motion Number 289 Regarding Form of Disclosure, 7 June 2007 ("*Šešelj* Decision"), paras. 33–36.

²⁶ *Šešelj* Decision, para. 35; cf. *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on Motion for Relief from Rule 68 Violations by the Prosecutor and for Sanctions to be Imposed Pursuant to Rule 68*bis* and Motion for Adjournment While Matters Affecting Justice and a Fair Trial Can Be Resolved, 30 October 2002, para. 26.

²⁷ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Zoran Zigić's Motion for Translation of Documents Pertaining to His Appeal, 3 October 2002.

(ii) *Disclosure of transcripts of witnesses subject to orders for delayed disclosure of identity to the accused*

19. Pursuant to Rule 69(A), the Prosecutor may in exceptional circumstances apply to a Judge or a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk. Rule 75(F)(i) provides that protective measures ordered in respect of a witness in any proceedings before the Tribunal continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (second proceedings) unless they are varied or rescinded, but Rule 75(F)(ii) provides that this does not prevent the Prosecutor from discharging any disclosure obligation in the second proceedings, provided that the defence in the second proceedings is informed of the nature of the protective measures. Where delayed disclosure has been ordered or continued in respect of a witness whose testimony forms part of the supporting material to an indictment or an amended indictment, Rules 66(A)(i), 69(A) and 75(F) are satisfied by the disclosure by the Prosecution to the Accused of the relevant sections of witness testimony with identifying details redacted.

(iii) *Disclosure of supporting material for previously operative indictments, briefs and oral submissions*

20. Pursuant to Rule 47 as set out above, “supporting material” is the material submitted to the confirming Judge which provides the evidence substantiating the charges in the indictment, and assists the confirming Judge in determining whether there is a *prima facie* case. The Trial Chamber in *Prosecutor v. Kordić and Čerkez* held that “‘supporting material’ means the material upon which the charges are based and does not include other material that may be submitted to the confirming Judge, such as a brief of argument or statement of facts”.²⁸

21. In *Prosecutor v. Ojdanić and Šainović*, the Trial Chamber approved this delimitation of the concept, and determined that oral submissions made by the Prosecutor before the confirming Judge were not to be disclosed, as “there is no obligation on the Prosecution to disclose material other than that upon which the charges are based”.²⁹ However, they determined that matters regarding confirmation of the Indictment remained within the remit of the confirming Judge, who at that point still held office at the Tribunal. That Judge, having been seised of the matter by the accused;

²⁸ *Prosecutor v. Kordić and Čerkez* Case No. IT-95-14/2, Order on Motion to Compel Compliance by the Prosecutor with Rules 66 (A) and 68, 26 February. 1999, p. 3.

²⁹ *Prosecutor v. Ojdanić and Šainović*, Case No.: IT-99-37-PT, Decision on Defence Motion to Require Full Compliance with Rule 66(A)(i) and for Unsealing of *Ex Parte* Materials, 18 October 2002; affirmed in *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-I, Decision on Application by Dragoljub Ojdanić for Disclosure of *Ex Parte* Submissions, 8 November 2002 (“*Milutinović et al.* Decision”), para. 16.

concurred with the ruling of the Trial Chamber that Rule 66(A)(i) does not entitle the accused to disclosure of submissions made by the Prosecutor before the confirming judge.³⁰ The confirming Judge did, in that decision, order disclosure to both accused of certain *ex parte* written submissions made by the Prosecution upon confirmation of the indictment which were intended to act as a guide or index for the confirming Judge, as well as a written minute of one *in camera* confirmation hearing which had been under seal, but concluded that these did not amount to supporting materials under Rule 66(A)(i).³¹

B. Legal standard for reconsideration

22. The Appeals Chamber has definitively 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.’”³²

IV. Discussion

A. Disclosure of materials requested by the Accused in the Motion

23. In accordance with its Decision of 25 September, the Trial Chamber considers that the Prosecution, in fulfilling its obligation under Rule 66(A)(i), must disclose to the Accused any witness testimony forming part of the supporting materials to the Motion to Amend in B/C/S in transcribed form, rather than in audio files.

24. The Trial Chamber accepts the Prosecution’s submission that the three witness statements claimed by the Accused to be outstanding have in fact been disclosed to the Accused.

25. Similarly, the Trial Chamber is satisfied that the required disclosure to the Accused of the five pages of testimony of the witness subject to delayed disclosure forming part of the supporting materials to the Motion to Amend has taken place in accordance with the Prosecution’s representations. Once the period for delayed disclosure expires—*i.e.*, 30 days before trial—the Prosecution must disclose to the Accused the unredacted statements of the relevant witness and any other such witnesses.

³⁰ *Milutinović et al.* Decision, para. 16.

³¹ *Milutinović et al.* Decision, para. 26.

³² *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.

26. The Trial Chamber concludes, in line with the law set out above, that supporting material for previous inoperative indictments that has not been relied upon for confirmation of any charge which remains in an amended indictment, and *ex parte* submissions of the Prosecution before the confirming judge, including legal briefs and oral submissions, are not supporting materials falling under Rule 66(A)(i) and are not required to be disclosed. The Accused's assertion that "in the *Ojdanić* case, the confirming Judge ordered disclosure of all of this type of material"³³ is inaccurate. As noted above, in the decision cited by the Accused to support this contention, the confirming Judge ordered disclosure of some *ex parte* materials related to the review hearing for the amended indictment in that case, but agreed with the Trial Chamber that these did not amount to supporting materials under Rule 66(A)(i).³⁴ This decision does not provide applicable precedent in support of the Accused's contention. However, the Accused remains entitled pursuant to Rule 66(B) to request the Prosecution to allow him to inspect any documents in the Prosecution's custody or control which are material to the preparation of his defence.

