



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: 17 December 2009
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision: 17 December 2009

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON APPEAL OF OLAD DECISION IN RELATION
TO ADDITIONAL PRE-TRIAL FUNDS**

The Accused:

Mr. Radovan Karadžić

1. On 11 November 2009, Radovan Karadžić (“Karadžić”) filed before me a request for review¹ of a decision issued in a letter dated 5 November 2009 (“Impugned Decision”) by the Registry’s Office of Legal Aid and Detention Matters (“Registry”), concerning the remuneration allocable to the members of Karadžić’s defence team under the Tribunal’s Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused.²

I. RELEVANT PROVISIONS OF THE REMUNERATION SCHEME

2. Paragraph 3.3 of the Remuneration Scheme provides in relevant part as follows:

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) Pre-Trial: A maximum of 3000 hours for the entire Pre-Trial phase, and a maximum of 100 hours per defence team member per month, plus all hearing hours for one defence team member if the accused has obtained leave from the Chamber for that person to attend the hearings. [...]

Paragraph 3.1 states that “[t]he Registrar shall provide remuneration for up to four persons” assisting an indigent self-represented accused, namely, a legal associate, a case manager, an investigator and a language assistant. Paragraph 3.2 provides, *inter alia*, that where an accused wishes to retain assistants in addition to those listed under paragraph 3.1, such persons “shall not receive remuneration from the Tribunal”. Under paragraph 3.5, an accused may request that the Registry assign:

[...] one or more additional defence team members and/or an increase of the maximum allotment of hours for the Pre-Trial phase if he can show that circumstances such as the geographical and temporal scope of the indictment, the number of exhibits and number of witnesses to be called to testify render the case more difficult than the average case heard before the Tribunal.

Paragraph 3.7(a) states that the Registrar may increase the maximum allotment of hours for the pre-trial phase “[t]o a total maximum of 4000 hours for the entire Pre-Trial phase” if satisfied that an increase in the maximum allotment of hours “is reasonable and necessary to facilitate the accused’s participation in the proceedings”. Under paragraph 3.8, where the Registrar increases the maximum allotment of hours for a particular stage of the proceedings:

[...] the maximum number of hours that each defence team member may invoice per month shall remain the same, unless the accused demonstrates exceptional circumstances which justify the application of a higher ceiling for a specific defence team member during a specific period.

¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, filed publicly with confidential Annex E, 11 November 2009 (“Request for Review”).

² Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 24 July 2009, (Rev. 1) (“Remuneration Scheme”).

II. BACKGROUND

3. In a letter to Karadžić dated 16 October 2008 (“16 October Letter”), the Registry informed Karadžić, *inter alia*, that pursuant to the Remuneration Scheme, his defence team would be allocated a maximum of 3,000 hours for the entire pre-trial stage and a maximum of 100 hours per defence team member per month “plus all hearing hours for one defence team member if the accused has obtained leave from the Chamber for that person to attend the hearings.”³

4. In correspondence to the Registry dated 12 May 2009 (“12 May Request”), Karadžić requested that the Registry increase the number of assistants assigned to his defence team, and raise the maximum number of hours per month which each team member would be entitled to invoice, to 240 hours per team member per month. Karadžić cited the volume of disclosure, the number of Prosecution witnesses and the geographical scope of the indictment in support of his request.

5. In a letter dated 2 July 2009 (“2 July Decision”), the Registry denied the 12 May Request for the assignment of additional assistants on the basis that the Registry already had, in view of the scope and complexity of the *Karadžić Case*,⁴ assigned him seven assistants, with the assignment of an eighth pending as at 2 July 2009. The Registry indicated that the average number of defence support staff assigned in the most complex cases at the Tribunal is between four and five persons, and that the increase already granted to Karadžić was “beyond what is foreseen in the Remuneration Scheme”.⁵ However, the Registry granted, in part, the 12 May Request for an increased allotment of monthly billable hours for each defence team member, by granting 160 hours per team member per month. The Registry also increased the allocation of hours for the pre-trial phase to 4,000 hours.⁶

6. In a letter to the Registry dated 11 September 2009 (“11 September Request”), Karadžić requested that the Registry allocate: (1) 987.95 hours to cover the outstanding hours of work completed by his defence team,⁷ and (2) an additional 160 billable hours per defence team member per month from September 2009 until the start of trial. In further letters to the Registry supplementing the 11 September Request,⁸ Karadžić argued that the additional 1,000 hours

³ 16 October Letter, p. 2.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18.

⁵ 2 July Decision, p. 1.

