



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-AR73.5
Date: 13 October 2009
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision: 13 October 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON RADOVAN KARADŽIĆ'S APPEAL OF THE
DECISION ON COMMENCEMENT OF TRIAL**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić, *pro se*

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 the “Appeal of Decision on Commencement of Trial” (“Appeal”), filed by Radovan Karadžić (“Karadžić”) on 25 September 2009. The Office of the Prosecutor (“Prosecution”) filed its response on 5 October 2009¹ and Karadžić filed his reply on 12 October 2009.²

I. BACKGROUND

2. Karadžić’s arrest was announced by Serbian authorities on 21 July 2008³ pursuant to an indictment filed on 24 May 2000.⁴ On 30 July 2008, he was transferred to the custody of the Tribunal and he made his initial appearance the following day.⁵ At a further appearance on 29 August 2008, pleas of not guilty were entered on his behalf.⁶ Karadžić stands accused of genocide, crimes against humanity and violations of the laws or customs of war.⁷

3. Karadžić has elected to conduct his own defence rather than accept representation by counsel.⁸ In order to assist him in this task, the Registry has assigned a number of paid legal assistants.⁹ Karadžić is further assisted by volunteer “academics and law students”.¹⁰

4. At a status conference on 20 August 2009, the Trial Chamber declared Karadžić’s case to be “now ready for trial”.¹¹ Thereafter, Karadžić filed a submission requesting ten additional months of trial preparation. As justification, he provided detailed calculations on the specific tasks to be undertaken and their estimated time for completion.¹² The Trial Chamber issued its oral decision (“Impugned Decision”) at a status conference held on 8 September 2009, finding that Karadžić had sufficient time to prepare his case for trial, and setting a date for commencement of trial of 19 October 2009.¹³ In the Impugned Decision, the Trial Chamber noted its expectation that the trial

¹ Prosecution Response to Karadžić’s Appeal of Decision on Commencement of Trial (“Response”).

² Reply Brief: Appeal of Decision on Commencement of Trial (“Reply”).

³ Initial Appearance, T. 31 July 2008, p. 3.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-I, Amended Indictment. A further amended version of the Indictment was filed on 18 February 2009, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Second Amended Indictment. A Third Amended Indictment was filed on 27 February 2009, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Third Amended Indictment (“Third Amended Indictment”).

⁵ Initial Appearance, T. 31 July 2008, pp. 1-3.

⁶ Further Initial Appearance, T. 29 August 2008, pp. 32-33. Pleas of not guilty were entered with regard to the Third Amended Indictment on 3 March 2009. Further Appearance, T. 3 March 2009, p. 134.

⁷ Third Amended Indictment, p. 1.

⁸ Status Conference, T. 17 September 2008, p. 43.

⁹ Status Conference, T. 8 September 2009, p. 455.

¹⁰ See Appeal, para. 10.

¹¹ Status Conference, T. 20 August 2009, p. 434.

¹² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Submission on Commencement of Trial, 3 September 2009 (“Karadžić Submission”), pp. 2, 6-9.

¹³ Status Conference, T. 8 September 2009, pp. 454-56.

would be reduced beyond the scope envisaged in the Third Amended Indictment, and that trial sessions would be held fewer than 5 days per week.¹⁴ Further, it noted that Karadžić would have amassed 14 months preparation time by the outset of trial in October 2009, and that he was assisted by a number of paid and volunteer legal assistants.¹⁵ Finally, the Trial Chamber noted the significant number of motions Karadžić had filed, and recalled the Pre-Trial Judge urging him on several occasions to devote resources to actual preparation for trial.¹⁶ With respect to the reduction of the indictment, the Trial Chamber welcomed the Prosecution's proposed reductions to the indictment set forth in a submission filed on 31 August 2009 under Rule 73bis(D) of the Rules of Procedure and Evidence,¹⁷ and instructed the Prosecution to consider further reductions prior to the commencement of trial.¹⁸

