

partly **CONFIDENTIAL**

D 28966



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Court
Management and
Support Services
Section

Tribunal Pénal
International pour
l'ex-Yougoslavie

Section des
Services
d'administration et
d'appui judiciaire

CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) **DATE** 11 November 2009

FROM/DE RAM DORAISWAMY, COURT OFFICER

TO/A

<input checked="" type="checkbox"/> President/Président (1)	<input checked="" type="checkbox"/> Prosecutor/Procureur	<input type="checkbox"/> Defense Counsel/Conseil de la Défense
<input checked="" type="checkbox"/> Vice President/Vice-Président		
<input type="checkbox"/> Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	<input checked="" type="checkbox"/> Self-representing Accused
<input type="checkbox"/> Trial Chamber I/ Chambre de 1ère instance I	<input type="checkbox"/> Chief of Investigations/ Chef des enquêtes	MR. R. KARADŽIĆ (1)
<input type="checkbox"/> Trial Chamber II/ Chambre de 1ère instance II		<input checked="" type="checkbox"/> Legal Advisers
<input checked="" type="checkbox"/> Trial Chamber III/ Chambre de 1ère instance III		MR. G. PETRONIJEVIĆ MR. P. ROBINSON MR. M. SLADOJEVIĆ
FOR INFO		
<input checked="" type="checkbox"/> E-copy		
<input type="checkbox"/> Embassy/Ambassade		

Pro Se Legal Liaison Officer/Juriste chargé de la liaison avec l'accusé

MS. J. GUDURIĆ

Other/Autre REFERRED TO THE PRESIDENT'S OFFICE (1), PURSUANT TO ARTICLE 31 (C) OF THE DIRECTIVE ON THE ASSIGNMENT OF COUNSEL, BY THE REGISTRAR

Registrar/Deputy Registrar/Greffier/Greffier adjoint
MS. T. MAIKOWSKI / MS. S. FOFANA

VWS Coordinator/Coordinateur de la SVT

Senior Legal Officer/Juriste hors-classe
MS. G. MCINTYRE

UNDU Commanding Officer/Commandant du QPNU

MS. Y. FEATHERSTONE / MS. L. DAVIDSON (FOR INFO)

Communications Service/Service Communication
ONLY D 28965 - D 28942

OLAD

PLEASE FIND ATTACHED/VEUILLEZ TROUVER CI-JOINT

Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___

Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___

Motion/Request/Application submitted by Prosecution/Defence Counsel/Accused on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le **10/11/2009**

APPEAL

Response/reply/brief submitted by Prosecution/Defence Counsel/Accused on/
Réponse/Réplique/Mémoire présent(e) par l'Accusation/le Conseil de la défense/ l'Accusé le ___/___/___

Decision of the Registrar on/Décision du Greffier le ___/___/___

Other/Autre

RECEIVED/RECU	FILED/ENREGISTRÉ
<input type="checkbox"/> Office hours/heures ouvrables Date: ___/___/___	<input checked="" type="checkbox"/> Office hours/heures ouvrables Date: 11/11/2009
<input checked="" type="checkbox"/> Outside Office hours/en dehors des heures ouvrables Date: 10/11/2009 Time/Heure: 19 h 05	<input type="checkbox"/> Outside Office hours/en dehors des heures ouvrables Date: ___/___/___ Time/Heure: ___h___

Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.

Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
Tel.: 31-70-416 5000 Fax: 31-70-416 8637

Notice of confidentiality applicable to fax
This facsimile transmission contains United Nations proprietary information that is strictly confidential and/or legally privileged, and is intended solely for the use of officials of the United Nations and/or the named recipient hereof. Any unauthorized disclosure, copying, distribution or other use of the information herein is strictly prohibited. If you have erroneously received this facsimile transmission, please notify the United Nations immediately.

