

**UNITED
NATIONS**

International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-5/18-PT
Date: 12 February 2009

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION SUBMISSION ON APPLICATION FOR
CERTIFICATION TO APPEAL DECISION ON ADEQUATE
FACILITIES**

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-95-5/18-PT

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v.

RADOVAN KARADŽIĆ

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**PROSECUTION SUBMISSION ON APPLICATION FOR CERTIFICATION
TO APPEAL DECISION ON ADEQUATE FACILITIES**

1. The Prosecution does not wish to take a position on the merits¹ of the Accused Radovan Karadžić's ("Accused") Application² for certification to appeal the Trial Chamber's Decision³. However, in accordance with the Trial Chamber's Scheduling Order⁴ inviting it "to file any submission it wishes to make in response to the Application", the Prosecution notes that the Accused fails to identify an error in the Trial Chamber's Decision as he is required⁵ to do in order to obtain certification under Rule 73(B)⁶.

¹ See also Prosecution's Response to Karadžić's Motion for Adequate Facilities and Equality of Arms, 1 December 2008.

² Application for Certification to Appeal Decision on Adequate Facilities, 6 February 2009 ("Application").

³ Decision on Accused Motion for Adequate Facilities and Equality of Arms: Legal Associates, 28 January 2009 ("Decision").

⁴ Scheduling Order for Expedited Response to Accused's Application for Certification to Appeal Decision on Adequate Facilities, 9 February 2009.

⁵ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Milivoj Petković's Application for Certification to Appeal Decision on Motions Alleging Defect in Form of Indictment, 19

2. The basis for the Accused's application is his claim that the Trial Chamber "rejected [his] contention that the Registrar misinterpreted and misapplied"⁷ the *Krajišnik* Decision⁸. This however does not amount to an error in the Trial Chamber's Decision. The Trial Chamber was entitled to reject the Accused's submission having deemed the Registry's application of the *Krajišnik* Decision to be reasonable.⁹ In reaching this conclusion the Trial Chamber took account of the Accused's submissions concerning the *Krajišnik* Decision.¹⁰ It also considered the guidance provided by the Appeals Chamber in the *Krajišnik* Decision, other jurisprudence concerning the matter, the terms of Article 21(4)(b), and the manner in which the Registry administered its remuneration scheme for self-represented accused.¹¹ This approach accords with principles governing the scope of judicial review of an administrative decision established by the Appeals Chamber in *Prosecutor v. Kvočka* ("Kvočka").¹²

September 2005, pp. 2-3; *Prosecutor v. Strugar*, Case No. IT-01-42-PT, Decision on the Defence's Request for Certification to Appeal the Trial Chamber's Decision dated 26 November 2003 on the Prosecution's Motion for Separate Trial and Order to Schedule a Pre-Trial Conference and the Start of the Trial against Pavle Strugar, 12 December 2003, para. 6; *See also Prosecution v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73. Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 5.

⁶ Rule 73(B) reads: "Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings."

⁷ Application, para. 4.

⁸ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion ("*Krajišnik* Decision"), 11 September 2007.

⁹ Decision, para. 32.

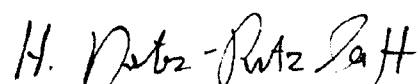
¹⁰ Decision, paras. 6-7.

¹¹ Decision, paras. 16-20, 29-34.

¹² *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para. 13, where the Appeals Chamber indicated that "a judicial review of an administrative decision made by the Registrar in relation to legal aid is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it [...] (in the absence of established unreasonableness) there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled."

3. No suggestion is made by the Accused that the Trial Chamber failed to abide by the standard set in *Kvočka*. Rather, the Accused seeks a rehearing of his motion before the Appeals Chamber because he disagrees with the Trial Chamber's interpretation of the *Krajišnik* Decision.¹³ The purpose of further appellate review is not to afford an accused with a *de novo* hearing.¹⁴ To do so would undermine the Trial Chamber's review of this matter, its role as the principal guardian of the Accused's right to a fair trial, and the standard set by the Appeals Chamber in *Kvočka*.

Word Count: 818



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Dated this 12th day of February 2009
At The Hague
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¹³ See Application, para. 11.

¹⁴ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, paras. 10, 42; See also *Case of Fischer v. Austria*, ECHR, Application no. 16922/90, Judgment, 26 April 1995, para. 28 where, in the context of a decision taken by an administrative body, the European Court of Human Rights suggests that judicial review by a single body is sufficient to preserve an applicant's right under Article 6, Paragraph 1 of the European Convention on Human Rights to have their "civil rights and obligations" determined before a "tribunal".