



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-PT
Date: 28 January 2009
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flüge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Decision of: 28 January 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED MOTION FOR
ADEQUATE FACILITIES AND EQUALITY OF ARMS:
LEGAL ASSOCIATES**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

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”) is seised of the Accused’s “Motion for Adequate Facilities and Equality of Arms: Legal Associates”, filed on 25 November 2008 (“Motion”), the “Prosecution’s Response to Karadžić’s Motion for Adequate Facilities and Equality of Arms”, filed on 1 December 2008 (“Response”), the “Registrar’s Submission Pursuant to Rule 33(B) regarding Radovan Karadžić’s Motion for Adequate Facilities and Equality of Arms”, filed on 2 December 2008 (“Registry Submission”), and the Accused’s “Motion for Leave to Reply: Adequate Facilities and Equality of Arms”, filed on 16 December 2008 (“Reply”) and hereby renders its decision thereon.

I. Procedural background

1. On 4 August 2008, following his transfer to the seat of the Tribunal on 30 July 2008, the Accused elected to represent himself in proceedings before the Tribunal.¹ In the Registry Submission, it is stated that, between this time and 29 September 2008, Registry representatives met with the Accused on several occasions to discuss the options available in respect of his representation, and the Accused was provided with the Registry policies on defence funding.²

2. On 29 September 2008, the Accused declared himself to the Registry to be indigent, and applied for the appointment of a team of experienced legal staff and for legal aid funding to remunerate the members of that team. Citing the complexity and significance of his case, the Accused requested the appointment of at least three legal advisors to be remunerated at the level of *amicus curiae* or counsel appointed to represent other accused, as well as five support personnel.³ On 16 October 2008, the Head of the Office for Legal Aid and Detention (“OLAD”) wrote to the Accused, informing him of the assignment of Mr. Peter Robinson as legal associate and Mr. Milivoje Ivanišević as investigator in his case, and setting out the terms and conditions for remuneration of these and any other defence team members who may be assigned in the future (“Remuneration Decision”).⁴

¹ Registry Submission pursuant to Rule 33(B) Regarding the Accused’s Representation and the Transmission of Court Documents, 6 August 2008, Annex 1, Letter from Radovan Karadžić to the Registry regarding Notification of Self-Representation, 5 August 2008.

² Registry Submission, para. 4.

³ Motion, Annex A, Letter from Radovan Karadžić to the Registrar regarding Request for Legal Aid for Self-Represented Accused, pp. 1–2.

⁴ Motion, Annex B, Letter from Head, Office of Legal Aid and Detention Matters to Radovan Karadžić regarding Your Request for Assignment of Assistants, 16 October 2008, pp. 3–4.

3. This letter explained that, pursuant to Article 21(4)(b) and (d) of the Statute of the Tribunal (“Statute”) and a decision of the Appeals Chamber in *Prosecutor v. Krajišnik* (“*Krajišnik Appeal Decision*”)⁵ a self-represented accused is “not entitled to receive legal aid funds” but that, in order to give effect to Article 21(4)(b), the Registry “considers it appropriate to provide some funding, outside the Tribunal’s legal aid system” for the remuneration of the associates of a self-represented accused.⁶ The Accused was further informed that, pursuant to the “Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused”, a Registry policy promulgated on 28 September 2007 (“Remuneration Scheme”), “legal associates” designated to assist self-represented accused are remunerated at the same hourly rate as those assisting assigned counsel.⁷ Finally, the letter also stated that, given the complexity of the case, the Registrar was willing, on an exceptional basis, to consider increasing the number of assistants remunerated by the Tribunal and/or the maximum allotment of hours upon submission of a reasoned request.⁸

4. By letter dated 21 October 2008, the Accused requested the Registrar to reconsider the Remuneration Decision.⁹ The Registrar denied this request in a letter dated 14 November 2008, asserting that the Accused’s needs could be met by the provision of additional support staff or increasing the maximum allotment of hours, and noting that, where warranted by the interests of justice, a Trial Chamber may appoint standby counsel or *amicus curiae* in the case of a self-represented accused to make submissions to the Trial Chamber on matters in favour of the defence.¹⁰

