



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 July 2013

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: 3 July 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S MOTION FOR REVISION OF
TRIAL TRANSCRIPTS**

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”) is seised of the Accused’s “Motion for Revision of Trial Transcripts”, filed on 27 May 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 14 May 2013, during the hearing, the Chamber noted the Accused’s heavy use of draft translations of witness statements, noting its impression that he and/or his team were requesting draft—as opposed to full or revised—translations of witness statements prepared by the Tribunal’s Conference and Language Section (“CLSS”), and expressing concern about their accuracy. The Accused’s legal adviser informed the Chamber that when their defence team submits a statement to CLSS, it requests a “regular” translation. He also stated that he saw no problem in having the draft statements of the witnesses who have already testified revised and checked by CLSS. As a result, the Chamber instructed the Accused to submit for revision all draft translations of witness statements and to liaise with CLSS on the most efficient procedure for doing so. It also asked that it be updated as to the progress of the revision. Finally, going forward, the Chamber instructed the Accused to request full translations from CLSS.¹

2. On 22 May 2013, the Accused filed his “Report on Draft Translation of Witness Statements” (“Report”), informing the Chamber that he has identified 59 witness statements that have been admitted into evidence with draft translations, all of which would be sent to CLSS for revision and uploaded into e-court once revised.² The Accused also noted in the Report that, “contrary to the Trial Chamber’s impression, his defence team never requested draft translations and the decision to provide the draft translations was made by CLSS.”³

3. The Accused then filed the Motion, in which he requests that the Chamber order CLSS to listen to audio recordings of the testimony of all witnesses who testified in Bosnian, Croatian, and/or Serbian language (“BCS”) and, together with the court reporters, produce an accurate revised transcript of their testimony.⁴ In support, the Accused argues that despite the interpreters’ best efforts, “errors in interpretation of the testimony of BCS speaking witnesses are commonplace”.⁵ As an example, he attaches to the Motion the transcript of one day of

¹ Hearing, T. 38283–38285 (14 May 2013).

² Report, para. 4.

³ Report, para. 2.

⁴ Motion, para. 1.

⁵ Motion, para. 2, Annex A.

testimony of witness Stanislav Galić, which he has reviewed and which, according to him, contains no less than 72 errors.⁶

4. Referring back to the Chamber's concern in relation to the draft translations of witness statements and the process of revision embarked upon in relation thereto, the Accused argues that the same principles should apply to the transcripts of court testimony.⁷ He also submits that the lack of an accurate trial record "not only jeopardizes his right to a fair trial, but frustrates one of the main purposes of the Tribunal's mandate – to create an accurate historical record of the events in former Yugoslavia."⁸ Finally, the Accused acknowledges that he is aware of his right to ask for revisions of certain portions of the transcript on a case-by-case basis. However, he submits that his defence team does not have the resources to listen to audio tapes of the proceedings and suggest revisions.⁹

5. On 30 May 2013, the Chamber instructed the Registry to file a response to the Motion pursuant to Rule 33 of the Tribunal's Rules of Procedure and Evidence ("Rules") by 10 June 2013. The Chamber requested the Registry to address not only the relief sought in the Motion but also the Report and the Accused's claim therein that he did not request draft translations of witness statements. In the event that it also wished to respond, the Office of the Prosecutor ("Prosecution") was given the same deadline, namely 10 June.¹⁰

6. On 6 June 2013, the Prosecution filed the "Prosecution Response to Accused's Motion for Revision of Trial Transcripts" ("Prosecution Response") arguing that the Motion should be dismissed.¹¹ According to the Prosecution, the Accused has failed to make an adequate showing that his right to a fair and expeditious trial is jeopardised by the quality of the interpretation or that the system currently in place for the Registry to revise portions of transcripts upon request is insufficient to guarantee such quality.¹² In relation to the Accused's review of the transcript of a day of Galić's testimony, the Prosecution submits that it simply shows that a transcript is not a verbatim record of the evidence. However, the Prosecution also notes that a verbatim record is not a prerequisite for a fair and expeditious trial.¹³ Finally, the Prosecution submits that the Accused has also failed to substantiate his claim that he lacks the resources to listen to audio tapes of the proceedings and that he would be unable to progressively monitor the quality of the

⁶ Motion, paras. 3–4.

⁷ Motion, para. 5.

⁸ Motion, para. 6.

⁹ Motion, para. 7.

¹⁰ Hearing, T. 38967–38968 (30 May 2013).

¹¹ Prosecution Response, para. 1.

¹² Prosecution Response, paras. 1–3.

