

Contents

CHAPTER ONE. Background	13
A. Introduction: Subject and methodology	13
B. The right to self-representation in national and regional jurisdictions	16
I. National jurisdictions	17
1. Common law systems: The example of <i>Faretta v. California</i>	17
2. Civil law / Other legal systems: Review of legislation	26
II. Regional jurisdictions	34
1. Existing provisions	34
2. Human Rights Committee and European Court of Human Rights	38
III. Influence of national and regional interpretations of the right to self-representation on the international criminal legal system	45
C. Preliminary observations	52
CHAPTER TWO. The right to self-representation in international criminal proceedings	54
A. Statutory provisions on the right to defend oneself in person	54
B. Judicial interpretation of the right to self-representation	66
I. The initial recognition of the right to self-representation	67
1. The case of Slobodan Milošević	67
a. Discussion of the <i>Milošević</i> approach	74
b. Confirmation and modification of the <i>Milošević</i> approach	78
2. Models differing from the <i>Milošević</i> approach	84
II. Recognition of the right to self-representation at different stages of the proceedings	89
1. The case of Momčilo Krajišnik: Trial phase	92

2. The case of Momčilo Krajišnik: Appeals phase	97
a. The majority opinion recognising self-representation on appeal	97
b. The fundamental dissent opposing self-representation	99
3. Discussion of the <i>Krajišnik</i> positions	102
a. Views expressed in the trial proceedings	102
b. Position of the appeals chamber majority	105
c. Opinion of the fundamental dissent	112
III. The impact of self-representation on the right to a fair trial	114
1. Interests of the accused	114
2. Interests of other participants in the proceedings	118
C. Potential pitfalls and actual repercussions of self-representation in the practice of international criminal proceedings	122
I. Negative consequences of the choice to self-represent for the accused	123
II. Risk of self-incrimination	127
III. Complexity of proceedings and (lack of) legal knowledge	131
1. Use of legal framework by self-represented accused	131
2. Impact of lack of legal knowledge on the conduct of proceedings	144
IV. Language barriers influencing the exercise of self-representation	149
1. <i>Ad hoc</i> Tribunals	149
2. International Criminal Court	164
V. Adequate time and facilities for self-represented accused	167
1. Adequate time	171
2. Adequate facilities	183
a. Office and assistance facilities	183
b. Financial aid	190
i. The cases of Momčilo Krajišnik and Vojislav Šešelj	190
ii. The case of Radovan Karadžić	205
c. Discussion	216
3. Use of resources by self-represented accused	222
a. Notion of “waste” of resources	222
b. Time management and delays	229
c. Potential impact of delays	241

D. The role of legal advisors to self-represented accused	245
I. The role of legal associates in <i>Tolimir</i> and <i>Karadžić</i>	246
II. Privileged communications with legal advisors	259
E. The accused choosing to self-represent and their motivations	265
I. General views on potential motives of <i>pro se</i> defendants	265
II. Motivations expressed by self-represented accused	269
F. Preliminary observations	276
 CHAPTER THREE. Restrictions on the exercise of the right to self-representation	 278
A. Factors that may be considered when restricting self-representation	278
I. Obstruction of the proceedings	281
1. Unintentional obstruction	283
a. The case of Slobodan Milošević	283
b. Impact of the accused’s state of health in other proceedings	288
2. Intentional obstruction	297
a. The case of Vojislav Šešelj	297
b. The case of Radovan Karadžić	301
II. Prior specific warning to the accused	305
III. “Clean slate” principle	307
IV. Proportionality of the restriction and right to be heard	311
V. Balance of interests	313
1. The right to expeditious proceedings	314
2. General fairness considerations	317
3. Further interests which may factor into the balance	320
B. Nature and forms of restrictions	325
I. Imposition of counsel	325
1. ICTY: Directive on the Assignment of Defence Counsel	326
2. The case of Radovan Karadžić	329
a. Litigation	329
b. Discussion	343
II. The role of imposed counsel	349
1. Potential roles to be played by imposed counsel	349
2. Examples of implementation in practice	354
3. Discussion	360

III. Potential ethical implications for imposed counsel	363
1. International Criminal Tribunal for the Former Yugoslavia	365
2. International Criminal Tribunal for Rwanda	375
3. Discussion	379
C. Preliminary observations	381
CHAPTER FOUR. Suggestions for future interpretations of the right to defend oneself in person	382
A. Conclusion: Lessons to be learned	382
B. Potential room for active participation by accused in the proceedings	384
ANNEX. Summary (German)	399
Bibliography	431
A. Doctrine	431
B. Table of cases	439