

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 Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Date: 30 May 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR REVIEW OF REGISTRAR'S
DECISION ON INDIGENCE

The Office of the Prosecutor:

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

Counsel for Radovan Karadzic:

Mr. Peter Robinson

1. Pursuant to Article 13(B) of the *Directive on Assignment of Defence Counsel*, Dr. Radovan Karadzic seeks review of the Registrar's Decision of 24 May 2016 ("Impugned Decision") that Dr. Karadzic has sufficient "readily disposable" assets to contribute E146,501 to the cost of his defence on appeal.¹

Procedural History

2. On 16 March 2012, Ljiljana Zelen Karadzic, provided a written statement to the ICTY Registrar indicating that:

1. I am the wife of Radovan Karadzic.
2. I am not willing to pay any of the costs of my husband's defence.
3. I am not willing to liquidate any property to pay the costs of my husband's defence.²

3. On 10 October 2012, the ICTY Registrar decided that Dr. Karadzic must contribute E146,501 to his defence. This amount was calculated based primarily upon two properties that had been owned by Dr. Karadzic's spouse.³

4. On 25 February 2014, the ICTY Trial Chamber denied Dr. Karadzic's request for review of that decision. It held, *inter alia*, that "the lack of consent of the Accused's spouse to the dissolution of marital property is not a basis upon which the Accused can avoid his obligation to contribute towards his defence".⁴

5. On 25 July 2014, the ICTY Appeals Chamber affirmed the Trial Chamber's decision, finding no discernable errors.⁵

6. On 8 December 2015, Dr. Karadzic requested the MICT Registrar to assign counsel on appeal and submitted a statement of financial means. On 11 January 2016, the Registrar denied his request and indicated that on appeal, the MICT would be recognizing the ICTY decision on his contribution to the cost of his defence, and would only reconsider it if there was "new information unknown at the time of the original

¹ This decision is attached as Annex A

² *Prosecutor v Karadzic*, No. IT-95-5/18-T, *Request for Review of Indigence Decision* (7 November 2012), Annex C

³ *Prosecutor v Karadzic*, No. IT-95-5/18-T *Decision* (10 October 2012)

⁴ *Decision on Accused's Request for Review of Registrar's Decision on Indigence* (25 February 2014) at para. 18

⁵ *Decision on Appeal from Decision on Indigence* (25 July 2014) at para. 26

indigency determination” or a “relevant change in circumstances impacting on your ability to remunerate counsel”.⁶

7. On 21 January 2016, Dr. Karadzic requested that the following change in circumstance, *inter alia*, be considered by the Registrar:

“in the intervening 18 months since the final July 2014 ICTY Appeals Chamber decision requiring a contribution from me for the trial, my wife has refused to take any steps to revoke the transfer or liquidate the properties which were the subject of that decision. I have been advised that there is no legal basis for me to bring an action in the courts of Republika Srpska to require her to do so. Therefore, there is presently no way for me to obtain funds from those properties for my defence.”⁷

8. On 4 February 2016, the MICT President affirmed the Registrar’s decision that assignment of counsel on appeal would be premature.⁸

9. The Registrar assigned counsel on appeal to Dr. Karadzic on 24 March 2016 following the issuance of the Trial Chamber’s judgement.⁹

10. On 21 April 2016, the Registrar informed Dr. Karadzic that since Dr. Karadzic had not provided any new information that would change his indigency status, he would be required to contribute the E146,501 as determined in the ICTY case.¹⁰

11. On 23 April 2016, Dr. Karadzic pointed out that the Registrar had appeared to have overlooked his letter of 21 January 2016 when making his determination. He requested that the Registrar take that letter into consideration before issuing a final decision.¹¹

12. On 24 May 2016 the Registrar issued the Impugned Decision

The Impugned Decision

13. The Impugned Decision adopted the position of the Registrar expressed in his letter of 21 April 2016 that:

[T]he Trial Chamber dismissed your argument that the properties are not readily available because your spouse refused to contribute to the cost of your defence.