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-T

Before: The President Patrick Robinson

Registrar: Mr. John Hocking

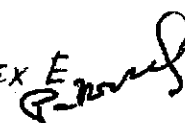
Date: 10 November 2009

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

Public WITH CONFIDENTIAL ANNEX E



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

The Office of the Prosecutor:

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

1. Dr. Radovan Karadžić hereby files the appeal in relation to the decision issued by the OLAD on 5 November 2009 (hereinafter: "impugned decision" - Annex C) not to remunerate the work of the Defence team performed to date.
2. On 11 September 2009, 16 September 2009 (Annex A) and 22 October 2009 (Annex B), Dr. Karadžić and his team filed three requests for additional pre-trial funds, in which detailed reasons were given that justified departure from the Remuneration Scheme. Unfortunately, to date merely 4000 plus 500 hours have been authorized for the Defence team for the entire pre-trial period, which is far from sufficient resources that would enable the Defence to continue preparing and eventually be prepared for the case. In addition, 3180 hours or 70700 Euros have not been remunerated to the Defence team for the work performed to date.
3. Pursuant to Article 8.1 of the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused and Article 31 (C) of the Directive on the Assignment of Defence Counsel , the President of the Tribunal has the authority to make a determination in relation to Dr. Karadžić's appeal.
4. Among the reasons set out in Dr. Karadžić's letters, the Defence stated that the bulk of disclosure had occurred relatively recently – almost half (48 per cent) of all documents, including 81 per cent of Rule 65 ter documents, had been disclosed since mid-May 2009. Furthermore, in its Pre-Trial legal aid policy, OLAD estimates that 7500 hours for support staff (5 people x 160 hrs/month x 9.5 months) is necessary for preparation of a complex, level three case during the pre-trial phase. Dr. Karadžić 's case is even more complex than the average level three case. For that reason, by OLAD's own standards, an additional allotment would be necessary for Dr. Karadžić to be adequately prepared for his trial.
5. The Prosecution has indicated its intention to call 409 witnesses. Regardless of the modalities of witness examination (i.e. *viva voce*, 92 ter or 92 bis), the Defence team must be prepared to challenge this evidence by collecting,

organizing and analyzing all the relevant materials. In addition, the Prosecution has just recently decided to reclassify 71 so-called "reserve witnesses" which might be called to testify in case the Defence challenges the adjudicated facts, which the Defence will certainly do for the reasons that will be set out in a separate filing. The total number of witnesses will therefore be 480, by far the largest number of witnesses ever brought before the ICTY. Not even the *Milošević* case had such a large number of witnesses appeared before the Trial Chamber during the Prosecution case. Finally, the current disclosure amounts to approximately 1.3 million of pages.

6. The impugned decision states that the Registry paid due regard to the magnitude and complexity of the case, in accordance with paragraphs 3.5, 3.7(a) and 3.8 of the Remuneration Scheme, when it decided to increase the maximum pre-trial allocation of hours from 3000 to 4000 hours. Bearing in mind the above explained characteristics of the case, it is simply inconceivable that the increase of mere 1000 hours could be considered as a proportionate measure for the outstanding work. 1000 hours do not cover even one month of Dr. Karadžić's Defence team work. The impugned decision is so unreasonable that, although it states that the Registry paid due regard to the magnitude and complexity of the case, it never addressed the question of how possibly Dr. Karadžić and his Defence team could undertake the enormous work explained above within such a small number of hours? It is not sufficient for the OLAD to merely state that it paid due regard to the complexity of the case, but it must also provide a reasonable answer to the question raised in the previous sentence.
7. On several occasions Dr. Karadžić and his team requested the OLAD to make an *urgent* decision in this matter or otherwise the Defence team would have no other option but to stop preparing for the trial and address this issue with the Trial Chamber, requesting it to delay the beginning of trial as a result of insufficient funds for the Defence pre-trial preparation. In spite of this, the Defence acted

constructively and continued working although it was not certain that it would be remunerated.

