

**UNITED
NATIONS**

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-PT

Date: 17 April 2009

IN THE TRIAL CHAMBER

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

Acting Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO KARADŽIĆ'S
APPLICATION FOR CERTIFICATION TO APPEAL THE
DECISION ON MOTION FOR INTERVIEW OF DEFENCE
WITNESS**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

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

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

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**PROSECUTION'S RESPONSE TO KARADŽIĆ'S APPLICATION FOR
CERTIFICATION TO APPEAL THE DECISION ON MOTION FOR
INTERVIEW OF DEFENCE WITNESS**

I. INTRODUCTION

1. In his "Application for Certification to Appeal Decision on Motion for Interview of Defence Witness" filed on 14 April 2009 ("Application"), Karadžić challenges the Trial Chamber's "Decision on Accused Motion for Interview of Defence Witness and Third Motion for Disclosure" ("Decision")¹ wherein his "Motion for Interview of Defence Witness"² was denied. So far the Prosecution has not taken a position on the substantive issues;³ however, the Prosecution requests to deny the Application as it does not meet either of the requirements for certification under Rule 73(B) of the Rules of Procedure and Evidence ("the Rules").

II. DISCUSSION

(A) The Decision does not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings

¹ The Decision was rendered on 9 April 2009.

² The Motion was transmitted on 11 December 2008 and filed on 12 December 2008.

³ See *Prosecutor v. Karadžić*, Prosecution's Response to Karadžić's Motion for Interview of Defence Witness, 15 Dec. 2008.

2. Karadžić claims that the first requirement under Rule 73(B) is met because the refusal to fund a witness' travel to The Hague so that he can be interviewed at the UNDU by Karadžić prior to the close of the Prosecution case is "an unreasonable penalty for the exercise of Dr. Karadžić's right of self-representation and denies him equality of arms and a right to a fair and expeditious trial."⁴

3. First, Karadžić's characterisation of the decision refusing his request to fund a potential witness's travel as a "penalty" is inappropriate. The operation of a Registry policy concerning the funding of travel costs, at the pre-trial stage of the proceedings, of persons who have not yet attained the status of Defence witness is not a penalty. In characterising it as such, Karadžić does not present a valid argument under the first requirement of Rule 73(B). Second, Karadžić mischaracterises the policy of the Registry regarding the payment of travel costs of lead counsel who wish to interview a witness, claiming that the Registry funds the travel costs of lead counsel to meet the individual at the pre-trial stage.⁵ This however is not the case.⁶ To the extent that Karadžić bases his argument on this mischaracterisation, the argument is unsound and also cannot support the first requirement under Rule 73(B). Third, a refusal to fund a potential Defence witness' travel at the pre-trial stage is not equivalent to a denial of access to the witness by Karadžić. There are a variety of means through which Karadžić can obtain the information which he seeks at this stage.⁷ Thus, there is no denial of equality of arms as Karadžić claims.

4. In light of these factors, Karadžić has not satisfied the first requirement under Rule 73(B) and his Application may be dismissed on this basis alone.

(B) The Decision does not involve an issue for which an immediate resolution by the Appeals Chamber may materially advance the proceedings

⁴ Application, para.10.

⁵ Application, para.8.

⁶ *Prosecutor v. Karadžić*, Registry Submission Pursuant to Rule 33(B) of the Rules Regarding the Accused's Motion for Interview of Defence Witness, 24 Dec. 2008, p.4, fn.7 ("Registry Submission") ("Contrary to the Accused's claim, the Registrar will rarely if ever authorise Counsel to travel at the Tribunal's expense to conduct a preliminary witness interview. In any event, the Defence Travel and DSA policy to which the Accused refers has been issued on the basis of the Directive of the Assignment of Defence Counsel and cannot be applied to potential witnesses.").

⁷ For example, the witness in question can be interviewed by Karadžić's legal associates upon his instructions or he can be contacted by Karadžić directly by mail or telephone or he can travel to The Hague at his own expense. See Registry Submission, paras.4,7,8.

5. Karadžić further submits that the Decision affects not only his interview of Mr. Alexa Buha, but also a number of other key persons with whom he needs to meet in order to be able to prepare effectively for trial.⁸ He claims that if the Trial Chamber is found to have erred in *refusing him access* to such persons during the pre-trial stage and the Prosecution case, the entire trial will have proceeded on a wrong footing.⁹ He contends that the second requirement under Rule 73(B) is met. However, as discussed above, the Decision does not deprive Karadžić of access to individuals whom he may wish to contact at this stage in connection with the preparation of his case for trial. Thus, Karadžić's argument is baseless and cannot support the second requirement under Rule 73(B). In addition, the cases referred to by Karadžić in the Application¹⁰ dealt with situations distinct from that presented here¹¹ and thus do not compel a different conclusion. Furthermore, in a decision in *Milošević*, the Trial Chamber indicated that it would deal with practical arrangements to be made to bring Defence witnesses to the Tribunal, and for the self-represented accused to prepare for his examination-in-chief, at a pre-Defence conference,¹² prior to the start of the Defence case.

6. Thus, the Decision does not involve an issue for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

⁸ Application, para.12.

⁹ Application, para.13.

¹⁰ Application, p.4, fn.4.

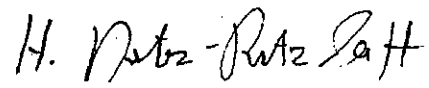
¹¹ For example, the 10 September 2004 decision in *Milošević* concerned the issue of the assignment of counsel to the Accused. *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order on Request for Certification to Appeal the Decision of the Trial Chamber on Court Assigned Counsel, 10 Sept. 2004. The 29 August 2006 decision in *Šešelj* also concerned an order that the Accused's participation in the proceedings would be through counsel. *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Request to Certify an Appeal Against Decision on Assignment of Counsel, 29 Aug. 2006. The 28 June 2007 decision in *Prlić et al* dealt with the Accused's ability to participate directly in the interrogation of witnesses. *Prosecutor v. Prlić et al*, Case No. IT-04-74-T, Decision on Certification to Appeal the Decision on the Mode of Interrogating Witnesses, 28 June 2007. The 15 January 2008 decision in *Tolimir* concerned the issue of whether the accused had a legal right to receive disclosed material and filings in Serbian in the Cyrillic script. *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Motion for Certification to Appeal the 11 December Oral Decision, 15 Jan. 2008. Finally, the 13 February 2009 decision in the present case concerned the issue of the lawfulness of the level of remuneration provided to the self-represented Accused's legal assistants. *Prosecutor v. Karadžić*, Decision on Accused's Application for Certification to Appeal Decision on Adequate Facilities, 13 Feb. 2009.

¹² *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order Concerning the Preparation and Presentation of the Defence Case, 17 Sept. 2003, pp.3-4, p.6.

III. CONCLUSION

7. For the reasons set out above, the Application should be dismissed.

Word Count: 1279 words

A handwritten signature in black ink, reading "H. Uertz-Retzlaff". The signature is written in a cursive style with a horizontal line underneath.

Hildegard Uertz-Retzlaff
Senior Trial Attorney

Dated this 17th day of April 2009,
At The Hague, The Netherlands