



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-T

Date: 4 June 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 4 June 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S APPLICATION FOR CERTIFICATION TO APPEAL THE
TRIAL CHAMBER'S ORDER ON TRIAL SCHEDULE AND FOR STAY**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 “Application for Certification to Appeal Order on Trial Schedule and for Stay Pending Appeal”, filed by the Accused on 31 May 2010 (“Application”), and hereby issues its decision thereon.

I. Background and Submissions

1. At the commencement of the hearing of evidence in this case, on 13 April 2010, the Trial Chamber set a sitting schedule of three court sessions per week, and kept to that schedule until 31 May 2010. When the parties were informed that the schedule would be increased to four sessions per week from the end of May, the Accused made first an oral and then a written request that the three-day week be maintained.¹ On 27 May 2010, the Trial Chamber issued its Order on the Trial Schedule (“Order”), confirming that from 31 May 2010 there would be a four-day per week sitting schedule until further order. In that Order, the Chamber reiterated that the Accused had had ample time and resources to prepare for his cross-examination of witnesses brought by the Office of the Prosecutor (“Prosecution”), and stated that it was not convinced that sitting four or five days per week would place an unreasonable burden on him.²

2. In the Application, the Accused seeks leave to appeal the terms of the Order and requests that its effect be stayed until his appeal is determined. He asserts that the Trial Chamber erred in equating the time needed for preparation by a self-represented accused and that of an accused represented by counsel, and by “creating conditions of trial which unfairly impinge upon Dr. Karadžić’s ability to effectively exercise his right of self-representation.”³ He argues that the test set out in Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) for certification to appeal have been met because: (1) the failure of the Accused to have adequate time to prepare significantly affects the fair and expeditious conduct of the trial, as well as its potential outcome; and (2) the damage done by conducting an unfair trial would be irreparable on appeal from final judgement, save for ordering a trial *de novo*.⁴ He further submits that,

¹ Hearing, T. 2374-2377, 2380-2381 (19 May 2010); Submission on Trial Schedule, 20 May 2010. The Chamber notes that a court session is generally not a full day, but rather either a morning (from 9:00 a.m. to 1:45 p.m.) or an afternoon (from 2:15 p.m. to 7:00 p.m.) session. For the sake of convenience, and adopting the terminology used by the Accused, however, it will refer to these sessions as “days”.

² Order, paras. 4–5, 7.

³ Application, para. 3.

⁴ Application, para. 5.

absent a stay of the effect of the Order pending the determination of his appeal, “it would be difficult to fix the situation if the Appeals Chamber were to reverse the Trial Chamber’s order.”⁵

3. On 2 June 2010, the Prosecution filed the “Prosecution’s Response to the Accused’s Application for Certification to Appeal Order on Trial Schedule and for Stay Pending Appeal” (“Response”), stating that it does not oppose the request for certification made by the Accused, but that it does oppose his request for a stay of the effect of the Order pending the resolution of the appeal.⁶ In support of the latter, it argues that the Accused has not demonstrated good cause for a stay, or shown that it is in the interests of justice, and that a stay would in fact undermine the Trial Chamber’s duty to ensure the fair and expeditious conduct of the trial.⁷

II. Applicable Law

4. According to the Rules, decisions on motions other than preliminary motions challenging jurisdiction are without interlocutory appeal save with certification by the Trial Chamber.⁸ Under Rule 73(B), a Trial Chamber may grant certification to appeal 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.” This test therefore contains two “prongs”, both of which must be satisfied in order for the Trial Chamber to exercise its discretion to grant certification to appeal.

III. Discussion

5. This Trial Chamber has previously found that the issue of trial readiness pertains directly to the fairness of the proceedings.⁹ Trial preparation and readiness is not limited to the period prior to the commencement of the proceedings, but is an ongoing matter, and should the Order to increase the sitting schedule to four days per week result in a situation where the Accused could not be sufficiently prepared to cross-examine the witnesses brought by the Prosecution, this would clearly have an impact on the fairness of the proceedings as a whole. Thus, the Chamber is satisfied that the first prong of the test for certification is met.

6. Similarly, the Chamber considers that the second prong is met; should the Order to increase the sitting schedule have been wrong, and the remainder of the trial progress on such an

⁵ Application, para. 18.

⁶ Response, paras. 1–2.

⁷ Response, paras. 4–5.

⁸ Rules 72 and 73 of the Rules.

erroneous basis, the trial would be tainted, necessitating a re-trial. Therefore, an immediate resolution by the Appeals Chamber would materially advance the proceedings.

7. In light of the fact that the two prongs of the certification test are met, and the Chamber's view that it would be in the interests of justice for the Appeals Chamber to consider the issue of the current sitting schedule and its possible impact on the rights of the Accused, and pronounce on the matter, certification to appeal will be granted.

8. However, on the basis of the vague argumentation provided by the Accused, the Chamber is unconvinced that it is necessary for it to stay the effect of the Order until such time as the Appeals Chamber issues its decision. Before the commencement of the evidentiary phase, the Chamber granted a stay of proceedings sought by the Accused until such time as the Appeals Chamber ruled on whether he had had sufficient time to prepare, because to do otherwise may have meant that all the witnesses brought to testify up until the Appeals Chamber's ruling would have to be brought yet again to repeat their entire testimony. However, the present situation is a different one. Whether or not the stay is granted, while the Appeals Chamber considers the merits of the Accused's appeal against the four-day per week sitting schedule, the trial will continue, either on a three or a four-day per week basis. Should the Appeals Chamber ultimately find that the Trial Chamber erred in increasing the sitting schedule to four days per week, the Accused would have the opportunity to make appropriate applications to re-call for further cross-examination any witnesses whose evidence was heard in the intervening period, on the basis that, as a result of increasing the sitting days per week by one, he was insufficiently prepared for his cross-examination of them in the first instance. The impact of such re-call, should it be considered to be necessary, would be minimal. For these reasons, and mindful of its obligation to ensure that the trial is conducted in a fair and expeditious manner, the Trial Chamber finds that it would not be in the interests of justice to grant the requested stay.

⁹ Decision on Accused's Application for Certification to Appeal Decision on Commencement of Trial, 18 September 2009, para. 5.

IV. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rule 73(B) of the Rules, hereby **GRANTS** the Application for certification to appeal and **DENIES** the request for a stay of the effect of its Order.

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



Judge O-Gon Kwon
Presiding

Dated this fourth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]