5. Karadžić requested certification to appeal the Impugned Decision¹⁹ and this was granted on 18 September 2009.²⁰ At the pre-trial conference held on 6 October 2009, the Trial Chamber changed the commencement date of the trial to 21 October 2009 for administrative reasons.²¹ It also noted that the Prosecution had declined to propose further reductions in the scope of its case.²² The Trial Chamber therefore accepted all reductions proposed in the 31 August 73bis(D) Submission, and requested that by 19 October 2009 “the Prosecution should file a marked-up version of the indictment and its schedules based upon [. . .] its 31 August [73bis(D) motion] with each of the municipalities and/or crime sites or incidents that [would no longer] be the subject of evidence at trial struck through” along with certain additional explanatory footnotes.²³

II. STANDARD OF REVIEW

6. Trial Chamber decisions regarding the scheduling of trial are discretionary.²⁴ The Appeals Chamber will overturn such discretionary decisions only where these are “found to be (1) based on

¹⁴ *Id.*, pp. 454-55.

¹⁵ *Id.*, p. 455.

¹⁶ *Ibid.*

¹⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution Submission Pursuant to Rule 73bis(D), 31 August 2009 (“31 August 73bis(D) Submission”).

¹⁸ Status Conference, T. 8 September 2009, p. 451.

¹⁹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Application for Certification to Appeal Decision on Commencement of Trial, 14 September 2009, para. 1.

²⁰ *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, para. 8.

²¹ Pre-Trial Conference, T. 6 October 2009, p. 465.

²² *Id.*, p. 467.

²³ *Id.*, p. 468.

²⁴ See, e.g., *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on 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.

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".²⁵

III. DISCUSSION

A. Arguments of the parties

7. Karadžić contends that the Trial Chamber erred in not addressing "factors relevant to its making a fully informed and reasoned decision as regards the commencement date of the trial".²⁶ He maintains that if "the Trial Chamber did not accept the pre-trial tasks he had identified as essential [in the Karadžić Submission], or the time he had allocated to each of them as reasonable, the Trial Chamber was required, in fairness, to explain why it found them unnecessary or unreasonable".²⁷ Citing the *Ngirabatware* Decision as authority,²⁸ Karadžić contends that "[t]he task of calculating the required time [for pre-trial preparation] is objective and scientific",²⁹ and concludes that the absence of a "rational calculation"³⁰ in the Impugned Decision warrants a remand in order to ensure that the Trial Chamber considers "all the relevant factors" in setting a trial date.³¹

8. Karadžić specifically refers to a list of factors related to pre-trial preparation contained in the *Ngirabatware* Decision.³² He maintains that his case is particularly complex, that the number of counts and charges he faces is high, that the gravity of the crimes he is charged with is very serious, that as a non-native English speaker who is self-represented he faces particular difficulties in reviewing material,³³ that the Prosecution's disclosure is both "massive and incomplete",³⁴ and that his level of paid staffing is less than that provided "by the Registry [in] complex 'level 3' cases at the Tribunal".³⁵ Karadžić contends that the Trial Chamber did not sufficiently consider these factors.³⁶ He concludes that no reasonable Trial Chamber could consider them and still find that the

²⁵ *Ngirabatware* Decision, para. 8.

²⁶ Appeal, para. 30.

²⁷ *Id.*, para. 31.

²⁸ *Ibid.*; see also *id.* paras 24-27.

²⁹ *Id.*, para. 31.

³⁰ *Id.*, para. 37.

³¹ *Id.*, para. 39.

³² *Id.*, para. 24. The *Ngirabatware* Decision notes that relevant factors may include but are not limited to "[t]he complexity of the case, the number of counts and charges, the gravity of the crimes charged, the individual circumstances of the accused, the status and scale of the Prosecution's disclosure, and the staffing of the Defence team". *Ngirabatware* Decision, para. 28.

³³ *Id.*, paras 41-54.

³⁴ *Id.*, para. 55.

³⁵ *Id.*, para. 62.