⁶ *Id.* According to the 2 July Decision, this additional allocation of hours applied as at the date of the 12 May Request.

⁷ Karadžić noted in his 11 September Request that the number of hours of work completed by his defence team totalled 1,695.3 hours as at the date of his 11 September Request. He also noted that of the total number of remunerable pre-trial hours allocated by the Registry to his defence team, 707.35 hours remained as at the date of the 11 September Request. Karadžić thereby states in his 11 September Request, that the granting of an additional 987.95 hours by the Registry “would together with available [*sic*] 707.35 hours cover the expenses of my Defence team’s work to date.”

⁸ Letter to the Registry submitted by Karadžić through his legal associate Mr. Marko Sladojević, 16 September 2009 (“16 September Letter”) and Letter to the Registry submitted by Karadžić through his legal associate Mr. Marko Sladojević, 22 October 2009 (“22 October Letter”).

assigned in the 2 July Decision “were insufficient for the remainder of the pre-trial phase”,⁹ as “the Karadžić case presents particular features which distinguish it from all the other cases brought before the ICTY” and is “different and far more complex than an average case classified as Level 3”.¹⁰

7. The factors cited by Karadžić in support of his request included, *inter alia*: (i) the volume of documents disclosed by the Prosecution;¹¹ (ii) the relatively recent disclosure of “the bulk” of the Prosecution’s documents, with “almost half” having been disclosed since mid-May 2009, and a further 3,022 documents totalling 91,450 pages having been disclosed on 16 September 2009;¹² (iii) the need to collect, organise and analyse materials in order to challenge the evidence of “by far the largest number of witnesses ever brought before the ICTY”;¹³ (iv) the amount of time necessary for defence support staff to prepare for and conduct interviews with “hundreds of Prosecution witnesses”;¹⁴ and (v) the Prosecution’s filing of a revised version of the indictment on 19 October 2009.¹⁵ Karadžić also stated that the Tribunal’s Pre-Trial Legal Aid Policy¹⁶ provides that an estimated 7,500 support staff hours are necessary for the pre-trial preparation of a complex Level 3 case, and argued that as the *Karadžić Case* “is even more complex than the average Level 3 case” the allocation of additional remunerable hours was necessary for the adequate preparation of his case for trial.¹⁷

8. The Impugned Decision denied the 11 September Request for an additional 160 hours for each team member per month.¹⁸ It stated, *inter alia*, that the Registry had already paid due regard to the size and complexity of the *Karadžić Case* in increasing the maximum allotment of hours for the pre-trial stage from 3,000 to 4,000 hours pursuant to paragraphs 3.7(a) and 3.8 of the Remuneration Scheme, and in raising the number of billable hours from 100 to 160 hours per defence team member per month. The Impugned Decision stated that in doing so, the Registry had “reached the limits established in the Remuneration Scheme” which “does not foresee any possibility to go over

⁹ 16 September Letter, p. 1.

¹⁰ 22 October Letter, p. 1.

¹¹ 16 September Letter, pp. 1-2. Karadžić stated in the 16 September Letter that as at 18 August 2009, the Prosecution had disclosed a total of 72,634 documents comprising 938,585 pages. Karadžić estimated that a total of 15,643 hours would be required to read all 938,585 pages, at “a native speaker’s rate of 60 pages per hour”.

¹² 16 September Letter, pp. 1-2.

¹³ 22 October Letter, p. 2. Karadžić noted, at pp. 1-2 of the 22 October Letter, the Prosecution’s “intention to call 409 witnesses” as well as the Prosecution decision to reclassify 71 reserve witnesses “which might be called to testify in case the Defence challenges the adjudicated facts, which the Defence will certainly do”. Karadžić thereby asserted that the total number of Prosecution witnesses stood at 480.

¹⁴ 22 October Letter, p. 2. See also 16 September Letter in which Karadžić estimated that his defence team would need to interview approximately 150 witnesses from the region of the former Yugoslavia, and 25 international witnesses. The 16 September Letter also indicated the defence team’s intention to interview 200 Prosecution witnesses whose evidence was submitted pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”).

¹⁵ 22 October Letter, p. 3.

¹⁶ Defence Counsel – Pre-Trial Legal Aid Policy, 1 May 2006 (“Pre-Trial Legal Aid Policy”).