8. Despite an oral promise by the OLAD on 16 September 2009 that the Defence team would be remunerated and that it should continue to “provide the best possible assistance to Dr. Karadžić”, which the Defence team did until 10 October 2009, the Defence was never remunerated for almost 50 % of the overall work done to date. Dr. Karadžić’s Defence team members have not been remunerated for 3180 hours of work completed until November 2009. Notwithstanding the gravity and urgency of this problem, it took the OLAD almost two months since the second request dated 11 September 2009 to issue impugned decision in which it allocated absurdly and merely 500 extra hours, which in the words of the OLAD “is justified to forego any prejudice to [Dr. Karadžić]”.
9. Therefore, while encouraging the Defence team to continue providing Dr. Karadžić the best possible assistance, the OLAD refused to remunerate the assistance it was encouraging. That is unreasonable and unjustifiable.
10. To this date, the Tribunal has spent **91055 Euros in total** on Dr. Karadžić’s Defence team since August 2008, or **6070 Euros per month**. That is the amount that the Tribunal spends on **two support staff** in other, less complex cases. Therefore, contrary to what OLAD claims in the impugned decision that it had increased the number of assistants receiving remuneration from the Tribunal from four to eight, it is evident that in practice **it actually reduced the number of paid assistants from four to two**. That is simply unacceptable by any judicial budgetary standards, let alone the standards that should be adopted for the most complex and voluminous criminal trial in the history of international justice. So much for the equality of arms with the Prosecution and the guarantees enshrined in Article 21 (4) (b) and (d) of the ICTY Statute:

“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

[...]

(d) [...] and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it [...].”

11. As a result of such an unreasonable approach taken by the OLAD, on 10 November 2009 Dr. Karadžić’s Defence team wrote a letter (Annex D with Confidential Annex E) to Dr. Karadžić in which it informed him that

”Your Defence team members have not been remunerated for 3180 hours of work completed to date (for more details see Annex attached to this letter). Resultantly, please be informed that your Belgrade and The Hague Defence teams will cease all work on your case starting from tomorrow, 10 November 2009. Having been misled by the OLAD in what they told your team orally and what they stated on the record at the Trial Management Meeting on 19 October 2009, namely, that the Defence would be remunerated for its work to date, we continued working until we received the OLAD’s decision dated 5 November 2009 not to remunerate our completed work.

Consequently and regrettably, your Belgrade and The Hague Defence teams will have to stop working until all outstanding amounts are paid and the remuneration for the future work is guaranteed by a written decision.”

12. Previously, on 5 November 2009, the Trial Chamber issued its “Decision on Appointment of Counsel and Order on Further Trial Proceedings”. In paragraph 25 of the decision, the Trial Chamber stated that

“Notwithstanding the appointment of counsel for this specific purpose, the Accused 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.”

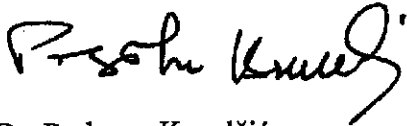
Two-three hours after this decision had been issued by the Trial Chamber, the OLAD made the impugned decision to remunerate mere 500 hours out of 3180 Defence unpaid hours.

13. Dr. Karadžić asks himself rhetorically – How is he reasonably expected to prepare himself for the trial, as ordered by the Trial Chamber, and be ready to start on 1 March 2009, if his Defence team has not been remunerated for almost 50 % of its work to date, as a result of which it stopped working completely?
14. To remove any doubt, Dr. Karadžić fully understands the decision of his Defence team and appreciates its patience and dedication throughout many months of entirely unpaid or partially paid work. However, he does not have any moral or other rights to expect his team to continue working unpaid.
15. Therefore, Dr. Karadžić hereby appeals to the President to enable him and his Defence team to prepare for trial uninhibitedly and order the OLAD to remunerate the unpaid Defence work to date and guarantee the adequate number of hours until the recommencement of the trial. As is evident from this appeal, usual 7500 hours for support staff is necessary for preparation of a complex, level three case during the pre-trial and the authorisation of 7500 hours in total for the pre-trial period would resolve the problem and would cover all the unpaid hours. Dr. Karadžić is not requesting resources that are granted to represented accused. Had he done so, Dr. Karadžić would have asked for 350,000 – 400,000 Euros for the pre-trial phase that is normally authorised for level three cases.¹ Dr. Karadžić is