³⁶ *Id.*, para. 30.

19 October 2009 date for the commencement of the trial provided him with reasonable time for pre-trial preparations.³⁷

9. Karadžić contends that the Trial Chamber should have addressed his argument that under the Tribunal's Statute he possesses the right to be adequately prepared before trial commences,³⁸ and also should have addressed his argument that he received less preparation time than was available in the case of other individuals detained by the Tribunal.³⁹ He rejects the Trial Chamber's suggestion that a reduced trial schedule would allow continued preparation during trial, maintaining that the "disadvantage of commencing a trial without adequate preparation is simply not able to be remedied by frantic in-trial preparation".⁴⁰ Karadžić also specifies that his current legal team was not available for the full 14 months of his incarceration; that he was not able to fully prepare for the case against him until he received Prosecution disclosures and the pre-trial brief in May 2009; and that his volunteer assistants are not able to perform fact-oriented tasks like reading transcripts.⁴¹

10. Karadžić further maintains that the Trial Chamber erred in finding that a potential future reduction in the size of the case against him would reduce the amount of pre-trial preparation the defence required. He notes that it is unclear whether or how the Prosecution will reduce its case, and contends that there is no pre-trial preparation benefit from future non-specific reductions in the Third Amended Indictment. Karadžić contends that only when a reduction in the scope of an indictment actually occurs will he be able to better focus on trial preparations.⁴²

11. The Prosecution responds that the Impugned Decision does not constitute an abuse of discretion. Quoting the *Milošević* Decision, it maintains that it is appropriate to examine "pre-trial proceedings as a whole"⁴³ in determining whether the Trial Chamber erred in setting the trial date. More specifically, the Prosecution contends that the "status and scale of Prosecution disclosure was closely managed by the Trial Chamber throughout pre-trial proceedings";⁴⁴ that the Trial Chamber actively took into consideration the number of counts and charges in the indictment;⁴⁵ that the Trial Chamber specifically recognized both the size and complexity of the case⁴⁶ and the gravity of the crimes charged;⁴⁷ and that the Trial Chamber considered the staffing status of the defence legal

³⁷ *Id.*, paras 65-66.

³⁸ *Id.*, para. 31.

³⁹ *Id.*, para. 38.

⁴⁰ *Id.*, para. 73.

⁴¹ *Id.*, paras 79-84.

⁴² *Id.*, paras 67-70.

⁴³ Response, para. 3, citing *Milošević* Decision, para. 7.

⁴⁴ *Id.*, para. 6, citing Status Conference, T. 2 April 2009, p. 155.

⁴⁵ *Id.*, para. 35, citing 31 August 73bis(D) Submission.

⁴⁶ *Id.*, para. 8, citing Status Conference, T. 2 April 2009, p. 146.

⁴⁷ *Id.*, para. 9, citing Rule 65ter Conference, T. 24 March 2009, p. 47.

team.⁴⁸ It further contends that the Trial Chamber took Karadžić's individual circumstances into account, both as a self-represented individual,⁴⁹ and as a non-native English speaker.⁵⁰

12. The Prosecution contends that the Trial Chamber's reminders to Karadžić regarding the need for trial preparation⁵¹ are further evidence that the Impugned Decision was reasonable. It also details various actions taken to assist Karadžić, including its own provision of an interim pre-trial brief, its disclosure of documents in forms helpful to Karadžić, and the access to confidential materials granted to Karadžić's legal team.⁵² The Prosecution notes that Karadžić does not request a specific amount of time for trial preparation; on this basis it contends that if his request remains ten additional months of pre-trial preparation then it is "excessive"⁵³ and that if his request is for an unspecified period less than ten months, "his lack of specificity undermines his position that the task of calculating the required time is objective and scientific".⁵⁴

13. The Prosecution maintains that Karadžić's own choices have made his preparation for trial more difficult. It contends that Karadžić's decision to represent himself, seek large volumes of disclosure material of only limited relevance, have his legal volunteers work on issues other than trial preparation and request large volumes of materials at a late stage from third parties are all self-inflicted hindrances to adequate trial preparation.⁵⁵

