



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-PT

Date: 18 September 2009

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 18 September 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON COMMENCEMENT OF TRIAL**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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 “Application for Certification to Appeal Decision on Commencement of Trial”, filed on 14 September 2009 (“Application”) and hereby issues this decision thereon.

I. Background and Submissions

1. Following the announcement by the former pre-trial Judge on 20 August 2009 that the present case is ready to proceed to trial, on 3 September 2009, the Accused filed a “Submission on Commencement of Trial” (“Submission”) setting out the amount of additional time he considers necessary for him to be prepared for trial, and requesting that his trial not commence for another 10 months.¹ The Office of the Prosecutor (“Prosecution”) filed its “Response to Karadžić’s Submission on Commencement of Trial” on 7 September 2009 (“Response to Submission”), opposing the Accused’s request for an additional 10 months to prepare, and confirming that it is ready to commence trial.²

2. At the Status Conference held on 8 September 2009, the pre-trial Judge announced that the Trial Chamber had considered the Accused’s Submission, and had determined that the trial should commence on 19 October 2009.³ The Accused then filed the present Application, pursuant to Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), seeking certification to appeal the Trial Chamber’s decision on commencement of trial.⁴ In the event that certification is granted, he further requests that the trial be stayed until a decision by the Appeals Chamber on the matter.⁵ On 17 September 2009, the Prosecution filed its “Response to Karadžić’s Application for Certification to Appeal Decision on Commencement of Trial” (“Response to Application”) stating that it does not oppose granting the Accused’s application for certification to appeal, but opposing his request for a stay of the trial.⁶

II. Applicable Law

3. According to the Rules, decisions on motions other than preliminary motions are without interlocutory appeal save with certification by the Trial Chamber.⁷ Under Rule 73(B), a Trial

¹ Submission, para. 35.

² Response to Submission, paras. 2, 24.

³ Status Conference, T. 456 (8 September 2009).

⁴ Application, para. 1.

⁵ Application, para. 27.

⁶ Response to Application, para 1.

⁷ Rule 73(B).

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.”⁸

4. 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 A request for certification is “not concerned with whether a decision was correctly reasoned or not.”¹⁰

III. Discussion

5. The Accused asserts, and the Prosecution agrees, that “[b]y its very nature, lack of preparation by one party significantly affects the fair and expeditious conduct of the trial, as well as its potential outcome.”¹¹ The Chamber considers that the issue of trial readiness pertains directly to the fairness of the proceedings. As the Trial Chamber pointed out in *Krajišnik*, in the context of a decision concerning a requested adjournment of the trial proceedings, “[i]f the Appeals Chamber would find that the Chamber’s decision is flawed, whether because it misstates the law or because it makes an unreasonable assessment of the facts, the consequences for the outcome of the trial of proceeding on the basis of the flawed decision could be extremely serious.”¹² The Trial Chamber agrees with this assessment and considers that the first prong of the test for certification under Rule 73(B) is met in the present circumstances.

6. With regard to the second prong of the test, the Accused claims, and the Prosecution agrees, that an opinion by the Appeals Chamber on this issue would materially advance the proceedings as the resulting harm, should the Trial Chamber’s decision be wrong, could be

⁸ Rules 73(b)

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 *Prosecutor v. Milutinović*, 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*, Case No. IT-05-87-T, Decision on Defence Application for Certification of Interlocutory Appeal of Rule 98bis Decision, 14 June 2007, para. 4; *Prosecutor v. Popović*, Case No. IT-05-88-T, Decision on Nikolić and Beara Motions for Certification of the Rule 92quater Motion, 19 May 2008, para. 16; *Prosecutor v. Popović*, Case No. IT-05-88-T, Decision on Motion for Certification of Rule 98bis Decision, 15 April 2008, para. 8; *Prosecutor v. 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.

¹¹ Application, para. 9.

¹² *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Defence Application for Certification on Interlocutory Appeal, 15 March 2005, para 3.

irreparable.¹³ As in the *Ngirabatware* case before the ICTR, which involved a similar request from the defence for extra time to prepare for trial, the Trial Chamber is satisfied that the second requirement is met as “a resolution of this matter at any later stage could impact [] the Accused’s right to a fair trial.”¹⁴ Given that both prongs of the test for certification are satisfied, and the Chamber’s view that it is in the interests of justice for the Appeals Chamber to rule on this issue, certification to appeal will be granted.

7. The only remaining issue is whether the Trial Chamber should stay its decision on the commencement of trial proceedings until a decision is rendered on the matter by the Appeals Chamber. The Trial Chamber considers that it would be premature to grant such a stay at this stage, as the Appeals Chamber decision may be rendered prior to 19 October 2009, and its outcome cannot be anticipated. Indeed, it is in the interests of the parties to continue their preparations for trial with the 6 October pre-trial conference, and the 19 October start in mind.

IV. Disposition

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 73(B) of the Rules, hereby **GRANTS** the application for certification to appeal the decision on commencement of trial, and **DENIES** the request to stay the trial proceedings.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of September 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Application, para. 9.

¹⁴ *Prosecutor v. Augustin Ngirabatware*, ICTR-99-54-T, Decision on Defence Motion for Certification to Appeal the Trial Chamber’s Decision of 25 March 2009 on Defence Motion to Vary Trial Date, 15 April 2009, para. 20.