⁶ The Registrar’s letter is Annex B to *Motion for Review of Decision on Assignment of Counsel on Appeal* (13 January 2016)

⁷ Dr. Karadzic’s letter is attached as Annex B.

⁸ *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016)

⁹ *Decision* (24 March 2016)

¹⁰ The Registrar’s Letter is attached as Annex C. It has been redacted to remove the information that identifies the specific property.

¹¹ The letter from Dr. Karadzic’s counsel is attached as Annex D.

These rulings were upheld by the Appeals Chamber. Consequently, this cannot be considered new information to warrant a change in the ICTY indigency determination.

Grounds of Review

14. Dr. Karadzic asserts the following grounds of review:¹²

- (A) Whether the MICT Registrar erred in relying on decisions applying the *ICTY Registry Policy for Determining the Extent to Which an Accused is Able to Remunerate Counsel* ("ICTY Policy") in the absence of any policy promulgated by the MICT
- (B) Whether the MICT Registrar was unreasonable when concluding that the assets of Dr. Karadzic's spouse were readily disposable in light of her continuing and persistent refusal to take any steps to contribute her property to fund his defence
- (C) Whether the defence team should be remunerated during the appeal phase in the interest of justice notwithstanding the existence of assets of Dr. Karadzic's spouse

Standard of Review

15. Article 13(B) of the *Directive on Assignment of Defence Counsel* provides:

The accused whose request for assignment of counsel has been denied or who has been found to have sufficient means to remunerate counsel in part, may within fifteen days from the date upon which he is notified of that decision, file a motion to the Chamber before which he is due to appear for review of the Registrar's decision. The Chamber may:

- (i) confirm the Registrar's decision; or
- (ii) quash the Registrar's decision and rule that counsel be assigned; or
- (iii) direct the Registrar to reconsider the extent to which the accused is able to remunerate counsel.

16. The Appeals Chamber has held that when a Chamber is exercising its power of review under Article 13(B) of the Directive, an administrative decision will be quashed "if the Registrar has failed to observe any basic rule of natural justice or to act with procedural fairness towards the person affected by the decision, or if he has taken into account irrelevant material or failed to take into account relevant material, or if he has

¹² Dr. Karadzic does not seek review of the issue he raised with the Registrar concerning the applicability of the foreign judgements, as his Counsel has been required to return to The Netherlands due to the complexity of the appeal and unprecedented length of the Trial Chamber's judgement.

reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached.”¹³

Argument

The Lack of a MICT Policy

17. Article 6 of the ICTY Policy specifically excludes from the accused’s contribution “the equity in assets owned by the applicant, his spouse, and persons with whom he habitually resides, that are not readily disposable.”

18. Article 4 of the ICTY Policy defines “readily disposable asset” as “an asset owned by the applicant, the applicant’s spouse, or the persons with whom he habitually resides, that can be sold, mortgaged, or leased, in order to raise money for the applicant’s defence.”

19. The ICTY Trial and Appeals Chamber decisions were based upon this definition. They ruled in 2014 that the properties of Dr. Karadzic’s spouse were “readily disposable assets” as defined in Article 4 of the ICTY Policy.¹⁴

20. However, to Dr. Karadzic’s knowledge, the MICT has not adopted a policy for determining to what extent an accused is able to remunerate counsel. Such a policy, if and when adopted, may well include a provision that property that cannot be obtained due to the lack of consent of a spouse is not “readily disposable” for purposes of its inclusion in the calculation of the means of the accused to remunerate counsel.¹⁵

21. Therefore, the Registrar erred in relying on decisions that were based upon the ICTY Policy. In the absence of a MICT policy, he was obligated to freshly examine the issue of whether funds from the properties of Dr. Karadzic’s wife were “readily disposable”. Given that almost two years have passed since the Appeals Chamber decision requiring Dr. Karadzic to contribute to his defence, and that those assets are still not available to him, the Registrar may well have concluded that the assets were not

