



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: 19 February 2010
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THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision of: 19 February 2010

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVIEW OF OLAD DECISION
ON TRIAL PHASE REMUNERATION**

The Accused

Mr. Radovan Karadžić

I, **PATRICK ROBINSON**, 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”), render the following decision in relation to the “Request for Review of OLAD Decision on Trial Phase Remuneration”, filed before me by Radovan Karadžić (“Karadžić”) on 14 January 2010.¹

I. BACKGROUND

1. On 5 November 2009, the Trial Chamber issued the “Decision on Appointment of Counsel and Order on Further Trial Proceedings” (“Adjournment Decision”), in which it instructed the Registrar to appoint counsel to prepare himself to represent Karadžić once the trial resumes, if required, and adjourned the trial proceedings until 1 March 2010. The Trial Chamber further held that:

Notwithstanding the appointment of counsel for this specific purpose, [Karadžić] will continue to represent himself, including by dealing with the day-to-day matters that arise, such as the filing of motions and responses to motions filed by the Prosecution, and further preparing himself for the trial.”²

2. Following the Adjournment Decision, in a letter dated 26 November 2009, the Office of Legal Aid and Detention Matters (“Registry”) informed Karadžić that during the adjournment of his trial, his defence team would be allocated remuneration for a maximum of 250 out-of-court hours per month, as well as all hearing hours for one defence team member if given leave by the Trial Chamber to attend the hearings. The Registry further informed Karadžić that during the trial period, the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused³ provides remuneration for a maximum of 150 out-of-court hours for the entire defence team per month, as well as hearing hours for up to two defence team members if given leave by the Trial Chamber to attend the hearings.⁴

3. In a letter to the Registry dated 30 November 2009, Karadžić argued that the funding provided during the adjournment period would only allow him to retain two of his eight defence team members, and furthermore, that if his entire defence team is only allocated 150 out-of-court hours per month during the trial phase, he will only be able to retain one defence team member

¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appointment of Counsel and Order on Further Trial Proceedings, 5 November 2009 (“Adjournment Decision”), paras 25-26 and 28.

³ 24 July 2009 (Rev. 1) (“Remuneration Scheme”).

⁴ See Letter from the Registry to Karadžić dated 26 November 2009 (“26 November 2009 Decision”), at Request, Annex A.

during the trial. He submitted that such funding would not allow him to effectively exercise his right of self-representation. He accordingly requested the Registry to allocate his defence team 1200 hours per month during both the adjournment and trial phases to enable each of his eight defence team members to assist him during this time. He further requested that his legal advisor, Mr. Peter Robinson, be remunerated at a rate of 72 Euros per hour during the trial given that the Trial Chamber granted him right of audience to make submissions on legal issues.⁵

4. On 14 December 2009, the Registry denied the 30 November 2009 Request. With regard to the allocation of funds during the adjournment phase, the Registry found that Karadžić had not provided reasons to support the need for assistance from eight full-time defence team members. With regard to the allocation of funds during the trial phase, the Registry submitted that it is not in a position to provide Karadžić's defence team with 1,200 hours per month, noting that pursuant to paragraph 3.3(b) of the Remuneration Scheme, indigent, self-represented accused are allocated 150 out-of-court hours per month for the entire defence team as well as all hearing hours for up to two members of the team if they are given leave by the Trial Chamber to attend the hearings. The Registry also submitted that such allocation has been deemed sufficient for the tasks Karadžić's team should be undertaking at trial. The Registry further asserted that it is not in a position to remunerate Mr. Robinson at a rate higher than the rates set forth in the Remuneration Scheme and that in a decision of 7 May 2009,⁶ the Appeals Chamber had found those rates reasonable and sufficient.⁷

5. On 17 December 2009, I issued the "Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds", in which I ordered the Registrar to allocate Karadžić 7,500 remunerable hours to cover the entire pre-trial phase of his case.⁸

6. On 29 December 2009, Karadžić requested the Registry to reconsider the 14 December 2009 Decision, citing, *inter alia*, the following factors in support of the 30 November 2009 Request: (i) the Prosecution's disclosure, since 26 October 2009, of an additional 4,822 items totalling approximately 290,113 pages, plus video material, including primarily prior testimony or statements of Prosecution witnesses, new exhibits, and material necessary for the preparation of his

⁵ See Letter from Karadžić to the Registry dated 30 November 2009 ("30 November 2009 Request"), at Request, Annex B.

⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Adequate Facilities, 7 May 2009 ("7 May 2009 Decision").

⁷ See Letter from the Registry to Karadžić dated 14 December 2009 ("14 December 2009 Decision"), at Request, Annex C.

⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009 ("Pre-Trial Decision"), para. 30.

defence; (ii) the need to continue analyzing and organizing disclosure already received in relation to more than 400 Prosecution witnesses; (iii) the need to interview these witnesses; (iv) the need to conduct investigations on the ground to locate exculpatory material; (v) the need to interview what may amount to approximately 200 Rule 92*bis* witnesses and to rebut what may amount to over 2000 adjudicated facts for which judicial notice will be taken; and (vi) the need to review Rule 54*bis* material, draft follow-up requests, and interview persons referenced in this material.⁹

