

31 MARCH 2010

UNITED
NATIONS

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-AR73.7

Date: 31 March 2010

Original: English

IN THE APPEALS CHAMBER**Before:**

Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar:**Mr. John Hocking****Decision of:****31 March 2010****PROSECUTOR****v.****RADOVAN KARADŽIĆ*****PUBLIC***

**DECISION ON APPEAL FROM DECISION ON MOTION FOR
FURTHER POSTPONEMENT OF TRIAL**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:Mr. Radovan Karadžić, *pro se***Appointed Counsel:**

Mr. Richard Harvey

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of an appeal filed by Radovan Karadžić (“Karadžić”) on 9 March 2010 (“Appeal”),¹ against the “Decision on the Accused’s Motion for Postponement of Trial” rendered on 26 February 2010 (“Impugned Decision”) by Trial Chamber III hearing the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T (“Trial Chamber” and “Karadžić case”, respectively).² The Office of the Prosecutor (“Prosecution”) responded on 17 March 2010³ and Karadžić filed his reply on 22 March 2010.⁴

I. BACKGROUND

2. Karadžić stands accused of genocide, crimes against humanity and violations of the laws or customs of war.⁵ He has elected to conduct his own defence rather than accept representation by counsel.⁶ In order to assist him in this task, the Registry has assigned a number of paid legal assistants.⁷

3. At a status conference on 20 August 2009, the Pre-Trial Judge of the *Karadžić* case declared that the case was “now ready for trial”.⁸ On 3 September 2009, Karadžić filed a submission requesting ten additional months of trial preparation.⁹ At a status conference held on 8 September 2009, the Trial Chamber denied Karadžić’s request, finding that he had had sufficient time to prepare his case for trial, and scheduled the trial to commence on 19 October 2009.¹⁰ Karadžić appealed this oral decision.¹¹ The Appeals Chamber ordered the Trial Chamber to postpone the

¹ Appeal From Decision on Commencement of Evidence, 9 March 2010.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Accused’s Motion for Postponement of Trial, 26 February 2010.

³ Prosecution Response to Karadžić’s Appeal of Decision on Postponement of Trial, 17 March 2010 (“Response”).

⁴ Reply Brief: Appeal from Decision on Commencement of Evidence, 22 March 2010 (“Reply”).

⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution’s Marked-up Indictment, 19 October 2009, amending *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Third Amended Indictment, 27 February 2009 (“Third Amended Indictment”).

⁶ T. 43 (17 September 2008).

⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009 (“December 2009 President Decision”), para. 5; T. 455 (8 September 2009).

⁸ T. 434 (20 August 2009).

⁹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Submission on Commencement of Trial, 3 September 2009.

¹⁰ T. 454-456 (8 September 2009). The Trial Chamber thereafter changed this date to 21 October 2009 for administrative reasons, see T. 465 (6 October 2009).

¹¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Appeal of Decision on Commencement of Trial, 25 September 2009. The Trial Chamber granted Karadžić’s request for certification to appeal on 18 September 2009, see *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused’s Application for Certification to Appeal Decision on Commencement of Trial, 18 September 2009.

commencement of the trial until one week after the Prosecution had filed a marked-up indictment¹² to ensure that Karadžić had sufficient time to read it before the start of trial.¹³ The Appeals Chamber otherwise upheld the Trial Chamber's assessment of the trial readiness of the case.¹⁴ In compliance with this decision, the Trial Chamber directed the Prosecution to file the marked-up indictment by 19 October 2009 and ordered the trial to begin no later than 26 October 2009.¹⁵

4. On 21 October 2009, Karadžić filed a further submission informing the Trial Chamber that he would not appear for the scheduled start of the trial because, in his view, his defence was not ready.¹⁶ Despite repeated warnings by the Trial Chamber that his failure to attend the trial proceedings might result in the curtailment of his right to self-representation,¹⁷ Karadžić chose not to appear on 26 October 2009¹⁸ and continued to absent himself from the proceedings.¹⁹ After having heard the parties' oral submissions,²⁰ on 5 November 2009, the Trial Chamber instructed the Registrar to appoint standby counsel and adjourned proceedings until 1 March 2010 to provide the appointed standby counsel adequate time to prepare.²¹ In so doing, the Trial Chamber noted that Karadžić 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 further preparing himself for the trial."²²

