



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 April 2012

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: 18 April 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**SECOND INVITATION TO GERMANY REGARDING THE ACCUSED'S MOTION TO
REPORT GERMANY TO UNITED NATIONS SECURITY COUNCIL**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Germany

via the Embassy of Germany
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 to Report Germany to United Nations Security Council” filed on 24 January 2012 (“Motion”) and of the Accused’s “Supplemental Submission in Support of Motion to Report Germany to United Nations Security Council”, filed on 10 April 2012 (“Supplemental Submission”), in which the Accused requests pursuant to Rule 7 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) that, absent a satisfactory explanation for the Federal Republic of Germany’s (“Germany”) non-compliance with Article 29 of the Statute of the Tribunal (“Statute”),¹ the Chamber advise the President of the Tribunal to report the non-compliance of Germany to the United Nations Security Council;²

RECALLING that on 1 December 2011, the Chamber issued a subpoena to Christoph von Bezold, requiring him to appear for an interview with the Accused’s legal adviser,³ as well as an order to Germany, instructing it to i) serve the subpoena on von Bezold, ii) take all reasonable and necessary measures to ensure that he appears at the time and place as notified by the Accused’s legal adviser, and iii) provide a written report either confirming and providing details of the actual service of the subpoena or describing the efforts made to serve the subpoena, and further describing the efforts made to ensure the appearance of von Bezold;⁴

NOTING that on 8 December 2011, the Accused provided notice to Germany that the interview with von Bezold would take place on 23 January 2012, in Berlin, Germany;⁵

NOTING that on 19 January 2012, Germany indicated to the Accused and the Chamber that it had served the subpoena on von Bezold and then stated, providing no indication as to whether it had informed Von Bezold of the time and place for the interview as proposed by the Accused, that “German law does not incorporate any obligation on a person to participate in an interview realized by the legal adviser of an accused outside the trial”;⁶

¹ The Accused requests that an oral hearing be held first whereby Germany, if it so chooses, may provide an explanation for its non-compliance with Article 29. *See* Motion, paras. 13, 14; Supplemental Submission, paras. 18–19.

² Motion, paras. 13, 14; Supplemental Submission, paras. 1–2, 18–19.

³ *See* Decision on the Accused’s Motion for Subpoena to Interview Christoph von Bezold, 1 December 2011. *See also* Subpoena, 1 December 2011.

⁴ *See* Order to the Government of the Federal Republic of Germany Concerning Subpoena, 1 December 2011.

⁵ *See* Notice of Interview: Christoph von Bezold, 8 December 2011.

⁶ *See* Correspondence from Germany, 19 January 2012.

NOTING that on 23 January 2012, von Bezold failed to appear at the place designated for the interview, following which the Accused filed the Motion;⁷

NOTING that, on 27 January 2012, Germany filed another correspondence indicating its intention to respond to the Motion⁸ and that, as a result, the Chamber invited Germany, on 30 January 2012, to respond to the Motion and provide a report on the steps it took to comply with the Chamber's order mentioned above, including whether or not it had informed von Bezold of the designated time and place for the interview;⁹

NOTING that on 13 February 2012, Germany filed its response, (i) reiterating that the Chamber's order to ensure that von Bezold appears for an interview was alien to German law and thus could not be enforced; (ii) stating that it has fulfilled its obligation to serve the subpoena on von Bezold and that it would be filing a memorandum of service "separately"; (iii) noting that the Accused's original proposal for the time and the place of the interview had been misplaced in the Embassy, which in turn led to von Bezold not being informed of the time and the place for the interview; and (iv) submitting that it was willing to inform von Bezold of a new appointment for an interview, should this be desired by the Accused;¹⁰

NOTING that, on 14 February 2012, the Chamber informed the Accused and his legal adviser that, in light of Germany's response above in (iv), the best way to proceed would be for the Accused to try and set up another interview;¹¹

NOTING that, on 14 February 2012, the Accused provided notice to Germany that the interview with von Bezold would take place on 4 April 2012 in Garmish-Partenkirchen in Germany;¹²

NOTING that, on 29 March 2012, Germany filed another correspondence, (i) informing the Chamber that it had served the Accused's notice of interview on von Bezold who then indicated that he would not attend the interview "as he will be travelling"; (ii) stating that it would communicate "separately" whether von Bezold would be "ready to express himself at a later

⁷ Motion, para. 7.

⁸ See Correspondence from Germany, 27 January 2012.

⁹ Invitation to Germany Regarding the Accused's Motion to Report Germany to United Nations Security Council, 30 January 2012.

¹⁰ Correspondence from Germany, 13 February 2012.

¹¹ See T. 24665 (14 February 2012).

¹² Second Notice of Interview: Christoph von Bezold, 14 February 2012, para. 3.

stage orally or in writing towards the legal adviser of the Accused”; and (iii) promising once again that the written memorandum of service would be “submitted separately”;¹³

NOTING that, on 4 April 2012, von Bezold failed to appear for the interview which prompted the Accused to file the Supplemental Submission, in which he highlights the fact that no memorandum of service or any other communication has been received from Germany since the correspondence of 29 March and seeking the relief as outlined in the Motion;¹⁴

CONSIDERING that the Chamber has not as of yet received the memorandum of service which Germany was ordered to produce and had indeed promised to produce, which in turn means that the Chamber is unable to assess the efforts made by Germany to locate von Bezold and ensure his attendance at the interview;

CONSIDERING further that it is not clear to the Chamber whether Germany’s submission relating to von Bezold potentially being willing to “express himself at a later stage orally or in writing” means that von Bezold may be willing to submit to an interview with the Accused’s legal adviser at a later stage;

CONSIDERING that it would be beneficial to the Chamber to hear from Germany once again before disposing of the Motion and the Supplemental Submission, and in particular to receive (i) a memorandum of service containing information on how and where von Bezold was served with both the original subpoena and the Accused’s notice for an interview, and any other efforts Germany may have made to ensure his appearance at that interview; (ii) information on whether Germany had any subsequent contact with von Bezold and whether he may be willing to submit to an interview at a later stage; and (iii) any other response Germany may wish to make to the Supplemental Submission;

PURSUANT TO Rule 54 of the Rules, the Chamber

HEREBY

- a. **INVITES** Germany, within two weeks of receipt of this Invitation, to respond to the Supplemental Submission and provide the Chamber with information outlined in the preceding paragraph; and

¹³ Correspondence from Germany, 29 March 2012.

¹⁴ Supplemental Submission, paras. 10–13.

b. **REQUESTS** the Registry to provide the Supplemental Submission and this Invitation to Germany.

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



Judge O-Gon Kwon, Presiding

Dated this eighteenth day of April 2012
At The Hague
The Netherlands

[Seal of the Tribunal]