7. On 13 January 2010, the Registry denied the 29 December 2009 Request. With regard to the adjournment period, the Registry reasoned, *inter alia*, that “[a]s [Karadžić’s] case was trial ready and all typical pre-trial tasks should have been undertaken prior to commencement of trial, any further motions, responses, disclosures or preparation during the adjournment constitutes reasonably foreseeable work that is ordinarily undertaken in a case, which includes the refinement of the case as proceedings progress”. The Registry stated that in allocating Karadžić’s defence team 250 hours per month for this period, it was guided by the Appeals Chamber’s holding in the *Krajišnik* Appeal Decision¹⁰ that “the role envisaged for support staff constitutes some legal consultation and coordination, thus requiring a limited amount of funding”. The Registry further stated that most of the tasks enumerated in the 29 December 2009 Request are pre-trial tasks, and that these tasks have been covered by the 7,500 support staff hours allocated to Karadžić for the pre-trial phase further to the Pre-Trial Decision. The Registry argued that none of the reasons cited in support of the 29 December 2009 Request were of such an extraordinary nature as to justify the allocation of additional funds. The Registry further noted that during the pre-trial phase, the number of Karadžić’s remunerated assistants was increased in accordance with paragraph 3.5 of the Remuneration Scheme on an exceptional basis to enable him “to deal with the rather high amount of disclosure and witnesses in the remaining period of time during the pre-trial phase, and to efficiently prepare [his] case for trial.” The Registry argued that “there is no provision in the Remuneration Scheme for ‘additional’ assistants during the trial phase, and the Registry is not satisfied that the remuneration of eight assistants working full time can be justified during the trial”. Finally, the Registry argued that the issue of Mr. Robinson’s rate of remuneration had been settled by the Appeals Chamber in the 7 May 2009 Decision, which found the remuneration rates set forth in the Remuneration Scheme to be “reasonable and sufficient”.¹¹

⁹ See Letter from Karadžić to the Registry dated 29 December 2009 (“29 December 2009 Request”), at Request, Annex D.

¹⁰ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007 (“*Krajišnik* Appeal Decision”).

¹¹ See Letter from the Registry to Karadžić dated 13 January 2010 (“Impugned Decision”), at Request, Annex E.

8. Karadžić thereafter filed the Request. On 28 January 2010, the Registrar filed a submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”),¹² and Karadžić filed a reply on 1 February 2010.¹³

II. STANDARD OF REVIEW

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

A judicial review of such 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 judgement in accordance with Rule 119 of the Rules of Procedure and Evidence. 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.¹⁴

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

- (a) failed to comply with the legal requirements of the Directive, 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).¹⁵

10. 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”.¹⁶ The onus of persuasion lies on the party challenging the administrative decision to show that: (1) an error of the nature enumerated above has occurred, and (2) that such an error has significantly affected the administrative decision to his detriment. An administrative decision may only be quashed when both elements are shown.¹⁷ Furthermore, in legal aid cases “it is clear, from the implicit restriction that only the Registrar may determine the *extent* to which the

¹² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Registrar’s Submission Pursuant to Rule 33(B) Regarding Radovan Karadžić’s Request for Review of OLAD Decision on Trial Phase Remuneration, 28 January 2010 (“Registrar’s Submission”).

¹³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Reply Brief: Request for Review of OLAD Decision on Trial Phase Remuneration, 1 February 2010 (“Reply”).

¹⁴ *Prosecutor v. Miroslav Kvočka et al*, Case No. IT-98-30/I-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 (“Žigić Decision”), para. 13; 7 May 2009 Decision, para. 10; *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003 (“Šljivančanin Decision”), para. 22.

¹⁵ Žigić Decision, para. 13. See also 7 May 2009 Decision, para. 10; *Krajišnik Appeal Decision*, para. 30; *Šljivančanin Decision*, para. 22.

¹⁶ Žigić Decision, para. 13; 7 May 2009 Decision, para. 10; *Krajišnik Appeal Decision*, para. 30.

accused has the means partially to remunerate counsel, that the power of the Chamber to substitute its own decision for that of the Registrar is limited".¹⁸

III. APPLICABLE LAW

11. Paragraph 3.1 of the Remuneration Scheme provides that:

The Registrar shall provide remuneration for up to four persons who discharge the following functions:

- a) legal associate,
- b) case manager,
- c) investigator, and
- d) language assistant.

Paragraph 3.3 of the Remuneration Scheme provides, in relevant part, that:

The Remuneration Scheme is based on a maximum allocation of hours to the accused's defence team depending on the stage of the proceedings. The following ceilings shall apply:

- a) Trial: A maximum of 150 out-of-court preparation hours for the entire defence team per month for the duration of the trial, plus all hearing hours for up to two defence team members, so long as they are given leave by the Chamber to attend the hearings.

Paragraph 3.4 states that:

The persons assigned to assist a self-represented accused shall be remunerated at the hourly rates for defence support staff set out in Annex I to the Directive, as their role and functions are comparable to those of support staff assisting Counsel.

IV. SUBMISSIONS

A. The Request

12. Karadžić asserts that the Impugned Decision is unreasonable and precludes the possibility that he will receive a fair trial.¹⁹ He accordingly requests the President to order the Registry to remunerate his defence team for 1200 hours per month during the trial and adjournment phases, as well as to compensate Mr. Robinson at a rate of 72 Euros per hour, throughout the trial phase.²⁰

¹⁷ *Žigić* Decision, para. 14; 7 May 2009 Decision, para. 10.

¹⁸ *Žigić* Decision, para. 14.

¹⁹ Request, paras 4, 20, 38, 43-44, 46.

²⁰ *Id.* Paras 39 and 45. *See also* Reply, paras 23 and 27.