5. On 19 November 2008, the Registrar assigned Mr. Goran Petronijević as a second legal “advisor” to the Accused.¹¹

II. Submissions

6. The relief sought in the first paragraph of the Motion is “for an order directing the Registrar to provide him with adequate facilities for his defence and equality of arms with the Prosecution by (1) authorising him to have the services of legal associates who have sufficient experience and qualifications to provide high-level assistance to him, and (2) remunerating those legal associates

⁵ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and Prosecution Motion, 11 September 2007 (“*Krajišnik Appeal Decision*”).

⁶ Motion, Annex B, p. 1.

⁷ Motion, Annex B, p. 2.

⁸ Motion, Annex B, p. 3.

⁹ Motion, Annex C, Letter from Radovan Karadžić to the Registrar, p. 1.

¹⁰ Motion, Annex E, Letter from the Registrar to Radovan Karadžić regarding Your Request for Reconsideration, 14 November 2008, pp. 3–4.

¹¹ Registry Submission, para. 9.

accordingly”.¹² In the Motion, the Accused requests that the Trial Chamber consider this matter “in light of [the Accused’s] statutory rights to adequate facilities for his defence and equality of arms, and in light of the Trial Chamber’s duty to ensure the proper administration of justice”.¹³ The Accused seeks judicial review of the Remuneration Scheme,¹⁴ arguing that “[t]he Registrar’s refusal to provide [the Accused] with anything more than support staff... makes a fair trial at this Tribunal impossible”.¹⁵ The Accused submits that the Remuneration Scheme misapplies both Appeals Chamber jurisprudence, specifically the *Krajišnik* Appeal Decision, and Article 21(4)(b) of the Statute.¹⁶

7. The Accused also challenges the Remuneration Decision itself, contending that, in making the Remuneration Decision, “the Registrar has inflexibly applied [the Remuneration Scheme] to prohibit payments of more than 25 Euros to persons who are needed to perform legal functions on [the Accused’s] defence team which are clearly more specialized than the functions of support staff”.¹⁷ The Accused argues that the applicable law does not prohibit “funding at the same level as a legal consultant or co-counsel to a represented accused, 71 Euros per hour, when a person of similar qualifications and experience provides those same services to a self-represented accused”, and states “[t]hat is all [the Accused] is asking for”.¹⁸ The Accused is of the view that neither *amicus curiae* nor standby counsel would be an adequate substitute for an experienced and trusted legal advisor, as “[a]n *amicus curiae* works independently of an accused” and “the very nature of a standby counsel supposes that he will be willing to act contrary to the wishes of the accused by replacing him when the Trial Chamber deems it necessary”.¹⁹ The Accused further submits that the refusal to remunerate his legal associates at the higher rate is a violation of the principle of equality of arms.²⁰

8. In the Response, the Prosecution declines to take a position on the Motion.²¹

9. In the Registry Submission, made pursuant to Rule 33(B) and Rule 33 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Deputy Registrar moves that the Accused’s

¹² Motion, para. 1.

¹³ Motion, para. 9.

¹⁴ Motion, para. 12.

¹⁵ Motion, para. 3.

¹⁶ Motion, paras 14, 15.

¹⁷ Motion, para. 13.

¹⁸ Motion, paras 16–17.

¹⁹ Motion, para. 24.

²⁰ Motion, para. 29.

