



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: 18 August 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

Decision of: 18 August 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION FOR SUSPENSION OF PROCEEDINGS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby 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 Suspension of Proceedings”, filed by the Accused on 10 August 2010 (“Motion”), and hereby issues its decision thereon.

1. According to the Motion, on 4 August 2010, the Office of the Prosecutor (“Prosecution”) disclosed to the Accused audio and video cassettes and CDs seized from the Belgrade residence of Bosiljka Mladić, wife of General Ratko Mladić, during searches conducted in March 2010 by the Serbian authorities.¹ The Accused argues that this material is related to notebooks also seized from the same residence at that time, as a number of entries in the notebooks refer to the recordings of meetings, and the labels on some of the disclosed cassettes suggest that they are recordings of some of the same meetings.²

2. In the Motion, the Accused requests that the trial proceedings be adjourned for a period of three weeks in order to allow him and his defence team to review the disclosed cassettes and CDs. He argues that, based on his review of the notebooks seized at the same time, which was done during the summer judicial recess, the cassettes and CDs may contain a significant amount of exculpatory material.³ He estimates that his review of the recordings will take approximately 113 hours, and argues that without the requested suspension of the proceedings, he will simply be unable to do it until the summer recess next year.⁴ Further, he argues that without sufficient time to review the material at this stage of the proceedings, he may have to recall witnesses who have already testified and who were participants in some of the recorded meetings, which would disturb and prolong the trial more than the requested suspension.⁵ Finally, the Accused asserts that if the requested suspension is denied, his right to a fair trial will be jeopardised.⁶

3. On 12 August 2010, the Prosecution filed the “Prosecution’s Response to Accused’s Motion for Suspension of Proceedings” (“Response”), opposing the Motion. The Prosecution asserts that the Accused has neither provided valid reasons for the requested suspension of the proceedings nor showed that this measure is in the interests of justice.⁷ It argues that it disclosed the material in question in a timely manner, pursuant to a request from the Accused made under

¹ Motion, para. 1

² Motion, paras. 3–4.

³ Motion, para. 5.

⁴ Motion, para 6.

⁵ Motion para. 7.

⁶ Motion, paras. 8-9.

⁷ Response, para. 1.

Rule 66(B) of the Rules of Procedure and Evidence (“Rules”).⁸ It also asserts that, contrary to the submission of the Accused, the content of the disclosed material is known to him because the Serbian authorities provided a detailed inventory of all the items seized and also indicated, where possible, the participants in or general subject matter of the meetings recorded. From this information, the Prosecution suggests that much of the material may be irrelevant to these proceedings, or at least to witnesses to be called in the case in the upcoming period.⁹

4. The Prosecution asserts that, considering the early stage of the proceedings, the Accused will have sufficient time for preparation during the course of the trial, suggesting that such preparation includes the review of this and other material disclosed by it in accordance with its disclosure obligations.¹⁰ It also argues that recalling witnesses for further questioning in relation to specific information contained in the material, where necessary, would more effectively balance the Accused’s right for adequate time for preparation of his defence with the right to an expeditious trial.¹¹

5. The Chamber recalls that Articles 20(1) and 21(4)(c) of the Statute of the Tribunal (“Statute”) protect the rights of an accused person to be tried expeditiously, with full respect for his rights, and without undue delay. In addition, Article 21(4)(b) of the Statute provides that an accused person should have “adequate time and facilities for the preparation of his defence”. The Chamber further recalls that an adjournment of the proceedings is an exceptional measure, which it will only order if convinced that it is in the interests of justice to do so.

6. There is no suggestion made by the Accused that the Prosecution acted inappropriately or with any delay in its disclosure to him of the cassettes and CDs, which are discussed in the Motion. Indeed, he acknowledges that there is no “fault” on the part of the Prosecution in the recent discovery of the material seized from the Mladić residence.¹² Nonetheless, the fact remains that a substantial quantity of material, which may include potentially exculpatory evidence, was provided to the Accused on 4 and 6 August 2010.¹³ While a detailed index to that material prepared by the Serbian authorities may have been provided to the Accused, which would suggest which tapes he should initially focus his attention upon, such an index cannot substitute for his own detailed review of all the material (no doubt also being conducted by the

⁸ Response, para. 4.

⁹ Response, para. 5.

¹⁰ Response, para. 6.

¹¹ Response, para. 7.

¹² Motion, para. 9.

¹³ The Prosecution states that 50 audio cassettes, five DVDs and six VHS tapes were disclosed on 4 August 2010, and a further 36 audio cassettes were disclosed on 6 August 2010. *See* Response, fn. 14.

Prosecution) so that the Accused can be satisfied as to the nature of its content and whether it contains anything exculpatory or otherwise important for his defence.

7. The Chamber is also not satisfied that continuing with the trial proceedings, and allowing the Accused to later recall certain witnesses for further cross-examination following his review of the seized material, if necessary, is sufficient, in this instance, to ensure his fair trial rights. Moreover, it will not be, in practical terms, conducive to the smooth conduct of the trial. The Chamber, therefore, considers that a suspension of proceedings is in the interests of justice, following the completion of the testimony of Richard Higgs and Tomasz Blaszczyk. However, taking into account the volume of the material, the number of personnel at the Accused's disposal, and the Accused's estimate of the time that is required to review the material, the Trial Chamber finds that a period of two weeks is sufficient time for the Accused to review that material.
8. For the foregoing reasons, and pursuant to Articles 20(1) and 21(4)(c) of the Statute and Rule 54 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART**, and **ORDERS** that after the completion of the testimony of Richard Higgs and Tomasz Blaszczyk the hearing of evidence in this case shall be suspended for a period of two weeks. The parties shall be advised of the date for the recommencement of the hearings upon the completion of Tomasz Blaszczyk's evidence.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]