¹³ *Prosecutor v Kvočka et al*, No. IT-98-30/1-A, *Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Zigic* (7 February 2003) at para. 13

¹⁴ *Decision on Accused’s Request for Review of Registrar’s Decision on Indigence* (25 February 2014) at para. 36; *Decision on Appeal from Decision on Indigence* (25 July 2014) at para. 25

¹⁵ It would be expected that this policy would be adopted only after consultation with the Association of Defence Counsel. *Prosecutor v Ngirabatware*, No. MICT-12-29-A, *Decision on Motion to Quash and Revise a Decision of the Registrar on the Level of Complexity and Seeking Further Relief* (26 February 2014) at para. 38

“readily disposable” for contribution to his defence at the MICT had he not totally relied on the ICTY decisions based on the ICTY Policy.

22. On that basis alone, the Appeals Chamber should reverse the Impugned Decision and order the Registrar to decide the issue without relying on the earlier ICTY determinations, or after adopting a MICT policy.

Readily Disposable Means

23. Even if the Registrar were allowed to rely on the ICTY decisions in the absence of a MICT policy, the determination in 2016 that the assets of Dr. Karadzic’s spouse are readily disposable is clearly unreasonable. Two years have passed and Dr. Karadzic’s spouse continues to refuse to take any steps to recover or liquidate the property. Dr. Karadzic has determined that there is no legal basis in the courts of Republika Srpska for him to be able to compel her to do so. The notion that her assets are readily disposable for use in contributing to the cost of Dr. Karadzic’s appeal in 2016 is pure fiction.

24. It is also in direct contravention of the United Nations’ own guidelines.

25. The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2013) provides in pertinent part that:

“if the means test is calculated on the basis of the household income of a family , but **individual family members are in conflict with each other, or do not have equal access to the family income, only the income of the person applying for legal aid** is used for the purpose of the means test.”¹⁶ (emphasis added)

26. This is precisely the situation in Dr. Karadzic’s case. Dr. Karadzic’s spouse is in conflict with him and refuses to recover and liquidate her assets to contribute to the cost of his defence. Dr. Karadzic does not have equal access, or any access, to her properties. Therefore, only his income and assets must be used when calculating his ability to contribute to the cost of his defence.

27. The United Nations cannot expect member States to follow its guidelines if its own Mechanism for International Tribunals refuses to follow them. The MICT is supposed to be the “gold standard” for fairness. The Registrar’s decision, which completely fails to comply with the United Nations’ own standard that it urges upon

¹⁶ UN Doc A/RES/67/187, Guideline 41(f)

countries such as North Korea, Libya, and Venezuela, is simply unreasonable.¹⁷

28. Asking Dr. Karadzic to contribute his spouse's properties to the cost of his defence is now asking him to do the impossible. Even if the Registrar is found to have been entitled to rely on the ICTY decisions that the property was readily disposable in 2014, the Registrar was unreasonable in failing to consider the effect of the passage of another two years in which Dr. Karadzic was unable to obtain these supposed "readily disposable assets" to fund his defence.

29. In other contexts, the passage of time has been considered to warrant a different result of a judicial or administrative decision. For example, in the *Karemera* case, reconsideration of a protective measures decision was found to be warranted based upon the experience with those measures over time.¹⁸ In the *Milutinovic* case, reconsideration of a provisional release decision was found to be warranted based upon the passage of time in detention without trial.¹⁹ And in the immigration context, the passage of time spent by an alien in the country to which s/he seeks to emigrate is often found to be a changed circumstance justifying a decision on legal status.

30. Therefore, the Appeals Chamber should find that the Registrar's decision that Dr. Karadzic must do the impossible in 2016 and contribute his spouse's assets to the cost of his defence was unreasonable.

