

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-AR73.8
Date: 19 July 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision of: 19 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON APPEAL FROM ORDER ON THE TRIAL
SCHEDULE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić, *pro se*

Standby Counsel:

Mr. Richard Harvey

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of the “Appeal from Order on the Trial Schedule” (“Appeal”) filed by Radovan Karadžić (“Karadžić”) on 10 June 2010 against the “Order on the Trial Schedule” issued by Trial Chamber III (“Trial Chamber”) on 27 May 2010.¹ The Office of the Prosecutor (“Prosecution”) responded on 21 June 2010² and Karadžić filed his reply on 22 June 2010.³

I. BACKGROUND

2. On 1 April 2010, the Trial Chamber issued an order in which it scheduled the hearing of evidence in the *Karadžić* case to commence on 13 April 2010, indicating that “[t]he Chamber will sit three days per week for the remainder of April, and until further order.”⁴ Pursuant to the order, trial proceedings were held three days each week until 31 May 2010. On discovering that the courtroom calendar listed a four day per week sitting schedule commencing on 31 May 2010, Karadžić orally requested that the existing schedule of sitting three days per week be maintained.⁵ He was then invited by the Trial Chamber to supplement his request with written submissions.⁶

3. On 27 May 2010, the Trial Chamber issued the Impugned Order confirming that it would sit four days each week from 31 May 2010.⁷

4. On 31 May 2010, Karadžić applied for certification to appeal the Impugned Order, requesting a stay of its effect pending appeal.⁸ On 2 June 2010, the Prosecution responded that while it did not oppose the application *per se*, it did oppose the request for a stay of the effect of the Impugned Order pending resolution of the appeal.⁹ On 4 June 2010, the Trial Chamber granted Karadžić’s application for certification to appeal the Impugned Order but denied his request to stay its effect.¹⁰

¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Order on the Trial Schedule, 27 May 2010 (“Impugned Order”). Hereafter *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T (“*Karadžić* case”).

² Prosecution Response to Karadžić’s Appeal of Order on Trial Schedule, 21 June 2010 (“Response”).

³ Reply Brief: Appeal from Order on the Trial Schedule, 22 June 2010 (“Reply”).

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Scheduling Order, 1 April 2010, p. 3.

⁵ T. 2374-2377, 2380-2382 (19 May 2010).

⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Submission on Trial Schedule, 20 May 2010.

⁷ Impugned Order, para. 9.

⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Application for Certification to Appeal Order on Trial Schedule and for Stay Pending Appeal, 31 May 2010.

⁹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution’s Response to the Accused’s Application for Certification to Appeal Order on Trial Schedule and for Stay Pending Appeal, 2 June 2010.

¹⁰ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused’s Application for Certification to Appeal the Trial Chamber’s Order on Trial Schedule and for Stay, 4 June 2010, para. 9.

II. STANDARD OF REVIEW

5. The scheduling of trial proceedings is a matter within the discretion of a Trial Chamber.¹¹ Appellate review is therefore limited to establishing whether a Trial Chamber has abused its discretion by committing a “discernible error”.¹² The Appeals Chamber will overturn such discretionary orders only where these are found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of a Trial Chamber’s discretion.¹³

III. SUBMISSIONS

A. Karadžić

6. Karadžić submits that the Trial Chamber incorrectly interpreted the governing law by equating his status with that of an accused represented by counsel and thereby denied him the means to effectively exercise his right of self-representation.¹⁴ He contends that the question before the Trial Chamber “was not whether a four day schedule was appropriate for an accused represented by counsel, but whether it was appropriate for a self-represented accused.”¹⁵ In particular, he maintains that the Trial Chamber’s error was manifest in its observation that a four or five day week should not impose an unreasonable burden on him since many defence counsel have represented clients before the Tribunal on a five-day sitting schedule.¹⁶

7. Karadžić claims that, unlike represented accused who have the benefit of both Lead Counsel and Co-Counsel, a self-represented accused is expected to cross-examine all prosecution witnesses alone.¹⁷ He avers that the extensive use of Rule 92*ter* of the Rules of Procedure and Evidence exacerbates this burden, requiring him to constantly cross-examine prosecution witnesses with little or no break.¹⁸ Karadžić further submits that the considerable scope of his case dwarfs that of the remaining self-represented accused, namely Vojislav Šešelj and Zdravko Tolimir, whose respective

¹¹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.7, Decision on Appeal from Decision on Motion for Further Postponement of Trial, 31 March 2010 (“*Karadžić Decision*”), para. 13; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 (“*Milošević Decision*”), para. 16; *Augustin Ngirabatware v. The Prosecutor*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware’s Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 (“*Ngirabatware Decision*”), para. 8.

¹² *Ngirabatware Decision*, para. 8.

¹³ *Karadžić Decision*, para. 13; *Ngirabatware Decision*, para. 8.

¹⁴ Appeal, paras 11, 14, 17, 24; Reply, paras 2, 6.

¹⁵ Appeal, para. 17.

¹⁶ Appeal, para. 15, referring to Impugned Order, para. 7.

¹⁷ Appeal, paras 14, 20.

¹⁸ Appeal, para. 20; Reply, para. 9.

