



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: 27 May 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

Order of: 27 May 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER ON THE TRIAL SCHEDULE

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 Accused’s “Submission on Trial Schedule”, filed on 20 May 2010 (“Submission”), and hereby issues this order in relation thereto.

1. In the Submission, the Accused requests that the Chamber sit for no more than three days per week for the duration of the Prosecution case.¹ He first made this request orally on 19 May 2010, at which time he made a number of submissions in support.² The Submission supplements these oral submissions.³ The Accused argues that the Chamber is obliged “to create the conditions” under which it is possible for him to exercise his right to self-representation in light of the number and type of Prosecution witnesses.⁴ He states that a sitting schedule of more than three days per week will not enable him to prepare adequately for the cross-examination of Prosecution witnesses, for which, unlike the Prosecution, he is personally responsible, and, consequently, he will not have a fair trial.⁵ According to the Accused, if he were to get more time and resources, “it may be possible to sit more than three days per week.”⁶ Referring to the *Slobodan Milošević* case, he states that he “does not wish to lose his good health due to a gruelling trial schedule”.⁷ The Accused also submits that the completion strategy is not a reason to curtail an accused’s right to a fair trial.⁸

2. The Office of the Prosecutor (“Prosecution”) responded orally, noting that trial scheduling was a matter for the Chamber and making some “observations” concerning the Accused’s request.⁹

3. The Chamber recalls at the outset that the Accused has been on notice of the Chamber’s intention that the three-day per week sitting schedule would not continue throughout the trial and, in fact, was a schedule that would be in place for the first few months only due to limitations on courtroom availability and the fact that some members of the bench sit on more than one trial.¹⁰ Thus, once these practical limitations were no longer an issue, the Chamber

¹ Submission, para. 1.

² Hearing, T. 2374-2377, 2380-2381 (19 May 2010).

³ Hearing, T. 2382 (19 May 2010).

⁴ Submission, paras 3-4, 13, 15. *See also* Hearing, T. 2375 (19 May 2010).

⁵ Submission, paras. 8-12. *See also* Hearing, T. 2375, 2380 (19 May 2010).

⁶ Submission, para. 4. *See also* Hearing, T. 2374, 2375-2376, 2380 (19 May 2010).

⁷ Submission, paras. 5-6.

⁸ Submission, para. 14.

⁹ Hearing, T. 2378-2379 (19 May 2010).

¹⁰ *See* Status Conference, T. 454-456, (8 September 2009); Hearing, T. 505-506 (26 October 2009); Scheduling Order, 1 April 2010.

would revert to a more normal sitting schedule. With this observation in mind, the Chamber will consider the particular arguments raised by the Accused against a schedule of more than three days per week.

4. By electing to be self-represented, the Accused knowingly undertook the task of cross-examining those Prosecution witnesses he chooses. The Prosecution first filed its Rule 65 *ter* list of proposed witnesses over a year ago, and the Accused has been aware of those witnesses to be called in the first two months of the trial since October 2009.¹¹ Even before this, the Chamber had found that the Accused was trial-ready, including that he was ready to cross-examine Prosecution witnesses.¹² The presentation of evidence by the Prosecution did not start until March 2010, and since then the Chamber has been following a three-day per week schedule, allowing for two additional days per week for ongoing trial preparation. The Chamber is thus convinced that the Accused has had ample time both before the presentation of evidence began and during these last months of trial to prepare his cross-examination.

5. Once again, the Accused raises the resources made available to him by the Tribunal for his defence as an argument in favour of his request. The Chamber considers that this issue has been satisfactorily addressed. Indeed, the President has ordered that the Accused be granted considerable resources for his support staff in the pre-trial, adjournment and trial phases of the case, which he is utilising for his legal advisors, case manager and other assistants.¹³ In light of these considerable staff resources, which are comparable to those available to an accused represented by counsel, the Chamber is surprised that the Accused continues to raise the issue of resource limitations as a factor in support of any request, particularly the current one.

6. As such, the Chamber sees no merit in the Accused's submission that a change to the three-day per week sitting schedule may be possible if he had more time and resources. It recalls that it has, on a number of previous occasions, expressed concern about the manner in which the Accused is employing his staff resources, while continuing to mention resource-limitations as an obstacle to his ongoing trial preparation.¹⁴ It has also suggested to him multiple times during his cross-examination of witnesses that he move to relevant lines of

¹¹ Prosecution's Notification of Order of Witnesses with Appendix, 8 October 2009.

¹² Status Conference, T. 454-456 (8 September 2009), confirmed on appeal, *see Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Commencement of Trial, 13 October 2009. *See also* Decision on Accused's Motion for Postponement of Trial, 26 February 2010; Hearing, T. 998 (13 April 2010).

¹³ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, President's Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, President's Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010.

¹⁴ Most recently, the Chamber expressed this view in the Decision on Accused's Motion to Exclude Testimony of Aernout van Lynden, 17 May 2010.

questioning so as to concentrate his cross-examination on matters relevant to the charges against him.¹⁵ Once again, the Chamber strongly encourages the Accused to use the time and resources that he already has in an effective manner, bearing in mind that his role is simply to create reasonable doubt in the minds of the Judges in relation to the charges in the Indictment.

7. The implication that increasing the number of days per week that the Chamber will sit will result in the ill-health, and possibly untimely death, of the Accused, does not assist. The well-being of the Accused is a concern of the Chamber. However, it has not been made aware that the Accused is suffering from any health problems. As the Chamber has stated elsewhere, it has a statutory duty to ensure that this trial proceeds in a manner that is fair and expeditious. The necessity for expeditiousness is unrelated to the implementation of the completion strategy throughout the Tribunal, but is rather a key component of a fair trial. The Chamber has ensured that the Accused's right to a fair trial is protected, and it will continue to do so. In that context, where certain measures are set in place to ensure that this trial progresses at a reasonable pace, the Accused must exercise his right to self-representation within them. Sitting four or five days a week should not place an unreasonable burden on the Accused; indeed, many defence counsel have represented their clients before this Tribunal on a five-day sitting schedule. However, should the Accused find that the task of representing himself becomes too arduous, he may consider the various options available for varying his representation arrangements. In the *Slobodan Milošević* case that the Accused cites, for example, Slobodan Milošević's self-represented status was modified in light of his health problems.¹⁶

8. For these reasons, the Chamber is not persuaded that there is any reason to retain the three-day per week sitting schedule as a general practice for the remainder of the Prosecution phase of this case, or that moving to a four-day per week schedule will have any negative effect on the rights of the Accused.

¹⁵ See, for example, Hearing, T. 1002, 1045 (13 April 2010); Hearing, T. 1536, 1571 (23 April 2010); Hearing, T. 1577 (26 April 2010); Hearing, T. 2276 (10 May 2010).

¹⁶ *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Oral Ruling, T. 32357-32359 (2 September 2004); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order on the Modalities to be Followed by Court Assigned Counsel, 3 September 2004; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Reasons for Decision on Assignment of Defence Counsel, 22 September 2004; *Prosecutor v. S. Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 November 2004, paras. 16-19; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel's Motion for Withdrawal, 7 December 2004, paras. 31-32.

9. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence, hereby **CONFIRMS** that from 31 May 2010 there will be a four-day per week sitting schedule, until further order of the Chamber.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]