The Interests of Justice

31. Even if the Appeals Chamber finds that the Registrar was not unreasonable in ordering Dr. Karadzic to contribute funds from the recovery and liquidation of his spouse's properties, it should nevertheless, in the interests of justice, order that his contribution not be deducted from the funds allocated on appeal.

32. In the *Praljak* case, the ICTY Appeals Chamber assigned counsel to the appellant even where he was found to have sufficient assets to remunerate his defence team. While maintaining the order that he remunerate the Tribunal for the cost of his defence, the Appeals Chamber found that delays that would inevitably result from the

¹⁷ The European Commission uses the same standard.
http://ec.europa.eu/justice/criminal/files/c_2013_8179_en.pdf at p.5, para. 7

¹⁸ *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Reconsideration of Protective Measures for Prosecution Witnesses* (30 October 2006) at para. 4

¹⁹ *Prosecutor v Milutinovic et al*, No. IT-99-37-PT, *Decision on Applications for Provisional Release* (14 April 2005) at para. 32

appellant's having to represent himself would negatively affect his and his co-appellants' rights to fair and expeditious proceedings on appeal.²⁰

33. While Dr. Karadzic is not threatening to represent himself on appeal, and while his is a single accused case, there are nevertheless sound reasons to follow the precedent of the *Praljak* decision in his case.

34. The E146,501 contribution represents approximately 64% of the \$255,000 (or E229,000) allocated to a defence team to prepare the briefs in a Level 3 (most complex) appeal.²¹ The amount thus available for the preparation of the briefs would require that they be researched and drafted solely by Dr. Karadzic's counsel with no other paid members of the defence team. There would only be enough funds to compensate counsel for four months of the briefing cycle, which will include the opening brief, response to the prosecution's brief, reply brief, and submission of motions for additional evidence.

35. The result of this, in addition to the reduced quality of the submissions due to the lack of opportunity for collaboration and case management assistance, will be extraordinary delays in the time needed for preparation of the briefs. Significant extensions would be needed at every stage of the briefing schedule. The costs of these delays would ripple across the various organs of the Tribunal. Prosecution and Chambers staff, who have to be paid each month regardless of their workload, would be idle while waiting for the appellant's counsel, working alone, to file his briefs and responses.

36. While it is impossible to calculate the exact cost of these delays, considering that the defence, with counsel working alone, has estimated that 180 days, rather than 30, were necessary to prepare the notice of appeal,²² it is reasonable that the 6 month briefing and motions cycle²³ would take at least six times as long, or 36 months. The extra 30 months of salary for Prosecution and Chamber's Staff would far exceed the E146,501 contribution expected from Dr. Karadzic.

37. The delay would also unfairly extend Dr. Karadzic's imprisonment in the event that his convictions were overturned on appeal.

²⁰ *Prosecutor v Prlic et al*, No. IT-04-74-A, *Decision on Praljak's Request for Stay of Proceedings* (27 June 2014) at para. 16

²¹ *Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals* (21 March 2016) at para. 17

²² *Motion for Further Extension of Time to File Notice of Appeal* (20 May 2016) at para. 27

²³ 2 ½ months for opening brief, 1 1/3 months for response to prosecution's appeal, 1 month for reply brief, and 1 month for Rule 115 motions.

38. The MICT President recently told the diplomatic community that “the Mechanism will be able to stand as a new model of international court: one that is leaner and more efficient, while continuing to meet the highest international standards of due process.”²⁴ It is in the interest of justice that, to meet that commitment, the MICT ensure that the appeal in this case proceeds efficiently and with the highest standard of due process by ordering that the accused’s contribution to the cost of his defence not be deducted from the funds allocated for the appeal.

Conclusion

39. For any and all of the above reasons, it is respectfully requested that the funds available to the defence team on appeal not be reduced by the E146,501 contribution required from Dr. Karadzic.

Word count: 2974

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, prominent loops for the first and last letters.