¹⁷ 16 September Letter, p. 3.

and beyond the abovementioned allotments”.¹⁹ Notwithstanding, the Impugned Decision pointed to the Registrar’s “discretion to authorize a reasonable amount of additional funds in case an unforeseeable circumstance or any other extraordinary reason occurs that warrant [*sic*] a departure from the Remuneration Scheme” in order to prevent injustice to an accused.²⁰ The Registry thereby granted, in part, the request for an additional 987.95 support staff hours, by allocating a further 500 hours on the basis that the timing of the Prosecution’s various disclosures was beyond Karadžić’s control, that the timing of the filing of the revised indictment in the case was an unforeseen circumstance and that both circumstances may have impacted on Karadžić’s case preparations.²¹

9. Subsequently, in a letter to Karadžić dated 9 November 2009, Karadžić’s defence team stated that in view of the Impugned Decision, and the fact that they had not been remunerated for 3,180 hours of work completed as at 9 November 2009, they would cease all work effective 10 November 2009, “until all outstanding amounts are paid and the remuneration for future work is guaranteed by a written decision”. Karadžić thereafter filed the Request for Review. The Registrar of the Tribunal (“Registrar”) filed a submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”) on 25 November 2009.²² Karadžić filed a reply on 2 December 2009.²³

III. SUBMISSIONS

A. The Request for Review

10. In the Request for Review Karadžić asks that the Registry be ordered to: (1) remunerate the defence team for 3,180 hours of unpaid work completed as of November 2009,²⁴ and (2) “guarantee the adequate number of hours until the recommencement of the trial”.²⁵ He states that “the authorisation of 7500 hours in total for the pre-trial period would resolve the problem and would cover all the unpaid hours”.²⁶ Karadžić argues that in view of the Prosecution’s intention to call the largest number of witnesses ever brought before the Tribunal, the volume of the Prosecution’s disclosures, which by the time of the Request for Review totalled 1.3 million pages, and the

¹⁸ Impugned Decision, pp. 1-2.

¹⁹ *Id.*, p. 1.

²⁰ *Id.*, p. 2.

²¹ *Id.*

²² *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Registrar’s Submission Pursuant to Rule 33(B) Regarding Radovan Karadžić’s Appeal of OLAD’s Decision on Pre-Trial Funding, 25 November 2009 (“Registrar’s Submission”).

²³ *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Reply Brief: Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 2 December 2009 (“Reply”).

²⁴ Request for Review, para. 15. See also Request for Review, paras 2 and 8.

²⁵ *Id.*, para. 15.

²⁶ *Id.*

relatively recent timing of the bulk of these disclosures, the Registry's allocation of 4,500 hours for the entire pre-trial phase is insufficient to enable his defence team to prepare his case for trial.²⁷

11. Karadžić repeats his assertion that the Pre-Trial Legal Aid Policy anticipates the need for 7,500 staff hours for the preparation of a complex level three case, and argues that given the unusual magnitude and complexity of the *Karadžić* Case compared to other level three cases before the Tribunal, the allocation of 7,500 hours to his defence team is justified.²⁸ Karadžić also submits that his request is not for an allocation of the resources granted to represented accused under the Pre-Trial Legal Aid Policy, as “[h]ad he done so, [... he] would have asked for 350,000 – 400,000 Euros for the pre-trial phase that is normally authorised for level three cases”.²⁹

B. The Registrar's Submission

12. The Registrar makes the preliminary point that in filing the Request for Review directly before me as President of the Tribunal, Karadžić failed to follow the proper procedure for initiating judicial review pursuant to Article 31(C) of the Directive on Assignment of Defence Counsel (“Directive”).³⁰ Article 31(C) 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”.³¹

13. The Registrar submits that he “correctly applied the relevant legal provisions” in allocating resources to Karadžić’s defence team.³² He argues that the Pre-Trial Legal Aid Policy cited by Karadžić is wholly irrelevant in the present instance as it applies exclusively in cases where accused are represented by Counsel.³³ The Registrar notes that the applicable policy in the instant case is the Remuneration Scheme,³⁴ and argues that this distinction is “based on the fundamentally different responsibilities and tasks of the defence teams of represented Accused”, from those of defence teams assisting self-represented accused.³⁵ Thus, while an accused who chooses to represent himself may receive “some funding” from the Tribunal for the payment of assistants assigned to him by the Registry, he is not entitled to funding comparable to that provided for defence teams of

²⁷ *Id.*, paras 2, 4 and 5.

²⁸ *Id.*, para. 15.

²⁹ *Id.*

³⁰ Registrar’s Submission, para. 31. The Remuneration Scheme provides, under para. 8.1, that any disputes regarding remuneration under the Remuneration Scheme are to be settled in accordance with Article 31 of the Directive.

³¹ Registrar’s Submission, paras 30-31.