Trial Chambers have elected to sit no more than three days each week.¹⁹ Finally, Karadžić argues, the four-day sitting schedule imposed by the Impugned Order infringes the principle of equality of arms, undermines the right of self-representation and jeopardises his health.²⁰

B. Prosecution

8. The Prosecution responds that Karadžić's Appeal should be dismissed on the basis that he fails to establish that the Trial Chamber abused its discretion by ordering a four day per week sitting schedule.²¹ In particular, the Prosecution argues that the Trial Chamber took into account all relevant factors, including that Karadžić – by electing self-representation – knowingly undertook the responsibility of preparing for cross-examination.²² Further, it contends that the Trial Chamber's comparative observation that many defence counsel have represented accused before this Tribunal on a five day per week sitting schedule, while not central to the Trial Chamber's reasoning, was nonetheless in accordance with binding jurisprudence.²³ The Prosecution maintains that Karadžić cannot complain of the ordinary and anticipated disadvantages which flow from his choice to represent himself since he knowingly deprived himself of the many advantages afforded to one who is represented by counsel.²⁴ It also argues that Karadžić fails to establish any infringement of his right to equality of arms in the present case.²⁵

9. The Prosecution further submits that Karadžić's reliance on the scheduling arrangement in other trials is misplaced due to the unique circumstances of each case.²⁶ With regard to the possible future negative impact of a four day per week sitting schedule on Karadžić's health, the Prosecution submits that Karadžić has not raised any current health problems and that the Trial Chamber has confirmed it will ensure that Karadžić's right to a fair trial is respected.²⁷

¹⁹ Appeal, paras 18-19.

²⁰ Appeal, paras 22-24; Reply, paras 10-11. Karadžić alleges that the four and five day per week trial schedule contributed to the decline and the death of the self-represented accused, Slobodan Milošević. The Appeals Chamber considers that his arguments in this regard are speculative and therefore dismisses them without further consideration. *See* Appeal, para. 18; Reply, paras 10-11.

²¹ Response, para. 1.

²² Response, para. 4. Such relevant factors further include that Karadžić had been on notice since September 2009 that the three day per week sitting schedule would only be preliminary; that the President had ordered considerable resources be made available to Karadžić to ensure the proper assistance of his case; that Karadžić had been repeatedly warned about the manner in which he uses the resources assigned to him; and that he had been aware since October 2009 of the witnesses to be called in the first two months of trial. *See also* Impugned Order, paras 4-5.

²³ Response, para. 5.

²⁴ Response, para. 6. The Prosecution further contends that the Trial Chamber committed no error in keeping Karadžić informed of the options available to him, should he encounter difficulties in coping with the burden of self-representation. *See* Response, para. 11.

²⁵ Response, para. 22.

²⁶ Response, paras 15-20.

²⁷ Response, paras 4, 21.

IV. DISCUSSION

10. At the outset, the Appeals Chamber observes that Karadžić's Appeal is premised on an alleged error of law, specifically that the Trial Chamber erred in equating his situation with that of an accused represented by counsel. It is evident the Trial Chamber considered that Karadžić should exercise his right to self-representation within the frame-work of measures introduced to ensure the reasonable progress of the trial.²⁸ In this context, the Trial Chamber observed:

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.²⁹

11. The Appeals Chamber recalls that "in general a self-represented accused is expected to undertake all the tasks normally assumed by counsel".³⁰ The daily rigour of preparation for trial is a fundamental part of these tasks. Moreover, the Appeals Chamber underscores that while "a Trial Chamber must be particularly attentive to its duty of ensuring that the trial be fair" to self-represented accused, an accused "who decides to represent himself relinquishes many of the benefits associated with representation by counsel."³¹

12. The Appeals Chamber discerns no error in the Trial Chamber's approach. The Impugned Order considers a broad range of factors, including Karadžić's trial-readiness, his advance notice of the witnesses to be called, his apparent good health and the considerable resources at his disposal, which it found comparable to those available to an accused represented by counsel.³² Furthermore, the Trial Chamber underscored its continuing commitment to its statutory duty to ensure a fair and expeditious trial.³³ In these circumstances, Karadžić has failed to demonstrate that the Trial Chamber erred in its application of the governing law. Indeed, the reasoning in the Impugned Order amply demonstrates the Trial Chamber's commitment to ensure the fairness of the proceedings.³⁴

²⁸ Impugned Order, para. 7.

²⁹ Impugned Order, para. 7.

³⁰ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Adequate Facilities, 7 May 2009, para. 23.

³¹ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009, para. 24 (internal quotations omitted); *Milošević* Decision, para. 19.

³² Impugned Order, paras 4, 5, 7. The Appeals Chamber considers that the arguments raised by Karadžić with respect to the alleged inequality of arms and his impending ill health to be without merit.

³³ Impugned Order, para. 7. The Trial Chamber found that "there is [no] 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". See Impugned Order, para. 8.

³⁴ Cf. *Milošević* Decision, para. 19.

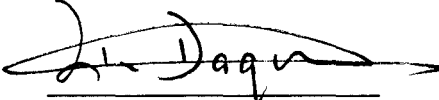
13. In light of the foregoing, the Appeals Chamber is satisfied that the Trial Chamber did not err in law when it ordered a four day per week sitting schedule to take effect from 31 May 2010.

V. DISPOSITION

14. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal in its entirety.

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

Dated this 19th day of July 2010



Judge Liu Daqun,
Presiding

[Seal of the Tribunal]