¹³ Prosecution Response, para. 4.

interpretation during the hearings by assigning a BCS-speaking member of his team to this task.¹⁴

7. On 10 June 2013, the Registry filed the “Deputy Registrar’s Submission Regarding Translation, Transcription, and Interpretation” (“Registry Response”), responding both to the Motion and to the Report. With respect to the Report, the Registry informs the Chamber that it is always the requesting party that indicates “whether it wishes to receive draft, full, revision only, or summary translation” and then sets a priority status in accordance with its needs. Thus, according to the Registry, as a client-orientated service provider, CLSS has no authority or interest to unilaterally decide on the type of translation requested.¹⁵ The Registry also explains that, from 23 June 2011, CLSS has been providing the Accused with draft translations of witness statements “as a matter of standard practice initiated pursuant to explicit request from the Accused’s defence team, in order to meet their deadlines.”¹⁶ The Registry also submits that the statements made by the Accused and his legal adviser to the effect that the decision to provide draft translations was made by CLSS are therefore false and undermine the integrity of the proceedings.¹⁷ Accordingly, the Registry invites the Chamber to consider taking appropriate action against the Accused and his legal adviser pursuant to Rule 54 of the Rules “as it determines may apply.”¹⁸

8. With respect to the Motion, the Registry acknowledges that errors in simultaneous interpretation are not uncommon as interpreters have to make omissions deliberately in order to be able to instantly convey the message in a targeted language. It also notes that the Accused was informed of this, during the trial management meeting on 19 October 2009. He was also informed that some of the things that are not acceptable in translation—such as paraphrasing, synthesising, and editing—are not only acceptable in simultaneous interpretation but are tools that make interpretation possible. Thus, according to CLSS, the parties should have no expectation of having a translation level of accuracy in interpretation.¹⁹ The Registry also notes that it too has reviewed the transcript of the same day of Galić’s testimony and found that the accuracy rate is “extremely high”, namely 98.4 per cent, which by far exceeds the required rate of accuracy of 75 per cent in the courts in the United States.²⁰ The Registry also submits that the Accused is aware that he can seek, on the spot, a corrigendum of any identified interpretation

¹⁴ Prosecution Response, paras. 3, 6.

¹⁵ Registry Response, para. 5.

¹⁶ Registry Response, paras. 6–7, Confidential Annex B.

¹⁷ Registry Response, para. 8.

¹⁸ Registry Response, paras. 9–10.

¹⁹ Registry Response, paras. 12–13.

²⁰ Registry Response, para. 14.

error or, alternatively, submit a request for verification of accuracy after the fact.²¹ The Registry notes that the Accused fails to justify why he and/or his defence team cannot raise any errors contemporaneously during the hearing, as they occur, given that he has at least three BCS speakers on his team.²²

9. With respect to the Accused's submission that the mandate of the Tribunal is to create an accurate historical record, the Registry notes that, in accordance with Rule 81(A) of the Rules, it preserves both audio and visual recordings of the original languages used during the proceedings.²³ Finally, the Registry submits that granting the relief sought in the Motion would be extremely resource and time consuming—assuming it had resources to do so, CLSS would take approximately three and a half years to complete the Accused's request. Furthermore, the Tribunal's budget provides for no human or material resources for the suggested revision.²⁴

10. On 11 June 2013, the Accused filed on the record a letter he sent to the Registrar, extending his apology to CLSS as well as that of his legal adviser ("Letter"). He states in the Letter that, when making representations to the Chamber that CLSS provided draft translations of its own accord, he and his legal adviser were both unaware that in fact their own case manager had acceded to CLSS' request to do so. He also instructs CLSS that, going forward, it should submit draft translations only when unable to provide a revised or full translation within the time frame set out in the defence request. In addition, the Accused notes that he will instruct his team to resubmit for revision all defence exhibits for which only a draft translation exists.

II. Applicable Law

11. According to Article 20(1) of the Tribunal's Statute ("Statute"), the Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused.

12. Rule 81(A) of the Rules of Procedure and Evidence of the Tribunal, entitled "Records of Proceedings and Evidence," provides as follows:

The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.

²¹ Registry Response, paras. 15–16.

²² Registry Response, paras. 17–18.

III. Discussion

13. As noted above, the Accused submits that errors in the interpretation of the BCS speaking witnesses are common place and that the lack of an accurate trial record in turn jeopardises not only his right to a fair trial but also the Tribunal's mandate to create an accurate historical record of the events in the former Yugoslavia. First, as submitted by the Registry, the very nature of interpretation is such that it is unrealistic to expect transcripts to be completely exact. Further, as indicated by the Registry, the level of accuracy of simultaneous interpretation in the Tribunal is much higher than that of simultaneous interpretation in the private sector or that required by the courts in some domestic jurisdictions. Indeed, the very same transcript the Accused submits contains a large number of errors is in fact 98.4 per cent accurate. Accordingly, the Chamber is not convinced that errors in interpretation of the proceedings at the Tribunal and in this particular case are as commonplace or as serious the Accused makes them out to be.

14. As for the impact that any errors that do occur may have on the Accused's right to a fair trial, the Chamber notes that the Registry has been discharging its duty in relation to maintaining the transcripts of court proceedings for close to two decades and in dozens of pre-trial, trial, and appellate proceedings. Accordingly, as was the case before another Chamber dealing with the same issue, this Chamber would be most reluctant to usurp the competence and authority of the Registry in this area and would only do so if there were an adequate showing that the Accused's right to a fair and expeditious trial was in jeopardy.²⁵ However, given the above mentioned high levels of accuracy of simultaneous interpretation at the Tribunal, the impact of any such errors on the Accused's fair trial rights would be minimal, particularly when one considers that there are mechanisms in place for the Accused to improve the accuracy of interpretation even further by (i) speaking at a reasonable pace and not overlapping with other speakers in court; (ii) seeking the correction of any identified error in the transcript immediately as it occurs; and (iii) requesting verification of a transcript after the fact. Indeed, the Accused has availed himself of all of these options throughout this trial.

