



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: 24 June 2014
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: 24 June 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON REQUEST FOR STATUS CONFERENCE**

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 seized of the “Application for Certification to Appeal Denial of Status Conference” filed by the Accused on 13 June 2014 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests certification to appeal the “Decision on Accused’s Request for Status Conference” issued by the Chamber on 11 June 2013 (“Decision”) pursuant to Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”). He argues that both prongs of the certification test are met for the following reasons. First, he contends that the denial of a status conference significantly affects the fair conduct of these proceedings in that it denies him an opportunity to be heard orally, in particular with regard to his mental and physical condition.¹ Second, he argues that an immediate resolution by the Appeals Chamber will materially advance the proceedings as the situation will repeat itself until the judgement’s expected issuance date and that, if he is found by the Appeals Chamber to have a right to a status conference during the trial phase, a violation of this right could not be cured in the final appeal Judgement.²

2. On 18 June 2014 the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to the Accused’s Application for Certification to Appeal Denial of Status Conference” (“Response”), opposing the Motion.³ The Prosecution submits that the Accused has not demonstrated that the Decision would significantly affect the fair and expeditious conduct of the proceedings, or the outcome of trial.⁴ In that regard, the Prosecution argues that the Accused has not raised any specific prejudice resulting from the Decision, in which the Chamber left open the possibility for him to request a status conference for a specific issue or to make submissions in writing.⁵ The Prosecution further contends that immediate resolution by the Appeals Chamber of this issue would not materially advance the proceedings in that the Accused has not been prejudiced and that therefore the immediate intervention by the Appeals Chamber is not required.⁶

¹ Motion, para. 5.

² Motion, paras. 6–7.

³ Response, para. 1.

⁴ Response, para. 2.

⁵ Response, para. 2.

⁶ Response, para. 3.

II. Applicable Law

3. Decisions on motions other than preliminary motions challenging jurisdiction are without interlocutory appeal save with certification by the Trial Chamber.⁷ Under Rule 73(B) of the Rules, a Trial Chamber may grant certification to appeal if the said 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 Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”.

4. A request for certification is “not concerned with whether a decision was correctly reasoned or not”.⁸ Furthermore, it has previously been 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”.⁹ Under Rule 73(C), requests for certification must be filed within seven days of when the decision was filed or delivered.

III. Discussion

5. The first prong of the certification test is whether the Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial against the Accused. The Chamber does not consider that it does in this specific instance. In the Decision, the Chamber noted that the Accused had not identified “any specific issue that may need to be addressed orally during a status conference and which cannot be raised by way of written filing”.¹⁰ Given that the Accused may come back to the Chamber if and when he wishes to raise any specific issue orally, or in writing, the Chamber cannot be satisfied that the Decision involves an issue that would significantly affect the fair and expeditious conduct of these proceedings or the outcome of the trial against him.

6. With respect to the second prong of the certification test, the Chamber must assess whether a resolution by the Appeals Chamber would materially advance these proceedings. As mentioned

⁷ See Rule 72(B), 73(C) of the Rules.

⁸ *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-T, Decision on Defence Application for Certification of Interlocutory Appeal of Rule 98 bis Decision, 14 June 2007, para. 4; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić and Beara Motions for Certification of the Rule 92 quater Motion, 19 May 2008, para. 16; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion for Certification of Rule 98 bis Decision, 15 April 2008, para. 8; *Prosecutor v. S. 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. 4.

⁹ *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, p. 1.

¹⁰ Decision, para. 5.

in the Decision and recalled in the previous paragraph,¹¹ the Accused is not prevented from bringing forward any *specific* matter he wishes to address to the Chamber. As such, the Chamber does not consider that the issue in the Motion is one which immediate resolution by the Appeals Chamber would materially advance these proceedings. In this respect, the Chamber reiterates that the Accused may seise the Chamber at any time of any specific issue he may wish to raise orally or in writing.

IV. Disposition

7. Accordingly, the Chamber, pursuant to Rule 73(B) of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-fourth day of June 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ See Decision, para. 5. See also para. 5 *supra*.