

INTERNATIONAL CRIMINAL TRIBUNAL
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Case No. IT-95-5/18-T
Prosecutor v. Radovan Karadžić

IT-95-5/18-T
D 29034 - D 29032
19 NOVEMBER 2009

PUBLIC

DECISION

THE REGISTRAR,

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), as subsequently amended (“Statute”), and in particular Articles 20 and 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended (“Rules”), and in particular Rules 44, 45, and 45 *ter* thereof;

NOTING the Directive on the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended (“Directive”), and in particular Articles 14, 16 and 23 thereof;

NOTING the Code of Professional Conduct for Counsel Appearing Before the International Tribunal (IT/125 REV.3) (“Code of Conduct”);

NOTING that Mr. Radovan Karadžić (“Accused”) was transferred to the seat of the Tribunal on 30 July 2008, and that in a letter to the Registry dated 4 August 2008, the Accused expressed his intention to represent himself before the Tribunal, which he reiterated during his initial appearance on 31 July 2008 and at his further appearance held on the dates 29 August 2008 and 3 March 2009;

NOTING that at a Status Conference held on 8 September 2009, the Pre-Trial Judge stated that the Trial Chamber had determined that the appropriate date for the commencement of the Accused’s trial was 19 October 2009;

NOTING that on 25 September 2009, the Accused filed an appeal against the Trial Chamber’s decision setting the date for the commencement of trial at 19 October 2009, and that on 13 October 2009, the Appeals Chamber issued its decision on the commencement of trial and ordered the Trial Chamber to delay the commencement of trial until one week after the Prosecution files the marked up indictment it was ordered to submit at the 6 October 2009 Pre-Trial conference;

NOTING that on 14 October 2009, the Trial Chamber issued a Scheduling Order, ordering that the trial would commence on 26 October 2009;

NOTING that on 21 October 2009, the Accused filed a “Submission on Commencement of Trial,” stating that he would not appear on 26 October 2009 for the scheduled commencement of the trial due to the fact that the defence was not ready for trial;

NOTING that the trial proceedings opened on 26 October 2009 in the absence of the Accused, and that the Accused was again absent from proceedings on 27 October 2009;

NOTING that, during the proceedings on 27 October 2009, the presiding Judge stated that, should the Accused persist in his refusal to attend trial and fail to attend the hearing scheduled for 2 November 2009, the Trial Chamber may decide to continue the trial in his absence or to assign counsel in the interest of justice pursuant to Rule 45 *ter* of the Rules;

NOTING that, during the proceedings on 27 October 2009, the presiding Judge invited the Accused and the Prosecution to make oral submissions at a hearing on 3 November 2009 regarding how the trial might proceed should the Accused continue to voluntarily absent himself from the courtroom;

NOTING that the Accused was again absent from trial proceedings on 2 November 2009;

NOTING that the Accused attended the hearing held on 3 November 2009, repeated his assertion that he is not prepared for trial and the reasons therefor, and informed the Trial Chamber that he will not attend the proceedings until such time as he deems himself ready;

CONSIDERING that on 5 November 2009, the Trial Chamber issued its “Decision on Appointment of Counsel and Order on Further Trial Proceedings” (“5 November 2009 Decision”), in which it, *inter alia*:

1. Outlined the applicable law and its reasons for deciding to appoint counsel for the Accused;
2. Determined that the overall interests of justice are best met by the appointment of counsel;
3. Ordered the Registrar to appoint a counsel to prepare to represent the interests of the Accused at trial, if that should be required;
4. Ordered that the trial will resume on Monday, 1 March 2010.

CONSIDERING that representatives from the Registry met with the Accused in order to inform him of the practical consequences of the 5 November 2009 Decision and to solicit his preference from a number of counsel established by the Registry to be both eligible for appointment before the Tribunal and available;

CONSIDERING that during that meeting, the Accused requested the Registry’s representatives to facilitate meetings between him and counsel on the list provided to him to indicate his preference;

CONSIDERING that although the Registry facilitated meetings between the Accused and counsel on the list, the Accused has not indicated a preference;

CONSIDERING that Article 16 of the Directive applies to counsel appointed to represent the interests of an accused;

CONSIDERING that Mr. Richard Harvey, Barrister from the United Kingdom, has informed the Registry of his availability and consent to act as appointed counsel to prepare to represent the interests of the Accused at trial in accordance with the 5 November 2009 Decision;

CONSIDERING that Mr. Harvey meets the qualifications under Rules 44 and 45 of the Rules;

NOTING that Mr. Harvey was previously co-counsel to Mr. Haradin Bala in the case of *Prosecutor v. Limaj et al.* (IT-03-66), whose case has been completed, and is currently lead counsel to Mr. Lahi Brahimaj in *Prosecutor v. Haradinaj et al.* (IT-04-84), whose case is pending final judgment before the Appeals Chamber;

CONSIDERING that the Registry has ascertained that no conflict of interest exists between Mr. Harvey's representation of Mr. Bala and Mr. Brahimaj, and his appointment as counsel to prepare to represent the interests of the Accused at trial;

CONSIDERING that Mr. Brahimaj has consented in writing to the appointment of Mr. Harvey as counsel pursuant to the 5 November Decision, after receiving independent legal advice on this issue from the Registry pursuant to Article 16(G) of the Directive;

HEREBY DECIDES pursuant to the 5 November 2009 Decision to appoint Mr. Harvey as counsel to prepare to represent the interests of the Accused at trial, effective as of the date of this decision.



Dated this nineteenth day of November 2009,
At The Hague,
The Netherlands.