

**UNITED
NATIONS**



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: 5 September 2014

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 5 September 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL and EX PARTE

DECISION ON REQUEST FOR REVIEW OF REGISTRAR'S DECISION

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 “Request for Review of Registrar’s Decision and Urgent Motion for Stay”, filed confidentially and *ex parte* of the Office of the Prosecutor (“Prosecution”) and standby counsel on 8 August 2014 (“Request”) and “Brief in Support of Request for Review of Registrar’s Implementation Decision on Indigence”, also filed confidentially and *ex parte* of the Prosecution and standby counsel on 18 August 2014, (“Brief”), and hereby issues its decision thereon.

I. Background

1. On 10 October 2012, applying the provisions of the Directive on the Assignment of Defence Counsel (“Directive”),¹ the Registrar found that the Accused was only partially indigent and should therefore contribute 146,501 euro to the costs of his defence (“Decision on Means”).² The Registrar also decided that the Accused’s contribution would be deducted from future allotments issued to his defence team “in a manner agreed upon by the Registrar and the Accused.”³

2. The Accused requested a review of the Decision on Means, pursuant to Article 13(B) of the Directive. On 25 February 2014, this Chamber denied his request and confirmed the Decision on Means.⁴ The Chamber granted the Accused certification to appeal its decision of 25 February 2014 and stayed the effect of its decision pending the resolution of that appeal.⁵ On 25 July 2014, the Appeals Chamber upheld the Chamber’s decision.⁶

3. On 29 July 2014, the Accused wrote to the Registrar’s Office of Legal Aid and Detention (“OLAD”), requesting that the recovery of his contribution be delayed until the end of the trial phase, namely 7 October 2014, and that his contribution be spread out over the appeal phase.⁷ On 4

¹ Directive on the Assignment of Defence Counsel (Directive No. 1/94) (IT/73/Rev. 11).

² Registrar’s Decision, with Public Appendix I and Confidential and *Ex Parte* Appendix II, 11 October 2012, p. 4.

³ Decision on Means, p. 4.

⁴ Decision on Accused’s Request for Review of Registrar’s Decision on Indigence, Confidential and *Ex Parte*, 25 February 2014.

⁵ Decision on Application for Certification to Appeal Chamber’s Decision on Indigence, Confidential and *Ex Parte*, 10 April 2014, p. 4.

⁶ Decision on Appeal from Decision on Indigence, Confidential and *Ex Parte*, 25 July 2014, paras. 40–41.

⁷ Request, para. 5, Annex A; Brief, para. 5.

August 2014, the Head of OLAD responded to the Accused, rejecting his proposal and stating that legal aid would be terminated as of 8 August 2014 (“Impugned Decision”).⁸

4. On 5 August 2014, the Accused sent a letter to OLAD asking for reconsideration of the Impugned Decision and presenting an alternative proposal, namely that legal aid be continued until 7 September 2014, which would allow him to file his closing brief as scheduled on 29 August 2014.⁹ Having not heard back from OLAD, the Accused filed the Request, asking that the Chamber review the Impugned Decision, and urgently moving for its stay, until the matter was fully briefed and resolved.¹⁰ Later that same day, the Head of OLAD responded to the Accused’s letter of 5 August 2014, indicating that the Registrar’s position was unchanged.¹¹

5. On 11 August 2014, the Chamber issued the “Order Regarding Accused’s Request for Review of Registrar’s Decision and Urgent Motion for Stay” (“Order for Stay”), wherein it (i) stayed the Impugned Decision; (ii) set the briefing schedule relating to the review of the Impugned Decision; and (iii) ordered both the Accused and the Registrar to make submissions not only on the substance of the Request but also on the Chamber’s jurisdiction to deal with it under the Directive. The Brief was then filed on 18 August 2014 and the Registrar filed the “Registrar’s Submission Regarding Radovan Karadžić’s Request for Review of Registrar’s Decision and Urgent Motion for Stay” on 25 August 2014 (“Response”).

6. On 27 August 2014, the Accused filed a request for leave to reply to the Response, which was denied by the Chamber on 1 September 2014.¹²

II. Submissions

7. The Accused submits that the issue of jurisdiction turns on the interpretation of Article 31 of the Directive.¹³ In his submission, the Directive provides that decisions related to an accused’s ability to remunerate his or her defence team should be reviewed by the Trial Chamber while other disputes over remuneration shall be decided by the Registrar and reviewed by the President of the Tribunal.¹⁴ More specifically, the Accused submits that Article 31(D), being concerned with the “extent” to which an accused is able to remunerate his counsel, applies to the present dispute

⁸ Request, para. 6, Annex B; Brief, para. 6.

⁹ Request, para. 7, Annex C; Brief, para. 7.

¹⁰ Brief, para. 8.

¹¹ Request, para. 8; Brief, paras. 8–8, Annex D. The Chamber notes that in the Brief the Accused has mistakenly labelled two paragraphs with a number 8, one after the other. Both are relevant to this footnote.

¹² Decision on Request for Leave to Reply: Request for Review of Registrar’s Implementation Decision on Indigence, Confidential and *Ex Parte*, 1 September 2014.