³² *Id.*, para. 36. See also Registrar’s Submission, para. 68.

³³ *Id.*, para. 40.

³⁴ *Id.*, para. 37.

³⁵ *Id.*, para. 40.

represented accused under the Tribunal's legal aid policy.³⁶ In this regard, the Registrar cites the *Krajišnik* Decision.³⁷

14. The Registrar states that in deciding to allot an additional 4,000 hours for the pre-trial phase in the 2 July Decision, he duly considered the scope and magnitude of the *Karadžić* case.³⁸ He also submits that a departure from the set payment policies under the Remuneration Scheme can only be authorised "in cases of duly justified unforeseen circumstances beyond the influence of the defence that significantly impact on their workload".³⁹ The Registrar emphasises that in allocating an additional 500 hours for the pre-trial phase in the Impugned Decision, he considered the amendment of the indictment shortly before the start of trial, and the timing of the Prosecution's disclosures, as constituting unforeseen circumstances.⁴⁰ He also states that any further allocation of funds is unwarranted as in support of his various requests, Karadžić repeated factors already taken into account in additional allocations made prior to the Impugned Decision.⁴¹

15. It is also submitted that the *Karadžić* Case is no more complex than level three cases at the Tribunal.⁴² The Registrar argues that Karadžić's decision to interview the majority of the Prosecution's witnesses is a strategy specific to the Karadžić defence team, and is not standard practice at the Tribunal.⁴³ Thus, while an accused is entitled to choose his defence strategy, he is not entitled to expect the Tribunal to allocate additional funding for a strategy which exceeds standard Tribunal defence practices.⁴⁴ The Registry Submission also notes that the high volume of Prosecution disclosures asserted results in part from Karadžić's request for access to materials irrelevant to his own trial.⁴⁵

16. The Registrar also states that the claim of 3,180 unpaid hours is "misleading" as Karadžić "had no legitimate expectation that the Registrar would authorize payment of all the invoices

³⁶ *Id.*, paras 41-42.

³⁷ *Prosecutor v. Momčilo Krajišnik*, Decision on Krajišnik Request and on Prosecution Motion, Case No. IT-00-39-A, 11 September 2007. The Registrar's Submission specifically cites paras 41-42 of the *Krajišnik* Decision.

³⁸ *Id.*, paras 46-47. The Registrar's Submission also states, at para. 48, that in full recognition of Karadžić's right as an accused under Article 21(4)(b) of the Statute of the Tribunal to adequate facilities to prepare his defence, Karadžić was provided, with facilities at the United Nations Detention Unit, "comparable to those provided to other self represented accused before the Tribunal, and exceeding the facilities available to represented Accused". The Registrar's Submission lists these facilities, at footnote 35, as including: computer access, Information Technology training and office facilities, such as phone and fax access and facilities for interviewing witnesses.

³⁹ *Id.*, para. 50.

⁴⁰ *Id.*, para. 51.

⁴¹ *Id.*, para. 53. The Registrar's Submission lists, at para. 53, the factors repeated in Karadžić's various submissions as: the high volume of the Prosecution's disclosures, the large number of Prosecution witnesses, the complexity of the *Karadžić* Case, and the ultimatum issued by the Karadžić team to cease working unless further remunerated.

⁴² *Id.*, para. 54.

⁴³ *Id.*, para. 55. The Registrar submits that this is the case whether the Prosecution witnesses in question are called *viva voce* or pursuant to Rules 92 *bis* or 92 *ter* of the Rules.

⁴⁴ *Id.*

⁴⁵ *Id.*, para. 56.

submitted by his defence team without regard to the allocated resources”.⁴⁶ He submits that should Karadžić be unable to prepare his case notwithstanding the assistance “of altogether 49 defence team members”, then “this puts in question his ability to represent himself”.⁴⁷ Thus, the solution lies, not in extending the resources allocated to Karadžić as a self-represented accused, but in restricting his rights of self-representation.⁴⁸

C. Reply

17. In his Reply Karadžić reiterates the unreasonableness of the Registrar’s decision to limit the defence team’s pre-trial funding to 4,500 hours for the entire pre-trial phase.⁴⁹ He also states, *inter alia*, that by opting to represent himself, Karadžić “in effect becomes the lead Counsel, thus forgoing some 175,000 Euros in legal aid during the pre-trial period” provided to accused represented by Counsel.⁵⁰ Karadžić also argues that the Tribunal’s jurisprudence does not provide that in assuming this role, an accused must also assume the roles of investigator, case manager and legal assistant.⁵¹ In this regard, he argues that the *Krajišnik* Decision:

[...] did not authorize the Registrar to diminish the facilities needed to prepare for a trial [...] below the minimum support level deemed necessary for represented accused. It simply provided that a self-represented accused was not entitled to funding of a counsel.⁵²

IV. STANDARD OF REVIEW

18. 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

⁴⁶ *Id.*, para. 63.