²¹ Response, para. 1.

request should be dismissed.²² It is submitted that, in making the Remuneration Decision, the Registrar complied with the standard for proper administrative decision-making set out in the case of *Prosecutor v. Kvočka et al.*²³ The Deputy Registrar argues that the Remuneration Scheme was made in accordance with, and applying, Appeals Chamber rulings, existing policies, including the Directive on the Assignment of Defence Counsel (“Directive”),²⁴ as well as United Nations financial rules and regulations, and provides for the assignment and remuneration of a support team for a self-represented accused, usually comprising a legal associate, a case manager, an investigator and a language assistant. The Deputy Registrar notes that these do not act as defence counsel, as an accused who chooses to self-represent is his own counsel.²⁵ Further to this, the Deputy Registrar refers to the Registrar’s offer “to consider exceptionally assigning up to eight assistants and/or increasing the overall allotment of working hours for such assistance upon a reasoned request, in line with the projected composition of the Accused’s defence team”.²⁶

10. The Deputy Registrar further submits that the provision of public funds for legal assistance is premised on the assignment of counsel to act as organs of the administration of justice,²⁷ rather than merely providing money for the defence, so that remunerating legal associates of a self-represented accused at the requested rate would circumvent the purpose of the Tribunal’s legal aid system.²⁸ Finally, the Deputy Registrar submits that granting the request would not only be contrary to established legal principle but “may also set a dangerous precedent”.²⁹

11. The Accused applies for leave to reply to the Registry Submission in order to clarify the Registrar’s role and focus the issues raised by the Registrar.³⁰ The Trial Chamber will grant such leave. In the Reply, the Accused moves to strike the Registry Submission³¹ and submits that the Registrar should not take a partisan role in judicial review of his own decisions.³² As for the level of remuneration, the Accused submits that “the Registrar remunerates legal consultants to a represented accused at 71 Euros per hour and remunerates those providing the same work to a self-

²² Registry Submission, para. 52.

²³ Registry Submission, para. 12; *Prosecutor v. 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 (“*Kvočka et al.* Appeal Decision”), para. 13.

²⁴ Directive on the Assignment of Defence Counsel, Directive No. 1/94, latest revision 11 July 2006 (IT/73/REV. 11).

²⁵ Registry Submission, para. 21.

²⁶ Registry Submission, para. 8.

²⁷ Registry Submission, para. 37.

²⁸ Registry Submission, para. 36.

²⁹ Registry Submission, para. 49.

³⁰ Reply, paras 1, 2.

³¹ Reply, para. 7.

³² Reply, para. 5.

represented accused at 25 Euros per hour”, and that “[t]here is no justification for this disparity”.³³ Referring to the remuneration of *amicus curiae*, the Accused submits that the Registrar “also fails to justify why it pays lawyers at the rate of counsel to provide legal consultation to the Trial Chamber on the rights of the accused [...] yet it refuses to pay lawyers at the rate of legal consultants to provide legal consultation to the accused himself”.³⁴ Finally, the Accused submits that the concept of “adequate facilities” for any accused includes “legal consultation”.³⁵

III. Applicable law

A. Judicial review by the Trial Chamber

12. The Remuneration Scheme does not contain any provision for review or challenge of any decision taken by the Registrar pursuant thereto. It is established jurisprudence that, in any event, a Trial Chamber may intervene in a matter that is within the primary competence of the Registrar where that matter goes to the fairness of the trial.³⁶

13. In *Prosecutor v. Kvočka et al.*, the Appeals Chamber set out the standard, deriving from “general principles of law”, for review by a Trial Chamber of a decision of the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal ... A judicial review of an administrative decision made by the Registrar in relation to legal aid 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.³⁷

14. According to this standard, an administrative decision will be quashed if the Registrar, in making the decision:

- (a) has failed to comply with the requirements of the relevant legal authorities; or
- (b) has failed to observe the basic rules of natural justice and procedural fairness towards the person affected by the decision; or

³³ Reply, para. 11.

³⁴ Reply, para. 13.

³⁵ Reply, para. 22.

³⁶ *Prosecutor v. Delalić et al.*, Order on Esad Landžo’s Motion for Expedited Consideration, Case No. IT-96-21-A, 15 September 1999, cited by the Appeals Chamber in *Prosecutor v. Blagojević*, Public and Redacted Reason for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, Case No. IT-02-60-AR73.4, 7 November 2004; see also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Concerning Court-Assigned Counsel’s Terms of Engagement, 8 April 2005, p. 4.

³⁷ *Kvočka et al.* Appeal Decision, para. 13.