5. On 19 November 2009, the Registrar appointed Mr. Richard Harvey as counsel to prepare to represent the interests of Karadžić at trial.²³ On 23 December 2009, the Trial Chamber denied a motion by Karadžić²⁴ requesting that the appointment of Mr. Richard Harvey be vacated, and

¹² The marked-up indictment was to reflect the reduction of the scope of the Third Amended Indictment, which was proposed by the Prosecution (*Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution Submission Pursuant to Rule 73bis(D), 31 August 2009) and accepted by the Trial Chamber (T. 467 (6 October 2009)).

¹³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009 ("Appeal Decision on Commencement of Trial"), paras 26-27.

¹⁴ Appeal Decision on Commencement of Trial, paras 21-24, 27.

¹⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Scheduling Order for the Commencement of Trial, 14 October 2009, p. 2.

¹⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Submission on the Commencement of Trial, 21 October 2009, p. 5.

¹⁷ T. 502-504 (26 October 2009), 510-511 (27 October 2009), 673 (2 November 2009).

¹⁸ T. 502 (26 October 2009).

¹⁹ T. 510 (27 October 2009), 612 (2 November 2009).

²⁰ T. 676-707 (3 November 2009).

²¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appointment of Counsel and Order on Further Trial Proceedings, 5 November 2009 ("Decision on Appointment of Counsel"), paras 24, 26, 28. The standby counsel was to prepare to represent the interests of Karadžić at trial, so that such counsel could take over as an assigned counsel to represent him should he continue to refuse to attend the proceedings or engage in any other conduct that obstructs the trial, *see id.*, paras 24-28. The Trial Chamber denied Karadžić's request for certification to appeal the Decision on Appointment of Counsel, *see Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused's Application for Certification to Appeal Decision on Appointment of Counsel and Order on Further Trial Proceedings, 23 November 2009.

²² Decision on Appointment of Counsel, para. 25.

²³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision of the Registrar, 19 November 2009, p. 3.

²⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Motion to Vacate Appointment of Richard Harvey, 4 December 2009, para. 1.

upheld the Registrar's decision appointing him as counsel.²⁵ On 12 February 2010, the Appeals Chamber affirmed the Trial Chamber's Decision on Motion to Vacate.²⁶

6. Meanwhile, Karadžić had also filed before the President of the Tribunal ("President") two requests for judicial review of decisions made by the Registry's Office for Legal Aid and Detention Matters ("OLAD") regarding the remuneration of members of his defence team: (i) at the pre-trial stage;²⁷ and (ii) in the period between the adjournment of the trial and 1 March 2010 ("adjournment period") and for the period after 1 March 2010.²⁸

7. On 17 December 2009, the President quashed the Registrar's decision to allocate a total of 4,500 remunerable hours for Karadžić's defence team during the pre-trial phase, and ordered the Registrar to allocate a total of 7,500 remunerable hours instead.²⁹

8. On 19 February 2010, the President found, *inter alia*, that no reasonable person could have arrived at the Registrar's decision to allocate 250 remunerable hours per month to Karadžić's entire defence team during the adjournment period, and thereafter 150 remunerable hours per month to his entire team for its out-of-court work in addition to any hearing hours spent by up to two defence team members in court.³⁰ The President ordered "the Registrar to allocate to Karadžić's defence team 1,200 remunerable hours per month until the resumption of the trial, 750 remunerable hours per month during trial, and to remunerate [Mr. Peter Robinson,³¹ one of Karadžić's legal advisors] at a rate of 71 Euros per hour during the trial".³²

9. On 1 February 2010, Karadžić filed a motion seeking postponement of the resumption of the trial on the grounds that his right to adequate facilities and to choose his standby counsel had been

²⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Accused's Motion to Vacate Appointment of Richard Harvey, 23 December 2009 ("Decision on Motion to Vacate"), para. 48.

