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UNITED
NATIONS



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: 8 October 2014
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision: 8 October 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL ANDEX PARTE

**DECISION ON REQUEST FOR
REVIEW OF REGISTRAR'S DECISION**

The Accused
Mr. Radovan Karadžić

1. **I, THEODOR MERON**, President 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”), am seised of the “Request for Review of Registrar’s Decision and Urgent Motion for Stay”, originally filed confidentially and *ex parte* with confidential and *ex parte* annexes by Mr. Radovan Karadžić (“Karadžić”) on 8 August 2014 (“Request”) before Trial Chamber III (“Trial Chamber”), and subsequently referred to me by the Registry of the Tribunal (“Registry”).¹ The Registry filed a confidential and *ex parte* response on 25 August 2014.² Karadžić filed a confidential and *ex parte* reply on 8 September 2014,³ and the Registry submitted a confidential and *ex parte* motion response to the Reply on 12 September 2014.⁴

I. BACKGROUND

2. On 11 October 2012, the Registry decided that Karadžić should contribute 146,501 euros to the costs of his defence, noting that the amount would “be deducted from future allotments issued to [Karadžić’s] defence team, in a manner to be agreed upon by the Registrar and [Karadžić]”.⁵ On 25 July 2014, the Appeals Chamber of the Tribunal (“Appeals Chamber”) denied Karadžić’s appeal of a decision by the Trial Chamber upholding the Costs Decision.⁶ On 4 August 2014, the Registry wrote to Karadžić and, noting that the final arguments in his trial were only two months away, stated that it could not defer implementation of the Costs Decision. In this regard, the Registry noted, *inter alia*, that it could not defer recovery of funds to any appeal stage of proceedings because the existence of an appeal was not certain, and that the sum of remaining allocations at trial and maximum expected costs on appeal was in any event less than Karadžić’s required contribution. Accordingly, the Registry stated that it would cease providing Karadžić with legal aid from 9 August 2014.⁷

¹ Registrar’s Submission Pursuant to Rule 33(B) Referring Mr. Radovan Karadžić’s Request for Review of Registrar’s Decision to the President, 8 September 2014 (confidential and *ex parte*) (“Submission”), p. 2.

² Registrar’s Submission Regarding Radovan Karadžić’s Request for Review of Registrar’s Decision and Urgent Motion for Stay, 25 August 2014 (confidential and *ex parte*) (“Response”).

³ Urgent Motion for Stay of Registrar’s Implementation Decision and Reply to Registrar’s Submission, 8 September 2014 (confidential and *ex parte*) (“Reply”).

⁴ Registrar’s Submission Opposing Accused’s Urgent Motion for Stay and Reply, 12 September 2014 (confidential and *ex parte*) (“Additional Submission”).

⁵ Decision, 11 October 2012 (public with public and confidential and *ex parte* annexes) (“Costs Decision”), p. 4.

⁶ Decision on Appeal from Decision on Indigence, 25 July 2014 (confidential and *ex parte*) (“25 July Decision”), paras 2-3, 40.

⁷ Request, Annex B, Letter from Susan Stuart, Head of the Office for Legal Aid and Defence Matters, to Radovan Karadžić, Re: Contribution to the cost of your defence, 4 August 2014 (“4 August Letter”), pp. 1-2.

3. Subsequently, Karadžić filed the Request before the Trial Chamber, which in turn found that it did not have jurisdiction to entertain this motion.⁸ The Registry subsequently referred the Request to myself on 8 September 2014,⁹ and I, on Karadžić's motion, granted a stay of the decision to suspend funding for Karadžić's defence until I decided on the Request.¹⁰

II. STANDARD OF REVIEW

4. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment [*sic*] in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar [...] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.¹¹

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).¹²

5. Unless unreasonableness has been established, "there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled."¹³ The party challenging the administrative decision bears the burden of demonstrating that "(1) an error of the nature enumerated above has occurred, and (2) [...] such an error has significantly affected the administrative decision to his detriment".¹⁴

⁸ Decision on Request for Review of Registrar's Decision, 5 September 2014 (confidential and *ex parte*) (5 September Decision), pp. 7-8.

⁹ Submission, p. 2.

¹⁰ Order on Urgent Motion for Stay of Registrar's Decision, 18 September 2014 (confidential and *ex parte*), pp. 1-2.

¹¹ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("Žigić Decision"), para. 13. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("Karadžić Decision"), para. 6.

¹² *Karadžić Decision*, para. 6. See also *Žigić Decision*, para. 13.

¹³ *Žigić Decision*, para. 13. See also *Karadžić Decision*, para. 7.

¹⁴ *Karadžić Decision*, para. 7. See also *Žigić Decision*, para. 14.

III. APPLICABLE LAW

6. Paragraph 26 of the Tribunal's Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused¹⁵ provides that any disputes over remuneration or reimbursement of expenses arising from application of the Remuneration Scheme shall be settled in accordance with Article 31 of the Tribunal's Directive on the Assignment of Defence Counsel.¹⁶

7. Article 31(C) of the Directive provides that "[w]here a dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar [of the Tribunal], who shall refer the matter to the President [of the Tribunal] for his determination." Article 31(D) of the Directive provides that "[r]equests for review of decisions of the Registrar [of the Tribunal] on the extent to which an accused is able to remunerate counsel shall be brought before the Chamber seised of the case in accordance with Article 13(B)."