¹ According to Defence Counsel – Pre-Trial legal Aid Policy, 1 May 2006

merely asking that his team is remunerated for the work done at the humiliating rates established by the OLAD for assistants to self-represented accused, which will not exceed the usual 7500 hours. Any other solution would be unfair and would leave Dr. Karadžić completely on his own to prepare for the trial that is currently scheduled for 1 March 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Dr. Radovan Karadžić

Word Count: 1772

ANNEX A

16 September 2009, The Hague

Dear Ms. Reindhardt,

I am writing to you in relation to your e-mail sent to Dr. Karadžić dated 15 September 2009, in which you ask for a more substantiated request for the allocation of additional funds. In order to speed up the correspondence and the resolution of the problem, Dr. Karadžić authorized me to address you on his behalf.

Firstly, I would like to draw the attention of the OLAD that a decision not to allocate additional funds for the pre-trial phase would mean that Dr. Karadžić's Defence team would have to stop preparing for trial, currently set for 19 October 2009. At least a month of precious pre-trial preparations would be lost.

Although we do not dispute the fact that the OLAD had taken into consideration the complexity and volume of the case at the time of its decision to allocate additional 1000 hours for the pre-trial phase (2 July 2009), we doubt that it had all necessary figures and information. Resultantly, it turned out that the additional 1000 hours were insufficient for the remainder of the pre-trial phase.

As of 18 August 2009, the Prosecution had disclosed over 938,000 document pages. While the disclosure process began shortly after Dr. Karadžić's initial appearance, the bulk of disclosure has occurred relatively recently - almost half (48 per cent) of all documents, including 81 per cent of Rule 65 ter documents, have been disclosed since mid-May 2009.

Prosecution disclosure	No. of documents	No. of pages
Rule 65 ter	43,741	384,514
Rule 66(A)(i)	1,119	45,056
Rule 66(A)(ii)	9,338	181,801
Rule 66(B)	3,407	127,250
Rule 68	15,029	199,964
Total	72,634	938,585

Today, on 16 September 2009, the Prosecution made an additional disclosure of 3022 items totaling 91,450 pages. Reading all of the Prosecution's disclosures without the latest one, at a native speaker's rate of 60 pages per hour, would take 15,643 hours.

Furthermore, the Defence will interview consenting Prosecution witnesses. To date, approximately 50 *viva voce* witnesses have been contacted and the majority have consented to speak with the Defence. There will probably be changes in our request to interview 85 *viva voce* witnesses altogether. Currently, only Marko Sladojević has planned a mission to Serbia and Bosnia, which was requested yesterday in a separate e-mail. The Defence has also requested 200 Rule 92 *bis* interviews, and the team is presently conducted consultations as to how to proceed with these interviews as efficiently as possible.

The Defence needs to interview other potential witnesses in the context of its investigation of the Prosecution's case. Dr. Karadžić estimates about 150 witnesses from the region and 25 international witnesses will need to be

interviewed. Interview time is estimated as 12 hours of preparation and 3 hours of interview (which is different than the time necessary to prepare for and interview Prosecution insider witnesses who are extremely time-consuming). Average travel time per witness is estimated at 8 hours. However, to achieve the most conservative overall estimate, the assumption here is that one-third of interviews will be conducted over the telephone; average travel time will thus be reduced to five hours across all witnesses.

Several other important pre-trial tasks (e.g. responding to new motions, following up non-responding states, preparing the opening statement, attending meetings with the prosecution, etc.) also require time and resources.