²⁶ *Prosecutor v. Radovan 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, para. 36. *See also Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.6, Appeal From Decision on Motion to Vacate Appointment of Richard Harvey, 19 January 2010. The Trial Chamber granted Karadžić leave to appeal the Decision on Motion to Vacate on 13 January 2010, *see Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused's Application for Certification to Appeal the Trial Chamber's Decision on Motion to Vacate Appointment of Richard Harvey, 13 January 2010.

²⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 11 November 2009.

²⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Request for Review of OLAD Decision on Trial Phase Remuneration, 14 January 2010.

²⁹ December 2009 President Decision, paras 20-21, 25, 30.

³⁰ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010 ("February 2010 President Decision"), paras 38-39, 42-43.

³¹ The Trial Chamber granted Mr. Peter Robinson the "right of audience limited to addressing the Trial Chamber on legal issues that arise during the proceedings", *see id.*, para. 51. Accordingly, the President considered that he has an "expanded role in his capacity of legal assistant, which includes responsibility normally assumed by co-counsel", *see id.*, para. 53.

³² *Id.*, para. 56. *See also id.* paras 45-46, 53.

violated by the Registrar.³³ In particular, he argued that his ability to prepare for trial was impeded by the Prosecution's voluminous disclosure and its motions for the "admission of almost 2,000 documents and adjudicated facts" during a period in which he lacked the assistance of case managers and investigators as a result of the financial limitation imposed by the Registrar.³⁴ Karadžić also suggested that the Trial Chamber not make any determination on the matter until the Appeals Chamber had ruled on his appeal of the appointment of Mr. Harvey, and the President had issued his decision on defence funding.³⁵ On 3 February 2010, the Prosecution filed a response opposing the Motion.³⁶ On the same day, the Trial Chamber issued an order directing both parties to file any further submissions on particular disclosure matters during the adjournment period.³⁷

10. On 10 and 15 February 2010 respectively, the Prosecution filed two submissions providing detailed information on its disclosure to Karadžić pursuant to Rule 65*ter*, Rule 66(A)(ii), Rule 66(B) and Rule 68 of the Rules of Procedure and Evidence ("Rules") during the period between 16 October 2009 and 15 February 2010.³⁸ On 22 February 2010, Karadžić filed two submissions, one of which set out his position in relation to the volume and nature of material disclosed by the Prosecution in the adjournment period,³⁹ while the other stated that the consequences of the February 2010 President Decision must be a postponement of the trial to allow his full defence team to recover the preparation time "lost" as a result of the Registrar's unreasonable decision.⁴⁰ Karadžić requested that the evidentiary phase of the trial be postponed until 17 June 2010, while he indicated his intention to make his opening statement on 1 and 2 March 2010.⁴¹

11. On 26 February 2010, the Trial Chamber rendered the Impugned Decision denying the Motion.⁴² Having analysed the disclosure made to Karadžić during the adjournment period as well as "additional tasks" arising in the same period, the Trial Chamber concluded that postponing the resumption of the trial was unjustified.⁴³ As a result, the Trial Chamber ordered that Karadžić's

³³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Motion for Postponement of Trial, 1 February 2010 ("Motion"), para. 1.

³⁴ *Id.*, paras 11, 14.

³⁵ *Id.*, paras 15-16, 20.

³⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution's Response to Karadžić's Motion for Postponement of Trial, 3 February 2010.

³⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Order Setting Deadlines for Further Submissions, 3 February 2010 ("Order Setting Deadlines"), para. 7.

³⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution's Further Response to Karadžić's Motion for Postponement of Trial Pursuant to Trial Chamber's Order of 3 February 2010 with Confidential Appendices A-F, 10 February 2010; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution Periodic Disclosure Report With Confidential Appendices A and B, 15 February 2010.

³⁹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Submission Pursuant to Trial Chamber's Order Setting Deadlines for Further Submissions, 22 February 2010.