14. The Prosecution contends that the Appeals Chamber has implicitly found that the potential for conducting defence preparations during a trial is relevant to determining whether a defence team has adequate preparation time before a trial begins.⁵⁶ It also maintains that the "average pre-trial detention period of accused persons brought before [t]he Tribunal is not a valid guide to the adequacy"⁵⁷ of the preparation time awarded to Karadžić. Nonetheless, the Prosecution notes that the Slobodan Milošević trial began only eight months after his arrest, and that this trial is comparable in scope to Karadžić's case.⁵⁸

⁴⁸ *Id.*, para. 12, citing Impugned Decision, p. 455-56.

⁴⁹ *Id.*, para. 10 ("the Registry has accommodated the payment of [...] assistants and investigators beyond the levels envisaged in the remuneration scheme"), citing Impugned Decision p. 455; Status Conference, T. 2 April 2009, pp. 144, 156.

⁵⁰ *Id.*, para. 11.

⁵¹ *Id.*, para. 14, citing Status Conference, T. 3 June 2009, p. 275.

⁵² *See id.*, paras 17-31; *see also id.* paras 36-37.

⁵³ *Id.*, para. 15.

⁵⁴ *Ibid.* (internal quotations omitted).

⁵⁵ *Id.*, paras 38-44.

⁵⁶ *Id.*, para. 45, citing *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 ("Krajišnik Decision"), para. 23.

⁵⁷ *Id.*, para. 49.

⁵⁸ *Ibid.*

15. Finally, the Prosecution notes various efforts to reduce the size of its case. In particular, it refers to the reduced scope of the Third Amended Indictment,⁵⁹ reductions in the number of witnesses from 542 to 409,⁶⁰ and reductions in the number of municipalities on which it plans to present evidence.⁶¹ It also notes that the Trial Chamber found that the 19 October 2009 start date was appropriate “even if the size of the trial were to remain the same”, and on that basis concludes that the Trial start date was not dependent on any future limitations on the scope of the indictment.⁶²

16. In his Reply, Karadžić reiterates that the Trial Chamber did not consider the factors enumerated in the *Ngirabatware* Decision,⁶³ and attempts to distinguish the *Milošević* Decision. In particular, Karadžić notes that in the *Milošević* Decision the Appeals Chamber considered only oral comments accompanying a written decision, as well as the relatively contemporaneous discussion before the *Milošević* Trial Chamber, whereas the Response makes reference to a much broader span of Karadžić’s pre-trial record.⁶⁴ In addition, Karadžić contends that the *Milošević* Trial Chamber was comprehensive in its analysis of Milošević’s arguments, whereas the Impugned Decision was not.⁶⁵ He also maintains that the *Milošević* Trial Chamber had comparatively more “organic familiarity” with the case.⁶⁶

17. Karadžić contends that the Response ignores his “detailed calculations” concerning the tasks facing the defence team,⁶⁷ and maintains that the Prosecution has not contradicted the facts he raises in support of these calculations.⁶⁸ Karadžić further contends that two bases of the Impugned Decision were undermined during the 6 October 2009 Pre-Trial Conference. In particular, he implies that the Impugned Decision’s references to a further reduction in the scope of the case failed to materialise,⁶⁹ and states that the Trial Chamber’s decision to proceed with sittings five days a week contradicts the Impugned Decision’s statement that a reduced sitting schedule would aid in-trial preparations.⁷⁰ Karadžić further maintains that in any event, the *Krajišnik* Decision’s consideration of in-trial preparation time is not applicable to his case for a variety of reasons, and thus that in-trial preparation time was not a valid consideration in setting the trial date.⁷¹ Finally, Karadžić contends that the Trial Chamber’s failure to order certain types of disclosure means that

⁵⁹ *Id.*, para. 32.

⁶⁰ *Id.*, paras 33-34.

