



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-R75bis.1

Date: 9 August 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

Decision of: 9 August 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

**DECISION ON REQUEST FOR ASSISTANCE OF THE COURT OF BOSNIA AND
HERZEGOVINA PURSUANT TO RULE 75 *BIS***

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

Applicant

Judge Mira Smajlović, Presiding Judge,
The Court of Bosnia and Herzegovina

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 “Request for International Legal Assistance in Hearing Witnesses via Video Conference Link” filed confidentially and *ex parte* on 1 August 2011 by the Court of Bosnia and Herzegovina (“Request” and “BiH Court”, respectively), in which the BiH Court requests, pursuant to Rule 75 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), that the Tribunal assist in facilitating the testimony of Radovan Karadžić (“Accused”) by video-link in Case No. S 1 1 K 003372 10 KrI currently being heard before the BiH Court (“BiH Case”);

NOTING the confidential “Order for Submissions on Request for Assistance from the Court of BiH” issued on 2 August 2011 in which the Duty Judge of the Tribunal lifted the *ex parte* status of the Request and invited expedited responses by the parties no later than 8 August 2011;

NOTING the “Prosecution’s Response to Confidential Request for Assistance from the Court of Bosnia and Herzegovina” filed confidentially on 3 August 2011, in which the Office of the Prosecutor (“Prosecution”) states that it has no objection to the Request as long as the proceedings before the Chamber are not disrupted but requests, should the Request be granted, that the Accused not refer to any confidential matters in his testimony and that the Accused be warned that the Prosecution may seek to admit the testimony in proceedings against the Accused or any other proceedings before the Tribunal;

NOTING the Accused’s submission, filed confidentially on 4 August 2011, in which the Accused contends that all confidential filings in this matter should be reclassified as public, and that the Request should be denied pursuant to Rule 75 *bis* (C) as it would prejudice his ongoing trial before the Tribunal, and pursuant to Rule 75 *bis* (D)(1) because granting the Request would interfere with his trial preparation and would allow the Prosecution to potentially use his testimony in the BiH Case against him;

NOTING that, pursuant to Rule 75 *bis* (A) of the Rules, a “Judge [. . .] in another jurisdiction [. . .] may request the assistance of the Tribunal in obtaining the testimony of a person under the authority of the Tribunal in ongoing proceedings in the jurisdiction of the Requesting Authority involving violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”;

NOTING that, pursuant to Rule 75 *bis* (C) of the Rules, such a request “shall not be granted if granting the request may prejudice ongoing investigations or proceedings before the Tribunal”;

NOTING that, pursuant to Rule 75 *bis* (D) of the Rules, such a request may be granted if “(i) granting the request will not prejudice the rights of the person under the authority of the Tribunal; (ii) provisions and assurances are in place for observing any protective measures granted by the Tribunal to the person under its authority; (iii) granting the request will not pose a danger or risk to any victim, witness, or other person; and (iv) no overriding grounds oppose granting the request”;

NOTING the recent decision in the case against Vlastimir Đorđević in which a Specially Appointed Chamber denied a Rule 75 *bis* request from an investigating judge of the Higher Court in Belgrade on the basis that “Đorđević could not testify about the matters for which his testimony is being requested without a serious risk of incriminating himself” and that “the matter in which [the Higher Court in Belgrade] requests Vlastimir Đorđević to testify falls squarely within the case against him before the Tribunal [...]”;¹

NOTING that in the BiH Case, Franc Kos, Stanko Kojić, Vlastimir Golijan, and Zoran Goronja, members of the 10th Sabotage Detachment of the Main Staff of the Army of Republika Srpska are charged with genocide under Article 171 of the Criminal Code of the BiH;

NOTING that, according to the Accused’s submission, his anticipated testimony would pertain to events in Srebrenica at a time relevant to the Third Amended Indictment (“Indictment”);

NOTING that the Accused is charged with, *inter alia*, the crime of genocide for events that took place in Srebrenica between 11 July and 1 November 1995;²

CONSIDERING that the anticipated testimony of the Accused in the BiH Case is therefore likely to cover matters which fall squarely within the case against him before the Tribunal;

CONSIDERING that the Srebrenica component of the case against the Accused has yet to be reached;

CONSIDERING that granting the Request may therefore prejudice the rights of the Accused;

¹ *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-R75bis.1, Confidential Decision on Request for Assistance Pursuant to Rule 75 *bis* of the Higher Court in Belgrade, 21 April 2011, paras. 11–12.

² Indictment, paras. 20–24, 41–47.

CONSIDERING the Chamber's lack of further information regarding the BiH case and that the Chamber is therefore not in a position to rule on whether the Request, and subsequent filings, may be reclassified as public;

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 75 *bis* of the Rules, **DENIES** the Request, and **INVITES** the BiH Court to indicate no later than 19 August 2011 why the Request should remain confidential.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]