

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-RoC85-02/14

Date: 12 May 2014

THE PRESIDENCY

Before:
Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GAMBO,
AIMÉ KILOLO MUSAMBA, JEAN-JAQUES MANGENDA KABONGO,
FIDÉLE BABALA WANDU AND NARCISSE ARIDO**

**Confidential and Ex Parte
available only to the Registrar and to the Applicant**

**Decision on the application for judicial review of the “Decision of the Registrar on Legal
Assistance Paid by the Court dated 17 April 2014 (CSS/2014/269)”
notified on 2 may 2014, ICC-01/05-01/13**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court*
to:

Counsel for the Defence
Mr Göran Sluiter

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section
Mr Esteban Peralta Losilla

Other
Pre-Trial Chamber II

The Presidency of the International Criminal Court ("Court") has before it an application notified on 2 May 2014 ("Application") of Mr Narcisse Arido ("Applicant") for judicial review of the Registrar's decision dated 17 April 2014 pursuant to regulation 85(3) of the Regulations of the Court ("RoC") on the legal assistance paid by the Court.

The Application is inadmissible.

I. PROCEDURAL HISTORY

1. On 18 March 2014 the Applicant was transferred to the Detention Centre, pursuant to a warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013.¹
2. On 17 April 2014, in response to the Applicant's request to the Registrar for legal assistance paid by the Court, the Registrar issued a provisional decision temporarily declaring the Applicant indigent and granting him payment of legal assistance pursuant to regulation 85(1) of the RoC ("Decision on Legal Assistance").²
3. On 17 April 2014, the Chief of the Counsel Support Section of the Registry informed the Applicant of the amount of legal aid funds disbursed following the Decision on Legal Assistance.³
4. On 18 April 2014, the Applicant submitted a request to the Registrar for reconsideration of the Decision on Legal Assistance ("Request for Reconsideration").⁴
5. On 24 April 2014, during a meeting held by the Applicant's counsel ("Counsel") and a representative from the Counsel Support Section of the Registry, the Request for Reconsideration was denied orally and was accepted, as such, by Counsel.⁵
6. On 2 May 2014, the Applicant submitted to the Presidency a request for a judicial review of the Decision on Legal Assistance ("Application").⁶

II. RELIEF SOUGHT

7. The Applicant requests the Presidency to review the Decision on Legal Assistance; to increase the monthly amount of legal aid; to permit the appointment of one counsel,

¹ICC-01/05-01/13-1-Red2-tENG.

² *Decision by the Registrar on Legal Assistance Paid by the Court*, CSS/2014/269, 17 April 2014.

³ Letter from Esteban Peralta Losilla, head of the Counsel Support Section, N. CSS/2014/269, dated 17 April 2014.

⁴ ICC-RoC85-02/14-1-Conf-Exp-AnxB.

⁵ Application, para. 12.

⁶ ICC-RoC85-02/14-1-Conf-Exp.

one legal assistant and one case manager to work full time on the case until the end of the confirmation of charges.⁷

III. SUBMISSSIONS OF THE APPLICANT

8. The Applicant submits that the Registrar committed two errors. First, an error of law, by departing from the Legal Aid Policy by granting only half of the legal aid budget for proceedings under article 70 of the Rome Statute of the International Criminal Court ("Statute"), in the absence of any legal basis to do so.⁸ Second, an error resulting from failing to take into account relevant information concerning the Applicant, which would allow the Registrar to base his decision on what he considers to be "reasonable and necessary" costs for an effective and efficient defence, as required by regulation 83(1) of the RoC.⁹
9. The Applicant submits that the amount of legal assistance disbursed cannot be reduced on the grounds that proceedings under to article 70 of the Statute are of a lesser complexity than those concerning proceedings pursuant to article 5 of the Statute.¹⁰ In support, he argues that the provisions of the Statute, Rules of Procedure and Evidence, RoC, Regulations of the Registry, *travaux préparatoires* and the Legal Aid Policy do not permit such reduction.¹¹ The Applicant submits that, according to this interpretation, suspects under article 70 are entitled to a less effective defence than suspects of crimes under article 5 of the Statute.¹²
10. The Applicant submits that certain vital information concerning his individual circumstances were not taken into account when deciding on the amount of the legal assistance for proceedings under article 70 of the Statute. The Applicant argues that he was brought before the Court much later than his co-defendants and, as a result, requires greater resources to be granted in order to prepare his defence for the confirmation of charges hearing.¹³ In addition, the Applicant argues that workload of his defence team was also not properly taken into account, despite the detailed indication made by him in terms of the scope of activities that need to be undertaken to permit a comprehensive, effective and efficient preparation of his representation.¹⁴

⁷ Application, para. 1.

⁸ Application, paras 20, 21.

⁹ Application, paras 20, 27.

¹⁰ Application, paras 22, 23.

¹¹ Application, paras 23, 24.

¹² Application, paras 22, 23, 26.

¹³ Application, paras 27, 35.

¹⁴ Application, paras 27, 28, 29, 30, 31, 34.

IV. DETERMINATION BY THE PRESIDENCY

11. It is recalled that prior to any judicial review regarding the propriety of the procedure by which the Registrar reached a particular decision as well as the outcome of that decision, the Presidency must be satisfied that it has jurisdiction to decide upon the matter before it.
12. As the Presidency has previously noted, legal assistance paid by the Court is governed, *inter alia*, by regulations 83, 84 and 85 of the RoC.¹⁵ Pursuant to these regulations, the Presidency and Chambers are each empowered to review distinct elements of the Registrar's administration of the legal assistance scheme.
13. Regulation 83 of the RoC governs the general scope of legal assistance paid by the Court. Regulation 83(1) provides that "[I]legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances".
14. As regards the Presidency's jurisdiction, regulations 84 and 85 stipulate that the Presidency may hear challenges to the assessment of the Registrar on the payment of legal assistance, including interim, final and revised determinations on means and on provisional, final or revised determinations on the full or partial payment of legal assistance. However, regulation 83(4) of the RoC provides that "[d]ecisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance."
15. The Presidency observes that in the present Application, the relief sought by the Applicant is an adjustment of the amount of legal aid accorded to him by the Registrar.¹⁶ Such determination falls squarely within the remit of the *scope* of legal assistance paid by the Court, as regulated by regulation 83(4).
16. The Presidency therefore considers that it does not have jurisdiction to decide upon the Application. Its review is within the purview of the relevant Chamber pursuant to regulation 83(4) of the RoC.

¹⁵ ICC-RoC85-01/09-7-Conf-Exp, para. 13; ICC-RoC85-01/11, para. 11, ICC-RoC85-01/14-2-Red.

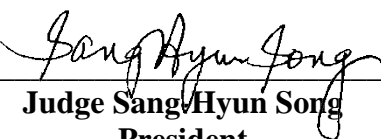
¹⁶ Application, *supra*, para. 1.

V. CLASSIFICATION

17. The Presidency notes that all documents in the instant Application have been filed confidentially and *ex parte*. The Presidency considers that, *prima facie*, there is no reason to retain the confidential *ex parte* classification of this decision, subject to ensuring the redaction of any information that may identify the Applicant.
18. If there is any factual and/or legal basis for retaining the confidential *ex parte* classification of this decision, or if there is any specific information requiring redaction before publication, the Applicant and the Registrar are each ordered to inform the Presidency thereof by 5 pm on 26 May 2014. The Presidency will thereafter rule on whether the classification should be maintained and, if necessary, the need for any redactions.

The Application is dismissed as inadmissible.

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



Judge Sang-Hyun Song
President

Dated this 12 May 2014

At The Hague, The Netherlands