(c) has taken into account irrelevant material or failed to take into account relevant material; or

(d) has reached a conclusion that is unreasonable, in the sense that it is a conclusion which no sensible person who has properly applied his mind to the issue could have reached.³⁸

15. The Appeals Chamber found that “in the absence of established unreasonableness 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”,³⁹ and that the accused bears the onus of persuading the Trial Chamber conducting the review both “(a) that an error of the nature described has occurred, and (b) that such error has significantly affected the Registrar’s decision to his detriment”.⁴⁰

B. Tribunal funding for legal assistance to self-represented accused

16. Article 21(4)(b) of the Statute entitles an accused “to have adequate time and facilities for the preparation of his defence”, while Article 21(4)(d) gives him the right “to defend himself in person or through legal assistance of his own choosing”.

17. The Appeals Chamber in the case of *Prosecutor v. Slobodan Milošević* commented on some implications of an accused’s choice to represent himself before the Tribunal:

There is no doubt that, by choosing to conduct his own defence, the accused deprived himself of resources a well-equipped legal defence team could have provided. A defendant who decides to represent himself relinquishes many of the benefits associated with representation by counsel. The legal system’s respect for a defendant’s decision to forgo assistance of counsel must be reciprocated by the acceptance of responsibility for the disadvantages this choice may bring.⁴¹

18. In the case of *Prosecutor v. Krajišnik*, the Appeals Chamber set out its interpretation of the entitlement of an indigent self-represented accused to Tribunal funding for his defence, pursuant to Article 21 of the Statute. The Appeals Chamber ruled that, whereas an indigent accused who elects to be represented by counsel is entitled to legal aid funds under Article 21(4)(d) of the Statute, an indigent accused who elects to represent himself is not so entitled:

³⁸ *Kvočka et al.* Appeal Decision, para. 13.

³⁹ *Kvočka et al.* Appeal Decision, para. 13.

⁴⁰ *Kvočka et al.* Appeal Decision, para. 14.

⁴¹ See Registry Submission, para. 23, *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the Amici Curiae Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 (“*Milošević Decision*”), para. 19.

Article 21(4)(d) gives the accused the right “to defend himself in person or through legal assistance of his own choosing”. We have held that these two options stand in “binary opposition”. An accused who chooses to self-represent is not entitled to legal assistance. Hence, he is not entitled to the subsidiary right mentioned later in Article 21(4)(d) to have legal assistance paid for by the Tribunal if he is indigent.

...
 Moreover, the Appeals Chamber considers that where an accused elects to self-represent, he is asserting his ability to conduct his case without legal assistance and thus Tribunal funding for legal aid for him can be presumed to be unnecessary to the conduct of a fair trial.⁴²

19. The Appeals Chamber was of the view that “[t]o the extent that the accused lacks the ability to conduct his own case and his self-representation is thus ‘substantially and persistently obstructing the proper and expeditious conduct of his trial’, then the remedy is restriction of his right to self-representation”.⁴³

20. Finally, the Appeals Chamber considered whether Article 21(4)(b) of the Statute requires the Tribunal to provide some funding for the legal associates of self-represented accused, finding as follows:

The Appeals Chamber agrees with the Registry that the term “facilities” in Article 21(4)(b) does not normally encompass legal assistance. Nonetheless, the Appeals Chamber considers that in seeking otherwise to give effect to Article 21(4)(b) for a self-represented accused, the Registry has relied heavily on the concept of designated legal associates. To the extent that the Registry requires or encourages indigent self-representing accused to coordinate their defences through designated legal associates, it is appropriate for the Tribunal to provide some funding for such associates. Such funding should not be comparable to that paid to counsel for represented accused (particularly since work such as the drafting of written filings should be considered the responsibility of the self-representing accused), but nonetheless should adequately reimburse the legal associates for their coordinating work and for related legal consultation.⁴⁴

C. Registry schemes for remuneration of defence team members of indigent accused

21. In implementing these and other applicable legal principles, the Registry has seen fit to create various policies setting out the procedure for the remuneration from Tribunal funds of the defence team members of indigent accused, pursuant to which the Registrar makes decisions about the assignment of personnel and the allocation of those funds.

i. Accused represented by assigned counsel

⁴² *Krajišnik* Appeal Decision, paras 40–41.

