



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

Case No. IT-95-5/18-T
Date: 10 February 2012
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision: 10 February 2012

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE REQUEST FOR REVIEW OF
DECISION ON OFFICE SPACE**

Office of the Prosecutor

Alan Tieger
Hildegard Uertz-Retzlaff

The Accused

Radovan Karadžić

1. I, **THEODOR MERON**, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), am seised of the “Request for Review of Decision on Office Space”, filed by Radovan Karadžić (“Karadžić”) on 20 December 2011 (“Request”). The Registrar of the Tribunal (“Registrar”) responded on 12 January 2012.¹ Karadžić filed a reply on 16 January 2012.²

I. BACKGROUND

2. The Tribunal closed its Beach Building in October 2011. The parties do not contest that Karadžić had general access to common defence areas of the Beach Building prior to October 2011, and of the Main Building before and after that date.³

3. On 28 September 2011, Karadžić sent a letter to the Head of the Office for Legal Aid and Detention Matters (“OLAD”) noting the impending closure of the Beach Building and the common defence area therein, which his defence team had been using. He requested that the Registry of the Tribunal (“Registry”) provide “suitable office space” for his defence team moving forward or, in the alternative, funds for his defence team to rent an office.⁴ On 31 October 2011 and 30 November 2011, Karadzic submitted additional letters to the Head of OLAD reiterating this request and also asking for reimbursement of rent paid for the apartments used by his defence team as office space in October and November 2011 (collectively, “Initial Request”).⁵

4. On 9 December 2011, the Head of OLAD responded to the Initial Request.⁶ She stated that the common defence area in the Main Building was a sufficient allocation of office space considering, *inter alia*, the current and expected future demand for this area.⁷ As an alternative, she offered to provide a dedicated area within the common defence space in the Main Building for the Karadžić defence team’s “exclusiv[e]” use, with the proviso that the Karadžić defence team would

¹ Registrar’s Second Submission Pursuant to Rule 33(B) Regarding Radovan Karadžić’s Request for Review of Decision on Office Space (“Response”). See also Registrar’s Submission Pursuant to Rule 33 (B) Regarding Radovan Karadžić’s Request for Review of Decision on Office Space, 22 December 2011.

² Reply Brief: Request for Review of Decision on Office Space (“Reply”).

³ See Request, paras 15-16; Response, paras 6, 23.

⁴ Request, Annex “A”, p. 7.

⁵ See Request, Annexes “B” and “C”, pp. 9, 11. Karadžić also submitted invoices detailing the amount of remuneration sought, namely €4,406 for October and €3,456 for November. See Request, para. 11, Annexes “B” and “C”, pp. 58087, 58085.

⁶ Request, Annex “D”, p. 13, Letter from Jaimee Campbell, Head, Office for Legal Aid and Detention Matters, to Karadžić, Re: Your Letters Dated 31 October 2011 and 30 November 2011 Regarding Office Costs (“Impugned Decision”).

⁷ Impugned Decision.

no longer be able to use other parts of the common defence area.⁸ The Head of OLAD also stated that Karadžić presented “no basis” justifying reimbursement of his defence team’s apartment rental costs for the months of October and November 2011.⁹

II. STANDARD OF REVIEW

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

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment [*sic*] in accordance with Rule 119 of the Rules of Procedure and Evidence [of the Tribunal]. A judicial review of an administrative decision made by the Registrar [...] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.¹⁰

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

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the “unreasonableness” test).¹¹

6. 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.”¹² The onus of persuasion lies on the party challenging the administrative decision to show both that: “(1) an error of the nature enumerated above has occurred, and (2) [...] such an error has significantly affected the administrative decision to his detriment.”¹³

III. APPLICABLE LAW

7. Article 21(4) of the Statute of the Tribunal (“Statute”) provides, in relevant part, that:

⁸ Impugned Decision.

⁹ Impugned Decision.

¹⁰ *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. *See also The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010 (“Karadžić Decision”), para. 9.

¹¹ Karadžić Decision, para. 9. *See also Žigić Decision*, para. 13.

¹² Žigić Decision, para. 13. *See also Karadžić Decision*, para. 10.

¹³ Karadžić Decision, para. 10. *See also Žigić Decision*, para. 14.

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[...]

(b) to have adequate time and facilities for the preparation of his defence [...];

IV. APPLICABLE REGULATIONS

8. Paragraph 25 of the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused¹⁴ provides that:

The Registrar shall provide office space for defence teams assisting self-represented accused during trial, as determined appropriate by the Registrar.

9. Paragraph 26 of the Remuneration Scheme provides that any disputes over remuneration or reimbursement of expenses arising from the application of the Remuneration Scheme shall be settled in accordance with Article 31 of the Directive on the Assignment of Defence Counsel.¹⁵ Article 31(C) of the Directive, in turn, provides that:

Where the dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President for his determination. Before making a determination the President shall request submissions from the aggrieved party and the respondent. The President's determination shall be final and binding upon the parties.