¹³ Brief, para. 10.

¹⁴ Brief, paras. 10–12.

because the term “extent” includes not only the amount he is to contribute but also the manner in which he is to do so.¹⁵ The Accused notes, however, that if the Chamber is of the view that the President of the Tribunal has jurisdiction to review the Impugned Decision, then it should refer the Request and the Brief to the Registrar for a determination by the President and maintain the Order for Stay while the President’s review is ongoing.¹⁶

8. In terms of the substance of the Request, the Accused submits that in issuing the Impugned Decision the Registrar failed to act with procedural fairness as he unilaterally terminated legal aid contrary to his own representation that the contribution would be deducted “in a manner agreed upon” with the Accused.¹⁷ The Accused further claims that the Registrar acted unreasonably when refusing to consider spreading the Accused’s contribution into the appeal phase of the case,¹⁸ and when concluding that the amount of legal aid available to the Accused for the remaining trial and appeal period was insufficient to cover his contribution of 146,501 euro.¹⁹ Furthermore, according to the Accused, in reaching the Impugned Decision the Registrar took into account an irrelevant consideration – namely that the Accused had obtained a stay of the Registrar’s original decision – and thus essentially penalised the Accused for doing so.²⁰ At the same time, the Registrar failed to consider a relevant consideration, namely that the Decision on Means was delayed for four years.²¹

9. Finally, the Accused claims that the Registrar failed to consider that it was in the interests of justice not to terminate legal aid “on the eve of the filing of the final brief and the final arguments.”²² Thus, in the Accused’s submission, should the Chamber find that the Impugned Decision can stand, it should nevertheless – in the interests of justice – continue the Accused’s legal aid for the duration of the trial.²³

10. In the Response, the Registrar submits that the Chamber lacks jurisdiction to review the Impugned Decision because the power to do so lies with the President of the Tribunal and, in any

¹⁵ Brief, paras. 11, 13. According to the Accused, there is nothing in Article 31(D) that limits its scope to a single aspect of the remuneration issue and thus the Chamber is not precluded by the fact that it has already reviewed “another aspect” of the remuneration issue: Brief, para. 14.

¹⁶ Brief, paras. 15–16. The Accused also notes, citing to paragraph 21 of the Chamber’s Decision on Accused’s Motion to Vacate the Appointment of Richard Harvey dated 23 December 2009, that the Chamber’s inherent authority to review decisions of the Registrar where the matter goes to the fairness of the trial exists only where the power of review is not explicitly conferred on the President. Brief, para. 15.

¹⁷ Brief, paras. 18–22.

¹⁸ Brief, para. 28–29.

¹⁹ According to the Accused’s calculations made under the Appeals Legal Aid Policy, he would be entitled to a total of 164,320 euros during the appeal phase of the case. Brief, paras. 30–35.

²⁰ Brief, paras. 23–24.

²¹ Brief, para. 26.

²² Brief, paras. 36–37, citing *Prosecutor v. Prlić et al*, No. IT-04-74-A, *Decision on Praljak’s Request for Stay of Proceedings* (27 June 2014) at para. 16.

²³ Brief, paras. 39–42.

event, the matter does not concern the Accused's fair trial rights.²⁴ According to the Registrar, Article 31(C) of the Directive vests sole authority in the President to resolve disputes concerning remuneration or reimbursement of defence expenses involving a sum greater than 4,999 euro.²⁵ While the Accused argues that the present dispute involves the "extent" to which he must remunerate his defence team – and thus falls under Article 31(D) of the Directive – the Registrar submits that the "extent" of the Accused's ability to remunerate counsel was already conclusively resolved by the Appeals Chamber.²⁶ Thus, given that the power of review lies with the President, the Chamber can only intervene after the issue has been reviewed by the President if the matter affects the Accused's fair trial rights.²⁷ However, according to the Registrar, cessation of legal aid does not implicate the Accused's fair trial rights because nothing prevents the Accused from retaining his defence team.²⁸ Accordingly, the Registrar submits that the Chamber should dismiss the Request and rescind its Order for Stay.²⁹

11. In case the Chamber finds that it has jurisdiction to review the Impugned Decision, the Registrar submits that it should deny the Request because (i) the cessation of legal aid was non-discretionary, (ii) the Impugned Decision was in compliance with the standard established by the jurisprudence, and (iii) the Impugned Decision was made in the interests of justice.³⁰ In support, the Registrar argues that he was required by Article 21(4)(d) of the Statute of the Tribunal, as well as Article 6(C) of the Directive, to cease legal aid once the Accused was found to have sufficient means to cover his remaining defence costs.³¹ Furthermore, the Registrar submits that the cessation of legal aid was procedurally fair as the Accused was put on notice of the impact of deferral in advance of his first deferral request back in October 2012 and, therefore, had ample time to prepare accordingly.³²

12. The Registrar also submits that he considered all and only relevant material when making the Impugned Decision as the deferral of the Accused's contribution impacted on the Registrar's ability to recover the money owed and therefore was a relevant consideration.³³ Furthermore, the

²⁴ Response, para. 2.

²⁵ Response, paras. 17–18.