15. The Accused submits that he has no resources to listen to audio tapes of the proceedings looking for errors and suggesting revisions. However, the Chamber is of the view that there is no need for him to do so. Instead, if in the process of reviewing evidence he comes across certain portions of transcript that appear as if they could contain an interpretation mistake he can

²³ Registry Response, para. 19.

²⁴ Registry Response, paras. 20–21.

avail himself of option (iii) referred to above. In addition, going forward, the Accused can also continue to avail himself of option (ii) by using one of a number of BCS-speaking members on his team. The Accused has throughout this trial had two members of his team in court with him, one of whom is usually a BCS speaker and who could therefore undertake this task. In addition, the Accused himself has proved on more than one occasion that he is more than capable of following the transcript simultaneously with the evidence given in BCS and raising interpretation or transcription errors.

16. Accordingly, for the reasons above, the Chamber considers that the Accused has failed to provide an adequate showing that his right to a fair trial is in jeopardy by virtue of errors in simultaneous interpretation provided by the CLSS.

17. With respect to the Accused's submission that an inaccurate record of the proceedings would also frustrate the Tribunal's mandate of creating an accurate historical record of the events in former Yugoslavia, the Chamber recalls its finding above that the accuracy of the transcripts is satisfactory and does not jeopardise the Accused's right to a fair trial. The Chamber also notes the Registry's submission that, in accordance with Rule 81(A) of the Rules, it preserves both audio and visual recordings of the proceedings, including in the original language of witnesses or other participants. Accordingly, the level of accuracy of the transcripts in this case, together with the audio and visual records, is sufficient to ensure that an accurate record of the proceedings at the Tribunal is preserved.

18. Finally, the Chamber recalls that in support of the Motion the Accused invokes the concerns expressed by the Chamber regarding draft translations of witness statements, arguing that the same principles should apply to both. However, the Chamber considers that these two situations are not comparable given the difference in the expected level of accuracy between translated and interpreted material. As noted above, the same level of accuracy that is normally achieved in translation cannot be expected in interpretation. Therefore, the same principles cannot apply to both. Furthermore, the level of accuracy achieved by the Tribunal's interpreters has been shown to be extremely high. In contrast, as shown by the Registry Response and the Letter, the poor quality of some of the translations of witness statements has been caused by the Accused's failure to provide adequate deadlines to CLSS and prioritise his requests, his failure to liaise with his own case manager when deciding on whether full or draft translation is necessary, and the late addition of information to the statements following the receipt of draft translations from CLSS.

²⁵ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Motion to Compel Registry to Provide Verbatim Transcripts of Proceedings, 27 September 2007, para. 3.

19. In that respect, the Chamber notes that in the Letter the Accused informs CLSS of his decision to modify the procedure for requesting translations so that draft translations are submitted by CLSS only when CLSS is unable to meet the deadlines given. However, the Chamber is concerned that this will not help the matter unless the Accused (i) submits witness statements and documents to CLSS sufficiently in advance so that his deadlines can be met; (ii) prioritises his requests to CLSS in order of importance; and (iii) ensures that any information added to the statements following the receipt of the CLSS translation is translated adequately by his defence team. The Chamber therefore instructs the Accused to take these steps in order to ensure the best quality of translation that is possible in the circumstances.

20. Furthermore, the Chamber is concerned that the Accused, while mentioning in the Letter the revision of all exhibits, does not refer specifically to draft translations of witness statements that may yet have to be provided in the future, due to short deadlines imposed on CLSS. The Chamber reiterates once again its concern over the Accused's willingness to rely on draft translations of witness statements and finds their widespread use inappropriate. It therefore expects the Accused to use full or revised translations of witness statements during the witnesses' testimony as much as possible. If that is not possible and he is forced to use draft translations of witness statements, the Accused shall, following a particular witness's testimony, request a revised translation of that witness's statement. He shall then upload it into e-court when available, and shall inform the parties and the Chamber via email that this has been done.

21. Finally, given that in the Letter the Accused acknowledges his mistake and extends an apology to CLSS, the Chamber considers that it is not necessary to reprimand him or his legal adviser, for making misleading statements. However, while accepting that this was an error on their part, the Chamber is extremely concerned by the failure in communication between the Accused, his legal adviser, and their case manager on this issue, especially given the time that passed between the hearing when the issue was first raised and the filing of the Report. The Chamber encourages the Accused and his legal adviser to make sure that defence submissions, whether written or oral, contain accurate and reliable information.

IV. Disposition

22. Accordingly, the Trial Chamber, pursuant to Article 20 of the Statute and Rules 54 and 81 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this third day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]