10. Paragraph 4 of the Defence Counsel Trial Legal Aid Policy¹⁶ provides, in relevant part, that:

All aspects of representation except for necessary travel and DSA are to be covered by the lump sum [payment scheme]. These include, but are not limited to:

[...]

office costs[.]

V. SUBMISSIONS

11. Karadžić requests that the Impugned Decision be “quashed” and asks that I order the Registrar to: (i) provide his defence team with office space on Tribunal premises or with funds to rent an office; and (ii) reimburse his defence team for their apartment rental costs since the closure of the Beach Building.¹⁷

¹⁴ 1 April 2010 (“Remuneration Scheme”).

¹⁵ Directive No. 1/94, IT/73/REV.11, 11 July 2006 (“Directive”).

¹⁶ 1 November 2009 (“Legal Aid Policy”).

¹⁷ Request, para. 13. *See also* Request, paras 3, 21.

12. Karadžić maintains that the provision of shared office space, even if dedicated areas are allocated to his defence team, is insufficient to meet the textual requirements of the Remuneration Scheme and, alternatively, is an unreasonable interpretation of the Remuneration Scheme's requirements.¹⁸ More specifically, he asserts that the common defence areas do not constitute "office space" within the meaning of the Remuneration Scheme because, *inter alia*, the space lacks appropriate meeting and witness preparation areas, secure storage, and computer availability.¹⁹ He also submits that the Registry's proposals would leave his defence team with "something less than they already have."²⁰ Karadžić further contends that if the common space provided in the Main Building qualified as appropriate "office space", the Tribunal would not need to pay each represented defence team €10,295 per month to rent an office.²¹ In addition, Karadžić asserts that since his defence team members were forced by the closure of the Beach Building to use their apartments as offices, the Registrar should be required to reimburse relevant apartment rental costs.²²

13. The Registrar first responds that the Request should be dismissed because it is premature and does not relate to a dispute subject to the President's review.²³ In particular, he contends that the Impugned Decision provided two alternative provisions of office space to Karadžić and thus was not a final "decision" ripe for review. He also asserts that the dispute relates to the provision of facilities not expressed in monetary terms and thus falls outside the purview of "a dispute over remuneration or reimbursement of expenses" under Paragraph 26 of the Remuneration Scheme and Article 31(C) of the Directive.²⁴ He further maintains that Karadžić's request for reimbursement of apartment rental costs is: (i) "frivolous" given that Karadžić and his defence team have had access to office space in the Main Building and the United Nations Detention Unit "at all times";²⁵ and (ii) "inappropriate" insofar as it is based on a "misunderstanding" of the Tribunal's policy concerning office costs, which are provided as part of counsel's and co-counsel's reimbursement, and to which Karadžić is not entitled.²⁶

14. With respect to the merits of Karadžić's claim, the Registrar maintains that the two alternatives provided to Karadžić in the Impugned Decision comply with all applicable regulations

¹⁸ Request, paras 2, 3, 13, 15-19.

¹⁹ See Request, paras 14-15, 18-19.

²⁰ Request, para. 18.

²¹ Request, para. 18. See also Request, paras 14, 20.

²² See Request, paras 16, 21.

²³ Response, paras 12-14.

²⁴ Response, paras 12-14, 38-39.

²⁵ Response, para. 31. See also Response, para. 28.

²⁶ Response, para. 31. See also Response, para. 40.

and are reasonable.²⁷ More specifically, he contends, in relevant part, that: (i) he complied with the relevant legal provisions of the Remuneration Scheme and considered only relevant material;²⁸ (ii) he acted with procedural fairness in coming to the Impugned Decision;²⁹ and (iii) the office space allocated to Karadžić's defence team is "sufficient and appropriate", involving facilities which are the same as or better than those provided in the past.³⁰

15. Karadžić replies that the Impugned Decision is reviewable because, *inter alia*, the dispute concerns reimbursement of expenses within the meaning of Paragraph 26 of the Remuneration Scheme, and in any event, no final decision is required for the President to review ongoing failures by the Registrar to comply with Tribunal regulations.³¹ He also submits that the Registrar's statement that the common staging areas are not intended to be permanent office space for defence teams in trial³² confirms that common defence workspaces do not constitute "office space".³³

VI. DISCUSSION

16. I note that the Impugned Decision unequivocally denied Karadžić's request for reimbursement of office rental expenses, and the sum involved exceeds that required to allow review of the denial.³⁴ I observe that the offers of office space by the Registrar are clearly connected to the issue of reimbursement, and thus that judicial rationality and economy justify adjudicating this dispute in one decision. On these bases, I determine that the Impugned Decision as a whole is ripe for review. I further note that by filing the Request directly before the President, Karadžić did not follow the procedure outlined in Article 31(C) of the Directive and reiterate that he is required to abide by proper procedure for filing any future requests for review of Registry decisions.³⁵ However, given that the Registrar has not challenged Karadžić's failure in this respect,³⁶ and in light of the need for judicial economy, I will consider the Request as filed.