²⁶ According to the Registrar, the real issue here is whether the Tribunal may disburse legal aid funds to an accused with sufficient funds to cover his remaining defence costs. Response, para. 19, footnotes 25 and 27.

²⁷ Response, para. 15.

²⁸ Response, para. 16.

²⁹ Response, para. 20.

³⁰ Response, para. 21.

³¹ Response, paras. 5, 24–25.

³² Response, para. 26.

³³ The Registrar also denies that he penalised the Accused for the deferral and explains that the Accused was simply reminded that the present situation was a foreseeable consequence of his actions. Response, para. 28.

Appeals Chamber has already held that the Accused was not prejudiced by purported delay by the Registrar in issuing the Decision on Means.³⁴ The Registrar also notes that the Accused's implied threat to refuse to contribute to his defence from his own means does not justify disbursing additional public funds under an "interests of justice" standard.³⁵

13. Finally, the Registrar argues that he acted reasonably in enforcing the applicable Tribunal rules, noting that the Registry policy requires that the Accused's contribution be deducted from the pre-trial and trial stages because the existence and contours of any appeal are speculative.³⁶ Further, even if the Chamber considered it reasonable to spread the Accused's contribution forward, into a "theoretical appeals stage", the estimated defence allotment on appeal, together with the remaining trial allotment, would still amount to less than what the Accused is to contribute.³⁷

III. Applicable Law

14. Article 31 of the Directive, entitled "Settlement of disputes over payment", provides as follows:

(A) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is less than €1,000, an aggrieved party may request the Head of the Registry's Office of Legal Aid and Detention Matters to review and decide upon the matter.

(B) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is between €1,000 and €4,999, aggrieved party may request the Registrar to review the matter. The Registrar shall decide on the matter personally or assign the Deputy Registrar to do so on his behalf. [...]

(C) 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.

(D) Requests for review of decisions of the Registrar on the extent to which an accused is able to remunerate counsel shall be brought before the Chamber seised of the case in accordance with Article 13(B).

15. Article 13(B) of the Directive provides:

(B) The accused whose request for assignment of counsel has been denied or who has been found to have sufficient means to remunerate counsel in part, may within fifteen days from the date upon which he is notified of that decision, file a motion to the

³⁴ Response, para. 29.

³⁵ Response, para. 31.

³⁶ Response, paras. 32–33.

³⁷ Response, para. 34.

Chamber before which he is due to appear for review of the Registrar's decision. The Chamber may:

- (i) confirm the Registrar's decision; or
- (ii) quash the Registrar's decision and rule that counsel be assigned; or
- (iii) direct the Registrar to reconsider the extent to which the accused is able to remunerate counsel.

IV. Discussion

16. Before the Chamber can embark on the review of the Impugned Decision, it must determine whether it or the President has a jurisdiction to do so. The Chamber does not consider that "the manner" in which the Accused is to pay the contribution he owes falls within the ordinary meaning of the "extent" to which the Accused is able to remunerate his defence team.³⁸ The "extent to which an accused is able to remunerate counsel" concerns simply a determination as to whether an accused can remunerate his counsel and, if so, the amount he should contribute to his defence costs. It is that determination alone that is to be brought before the Chamber seized of the case and thus dealt with in accordance with Article 13(B) of the Directive. Article 31(D) of the Directive simply reminds the relevant parties that any dispute over whether an accused should contribute and how much his contribution should be is to be dealt with in accordance with Article 13(B). As rightly pointed out by the Registrar, the Accused has already exercised his rights by following the review procedure outlined in Article 13(B) and the extent of his contribution has been definitively settled by the Appeals Chamber.

17. In the Chamber's view, the present dispute concerns the Registrar's decision to stop legal aid payments to the Accused for the remainder of the trial, in line with his Decision on Means, which was confirmed by this Trial Chamber and later by the Appeals Chamber. Given that the sum withheld by the Registrar is in excess of 60,000 euros,³⁹ the issue is rightly framed as a dispute over a payment higher than 4,999 euros. As such, it falls squarely within Article 31(C) of the Directive, which in turn means that the President has jurisdiction to review the Impugned Decision. Thus, contrary to the Accused's claim, this Chamber cannot review the Impugned Decision.

18. Given the finding above, the Chamber will not consider the substantive arguments relating to the review of the Impugned Decision. However, the Chamber recalls that it issued the Order for Stay of the Impugned Decision until the issues raised by the Request and the Brief, including the issue of jurisdiction, were resolved. Having now found that it does not have jurisdiction to deal

³⁸ See Brief, para. 13.

³⁹ See Request, Annex B, footnote 9.

with the present dispute, the Chamber will also rescind its Order for Stay. However, the Chamber is of the view that the matter should be referred to the President by the Registrar as per the procedure outlined in Article 31(C) of the Directive.⁴⁰ Given the urgency of the matter, the Chamber encourages the Registrar to do so as soon as possible.

V. Disposition

19. Accordingly, the Chamber, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence and Article 31(C) of the Directive, hereby **DENIES** the Motion and **RESCINDS** the Order for Stay.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of September 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴⁰ See President's Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009, para. 19.