⁴⁰ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Supplemental Submission on Motion for Postponement of Trial Following President's Decision, 22 February 2010, ("Karadžić's Supplemental Submission"), paras 2-5.

⁴¹ Karadžić's Supplemental Submission, paras 3, 5.

⁴² Impugned Decision, para. 49.

⁴³ *Id.*, para. 47.

opening statement be heard on 1 and 2 March 2010, following which the hearing of evidence would commence on 3 March 2010.⁴⁴

12. On 1 and 2 March 2010, Karadžić made his opening statement. On 1 March 2010, Karadžić also filed a motion requesting certification to appeal the Impugned Decision and stay of the proceedings pending appeal.⁴⁵ At the end of the hearing on 2 March 2010, the Trial Chamber granted him certification to appeal and ordered that the effect of the Impugned Decision be stayed until the Appeals Chamber had resolved the matter.⁴⁶ On 9 March 2010, Karadžić filed his Appeal requesting the Appeals Chamber to reverse the Impugned Decision and to order that his trial commence on 17 June 2010.⁴⁷

II. STANDARD OF REVIEW

13. Trial Chamber decisions regarding the scheduling of trial are discretionary.⁴⁸ The Appeals Chamber's examination is therefore limited to establishing whether the Trial Chamber abused its discretion by committing a "discernible error".⁴⁹ The Appeals Chamber will overturn such discretionary decisions only where these are "found to be (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion".⁵⁰

III. SUBMISSIONS

A. Karadžić

14. Karadžić submits that by rejecting the requested postponement, the Trial Chamber made it impossible to implement the remedy granted by the President for the Registrar's unreasonable decision on defence funding.⁵¹ In Karadžić's view, the Trial Chamber overruled the President's order, which did not simply address the issue of funding, but was predicated upon the statutory right

⁴⁴ *Id.*, para. 49.

⁴⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Application for Certification to Appeal and for Stay Pending Appeal of Decision on Commencement of Evidence, 1 March 2010.

⁴⁶ T. 993-995 (2 March 2010).

⁴⁷ Appeal, para. 51.

⁴⁸ See, e.g., Appeal Decision on Commencement of Trial, para. 6; *Prosecutor v. Slobodan Milošević*, Case 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 ("*Milošević* Decision"), para. 16; *Augustin Ngirabatware v. The Prosecutor*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("*Ngirabatware* Decision"), para. 8.

⁴⁹ *Ngirabatware* Decision, para. 8.

⁵⁰ Appeal Decision on Commencement of Trial, para. 6; *Ngirabatware* Decision, para. 8.

⁵¹ Appeal, paras 24-25; Reply, paras 10, 16, 20. Karadžić also asserts that had the President believed that the disclosure and the tasks arising during the adjournment period could have been performed after the commencement of the

of an accused to adequate facilities for the preparation of his defence.⁵² Karadžić maintains that while the Trial Chamber has the discretion to set a date for the resumption of a trial to which it has been assigned, such discretion cannot be exercised in a manner which overrules a decision of the President.⁵³ According to Karadžić, “the Trial Chamber exceeded its authority and invaded the province of the President”⁵⁴ and erred “in drawing an artificial distinction between the remuneration of the defence team and the date upon which the trial could resume.”⁵⁵

15. Karadžić further submits that the Trial Chamber abused its discretion in deciding to commence the hearing of evidence before the Registrar’s violation of his right to adequate facilities had been remedied.⁵⁶ He contends that it was unreasonable for the Trial Chamber to conclude “that the trial could proceed with 400,000 pages of disclosure unreviewed and other trial preparation tasks unperformed” due to the Registrar’s unreasonable decision on defence funding.⁵⁷ In support of his submission, Karadžić maintains that the staffing of the defence team is a factor that a Trial Chamber must consider when determining whether the commencement of a trial would violate an accused’s right to adequate facilities.⁵⁸ He further asserts that the Appeals Chamber should not defer to the Trial Chamber’s determination, because (i) the Trial Chamber, which had been constituted only in September 2009, was not intimately familiar with the *Karadžić* case and (ii) its conclusion is in direct contravention of the President’s decision.⁵⁹

B. Prosecution

16. The Prosecution responds that the Trial Chamber neither overruled nor vacated the February 2010 President Decision.⁶⁰ The Prosecution submits that Karadžić’s arguments are based on the false assumption that the February 2010 President Decision required postponing the resumption of the trial.⁶¹ According to the Prosecution, the February 2010 President Decision was confined to the

evidence, he would not have “reversed” the Registrar’s decision, but would have ordered to increase the defence funding for the phase after the resumption of the trial, *see* Reply, para. 18.