PETER ROBINSON
Counsel for Radovan Karadzic

²⁴ MICT Press Release, *Mechanism Briefs Diplomatic Community in The Hague* (24 May 2016)

ANNEX “A”



MICT • MTPI

OFFICE OF THE REGISTRAR / BUREAU DU GREFFIER

CONFIDENTIAL

24 May 2016
MICT/H/OLAD/2016/060

Dear Mr. Karadžić,

I refer to Mr. Peter Robinson's letter of 23 April 2016, in which he requests that I address certain arguments made in your letter of 21 January 2016 with regard to the Declaration of Means form which you submitted on 8 December 2015.

In your letter of 21 January 2016, you claim that there are two new circumstances with regard to your means that the Registry needs to consider. First, you claim that your wife has refused to take any steps to liquidate the assets that have been subject to the original indigency determination. In this regard, I refer to my letter of 21 April 2016, which already addresses the matter of an unwilling spouse.¹ I reiterate that the ICTY Appeals Chamber already considered and deemed this matter as not affecting the original indigency determination.²

Secondly, you claim that Mr. Robinson's move to the United States constitutes a new circumstance, as the outstanding judgement against you in the United States would bar you from remunerating Mr. Robinson, even if you had such funds available. In this regard, I kindly turn your attention to the ICTY Trial Chamber's Decision of 25 February 2014.³ In this Decision, the Trial Chamber considered your claim that foreign judgements were enforceable against you in the Netherlands, and that therefore payments to your defence team would be subject to claims by judgement creditors.⁴ The Trial Chamber rejected your argument,⁵ ruling that you did not show that the monies paid to defence team members in the Netherlands would be subject to attachment⁶ and that you failed to establish that you had taken steps to satisfy these foreign judgements.⁷ Accordingly, the Trial Chamber found that the Registry was not unreasonable in excluding the foreign judgements as liabilities.⁸ The Appeals Chamber upheld these findings.⁹

I note that, similar to your claim with regard to the Netherlands, you have not brought forward any evidence that monies paid to Mr. Robinson in the United States would be subject to attachment, nor that you have taken any steps to satisfy the United States judgement against you.

In addition, I note that a decreased ability to contribute to the costs of one's defence cannot be based on the deterioration of assets due to the lapse of time since the initial determination of available means, in

¹ See Letter from the Registrar to Mr. Karadžić, 21 April 2016, pp. 1-2.

² See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.13, Decision on Appeal From Decision on Indigence, confidential *ex parte*, 25 July 2014 ("Appeal of Decision on Indigence"), paras. 23-26.

³ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T ("Karadžić"), Decision on Accused's Request for Review of Registrar's Decision on Indigence, confidential *ex parte*, 25 February 2014 ("Decision on Indigence").

⁴ *Id.*, para. 47.

⁵ *Id.*, paras. 49-50.

⁶ *Id.*, para. 49.

⁷ *Id.*, para. 50.

⁸ *Ibid.*

⁹ See Appeal of Decision on Indigence, para. 30.

particular if the accused has made no efforts to liquidate available assets in a timely manner. Similarly, a decrease in available means or the ability to contribute due to an act or omission by the accused cannot be considered either.

I note in this regard that at the time the original indigency decision was upheld by the Appeals Chamber in 2014, and you were, hence, due to pay your contribution to Mr. Robinson, he was still residing in the Netherlands, and could have received your payments.¹⁰

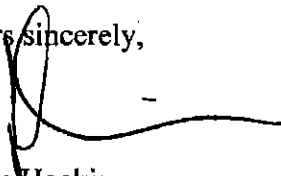
Accordingly, absent any proof that you have taken steps to satisfy the foreign judgements against you, and that you were unable to remunerate Mr Robinson in either the Netherlands or the United States, the Registry cannot consider Mr. Robinson's move to the United States as constituting a new circumstance which would impact the original indigency determination.

In light of the above, the two matters raised in your letter of 21 January 2016 do not affect the original indigency decision made by the ICTY in 2012 and therefore do not justify a change in your indigency status. Accordingly, my decision of 21 April 2016 remains in effect.

