



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: 23 September 2010

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 23 September 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

DECISION ON ACCUSED'S SECOND SUBMISSION ON TRIAL SCHEDULE

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”) is seised of the “Second Submission on Trial Schedule”, filed by the Accused on 7 September 2010 (“Submission”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 27 May 2010, the Chamber confirmed that from 31 May 2010 onwards, and until further order of the Chamber, there would be a four-day sitting schedule in these proceedings.¹ On 19 July 2010, the Appeals Chamber dismissed an appeal against this sitting schedule filed by the Accused on 10 June 2010, and found that “the Trial Chamber did not err in law when it ordered a four-day per week sitting schedule to take effect from 31 May 2010.”²

2. Following an indication by the Chamber that it was minded to move to a five-day sitting schedule after the summer judicial recess,³ the Accused filed a “Motion for Medical Examination and Report” on 20 July 2010, which was granted by the Chamber on 22 July 2010. The Chamber thus ordered “the Registrar [...] to provide a medical report to the Chamber on the current health of the Accused, any changes in the Accused’s health since his arrival at the UNDU, and, if possible, a medical opinion on the impact to the Accused’s health of increasing the court sitting schedule from four to five days per week.”⁴ The medical report was filed confidentially and *ex parte* on 12 August 2010 (“Medical Report”).⁵ The Reporting Medical Officer of the UNDU (“Reporting Medical Officer”) concluded that “Mr. Radovan Karadžić’s general health state is satisfactory with exception of his overweight and lack of physical exercise and fresh air. It is my opinion that a [sic] Mr Radovan Karadžić present health state does not oppose participating in proceedings 5 days a week. However, further reduction of physical activity would frustrate the medically necessary weight loss, and therefore it is my advice to limit the days participating in proceedings to 4 days a week should he continue to represent himself.”⁶

¹ Order on the Trial Schedule, 27 May 2010 (“27 May Order”), para. 9.

² *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.8, Decision on Appeal from Order on the Trial Schedule (“Appeal Decision on Trial Schedule”), para. 13.

³ Hearing, T. 2381 (19 May 2010).

⁴ Decision on Accused’s Motion for Medical Examination and Report, confidential, 22 July 2010, para. 4.

⁵ Registry Submission Pursuant to Rule 33 (B) Concerning Medical Report on Radovan Karadžić, confidential and *ex parte*, 12 August 2010. During the hearing of 8 September 2010, the Accused stated that he did not object to the disclosure of the Medical Report to the Office of the Prosecutor. Hearing, T. 6325, 6361 (8 September 2010).

⁶ Medical Report, para. 9.

3. Subsequently, at the status conference held on 3 September 2010, the Presiding Judge of the Chamber informed the parties that for reasons of judicial and courtroom unavailability, the Chamber could not move to the anticipated five-day sitting schedule until the end of October 2010. He further noted that, should the Accused wish to make any submissions against the planned five-day sitting schedule, he should do so in writing.⁷

4. In the Submission, the Accused requests that the Chamber not move to a five-day sitting schedule. He claims that doing so would jeopardise his health and disregard medical advice to the contrary.⁸ He further argues that it would be impractical for him, his legal advisors and the Chamber given their respective commitments.⁹ Lastly, the Accused submits that sitting five days per week would violate his right to adequate time and facilities to prepare his case and further exacerbate the inequality of arms between him and the Office of the Prosecutor (“Prosecution”), given the heavy use made by the Prosecution of Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) in this case, and the necessity for the Accused to cross-examine each witness himself.¹⁰

