



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: 3 February 2010

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

Order of: 3 February 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER SETTING DEADLINES FOR FURTHER SUBMISSIONS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed 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”) is seised of the Motion for Postponement of Trial, filed by the Accused on 1 February 2010 (“Motion”), and hereby issues this Order in relation thereto.

1. In the Motion, the Accused requests that the Trial Chamber postpone the resumption of his trial on 1 March 2010, on the grounds that “his rights to adequate facilities and to choose his standby counsel have been violated by the Registrar, making it impossible for him to prepare for and participate in the trial.”¹ Amongst his arguments in support of the Motion, the Accused states that the Office of the Prosecutor (“Prosecution”) has furnished an additional 300,000 pages of disclosure material from the adjournment of his trial at the beginning of November 2009, and has filed motions for the admission of numerous documents and for judicial notice of adjudicated facts.² The Accused also suggests that the decision on his Motion be postponed until after decisions are made in two pending appeals—one before the President of the Tribunal concerning Registry funding for his defence team, and one before the Appeals Chamber concerning the propriety of the appointment of Mr. Richard Harvey by the Registrar—and he has had the opportunity to supplement his Motion with further submissions in light of those decisions.³

2. The Trial Chamber considers that it would be helpful to its determination of the Motion to receive further submissions from the Accused, and a response from the Prosecution, on the specific issue of the disclosure of material to the Accused by the Prosecution, following the President’s decision on defence funding. Given that the trial is set to resume on 1 March 2010, the Trial Chamber further considers that it is in the interests of justice to set deadlines now for those submissions and response.

3. The Chamber notes that, according to the regular disclosure reports filed by the Prosecution, in the period from 15 October 2009 to 15 January 2010, the Prosecution has disclosed to the Accused a total of 291,049 pages of material. Of that total, 2.1% (6,188 pages) is material falling under Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), 2.9% (8,371 pages) is material falling under Rule 66(A)(ii) of the Rules, 85.2% (247,917 pages) is material falling under Rule 66(B) of the Rules, and 9.8% (28,573 pages) is material falling under

¹ Motion, para. 1.

² Motion, para. 14.

³ Motion, para. 20.

Rule 68 of the Rules. A further disclosure report is expected from the Prosecution covering the period of 16 January to 15 February 2010, on 15 February 2010.

4. Since the Prosecution's disclosure obligation with regard to material falling under Rule 68 is an ongoing one, the Chamber has no questions in relation to this category of material at this time. With regard to the large volume of material disclosed under Rule 66(B), the Chamber notes that these items have been requested from the Prosecution by the Accused, because, according to Rule 66(B)(i), either (i) he considers them material to the preparation of his defence, (ii) they are intended for use by the Prosecution at trial, or (iii) they were obtained from or belonged to the Accused. Given that any items falling within the second of these categories should already have been disclosed to the Accused due to the Prosecution's other disclosure obligations, the Chamber assumes that only the first and the third reasons for requesting the material apply here. It would be of assistance to the Chamber to know from the Accused and the Prosecution the date upon which the Accused requested the Rule 66(B) material that was disclosed to him between November 2009 and January 2010, as well as the nature of that material and its relevance to the case.

5. With regard to the material disclosed in this time period falling under Rule 66(A)(ii) of the Rules, the Chamber notes that the deadline set by the Pre-trial Judge for disclosure was 7 May 2009. It further notes its Decision on Accused's Motion to Set Deadlines for Disclosure, dated 1 October 2009 ("Decision on Deadlines for Disclosure") in which it expressed concern about the continuing disclosure of Rule 66(A)(ii) material following the expiry of the May deadline. In the Decision on Deadlines for Disclosure, the Chamber stated that witness statements subject to delayed disclosure would constitute an exception to the May deadline, as would "statements provided to the Prosecution, or transcripts of testimony given, after the deadline" and materials relating to witnesses added to the Prosecution's witness list after the deadline.⁴ The Chamber further stated that it was not sympathetic to the late disclosure of items because of "technical reasons", or because those items were being processed by other teams within the Prosecution and the team working on this case was not aware of them. It would therefore assist the Chamber if the Prosecution provided detailed reasons for the late disclosure of all the Rule 66(A)(ii) material provided to the Accused in the period November 2009 to January 2010.

6. Finally, in relation to the material disclosed in this time period falling under Rule 65 *ter* of the Rules, the Chamber notes that the deadline set by the Pre-trial Judge for disclosure was 25 May 2009. In its Decision on Deadlines for Disclosure, the Chamber stated that all material

listed on the Prosecution's Rule 65 *ter* exhibit list should have been disclosed to the Accused by the May deadline, apart from items which the Prosecution might seek to add to its Rule 65 *ter* exhibit list subsequently.⁵ Once again, it would assist the Chamber if the Prosecution provided detailed reasons for the late disclosure of the 6,188 pages of Rule 65 *ter* material disclosed to the Accused between November 2009 and January 2010, and if the Prosecution provided more information about the nature of that material, and whether it is material that the Prosecution has already sought leave from the Chamber to add to its Rule 65 *ter* exhibit list.

7. For these reasons, pursuant to Rules 54 and 126 *bis* of the Rules, the Trial Chamber hereby **ORDERS** (i) the Accused to make any further submissions in relation to the Motion that he wishes, including on the issues set out above, within **three days** of the President's decision on the Accused's "Request for Review of OLAD Decision on Trial Phase Remuneration", and (ii) the Prosecution to file its response to the Motion and any further submissions made by the Accused, and to address the issues set out above, including in relation to any further material disclosed to the Accused in the period to 15 February 2010, within **three days** of the Accused's further submissions.

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



Judge O-Gon Kwon
Presiding

Dated this third day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ Decision on Deadlines for Disclosure, para. 14 (check)

⁵ Decision on Deadlines for Disclosure, para. 18.