⁴³ *Krajišnik* Appeal Decision, para. 41 (footnotes omitted).

⁴⁴ *Krajišnik* Appeal Decision, para. 42.

22. According to article 24 of the Directive, the remuneration of counsel and other defence team members for represented accused for pre-trial proceedings commenced before 1 December 2004, and for appellate proceedings, is based on a maximum allotment of working hours paid at a fixed hourly rate as established in Annex I to the Directive. This Annex sets out hourly rates for lead counsel of €71–97 depending on years of experience, for co-counsel of €71, and for legal assistants and investigators of €15–25 depending on years of experience, and stipulates in a footnote that “[t]hese rates shall be adjusted by reference to the movement of the Consumer Price Index (“CPI”) used by the International Civil Service Commission (“ICSC”) to adjust the Post Adjustment Index of United Nations Professional staff based in The Hague. This adjustment will be effective as of 1 January each year ... The Registrar shall republish this Annex within thirty days after the adjusted rates come into effect”.⁴⁵ It is this rate that is then imported into the Remuneration Scheme.

23. Article 24 of the Directive stipulates that for cases which commenced after 1 December 2004, counsel and defence team members for represented accused shall be remunerated according to the Defence Counsel Pre-Trial Legal Aid Policy during pre-trial and according to the Defence Counsel Trial Legal Aid Policy during trial. These policies provide for the allocation of a lump sum for each stage of pre-trial and trial, determined in relation to the complexity of the case.⁴⁶ In these documents, the lump sum is calculated based on a rate for counsel equivalent to that of a Prosecution Senior Trial Attorney, and for co-counsel, during the later part of pre-trial proceedings and the trial, equivalent to that of a Prosecution Trial Attorney.⁴⁷ The remuneration provided for support staff is €3000 per month based on a rate of €20 per hour.⁴⁸

24. Regarding the payment of legal consultants, the Deputy Registrar has submitted that, under the hourly payment scheme, while legal consultants have been paid at the rate of co-counsel, “all the working hours billed by the legal consultant would be charged against the allotment of counsel hours as the work performed by a legal consultant... is considered counsel’s work”.⁴⁹

ii. Self-represented accused

25. By contrast, the Remuneration Scheme for indigent self-represented accused provides for remuneration for four—or exceptionally, five—persons on a defence team: a legal associate, a case manager, an investigator and a language assistant. The Remuneration Scheme stipulates that

⁴⁵ Directive, Annex I, footnote 1.

⁴⁶ Pre-Trial Legal Aid Policy; Trial Legal Aid Policy.

⁴⁷ Pre-Trial Legal Aid Policy, paras 12–13, 24, 29; Trial Legal Aid Policy, para 24.

⁴⁸ Pre-Trial Legal Aid Policy, paras 12–13, 29; Trial Legal Aid Policy, para 24.

⁴⁹ Registry Submission, para. 31.

members of the defence team of such an accused “shall be remunerated at the hourly rates for support staff as set out in Annex I to the Directive”.⁵⁰

IV. Discussion

A. Competence of the Registry Submission

26. The Registry Submission was made in exercise of the Registrar’s functions under Rule 33(B) of the Rules. That was the procedure followed in the *Krajišnik* appeal with the approval of the Appeals Chamber. Had no such submission been made by the Registry in this case, this Trial Chamber would have called for one in order to have before it a complete picture of the administrative scheme for providing assistance to self-represented accused. Therefore the Trial Chamber will not grant the Accused’s motion to strike the Registry Submission.