1. Trial Phase and Adjournment Phase Remuneration

13. Specifically, Karadžić asserts that given the complexity of his case and the demands of Tribunal trials, the Registry's decision to remunerate his defence team for no more than 150 hours per month during the trial phase and 250 hours per month during the adjournment phase deprives him of the resources necessary to exercise his right of self-representation at the Tribunal.²¹ He explains that the Registry's decision requires him to lay off seven of his eight support staff members, leaving him with only one legal associate and no case manager or investigator to assist him during the trial.²² He claims that the decision:

[...] ignore[s] the extraordinary circumstances of this case, including the timing of disclosure (another 290,113 pages of disclosure has been received since the trial commenced), voluminous trial motions for wholesale admission of hundreds of exhibits, the large number of witnesses to be called at trial under Rule 92 *ter* with voluminous packets of material, the large number of witnesses whose statements and testimony are offered under Rule 92 *bis*, as well as the unprecedented number of judicially noticed adjudicated facts which need to be rebutted."²³

14. Karadžić notes the Registry's claim that such work should have been completed during the pre-trial stage and maintains that his defence team could not have read 290,113 pages in the pre-trial period,²⁴ as this material was not received until after the trial had started, and likewise, that his team could not have responded in the pre-trial phase to motions that were not filed until after the trial started.²⁵

15. Karadžić notes that pursuant to the Registry's Trial Legal Aid Policy,²⁶ a simple case is allocated remuneration for one support staff member, whereas a complex "Level 3" case is allocated remuneration for five support staff members. Karadžić submits that the Registry's Pre-Trial Legal Aid Policy²⁷ provides for the same amount of remuneration, which reflects the fact that the amount of work during the trial stage is at least as great as during the pre-trial stage and allows staff to use knowledge gained in the pre-trial stage to benefit the accused at trial. Karadžić argues that the Impugned Decision violates this principle by providing him with substantially less funding during the adjournment and trial periods than that provided during the pre-trial phase.²⁸

²¹ *Id.*, paras 2, 7, 14-15, 19-20, 23, 26, 33-35, and 38.

²² *Id.*, paras 19 and 23.

²³ *Id.*, para. 24. See also Request, para. 19, in which Karadžić asserts that "[this] case is among the most complex and voluminous ever brought at this Tribunal".

²⁴ Karadžić estimates that it would take 5,000 hours to review this material at a rapid rate of 60 pages per hour. See 29 December 2009 Request, p. 2, at Request, Annex D.

²⁵ Request, para. 25.

²⁶ Defence Counsel – Trial Legal Aid Policy, 1 May 2006 ("Trial Legal Aid Policy").

²⁷ Defence Counsel – Pre-Trial Legal Aid Policy, 1 May 2006 ("Pre-Trial Legal Aid Policy").

²⁸ Request, paras 21-23.

16. Karadžić submits that depriving a self-represented accused of support equal to that deemed necessary for a represented accused violates Article 21(4)(d) of the Statute of the Tribunal (“Statute”), which grants an accused “the right to have adequate time and facilities for the preparation of his defence.”²⁹ He recognizes that Article 21 does not entitle self-represented accused to all of the benefits provided to represented accused, noting that by opting to represent himself, he will forgo approximately 25,738 Euros per month in legal aid allocated to represented accused at trial. He argues, however, that the only difference between represented and self-represented accused are that self-represented accused assume the role of counsel.³⁰ He accordingly maintains that “if five support staff members working 150 hours per month is deemed to be necessary to provide adequate support for a represented accused in a complex case, the same facilities must be also necessary for a self-represented accused.”³¹

17. Karadžić submits that his Request comports with the Appeals Chamber’s holding in *Prosecutor v. Krajišnik* that “the term ‘facilities’ in Article 21(4)(b) does not normally encompass legal assistance”. In this regard, he explains that seven of his eight defence team members are engaged in factually based tasks, while the eighth member provides him with “related legal consultation”, as authorized in the *Krajišnik* Appeal Decision.³² He concludes that while the *Krajišnik* Appeal Decision determined that a self-represented accused is expected to undertake the tasks usually undertaken by counsel, it “did not hold that a self-represented accused must also undertake the tasks of investigator, case manager, and legal assistant.”³³

2. Remuneration Rate of Mr. Robinson

18. Karadžić contends that the Registry’s position that all persons assisting self-represented accused should be paid at support staff rates and refusal to remunerate Mr. Robinson at a rate of 72 Euros per hour during the trial is unreasonable and violates the holding in the *Krajišnik* Appeal Decision that “those assisting self-represented accused should be adequately compensated.”³⁴ Karadžić notes that Mr. Robinson has been granted right of audience to make legal submissions during the trial and opines that this new task does not reflect work normally undertaken by a legal assistant, as envisaged in the 7 May 2009 Decision, but rather reflects the type of work typically assumed by co-counsel.³⁵ Karadžić concludes that Mr. Robinson will not be able to participate in

²⁹ *Id.*, paras 26-29.

³⁰ *Id.*, paras 33-34.

³¹ *Id.*, para. 29.

³² *Id.*, paras 31-32.

³³ *Id.*, para. 35.

³⁴ *Id.*, paras 40-43.

³⁵ *Id.*, para. 42.

the trial at the remuneration rate of 25 Euros per hour, which “will exacerbate his lack of resources and the unfairness of the trial”.³⁶

B. The Registrar’s Submission

19. The Registrar makes the preliminary point that in filing the Request directly before me as President of the Tribunal, Karadžić again failed to follow the proper procedure for initiating judicial review pursuant to Article 31(C) of the Directive on the Assignment of Defence Counsel,³⁷ despite my finding regarding this issue in the Pre-Trial Decision.³⁸

1. Trial Phase and Adjournment Phase Remuneration

20. The Registrar submits that in reaching the Impugned Decision, he complied with the relevant legal requirements, acted with procedural fairness toward Karadžić, only considered relevant material, and acted reasonably. He accordingly asserts that there is no basis for interfering with it.³⁹

21. With regard to trial phase remuneration, the Registrar explains that the applicable policy for self-represented accused is the Remuneration Scheme, which is based on the holding in the *Krajišnik* Appeal Decision that a self-represented accused is not entitled to legal aid but is entitled to some funding for legal associates. The Registrar submits that the trial allocation set forth therein is premised on the assumption that the accused has completed pre-trial preparation and is ready for trial. He explains that the 150 out-of-court preparation hours per month are thus primarily allocated to assist the accused with preparation for court sessions.⁴⁰

22. The Registrar argues that Karadžić’s contention that he should receive the same financial support as a represented accused, minus remuneration for lead counsel, finds no basis in the Tribunal’s jurisprudence.⁴¹ The Registrar submits that departure from the Remuneration Scheme may only be warranted in “cases of duly justified unforeseen circumstances beyond the influence of the defence that significantly impact on their workload”, and that Karadžić has not demonstrated such circumstances.⁴² He asserts that most of the tasks set forth in the Request are pre-trial tasks, and notes that following the Pre-Trial Decision, Karadžić was allocated 7,500 support staff hours to

³⁶ *Id.*, para. 44.

