

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Date Filed: 6 April 2009

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

Case No. IT-95-05/18-PT

Public

APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON LANGUAGES

The Office of the Prosecutor

Mr Alan Tieger
Ms Hildegard Uertz-Retzlaff

The Accused

Dr Radovan Karadžić

1. Dr. Radovan Karadžić respectfully applies, pursuant to Rule 73(B) of the Tribunal's Rules of Procedure and Evidence, for certification to appeal the Trial Chamber's "Decision on Prosecution Motion Seeking Determination that the Accused Understands English for the Purposes of the Statute and the Rules of Procedure and Evidence", dated 26 March 2009, and served on the accused on 1 April 2009.
2. In the decision, the Trial Chamber ruled that the Accused understands English for the purposes of the Tribunal's Statute and Rules. As a result, the prosecution would not be required to translate witness statements and testimony into Serbian pursuant to Rule 66(A)(ii), nor would the Registrar be required to translate legal pleadings and decisions into Serbian.¹
3. Dr. Karadžić contends that the Trial Chamber incorrectly interpreted governing law by failing to distinguish the needs of a self-represented accused and an accused represented by counsel. While an accused represented by counsel might be able to read and absorb material in a non-native language sufficient to instruct his counsel, the Trial Chamber failed to account for the different needs of a self-represented accused, which include understanding complex arguments using legal terminology and having a full understanding of the nuances of a witness's prior statement or testimony sufficient to be able to cross-examine that witness personally.
4. Dr. Karadžić also contends that the Trial Chamber, basing itself primarily on 15 year old evidence and ignoring the fact that Dr. Karadžić rarely spoke English in the intervening years, made a patently incorrect conclusion of fact that his present knowledge of English is sufficient to undertake these tasks.
5. Rule 73(B) provides that:

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.
6. The question of the accused's ability to defend himself in a foreign language is a matter that significantly affects both the fair and the expeditious conduct of the trial.

¹ Impugned decision, par. 23-24

The impugned decision significantly diminishes Dr Karadžić's ability as a self-represented accused to present his side of the case efficiently, and multiplies the time he will need to be prepared to commence the trial. The first requirement of Rule 73(B) therefore is met.

7. An immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings. If the Trial Chamber is later found to have erred about the accused's knowledge of English for the purposes of the Statute and the Rules, Dr Karadžić will have been prejudiced throughout the trial by the operation of the impugned decision, the entire trial will have been conducted on a footing that is unsound, and the finality of any judgement will have been put in jeopardy.

8. In the *Tolimir* case, the Trial Chamber held that the issue of proceeding in a language that an accused may not understand satisfied the requirements of Rule 73(B).²

9. In other cases in which the ability of the accused to participate in his own defence was put into question, ICTY Trial Chambers have also granted certification to appeal, finding that such issues impacted on the fairness and expeditiousness of the trial, and that an immediate decision by the Appeals Chamber would materially advance the proceedings.³

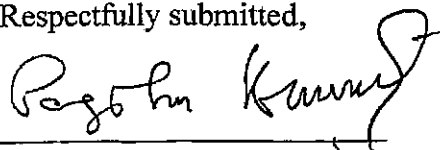
10. For the above reasons, Dr Karadžić contends that the Trial Chamber's decision involves an issue which meets the criteria of Rule 73(B). He respectfully requests that the Trial Chamber grant him certification to appeal that decision.

² *Prosecutor v Tolimir*, No. IT-05-88/2-PT, *Decision on Motion for Certification to Appeal the 11 December 2007 Decision* (15 January 2007)

³ *Prosecutor v Prlic et al*, No. IT-04-74-T, *Decision on Certification to Appeal the Decision on the Mode of Interrogating Witnesses* (28 June 2007); *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Request to Certify an Appeal Against Decision on Assignment of Counsel* (29 August 2006); *Prosecutor v Seselj*, No. IT-03-67-T, *Decision on Request for Certification to Appeal Decision (No. 2) on Assignment of Counsel* (5 December 2006); *Prosecutor v Milosevic*, No. IT-02-54-T, *Order on Request for Certification to Appeal the Decision of the Trial Chamber on Court Assigned Counsel* (10 September 2004)

Word count: 806

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Radovan Karadžić", written in a cursive style. The signature is positioned above a horizontal line.

Radovan Karadžić