B. Review of the Registry Decision

27. It is important at the outset to identify the determination of the Registrar that is challenged. In the Motion and Reply the Accused appears to seek review of both the Remuneration Scheme and a decision of the Registrar thereunder. A reading of all the submissions of the Accused, in light of the relief sought in the first paragraph of the Motion, makes it clear that the decision challenged is that of the Registrar to limit the remuneration of legally qualified support staff authorised to assist the Accused to rates comparable to those payable to legally qualified support staff of assigned counsel in cases where the Accused is represented. The Accused correctly relates that issue to the experience and qualifications of the legal associates authorised. The Registrar refuses to authorise a higher remuneration rate for lawyers with particular expertise or experience. The Remuneration Scheme does not provide any mechanism for review of a decision made by the Registrar thereunder. The question for the Chamber to examine is whether that decision will result in the Accused not receiving a fair trial in keeping with both the minimum guarantees of Article 21(4) of the Statute and the guidance provided by the Appeals Chamber in the *Krajišnik* Appeal Decision. What the Accused essentially seeks is all the assistance and public funding associated with full legal representation by counsel, while at the same time retaining his status as an unrepresented Accused.

28. The Accused also invites the Chamber to review the fairness of the Remuneration Scheme. The Chamber notes that the Remuneration Scheme is a non-binding administrative document which has not been submitted to or endorsed by the Judges of the Tribunal in plenary, although, as a policy formulated by the Registrar, it is subject to the authority and supervision of the President

⁵⁰ Remuneration Scheme, para. 3.4.

of the Tribunal.⁵¹ For the reasons set out later in this discussion, it is not considered that a general review of the Remuneration Scheme by the Trial Chamber is necessary to decide this Motion.

29. The Tribunal has a fully funded, flexible scheme for the provision of legal aid through counsel and associated staff for indigent accused. Thus is equality of arms with the Prosecution generally secured. In spite of that, the Appeals Chamber in the *Krajišnik* Appeal Decision went further and gave approval to the Registry providing public funding for various forms of assistance to self-represented accused, the aim of that assistance being to facilitate the management of the case of the self-represented accused.

30. On the question of public funding for legally qualified support staff the Appeals Chamber started from the position that such was exceptional. It said: “Moreover, the Appeals Chamber considers that where an Accused elects to self-represent, he is asserting his ability to conduct his case without legal assistance and thus Tribunal funding for legal aid for him can be presumed to be unnecessary to the conduct of a fair trial”.⁵² The only exception envisaged by the Appeals Chamber was expressed as follows: “To the extent that the Registry requires or encourages indigent self-representing accused to co-ordinate their defences through designated legal associates, it is appropriate for the Tribunal to provide some funding for such associates”.⁵³ The Chamber was recognising that designated legal associates could provide management and administrative assistance that would facilitate the Accused’s conduct of the case.

31. The Trial Chamber views the *Krajišnik* Appeal Decision as a clear statement that it is not for the Registry to fund the provision to a self-represented accused of expensive legal advice. What the Appeals Chamber envisaged was modest financial support to assist the efficient and effective presentation of the Defence case. Should the Accused lack the ability to present his defence efficiently and effectively because of his lack of knowledge of law and legal procedures, or because of the complexities of the case, the solution envisaged by the Appeals Chamber was not the provision of experienced, high-level professional assistants but “restriction of his right to self-representation”.⁵⁴ There is accordingly a clear distinction between the purpose of the legal aid scheme for representation through counsel under the Directive and what the Appeals Chamber saw as the purpose of support to self-represented accused.

⁵¹ See Rules 19(A) and 33 of the Rules.

⁵² *Krajišnik* Appeal Decision, para. 41.

⁵³ *Krajišnik* Appeal Decision, para. 42.

⁵⁴ *Krajišnik* Appeal Decision, para. 41.

32. Since the *Krajišnik* Appeal Decision plainly does not require the Registrar to fund experienced high-level lawyers to support a self-represented accused, the crucial question is whether the remuneration proposed satisfies the *Krajišnik* Appeals Chamber requirement that it should “adequately reimburse the legal associates for their co-ordinating work and for related legal consultation”.⁵⁵ In determining the rate for payment the Registrar has used as the touchstone the rates payable to legal assistants of counsel. On the face of it that seems to be a reasonable approach.