³⁷ IT/73/Rev.11, 11 July 2006 (“Directive”).

³⁸ Registrar’s Submission, para. 34.

³⁹ *Id.*, paras 37 and 73-74.

⁴⁰ *Id.*, paras 40 and 45-46.

⁴¹ *Id.*, para. 49.

cover the pre-trial phase. He submits that the allocation of further funding during the trial phase is accordingly not justified.⁴³

23. The Registrar submits that his decision to increase the number of Karadžić's assistants to eight was limited to the pre-trial phase and was taken to enable Karadžić "to deal with the large amount of disclosure and witnesses in the remaining period of time during the pre-trial phase, and to efficiently prepare his case for trial". The Registrar argues that such additional assistance should not be required once a Chamber declares a case trial ready,⁴⁴ and notes that the Trial Chamber determined, and the Appeals Chamber confirmed, that Karadžić has had sufficient time to prepare his case.⁴⁵

24. The Registrar argues that in order to determine the existence of extraordinary circumstances that justify departure from the Remuneration Scheme, Karadžić must provide more specificity in his Request. The Registrar opines that the reasons that Karadžić has advanced so far do not constitute extraordinary circumstances. He explains that "work generated by motions, responses or other preparations during the adjournment period and the trial proceedings [...] constitute[s] work that is reasonably foreseeable" and normally performed during the trial phase. He further reasons that the need to review ongoing disclosure is common to Tribunal cases and does not warrant additional funds. In addition, he notes that Karadžić received a substantial increase in expert hours to address Rule 92*bis* materials, and that Karadžić has not yet exhausted this allocation.⁴⁶

25. With regard to funding during the adjournment phase, the Registrar submits that the Remuneration Scheme provides no guidance.⁴⁷ He explains that in determining the amount of funds to allocate Karadžić's defence team during this period, he therefore consulted the Remuneration Scheme's trial phase guidelines. He asserts that he interpreted these provisions in the manner most beneficial to Karadžić by allocating the 150 out-of-court hours provided for in the Remuneration Scheme, as well as 100 additional out-of-court hours, which reflects the average amount of hearing hours for two persons.⁴⁸

⁴² *Id.*, paras 51-52.

⁴³ *Id.*, para. 53.

⁴⁴ *Id.*, para. 44.

⁴⁵ *Id.*, para. 54.

⁴⁶ *Id.*, paras 55-57.

⁴⁷ *Id.*, para. 59.

⁴⁸ *Id.*, para. 62.

2. Remuneration Rate of Mr. Robinson

26. The Registrar submits that he correctly applied the relevant legal provisions when he denied Karadžić's request to remunerate Mr. Robinson at a rate of 72 Euros per hour. He notes that pursuant to the Remuneration Scheme, persons assisting self-represented accused are to be remunerated at the support staff rates set forth in the Directive. The Registrar argues that the Appeals Chamber endorsed the application of support staff rates to the assistants of self-represented accused in its 7 May 2009 Decision. He submits that Karadžić's request to remunerate Mr. Robinson at the rate of 72 Euros is actually a request to remunerate Mr. Robinson at the rate of co-counsel.⁴⁹

27. The Registrar argues that the fact that the Trial Chamber granted Mr. Robinson a limited right of audience has not changed his role as Karadžić's legal assistant. He submits that during a pre-trial conference, Karadžić confirmed that Mr. Robinson's role during trial would be limited to providing assistance to Karadžić and not representation. The Registrar further submits that whether or not Mr. Robinson will be able to participate in the trial if remunerated at a rate of 25 Euros per hour has no impact on the Tribunal's applicable remuneration rates. Additionally, the Registrar opines that in stating that his trial would be unfair if he were to have to research and present legal issues himself, "[Karadžić] demonstrates a profound misunderstanding of his status and role as a self-represented accused. The Tribunal's jurisprudence is clear that an accused who elects to be self-represented takes on the full responsibility for preparing and leading his case, including the legal issues arising therein."⁵⁰

C. Reply

28. In his Reply, Karadžić refutes the Registrar's claim that he violated Article 31(C) of the Directive by filing the Request directly before me. He submits that he appropriately filed the Request with the Registrar, requesting the Registrar to refer the matter to the President, and filed the Request simultaneously before me given that "time was of the essence". He argues that if anyone is in violation of Article 31(C), it is the Registrar, as he never referred the matter to me as required under Article 31(C).⁵¹

⁴⁹ *Id.*, paras 66-68.

⁵⁰ *Id.*, paras 69-72.

⁵¹ Reply, paras 2-4.