⁴⁷ *Id.*, para. 65. The Registry Submission cites in support of this submission: *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007, para. 40 and *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel, 20 October 2006, para. 20. Footnote 6 of the Registrar’s Submission states that the Karadžić defence team consists of “eight recognised assistants, nine experts who are remunerated separately, 23 *pro bono* assistants, and nine interns”.

⁴⁸ Registrar’s Submission, para. 65. The Registry Submission cites in support of this submission: the *Krajišnik* Decision, para. 41, and *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel, 20 October 2006, para. 20. The Registrar’s Submission also states at footnote 6, that the Karadžić defence team consists of “eight recognized assistants, nine experts who are remunerated separately, 23 *pro bono* assistants, and nine interns”.

⁴⁹ Reply, paras 11-13.

⁵⁰ *Id.*, para. 26.

⁵¹ *Id.*, para. 28. In his Reply, at para. 28, Karadžić cites para. 41 of the *Krajišnik* Decision that “in general, a self-represented accused is expected to undertake all the tasks normally assumed by counsel”.

⁵² *Id.*, para. 27.

propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it.⁵³

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).⁵⁴

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”.⁵⁵ 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.⁵⁶ Furthermore, in legal aid cases “it is clear, from the implicit restriction that only the Registrar may determine the *extent* to which the 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”.⁵⁷

V. DISCUSSION

19. The Registrar correctly submits⁵⁸ that the present Request for Review was filed contrary to Article 31(C) of the Directive which provides, *inter alia*, 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. Before making a determination the President shall request submissions from the aggrieved party and the respondent. [...]

⁵³ *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 *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-AR73.2, Decision on Zdravko Tolimir’s Appeal Against the Decision of Trial Chamber II on the Registrar’s Decision Concerning Legal Aid, 12 November 2009 (“Tolimir Decision”), para. 8; *Prosecutor v. Milan Martić*, IT-95-11-AR73.1, Decision on Review of Registrar’s Decision Not to Rank the Case to Level III Complexity, 3 December 2004 (“Martić Decision”), para. 16.

⁵⁴ *Tolimir Decision*, para. 8; *Martić Decision*, para. 16; *Žigić Decision*, para. 13.

⁵⁵ *Tolimir Decision*, para. 8; *Žigić Decision*, para. 13; *Krajišnik Decision*, para. 30; *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 (“Karadžić Appeal Decision”), para. 10.

⁵⁶ *Tolimir Decision*, para. 9; *Žigić Decision*, para. 14; *Karadžić Appeal Decision*, para. 10.

⁵⁷ *Tolimir Decision*, para. 9; *Žigić Decision*, para. 14.

⁵⁸ Registrar’s Submission, para. 31.

The Request for Review asserts that the Impugned Decision materially impedes Karadžić's ability to continue with the preparation of his case for trial. The trial in the *Karadžić* Case is scheduled to resume on 1 March 2010. The present matter must therefore be expediently resolved. Accordingly, in light of the relatively limited time remaining before the resumption of the trial, and given that I am already seised of Karadžić's request for review and the submissions of the parties, I am of the view that judicial economy would be best served by considering the Request for Review as filed, rather than requiring that Karadžić re-file his request for review through the Registrar, and that the parties re-file their respective submissions.

20. As previously noted,⁵⁹ the Remuneration Scheme allocates a maximum of 3,000 hours for the entire pre-trial phase under paragraph 3.3(a) and allows for a maximum extended allotment of 4,000 hours for the entire pre-trial phase where the Registrar is satisfied that an increase in the 3,000 hour allotment "is reasonable and necessary to facilitate the accused's participation in the proceedings". The Registrar therefore correctly submits that the 4,000 hour extended allotment is the maximum allotment of hours available for the pre-trial phase under the Remuneration Scheme. This maximum extended allotment was granted to Karadžić by way of the 2 July Decision. Any further funding above and beyond the Remuneration Scheme is thus dependent on the Registrar's discretion to authorize a reasonable amount of additional funds where an unforeseeable circumstance or any other extraordinary reason arises which warrant a departure from the Remuneration Scheme.⁶⁰ I note that the Remuneration Scheme makes no such provision on its face and that the source of this particular discretion of the Registrar is unclear.⁶¹ However, as both parties have accepted the application of this discretion in the instant case, I am prepared to proceed on the basis that this discretion applies in this current case.

