



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: 19 June 2009  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision of:** 19 June 2009

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON MOTION FOR ORDER FOR  
CONTACT WITH PROSECUTION WITNESSES**

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**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**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 Order for Contact with Prosecution Witnesses”, filed on 2 June 2009 (“Motion”), and hereby renders its decision thereon.

1. On 2 September 2008, the Trial Chamber issued its Decision on Prosecution Motion for Non-Disclosure, stating that the Office of the Prosecutor (“Prosecution”) may “as a general protective measure for the purpose of disclosure to the Accused” redact from the statements, affidavits, or formal statements of victims, witnesses or potential witnesses then being disclosed to the Accused, any information that discloses or might lead to the disclosure of the current whereabouts of a witness or potential witness who had given a prior statement to the Prosecution.<sup>1</sup> The Chamber further noted that “to the extent reasonably necessary to allow the Accused to prepare for and participate in these proceedings and present a defence, the Accused may seek to obtain from the Prosecution the current whereabouts of a victim, witness, or potential witness.”<sup>2</sup>

2. The Accused subsequently wrote to the Prosecution requesting the contact information of some of the witnesses on its Rule 65 *ter* witness list, so that he could contact them to ask if they were willing to be interviewed by his defence team.<sup>3</sup> The Prosecution responded that it does not disclose witness contact information without first obtaining the permission of the relevant witness, and offered to communicate with the witnesses identified by the Accused in order to determine whether they are willing for their contact details to be given to him.<sup>4</sup>

3. Consequently, the Accused filed the Motion, seeking an order from the Chamber directing the Tribunal’s Victims and Witnesses Section (“VWS”), which is part of the Registry, to contact the relevant witnesses in order to ascertain whether they would consent to be interviewed by the Accused or a member of his defence team. He argues that he does not consider it appropriate for the Prosecution to perform this function, and specifically asks that the VWS be required to perform the following tasks:

- (a) obtain from the Prosecution the contact information for all of its witnesses;
- (b) obtain from the Accused the list of Prosecution witnesses whom he wishes to interview;

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<sup>1</sup> Decision on Prosecution Motion for Non-Disclosure, 8 September 2008, para. 16(c).

<sup>2</sup> Decision on Prosecution Motion for Non-Disclosure, 8 September 2008, para. 16(e).

<sup>3</sup> Motion, Annex A.

<sup>4</sup> Motion, Annex B.

(c) contact the witnesses listed by the Accused and determine (1) if they consent to meet with the Accused or a member of his defence team, and (2) if they do consent, whether they desire that a representative of the Prosecution be present at the interview;

(d) advise the Accused of the result of these inquiries;

(e) facilitate and pay for the transportation to The Hague of the witnesses willing to be interviewed by the Accused;

(f) facilitate the making of appointments for interview at a place convenient to the witness between the Accused's defence team and those witnesses willing to be interviewed by them;

(g) provide notice to the Prosecution of the date, time, and place of interviews of those witnesses who have indicated that they wish a representative of the Prosecution to be present.<sup>5</sup>

4. At the Status Conference held on 3 June 2009, the Prosecution responded orally to the Motion, stating that it does not have a particular objection to the VWS contacting the witnesses, as requested by the Accused, provided that this is done in a proper manner, in consultation with the Prosecution.<sup>6</sup> The pre-trial Judge invited the Registry to make a submission on the issue, under Rule 33(B) of the Tribunal's Rules of Procedure and Evidence ("Rules"), by 10 June 2009.

