



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: 15 December 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: 15 December 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

**SECOND INVITATION TO CROATIA REGARDING MOTION FOR SUBPOENA OF
MIROSLAV TUĐMAN**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Croatia

via the Embassy of the Republic
of Croatia to The Netherlands,
The Hague

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”);

BEING SEISED OF the Accused’s “Motion for Subpoena to Interview: Miroslav Tudman” filed on 6 September 2010 (“Motion”) in which the Accused requests, pursuant to Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), that the Chamber issue a subpoena to Miroslav Tudman, former director of the Croatian Intelligence Service, compelling him to submit to an interview by the Accused’s legal adviser;¹

RECALLING the Accused’s “Motion for Binding Order: Government of Croatia” filed on 11 September 2009 (“Binding Order Motion”), which is still pending before the Trial Chamber and in which the Accused requests that the Chamber direct the Republic of Croatia (“Croatia”) to provide him with a number of documents;²

RECALLING further that the Accused’s legal adviser stated, in private session, during the Status Conference of 3 September 2010, that the Accused was not satisfied with the documents delivered to him by Croatia and that he would be making a motion to subpoena Miroslav Tudman for an interview with the Accused’s defence team because he believes that Miroslav Tudman has information pertaining to the existence and location of the documents he has requested from Croatia;³

NOTING that, in the Motion, the Accused outlines the steps he took to arrange an interview with Miroslav Tudman, which were ultimately unsuccessful, and attaches a letter from Croatia, sent to him on 22 July 2009, informing him that it was not Croatia’s practice to organise such interviews;⁴

NOTING that the Office of the Prosecutor has, on 7 September 2010, informed the Chamber and the Accused, *via* email, that it does not intend to respond to the Motion;

¹ Motion, paras. 1, 22–23.

² Binding Order Motion, para. 1.

³ Status Conference, T. 6138 (line 9)–6139 (3 September 2010).

⁴ Motion, paras. 5–9, Annex C.

NOTING that, on the Chamber's invitation,⁵ Croatia responded to the Motion on 30 September 2010, stating that it is for the defence to organise interviews with potential witnesses, but also that "if Miroslav Tuđman were questioned about matters relating to his former duty as Director of the Croatian Intelligence Service, that is, a former state official, different modalities would apply";⁶

NOTING that, on 18 November 2010, the Presiding Judge sent a confidential letter to Miroslav Tuđman ("Letter"), informing him of the Motion and inviting him to (i) reconsider his refusal to submit for an interview with the Accused's legal adviser and (ii) inform the Chamber if he was not willing to do so;⁷

NOTING that, on 2 December 2010, "Mr. Miroslav Tuđman's Response to the Trial Chamber's Correspondence of 18 November 2010" ("Response") was filed on a confidential basis, indicating, *inter alia*, that Miroslav Tuđman would be subject to criminal prosecution in Croatia were he to submit to an interview and reveal information he may have learned *ex officio* and that, therefore, he would only agree to being interviewed by the Croatian authorities on the issues which are of interest to the Accused; it would then be for those authorities to disclose the results of such an interview;⁸

NOTING that, on 7 December 2010, the Accused filed, with the permission of the Chamber,⁹ his confidential "Reply to the Filing of Miroslav Tuđman" ("Reply") indicating that he objects to the solution proposed in the Response on the basis that the interview would be "more effectively conducted by [the Accused's legal adviser], in the presence of a representative of the government of Croatia";¹⁰

NOTING also that, in the Reply, the Accused suggests that the Chamber inquire with Croatia whether it would be willing to authorise Miroslav Tuđman to disclose "what may otherwise be state secrets" relating to the issues raised in the Binding Order Motion and, if so, to indicate the

⁵ Invitation to Croatia Regarding Motion for Subpoena of Miroslav Tuđman, 8 September 2010.

⁶ Confidential Correspondence from Croatia, 30 September 2010, p. 2.

⁷ Confidential Letter to Miroslav Tuđman, 18 November 2010.

⁸ Response, paras. 5–8, 17–22.

modalities it may wish to request under Rule 54 *bis* and/or Rule 70 of the Rules, for the provision of this information;¹¹

CONSIDERING that Croatia has already indicated to the Chamber¹² and to Miroslav Tudman¹³ that it would be unwilling to authorise disclosure of information he has obtained in his official capacity as Director of the Croatian Intelligence Service;

CONSIDERING, however, that the Accused is proposing to conduct an interview of Miroslav Tudman, through his legal adviser, in the presence of a representative of Croatia and is ready to comply with any modalities that may be requested by Croatia pursuant to Rule 54*bis* and/or Rule 70;

CONSIDERING also that it is in the interests of all parties involved that requests for documents are, if possible, dealt with on a voluntary basis;

CONSIDERING finally the Chamber's view that in light of these circumstances it would be assisted by hearing from Croatia on the issues raised in the Response and Reply;

PURSUANT TO Rule 54 of the Rules,

HEREBY

- a. **INVITES** Croatia to respond to the Reply, indicating whether it agrees to the interview of Miroslav Tudman being conducted in the manner proposed by the Accused, and to make any pertinent comments on the Response, by close of business on **7 January 2011**; and

⁹ Hearing, T. 9370 (7 December 2010) (private session).

¹⁰ Reply, paras. 6–8.


¹¹ Reply, para. 9.

¹² Confidential Correspondence from Croatia, 30 September 2010, p. 2.

¹³ Response, para. 5.

- b. **REQUESTS** the Registry to provide the following filings to Croatia, namely: the Letter, the Response, and the Reply.

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



Judge O-Gon Kwon, Presiding

Dated this fifteenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]