21. In the Impugned Decision, the Registrar exercised this discretion to allocate a further 500 remunerable hours on the basis that the timing of the Prosecution's various disclosures, and the filing of the revised indictment in the case, were unforeseen circumstances beyond Karadžić's control which may have impacted his trial preparations.⁶² The gravamen of the Request for Review is that the Registrar failed to reasonably allocate additional pre-trial funding in an amount

⁵⁹ See *supra*, para. 2.

⁶⁰ See Impugned Decision, p. 2.

⁶¹ See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54, Memorandum from the President Regarding Article 31 of the Directive on the Assignment of Defence Counsel, 9 February 2005, para. 6. The Registrar's discretion to grant allocations above and beyond the Remuneration Scheme appears to have evolved out of Registry practice. The language defining this discretion, specifically, that it is exercisable where an unforeseeable circumstance or other extraordinary reason arises, appears to have been influenced by provisions such as paragraph 37 of the Pre-Trial Legal Aid Policy, and paragraph 3.8 of the Remuneration Scheme. See also *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17, Memorandum from the President Regarding the Request for Review Under Article 31 of the Directive on the Assignment of Defence Counsel by Counsel for Miroslav Bralo, 12 September 2007, paras 28-30.

⁶² Impugned Decision, p. 2. See also Registrar's Submission, para. 51.

commensurate with the circumstances of the *Karadžić* Case. The issue therefore is whether the Registrar, by granting 500 remunerable hours in the Impugned Decision, in the exercise of his discretion to grant additional funding beyond the limits set by the Remuneration Scheme: (1) failed to comply with the legal requirements of the Directive, or (2) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or (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.

22. Regarding the timing of the Prosecution's disclosures, Karadžić submitted that 72,634 documents totalling 938,585 pages were disclosed by the Prosecution as at 18 August 2009, and that "almost half" or "48 per cent" of these disclosures were made since mid-May 2009.⁶³ The Registry Submission argues that the volume of the Prosecution's disclosures is due in part to Karadžić's request for documents extraneous to his own case.⁶⁴ However, in submissions supplementing the 11 September Request, Karadžić emphasised that of the aforementioned 72,634 documents, 43,741 documents totalling 384,514 pages, were Rule 65 *ter* documents. He also specified that "81 per cent" of these Rule 65 *ter* documents were disclosed after mid-May 2009.⁶⁵ These circumstances, which were not contested by the Registrar in either the Impugned Decision, or the Registrar's Submission, reveal that a significant portion of the disclosures during this period were documents relevant to the *Karadžić* Case.⁶⁶

⁶³ 16 September Letter, pp. 1-2.

⁶⁴ Registrar's Submission, para. 56.

⁶⁵ 16 September Letter, p. 2.

⁶⁶ The Registrar's Submission states at para. 60 that a representative of the Registry visited Karadžić at the United Nations Detention Unit and "explained that the information given in the request was vague and that the Registrar questioned the accuracy and reasonableness of the Accused's assessments, as outlined in paragraph 45 above." The Registrar's Submission states, at para. 45, as follows:

In the Requests, the Accused repeatedly used the magnitude of the case as his main justification for additional funds, in particular the volume of disclosure, the number of OTP witnesses, the geographical scope covered by the indictment, and the number of experts the OTP intends to call. In particular, the Accused claimed that "the majority" of 50 contacted *viva voce* witnesses had consented to speak with the Defence and that the Defence also "requested 200 Rule 92*bis* interviews". He "estimated" that another 175 witnesses would need to be interviewed, and that the time needed per witness would amount to 20 hours. The accused further stated that a review of all the OTP disclosure would take a native speaker 15,643 hours. In addition, he claimed that new documents were found during an investigative mission, that the disclosure strategy by the OTP constantly forced the Defence to adjust their work, and that an amended indictment was filed just before the start of trial. He also compared the allocation of resources to his defence team to the Pre-Trial Legal Aid Policy applicable to legally aided accused. Finally, he indicated that his

23. The Registrar determined that the volume of Prosecution disclosures, and the ongoing nature of those disclosures, “are not unforeseeable circumstances and can not be classified as ‘extraordinary’ in comparison to other cases” before the Tribunal.⁶⁷ Considered in isolation, the volume of Prosecution disclosures might not be an “extraordinary” feature in Tribunal practice. However, in the particular circumstances of this case, the volume of the Prosecution’s disclosures, the timing of these disclosures relative to the start of trial, and the relevance of a significant number of these documents to the proceedings, cumulatively result in an extraordinary circumstance.