8. Article 13(B) of the Directive provides, in part, that:

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[of the Tribunal's] decision.

IV. SUBMISSIONS

9. Karadžić submits that the Registry's decision to immediately terminate payment of legal aid to his advisors be quashed, suggesting, as an alternative, that payments to his defence team be spread into the appeal phase of his case.¹⁷ Karadžić contends, *inter alia*, that in the 4 August Letter, the Registry unilaterally terminated legal aid to him in a manner which was not procedurally fair, noting in this respect that the Costs Decision specified that future allotments to his defence team would be agreed by himself and the Registry.¹⁸ Karadžić further contends that the Registry acted unreasonably by not considering his proposal to spread the required "contribution into the appeal proceedings in" the case.¹⁹ Karadžić submits that the Registry took into account an "irrelevant consideration" by noting the fact that he obtained a stay in implementation of the Costs Decision.²⁰ Finally, Karadžić asserts that the Registry unreasonably failed to provide funding for a 30 day transition period, and also unreasonably failed to consider

¹⁵ Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 1 April 2010 ("Remuneration Scheme").

¹⁶ Directive on the Assignment of Defence Counsel, Directive No. 1/94, IT/73/REV. 11, 11 July 2006 ("Directive").

¹⁷ See Request, paras 7, 12, 14, 21; Reply, paras 23, 25.

¹⁸ See Request, para. 12.

¹⁹ Request, para. 12.

²⁰ Request, para. 12.

that it would be in the interests of justice to delay implementation of the decision until filing of the closing brief in his case.²¹ Karadžić notes that these contentions are more fully elucidated in a letter attached in an annex to the Request.²²

10. The Registry responds, *inter alia*, that it has no choice in whether or not cease legal aid to Karadžić, as Article 21(4)(d) of the Statute of the Tribunal only provides for legal aid where an accused does not have sufficient means to pay for it.²³ The Registry submits that as set out in the Costs Decision, Karadžić is able to pay for his remaining defence during the trial, and the Registry is thus not authorized to provide him additional funding.²⁴ In addition, the Registry notes that the sum of remaining funding for Karadžić's defence during trial and of funding for any expected appeal is less than the amount he has been ordered to contribute towards his defence; in this regard, the Registry observes that in any event, it cannot assume the existence of any appeal proceedings at this stage of the case.²⁵

11. The Registry maintains that it did not take into account Karadžić's appeal of its Costs Decision in ordering that funding cease five days after the 4 August Letter; the Registry maintains that it had referred to these appeals only in order to warn Karadžić that should his appeals of the Costs Decision fail, the Registry might not have discretion in implementing cuts to legal aid.²⁶

12. Karadžić replies, *inter alia*, that the President lacks jurisdiction over the Request, and that the matter is best decided by the Trial Chamber.²⁷ Karadžić suggests that the Registry is unreasonable in refusing to spread out payments over future appeals proceedings based on lack of certainty as whether such an appeal take place.²⁸ In this regard, Karadžić asserts that since all future events, including continuation of trial proceedings, are speculative, the Registrar is unreasonable in recalling the uncertainty of future appeal proceedings in rejecting his request to spread out his contributions to defence costs.²⁹ Finally Karadžić suggests that the Registry should, as a discretionary decision, maintain his legal aid in the "interests of justice".³⁰

13. The Registry responds, *inter alia*, that Karadžić should have requested certification to appeal the Trial Chamber's finding that it did not have jurisdiction over the Request.³¹ Since he

²¹ See Request, para. 12.

²² Request, para. 13.

²³ See Response, para. 24.

²⁴ See Response, para. 24.

²⁵ See Response, paras 32, 34.

²⁶ Response, para. 28.

²⁷ Reply, paras 20-21.

²⁸ See Reply, para. 23.

²⁹ See Reply, para. 23.

³⁰ Reply, para. 24.

³¹ Cf. 5 September Decision, pp. 7-8.

did not, it suggests dismissing his contentions regarding jurisdiction.³² The Registry also contends that the other contentions contained in the Reply should be disregarded, as they do not address new issues.³³ The Registry also submits that it is reasonable to consider the potential of appeal proceedings in Karadžić's case more speculative than the continuation of his trial, which has already begun.³⁴

V. DISCUSSION

14. I first observe that, by definition, I cannot decide on the Request if I do not possess jurisdiction over the matter presented.³⁵ However, I find that the Directive does provide me such jurisdiction. The Request involves the modalities by which Karadžić's contribution to the costs of his defence will be provided³⁶—an issue falls within the scope of Article 31(C) of the Directive, granting me jurisdiction over disputes involving sums greater than 4,999 euros. While Article 31(D) of the Directive states that the relevant chamber should address the extent to which an accused is able to remunerate counsel, it makes reference to Article 13(B) of the Directive, which discusses appeals of decisions about the assignment or extent of reimbursement of defence counsel. The Request does not raise these latter issues.³⁷

15. As a second preliminary matter, I note that the procedural history underlying this decision is complicated, involving arguments originally addressed in one period of time to the Trial Chamber now addressed, in a subsequent period of time, to myself.³⁸ In this context, I believe that it is in the interests of justice to consider the contentions included in the Reply and Additional Motion, both of which are specifically directed to me rather than the Trial Chamber.³⁹ Accordingly, I have reviewed these submissions in deciding on the Request.

