

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: 20 May 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR FURTHER EXTENSION OF TIME
TO FILE NOTICE OF APPEAL

The Office of the Prosecutor:

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

Counsel for Radovan Karadzic:

Mr. Peter Robinson

1. On 21 April 2016, the Pre-Appeal Judge ordered the parties to file their Notice of Appeal by 22 June 2016.¹ Dr. Karadzic appreciates the 60-day extension granted by the Pre-Trial Judge. However, due to the inadequate resources provided to the defence team, it will not be possible to file a meaningful notice of appeal by 22 June 2016.

2. Dr. Karadzic requests an additional 90-day extension of the deadline for the filing of his notice of appeal.

3. On 8 December 2015, after learning that the prosecution had already started working on the appeal, Dr. Karadzic requested the immediate assignment of counsel on appeal. However, his request to assemble and fund a defence team was refused by the Registrar as “speculative”. Dr. Karadzic appealed this decision, but the President affirmed it.²

4. On 29 March 2016, on the first working day after the Trial Chamber judgement, Dr. Karadzic requested that the Registrar increase the amount of funding to his defence team based upon the complexity of the case and the resources available to the prosecution. He also requested that the Registrar make a determination of the amount of the contribution he would be required to make.

5. Regrettably, despite several inquiries and reminders over the past two months, the Registry has not yet made a determination on either issue.

6. As a result, counsel has been unable to recruit or retain anyone to help him with the preparation of the notice of appeal. The amount allocated for the preparation of the notice of appeal by the Registrar’s Legal Aid Policy, \$27,500, over the 90-day period for preparation of the notice of appeal, amounts to 27 ½ days of work by one counsel with no funding for any other staff.³

7. On the other hand, the prosecution has had a team of lawyers working on the appeal since at least November 2015. This team currently consists of at least three experienced counsel remunerated at the highest level for prosecution staff, and numerous other lawyers, case managers, and other support staff.

¹ *Decision on Motion for Extension of Time to File Notice of Appeal* (21 April 2016)

² *Decision on Motion for Review of Decision on Assignment of Counsel on Appeal* (4 February 2016)

³ The hourly rate for counsel pursuant to the Registrar’s Legal Aid policy is \$125/hr or \$1000 per 8-hour day.

8. The principle of equality of arms between the prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee of the Statute.⁴ As a minimum, a fair trial, which includes a fair appeal, must entitle the accused to adequate time and facilities for his defence under conditions that do not place him at a substantial disadvantage as regards his opponent.⁵ Equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case.⁶

9. Dr. Karadzic is at an extreme disadvantage when preparing his notice of appeal.

10. Dr. Karadzic accepts that equality of arms does not mean equality of resources.⁷ This principle has been widely stated in the jurisprudence of the ICTY and ICTR. It is because the accused benefits from the presumption of innocence at the trial and the prosecution bears the burden of proof beyond a reasonable doubt.⁸

11. The Appeals Chamber has repeatedly explained that:

The prosecution has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond a reasonable doubt. Defense strategy, by contrast, often focuses on poking specifically targeted holes in the prosecution's case, an endeavor which may require less time and fewer witnesses.⁹

12. However, now that Dr. Karadzic has been convicted, he bears the heavy burden of persuading the Appeals Chamber that the Trial Chamber has erred. As the Appellant, he is in a similar position to the prosecution at trial, having the burden of

⁴ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 44

⁵ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 47; *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at para. 175

⁶ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 48

⁷ *Prosecutor v Stakic*, No. IT-97-24-A, *Judgement* (22 March 2006) at para. 149

⁸ *Prosecutor v Perisic*, No. IT-04-81-PT, *Decision on Motion to Appoint Amicus Curiae to Investigate Equality of Arms* (18 June 2007) at para. 7; *Prosecutor v Prlic et al*, No. IT-04-74-T, *Decision on the Oral Request of the Accused Jadranko Prlic for Authorisation to Use a Laptop Computer at Hearings or to be Seated Next to his Counsel* (29 June 2006), pp. 3-4; *Prosecutor v Prlic et al*, No. IT-04-74-AR73.7, *Decision on Defendants Appeal Against the Decision Portant Attribution du Temps a la Defense Pour la Presentation des Moyens a Decharge* (1 July 2008) at para.39

⁹ *Prosecutor v Oric*, No. IT-03-68-AR73.2, *Interlocutory Decision on Length of Defence Case* (20 July 2005) at para. 7; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73, *Decision on Mathieu Ndirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008* (30 January 2009), at para. 29; *Prosecutor v Nyiramasuhuko et al.*, No. ICTR-98-42-AR73, *Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List*, (21 August 2007), at para. 26; *Prosecutor v Karemera et al*, No. ICTR-98-44-AR15bis.3, *Decision on Appeals Pursuant to Rule 15 bis (D)* (20 April 2007) at para. 28

identifying and specifying errors committed by the Trial Chamber, and persuading the Appeals Chamber to reverse those convictions.