Consequently, and as previously explained in my letter of 21 April 2016, your full outstanding contribution of €146,501.00 will be deducted in due course from the legal aid allotment which your defence team is entitled to receive pursuant to the Appeals Policy.

Should you have any additional questions, please do not hesitate to contact Ms. Fiana Reinhardt at reinhardt@un.org.

Yours sincerely,


John Hocking
Registrar

To: Mr. Radovan Karadžić
UNDU

Cc: Mr. Peter Robinson
Counsel

¹⁰ *Karadžić*, Decision, public with public Appendix I and confidential *ex parte* Appendix II, 10 October 2012, as filed on 11 October 2012 ("Decision on Means"). See also Appeal of Decision on Indigence.

ANNEX “B”

Radovan Karadzic
International Criminal Tribunal for
the former Yugoslavia

21 January 2016

Ms. Fiana Reinhardt
Head of OLAD

Dear Ms. Reinhardt,

In your letter of 11 January 2015 denying my request for immediate assignment of counsel for the appeal before the MICT, you indicated that "the Registry will only reconsider the ICTY's determination of your indigency should the Declaration of Means include new information, unknown at the time of the original indigency determination or indicate that there is a relevant change of circumstances impacting on your ability to remunerate counsel."

I wish to inform you that there have indeed been changes in circumstances that I would like you to consider when your office makes a determination on whether there are funds that are readily available to me to contribute to my appeal.

The first change in circumstance is that in the intervening 18 months since the final July 2014 ICTY Appeals Chamber decision requiring a contribution from me for the trial, my wife has refused to take any steps to revoke the transfer or liquidate the properties which were the subject of that decision. I have been advised that there is no legal basis for me to bring an action in the courts of Republika Srpska to require her to do so. Therefore, there is presently no way for me to obtain funds from those properties for my defence.

The second change in circumstances is that following the trial, my Legal Advisor Peter Robinson has moved back to the United States, and will continue to work from the United States during any appeal. He would be unable to receive any funds from me even if I had such funds available, because the \$775 million judgement of the United States District Court in *Kadic v Karadzic* is registered and enforceable throughout the United States.

Therefore, I request that you take these changes in circumstances into consideration when you consider my request for assignment of counsel on appeal.

Yours truly,



Radovan Karadzic

ANNEX "C"



CONFIDENTIAL

21 April 2016
MICT/H/OLAD/2016/034

Dear Mr. Karadžić,

I refer to your letter of 8 December 2015, by which you submitted a completed Declaration of Means form accompanied by a request for the assignment of counsel and legal aid on appeal before the Mechanism for International Criminal Tribunals ("Mechanism"). I further refer to the Head of OLAD's letter of 11 January 2016, in which you were informed that whilst the request at that time was premature, the Registry would review the Declaration of Means in due course, following issuance of the trial judgement.

As a preliminary matter, I note that pursuant to paragraph 7 of the Remuneration Policy for Persons Representing indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals, 21 March 2016 ("Appeals Policy"),¹ the Mechanism will recognise the determination of indigency made by the International Criminal Tribunal for the former Yugoslavia ("ICTY"), unless new information is obtained which establishes that the accused has sufficient means to remunerate counsel.²

Having carefully reviewed your 2015 Declaration of Means form, the Registry finds that you have not provided any new information that would change your indigency status, whether to your benefit or detriment. Moreover, neither in your letter of 8 December 2015 nor your Declaration of Means form, do you claim that your situation has materially changed. Rather, all the information provided was already known to the Registry and taken into account by the ICTY in its original indigency determination in 2012.³ This determination was upheld in 2014 by the Appeals Chamber.⁴ Detailed reasons are set out below.

Pension and UNDU account

You reiterate that you do not receive any income or pension with the exception of occasional gifts from friends and family through your UNDU account. Furthermore, you indicate that your wife receives a small pension though she refuses to contribute to your defence.