⁶¹ *Id.*, para. 35.

⁶² *Id.*, para. 16, quoting Impugned Decision, p. 455.

⁶³ See Reply, paras 2-5.

⁶⁴ *Id.*, paras 6-7.

⁶⁵ *Id.*, para. 8.

⁶⁶ *Id.*, para. 9; see also para. 28.

⁶⁷ *Id.*, para. 11.

⁶⁸ *Id.*, para. 12; see also paras 13-19.

⁶⁹ *Id.*, paras 20-22.

⁷⁰ *Id.*, paras 23-24.

⁷¹ *Id.*, paras 25-29.

he will be inundated with documents during trial,⁷² and that his legal volunteers cannot be expected to perform “mundane tasks” of trial preparation,⁷³ which in any event need to be undertaken by himself and his full-time staff.⁷⁴

B. Analysis

18. As a preliminary matter, the Appeals Chamber notes that although the Appeal and the Response were filed based on the initially scheduled 19 October 2009 trial start date, the Appeals Chamber will proceed on the assumption that their arguments also apply to the revised 21 October 2009 trial start date.

19. Turning to the merits, the Appeals Chamber notes that the Appeal appears premised on a number of erroneous assumptions. First, rather than establishing that the calculation of pre-trial preparation time is a mechanically “objective” task,⁷⁵ the *Ngirabatware* Decision underscores 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”.⁷⁶ A Trial Chamber’s assessment of the amount of pre-trial preparation required in each case is a fact-intensive exercise but also involves an exercise of the Trial Chamber’s judgement. The factors cited in the *Ngirabatware* Decision and addressed by both Karadžić and the Prosecution are specifically described as examples of indicia that might impact a Trial Chamber’s assessment of the pre-trial preparation period,⁷⁷ rather than constituting a required “objective” checklist for Trial Chambers.

20. The Appeal also mischaracterizes the level of detail required of the oral Impugned Decision. Insofar as Karadžić claims that the Trial Chamber was required to specifically address all the particulars of his proposed “pre-trial tasks” and the time values he assigned them,⁷⁸ he is mistaken. The Appeals Chamber reiterates that assessing the amount of pre-trial preparation required is not a mechanical duty, and also that “[w]hile a Trial Chamber has an obligation to provide reasons for its decision, it is not required to articulate the reasoning in detail”.⁷⁹ The Appeals Chamber further observes that Karadžić’s focus on the oral Impugned Decision⁸⁰ ignores the broader context in which it was issued. The Appeals Chamber underscores that “[i]n examining whether the Trial Chamber has considered appropriate factors in sufficient measure” with regard to pre-trial

⁷² *Id.*, para. 30.

⁷³ *Id.*, para. 33.

⁷⁴ *Id.*, paras 34-35.

⁷⁵ *See* Appeal, para. 31.

⁷⁶ *Ngirabatware* Decision, para. 28; *see also* *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Appeal Judgement, 28 November 2007, para. 220.

⁷⁷ *Ngirabatware* Decision, para. 28.

⁷⁸ *See* Appeal, para. 31.

⁷⁹ *Milošević* Decision, para. 7 (internal citations omitted).

preparation, “the Appeals Chamber is not limited to the text of the order issued by the Trial Chamber”. Instead, it will look to relevant decisions and transcripts of recent status and pre-trial conferences in order to determine “whether the Trial Chamber gave the issues involved due consideration”.⁸¹

21. Reviewing the Trial Chamber’s reasoning as set out in both the Impugned Decision and various pre-trial proceedings demonstrates that it was well aware of the key issues impacting pre-trial preparation time: first, the size and scope of the Prosecution case, and the issues of disclosure and document review this raises, and, second, Karadžić’s decision to represent himself. In the 20 August 2009 and 8 September 2009 Status Conferences, and the 6 October 2009 Pre-Trial Hearing, the Trial Chamber specifically concerned itself with the parameters of the Prosecution case,⁸² eventually reducing its scope and capping the number of hours for the Prosecution’s presentation.⁸³ These decisions were taken in the context of diverse efforts during the pre-trial period to facilitate document disclosure⁸⁴ and specific reminders to Karadžić that he prepare for trial⁸⁵ and request resources he needed to do so.⁸⁶ Given the Trial Chamber’s explicit consideration of the case’s size and the actions it took to reduce this, Karadžić’s contention that it ignored issues such as the case’s complexity, number of counts and charges, the gravity of the crimes and the status and scale of the disclosure process is not convincing.