The OLAD should also take into consideration the constructive, diligent and professional approach taken by Dr. Karadžić. His Defence team is assisted by a significant number of *pro bono* professors and students working on legal issues, which considerably compensate for the lack of additional paid assistants to everybody's benefit.

For the 95 individuals who have had their cases go to trial at the ICTY, the average time between arrest/surrender and commencement of trial is nearly two years. In its Pre-Trial legal aid policy, OLAD estimates that 7500 hours for support staff (5 people x 160 hrs/month x 9.5 months) is necessary for preparation of a complex, level 3 case during the pre-trial phase. Dr. Karadzic's case is even more complex than the average Level 3 case. For that reason, by OLAD's own standards, an additional allotment would be necessary for Dr. Karadžić to be adequately prepared for his trial.

Therefore, I use this opportunity to urge you on behalf of Dr Karadžić to allocate sufficient funds that would enable the Defence team to continue its

pre-trial preparations until the beginning of trial. Also, Dr. Karadžić requests the OLAD to make an urgent decision in this matter or otherwise his team will have no other option but to stop preparing for the trial and address this issue with the Trial Chamber, requesting it to delay the beginning of trial as a result of insufficient funds for the Defence pre-trial preparation.

Dr. Karadžić hopes that the OLAD will take a constructive and flexible approach in relation to this issue and that the Defence team will be enabled to continue its pre-trial work.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Marko Sladojević', followed by a horizontal line.

Marko Sladojević

ANNEX B

22 October 2009, The Hague

Dear Ms. Reinhardt,

Following our telephone conversation of 21 October 2009, I am writing to you to provide further explanation, which is necessary to justify additional allocation of funds to Dr. Karadžić's Defence Team.

As a matter of fact, the Karadžić case presents particular features which distinguish it from all the other cases brought before the ICTY. In addition to that, various unforeseen events occurred in the last month, increasing the already enormous amount of work that our team is supposed to carry out.

Particular features of the Karadžić case

As already stated in my previous e-mail,¹ the Karadžić case is different and far more complex than an average case classified as Level 3, mainly because of the legal complexity of the Prosecution case against Dr. Karadžić, number of witnesses who are supposed to give evidence during the trial, number of documents that the Prosecution intends to tender, as well as because of the particular modality of disclosure used by the OTP in this case. Since you have already taken into account the legal complexity of the case, I will further elaborate on other aspects mentioned above.

A) 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.

¹ Letter of 16 September 2009.

In addition, the Prosecution has just recently decided to reclassify 71 so-called "reserve witnesses" which might be called to testify in case the Defence challenges the adjudicated facts, which the Defence will certainly do for the reasons that do not belong in this letter. The total number of witnesses will therefore be 480, by far the largest number of witnesses ever brought before the ICTY. Not even the *Milosevic* case had such a large number of witnesses appeared before the Trial Chamber during the Prosecution case.² We appreciate that the OLAD was not aware of the final number of witnesses when it determined the original number of pre-trial hours.

B) Witness interviews during the pre-trial period. Dr. Karadžić's team is the only Defence team to our knowledge that requested, and was granted, permission to interview hundreds of Prosecution witnesses during the pre-trial phase of the case. Due to complex logistical issues that needed to be resolved before the actual interviews took place, the whole exercise began quite late, on 1 October 2009, with my trip to Belgrade. Having in mind that the VWS contacted the witnesses, their consents [and consequently the number of witnesses] were beyond our control, and must also be seen as unforeseen event. The amount of hours needed to prepare for the first batch of interviews was exceeding authorized 160 hours per team member per month, as is documented in Defence invoices.

C) Modality of disclosure. As you may be aware, the Prosecution was granted its request to perform an "ongoing disclosure": in other words, the material is being disclosed at different points in time in different quantities instead all at once. Consequently, our Defence team cannot complete its duty to review the disclosure by a certain date, but it will be always bound by the

² The Milosevic Prosecution called 352 witnesses

OTP's disclosure's schedule, obliging us to constantly adjust our work to the pace dictated by the OTP without any possibility to influence it. As a result of a recent Trial Chamber's decision to allow the Prosecution to proceed with an "on-going" disclosure despite our request to set strict deadlines, the quantity and quality of the Prosecution disclosure will always remain beyond our control.