13. Therefore, under the Appeals Chamber's rationale, Dr. Karadzic would be entitled to proportionally greater time and resources than that of the prosecution, who would merely be "poking holes" in the defence's arguments.

14. In particular, given that he has been convicted of 10 of the 11 counts in the indictment, it would be fair to estimate that his work in identifying errors in the 2600 page judgement, as well as in the hundreds of decisions and rulings during the five-year trial, is at least ten times that of the prosecution. Yet he has so far been allocated less than 10% of the resources available to the prosecution to do that job.

15. Such a situation is unfair and untenable.

16. Without any staff, Dr. Karadzic's counsel has been doing his best to examine the judgement, as well as the trial record, and identify potential grounds for appeal. He has done this at the same time as performing all of the other duties required of the defence team, including the preparation and filing of motions, answering inquiries from the Registry and prosecution, sending documents for translation, and liaising with Dr. Karadzic to assist him in his review of the judgement.

17. In the two months since the judgement, counsel has organised his review of the judgement by first reviewing the sections dealing with Dr. Karadzic's individual responsibility and listing the potential issues. This was necessary to be able to understand and explain to Dr. Karadzic the reasons he was convicted and to understand the context of the other sections of the judgement.

18. Those sections consisted of about 560 pages and were reviewed without looking up the references cited by the Chamber.

19. The next task was to review the legal findings of the Chamber, including the sentencing to identify potential grounds for appeal as to legal issues. Those sections consisted of approximately 190 pages.

20. The next task was to review the factual findings on each component of the case and identify potential grounds of appeal. Those sections consisted of approximately 1800 pages, and were reviewed without looking up the references cited by the Chamber.

21. Those tasks were completed in early May, resulting in the identification of

hundreds of potential grounds for appeal, both legal and factual.

22. Following completion of that initial review of the judgement, counsel has undertaken to begin to identify the issues that arose during the trial that could potentially be grounds for appeal. These include defects in the indictment, disclosure violations, judicial notice of adjudicated facts, admission of Rule 92 bis and quarter evidence, protective measures issues, exclusion of alleged *tu quoque* evidence, denial of self-representation, refusal to issue subpoenas, to compel testimony, and to assign counsel for defence witnesses, parliamentary and war correspondent privilege issues, admission of illegally intercepted conversations, site visit issues, and admission of uncharged acts, among others.

23. This task involves reviewing the voluminous trial record and identifying the Impugned Decisions and motions, and then returning to the judgement to determine what impact the issue had on the judgement and what paragraphs of the indictment were affected by the issue. It is expected that this task will be completed by mid-June.

24. After that, it will be necessary to return to the judgement for a thorough review, hopefully with the assistance of co-counsel, legal assistants, and a case manager, to check the references cited by the Chamber in support of its findings and to develop additional grounds of appeal in instances where the references cited by the Chamber do not support its findings or the Chamber failed to provide a reasoned opinion.

25. There are 20,814 footnotes in the Trial Chamber's judgement. Each footnote contains multiple references. It is expected that this detailed review of the judgement and its references will take another 60 days and could be completed by mid-August.¹⁰

26. The final task will be to do some preliminary research on the potential grounds of appeal to winnow them down to those issues with a sound basis in the jurisprudence and to frame the grounds of appeal in a proper and specific way. It is expected that this could be completed by mid-September.

27. Therefore, it is respectfully submitted that an additional 90 day extension for filing the notice of appeal is required in order for Dr. Karadzic's statutory right to adequate time for preparation of his defence to be respected. While his right to equality

¹⁰ In order to do this, the defence team, such as it is, will have to be working throughout the judicial recess period.

of arms with the prosecution continues to be violated on a daily basis, and will undoubtedly be the subject of further litigation, the Appeals Chamber can ameliorate some of the prejudice from this violation at this time by granting Dr. Karadzic adequate time to prepare the notice of appeal with the limited resources he has at his disposal.

Word count: 1849

Respectfully submitted,

A handwritten signature in cursive script that reads "Peter Robinson". The signature is written in a dark ink and is centered on the page.

PETER ROBINSON
Counsel for Radovan Karadzic