

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

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

IN TRIAL CHAMBER No. 3

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

Acting Registrar: Mr. John Hocking

8.15. Date Filed: 14 April 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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APPLICATION FOR CERTIFICATION TO APPEAL  
DECISION ON MOTION FOR INTERVIEW OF DEFENCE WITNESS

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The Office of the Prosecutor:  
Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:  
Radovan Karadzic

1. On 9 April 2009, the Trial Chamber issued its *Decision on Motion for Interview of Defence Witness and Third Motion for Disclosure* (the “Impugned Decision”).

2. Dr. Radovan Karadzic respectfully applies, pursuant to Rule 73(B), for certification to appeal part of that decision.

3. 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.

4. In his *Motion for Interview of Defence Witness* (11 December 2008), Dr. Karadzic contended that the Registrar erred in denying him the right to meet potential witnesses before the commencement of his defence case. He appealed the Registrar’s decision that it would not transport any potential witnesses to meet with Dr. Karadzic until after the prosecution’s case was closed.

5. In the Impugned Decision, the Trial Chamber held that:

The Victims and Witnesses Section of the Registry (“VWS”) is ordinarily responsible for making the necessary travel arrangements for both Prosecution and Defence witnesses who are being brought to The Hague to testify, either to matters of guilt or innocence, or to matters relevant to sentencing. When an Accused submits his list of witnesses pursuant to Rule 65 *ter* (G) of the Rules, the VWS will then be in a position to begin the process of arranging their travel to, and stay in, The Hague for the period necessary to prepare for and give their evidence. Thus, should the Accused wish to bring the Witness to testify at trial in relation to the alleged immunity agreement and/or other matters alleged in the Indictment, he should include his name on the Rule 65 *ter* (G) list to be filed in due course. The Chamber does not consider that the Accused’s fair trial rights are affected by the Registry’s refusal to arrange for and fund the travel of the Witness to The Hague at this stage of the proceedings, nor have the standards for judicial review of an administrative decision of the Registrar been met.<sup>1</sup>

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<sup>1</sup> Para. 20

6. Dr. Karadzic respectfully contends that the Trial Chamber erred in upholding the Registrar's decision which effectively prevents him from personally interviewing anyone until after the close of the prosecution case.

7. The prosecution is free to travel anywhere in the world to interview persons with relevant information so that it may prepare its case against Dr. Karadzic.

8. Lead counsel for accused persons are expressly allowed to interview persons with important information at the pre-trial stage, and the Registry funds the travel of the lead counsel to meet the person.<sup>2</sup>

9. As a detained and self-represented accused, Dr. Karadzic can only meet with these people at the United Nations Detention Unit in The Hague. As an indigent accused, he requires that the travel of such persons to The Hague be funded by the Tribunal.

10. The refusal to fund travel of a witness to be interviewed by Dr. Karadzic at the UNDU prior to the close of the prosecution case is an unreasonable penalty for the exercise of Dr. Karadzic's right of self-representation and denies him equality of arms and a right to a fair and expeditious trial. Therefore, the first criteria for certification to appeal is met.

11. Dr. Karadzic pointed out in his motion that not only was the witness, Republika Srpska Foreign Minister Alexa Buha, important to his preliminary motion concerning the Holbrooke Agreement, but "Dr. Karadzic will also benefit in his preparation for the prosecution's case by interviewing Mr. Buha about the events in the indictment of which he has knowledge, such as the policies of the Republika Srpska government and the SDS party, as well as the negotiations undertaken with representatives of the international community."<sup>3</sup>

12. The Trial Chamber's decision that witnesses could only be brought to The Hague after the close of the prosecution case affects not only his interview of Mr. Buha, but a number of other key players in the events charged in the indictment with whom Dr. Karadzic needs to meet in order to be able to effectively prepare for trial and cross-examine prosecution witnesses.

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<sup>2</sup> *Defence Travel and DSA Policy* at para. (A)(6)

<sup>3</sup> *Motion for Interview of Defence Witness* (11 December 2008) at para. 13

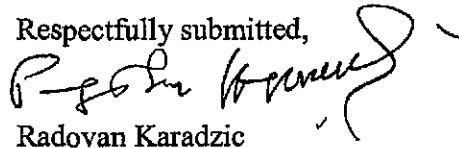
13. Therefore, the issue meets the second criterion of Rule 73(B) in that an immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings. If the Trial Chamber is found to have erred in refusing Dr. Karadzic access to such persons during the pre-trial stage and the prosecution's case, the entire trial will have proceeded on a wrong footing and the damage to Dr. Karadzic's right to a fair trial would be irreparable.

14. Issues of equality of arms and adequacy of facilities for a self represented accused have already been held by this Chamber and others to meet the criteria for certification to appeal.<sup>4</sup> The issue of whether an indigent self-represented, detained accused has the right to personally interview persons necessary for his trial preparation appears to be one of first impression at the International Tribunals.

15. It is respectfully requested that the Trial Chamber grant Dr. Karadzic certification to appeal that portion of the Impugned Decision in which it denied Dr. Karadzic the right to interview Foreign Minister Alexa Buha.

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Respectfully submitted,



Radovan Karadzic

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<sup>4</sup> *Prosecutor v Karadzic*, No. IT-95-5/18-PT, *Decision on Accused's Application for Certification to Appeal Decision on Adequate Facilities* (13 February 2009); *Prosecutor v Tolimir*, No. IT-05-88/2-PT, *Decision on Motion for Certification to Appeal the 11 December 2007 Decision* (15 January 2007); *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)