22. The Trial Chamber has also been continuously made aware that Karadžić is self-represented. In addition to his direct role as an interlocutor at status conferences, he has enjoyed significant assistance with his preparations. This assistance includes a larger number of paid legal assistants than is normally accorded by the Tribunal’s programme to assist those representing themselves,⁸⁷ and special efforts by the Trial Chamber to ensure that disclosure assistance was “above and beyond what would be done in the case of a represented accused”.⁸⁸ Again, Karadžić is unconvincing in contending that the Trial Chamber ignored this personal circumstance.

⁸⁰ See Appeal, paras 21, 29-39.

⁸¹ Milošević Decision, para. 7.

⁸² See Status Conference, T. 20 August 2009, pp. 400-403; Status Conference, T. 8 September 2009, pp. 445-452; Pre-Trial Hearing, T. 6 October 2009, pp. 467-68.

⁸³ Pre-Trial Hearing, T. 6 October 2009, p. 468.

⁸⁴ See, e.g., Pre-Trial Conference, T. 6 October 2009, pp. 479-82. The Trial Chamber also ordered that it be provided with periodic reports on the status of disclosure. *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order on Proposed Disclosure Report, 19 December 2008. It actively managed disclosure efforts as they progressed. See, e.g., Status Conference, T. 2 April 2009, pp. 148-56.

⁸⁵ See, e.g., Status Conference, T. 20 August 2009, p. 434; see also Status Conference, T. 3 June 2009, p. 275.

⁸⁶ Status Conference, T. 20 August 2009, p. 432.

⁸⁷ Status Conference, T. 8 September 2009, p. 455. See Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 24 July 2009 (Rev. 1), paras 3.1., 3.5., 3.6.

⁸⁸ Status Conference, T. 2 April 2009, p. 156.

23. Apart from his failure to show that the Trial Chamber did not consider factors relevant to pre-trial preparations, Karadžić also presents no convincing reasoning to demonstrate that the Trial Chamber's assessment of the time required for pre-trial preparation was so erroneous as to constitute an abuse of discretion. Simply repeating the number of counts in the indictment⁸⁹ or recounting the volume of documents disclosed⁹⁰ does not demonstrate that the Trial Chamber's assessment of necessary pre-trial preparation time was incorrect. Nor are comparisons to the specifics of other cases or the "average" amount of preparation time generally allowed defendants very informative,⁹¹ given the particularized circumstances of each individual tried by the Tribunal.⁹² The Appeals Chamber notes in passing that even considered on its merits, Karadžić's assertion that the Trial Chamber "fell into the same trap as the *Ngirabatware* Trial Chamber"⁹³ is unconvincing, given the very different circumstances addressed by the Appeals Chamber in the *Ngirabatware* Decision.

24. Insofar as the Impugned Decision relied on reduced sitting times during trial to justify the October trial date, Karadžić fails to show that the Trial Chamber erred. The Appeals Chamber has included preparation time during trial as one factor in its assessment of whether defence teams were given adequate total preparation time,⁹⁴ and it was a valid factor for the Trial Chamber to take into consideration. In addition, the Trial Chamber was justified in noting Karadžić's relatively large group of paid and unpaid advisors, and contrary to Karadžić's contention,⁹⁵ did not claim that they had worked for him during his entire time in custody.⁹⁶ While Karadžić's defence team may have taken some time to recruit and may not be able to work on every trial issue he would wish them to, these advisors are a source of significant support, and their limitations are linked to Karadžić's choice to be self-represented. The Appeals Chamber has explained that while "a Trial Chamber must be particularly attentive to its duty of ensuring that the trial be fair" to self-represented defendants, "[a] defendant who decides to represent himself relinquishes many of the benefits associated with representation by counsel".⁹⁷

⁸⁹ See, e.g., Appeal, paras 41, 46.