24. In the Impugned Decision, the Registrar acknowledged that the *Karadžić* Case has a “higher than average number of Prosecution witnesses”.⁶⁸ However, he noted that this factor does not justify a departure from the Remuneration Scheme, as it had already been factored into account in previous decisions to grant additional funding to Karadžić’s defence team.⁶⁹ The Registrar also determined that Karadžić’s decision to interview various Prosecution witnesses is a strategy peculiar to Karadžić’s defence strategy, and does not therefore warrant additional funding.⁷⁰ Significantly, in the submissions supplementing the 11 September Request, Karadžić did not restrict his descriptions of the tasks involved in the defence preparations concerning the large number of Prosecution witnesses, to the undertaking “to interview hundreds of Prosecution witnesses”.⁷¹ Rather, Karadžić also made reference to additional tasks, stating as follows:

Number of witnesses. The OTP has indicated its intention to call 409 witnesses. Regardless of the modalities of witness examination (i.e. *viva voce*, 92 ter or 92 bis), our Defence team must be prepared to challenge this evidence by collecting, organizing and analyzing all the relevant materials.⁷²

In light of the foregoing, “the higher than average number of Prosecution witnesses” only adds to the extraordinary nature of the circumstances produced by the timing of the Prosecution’s Rule 65 *ter* disclosures, the volume of these disclosures, and relevance of these Rule 65 *ter* disclosures to the trial proceedings.

25. Thus, in making the Impugned Decision, the Registrar was seized of four critical factors: (1) that approximately 60 per cent of the 72,634 documents disclosed between mid-May 2009 and

defence team would not continue to prepare for trial if the Registry did not provide the team with additional funds.

I note that the Registrar’s Submission does not contest the specific assertions made by Karadžić. Thus, while I have been unable to independently verify these facts, the fact that the Registrar’s Submission does not challenge them directly is sufficient basis for my reliance upon them as reasonably accurate.

⁶⁷ Impugned Decision, p. 2.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ 22 October Letter, p. 2.

⁷² *Id.*, p. 1.

August 2009 were Rule 65 *ter* materials, (2) the relatively late disclosure of 81 per cent of the Rule 65 *ter* documents in the case relative to the start of trial, (3) the fact that the trial commenced on 26 October 2009, and (4) the fact that the *Karadžić* Case involves a “higher than average number of Prosecution witnesses”. While the Registrar states in the Impugned Decision that he had taken all these factors into account, I am not persuaded that he did so, or that if he did, that he gave sufficient weight to them. In fact, the decision contradicts the assertion that he took these factors into account. In my view, no reasonable person having properly considered these factors could have arrived at the decision that an allocation of only 500 additional pre-trial hours was sufficient in the given circumstances. This is even more apparent in light of the following supplemental submission to the 11 September Request, which was unchallenged in either the Impugned Decision or the Registrar’s Submission:

[...] many documents indicated by the Prosecution as disclosed were in fact missing from corresponding batches, forcing our Defence team to request them on a case by case basis and slowing down/increasing our work. Notably, only in the past few weeks the OTP disclosed various new batches with 65ter and other documents that should have been disclosed long time ago [*sic*]. These batches contain materials which the Prosecution classified as “not provided earlier due to lack of identifying information”, as “inadvertently missed” or marked as “updated versions/additional versions” of the exhibits already provided (see, for example, batches of disclosure number 136, 144 and 149 disclosed since my last letter to OLAD dated 16 September 2009). Again needless to say, these events were completely beyond our control.[Unforeseen event]⁷³

26. The remaining question is whether an allocation of 7,500 hours for the entire pre-trial phase would violate the standard set in the *Krajišnik* Decision for the funding allocable to self-represented accused. The *Krajišnik* Decision states the following:

To the extent that the Registry requires or encourages indigent self-representing accused to coordinate their defences through designated legal associates, it is appropriate for the Tribunal to provide some funding for such associates. Such funding should not be comparable to that paid to counsel for represented accused (particularly since work such as the drafting of written filings should be considered the responsibility of the self-representing accused), but nonetheless should adequately reimburse the legal associates for their coordinating work and for related legal consultation.⁷⁴

27. I am of the view that *Karadžić*’s request for 7,500 hours for the entire pre-trial phase is not equivalent to a request for funding “comparable to that paid to counsel for represented accused”. Under the Pre-Trial Legal Aid Policy, Lead Counsel for represented accused are paid a lump sum of 382,827 Euros for the pre-trial phase in cases comparable in magnitude and complexity to the *Karadžić* Case.⁷⁵ A break down of this figure reveals that 1,688 Euros are paid for “phase one” of

⁷³ *Id.*, p. 4.