⁵² Appeal, paras 32-34, 38; Reply, paras 12, 17, 19.

⁵³ Appeal, paras 35-38; Reply, paras 17, 20.

⁵⁴ Appeal, paras 24-25. *See also id.*, paras 22, 50.

⁵⁵ Appeal, para. 32. *See also* Reply, paras 13-15, 20.

⁵⁶ Appeal, paras 22, 47, 50.

⁵⁷ *Id.*, paras 40, 42. In the Motion of 1 February 2010, Karadžić stated that 300,000 pages of the material had been disclosed to him during the adjournment period, *see* Motion, para. 14. On 22 February 2010, he revised this figure to 400,000 pages counting the material disclosed since the filing of his Motion, *see* Karadžić’s Supplemental Submission, para. 3.

⁵⁸ *Id.*, para. 41 referring to *Ngirabatware* Decision, para. 28.

⁵⁹ *Id.*, paras 43-46 referring to *Milošević* Decision, para. 18; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on Defence Motion for Adjournment (Written Reasons), 21 September 2004, para. 3; Appeal Decision on Commencement of Trial. *See also* Reply, paras 17, 20, 23-24.

⁶⁰ Response, paras 5, 12.

⁶¹ *Id.*, para. 5.

issue of defence remuneration and did not address the timing of the resumption of trial, since trial management, including trial scheduling, is the responsibility of the Trial Chamber alone.⁶² The Prosecution also submits that the President had no authority to interfere with the Trial Chamber's discretion to manage trial proceedings and fix the trial schedule *in lieu* of the Trial Chamber.⁶³

17. The Prosecution further contends that the President and the Trial Chamber undertook different assessments in light of their respective concerns: the President decided upon the level of remuneration on the basis of "general work estimates", while the Trial Chamber undertook a detailed review of the nature and quantity of the material disclosed and "additional tasks" arising during the adjournment period, and considered whether there were means other than postponing the presentation of evidence to ensure that Karadžić's rights were not prejudiced.⁶⁴ The Prosecution also maintains that while the President did not specify the need to complete the "additional tasks" before the resumption of the trial, the Trial Chamber considered that most of these tasks did not have to be completed prior to the resumption of the trial.⁶⁵ According to the Prosecution, this shows that the Trial Chamber took into account the level of staffing in the defence team in addition to other relevant factors, and concluded that further postponement of the trial was unjustified.⁶⁶

18. The Prosecution also submits that Karadžić has failed to show that the Trial Chamber abused its discretion in rejecting his request for further postponement of the trial.⁶⁷ The Prosecution contends that the Trial Chamber carefully analysed the disclosure and other developments during the adjournment period in light of the level of defence assistance provided by the Registry.⁶⁸ The Prosecution maintains that Karadžić failed to address the Trial Chamber's detailed assessment of the facts relevant to the disclosure and "additional tasks", as well as its consideration of means other than further postponement of the trial to ensure that his rights were not prejudiced.⁶⁹ In particular, the Prosecution points out that the Trial Chamber suggested, in light of the February 2010 President Decision, the possibility of requesting the Registrar to remunerate eight defence team members, instead of five, during the first weeks of the resumed trial.⁷⁰ The Prosecution further states that Karadžić omitted to mention that during the adjournment period, he was assisted by 14 advisors in

⁶² *Id.*, paras 5-6.

⁶³ *Id.*, paras 7-8.

⁶⁴ *Id.*, paras 10-11, 13-14.