I kindly turn your attention to the Trial Chamber and Appeals Chamber Decisions of 25 February 2014 and 25 July 2014 respectively.⁵ The Trial Chamber held that the Registrar was not unreasonable in including your spouse's pension as well as a portion of your UNDU account in your disposable means.⁶ This determination was upheld by the Appeals Chamber and your argument that your spouse refused to contribute

¹ See attached for your information.

² See paragraph 7 of the Appeals Policy. I note that before the ICTY you were found partially indigent and able to contribute €146,501.00 to the costs of your defence.

³ *Prosecutor v. Radovan Karadžić*, Case No. ICTY-95-5/18/T ("Karadžić"), Decision, public with public Appendix I and confidential *ex parte* Appendix II, 10 October 2012, as filed on 11 October 2012 ("Decision on Means").

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.13, Decision on Appeal From Decision on Indigence, confidential *ex parte*, 25 July 2014 ("Appeal of Decision on Indigence").

⁵ *Karadžić*, Decision on Accused's Request for Review of Registrar's Decision on Indigence, confidential *ex parte*, 25 February 2014 ("Decision on Indigence"). Also see Appeal of Decision on Indigence.

⁶ Decision on Indigence, paras. 18, 39-42, 46.

was dismissed.⁷ Accordingly, this does not constitute new information which would result in a change from the previous ICTY indigency determination.

Properties

You further claim that there are two properties which should not be included in the calculation of your assets as you have no interest in them and, even so, that they are not readily available to you for liquidation for the costs of your defence.

The Declaration of Means does not clarify to which two properties you refer specifically. However, I understand your reference to the "two properties" as references to the [REDACTED] property and the [REDACTED] property which have already been subject to previous litigation. In relation to these two properties, the Trial Chamber found that the Registrar was not unreasonable in including them in your disposable means.⁸ Furthermore, the Trial Chamber dismissed your argument that the properties are not readily available because your spouse refused to contribute to the cost of your defence.⁹ These rulings were upheld by the Appeals Chamber.¹⁰ Consequently, this cannot be considered new information to warrant a change in the ICTY indigency determination.

Outstanding liabilities

You also refer to the two outstanding foreign judgements against you in France and the United States of America.

The Trial Chamber already found that the Registrar was not unreasonable in excluding the foreign judgements as liabilities in the determination of your indigence.¹¹ The Appeals Chamber upheld this finding.¹² For this reason, the reference to the two foreign judgements cannot be considered new information leading to an adjustment of the ICTY indigency determination.

Moveable assets and bank accounts

In your Declaration of Means, you further state that you do not own any moveable property or have any bank accounts, stock, bonds or other valuables. This information was previously submitted and was taken into consideration in the Registrar's Decision on Means. This matter, therefore, does not appear to be in dispute.

Contribution before the Mechanism

In light of the above, the Registry finds that you did not provide any information which would justify a change from the ICTY indigency determination. Rather, the Appeals Chamber has already considered and deemed all the information provided by you as not impacting the original indigency determination. Accordingly, the Mechanism, pursuant to paragraph 7 of the Appeals Policy, recognises the determination made by the ICTY that you are partially indigent and able to contribute €146,501.00 to the costs of your defence.

⁷ Appeal of Decision on Indigence, paras. 14, 24-26.

⁸ Decision on Indigence, paras. 18, 20-22.

⁹ Decision on Indigence, paras. 18, 33-36.

¹⁰ Appeal of Decision on Indigence, paras. 14, 24-26.

¹¹ Decision on Indigence, paras. 49-50.

¹² Appeal of Decision on Indigence, paras. 29-30.