Unforeseen/Latest events beyond the Defence control

In addition to the previous, more general reasons, it must be also noted that unforeseen events occurred, which increased the burden of work and the overall amount of documents that has to be analyzed by our Defence team.

- A) Firstly, a new version of the Indictment was filed by the Prosecution last Monday (19 October 2009) pursuant to an order of the Trial Chamber, which forced our Defence team to assess the situation *de novo* and to reorganize a significant part of our work; [Unforeseen event]

- B) Secondly, during my mission in Serbia and Bosnia that lasted until 19 October 2009, new documents were provided by our investigators, documents that require an immediate attention and thorough analysis; [Latest event]

- C) Thirdly, during the same mission, the Defence had a meeting with the Republican Centre for the Investigation of War Crimes based in Banja Luka in order to request its assistance regarding the collection of documents. On that occasion we were provided with judgments and documents related to criminal cases against Serbs for crimes committed against non-Serbs which have never been disclosed before. Needless to say

that these new documents require our urgent analysis (we also expect further materials from the same body); [Unforeseen and Latest event]

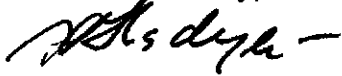
D) Fourthly, during my field mission in Bosnia, in addition to the meetings with the Prosecution's witnesses (as agreed with OLAD), other meetings took place which were not originally scheduled. These meetings concern persons who took part as direct participants in the relevant events concerning indictment municipalities, but will not be called by the Prosecution. They provided us with additional information and documents that will be of an invaluable importance for the preparation of cross-examination of Prosecution witnesses testifying about the same municipality events. [Unforeseen event]

E) Lastly, 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. 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]

In light of the aforementioned facts, I would kindly ask you to authorise a sufficient number of additional hours that would enable Dr. Karadžić's Defence

Team to continue its work and be remunerated for the work already carried out during the entire pre-trial period.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Sladojević', with a horizontal line extending to the right.

Marko Sladojević

ANNEX C



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

5 November 2009

Dear Mr. Karadžić,

Re: Your request for additional pre-trial funds

I write regarding your request for additional funds dated 11 September 2009, the additions thereto submitted through your legal associate Marko Sladojević dated 16 September 2009 (together, "Request"), the Registry's correspondence to you of 15 September 2009, the meeting between you and the Registry on 15 October 2009, and the subsequent additional information submitted by Mr. Sladojevic dated 22 October 2009 ("Additional Request").

In your Request, you ask the Registry to allocate 987.95 support staff hours to cover the currently outstanding invoices of your defence team, as well as 160 hours per team member per month from September 2009 until the start of trial.

You state that the additional 1000 hours allocated in July 2009 were insufficient, in light of the complexity of the case and the "sheer volume of documents involved". You argue that reading all the Prosecution's disclosure would take 15,643 hours. Furthermore, you state that the Defence will interview consenting Prosecution witnesses, and you give estimates of the number of witnesses to be interviewed, including witnesses to be called pursuant to Rule 92*bis*. You further state that the Registry should take into account your "constructive, diligent and professional" approach by using the assistance of a significant number of *pro bono* defence team members. In addition, you compare the number of hours allocated to your case with the lump sum allocated to represented legally aided accused in accordance with the Pre-Trial Payment Policy. You argue that the Pre-Trial Payment Policy suggests that 7500 support staff hours are deemed reasonable and necessary for the preparation of a complex case for trial. Finally, you state that in case the Registry does not authorise the requested additional allocation of funds to your team, your team will stop assisting you and you will request the Trial Chamber to delay the start of trial due to insufficient funds for your pre-trial preparation.

