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CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) **DATE** 15 April 2010

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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: 15 April 2010

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: 15 April 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON DESIGNATION OF STANDBY COUNSEL

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”), in the exercise of its powers under Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), hereby issues this decision *proprio motu*.

1. On 5 November 2009, the Trial Chamber issued its “Decision on the Appointment of Counsel and Order on Further Trial Proceedings” (“Decision Appointing Counsel”), finding that the Accused had substantially and persistently obstructed the proper and expeditious conduct of his trial by refusing to attend the proceedings until such time as he considered himself to be ready. This was despite this Chamber’s decision, upheld by the Appeals Chamber, that he had had sufficient time to prepare, and despite the warnings that were given to him by the Chamber.¹ As a result, the Chamber found it necessary to instruct the Registrar to appoint counsel, who would begin immediately to prepare him or herself to represent the interests of the Accused when the trial resumes, if that should be required. The trial proceedings were scheduled to resume on 1 March 2010, to allow the appointed counsel sufficient time to prepare. The Chamber reiterated that, in the meantime, the Accused would continue to represent himself, including by dealing with the day-to-day matters that arise, such as the filing of motions and responses to motions filed by the Prosecution, and by further preparing himself for the trial.² The Chamber also stated that, should the Accused continue to absent himself from the resumed trial proceedings scheduled for 1 March, or should he engage in any other conduct that obstructs the proper and expeditious conduct of the trial, he would forfeit his right to self-representation, no longer be entitled to assistance from his assigned defence team, and the appointed counsel would take over as an assigned counsel to represent him. The Chamber further decided that, should the Accused not engage in such conduct, the trial would proceed with him continuing to represent himself, and the appointed counsel would attend the proceedings and remain available to step in at any time the Chamber determined it to be necessary.³

2. On 19 November 2009, as instructed in the Decision Appointing Counsel, the Registrar selected Mr. Richard Harvey as “counsel to prepare to represent the interests of the Accused at trial” (“Registrar’s Decision”).⁴ In doing so, the Registrar considered: (i) Articles 20 and 21 of the Statute of the Tribunal (“Statute”) and Articles 14, 16, and 23 of the Directive on the

¹ Decision Appointing Counsel, para. 21. The Chamber recalls that this Decision contains a detailed background section (paragraphs 1 through 12), that deal with the relevant procedural history. The Chamber is of the view that it is not necessary to repeat that procedural history here.

² Decision Appointing Counsel, para. 25.

³ Decision Appointing Counsel, para. 27.

⁴ Registrar’s Decision, p. 3.

Assignment of Counsel (“Directive”); (ii) the fact that “representatives from the Registry met with the Accused in order to inform him of the practical consequences of the [Decision Appointing Counsel] 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”; (iii) the Accused’s request to meet with the counsel established to be eligible by the Registry; and (iv) the Accused’s failure to indicate preference for any of the counsel with whom he met.⁵

3. On 4 December 2009, the Accused requested the Chamber to vacate the appointment of Mr. Harvey, claiming that the procedure used by the Registrar violated: (i) Article 21(4)(b) and (d) of the Statute; (ii) an Appeals Chamber decision in the *Šešelj* case;⁶ and (iii) Articles 11 and 16(G) of the Directive.⁷ On 23 December 2009, the Chamber denied the Accused’s motion, on the basis that it was satisfied that the Registrar did not commit an error or act unreasonably when he decided to appoint Richard Harvey to prepare for this case. The Chamber further found that the Registrar had met the requirements established in the Tribunal’s case-law, and of procedural fairness.⁸ This decision was subsequently confirmed by the Appeals Chamber.⁹

4. On 1 March 2010, the trial proceedings resumed, and the Accused made an opening statement over a period of two days. Following this opening statement the Chamber adjourned the proceedings once again, in light of a pending appeal filed by the Accused against its decision denying a further postponement of the proceedings. The Appeals Chamber dismissed this appeal on 31 March 2010, and the trial was then scheduled to resume on 13 April 2010 with the hearing of the first witnesses.¹⁰

5. Upon the resumption of the proceedings on 13 April 2010, the Chamber issued an oral decision, designating Mr. Harvey as standby counsel, and stated that a written decision would follow.¹¹

6. Article 20 of the Statute requires a Trial Chamber to “ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of

⁵ Registrar’s Decision, pp. 1–2.

⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-AR73.4, Decision on Appeal Against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, 8 December 2006.

⁷ Motion to Vacate Appointment of Richard Harvey, 4 December 2009, paras. 1, 2, 6–7.

⁸ Decision on the Accused’s Motion to Vacate Appointment of Richard Harvey, 23 December 2009, paras 46–48.

⁹ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.6, Decision on Radovan Karadžić’s Appeal from Decision on Motion to Vacate Appointment of Richard Harvey, 12 February 2010.

¹⁰ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.67, Decision on Appeal from Decision on Motion for further Postponement of Trial, 31 March 2010; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Scheduling Order, 1 April 2010,

¹¹ T. 998–999 (13 April 2010).

victims and witnesses.” Article 21 of the Statute then sets out the rights of an accused person, including minimum guarantees, such as “to have adequate time and facilities for the preparation of his defence [...].”

7. Rule 45 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that a Chamber may instruct the Registrar to assign a counsel to represent the interests of the accused, if it decides that this is in the interests of justice. Rule 80(B) further permits the Chamber to order the removal of an accused from the courtroom, and to continue the proceedings in his absence, if the accused has persisted in disruptive conduct following a warning. The Chamber also notes that, under Rule 54, it may, at the request of either party or *proprio motu*, issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

8. In the period from the issuance of the Decision Appointing Counsel to the commencement of the hearing of evidence on 13 April 2010, the Trial Chamber continued to monitor the manner in which the Accused engaged in his defence and further prepared himself for the trial. The Chamber notes in particular that the Accused gave his defence opening statement on 1 and 2 March, as instructed, and that he has continued to file motions and to respond to motions filed by the Prosecution, largely in a responsible manner. The Chamber does not, therefore, consider it necessary at the present time to assign Mr. Harvey to represent his interests at trial. Rather, the Trial Chamber considers it to be in the interests of justice to designate Mr. Harvey as standby counsel. In this capacity he will continue to be engaged in the proceedings and maintain the capacity to step in to represent the interests of the Accused should the Chamber determine that this is necessary.

9. Until further order, Mr. Harvey’s functions shall be as follows:

- (a) to receive copies of all court documents, filings, and disclosed materials generated by or sent to the Accused;
- (b) to be present in the courtroom during the proceedings, assisted by one member of his team, should he consider it to be necessary;¹²
- (c) to engage actively in ongoing substantive preparation of the case, in order to be prepared to put questions to witnesses on behalf of the Accused, or to represent his interests, at any time, should the Trial Chamber find this to be necessary; and

¹² Should he be unable to attend any of the court proceedings, Mr. Harvey should inform the Chamber and may request that a member of his team attend in his absence.

(d) to address the Chamber whenever so requested by the Chamber .

Disposition

10. For these reasons, pursuant to Article 20(1) of the Statute, and Rule 54 of the Rules, the Trial Chamber hereby **DECIDES** that Mr. Richard Harvey shall be designated as standby counsel in these proceedings, with the functions set out in paragraph 9 above, until further order of the Chamber, and **REQUESTS** the Registry and the Prosecution to continue to take all necessary measures to ensure that Mr. Harvey is able to fulfil his role as standby counsel.

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



Judge O-Gon Kwon
Presiding

Dated this fifteenth day of April 2010
At The Hague
The Netherlands

[Seal of the Tribunal]