



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: 7 May 2012

Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 7 May 2012

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE REQUEST FOR REVIEW OF
REGISTRAR DECISION AND FOR SUMMARY REVERSAL**

Office of the Prosecutor

Alan Tieger
Hildegard Uertz-Retzlaff

The Accused

Radovan Karadžić

Standby Counsel

Richard Harvey

1. **I, THEODOR MERON**, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), am seised of the “Request for Review of Registrar Decision and for Summary Reversal”, with public annexes, filed by Radovan Karadžić (“Karadžić”) on 18 April 2012 (“Request”). The Registrar of the Tribunal (“Registrar”) responded on 1 May 2012.¹

I. BACKGROUND

2. On 9 and 10 February 2012, Karadžić requested the appointment of Dragomir Keserović and of Luka Bogdanović, respectively, as investigators on his defence team.² On 4 April 2012, both requests were denied.³ The Keserović Letter stated, in relevant part, that “[h]aving reviewed Mr. Keserović’s background, in light of his role during the time relevant to the indictment against you, as well as prior testimonies before the Tribunal, the Registrar has determined that he is not suitable for assignment to a Tribunal funded defence team.” The Bogdanović Letter similarly stated, in relevant part, that “[h]aving reviewed Mr. Bogdanović’s background, in light of his role during the time relevant to the indictment against you, the Registrar has determined that he is not suitable for assignment to a Tribunal funded defence team.”

3. On 20 April 2012, I issued an order denying the Motion insofar as it requested that I prohibit the Registrar from providing a submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal.⁴

II. STANDARD OF REVIEW

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

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment [*sic*] in

¹ Registrar’s Submission Pursuant to Rule 33 (B) Regarding Request for Review of Registrar Decision and for Summary Reversal Dated 18 April 2012 (with public annexes) (“Response”). This decision is issued without waiting for any reply from Karadžić in view of the lack of prejudice to him.

² See Motion, Annex A, Letter from Karadžić to Jaimee Campbell, Head, Office of Legal Aid and Detention Matters, 9 February 2012; Letter from Karadžić to Jaimee Campbell, Head, Office of Legal Aid and Detention Matters, 10 February 2012.

³ See Motion, Annex B, Letter from Anna Osure, Deputy Head, Office of Legal Aid and Detention Matters, to Karadžić, Re: Your request for the assignment as investigator: Mr. Dragomir Keserović, 4 April 2012 (“Keserović Letter”); Letter from Anna Osure, Deputy Head, Office of Legal Aid and Detention Matters, to Karadžić, Re: Your request for the assignment as investigator: Mr. Luka Bogdanovic [*sic*], 4 April 2012 (“Bogdanović Letter” and, collectively, “Impugned Decision”).

⁴ Order on Request for Review of Registrar Decision and for Summary Reversal, 20 April 2012, p. 1.

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.⁵

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).⁶

5. Unless unreasonableness has been established, “there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled.”⁷ 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.”⁸

III. APPLICABLE REGULATIONS

6. Paragraphs 20 and 21 of the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused⁹ provide that the Registrar shall review candidates for the position of investigator. The Registrar may “deny the assignment of a candidate who does not meet the basic qualification requirements, or where there is an indication that such an assignment would be prejudicial to the administration of justice, or likely to diminish public confidence in the Tribunal or the administration of justice”.¹⁰

IV. SUBMISSIONS

7. Karadžić asserts, *inter alia*, that the Impugned Decision “is so deficient that it is simply incapable of intelligent review”, maintaining that “[i]t is impossible to determine from the [Impugned D]ecision what the Registrar took into account, whether relevant or irrelevant, in

⁵ *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.

⁶ Karadžić Decision, para. 9. *See also* Žigić Decision, para. 13.

⁷ Žigić Decision, para. 13. *See also* Karadžić Decision, para. 10.

⁸ Karadžić Decision, para. 10. *See also* Žigić Decision, para. 14.

⁹ 1 April 2010 (“Remuneration Scheme”).

coming to his decision.”¹¹ Karadžić further maintains that the Registrar should not be allowed to provide additional rationales for his decision during any review process.¹² Karadžić concludes that I should either order the Registrar to provide a reasoned decision or order that the requests for assignment of investigators be granted.¹³

8. The Registrar responds, *inter alia*, that he acted with procedural fairness, asserting that “[a]n administrative decision which sets out the basis on which it was taken and states the underlying reason, is sufficient to comply with the requirement that it be reasoned.”¹⁴ He “concedes that the Impugned Decisio[n] could have contained more detail” but “submits that this does not invalidate” his determination, especially as “the outcome of the Registrar’s assessment of the suitability of the two candidates would have remained the same.”¹⁵ More broadly, the Registrar suggests that Karadžić was in possession of sufficient information to inform him of the reasons underlying the Impugned Decision.¹⁶

V. DISCUSSION

9. The Impugned Decision sets out its reasons for denying Karadžić’s requests in two sentences, one per investigator. These explanations are so general that they provide little insight into any underlying rationales.¹⁷ This failure to explain risks appearing arbitrary, and violates Karadžić’s right to procedural fairness.

10. The Registrar provides fuller explanations for the Impugned Decision in the Response.¹⁸ However, this *post hoc* rationalisation is insufficient to demonstrate the propriety of the initial decision. The Impugned Decision also fails to meet even the overly narrow definition of a reasoned administrative decision advanced in the Response.¹⁹ As I have noted, the two sentences devoted to explaining the Impugned Decision are so general that it is not possible to identify specifically any underlying rationales. Insofar as the Registrar suggests that I assume Karadžić’s broader background knowledge was sufficient to remedy any paucity in the Impugned Decision’s reasoning, he is mistaken. Administrative decisions are not pronouncements of Delphic oracles, and should be comprehensible on their face.

¹⁰ Renumeration Scheme, para. 22.

¹¹ Motion, para. 6. *See also* Motion, paras 7-8, 11.

¹² Motion, para. 9.

¹³ Motion, para. 12.

¹⁴ Response, para. 39 (internal quotations omitted).

¹⁵ Response, para. 40.

¹⁶ Response, para. 41.

¹⁷ *See* Impugned Decision.

¹⁸ *See* Response, paras 20-36.

¹⁹ *See supra* para. 8.

11. The Registrar submits that even if more detail was included in the Impugned Decision, its outcome would be the same. While this may well be true, sufficient explanation of the rationales underlying administrative decisions is crucial to assuring that the Tribunal both acts and is seen to act in a fair manner, guides parties in their interactions with the Tribunal, and permits focused applications for review. The insufficient explanations in the Impugned Decision impacted Karadžić's ability to understand what criteria he should apply in selecting individuals who could act as investigators, and prevented him from preparing a focused application for review. The Impugned Decision thus caused him significant detriment.

12. Aside from any issues of procedural fairness related to the Impugned Decision, I would ask that the Registrar exercise particular caution before attempting to determine the inner functioning of individual defence teams, and the role that specific team members may play therein, especially with respect to ancillary employees such as investigators.

13. Accordingly, I find that the Impugned Decision violated Karadžić's right to procedural fairness and, in these circumstances, need not address other arguments set out by Karadžić and the Registrar.

VI. DISPOSITION

14. For the foregoing reasons, I hereby **GRANT** the Motion, **IN PART**, and **ORDER** the Registrar to reconsider the Impugned Decision in light of this decision.

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



Judge Theodor Meron
President

Dated this 7th day of May 2012
At The Hague,
The Netherlands

[Seal of the Tribunal]