

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-55-A

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prusse Joensen
Judge Jose Ricardo de Prada Soleasa
Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Date: 22 April 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Government of Republika Srpska

Government of The Netherlands

Counsel for Radovan Karadzic:

Mr. Peter Robinson

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rule 68(I), for an order provisionally releasing him to live in Republika Srpska for the duration of his appeal.

2. Rule 68(I) provides in pertinent part that

...the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that:

- (i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;
- (ii) the appellant, if released, will not pose a danger to any victim, witness, or other person; and
- (iii) special circumstances exist warranting such release...

3. Rule 68(B) provides that a decision on provisional release should be made “only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard.” Therefore, Dr. Karadzic requests that the Registrar serve a copy of this motion on the Republika Srpska and The Netherlands.

4. The MICT President has held that “special circumstances” warranting provisional release related to humane and compassionate considerations exist where there is an “acute justification”, such as a medical need, a memorial service for a close family member, or a visit to a close relative in extremely poor health whose death is believed to be imminent.¹

5. The ICTY Appeals Chamber has recognised that “special circumstances” are not limited to humane and compassionate considerations, and held that “other exceptional factors may amount to special circumstances.”² Such factors have been found when an appellant has already served more than 2/3 of his sentence before the Appeals Judgement

¹ *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion for Provisional Release* (23 February 2016) at para. 9

² *Prosecutor v Stanisic & Zupljanin*, No. IT-08-91-A, *Decision on Stojan Zupljanin's Request for Provisional Release* (19 December 2013) at para. 19

has been issued.³

6. The appellant has the burden of satisfying the conditions of Rule 68(I) by a balance of probabilities.⁴

7. Dr. Karadzic contends that he will abide by all reasonable conditions of release, will appear at the hearing of the appeal or whenever required; will not pose a danger to any victim, witness, or other person; and that special circumstances exist warranting his release. He has attached a personal guarantee and declaration that sets forth the factual basis for his application for provisional release.

8. For the reasons set forth therein, it is respectfully requested that provisional release of Dr. Radovan Karadzic for the duration of his appeal be granted.

Word count (including declaration): 1502

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, connected letters.

PETER ROBINSON

Counsel for Radovan Karadzic

³ *Prosecutor v Mrskic & Sljivancanin*, No. IT-95-13/1-A, *Decision on the Motion of Veselin Sljivancanin for Provisional Release* (11 December 2007) at p. 3; *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-A, *Decision on Motion on behalf of Enver Hadzihasanovic for Provisional Release* (20 June 2007) at para 13; *Prosecutor v Kvočka et al*, No. IT-98-30/1-A, *Decision on the Request for Provisional Release of Miroslav Kvočka* (17 December 2003) at p 3

⁴ *Prosecutor v Tolimir*, No. MICT-15-95-ES, *Decision on Motion f Provisional Release* (23 February 2016) at para. 8

PERSONAL GUARANTEE AND DECLARATION OF RADOVAN KARADZIC

I, RADOVAN KARADZIC, do hereby declare under penalty of perjury, that the following is true and correct;

1. I am the Appellant in this case.

2. I hereby provide my personal guarantee that if released, I will appear at any and all proceedings required of me and will return to the United Nations Detention Facility when ordered; I will not take any actions whatsoever that may pose a danger to any victim, witness, or any other person; and I will obey any and all reasonable conditions of release, such as reporting to local authorities and limiting my movement or travel.

3. I note that although I did not surrender to the Tribunal voluntarily, after my arrest on 18 July 2008, I have fully cooperated with the Tribunal and have conducted myself at all times during my trial with respect and dignity. Not a single witness has reported any instance of threats or intimidation in my case.⁵ Therefore, I pose neither a flight risk nor a danger to any other person.