In the Additional Request, you further state that the OTP intends to call 480 witnesses, which is "by far the largest number of witnesses brought before the ICTY", that your team was the first one to request and be granted permission to interview hundreds of Prosecution witnesses and that the OTP was granted to perform "ongoing disclosure" which obliges you to constantly adjust your work to the pace dictated by the OTP. Furthermore, you state that several unforeseen circumstances occurred which increased the burden of work and the overall amount of documents that has to be analysed by your Defence team: firstly a new indictment was filed by the Prosecution on 19 October 2009 which forced the Defence team to reorganise a significant part of their work; secondly your associate received new documents, including related national Judgments, as well as unexpected statements of possible witnesses during a field mission; thirdly there were certain inconsistencies in the disclosure process of the OTP that increased your workload and delayed the preparation.

As a preliminary matter, I note that the Registry paid due regard to the magnitude and complexity of the case, in accordance with paragraphs 3.5, 3.7(a) and 3.8 of the Remuneration Scheme, and reached the limits established in the Remuneration Scheme, namely by increasing the number of assistants receiving remuneration from the Tribunal from four to eight, by increasing the maximum pre-trial allocation of hours from 3000 to 4000 hours, and by increasing the number of billable hours from 100 to 160 per associate per month. In addition, the Registry has increased the number of hours allocated for defence experts substantially, and

agreed to advance the hours reserved for experts in the prosecution phase to the pre-trial phase of the case bringing the total expert hours from 150 to 570 hours.

I note that the Remuneration Scheme does not foresee any possibility to go over and beyond the above-mentioned allotments. However, in order to avoid prejudice to an accused, the Registrar has the discretion to authorize a reasonable amount of additional funds in case an unforeseeable circumstance or any other extraordinary reason occurs that warrant a departure from the Remuneration Scheme.

In your Request you reiterate the magnitude and complexity of your case – factors that the Registrar has already taken into consideration in the above-mentioned (additional) allocation of resources.¹ I note that the amount of disclosed material in your case and the fact that there is ongoing disclosure by the OTP are not unforeseeable circumstances and can not be classified as “extraordinary” in comparison to other cases in the sense of the above. In fact, ongoing disclosure is common to basically all cases before this Tribunal.

Furthermore, your statements regarding the envisaged interviews of Prosecution witnesses and that your team is the first before this Tribunal to request and be granted permission “to interview hundreds of Prosecution witnesses” and the higher than average number of Prosecution witnesses, do not justify a departure from the Remuneration Scheme as these factors have been taken into account by the Registry in its previous decisions allocating more funds to your defence team.

With regard to your decision to interview all 92bis Prosecution witnesses, I note that this is a matter that relates to your defence strategy. In such instances, the Registry may approve field missions to interview the said witnesses upon justification by the defence team but would not allocate additional funds for the reason that your strategy has turned out to be a time-consuming exercise. The Registry is also not satisfied that new documents received by your legal associate constitutes unforeseeable circumstances as this is an expected outcome in the course of investigations in the preparation of a defence case. Finally, I note your comments that you diligently prepare your defence by using *pro bono* assistants and that your team will stop working for you if additional funds are not allocated, and you will not be able to participate in the proceedings. It is the Registry’s understanding that you do not advance these statements as reasons for the allocation of additional funds to your defence team.


However, having said this, the Registrar is satisfied that the timing of disclosure may have impacted on the preparation of your case and was beyond your control. Finally, the filing of a new version of the indictment on the eve of commencement of trial is an unforeseen circumstance and the Registrar appreciates that this may also have had an impact on the preparation of your defence case. As such, an additional allocation of up to 500 hours for the pre-trial phase of the case is justified to forego any prejudice to you. Please advise the Registry on the distribution of the additional funds among your team members..

The Registry however reminds you that you may need to ensure that limited resources available to you for the preparation of the case are used diligently and reasonably.

