

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. Olufemi Elias

Date: 5 January 2018

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REQUEST FOR RADOVAN KARADZIC'S PARTICIPATION
DURING THE APPEAL HEARING

Office of the Prosecutor:

Laurel Baig
Barbara Goy
Katrina Gustafson

Counsel for Radovan Karadzic:

Peter Robinson
Kate Gibson

1. Radovan Karadzic hereby requests that he be allowed to participate in the appeal hearing in his case by addressing grounds 28, 34, 36-37, 38-39, and 45 of his appeal during the time allocated to the Defence for its oral argument.¹

2. Now that the President has indicated that the appeal hearing in this case is likely to take place by the end of the second quarter of 2018,² President Karadzic's defence team has begun planning for the hearing and dividing responsibility for presenting the various grounds of appeal.

3. Grounds 28, 34, 36-37, 38-39, and 45 are predominately factual in nature. President Karadzic, as a self-represented accused, examined all of the witnesses at his trial. Although he chose to be represented by counsel on appeal due to the primarily written and legal nature of these proceedings, he actively and substantially participated in preparing the Defence opening and reply briefs concerning Grounds 28, 34, 36-37, 38-39, and 45. As a result, he is the member of the Defence team most knowledgeable about those grounds and their factual underpinnings.

4. President Karadzic and his Defence team have concluded that because of his special knowledge of these grounds, his experience in addressing the Court during his 7 ½ years of self-representation, and the importance he attaches to these grounds of appeal, he would be the member of the team best suited to addressing those grounds during the appeals hearing. Therefore, it is respectfully requested that he be allowed to participate in the appeal hearing by presenting the Defence oral argument on those grounds.

5. Article 19(4)(d) guarantees a defendant the right "to defend himself or herself in person or through legal assistance of his own choosing". Where the defendant is represented by counsel, the Chamber has the discretion to allow him to participate in addressing the court.³ When the defendant represents himself on appeal, the Chamber

¹ It is not envisioned that President Karadzic would address the Chamber on any of the Prosecution's grounds of appeal. However, he wishes to retain the opportunity customarily afforded to the defendant to address the Appeals Chamber for 10 minutes at the conclusion of the appeal.

² *Assessment and Progress Report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the Period from 16 May to 15 November 2017*, S/2017/971 (17 November 2017), para. 37

³ *Nahimana et al v Prosecutor*, No. ICTR-99-52-A, *Judgement* (28 November 2007), para. 267, fn. 651; *Prosecutor v. Prlic et al*, No. IT-04-74-AR73.11, *Decision on Slobodan Praljak's Appeal of the Trial Chamber's Decision on the Direct Examination of Witnesses dated 26 June 2008* (11 September 2008), para. 19 citing *Prosecutor v. Prlic et al*, No. IT-04-74-AR73.5, *Decision on Praljak's Appeal of the Trial*

has discretion to grant right of audience to a lawyer to participate in addressing the court as well.⁴ The ICTY Appeals Chamber has also granted right of audience for persons assisting the Defence who were not counsel.⁵

6. Therefore, allowing President Karadzic to participate in the appeal hearing alongside his Lead Counsel and Co-Counsel by making substantive arguments on factual grounds for which he has the most familiarity is consistent with the jurisprudence and practice of the *ad hoc* Tribunals.

7. No additional time is sought as a result of President Karadzic's participation in the appeal hearing. The time that the Appeals Chamber sets aside for the Defence to orally present its submissions will be divided among Lead Counsel, Co-Counsel, and President Karadzic.⁶ President Karadzic has shown throughout his 5-year trial, at the Rule 98 *bis* appeal hearing, and in status conferences with the Pre-Appeal Judge that he is respectful to the Chamber and will obey its rules and decorum. Lead Counsel will remain in charge of the Defence team and will retain overall responsibility for the appeal.

8. By granting President Karadzic this limited right to participate, the Appeals Chamber will not only benefit from his familiarity with the factual underpinnings of the Trial Chamber's judgement, but will allow President Karadzic to feel that he has had his "day in court" during the appeals hearing.⁷ Therefore, it is respectfully requested that President Karadzic be granted the right to participate in the appeal hearing by addressing grounds 28, 34, 36-37, 38-39, and 45.

Chamber's 10 May 2007 Decision on the Mode of Interrogating Witnesses (24 August 2007), paras. 9,11,13

⁴ *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Momcilo Krajisnik's Motion to Reschedule Status Conference and permit Alan Dershowitz to Appear* (28 February 2008), para. 8; *Prosecutor v Tolimir*, No. IT-05-88/2-A, *Decision on Tolimir's Request to Grant a Right of Audience to Mr. Aleksandar Gajic* (20 June 2014), p. 2; *Prosecutor v Karadzic*, No. IT-95-5/18-AR98bis.1, *Scheduling Order for Appeal Hearing* (22 March 2013), p. 2

⁵ *Prosecutor v Djordjevic*, No. IT-05-87/1-A (13 May 2013) T53-54; *Prosecutor v Prlic et al*, No. IT-04-84-A (20 March 2017) T116

⁶ The precise division of time will be determined after receiving any written questions from the Appeals Chamber. While President Karadzic requests the right to be heard on Grounds 28, 34, 36-37, 38-39, and 45, not all of those grounds will necessarily be addressed during the limited time available at the hearing.

⁷ Had President Karadzic chosen to represent himself on appeal, as he did at trial, he would be entitled to address the Chamber at the appeal hearing without seeking permission.

Word count: 974

Respectfully submitted,

A handwritten signature in black ink, reading "Peter Robinson". The signature is written in a cursive style with large, rounded letters and a prominent initial "P".

PETER ROBINSON

Counsel for Radovan Karadzic



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