⁷⁴ *Krajišnik* Decision, para. 42.

⁷⁵ Pre-Trial Legal Aid Policy, para. 5. According to para. 5 of the Pre-Trial Legal Aid Policy, this amount “will be adjusted by reference to the movement of the Consumer Price Index (“CPI”) used by the International Civil Service Commission to adjust the Post Adjustment Index of UN Professional staff based in The Hague.” The adjustment is

the pre-trial period,⁷⁶ 40,707 Euros are disbursed for work done during “phase two” of the pre-trial period,⁷⁷ and 340,432 Euros are paid for work done during “phase three” of the pre-trial phase.⁷⁸ The policy further provides that the 340,432 Euros disbursed by the Tribunal for phase three is to be allocated as follows: Lead Counsel are entitled to 14,093 Euros per month over a period of 9.5 months, Co-Counsel are entitled to receive 11,645 Euros per month over 5.5 months, and five support staff are remunerated at a rate of 15,000 Euros per month over a 9.5 month period.⁷⁹

28. The Request for Review indicates that Karadžić’s defence team has already been paid a total of 91,055 Euros, an equivalent of 4,197.6 remunerable hours, for work done in the *Karadžić* Case since August 2008, a figure not contested in the Registrar’s Submission. Karadžić requests a total of 7,500 remunerable hours for the entire pre-trial phase, which therefore means that an additional 3,302.4 hours must be allocated to Karadžić’s defence team in order to bring the total of number of remunerable hours for the pre-trial phase to 7,500 hours. Based on the 91,055 Euros already paid to Karadžić’s defence team for 4,197.6 hours, the remuneration payable for 7,500 hours would total approximately 165,000 Euros.

29. It is therefore apparent that the 7,500 remunerable hours applied for in the Request for Review is not comparable to the funding received by the Counsel of represented accused under the Pre-Trial Legal Aid Policy. Furthermore, the Appeals Chamber’s admonition that the Registry “nonetheless should *adequately* reimburse the legal associates for their coordinating work and for related legal consultation” should not be overlooked.⁸⁰ Accordingly, I am of the view that the decision indicates that the Registrar failed to take into account relevant factors, and that no reasonable person having taken the circumstances of this case into account could have arrived at the decision that an allocation of only 500 additional pre-trial hours above and beyond the Remuneration Scheme was sufficient in the given circumstances.

effective as of 1 January of each year, based on the movement of the CPI index during the 12 month period from November of the preceding year.

⁷⁶ Pre-Trial Legal Aid Policy, paras 5 and 7. See Pre-Trial Legal Aid Policy, para. 6, which indicates that phase one of the pre-trial phase involves the assignment of Counsel to represent an accused at the accused’s initial appearance.

⁷⁷ Pre-Trial Legal Aid Policy, para. 5. See also Pre-Trial Legal Aid Policy, paras 10-11 which define the tasks performed by Counsel under phase two of the pre-trial period as including, *inter alia*, the review of the indictment supporting material and of material disclosed by the Prosecution pursuant to Rules 66 and 68 of the Rules, the filing of any preliminary motions and replies to any Prosecution responses and the preparation of a Work Plan for the Defence.

⁷⁸ Pre-Trial Legal Aid Policy, para. 5. See also Pre-Trial Legal Aid Policy, para. 23 which states phase three of the pre-trial phase begins the day after the conclusion of phase two, and that the phase three ends with the start of trial.

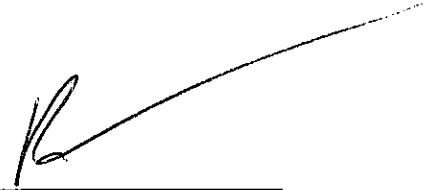
⁷⁹ Pre-Trial Legal Aid Policy, para. 29. See also, Pre-Trial Legal Aid Policy, para. 25.

⁸⁰ *Krajišnik* Decision, para. 42. (Emphasis inserted)

VI. DISPOSITION

30. In light of the foregoing I **GRANT** the Request for Review and **ORDER** that the Registrar allocate to Karadžić 7,500 remunerable hours for the entire pre-trial phase of the *Karadžić* Case.

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



Judge Patrick Robinson
President

Dated this 17th day of December 2009,
At The Hague,
The Netherlands

[Seal of the Tribunal]