⁶⁵ *Id.*, paras 12-13.

⁶⁶ *Id.*, paras 13-14.

⁶⁷ *Id.*, para. 15.

⁶⁸ *Id.*, paras 15-17.

⁶⁹ *Id.*, paras 15, 18-21.

⁷⁰ *Id.*, paras 19, 21.

addition to those funded by the Registrar.⁷¹ Finally, the Prosecution asserts that none of the authorities cited by Karadžić supports his contentions.⁷²

IV. DISCUSSION

A. Alleged lack of authority on the part of the Trial Chamber to “override” the President

19. The Appeals Chamber recalls that in the Impugned Decision, the Trial Chamber held:

[T]he judicial review undertaken by the President in [the February 2010 President Decision] was confined to the issue of defence remuneration, and it did not and could not address the timing of the resumption of the trial, as this is a matter within the discretion of the Trial Chamber alone. It does not follow, therefore, purely from the [February 2010 President Decision] that there *must* be a further postponement of the trial to allow [Karadžić’s] defence team to recover the time “lost” during November, December, January, and February.⁷³

The Appeals Chamber does not see any error in this determination. The President is vested with the authority to supervise the activities of the Registrar, who is in charge of the administration and servicing of the Tribunal.⁷⁴ However, decisions relating to the general conduct of trial proceedings, including the scheduling of trials, are matters that fall within the discretion of Trial Chambers.⁷⁵ None of the provisions in the Statute of the Tribunal (“Statute”) or the Rules confers on the President the authority to interfere with a Trial Chamber’s determination with respect to the scheduling of a trial to which it is assigned. Indeed, while Trial Chambers are bound by the *ratio decidendi* of decisions of the Appeals Chamber,⁷⁶ the President has no competence to issue decisions that are binding on Trial Chambers.⁷⁷ This power is exclusively conferred upon the Appeals Chamber pursuant to Article 25 of the Statute.⁷⁸

20. Thus, in accordance with his mandate, in the February 2010 President Decision, the President solely dealt with the issue of remuneration for Karadžić’s defence team. He refrained from stating how his determination of the issue might affect the scheduled date of the resumption of the trial. The latter was clearly within the competence of the Trial Chamber, not of the President.

⁷¹ *Id.*, para. 21.

⁷² *Id.*, paras 23-25.

⁷³ Impugned Decision, para. 23 (footnote omitted).

⁷⁴ Rules 19(A) and 33(A) of the Rules.

⁷⁵ *Ngirabatware* Decision, para. 22; *Milošević* Decision, para. 16; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on Adequate Facilities, 7 May 2009, para. 11. *See also* *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Appeal Against Registry Decision of 19 December 2006, 12 March 2007, para. 6.

⁷⁶ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 113.

⁷⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Urgent Registry Submission Pursuant to Rule 33(B) Seeking Direction From the President on the Trial Chamber’s Decision of 27 November 2008, 17 December 2008, para. 9.

⁷⁸ *Id.*

21. The Appeals Chamber considers that the President's evaluation of defence funding may be a factor for a Trial Chamber to consider when deciding upon the scheduling of a trial, in discharging its duty to ensure the fair and expeditious management of the trial proceedings. However, this does not mean that the President's order to increase the remuneration for a defence team invariably warrants postponement of the trial. Thus, it was open for the Trial Chamber to conclude, in light of other relevant factors, that the President's view on the defence funding during the adjournment period would not necessitate further delay in the proceedings in order to safeguard Karadžić's rights to a fair trial.

22. In making its decision on the scheduling of the resumption of the trial, the Trial Chamber was indeed mindful of the President's finding that the remuneration provided for Karadžić's defence team during the adjournment period was insufficient.⁷⁹ Yet, the Trial Chamber held:

In assessing [the disclosure made during the adjournment period and the "additional tasks" arising in the same period], taken together and in light of the level of defence assistance being provided to [Karadžić] during the adjournment period, the [Trial] Chamber remains satisfied that these factors do not justify a further postponement of trial.⁸⁰

Therefore, Karadžić's assertion that the Trial Chamber overruled the February 2010 President Decision or removed the remedy granted therein although it was obliged to implement the President's order, is based on the misconception of both the law and the Impugned Decision. The Trial Chamber did not overrule the President, but concluded that the level of defence assistance for Karadžić, which the President found too low, could be remedied by means other than postponement of the trial.⁸¹ The Appeals Chamber finds no error in this approach.