33. However, in the Remuneration Scheme devised following upon the *Krajišnik* Appeal Decision the Registrar has included, among the qualifications for a legal associate, that the associate “is a member of the Association of Defence Counsel Practising before the ICTY” (“ADC”).⁵⁶ Membership of the ADC requires the applicant to “possess at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings”.⁵⁷ There is no similar qualification requirement for a legal assistant to counsel. It is easy to see why this requirement exists. Legal assistants to counsel are answerable for their professional conduct to Chambers through counsel. On the other hand, advisers to a self-representing accused can only be so answerable if they are subject to an enforceable code of conduct. The requirement of membership of the ADC is designed to achieve that measure of control.

34. In the end of the day what matters is how the Registrar applies that and other parts of the Remuneration Scheme in practice. The Trial Chamber has learned that in other circumstances the Registrar has waived certain qualification requirements, thus demonstrating flexibility in his application of the Remuneration Scheme.⁵⁸ He has demonstrated further flexibility in indicating to the Accused in this case that he is prepared to consider increasing the number of support staff authorised, including legally qualified staff, or authorising an increase in the hours of work for which authority may be given if the Accused presents arguments to justify these decisions. What this shows is that the Registrar views the Remuneration Scheme as a policy guideline rather than a

⁵⁵ *Krajišnik* Appeal Decision, para. 42.

⁵⁶ Remuneration Scheme, para. 5.1(A).

⁵⁷ Constitution of the Association of Defence Counsel Practising Before 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, art. 3.2.c.

⁵⁸ See *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Accused's Submission concerning the Appointment of Legal Advisors and the Need for the Court, Registry and Prosecution to Communicate with the Accused in the Serbian Language, as the Only Language He Understands, 5 March 2008, in which the Accused Tolimir requested the appointment of a Mr. Gajić as his legal advisor on international law matters despite Mr. Gajić's failure to meet the specific qualification requirements in the Remuneration Scheme; *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Status Conference, 12 March 2008, see in particular the comments of Judge Prost at T. 154–158, following which Mr. Gajić was appointed.

rigid policy. The Trial Chamber considers that, against that background, the application of rates of remuneration comparable to those payable to legal assistants of counsel is not an unreasonable approach to the provision of assistance for self-represented accused, and provides adequate reimbursement to legal associates for the type of assistance they are expected to provide.

35. The Chamber does not consider it necessary to carry out any further review of the Remuneration Scheme to determine the Motion. As the Remuneration Scheme is fairly recent, the Registrar will no doubt wish to take account of all comments made by the Chamber in this Decision and decide whether any revisals are appropriate. The Chamber notes that the Remuneration Scheme includes provision for periodical review of the applicable rates.⁵⁹

36. If, as the Accused's submissions indicate, his principal concern is that his case is exceptionally complex and that he requires, or may require, special assistance in performing various aspects of the work involved, including general advice, drafting, and relief from making submissions in court, then the solution does not lie in the application of the Remuneration Scheme but rather in devising an arrangement for the presentation of his defence that allows him to play an active role while at the same time being represented by counsel. The Chamber is conscious that, in saying this, it repeats what has been said to the Accused on more than one occasion before.

37. The Chamber has been unable to identify in the material presented to it any failure of the type listed by the Appeals Chamber in the *Kvočka et al.* Appeal Decision meriting the overturning of the Remuneration Decision. In these circumstances the Chamber will refuse the Motion. Should the Accused continue to seek support under the Remuneration Scheme, the Chamber encourages him and the Registrar to engage urgently in further discussion to ensure that the support that can be provided is made available as soon as possible.

⁵⁹ Directive, Annex I, footnote I.

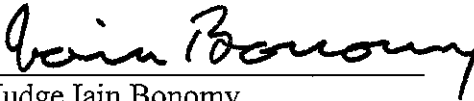
V. Disposition

38. Accordingly, the Trial Chamber, pursuant to Rules 54 and 126 *bis* of the Rules, hereby:

(a) GRANTS the Motion to Reply; and

(b) DENIES the Motion.

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



Judge Iain Bonomy
Presiding

Dated this twenty-eighth day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]