29. Karadžić asserts that the Registrar has failed to explain how Karadžić can defend himself with the assistance of only one support staff member.⁵² He submits that the Registrar has ignored the following extraordinary circumstances in his case, including that: (1) the Prosecution submitted 300,000 pages of new disclosure after the trial commenced; (2) the Prosecution has filed motions, which must be responded to during the adjournment period, seeking judicial notice of 300 documents, approximately 300 adjudicated facts, admission of 700 documents from the bar table, and the addition of 300 exhibits to the Rule 65*ter* list; (3) over 200 Rule 92*bis* witnesses must be interviewed and over 2000 adjudicated facts will likely need to be rebutted; (4) the defence must identify, interview, obtain documents from, and create 65*ter* summaries for a huge number of defence case witnesses; and (5) the defence must challenge over 26 Prosecution experts.⁵³

30. Karadžić notes that the Registrar concedes that his case is among the most complex and submits that he granted Level 3 status to the case when remunerating Karadžić's standby counsel. He reiterates that if five support staff are necessary for a counsel to adequately defend him, at least that amount is necessary to enable him to defend himself.⁵⁴

V. DISCUSSION

A. Preliminary Issue

31. As a preliminary matter, I note that the Registrar is correct in submitting that pursuant to Article 31(C) of the Directive,⁵⁵ Karadžić should not have filed his Request directly before me as President of the Tribunal. Nonetheless, as Karadžić notes, in accordance with Article 31(C), he also filed the Request before the Registrar. With regard to Karadžić's argument that the Registrar did not refer the Request to me, as also required under Article 31(C), I observe that by filing his Request simultaneously before me, Karadžić rendered this requirement moot. I further note Karadžić's submission that the reason he filed his Request before me is because "time was of the essence". Considering the foregoing, I am satisfied that although there may have been some confusion in relation to the appropriate procedure for filing a request pursuant to Article 31(C) of the Directive, both Karadžić and the Registrar acted in good faith. I accordingly consider the Request validly filed.

⁵² Reply, para. 5.

⁵³ Reply, paras 17-22.

⁵⁴ Reply, para. 14.

⁵⁵ Article 31(C) of the Directive provides, in relevant part, that where a dispute concerns a sum greater than 4,999 Euros, "an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President for his determination".

B. Merits

32. Turning to the merits, the gravamen of Karadžić's Request is that the Registrar failed to reasonably allocate additional adjournment phase and trial phase funding in an amount commensurate with the circumstances of the *Karadžić* case and failed to reasonably compensate Mr. Robinson for his services during the trial phase. The issue is therefore whether the Registrar, in exercising his discretion to render these decisions: (1) failed to comply with the legal requirements of the Directive; (2) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision; (3) took into account irrelevant material or failed to take into account relevant material; or (4) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test). In my view, for the purposes of this decision, the applicable criteria for judicial review are whether the Registrar took into account irrelevant material or failed to take into account relevant material, and whether the Registrar reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached.

1. Trial Phase and Adjournment Phase Remuneration

33. In the Impugned Decision, the Registrar provided, *inter alia*, the following reasons for denying Karadžić's request to increase the allocation of 250 remunerable hours per month to his defence team for the adjournment phase to 1,200 remunerable hours per month: (1) most of the tasks cited by Karadžić in support of his request for additional funds are pre-trial tasks, and these tasks were covered by the 7,500 support staff hours allocated to Karadžić for the pre-trial phase further to the Pre-Trial Decision; (2) because the Trial Chamber determined that Karadžić's case was trial ready, "all typical pre-trial tasks should have been undertaken prior to commencement of trial" and "any further motions, responses, disclosures or preparation during the adjournment constitutes reasonably foreseeable work that is ordinarily undertaken in a case, which includes refinement of the case as proceedings progress"; (3) pursuant to the *Krajišnik* Appeal Decision, the role of support staff is envisaged as providing "some legal consultation and coordination", which requires a limited amount of funding; and (4) none of the reasons cited by Karadžić are of such an extraordinary nature as to justify the allocation of additional funds, in particular, as "the need to review ongoing disclosure is common to all cases before the Tribunal and does not warrant additional funds as such".⁵⁶

⁵⁶ See Impugned Decision, at Request, Annex E.

34. With regard to the Registrar's determination in the Impugned Decision that most of the tasks cited by Karadžić were covered in the pre-trial allotment, I note that in the Pre-Trial Decision, I ordered the Registrar to allocate Karadžić 7,500 remunerable hours for the entire pre-trial phase.⁵⁷ I further note that in rendering the Pre-Trial Decision, I did not take into account Karadžić's submission, which is uncontested by the Registrar, that the Prosecution disclosed some 300,000 documents after the trial started on 26 October 2009, including primarily prior testimony or statements of Prosecution witnesses, new exhibits, and material necessary for the preparation of his defence, and that more disclosure is arriving on a daily basis.⁵⁸ Rather, the Pre-Trial Decision concerned Karadžić's appeal of the Registry's decision denying his 11 September 2009 request for additional pre-trial funds, which was supplemented by additional information Karadžić provided on 16 September 2009 and 22 October 2009. I emphasize that these submissions were made before the trial commenced.⁵⁹ In light of the significant amount of work involved in reviewing 300,000 disclosure documents, I find that it was unreasonable for the Registrar to conclude that most of the outstanding work cited by Karadžić in support of his Request was covered in the pre-trial allotment.

35. As regards the Registrar's finding in the Impugned Decision that because the Trial Chamber determined Karadžić's case trial ready, all pre-trial tasks should have been undertaken during the pre-trial phase, and any further motions, responses, disclosures or preparation during the adjournment constitute reasonably foreseeable work ordinarily undertaken in a case, I observe that on 20 August 2009, the Trial Chamber declared Karadžić's case trial ready, and that on 8 September 2009, the Trial Chamber found that Karadžić had sufficient time to prepare his case for trial.⁶⁰ The Appeals Chamber upheld this position on 13 October 2009.⁶¹ Nevertheless, as noted above, subsequent to the commencement of trial on 26 October 2009, Karadžić received approximately 300,000 pages of disclosure documents. In the Request, Karadžić does not provide more specificity regarding the type of disclosure included in these documents.

