

**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: 10 November 2008

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Iain Bonomy, Pre-Trial Judge
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Date: 10 November 2008

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO KARADŽIĆ'S
APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON PROTECTIVE MEASURES**

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

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO KARADŽIĆ'S
APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON PROTECTIVE MEASURES**

1. The Trial Chamber's decision ("Decision")¹ denying the Accused an extension of time to respond to the Prosecution's Motion Seeking Delayed Disclosure of Witness P's Identity and Notification of the Protective Measures in Force ("Accused Motion for Extension")² satisfies neither prong of Rule 73(B). Thus, the Decision does not affect the fair and expeditious conduct of these proceedings or the outcome of the trial. An immediate resolution by the Appeals Chamber would have virtually no impact on these proceedings.
2. The Accused has mischaracterized the Decision as a general decision on his "right to be heard" and the "denial of adequate facilities for his defence."³ In reality, the Decision relates exclusively to the protective measures sought by

¹ *Prosecutor v. Karadžić*, Decision on Protective Measures for Witnesses, IT-95-5/18-PT, 30 October 2008.

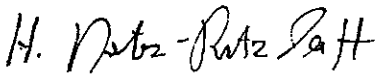
² *Prosecutor v. Karadžić*, Accused Motion for Extension of Time to Respond to Prosecution Motion Concerning Witness P, 6 October 2008 against Prosecution Motion Seeking Delayed Disclosure of Witness P's Identity and Notification of the Protective Measures in Force, 15 September 2008 ("Motion on Protective Measures").

³ *Prosecutor v. Karadžić*, Application for certification to Appeal Decisions on Protective Measures, 5 November 2008 ("Application"), paras. 8-12. The Accused put forward the same arguments in the *Prosecutor v. Karadžić*, Application for Certification to Appeal Perišić Access Decision, 30 October 2008.

the Prosecution,⁴ and the ability of the Accused to respond to the Motion on Protective Measures based on the particular circumstances of his request for an extension of time.⁵ It does not relate to his general right or ability to be heard. Similarly, the Decision is unrelated to the Registry decisions cited by the Accused concerning legal assistance⁶ and is not a determination of the Accused's right to adequate facilities for his defence.

3. Whether or not the Accused was entitled to an extension of time to respond to the Motion on Protective Measures is not an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Furthermore, the Accused failed to allege any error made by the Trial Chamber with such result.⁷ On the other hand, an immediate resolution of this issue by the Appeals Chamber would have virtually no effect on the proceedings. At *most* the end result of an interlocutory appeal on this issue would be a different decision on the substance of the Motion on Protective Measures. Yet, if the Accused aims at modifying the substance of the Decision (protective measures granted), he may file a motion seeking to rescind or vary the measures according to Rule 75(F) and (G). Nevertheless, the Accused has not expressed his disagreement with the Trial Chamber's ruling on protective measures. Hence, neither prong of Rule 73(B) is satisfied.
4. For these reasons, the Accused's Application should be denied.

Word Count: 595 words


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Dated this 10th day of November 2008
 At The Hague, The Netherlands

⁴ Decision, paras. 25-33.

⁵ Decision, paras. 23-24 (holding that "...choosing to proceed *pro se* is no justification for the late filing of submissions, nor for habitual requests for extension of time").

⁶ Application, paras. 16-17.

⁷ *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 Prosecutor'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; *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.