



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 March 2011

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 March 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

**INVITATION TO CROATIA REGARDING REQUEST FOR INTERVIEW OF
MIROSLAV TUĐMAN**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

The Government of Croatia

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

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 “Request for Invitation to Government of Croatia: Interview of Miroslav Tudjman” filed on 28 February 2011 (“Motion”), whereby the Accused requests the Chamber to issue an invitation to the Government of Croatia (“Croatia”) directing it to “state its position on whether it is willing to issue an official decision relieving Miroslav Tudjman of his obligation not to disclose state and official secrets” in relation to the “acquisition of arms from Iran in 1994-1995 for the Bosnian Muslims”;¹

NOTING that the Chamber is also currently seized of the Accused’s “Motion for Subpoena to Interview Miroslav Tudjman”, filed on 6 September 2010 (“Motion for Subpoena”), requesting the Chamber to issue a subpoena pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) compelling Miroslav Tudman to submit to an interview with him;²

NOTING that, on 8 September 2010, the Chamber issued a confidential “Invitation to Croatia Regarding Motion for Subpoena of Miroslav Tudman” (“Invitation”) to respond to the Motion for Subpoena;³

NOTING that, on 1 October 2010, Croatia filed a confidential response to the Invitation stating that interviews with citizens and potential witnesses should be organised by the defence, but that “if Miroslav Tudman 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”;⁴

NOTING that, on 18 November 2010, the Presiding Judge sent a confidential letter to Miroslav Tudman (“Letter”), informing him of the Motion for Subpoena and inviting him to reconsider

¹ Motion, para. 13.

² Motion for Subpoena, para. 1,

³ Confidential Invitation to Croatia, 8 September 2010.

⁴ Confidential Correspondence from Croatia, 1 October 2010.

his refusal to submit to an interview with the Accused's legal advisor and to inform the Chamber if he was not willing to do so;⁵

NOTING that, on 2 December 2010, Miroslav Tudman filed a confidential response to the Letter ("Response") indicating that he is precluded, under Croatian law, from disclosing any intelligence information to the Accused and would be subject to criminal prosecution in Croatia if he were 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 and it would then be for those authorities to disclose the results of such an interview;⁶

NOTING that, on 7 December 2010, the Accused filed, with the permission of the Chamber,⁷ his confidential "Reply to the Filing of Miroslav Tudjman" ("Reply") indicating that he objects to the solution proposed in the Response on the basis that the interview would be "more effectively conducted by [his legal adviser], in the presence of a representative of the government of Croatia";⁸

NOTING that, on 15 December 2010, the Chamber issued confidentially a "Second Invitation to Croatia Regarding Motion for Subpoena of Miroslav Tudman" ("Second Invitation") to respond to the Reply and indicate whether it agrees to the interview of Miroslav Tudman being conducted in the manner proposed by the Accused;⁹

NOTING that, on 11 January 2011, Croatia filed a confidential response to the Second Invitation ("Croatia Response"), in which it failed to comment on the proposal in the Reply and simply stated that if Miroslav Tudman was subpoenaed by the Chamber to testify at the Tribunal and questioned about matters pertaining to his duties as the former Head of the Croatian Intelligence Services, Croatia would release him of his duty of keeping official secrets pursuant to Croatian law, but that Rule 54 *bis* and Rule 70 of the Rules would apply, and in addition, Croatia would send a representative to assist with the interview;¹⁰

NOTING that the Presiding Judge, indicating the lack of clarity in Croatia Response, raised the matter orally and requested the Accused's legal advisor to (i) contact Miroslav Tudman to

⁵ Confidential Letter to Miroslav Tudman, 19 November 2010.

⁶ Response, paras. 5–8, 17–22.

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

⁸ Reply, paras. 6–8.

⁹ Second Invitation, 15 December 2010.

inquire whether he was prepared to submit to an interview on a voluntary basis in light of the Croatia Response and (ii) contact Croatia to clarify its conditions for the Accused to interview Miroslav Tudman.¹¹

NOTING that the Accused's legal advisor sent letters to both Miroslav Tudman and Croatia and that Miroslav Tudman indicated that he must have written permission from Croatia before he will agree to an interview with the Accused¹² while Croatia did not respond;

CONSIDERING that it is not clear to the Chamber whether Croatia is willing to agree to this interview being conducted on a voluntary basis, without a subpoena being issued;

CONSIDERING that the Accused has sent two letters to the Croatian Embassy in The Hague inquiring of Croatia whether it would grant permission to Miroslav Tudman to agree to the interview, but has received no response;¹³

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

CONSIDERING finally that, in light of these circumstances, the Chamber would be assisted by hearing from Croatia;

PURSUANT TO Rule 54 of the Rules,

HEREBY

- a. **INVITES** Croatia to respond to the Motion, with fourteen days of receipt of this invitation, indicating:
 - (i) whether it agrees to issue an official decision relieving Miroslav Tudman of his obligation not to disclose state and official secrets pertaining to matters identified in the Motion should the interview be conducted on a voluntary basis, without the issuance of a subpoena;

¹⁰ Croatia Response, 11 January 2011.

¹¹ Hearing, T.10770 (26 January 2011) (private session).

¹² Motion, para. 11.

¹³ Motion, para. 12.

(ii) specifying the conditions or modalities it wishes to place on such an interview; and

b. **REQUESTS** the Registry to provide the Motion and this invitation to Croatia.

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



Judge O-Gon Kwon, Presiding

Dated this third day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]