



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: 22 April 2009

Original: English

IN THE TRIAL CHAMBER

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

Acting Registrar: Mr. John Hocking

Decision of: 22 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON LANGUAGES**

Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the 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 (“Tribunal”) is seised of the Accused’s “Application for Certification to Appeal Decision on Languages”, filed on 6 April 2009 (“Application”), and hereby renders its decision thereon.

I. Brief procedural background

1. On 26 March 2009, the Trial Chamber issued its “Decision on Prosecution Motion Seeking Determination that the Accused Understands English for the Purposes of the Statute and the Rules of Procedure and Evidence” (“Decision”) in which it found that English is a language that the Accused understands for the purposes of the Statute of the Tribunal (“Statute”) and its Rules of Procedure and Evidence (“Rules”).¹ In making the Decision, the Trial Chamber relied on materials presented to it by the Office of the Prosecutor (“Prosecution”), including a number of video clips of the Accused showing his proficiency in English.² The Decision was intimated to the Accused in B/C/S on 1 April 2009.

II. Submissions

2. In the Application, the Accused, pursuant to Rule 73(B) of the Rules, requests certification for interlocutory appeal of the Decision. He 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,”³ and that it made a “patently incorrect conclusion of fact that his present knowledge of English is sufficient to undertake these tasks.”⁴ According to the Accused, the Decision “significantly diminishes” his ability as a self-represented Accused to present his side of the case efficiently, which is a matter that significantly affects both the fair and the expeditious conduct of the trial.⁵ The Accused also claims that an immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings, as, otherwise, there is a potential for prejudice throughout the entire trial which would put the finality of the eventual judgement in jeopardy.⁶ The Accused also refers to a number of cases dealing with language, or similar issues, relating to the participation of an accused in his own defence where certification was granted pursuant to Rule 73(B). Thus,

¹ Decision, paras. 23, 26.

² Decision, paras. 17–22.

³ Application, para. 3.

⁴ Application, para. 4.

⁵ Application, para. 6.

⁶ Application, para. 7.

the Accused concludes that the Trial Chamber's Decision involves an issue which meets the criteria of Rule 73(B).⁷

3. In the "Prosecution Response to Karadžić's Application for Certification to Appeal Decision on Languages", filed on 8 April 2009 ("Response"), the Prosecution does not oppose the Application.⁸

III. Applicable law

4. According to the Rules, decisions on motions other than preliminary motions are without interlocutory appeal save with certification by the Trial Chamber.⁹ Rule 73 governs the exercise of the Chamber's discretion to grant certification for an interlocutory appeal.¹⁰ Rule 73(B) requires that two criteria be satisfied before a Trial Chamber may certify a decision for interlocutory appeal: (a) the decision in question involves an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and (b) an immediate resolution of the issue by the Appeals Chamber may, in the opinion of the Trial Chamber, materially advance the proceedings.¹¹

5. This Trial Chamber has previously held that "even when an important point of law is raised ..., the effect of Rule 73(B) is to preclude certification unless the party seeking certification establishes that both conditions are satisfied";¹² furthermore, other Trial Chambers have held that "even where both requirements of Rule 73(B) are satisfied, certification remains in the discretion of the Trial Chamber".¹³ A request for certification is "not concerned with whether a decision was correctly reasoned or not. That is a matter for appeal, be it an interlocutory appeal or one after final Judgement has been rendered. Rule 73(B) concerns the

⁷ Application, paras. 8–10.

⁸ Response, para. 1.

⁹ Rule 73(B).

¹⁰ *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004 ("Strugar Decision"), para. 2.

¹¹ *Prosecutor v. Milutinović et. al.*, Case No. IT-05-87-T, Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008, para. 42; *Prosecutor v. Milutinović et. al.*, Case No. IT-05-87-PT, Decision on Prosecution's Request for Certification for Appeal of Decision on Vladimir Lazarević and Sreten Lukić's Preliminary Motions on Form of the Indictment, 19 August 2005, p. 3; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for *Voir Dire* Proceeding, 20 June 2005, para. 2; *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecution Request for Certification for Interlocutory Appeal of "Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment", 12 January 2005 ("Halilović Decision"), p. 1.

¹² *Halilović Decision*, p. 1.

¹³ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Motion for Certification to Appeal the 11 December Oral Decision, 15 January 2008, para. 4; *Strugar Decision*, para. 2; *Prosecutor v. Popović*, IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting PW-104 Interview Statements, 25 April 2001, p. 1.

fulfilment of two criteria, after which the Trial Chamber may decide to certify an interlocutory appeal".¹⁴

IV. Discussion

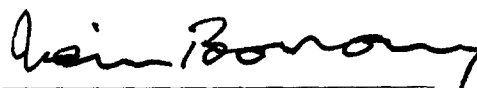
6. The Chamber is satisfied that both prongs of the test are met. In light of the right of the Accused to be informed of the nature of the case against him in a language which he understands and the choice of the Accused to represent himself, the determination that English is such a language involves an issue that, if wrongly decided, would significantly affect the fairness and expeditiousness of his trial. Since an erroneous decision could give rise to the need to rehear part or all of the trial, an immediate resolution of this issue by the Appeals Chamber would materially advance the proceedings.

7. Being satisfied that both prongs of the test are met, notwithstanding its opinion on the Accused's capability to understand English for the purposes of the Statute and the Rules, the Chamber has, with some hesitation, decided to certify the Decision.

V. Disposition

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 73(B) of the Rules, hereby **GRANTS** the Application.

Done in English and French, the English text being authoritative.



Judge Iain Bonomy
Presiding

Dated this twenty second day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ *Lukić* Decision, para. 42, *Milošević* Decision, para. 4.