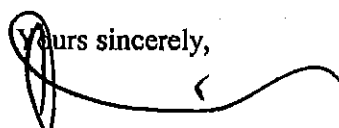


To date, this contribution of €146,501.00 has not been directly recovered by the Tribunal. The Registry, however, has informed you that it would be willing to deduct from your outstanding contribution your expenditures for case-related work performed by Mr. Robinson in the period between the closing arguments and issuance of the trial judgement.¹³ I further note the President's Decision of 12 October 2015 in this regard.¹⁴ Upon review of Mr. Robinson's final invoices, the Registry has established that an amount of €109,339.08 may potentially be deducted from your contribution.¹⁵ I kindly request that you provide the Registry with proof that payment in the amount of €109,339.08 has been made by you to Mr. Robinson to allow the Registry to verify that you have indeed contributed €109,339.08 to the costs of your defence.

In the event that you are not able to provide the Registry with proof that such payment has been made, you cannot be considered to have contributed to the costs of your defence. In such a case, there is no change in the means available to you and accordingly no monies can be deducted from your contribution.

As a result thereof, the full outstanding contribution would be deducted from any potential allotment to your defence team on appeal pursuant to the Appeals Policy. In line with the President's Decision of 12 October 2015, however, Mr. Robinson would then be remunerated by the Tribunal for work performed during the period between the closing arguments and pronouncement of the trial judgement.

Should you have any additional questions, please do not hesitate to contact Ms. Fiana Reinhardt at reinhardtff@un.org.

Yours sincerely,

John Hocking
Registrar

To: Mr. Radovan Karadžić
UNDU

Cc: Mr. Peter Robinson
Counsel

¹³ See Letter Head of OLAD to Mr. Karadžić, 12 November 2014; Letter Head of OLAD to Mr. Karadžić, 30 October 2015; Letter of Head of OLAD to Mr. Karadžić, 1 February 2016; Letter of Head of OLAD to Mr. Karadžić, 11 February 2016.

¹⁴ Karadžić, Decision on Request for Review of Registrar's Decision on Remuneration for October 2014 – January 2015, confidential *ex parte*, 12 October 2015.

¹⁵ This is the final total calculated upon review of Mr. Robinson's last invoices for January, February and March 2016 (€92,891.94 for remunerable work and €16,447.14 for travel related costs). Please note that these last three invoices were accepted in whole, save from one entry in the February 2016 invoice, where 5,5 hours were deducted on 1 February 2016 for communication with OLAD, a tasks considered not remunerable pursuant to the President's Decision of 12 October 2015. Previously, on 11 February 2016, the Registry indicated that for the period of October 2014 to December 2015 the total amount of €85,495.46 (€71,473.43 for remunerable work and €14,022.03 for travel related costs) could be considered for deduction.

ANNEX “D”

PETER ROBINSON
Defence Counsel
Residual Mechanism for
International Criminal Tribunals
Churchillplein 1
2517JW The Hague
Netherlands
E-mail: peter@peterrobinson.com

23 April 2016

Ms. Fiana Reinhardt
Office of Legal Aid and Detention
Residual Mechanism for
International Criminal Tribunals

Re: Prosecutor v Radovan Karadzic

Dear Ms. Reinhardt,

In reviewing your letter of 21 April 2016, I note that you stated that Dr. Karadzic had “not provided any new information that would change your indigency status. Moreover neither in your letter of 8 December 2015 nor your Declaration of Means form, do you claim that your situation has materially changed.”

It appears that you have overlooked Dr. Karadzic’s letter of 21 January 2016, in which he advised “I wish to inform you that there have indeed been changes in circumstances that I would like you to consider when your office makes a determination on whether there are funds that are readily available to me to contribute to my appeal.”

He then went on to describe the changes in circumstances. You didn’t address either of them in your decision.

I am attaching his letter and request that you consider it. Rather than appealing your decision of 21 April now and contending that you failed to consider relevant information, I thought it fair to give you the opportunity to consider the information and issue a new decision.

Ms. Fiana Reinhardt
--page two--

I will hold off on any appeal until hearing from you further.

Thank you for your cooperation.

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter Robinson". The signature is written in black ink and is centered on the page.

PETER ROBINSON
Counsel for Radovan Karadzic