5. The Prosecution indicates its opposition to the request made in the Submission in the “Prosecution’s Response to Karadžić’s Second Submission on Trial Schedule with Confidential Appendix A” filed on 13 September 2010 (“Response”), and provides further observations on the planned five-day sitting schedule therein. It submits that it is within the discretion of the Chamber to order a five-day sitting schedule as long as the fairness of the trial continues to be ensured.¹¹ It argues that the Medical Report does not fully support the assertion that a five-day sitting schedule would jeopardise the health of the Accused, but that, in any event, any eventual ill-health concerns of a self-represented accused are more appropriately addressed by imposing restrictions to the said accused’s right to self-representation.¹² In this context, the Prosecution argues that the “decision by an accused to represent himself necessarily means that he may have deprived himself of the advantages that a legal defence team could have provided, and cannot insist on preferential treatment as a result.”¹³ With regard to the impracticality of a five-day sitting schedule, the Prosecution notes that the Accused may rely on his legal advisors to interview witnesses.¹⁴ It concludes by recalling that it is within the Chamber’s discretion to adopt a five-day sitting schedule or to seek other options that it deems appropriate, such as

⁷ Status Conference, T. 6140 (3 September 2010).

⁸ Submission, paras. 3–4.

⁹ Submission, paras. 5–6.

¹⁰ Submission, paras. 7–10.

¹¹ Response, para. 2.

¹² Response, paras. 3-5, confidential Annex A.

¹³ Response, para. 9; *see also* Response, paras. 10–11.

maintaining the current four-day sitting schedule and increasing courtroom time on each sitting day by “an appropriate number of hours”.¹⁵

II. Discussion

6. As stated elsewhere, including in the 27 May Order, the Chamber recalls that it has a statutory duty to ensure the fair and expeditious conduct of the trial.¹⁶ Amongst the minimum fair trial guarantees afforded to the Accused under the Statute is the right to have adequate time and facilities for the preparation of his defence.¹⁷ The Chamber reiterates its continuing commitment to safeguarding the Accused’s fair trial rights.¹⁸ Furthermore, the Chamber continues to consider that the Accused should exercise his right to self-representation within the framework of measures introduced by it to ensure the reasonable progress of the trial.¹⁹ With this in mind, the Chamber has already held that “[s]itting four or five days a week should not place an unreasonable burden on the Accused; indeed, many defence counsel have represented their clients before this Tribunal on a five-day sitting schedule.”²⁰

7. The Accused first argues that adopting a five-day sitting schedule would jeopardise his health and would disregard the advice presented in the Medical Report.²¹ The Chamber wishes to underline the Reporting Medical Officer’s conclusion that the Accused’s “present health state does not oppose participating in proceedings 5 days a week”.²² The only basis for his advice that the Chamber maintain a four-day schedule is that any further reduction of physical activity on the part of the Accused would frustrate medically necessary weight loss. The Medical Report therefore assumes that on a four-day sitting schedule, the Accused would use the fifth weekday to exercise. The Chamber notes that this is only an assumption and that at present nothing indicates that the Accused would actually exercise on the fifth weekday, or that he is currently doing so. The Chamber remains fully attentive to any development in the Accused’s state of health. Because representing oneself is a demanding task, the Chamber would however like to encourage the Accused to take heed of the Reporting Medical Officer’s advice with regard to the need for weight loss, physical exercise and fresh air whenever possible. In these circumstances,

¹⁴ Response, para. 7.

¹⁵ Response, paras. 12–13.

¹⁶ 27 May Order, para. 7; Statute, Articles 20(1) and 21(2).

¹⁷ Article 21(4)(b) of the Statute.

¹⁸ 27 May Order, para. 7.

¹⁹ 27 May Order, para. 7.

²⁰ 27 May Order, para. 7.

²¹ Submission, para. 3; Medical Report.

²² Medical Report, para. 9.

the Chamber does not consider that adopting a five-day sitting schedule would be detrimental to the Accused's health.

