

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-AR73.8

IN THE APPEALS CHAMBER

Before: Judge Mehmet Guney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andresia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Date: 22 June 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REPLY BRIEF:
APPEAL FROM ORDER
ON THE TRIAL SCHEDULE

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic has appealed the Trial Chamber's *Order on the Trial Schedule* (27 May 2010) in which the Trial Chamber confirmed that the trial would proceed four days per week. On 21 June 2010, the prosecution filed its response.¹ Dr. Karadzic now replies.

2. The two Appeals Chamber decisions from the *Milosevic* case upon which the prosecution rely demonstrate that the Trial Chamber in Dr. Karadzic's case made an incorrect interpretation of governing law by equating self-representation with representation by counsel when deciding upon the trial schedule.

3. In the first decision, the Appeals Chamber reviewed the Trial Chamber's decision concerning the amount of time the self-represented accused would have before commencing the defence case.² The Appeals Chamber affirmed the decision of the Trial Chamber precisely because the Trial Chamber had taken into account the differences and difficulties of self-representation.

4. The Appeals Chamber pointed out that the Presiding Judge had expressly taken into account the fact that the Accused had elected to represent himself, and the fact that he had to prepare his defence while in detention.³ It also relied upon the fact that submissions had been made to the Trial Chamber concerning the unique challenges faced by a self-represented accused.⁴ It noted that "the Trial Chamber acted with proper sensitivity to the concerns of a self-representing defendant."⁵

¹ *Prosecution Response to Karadzic's Appeal of Order on Trial Schedule*

² *Prosecution v Milosevic*, 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)

³ *Prosecution v Milosevic*, 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) at para. 8

⁴ *Prosecution v Milosevic*, 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) at paras. 11,15(f)

⁵ *Prosecution v Milosevic*, 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) at para. 20

5. The Appeals Chamber held that “where an accused elects self-representation, the concerns about the fairness of the proceedings are, of course, heightened, and a Trial Chamber must be particularly attentive to its duty of ensuring that the trial be fair.”⁶

6. In Dr. Karadzic’s case, the Trial Chamber made no allowance for his status as a self-represented accused. Instead, it erroneously equated his situation with that of a represented accused, who benefits from a lead counsel and co-counsel when cross-examining prosecution witnesses.

7. In its second decision in the *Milosevic* case, the Appeals Chamber was confronted with an order of the Trial Chamber terminating the accused’s self-representation due to his ill-health.⁷ The Appeals Chamber strongly reaffirmed the right of an accused to represent himself, “notwithstanding a Trial Chamber’s judgement that they would be better off if represented by counsel.”⁸

8. The Appeals Chamber reversed the decision of the Trial Chamber on the modalities of the trial. It held that the Trial Chamber’s order placed disproportionate restrictions upon the right to self representation. It said that:

The Trial Chamber failed to impose a carefully calibrated set of restrictions on Milosevic’s trial participation. Given the need for proper respect of a right as fundamental as this one [right of self-representation], the failure was an improper exercise of the trial court’s discretion.⁹

9. Likewise, the modalities established by the Trial Chamber in Dr. Karadzic’s case failed to take into account the impact of an increased sitting schedule on Dr. Karadzic’s right of self-representation. Given that Dr. Karadzic is required to cross examine all prosecution witnesses, and the pace of those witnesses is fast and furious due to the extensive use of Rule 92 *ter* at his trial, the Trial Chamber, like that in the

⁶ *Prosecution v Milosevic*, 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) at para. 19

⁷ *Prosecution v Milosevic*, 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)

⁸ *Prosecution v Milosevic*, 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) at para. 11

⁹ *Prosecution v Milosevic*, 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) at para. 18

Milosevic case, failed to carefully calibrate the effect of increased sitting upon the right of self-representation.

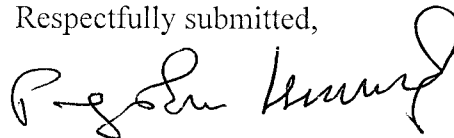
10. The dangers of an intense trial schedule to the health of a self-represented accused who must do the job alone were acutely obvious in the *Milosevic* case. The Appeals Chamber noted that “the stress of the trial had...badly exacerbated these two conditions...[heart and blood pressure],” and that “Milosevic’s health actually seemed to decline rather than improve with time.” The trial had to be suspended 13 times for 66 days due to Milosevic’s ill health.¹⁰

11. The Appeals Chamber should ensure that the mistakes of the *Milosevic* case are not repeated. Thankfully, although 65 years old, Dr. Karadzic is in good health at the commencement of the trial. However, the Trial Chamber’s decision risks jeopardizing that good health. It should not be necessary for Dr. Karadzic to fall ill before the Chamber recognizes that it is putting too much stress on a single human being.

12. Therefore, it is respectfully submitted that the Trial Chamber made an incorrect interpretation of governing law when equating Dr. Karadzic’s situation with that of a represented accused and that the matter should be remanded to the Trial Chamber for a determination using the correct legal standard.

Word count: 1077

Respectfully submitted,



Radovan Karadzic

¹⁰ *Prosecution v Milosevic*, 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) at paras. 4-5