17. As an initial matter, I note that Karadžić's submissions are premised on the flawed assumption that represented accused's defence teams are entitled to a specific monthly allowance for office costs.³⁷ The allowance to which Karadžić refers constitutes one component of lead and

²⁷ Response, paras 15, 17, 41-42.

²⁸ Response, paras 18-21, 35, 36.

²⁹ Response, paras 32-34.

³⁰ Response, paras 21-30.

³¹ Reply, paras 4-8. *See also* Request, paras 10-11.

³² Reply, paras 9, 12.

³³ Reply, paras 9-13.

³⁴ *See* Impugned Decision; Request, para. 11; Remuneration Scheme, para. 26; Directive, para 31(C).

³⁵ Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012, para. 22.

³⁶ *See* Response, paras 12-15, 39.

³⁷ *See* Request, paras 14, 18, 20.

co-counsel's fees, paid to defence teams as part of a lump sum allotment to be used for a variety of purposes, including office costs.³⁸ In this sense, it is distinct from the Remuneration Scheme's requirement that the Registrar provide "office space" he deems appropriate to defence teams assisting self-represented accused. Thus, Karadžić's suggestion that the office space to which he is entitled should be comparable to that which can be rented using the whole of the lump sum allowance is misplaced.³⁹ More broadly, I underscore that by choosing to be self-represented, Karadžić has abjured the broader panoply of support available to represented accused.⁴⁰ The Remuneration Scheme, whose validity Karadžić does not challenge, is not meant to provide self-represented accused with all the support provided to represented accused, including lump sums provided to counsel for represented accused.

18. Turning to Karadžić's remaining contentions, I note that the Remuneration Scheme guarantees no minimum provision of office space and explicitly defers to the Registrar's judgement on specific provision.⁴¹ In this context, Karadžić's apparent assertion that the Registrar's provision of access to shared defence areas facially violates the textual requirements of the Remuneration Scheme is incorrect.⁴²

19. In addition, I do not believe that Karadžić has demonstrated that the Registrar's relevant decisions are so unreasonable as to exceed the scope of his discretion. Aside from claims to the lump sums provided for the defence teams of represented accused, Karadžić focuses his arguments on: (i) various shortcomings of common defence areas, relating, *inter alia*, to computer access, meeting/witness preparation areas, and storage areas;⁴³ and (ii) the fact that the total office space available to his team has been reduced since the Beach Building's closure.⁴⁴ However, I note that all office spaces can have shortcomings, and many of the concerns expressed by Karadžić are actually addressed by the Registrar's provision of office space. In particular, the Karadžić defence team is provided with work areas, secure storage space, and a room for private interviews with witnesses.⁴⁵ I further observe that Karadžić does not explain how any reduction in the total amount

³⁸ See generally Legal Aid Policy, paras 3-16. See also Legal Aid Policy, para. 30.

³⁹ I note that Karadžić's suggestion that the Remuneration Scheme provides for monetary compensation in lieu of provision of office facilities is similarly mistaken. See Remuneration Scheme, paras 25-26.

⁴⁰ 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, para. 24, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 19.

⁴¹ See Remuneration Scheme, para. 25.

⁴² See Request, para. 13.

⁴³ See Request, paras 15, 19.

⁴⁴ See Request, paras 15-16, 18. See also *supra*, para. 3.

⁴⁵ See Response, paras 21, 26-28. See also Impugned Decision; Response, para. 36.

of common defence space caused by the closure of the Beach Building renders the Registrar's subsequent allocation of office space unreasonable.

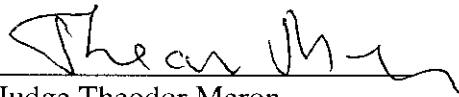
20. I note that the Registrar demonstrated appropriate concern for procedural fairness by engaging in "ongoing" discussions with Karadžić's defence team regarding provision of office space after the closure of the Beach Building,⁴⁶ explicitly considering the level of demand for common defence areas,⁴⁷ offering additional accommodations beyond shared office space,⁴⁸ and appearing to take into account all relevant material before him.⁴⁹

21. Accordingly, I find that the Registrar acted within the scope of his discretion in his provision of office space to Karadžić's defence team, and thus need not explicitly address Karadžić's now moot requests for reimbursement of apartment rental costs.

VII. DISPOSITION

22. For the foregoing reasons, I hereby **DENY** the Request.

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


Judge Theodor Meron
President

Dated this 10th day of February 2012
At The Hague,
The Netherlands

[Seal of the Tribunal]

⁴⁶ See Response, paras 33, 42. Karadžić does not dispute this submission, and I therefore accept the Registrar's submissions in this regard on their face. I note, however, that in the future, it would be preferable for parties to include copies of these informal communications in an annex to their submissions.

⁴⁷ See Impugned Decision. See also Response, paras 25-26, 35.

⁴⁸ See Impugned Decision. See also Response, paras 24, 36.

⁴⁹ See Impugned Decision. See also Response, paras 26, 35.