8. The Accused further submits that adopting a five-day sitting schedule would violate his right to adequate time and facilities for the preparation of his defence, in light of the scope of the case, its document intensive nature and the extensive use of Rule 92 *ter* by the Prosecution.²³ Because these arguments are raised by the Accused again, the Chamber considers it necessary to repeat herein that “in general a self-represented accused is expected to undertake all the tasks normally assumed by counsel”.²⁴ It is nonsensical for the Accused to argue in favour of his request for a more restricted sitting schedule that the Prosecution “brings in new lawyers to conduct what little direct examination is required” when he chose to represent himself and therefore accepted that he would conduct the cross-examinations himself, as he deems appropriate. The Chamber reminds the Accused that, at any time, he may choose to be represented by counsel should he consider the burden of self-representation to be too heavy. He may also delegate some of the necessary witness preparation to any of his legal advisers and assistants. As such, the Chamber does not consider that a five-day sitting schedule would violate the Accused's right to adequate time and facilities.

9. With regard to the Accused's argument that a five-day sitting schedule would be impractical given the other commitments of members of his defence team, as well as the Judges of the Chamber, the Chamber recalls its previous ruling that “[s]itting four or five days a week should not place an unreasonable burden on the Accused; indeed, many defence counsel have represented their clients before this Tribunal on a five-day sitting schedule”.²⁵ The Accused has been afforded considerable resources, including for the remuneration of his legal advisors, case manager(s) and other assistants. He may, therefore, organise the preparation of his defence and delegate certain tasks, such as interviewing witnesses and reviewing documents, as he best sees fit and in order to avoid scheduling conflicts. This is, indeed, what defence counsel routinely do in other cases, and the Accused should do likewise. With regard to its own schedule of hearings and deliberations, the Chamber had previously stated that once judicial and courtroom activity became less of an issue, it would revert to “a more normal sitting schedule”²⁶ and was minded to sit five days per week.²⁷ This Chamber is no less capable of organising its deliberations around

²³ Submission, paras. 7–10.

²⁴ *Prosecutor v. 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. 23; *see also* Appeal Decision on Trial Schedule, para. 11.

²⁵ 27 May Order, para. 7.

²⁶ 27 May Order, para. 3; Status Conference, T. 449–450, 454–455, 461–462 (8 September 2009); Hearing, T. 2380–2382 (19 May 2010); Status Conference, T. 6131–6134 (3 September 2010).

²⁷ Hearing, T. 2380–2382 (19 May 2010).

a five-day per week schedule than other Trial Chambers which have adopted such a schedule. The Chamber therefore considers that, while a five-day sitting schedule may be difficult to implement on a weekly basis in light of practical considerations, it would not be so impractical that it would impair the fairness of the trial.

10. The Accused has therefore not established that the additional burden of holding hearings on a fifth day per week would be so significant as to compromise his right to effectively conduct his defence or his right to have adequate time and facilities for the preparation of his defence. However, while the Chamber does not consider that a five-day sitting schedule would violate the rights of the Accused, it is also of the opinion that maintaining the current four-day schedule with sittings extended by 45 minutes whenever possible as is its current practice, may be equally conducive to ensuring an expeditious trial. An additional benefit of keeping such a schedule may also be that the Accused can pay closer attention to maintaining his good health by using part of the non-sitting fifth day to exercise.

11. For these reasons, the Chamber shall generally maintain a four-day per week sitting schedule for the time being, but shall sit for extended sittings of 45 additional minutes as of November 2010 whenever there is courtroom space availability. If necessary, the fifth weekday may be used to schedule non-evidentiary hearings or to finish hearing the testimony of a witness who must return to his place of residence before the weekend.²⁸ The Chamber will continue to regularly monitor the pace of the trial and reserves the possibility to move to a five-day sitting schedule at any time if it finds that progress made in the course of trial is not sufficient.

III. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby **ORDERS** that the Chamber shall:

- (i) maintain a four-day per week sitting schedule until further order; and
- (ii) sit for extended sittings of 45 additional minutes (sitting 9:00 a.m. to 2:30 p.m.) whenever possible as of November 2010,

²⁸ On Friday 15 October 2010, a hearing has been scheduled pursuant to Rule 54 *bis*.

and **REQUESTS** the Registry to make all necessary arrangements to implement this Order.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-third day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]