5. The "Registry Submission on the Accused's Motion on Contact with Prosecution Witnesses", filed on 10 June 2009 ("Registry Submission"), observes that the VWS is an "independent and neutral body within the Registry" and raises the concern that, should the Chamber order the VWS to contact Prosecution witnesses in the manner requested by the Accused, this could compromise its neutral role.<sup>7</sup> It also submits that the Accused has the necessary resources, as well as the responsibility, to contact the Prosecution witnesses and determine whether they are willing to be interviewed by him and his team. The Registry also states that the "Directive on Allowances for Witnesses and Expert Witnesses" provides that the Tribunal "shall provide and arrange transportation" for witnesses to travel to The Hague, or such other place as they are required to testify from, and cover the costs thereof. It does not, therefore, make such arrangements or pay for such travel for interviews at this stage of the proceedings.<sup>8</sup> It further submits that facilitating the making of appointments for interviews of Prosecution witnesses by the Accused or his defence team is not something normally performed by the VWS, but rather the defence team itself.<sup>9</sup> Should the VWS be required to contact Prosecution witnesses at the request of the Accused,

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<sup>5</sup> Motion, para. 5.

<sup>6</sup> Status Conference, T. 300–301 (3 June 2009).

<sup>7</sup> Registry Submission, para. 5.

<sup>8</sup> Registry Submission, para. 8.

<sup>9</sup> Registry Submission, para. 10.

it would be willing only to ask them whether or not they consent to their contact information being provided to the Accused and his defence team.<sup>10</sup>

6. This matter was further discussed at the Rule 65 *ter* meeting convened by the pre-trial Judge on 15 June 2009, to which a representative of the VWS was invited.

7. Article 21 of the Tribunal's Statute, setting out the rights of the accused, provides in paragraph 4, sub-paragraph (e) that the accused is entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Under Rule 69, the Prosecution may apply to a Judge or Trial Chamber at the pre-trial stage of proceedings to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until such time as they are brought under the protection of the Tribunal. Absent such an order, the accused is entitled to know the identities of the witnesses against him, and the current whereabouts of or contact information for those witnesses.<sup>11</sup> Once he is in possession of that material, there is no reason why the necessary inquiries cannot be made by the Accused himself, or those who act on his behalf. The Prosecution should therefore provide this information to the Accused in relation to those witnesses he wishes to contact. When it provides this material to the Accused, the Prosecution may contact the relevant witnesses to let them know that it has done so.

8. Once the Accused is in possession of the contact information of the witnesses listed by the Prosecution in its Rule 65 *ter* witness list whom he wishes to interview, he or one of his assigned legal associates, or other appropriate person assisting them, can contact the witnesses directly in order to ascertain whether they are willing to be interviewed. While co-operation with such requests for interview is to be encouraged, it is ultimately for the witnesses to decide whether to consent to being interviewed by a representative of the Accused.

9. The Trial Chamber notes in this regard that it is unnecessary for witnesses to be brought to The Hague for interview by the Accused or his associates at this stage of the proceedings, and that such interviews can be carried out by members of his defence team in the region of the former Yugoslavia, or in other locations where they are. The Chamber will not, therefore, order the

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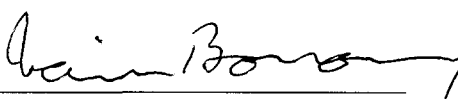
<sup>10</sup> Registry Submission, para. 11.

<sup>11</sup> *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Milan Lukić's Motion to Compel Disclosure of Contact Information and on the Prosecution's Urgent Motion to Compel Production of Contact Information, 30 March 2009, para. 25; *Prosecutor v. Vladimir Lazarević*, Case No. IT-03-70-PT, Decision on Prosecution's Motion for Order of Non-Disclosure to Public of Materials Disclosed Pursuant to Rule 66(A) and Rule 68, 15 March 2005, p. 3.

Registry to pay for the transportation of witnesses to The Hague for the purposes of interview by the Accused, at the present time.

10. For these reasons, pursuant to Rule 54 of the Rules, the Trial Chamber hereby **DENIES** the Motion and **ORDERS** the Prosecution to provide to the Accused the contact information of those witnesses requested by him, subject to the exception of those witnesses who have been granted relevant protective measures.

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

  
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Judge Iain Bony, Presiding

Dated this nineteenth day of June 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**