B. Prosecution request for reconsideration and clarification

(i) Prosecution request for reconsideration of Decision of 25 September

27. The Trial Chamber does not consider that the Prosecution's arguments in the Response and Request establish that the Decision of 25 September contains a "clear error of reasoning" or gives rise to "injustice" in order to satisfy the reconsideration standard required by the Appeals Chamber.

28. The Trial Chamber was cognisant, when making its ruling in the Decision of 25 September as to the format of witness testimony disclosed under Rule 66(A), that it was taking a different approach to that adopted by some other Trial Chambers, particularly as regards Rule 66(A)(ii). However, none of these cases concerned disclosure under Rule 66(A)(i) to a self-representing accused. In the one comparable case in which the accused was self-representing, a similar approach was followed to that taken by this Trial Chamber. Taking into account the circumstances of the instant case and the fact that it would have been unrealistic to expect the Accused to work through many hours of audio recordings of essential supporting material in real time, this Trial Chamber validly exercised its discretion in relation to issues of pre-trial management to allow the Accused to make effective use of the materials upon which the charges against him are based.

29. The Trial Chamber is mindful that the issue of language and translation is an ongoing one, and that circumstances may change throughout the course of pre-trial and trial proceedings. The

³³ Motion, para. 22.

³⁴ *Milutinović et al.* Decision, para. 26.

Decision of 25 September thus made no final determination as to the language for all materials, but made a determination as to the language for disclosure under Rule 66(A) to ensure the expeditious progress of the case. The Trial Chamber notes that the Accused continues to be self-represented, notwithstanding that he has legal assistance. In its Decision of 25 September, the Trial Chamber observed that, although there was some evidence that the Accused has a good understanding of English, the Chamber was not prepared to conclude that he could handle legal matters in English.³⁵ For the purposes of this decision, and in light of the vague nature of the Prosecution's submission in this respect, that remains the position of the Trial Chamber. Further, while accepting that transcription in B/C/S of the relevant material requires expenditure of time and resources, this is no justification for reconsideration of the Decision. Accordingly, the Trial Chamber will refuse the Prosecution's request for reconsideration of that Decision.

30. The Trial Chamber notes that the Prosecution was given due notice of the nature of this obligation in the Decision of 25 September and only now seeks reconsideration. Instead of taking steps to provide the material as ordered, it has waited almost two months before raising any objection to it. This in itself causes a delay in proceedings.

(ii) Prosecution request for clarification of Decision of 25 September

31. The Trial Chamber considers that the effect of the Decision of 25 September is plain, and does not require clarification. Nevertheless, for the avoidance of doubt, the Trial Chamber draws the Prosecution's attention to the words of Rule 66(A), which provide that "the Prosecutor shall make available to the defence [the relevant material] in a language which the Accused understands". The Trial Chamber notes that the Registry submission concurs with the Trial Chamber's view on this point. In addition, the Trial Chamber reiterates the holding of the Pre-Trial Judge in his Order of 28 October that "the time for the Accused's response to the Motion to Amend should start to run from the date upon which he has received all the supporting material in B/C/S".³⁶

32. As to the statements made in the Status Conference of 28 October 2008 and referred to by the Prosecution in the Response and Request, the Trial Chamber notes that the Prosecution did not specifically refer to transcripts when it stated that, in respect of supporting materials yet to be served on the Accused, "there may be a few, that is, a handful of translation[s] that have not been provided; and there may also be an issue with some of the B/C/S audios that I would need to check

³⁵ Decision of 25 September, para. 10.

³⁶ Order of 28 October, para. 1 (emphasis added).

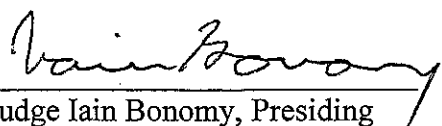
[up on]”.³⁷ The Prosecution’s non-specific reference to “B/C/S audios” did not make it clear to the Pre-Trial Judge that there were outstanding B/C/S audio files of testimony yet to be transcribed in accordance with the Trial Chamber’s Decision of 25 September. In fact, in the absence of any indication to the contrary, the Pre-Trial Judge, and indeed the Trial Chamber, was entitled to have an expectation that the Decision of 25 September had been complied with.

V. Disposition

33. Accordingly, the Trial Chamber, pursuant to Rules 50, 54 and 66 of the Rules of Procedure and Evidence of the Tribunal, hereby:

- (a) REAFFIRMS its Decision of 25 September 2008;
- (b) GRANTS the Motion, in part, and ORDERS the Prosecution to comply with its obligation pursuant to Rule 66(A)(i) to disclose to the Accused, in B/C/S, transcriptions of all witness testimony forming part of the supporting material for the Motion to Amend;
- (c) ORDERS the Prosecution to file a Notice informing the Trial Chamber when full disclosure has been accomplished pursuant to Rule 66(A)(i);
- (d) DENIES the Motion in all other respects; and
- (e) DENIES the Prosecution Request for Reconsideration or Clarification.

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


Judge Iain Bonomy, Presiding

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

[Seal of the Tribunal]

³⁷ Status Conference, 28 October 2008, T. 71.