B. Alleged abuse of discretion on the part of the Trial Chamber in deciding to commence the evidence hearing

23. In the course of discharging their duty to ensure that a trial is fair and expeditious,⁸² Trial Chambers enjoy considerable discretion in scheduling trials.⁸³ The Appeals Chamber recalls that "it is not possible to set a standard of what constitutes adequate time to prepare a defence. The length of the preparation period depends on a number of factors specific to each case".⁸⁴ Thus, a Trial Chamber's assessment of the time and resources required to prepare for trial is such a "fact-

⁷⁹ Impugned Decision, paras 21-22, 40, 43-44, 47.

⁸⁰ *Id.*, para. 47.

⁸¹ *Id.*, paras 40, 43, 47.

⁸² Article 20(1) of the Statute. *See also* Article 21(4)(b) of the Statute, requiring a Trial Chamber to guarantee the accused's right to have adequate time and facilities for the preparation of his defence.

⁸³ *Ngirabatware* Decision, para. 22; *Milošević* Decision, para. 16.

⁸⁴ Appeal Decision on Commencement of Trial, para. 19; *Ngirabatware* Decision, para. 28.

intensive exercise” that Karadžić’s comparisons to other cases are of little assistance and limited relevance.⁸⁵

24. In September 2009, the Trial Chamber determined that the *Karadžić* case was trial-ready.⁸⁶ The Appeals Chamber confirmed this finding in October 2009.⁸⁷ Thus, the Trial Chamber had only to determine “whether the current circumstances concerning Prosecution disclosure and other developments since the beginning of the adjournment period, are such as to require additional time for [Karadžić] to prepare, assisted by his defence team”.⁸⁸

25. The Appeals Chamber recalls that the Trial Chamber requested the parties to provide further submissions with respect to the Prosecution’s seemingly extensive disclosure of material during the adjournment period.⁸⁹ Based on the information provided, the Trial Chamber conducted considerably detailed analyses concerning the quantity and nature of the disclosed items, as well as reasons for their disclosure at this stage of the proceedings.⁹⁰ The Trial Chamber found that much of the disclosure made to Karadžić during the adjournment period was unavoidable, particularly the ongoing disclosure pursuant to Rule 65ter, Rule 66(A)(ii) and Rule 68 of the Rules.⁹¹ It was also satisfied that Rule 66(B) disclosure was unavoidable as it was made in response to Karadžić’s requests, and that the Prosecution had responded in a timely manner to his requests for Rule 66(B) material.⁹² Taking into account that Karadžić had already had 18 months to prepare, the Trial Chamber found that the volume of additional disclosure did not justify further delay to the hearing of evidence.⁹³ The Trial Chamber also considered other means to ensure that Karadžić’s rights were not prejudiced by late disclosure, such as granting him additional time to prepare for his cross-examination or familiarise himself with the disclosure, or allowing him to re-call a witness, upon a showing of good cause.⁹⁴

26. With respect to the “additional tasks” that Karadžić was allegedly required to undertake during the adjournment period, the Appeals Chamber observes that the Trial Chamber, cognisant of the President’s assessment of these tasks in the context of the defence remuneration, made its own

⁸⁵ See Appeal Decision on Commencement of Trial, paras 19, 23. See also *Ngirabataware* Decision, para. 28.

⁸⁶ T. 454-456 (8 September 2009). See also T. 434 (20 August 2009).

⁸⁷ The Appeals Chamber ordered the Trial Chamber to delay the commencement of the trial until one week after the Prosecution filed a marked-up indictment reflecting the reduction of the scope of the Third Amended Indictment, see Appeal Decision on Commencement of Trial, paras 21-24, 26-27.

