



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: 19 July 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: 19 July 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**INTERIM ORDER ON THE ACCUSED'S MOTION FOR BINDING ORDER TO
INTERNATIONAL COMMISSION FOR MISSING PERSONS**

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”),

BEING SEISED OF the Accused’s “Motion for Binding Order to International Commission for Missing Persons” filed on 15 May 2012 (“Motion”), in which he moves the Chamber, pursuant to Rule 54 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) for an order compelling the International Commission for Missing Persons (“ICMP”) to make available to him a number of DNA case files for testing by his DNA expert;¹

NOTING that the Prosecution filed on 29 May 2012 the “Prosecution’s Response to Accused’s Motion for Binding Order to International Commission for Missing Persons” with public and confidential appendices (“Response”) in which it opposes the Motion;²

NOTING that, having been granted leave to do so,³ the Accused filed his “Reply Brief: Motion for Binding Order to International Commission for Missing Persons” on 4 June 2012 (“Reply”),⁴ which was then followed by the “Prosecution’s Sur-Reply to Accused Reply Brief: Motion for Binding Order to International Commission for Missing Persons”, filed on 11 June 2012 (“Sur-Reply”);⁵

RECALLING that the pre-Trial Judge agreed that the Accused should be able to engage his own DNA expert to run DNA identification tests relating to alleged victims of the conflict in Bosnia and Herzegovina (“BiH”), similar to those conducted by the ICMP, and that the agreement reached by all parties, including the ICMP, was that the Accused would select 300 cases from the ICMP’s list of identified victims for that purpose, 295 of which were to be selected by a random sampling method, while five were to be individually chosen by the Accused;⁶

¹ Motion, para. 1.

² Response, paras. 1, 16.

³ As the Chamber was not sitting at the time, the Accused was informed via email, sent on 4 June 2012, that he was granted leave to reply to the Response.

⁴ The Reply was initially filed publicly but the Accused then informed the Chamber, on 5 June 2012, that it should be reclassified as confidential due to the information contained in one of the Annexes.

⁵ As the Chamber was not sitting at the time, the Prosecution was informed via email, sent on 8 June 2012, that it was granted leave to file a sur-reply.

⁶ See Order on Selection of Cases for DNA Analysis, 19 March 2010; Decision in Relation to Selection of Cases for DNA Analysis, 23 September 2011.

RECALLING further that, in order to facilitate testing by the Accused, the ICMP had agreed to seek the consent of the 1200-odd family members who provided samples for the 300 test cases before providing their genetic information to the Accused's expert;⁷

NOTING that at the time the Motion was filed, the ICMP had obtained consents from family members in relation to a number of test cases and had received refusals in relation to 15 test cases, while it had been unable to locate family members related to four other test cases;⁸

NOTING further that in the correspondence attached to the Motion, the ICMP indicated to the Accused that it aimed to receive responses related to the remaining test cases by the beginning of August 2012;

CONSIDERING therefore that the Motion was filed by the Accused before the ICMP was able to contact family members of all the 300 test cases and before the final results of that process were known to the Accused and the Chamber;

CONSIDERING that, before dealing with the Motion, the Chamber would benefit from having the final results of the process described above, including the total number of consents and refusals obtained by the ICMP;

NOTING further the Prosecution's contention that the 295 test cases, which were to be selected by a random sampling method, were allegedly neither random nor representative,⁹ as well as the fact that the Accused does not address this issue in his Reply;

CONSIDERING that before disposing of the Motion the Chamber would be assisted by receiving submissions from the Accused on this issue and particularly whether the 295 test cases were in fact random and representative as was originally indicated;

NOTING finally that the Accused argues that the ICMP is "subject to the issuance of a binding order pursuant to Rule 54 *bis*" and that, should the Chamber consider this not to be the case, it should then issue a subpoena or an order to the ICMP under Rule 54;¹⁰

⁷ See Order on Selection of Cases for DNA Analysis, 19 March 2010; Decision in Relation to Selection of Cases for DNA Analysis, 23 September 2011.

⁸ According to the Motion and the Response, the consents relate to four out of five non-randomly selected cases and 150 out of 295 randomly selected cases. Motion, para. 6, Annex A. See also Response, para. 7, Appendix F.

⁹ Response, para. 11, Appendix M.

¹⁰ Motion, paras. 10–15.

NOTING however that the Prosecution does not address this issue in the Response, nor in the Sur-Reply, but simply argues that the Accused has not met the requirements of Rule 54 *bis*;

CONSIDERING therefore that, before deliberating on the Motion, the Chamber would also be assisted by receiving further submissions on this issue from the Prosecution;

PURSUANT TO Rule 54 of the Rules

HEREBY:

- a. **ORDERS** the Accused to file, within seven days from receiving the final numbers of consents and refusals from the ICMP, a submission (attaching the relevant correspondence from the ICMP) updating the Chamber on these numbers and explaining the method he had used to select the 295 test cases; and
- b. **ORDERS** the Prosecution to file, within seven days of receiving the Accused's submission discussed above in (a), a submission addressing the issue of the applicability of Rules 54 and Rule 54 *bis* to the ICMP, as well as any other issues that may arise from the Accused's supplemental submissions referred to above.

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



Judge O-Gon Kwon, Presiding

Dated this nineteenth day of July 2012
At The Hague
The Netherlands

[Seal of the Tribunal]