36. In so far as this disclosure contains Rule 65ter materials and other such material that is normally classified as pre-trial disclosure, given that it was not disclosed until after the trial commenced, Karadžić cannot reasonably be expected to have finished reviewing it during the pre-trial stage. In so far as this disclosure constitutes, in the Registrar's opinion, "ongoing disclosure

⁵⁷ See Pre-Trial Decision, para. 30; Registrar's Submission, para.

⁵⁸ See Request, para. 24; Reply, para. 17.

⁵⁹ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 10 November 2009, para. 2.

⁶⁰ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009 ("Decision on Trial Commencement"), para. 4.

⁶¹ Decision on Trial Commencement, paras 23 and 27.

[...] common to all cases before the Tribunal”,⁶² I do not consider that Karadžić can reasonably be expected to deal with it during the adjournment phase with the assistance of only two staff members. In this regard, I note the high volume of this disclosure, coupled with the timing of the disclosure, the complexity of Karadžić’s case, and the other outstanding tasks Karadžić cites in support of his Request for additional resources, including: (1) the need to respond during the adjournment phase to Prosecution motions seeking judicial notice of 300 documents and approximately 300 adjudicated facts, the admission of 700 documents from the bar table, and the addition of 300 exhibits to the Rule 65*ter* list; (2) the fact that over 200 Rule 92*bis* witnesses remain to be interviewed and over 2000 adjudicated facts will likely need to be rebutted; (3) the need to identify and interview defence witnesses; and (4) the need to challenge over 26 Prosecution experts.

37. Turning to the Registrar’s argument with regard to the role of support staff envisaged in the *Krajišnik* Appeal Decision, I note that contrary to the Registrar’s assertion, this role is not limited to “some legal consultation and coordination”.⁶³ Rather, in the *Krajišnik* Appeal Decision, the Appeals Chamber confirmed the Registry’s finding that Article 21(4)(b) of the Statute also requires the provision of “‘certain technical and logistical support’ and ‘conceivabl[y]’ the assignment of a Tribunal-paid ‘investigator and/or (an) expert(s), depending on the stage of the proceedings’”, as well as “translation assistance”.⁶⁴

38. Moreover, the Registrar’s determination in the Impugned Decision that none of the reasons cited by Karadžić are of such an extraordinary nature as to justify granting his Request for additional funds during the adjournment period is questionable. In my view, the significant amount of work involved in reviewing 300,000 disclosure documents, coupled with the additional tasks, as outlined above, that Karadžić must undertake during the adjournment phase, constitute an extraordinary circumstance that justifies the need for resources beyond those allocated by the Registrar.

39. In light of the foregoing, I find that in exercising his discretion to allocate funds to Karadžić during the adjournment period, the Registrar failed to take into account relevant material; namely, that after the commencement of the trial, the Prosecution submitted 300,000 pages of disclosure. I also consider that the Registrar failed to take into account or give sufficient weight to the other tasks that Karadžić must undertake during this period in order to effectively represent himself, as well as the role of the support staff of self-represented accused, as envisaged in the *Krajišnik* Appeal

⁶² See *supra*, para. 33.

⁶³ *Ibid.*

⁶⁴ *Krajišnik* Appeal Decision, paras 43-44.

Decision. Accordingly, I am satisfied that no reasonable person considering these factors could have arrived at the decision that an allocation of 250 hours for the entire defence team per month during the adjournment period was sufficient in the given circumstances.

40. Turning to the trial phase, I note that the Registrar's main justification in the Impugned Decision for denying Karadžić's request for additional defence team funding was that there is no provision for additional assistants during the trial phase, and the Registrar was not satisfied that the remuneration of eight full-time assistants could be justified during the trial.⁶⁵ As noted above, in the Rule 33(B) submission, the Registrar further submits that departure from the Remuneration Scheme is only warranted "in cases of duly justified unforeseen circumstances beyond the influence of the defence that significantly impact on their workload" and that Karadžić has not demonstrated such circumstances.⁶⁶

41. Pursuant to the Trial Legal Aid Policy, the cases of represented accused ranked at "Level 3", which is the highest level of complexity, are allocated funding to remunerate five support staff, in addition to a counsel and co-counsel, during the trial phase. The factors the Registrar takes into account in ranking the case of a represented accused include "the position of the accused within the political/military hierarchy", "the number and nature of counts in the indictment"; the "geographical scope of case", "the complexity of legal and factual arguments involved", and "the number and type of witnesses and documents involved".⁶⁷ In my opinion, considering these factors, it is beyond doubt that Karadžić's case is of similar complexity to a Level 3 case.

42. The Registrar has acknowledged that Karadžić's case is "exceptionally large in terms of the factual scope of the indictment and the sheer volume of documents that need to be reviewed" and "very complex both from a factual and legal point of view".⁶⁸ Nevertheless, the Registrar's allocation of 150 out-of-court hours for the trial phase will only permit Karadžić to employ one full-time support staff member to assist him outside the courtroom during the trial phase.⁶⁹

43. I do not consider that a reasonable person having properly taken into account the complexity of Karadžić's case could have arrived at the decision that providing remuneration for one full-time support staff member to assist Karadžić out-of-court is sufficient to enable Karadžić to effectively

⁶⁵ See Impugned Decision, at Request, Annex E.

⁶⁶ See *Supra*, para. 22.

⁶⁷ Trial Legal Aid Policy, pp. 4-5.

⁶⁸ See Letter from the Registry to Karadžić dated 14 November 2008, at *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Motion for Adequate Facilities and Equality of Arms: Legal Associates, Annex E.