⁹⁰ See, e.g., *id.* para. 56.

⁹¹ See Appeal, para. 44.

⁹² Cf. *supra* para. 19.

⁹³ Appeal, para. 30.

⁹⁴ See *Krajišnik* Decision, para. 23. The Trial Chamber's rough calculations concerning the Prosecution case during the pre-trial conference, which assumed sittings five days a week, were obviously meant to be for estimation purposes only. See Pre-Trial Conference, T. 6 October 2009, pp. 467-68. As the Trial Chamber noted at the 8 September 2009 Status Conference, logistical considerations will prevent sitting five days a week during some periods of the Prosecution case. See Status Conference, T. 8 September 2009, pp. 449-50.

⁹⁵ Appeal, para. 80.

⁹⁶ Compare Appeal, para. 80, with Impugned Decision, p. 455.

⁹⁷ *Milošević* Decision, para. 19.

25. In the Impugned Decision, the Trial Chamber informed Karadžić that “the Chamber is minded that [the] trial will be reduced in size and that a number of crime sites or counts will not form part of it. This will have an impact on your submission”.⁹⁸ He convincingly asserts that his pre-trial preparations would not be assisted by “a hypothetical and at this point unknown reduction in the scope or size of the current indictment”.⁹⁹ During the 6 October 2009 Pre-Trial Conference, the Trial Chamber attempted to clarify the scope of the reduction, accepting all the proposals to reduce the indictment set forth in the Prosecution’s 31 August 73bis(D) Submission.¹⁰⁰ In the interest of additional transparency, it further ordered the Prosecution to file by 19 October “a marked-up version of the indictment and its schedules”,¹⁰¹ requiring the Prosecution to include footnotes explaining those changes which are not obvious in order to ensure that Karadžić clearly understands which of the counts and allegations remain.¹⁰² Given that the trial is scheduled to commence on 21 October 2009, this deadline risks leaving Karadžić only two days to review what is now to be the operative indictment in the trial proceedings.

26. Contrary to the implication of the Reply,¹⁰³ the Trial Chamber reduced the size of the case Karadžić faced by accepting the propositions of the Prosecution’s 31 August 73bis(D) Submission. However, the amount of time provided to Karadžić for reviewing the marked-up indictment is exceedingly short and risks rendering the trial unfair, even when the only potential changes are reductions in the Prosecution’s charges. In the context of this case, the Trial Chamber was obligated to ensure that Karadžić had sufficient time to read the marked-up and clarified indictment before the commencement of trial. Its failure to do so constitutes an abuse of discretion.

IV. DISPOSITION

27. For the foregoing reasons, the Appeals Chamber **ORDERS** the Trial Chamber to delay the commencement of the trial until one week after the Prosecution files the marked up indictment it was ordered to submit at the 6 October 2009 Pre-Trial Conference and **DISMISSES** the Appeal in all other respects.

⁹⁸ Impugned Decision, pp. 454-55.

⁹⁹ Appeal, para. 68.

¹⁰⁰ See Pre-Trial Conference, T. 6 October 2009, p. 467. The Trial Chamber thus effectively reduced the scope of the indictment, contrary to what is implied in Karadžić’s Reply, at paras 20-22.

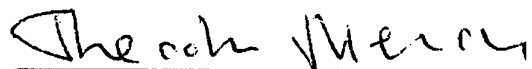
¹⁰¹ Pre-Trial Conference, T. 6 October 2009, p. 468.

¹⁰² *Ibid.*

¹⁰³ Reply, para. 20-22.

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

Done this 13th day of October 2009


Judge Theodor Meron, Presiding

Seal of the Tribunal