I note that the Trial Chamber issued a decision today in your case adjourning the proceedings in your case until 1 March 2010. The Registry will address the allocation of funds during this period in due course.

¹ I note that the allotments as established in the Remuneration Scheme are based on the allotments granted for support staff when the Registry still applied an hourly system to Pre-Trial cases, before the introduction of the lump sum system applicable to legally aided (represented) accused today.

Yours sincerely,



Anna Osure
Acting Head of OLAD

To: Mr. Radovan Karadzic
UNDU

CC: Mr. Peter Robinson
Mr. Marko Sladojević
Mr. Goran Petronijević
Legal Associates

ANNEX D

9 November 2009, Belgrade, The Hague

Re: Cessation of work

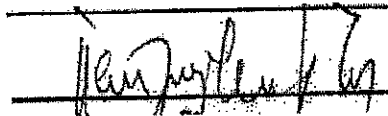
Dear Dr. Karadzic,

Your Defence team members have not been remunerated for 3180 hours of work completed to date (for more details see Annex attached to this letter). Resultantly, please be informed that your Belgrade and The Hague Defence teams will cease all work on your case starting from tomorrow, 10 November 2009. Having been misled by the OLAD in what they told your team orally and what they stated on the record at the Trial Management Meeting on 19 October 2009, namely, that the Defence would be remunerated for its work to date, we continued working until we received the OLAD's decision dated 5 November 2009 not to remunerate our completed work.

Consequently and regrettably, your Belgrade and The Hague Defence teams will have to stop working until all outstanding amounts are paid and the remuneration for the future work is guaranteed by a written decision.

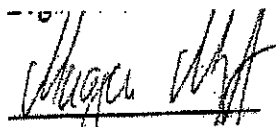
Kind regards,

Belgrade Team:

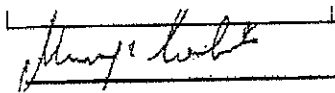

Goran Petronijevic



Milivoj Ivanisevic




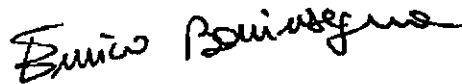
Mladen Magdelinic


Milomir Savcic

The Hague Team:


Marko Sladojevic


Aleksandar Vujic



Enrico Boninsegna

CONFIDENTIAL
ANNEX E

PAID *P. Kovandz*UNPAID *P. Kovandz*NOT INVOICED *P. Kovandz*

Goran PETRONIJEVIC	Sep 08 – Feb 09 6x2.500 = 15.000 April 09 – 2500	Mar 09 – 2500 May 09 – 4000 Jun 09 – 4000	July, August, September, October 09
Marko SLADOJEVIC	April 09 – 1800 May 09 – 3200 June 09 – 3200 July 09 – 3200 Aug 09 – 3200	Sep 09 – 3200 Oct 09 - 3200	
Mladen MAGDALINIC	0	May 09 – 4000 June 09 – 4000 July 09 - 4000	
Aleksandar VUJIC	May 09 – 4000 June 09 – 4000 July 09 – 4000 Aug 09 – 4000	Sep 09 – 4000 Oct 09 - 4000	
Enrico BONINSEGNA	May – June 09 – 2265 July 09 – 2400 Aug 09 – 2400		
Milomir SAVCIC	0	July 09 – 4000 Aug 09 – 4000 Sep 09 - 4000	October 09
Milivoj IVANISEVIC	Aug 08 – 1612 Sep 08 – 2150 Oct 08 – 2500 Nov 08 – 2500 Dec 08 – 2500 Jan 09 – 2500 Feb 09 – 2500	Mar 09 – 2500 Apr 09 – 2500 May 09 – 4000 Jun 09 – 4000 Jul 09 – 4000 Aug 09 - 4000	Sep 09 Oct 09
Peter ROBINSON	21190 Euros 847.6 Hours		
TOTAL:	91055 EUROS	70700 EUROS	
	4197.6 HOURS	3180 HOURS	