⁶⁹ I note that both the Pre-Trial Legal Aid Policy and the Trial Legal Aid Policy provide that full-time support staff members work 150 hours per month. See Pre-Trial Legal Aid Policy, p. 6 and fns 7-9; Trial Legal Aid Policy, p. 5, fn. 3.

represent himself during the trial, and that departure from the Remuneration Scheme is not warranted. Rather, in rendering his decision, I am convinced that the Registrar erred.

44. Having found an error in the exercise of the Registrar's discretion, it remains to be determined whether the circumstances of this case warrant granting Karadžić's Request for the allocation of 1,200 remunerable hours per month to his defence team during both the adjournment phase and the trial phase.

45. In the Impugned Decision, the Registrar noted that during the pre-trial phase, the number of Karadžić's remunerated assistants was increased from four to eight on an exceptional basis in accordance with paragraph 3.5 of the Remuneration Scheme to enable Karadžić to (1) "deal with the rather high amount of disclosure and witnesses in the remaining period of time during the pre-trial phase"; and (2) "to efficiently prepare [his] case for trial."⁷⁰ I consider that the justifications relied upon by the Registrar in increasing Karadžić's remunerated assistants from four to eight during the pre-trial phase still apply. In this regard, I again recall the high volume of disclosure that occurred after the trial began and during the adjournment period, which is still ongoing. I also take account of Karadžić's submissions, as set forth above, regarding work that remains to be done in relation to the large number of witnesses and prospective witnesses in his case. In addition, I note that although the Trial Chamber determined that Karadžić has had sufficient time to prepare his case for trial, it nevertheless instructed in the Adjournment Decision that during the adjournment phase, Karadžić will "continue to [...] further prepar[e] himself for the trial."⁷¹ In light of the foregoing, I consider it in the interests of justice to grant Karadžić's defence team 1,200 remunerable hours per month until the resumption of trial, which will enable each of his eight defence team members to continue to assist him during this period.

46. Once the trial resumes, however, I expect that the allocation of funds to cover eight support staff members working full-time will no longer be justified, as Karadžić will have had time to address the exceptional circumstances outlined above. Nevertheless, I recall that under the Trial Legal Aid Policy, in cases of comparable magnitude and complexity, lead counsel for represented accused are paid a lump sum, which includes funds to remunerate five full-time support staff members.⁷² I consider that Karadžić has demonstrated that in order to adequately represent himself, he will need assistance from the same number of full-time support staff. I recall that pursuant to the Trial Legal Aid Policy, full-time support staff are remunerated for a total of 150 remunerable hours

⁷⁰ See Impugned Decision, at Request, Annex E.

⁷¹ See Adjournment Decision, para. 25; 26 November 2009 Decision, at Request, Annex A.

⁷² See Trial Legal Aid Policy, pp. 4-5.

per month.⁷³ I thus consider that Karadžić should be allocated a total of 750 remunerable hours per month for the funding of five support staff members during the trial.

47. Nothing in this decision should be construed as meaning that all self-represented accused should be allocated the same number of support staff as allocated to represented accused with cases of similar complexity. Rather, such decisions can only be made on a case-by-case basis after careful consideration of the particular circumstances of each self-represented accused.

2. Remuneration Rate of Mr. Robinson

48. I recall that in the Impugned Decision, the Registrar stated that despite the fact that Mr. Robinson has been exceptionally authorized by the Trial Chamber to make submissions in court, he remains Karadžić's legal associate, to be remunerated in accordance with the Remuneration Scheme. The Registrar further stated that the issue of Mr. Robinson's remuneration rate was settled by the Appeals Chamber's 7 May 2009 Decision, "which found the remuneration rates as established in the Remuneration Scheme to be reasonable and sufficient". On this basis, he denied Karadžić's Request to remunerate Mr. Robinson at a rate of 72 Euros per hour.⁷⁴

49. Paragraph 3.4 of the Remuneration Scheme provides that:

The persons assigned to assist a self-represented accused shall be remunerated at the hourly rates for defence support staff set out in Annex I to the Directive [...].

Annex I to the Directive provides that legal assistants and investigators are paid at an hourly rate commensurate with their experience, as follows: persons with 0-4 years of experience are paid at a rate of 15 Euros; persons with 5-9 years of experience are paid at a rate of 20 Euros; and persons with 10 or more years of experience are paid at a rate of 25 Euros. Furthermore, co-counsel are paid at a fixed hourly rate of 71 Euros, and lead counsel, counsel, and experts with 0-9 years of experience are paid at an hourly rate of 71 Euros.⁷⁵

50. In the 7 May 2009 Decision, the Appeals Chamber dismissed Karadžić's appeal against the Trial Chamber's denial of his request to remunerate his legal associates at a level above that of support staff.⁷⁶ The Appeals Chamber held, *inter alia*, that Karadžić had:

⁷³ See *Id.*, p. 5, fn. 3.

⁷⁴ See Impugned Decision, at Request, Annex E.

⁷⁵ See Directive, Annex I, at p. 27.

⁷⁶ 7 May 2009 Decision, p. 14.