4. I believe that special circumstances exist warranting my release pending appeal.

5. First, my **health** has deteriorated during the eight years I have been in detention. When I arrived in the detention unit in 2008, although I was already 63 years old, my health was perfect. This was primarily due to a lifestyle of eating healthy foods and taking nutritional supplements.

6. Now, my blood sugar has risen to diabetes levels and my most recent blood pressure is elevated to 140/85. I also had to undergo emergency gall bladder surgery in August 2015 after the urgent intervention of my Trial Chamber. I am not able to follow the same kind of diet that I did when I was free and I am not obtain the supplements that I need while in detention. I am convinced that my health would not have deteriorated but

⁵ Now that my trial is concluded, there is no reason for any interference with witnesses in any event.

for the conditions of my detention, and that my health will continue to deteriorate if I am detained for the duration of my appeal.

7. Second, I have watched my fellow detainees die while I have been detained at the UN Detention Unit. We have lost Drago Nikolic, Zdravko Tolimir, and Mile Mrskic since I arrived at the Detention Unit. Vojislav Seselj, Goran Hadzic, and two other detainees have suffered serious, life-threatening illnesses while detained at the Detention Unit. Before I arrived detainees Mico Kovacevic, Slobodan Milosevic, Miroslav Deronjic, Slavko Dokmanovic, Milan Babic, Momir Talic, and Djordje Djukic had already died. I am convinced that this extraordinarily high incidence of **malignancy** and illness is no coincidence. I believe that environmental issues within the building of the Detention Unit exist and toxicity in that environment may well kill me or cause me to develop a debilitating illness if I am not released.⁶

8. Third, I am disabled by virtue of my detention from contributing in a meaningful and effective way to **my appeal**. I represented myself at my trial and am the person most familiar with the facts of my case. I am a full partner with my counsel in the preparation of my appeal. However, due to antiquated and inadequate computer facilities at the Detention Unit, the inability to access the internet, difficulties in being in contact with my investigator in Bosnia, and the effect of all of these frustrations on my mental and physical health, I am unable to provide effective assistance to my counsel on the appeal in a manner that will allow him to comply with the deadlines for appeal proceedings. Given the lack of adequate funding for my appeal, my assistance is paramount.

9. Fourth, I have been deprived of my **family and cultural life** for eight years during my detention, and face the prospect of at least another three years in detention while my appeal is decided. There is no way these 11 years can be recovered if I am acquitted. Even if my conviction is affirmed, I will have suffered these deprivations for an unconscionably long time. Because my family has insufficient funds to visit me, I have had infrequent in person contact with my family. Although I was a poet, writer, and intellectual in Serbian society, I have been deprived of my cultural needs while

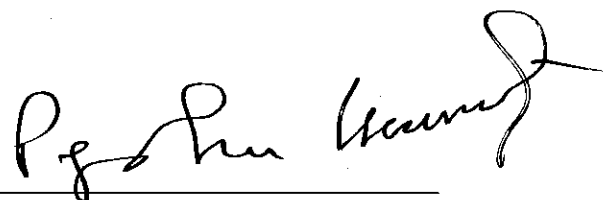
⁶ I note that following my letter complaining of these issues to Secretary-General Ban Ki Moon in October 2015, inspection and work have commenced on the ventilation system of the Detention Unit.

incarcerated. By being released, I will be able to have family visits and cultural life for which I have been deprived over the past 8 years.

10. Fifth, I strongly maintain my innocence and am highly motivated to rectify the injustice that has been done to me, and to the truth, by the judgement of the Trial Chamber. This Tribunal has a strong interest in seeing that the appeal proceedings are conducted with full respect for the rights of the defence, and that it receives the highest quality submissions from both parties. By granting me provisional release, the Appeals Chamber will take an important step in assuring the **fairness** of the appeal proceeding in my case.

11. Therefore, I respectfully request that I be granted provisional release on appeal.

DATED: 22 April 2016

A handwritten signature in black ink, appearing to read 'P. P. ...', written over a horizontal line.