⁸⁸ Impugned Decision, para. 23.

⁸⁹ Order Setting Deadlines, para. 7; Impugned Decision, para. 24. The Trial Chamber noted that in Karadžić’s Supplemental Submission, he revised the figure of 300,000 pages of the disclosed material to 400,000 pages following further disclosure made to him, see Impugned Decision, fn. 37.

⁹⁰ Impugned Decision, paras 25-37.

⁹¹ *Id.*, para. 38.

⁹² *Id.*

⁹³ *Id.*, para. 39.

⁹⁴ *Id.*, para. 40.

evaluation thereof from the point of view of the trial scheduling.⁹⁵ Regarding the Prosecution's motions relating to judicial notice, bar table and amendment of the Rule 65ter exhibit list,⁹⁶ to which Karadžić was supposed to respond during the adjournment period, the Trial Chamber has already granted extensions of time of four to six weeks to respond in view of their voluminous nature.⁹⁷ Taking into account the President's analysis of the same motions, the Trial Chamber held that any difficulty Karadžić had faced in responding to these motions during the adjournment period due to the limitation on the defence funding could be remedied by granting further extensions of time to respond.⁹⁸ It also observed that other "additional tasks" identified by Karadžić, such as interviewing Rule 92bis witnesses and potential defence witnesses as well as work necessary to challenge Prosecution experts, were "typical aspects of the preparation of any accused's case, and they [did] not have to be completed before a trial can reasonably begin".⁹⁹

27. In relation to both the disclosure and "additional tasks" during the adjournment period, the Trial Chamber also pointed out that in the February 2010 President Decision, the President had ordered the Registrar to provide funding for eight defence team members during the adjournment period, and for five defence team members during the trial phase. Based on this observation, and in light of the fact that the February 2010 President Decision was rendered only one week before the end of the adjournment period, the Trial Chamber suggested that it was open to Karadžić to request that the Registrar remunerate all eight defence team members, instead of five, during the first weeks of the resumed trial in order to accelerate progress in some tasks.¹⁰⁰

28. In light of the above, the Appeals Chamber is satisfied that the Trial Chamber took into account all the relevant factors, including the impact of the February 2010 President Decision on the staffing of Karadžić's defence team and possible remedies for the period when his team was understaffed. As a result, the Trial Chamber made no error in assessing that further postponement of

⁹⁵ In particular, *id.*, paras 42-43, 47.

⁹⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution's First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component with Confidential Appendix A, 19 October 2009; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution's Motion for Leave to File a Supplemental Rule 65ter Exhibit List with Confidential Appendix A, Public Appendix B and Confidential and *Ex Parte* Appendix C, 14 December 2009; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution's First Bar Table Motion with Appendix A, 15 December 2009; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts, 15 December 2009.

⁹⁷ Impugned Decision, para. 42, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Motion for Extension of Time to File Response to Prosecution Motion for Judicial Notice of Documents, 30 October 2009; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Accused's Motion for Extension of Time to Respond to Prosecution Motions, 24 December 2009.

⁹⁸ Impugned Decision, para. 43. The Trial Chamber accordingly granted extensions of two additional weeks except for one motion to which he had already responded, *see id.*, para. 49, d), setting 12 March 2010 as the deadline for responses to the relevant motions.

⁹⁹ *Id.*, para. 44. *See also id.*, paras 41(ii)-(iv), 45-46.

¹⁰⁰ *Id.*, paras 40, 43.

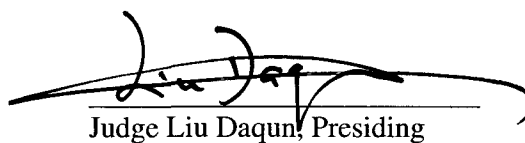
the trial was not justified. Karadžić has failed to demonstrate that the Trial Chamber abused its discretion in reaching this conclusion.

V. DISPOSITION

29. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal in its entirety.

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

Done this 31st day of March 2010



Judge Liu Daqun, Presiding

[Seal of the Tribunal]