



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 10 April 2014

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 10 April 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL AND EX PARTE

**DECISION ON APPLICATION FOR CERTIFICATION TO APPEAL
CHAMBER'S DECISION ON INDIGENCE**

The Accused

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED of the Accused’s “Application for Certification to Appeal Decision on Request for Review of Registrar’s Decision on Indigence”, filed confidentially and *ex parte* on 3 March 2014 (“Application”), in which the Accused seeks, pursuant to Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), certification for leave to appeal the Chamber’s “Decision on Accused’s Request for Review of Registrar’s Decision on Indigence” issued on 25 February 2014 (“Impugned Decision”);¹

NOTING that in the Impugned Decision, the Chamber denied the Accused’s request to quash a decision made by the Registrar on 11 October 2012 (“Registrar’s Decision”), in which the Registrar decided that the Accused shall contribute a sum of 146,501 euro to the cost of his defence before the Tribunal and that such contribution would be deducted from future allotments issued to the Accused’s defence team;²

NOTING that the Chamber also found that: (i) when determining the Accused’s disposable means the Registrar acted reasonably in considering the full value of the joint marital assets of the Accused and his spouse, assessing the value of the relevant properties, including the pension of the Accused’s spouse and the portion of the Accused’s UNDU Account representing monies received from friends and family, and excluding two foreign judgements against the Accused as liabilities; (ii) it was not unreasonable for the Registrar not to have considered the option of reassigning the Accused’s interest in his relevant properties; and (iii) the Accused did not suffer any prejudice as a result of the length of time it took to issue the Registrar’s Decision and thus there was no reason to examine whether the delay in issuing the Registrar’s Decision was reasonable.;³

NOTING that in the Application, the Accused submits that the issue at hand concerns his right to legal aid and would significantly affect the fairness and expeditious conduct of the trial and its

¹ Application, para. 1. The Accused filed the request on 7 November 2012. Request for Review of Indigence Decision, confidential and *ex parte*, 7 November 2012.

² Impugned Decision, para. 57; Registrar’s Decision with public Appendix I and confidential and *ex parte* Appendix II, 11 October 2012.

³ Impugned Decision, paras. 14–56.

outcome as this issue affects his ability to access adequate resources for the preparation of his final brief and closing arguments;⁴

NOTING further the Accused's submission that the Appeals Chamber's immediate resolution of the issue will materially advance the proceedings, as, in the event the Appeals Chamber quashes the Impugned Decision, the error may be rectified prior to the issuance of a final trial judgement and thereby a retrial or protracted appellate proceedings could be avoided should the Accused be found to have been wrongly deprived of legal aid in connection with his final brief and closing arguments;⁵

NOTING that the Accused also challenges the correctness of the Impugned Decision, submitting that the Chamber erred in fact by failing to take into account his inability to fund his defence in a timely manner as the assets identified by the Registrar are not readily disposable, and his current liabilities prevent the transfer of any funds to members of his defence team;⁶

NOTING that decisions on all motions are without interlocutory appeal save with certification by the Chamber,⁷ and that under Rule 73(B) of the Rules, the Chamber may grant certification to appeal if the said decision "involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings";

NOTING that Rule 73(B) precludes certification unless the Chamber finds that both of its requirements are satisfied,⁸ and that a request for certification is "not concerned with whether a decision was correctly reasoned or not";⁹

⁴ Application, para. 5.

⁵ Application, para. 6.

⁶ Application, para. 8.

⁷ Rule 73(B) and 73(C) of the Rules.

⁸ *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecution Request for Certification for Interlocutory Appeal of "Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment", 12 January 2005, p. 1.

⁹ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008, para. 42; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Defence Application for Certification of Interlocutory Appeal of Rule 98 bis Decision, 14 June 2007, para. 4; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić and Beara Motions for Certification of the Rule 92 quater Motion, 19 May 2008, para. 16; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion for Certification of Rule 98 bis Decision, 15 April 2008, para. 8; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for *Voir Dire* Proceeding, 20 June 2005, para. 4.

CONSIDERING that the issue of remuneration of the defence team of the Accused who represents himself is one that would significantly affect the fair and expeditious conduct of the proceedings, as it directly pertains to his ability to prepare his final brief and closing arguments, and that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings at this stage;

CONSIDERING, therefore, that both criteria of Rule 73(B) for granting certification to appeal have been met;

CONSIDERING further that in the interests of justice, the effect of the Impugned Decision shall be stayed until the Appeals Chamber has rendered a final decision thereto;

PURSUANT to Rule 73(B) of the Rules,

HEREBY GRANTS the Application and **ORDERS** the Registrar to stay the effect of the Impugned Decision pending appeal.

Done in English and French, the English text being authoritative.



Judge O-Gon Kwon
Presiding

Dated this tenth day of April 2014
At The Hague
The Netherlands

[Seal of the Tribunal]