[...] failed to show that it was unreasonable for the Trial Chamber to conclude based on the *Krajišnik* Appeal Decision that the Registry was not required to pay legal associates at the same rate as counsel for a represented accused.⁷⁷

The Appeals Chamber noted that:

The *Krajišnik* Appeal Decision recognised that “[t]o the extent that the Registry requires or encourages indigent self-representing accused to coordinate their defences through designated legal associates”, it “should adequately reimburse the legal associates for their coordinating work and for related legal consultation.” However, it concluded that “[s]uch 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)”.⁷⁸

The Appeals Chamber reasoned that:

While the *Krajišnik* Appeal Decision does contemplate the provision of legal consultation by a legal associate, it makes clear that this is not to be equated with the comprehensive work of counsel which is to be undertaken by the accused himself. The mere fact that a legal associate may provide legal consultation does not necessarily imply that he or she will undertake the functions and tasks for which counsel is normally responsible.⁷⁹

The Appeals Chamber further explained that:

However, experience alone does not determine the rate of pay; the functions and tasks undertaken are also important as is the level of responsibility assumed. For example, the Appeals Chamber notes that the Directive on the Assignment of Defence Counsel contemplates the possibility of legal assistants with 10 years or more of experience. A legal assistant with such experience could thus be considered to have comparable experience to counsel but is not paid at the same rate of pay as counsel because he or she fulfils a different function on the defence team.⁸⁰

Thus, in the 7 May 2009 Decision, the Appeals Chamber recognized that legal associates must be adequately reimbursed for their services but denied Karadžić’s appeal on the basis of the limited functions and tasks that those associates were expected to undertake in his case, namely, legal consultation and coordination work.

51. I note, however, that subsequent to the 7 May 2009 Decision, the Trial Chamber granted Mr. Robinson a “right of audience limited to addressing the Trial Chamber on legal issues that arise during the proceedings”. This is qualified in that Mr. Robinson “may only exercise this limited right of audience upon a specific request for such by [Karadžić] being granted by the Trial Chamber”.⁸¹ The Registrar correctly asserts that this fact does not change Mr. Robinson’s role as Karadžić’s legal assistant. Nevertheless, I am mindful of the Appeals Chamber’s instruction that legal associates must be adequately compensated for their work, and that rate of pay is determined not only by experience but also the functions and tasks undertaken by legal associates, as well as

⁷⁷ *Id.*, para. 23.

⁷⁸ *Id.*, para. 16.

⁷⁹ *Ibid.*

⁸⁰ 7 May 2009 Decision, para. 18.

⁸¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order on the Procedure for the Conduct of Trial, 8 October 2009, Appendix A, p. 8.

the level of responsibility assumed by them. I consider that the authority to address the Trial Chamber on legal issues that arise during the proceedings goes beyond the tasks, functions, and level of responsibility of legal associates as envisaged by the Appeals Chamber. Rather, it more closely reflects work normally undertaken by co-counsel.

52. During the pre-trial and adjournment phases, Mr. Robinson has been remunerated at the rate of 25 Euros per hour, which reflects the rate of pay under the Directive for legal assistants or investigators with 10 or more years of experience. In denying Karadžić's request to remunerate Mr. Robinson at a higher rate of pay, I am not satisfied that the Registrar took into account or gave sufficient weight to the higher level of responsibility that Mr. Robinson has been authorized by the Trial Chamber to assume. I consider that the Registrar's failure to do so was unreasonable and in contravention of the requirement that legal associates must be adequately compensated.

53. It remains to be determined whether the circumstances of this case warrant the remuneration of Mr. Robinson at the rate of 72 Euros per hour, as Karadžić requests. As explained above, the Directive sets forth the payment rates for three categories of defence team staff: (1) legal assistants and investigators; (2) co-counsel; and (3) lead counsel, counsel and experts. Thus far, Mr. Robinson has been remunerated at the highest rate of pay available to legal assistants and investigators. Co-counsel, as well as lead counsel, counsel, and experts with 0-9 years of experience, are paid at the next highest rate of pay – that is, 71 Euros per hour. Given Mr. Robinson's expanded role in his capacity of legal assistant, which includes responsibility normally assumed by co-counsel, I consider it in the interests of justice to remunerate Mr. Robinson at a rate of 71 Euros per hour during the trial phase.

3. Compliance with *Krajišnik* Appeal Decision

54. This decision is consistent with the standard set in the *Krajišnik* Appeal Decision for the funding allocable to self-represented accused. The *Krajišnik* Appeal Decision states that:

While Article 21 may require that accused in similar circumstances receive roughly comparable treatment, it does not require that an accused who opts for self-representation receive all the benefits held by an accused who opts for counsel.⁸²

The *Krajišnik* Appeal Decision further states that:

To the extent that the Registry requires or encourages 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

⁸² *Krajišnik* Appeal Decision, para. 41.

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.⁸³

In addition, as previously noted, the *Krajišnik* Appeal Decision states that Article 21(4)(b) of the Statute requires the Registrar to provide self-represented accused with “certain technical and logistical support” and may also require the assignment of an investigator and/or an expert or experts, as well as translation assistance.⁸⁴


55. The allocation to Karadžić’s defence team of 1,200 remunerable hours per month until the resumption of the trial, as well as 750 remunerable hours per month during the trial phase, including 71 Euros per hour for Mr. Robinson’s services during the trial, is not comparable to the funding paid to counsel for represented accused. Under the Trial Legal Aid Policy, the lump sum received by counsel for represented accused in a case of comparable complexity includes 14,093 Euros per month in funding for a lead counsel and 11,645 Euros per month in funding for a co-counsel, as well as 15,000 Euros per month to fund five support staff.⁸⁵ On the other hand, although Karadžić will receive funds to remunerate eight support staff until the resumption of trial and five support staff during the trial phase, he will not receive funds to remunerate a lead counsel or co-counsel.

VI. DISPOSITION

56. In light of the foregoing, I **GRANT** the Request **IN PART** and **ORDER** the Registrar to allocate to Karadžić’s defence team 1,200 remunerable hours per month until the resumption of the trial, 750 remunerable hours per month during the trial, and to remunerate Mr. Robinson at a rate of 71 Euros per hour during the trial.

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

Done this 19th day of February 2010,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

⁸³ *Krajišnik* Appeal Decision, para. 42.

⁸⁴ *Krajišnik* Appeal Decision, paras 43-44.

⁸⁵ See Trial Legal Aid Policy, para. 24.