16. As a final preliminary matter, I note that the Request attempts to incorporate certain explanations included in its annex by reference.⁴⁰ I recall that motions before the Tribunal may not incorporate by reference submissions made elsewhere.⁴¹ Accordingly, I have only taken into account the relevant arguments included in the main body of Karadžić's submissions.

³² Additional Submission, para. 8.

³³ Additional Submission, para. 10.

³⁴ See Additional Submission, para. 12.

³⁵ *Contra* Additional Submission, para. 8.

³⁶ See Request, paras 7, 12, 14, 21; Reply, paras 23, 25.

³⁷ Indeed, the issues addressed by Article 31(D) of the Directive were already adjudicated by the Trial Chamber and Appeal Chamber. See generally 25 July Decision.

³⁸ See, e.g., 5 September Decision, pp. 7-8; Request, paras 2-7; Response, paras 4-13.

³⁹ See Reply; Additional Submission.

⁴⁰ See Request, para. 13; Annex C.

⁴¹ Cf. *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.5, Decision on Appeal of Trial Chamber's

17. Karadžić's basic contention is that the Registry acted unreasonably by not accepting his suggestion that any cuts in payments to his defence team be spread over the appeal phase of his case.⁴² However, I consider that absent a notice of appeal, it is very speculative to base plans on the existence of an appeal—considerably more speculative than assuming that a trial that has already started will be completed. I also note that Karadžić does not refute the Registry's submission that the amount of support due for the remainder of his trial and any appeal are less than the amount he has been found liable to contribute.⁴³ In this context, I do not consider that the Registry acted unreasonably in rejecting Karadžić's suggestion that cuts to his defence funding be postponed till the appeal phase of his case. I also consider that Karadžić does not explain why the interests of justice would require continuation of Tribunal funding for his defence at this stage of the trial.⁴⁴ Merely invoking the interests of justice is insufficient to justify his request absent additional reasoning, which neither the Request nor the Reply contain.⁴⁵

18. The Costs Decision did state that Karadžić's contribution would be deducted from future allotments in a matter agreed by himself and the Registry.⁴⁶ However the Registry took into account and responded to Karadžić's suggestions.⁴⁷ In a context where the total amount Karadžić is liable to contribute is more than all expected future defence costs,⁴⁸ the Registry is not unreasonable in ending funding even without explicit agreement. Similarly, Karadžić does not demonstrate that the Registry erred by recalling prior warnings that delaying implementation of the Costs Decision would reduce the Registry's scope to be flexible in structuring payments. In context, the 4 August Letter simply underscored that the Registry had acted with procedural fairness, by providing Karadžić with information about the consequences of delays in implementing the Costs Decision.⁴⁹

19. Karadžić's remaining submissions are also unconvincing. His poorly substantiated contention that the Registry should have provided a thirty day transition period before halting defence funding does not explain why the failure to provide such a period was unreasonable,⁵⁰

Decision on Preliminary Motion to Dismiss Count 11 of the Indictment, 9 July 2009, para. 13.

⁴² Additional Submission, paras 7, 12; Reply, paras 22-23.

⁴³ See Response, para. 34. See also Request; Reply. In this context, I also note that in any event, any appeals in Karadžić's case will take place under the auspices of the Mechanism for International Criminal Tribunals rather than the Tribunal, see Security Council Resolution 1966, S/RES/1966 (2010), para. 1, Annex 1, an issue which Karadžić does not address, but which would certainly complicate his request.

⁴⁴ Reply, paras 23-24.

⁴⁵ See generally Request, Reply.

⁴⁶ Costs Decision, p. 4.

⁴⁷ See generally 4 August Letter.

⁴⁸ See Response, para. 34.

⁴⁹ See 4 August Letter, p. 1

⁵⁰ See Request, para. 12.

especially in light of the extensive notice Karadžić had of the Costs Decision.⁵¹ Finally, I note that certain of Karadžić contentions have been rendered moot by the passage of time. Accordingly, I will not address his submission that the Registrar should continue to provide legal aid until submission of the closing brief on 29 August 2012,⁵² as this date has already passed, and the relevant briefing completed.⁵³

20. In these circumstances, I am satisfied that Karadžić has not demonstrated procedural unfairness or unreasonableness by the Registry.

VI. DISPOSITION

21. In view of the foregoing, I hereby **DENY** the Request.

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

Done this 8th day of October 2014,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Tribunal]

⁵¹ In this regard I note that the Registry's decision on contributions Karadžić is required to make to his own defence was rendered almost two years ago. *See* Costs Decision, p. 4.

⁵² *See* Request, para. 12.

⁵³ Defence Final Trial Brief, 29 August 2014 (confidential).