



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: 22 April 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Decision of: 22 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S APPLICATION FOR CERTIFICATION TO APPEAL
DECISION ON MOTION FOR INTERVIEW OF DEFENCE WITNESS**

Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark B. Harmon

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 Motion for Interview of Defence Witness”, filed on 14 April 2009 (“Application”), and hereby renders its decision thereon.

I. Background and Submissions

1. On 11 December 2008, the Accused filed a “Motion for Interview of Defence Witness” (“Motion for Interview”), in which he requested that the Trial Chamber order the Registry of the Tribunal to provide transportation for a defence witness Aleksa Buha (“Witness”) to the United Nations Detention Unit in The Hague. The Accused submitted that the Witness was present during negotiations as to the alleged immunity agreement between representatives of the Republika Srpska and U.S. Ambassador Richard Holbrooke on 18 and 19 July 1996, and that he had detailed and valuable information with regard to the events alleged in the Indictment.¹

2. The Registry filed a “Submission Pursuant to Rule 33(B) of the Rules Regarding the Accused’s motion for Interview of Defence Witness” (“Registry Submission”) on 24 December 2008. The Registry stated that it had declined to arrange the transport and accommodation of the Witness because its policy is not to pay for the transportation of potential witnesses at this stage of the proceedings but, rather, to do so once an accused submits his list of witnesses pursuant to Rule 65 *ter*(G) of the Rules. The Registry also asserted that the Accused’s right to meet with potential witnesses had not been violated by its decision.²

3. On 9 April 2009, the Trial Chamber issued its “Decision on Accused Motion for Interview of Defence Witness and Third Motion for Disclosure” (“Impugned Decision”). The Chamber referred to the regular procedure used by the Registry and held that the Accused’s fair trial rights were not affected by the Registry’s refusal to arrange for and fund the travel of the Witness to The Hague at this stage of the proceedings.³

4. In the Application, the Accused, pursuant to Rule 73(B) of the Rules, requests certification to appeal the part of the Impugned Decision relevant to the Motion for Interview.⁴ The Accused asserts that the Trial Chamber erred in upholding the Registry’s view which

¹ Motion for Interview, paras 6, 8.

² Registry Submission, para 5.

³ Impugned Decision, para 20.

⁴ Application, paras 2, 7.

infringes “equality of arms and adequacy of facilities for a self represented accused”.⁵ The Application states that the Impugned Decision “affects not only his interview of Mr. Buha, but a number of other key players in the events charged in the indictment with whom Dr. Karadzic needs to meet in order to be able to effectively prepare for trial and cross-examine prosecution witnesses”.⁶

5. In the “Prosecution’s Response to Karadžić’s Application for Certification to Appeal the Decision on Motion for Interview of Defence Witness”, filed on 17 April 2009 (“Response”), the Office of the Prosecutor (“Prosecution”) contends that the Impugned Decision relates to neither an issue that would significantly affect the fair and expeditious conduct of the proceedings nor an issue for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.⁷ The Prosecution asserts that the denial to fund a potential witness is not, as alleged by the Accused, a “penalty”; that the Accused misunderstands the position of the Registry; and that there are other means available for him to contact potential witnesses at this stage.⁸ The Prosecution further submits that the Accused has not been denied access to potential witnesses due to the effect of the Impugned Decision.⁹

III. Applicable law

6. Rule 73(B) of the Rules provides two requirements to be satisfied before a Trial Chamber may grant an application for certification to appeal: (a) the decision in question must involve an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, *and* (b) an immediate resolution of the issue by the Appeals Chamber may, in the opinion of the Trial Chamber, materially advance the proceedings.¹⁰

7. The Trial Chamber recalls 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

⁵ Application, para 6, 9, 14.

⁶ Application, para 12.

⁷ Response, para. 1.

⁸ Response, para. 3.

⁹ Response, para. 5.

¹⁰ *Prosecutor v. Milutinović et. al.*, 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 et. al.*, Case No. IT-05-87-PT, Decision on Prosecution’s Request for Certification for Appeal of Decision on Vladimir Lazarević and Sreten Lukić’s Preliminary Motions on Form of the Indictment, 19 August 2005, p. 3; *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. 2; *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 (“*Halilović* Decision”), p. 1.

that both conditions are satisfied.”¹¹ In addition, it should be noted that, even where both requirements of the Rule are satisfied, certification remains in the discretion of the Trial Chamber.¹²

IV. Discussion

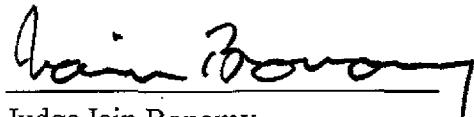
8. The Trial Chamber does not consider that the Impugned Decision affects the fair and expeditious conduct of the present proceedings. As indicated in the Impugned Decision, the Accused is not prevented from communicating with potential witnesses at this stage of proceedings as he has various means available to contact them, directly or through his legal associates or *pro bono* advisers. Should he wish to meet the Witness in person, he or his legal associates could arrange for his travel to and accommodation in The Hague. The Accused will be able to take advantage of the Registry’s assistance once he submits his Rule 65 *ter*(G) list, as is the case for other accused persons before this Tribunal.¹³ For these reasons, the Trial Chamber considers that the first prong of the Rule 73(B) test is not satisfied.

9. In light of the fact that the first prong of the test is not met, it is not necessary for the Trial Chamber to consider the second prong.

V. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rule 73(B) of the Rules, hereby **DENIES** the Application.

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



Judge Iain Bonomy
Presiding

Dated this twenty-second day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ *Halilović* Decision, p. 1.

¹² *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Motion for Certification to Appeal the 11 December Oral Decision, 15 January 2008, para. 4; *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting PW-104 Interview Statements, 25 April 2007, p. 1.

¹³ Impugned Decision, para. 20.