

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 12 November 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

---

APPLICATION FOR CERTIFICATION TO APPEAL  
DECISION ON APPOINTMENT OF COUNSEL AND  
ORDER ON FURTHER TRIAL PROCEEDINGS

---

The Office of the Prosecutor:

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Radovan Karadzic respectfully applies, pursuant to Rule 73(B), for certification to appeal the Trial Chamber's *Decision on Appointment of Counsel and Order on Further Trial Proceedings* (5 November 2009).

2. Rule 73(B) provides:

Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification 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.

3. In the Impugned Decision, the Trial Chamber ordered the Registrar to appoint a standby counsel for Dr. Karadzic and found that 3 ½ months was an adequate period of time for such standby counsel to be prepared to commence cross-examination of prosecution witnesses in the event that Dr. Karadzic did not appear on 1 March 2010 for continuation of the trial.

4. The issue of imposition of counsel has already been held by two Trial Chambers to meet the criteria for interlocutory appeal.

5. In the *Milosevic* case, the Trial Chamber granted certification to appeal the issue of imposition of counsel on the accused over his objection, finding the issue to be one which met both criteria of Rule 73(B). The Trial Chamber held that:

...the Trial Chamber is satisfied that the cumulative requirements under Rule 73 (B) have been satisfied, in that the decision of the Chamber to assign counsel affects fundamentally the conduct of the trial and as such it would be best to have it resolved by the Appeals Chamber at this stage, rather than after the conclusion of the trial.<sup>1</sup>

6. In the *Seselj* case, the Trial Chamber likewise granted certification to appeal its decision to assign counsel. The Chamber reasoned that:

Considering that the consequences for the trial of the Accused would be extremely serious should the Appeals Chamber overturn the decision, particularly since counsel was assigned to the Accused because the Trial Chamber is of the clear view that the Accused's behavior may substantially and persistently obstruct the proper and expeditious conduct of a fair trial and therefore, the assignment of counsel involves an issue affecting the fair and expeditious conduct of the proceedings;

---

<sup>1</sup> *Prosecutor v Milosevic*, No. IT-02-54-T, *Order on Request for Certification to Appeal the Decision of the Trial Chamber on Court Assigned Counsel* (10 September 2004)

Considering that immediate resolution of this question by the Appeals Chamber at this stage would reduce the risk of a potential retrial, and thus materially advance the proceedings...<sup>2</sup>

7. The Trial Chamber in *Seselj* granted certification to appeal for the second time after it had ordered the standby counsel to assume the defence of the accused. The Trial Chamber once again concluded that:

The decision to assign counsel, therefore, involves an issue which significantly affects the fair and expeditious conduct of the proceedings. The Trial Chamber further finds that an immediate resolution of this question by the Appeals Chamber at this stage would reduce the risk of a potential retrial and thus materially advance the proceedings.<sup>3</sup>

8. Therefore, the jurisprudence of this Tribunal is clear that issues concerning the appointment of counsel over the objection of a self-represented accused meet the criteria for certification to appeal under Rule 73(B).

9. It is well established that an application for certification to appeal is not concerned with the merits of the impugned decision, but only with whether the criteria for an interlocutory appeal is satisfied.<sup>4</sup> However, Dr. Karadzic cannot help but note that the Trial Chamber's decision is flawed in several respects, including failing to support its conclusion, seemingly picked out of thin air, that a 3 ½ month period would be an adequate time for standby counsel to be prepared for trial in a case of this magnitude and complexity, and in its failure to direct the Registrar to provide him with the Rule 44 list from which he can select the standby counsel as required by Appeals Chamber jurisprudence.<sup>5</sup>

10. These errors enhance the need for certification to appeal in this case.

---

<sup>2</sup> *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Request to Certify an Appeal Against Decision on Assignment of Counsel* (29 August 2006)

<sup>3</sup> *Prosecutor v Seselj*, No. IT-03-67-T, *Decision on Request for Certification to Appeal Decision (No.2) on Assignment of Counsel* (5 December 2006) at para. 6

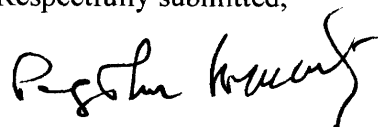
<sup>4</sup> *Decision on Accused's Application for Certification to Appeal Decision on Languages* (22 April 2009) at para. 5

<sup>5</sup> *Prosecutor v Seselj*, No. IT-03-67-AR73.4, *Decision on Appeal Against the Trial Chamber's Decision (No. 2) on Assignment of Counsel* (6 December 2006) at para. 28

11. Therefore, it is respectfully requested that certification to appeal the Trial Chamber's *Decision on Appointment of Counsel and Order on Further Trial Proceedings* (5 November 2009) be granted.

Word count: 889

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic