

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

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

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding  
Judge Michele Picard  
Judge Christoph Flugge

Registrar: Mr. Hans Holthuis

Date Filed: 24 November 2008

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR ADEQUATE FACILITIES AND EQUALITY OF ARMS:  
LEGAL ASSOCIATES

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The Office of the Prosecutor:

Mr. Allan Tieger  
Mr. Mark Harmon

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber for an order directing the Registrar to provide him with adequate facilities for his defence and equality of arms with the prosecution by (1) authorizing him to have the services of legal associates who have sufficient experience and qualifications to provide high-level assistance to him, and (2) remunerating those legal associates accordingly. He suggests that the Trial Chamber take such measures as part of its duty to ensure the proper administration of justice.

2. Dr. Karadzic wants a fair trial in which he can defend himself on the merits of his case. He has shown that he conducts himself competently and politely, and in accordance with the Tribunal's rules. He is prepared to be reasonable, succinct, and respectful in the pretrial motions that he files, his interventions in the courtroom, and in his conduct towards all parties and witnesses. While he insists on self-representation, he recognizes that to defend himself professionally, he needs assistance from legal professionals.

3. Furnishing Dr. Karadzic with adequate facilities for his defence is not only in his interest, but is in the interest of the Trial Chamber and international criminal justice. It will allow the Tribunal to demonstrate that it can both do justice and uphold an accused person's right to dignified self-representation. The Registrar's refusal to provide Dr. Karadzic with anything more than support staff frustrates both goals and makes a fair trial at this Tribunal impossible.<sup>1</sup>

#### **Statement of Facts**

4. On 29 September 2008, the accused requested the Tribunal to provide funding for his self-represented defence. He stated that:

There are likely to be many unique legal issues arising in my case, such as the impact of the promise made to me in 1996. I need top people to help me research the jurisprudence, using sources to which as a detained person, I do not have access, and to give me advice on the complex legal ramifications and procedure in raising these issues. I also need experienced lawyers who can help me obtain documentation and interview high level witnesses so that I can substantiate my claims.

The Trial Chamber has urged me to compose a team of highly

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<sup>1</sup> For a criticism of the Registrar's position on legal aid for self-represented accused, see Zahar, *Legal Aid, Self-Representation, and the Crisis at The Hague Tribunal*, 19 Criminal Law Forum 241 (2008)

experienced and competent persons from both legal systems. I strongly agree that I need the advice and support of such lawyers in order to confront the vast legal and factual challenges which exist in my case. I cannot get such persons to work for 15 or 25 Euros per hour. Therefore, it is absolutely essential that the lawyers advising me be compensated at the same rate as those appearing as amicus curiae to assist the Chamber and those appointed to represent other accused.<sup>2</sup>

5. On 16 October 2008, Dr. Karadzic received a letter from Mr. Martin Petrov, Head of Office for Legal Aid and Detention Matters. Mr. Petrov informed him that the Registrar had assigned one of the persons he requested, Peter Robinson, as a legal advisor to him. However, he stated that:

Since work typically performed by defence counsel is to be done by the self-represented accused himself, legal associates assigned to assist him perform tasks typically carried out by defence support staff. Accordingly, the Remuneration Scheme provides that persons assigned to assist an indigent self-represented accused shall be remunerated at the hourly rates for support staff...<sup>3</sup>

6. On 21 October 2008, Dr. Karadzic appealed this decision to the Registrar himself. Dr. Karadzic stated that:

This decision will not allow me to have adequate facilities for my defence. My case is extremely complex, both factually and legally. I require legal advice from persons with extensive experience in international criminal law and with the procedures at this Tribunal, and with access to legal materials and research tools not available to me. Since I am detained, I need experienced advisors who can have high level contacts with people possessing important information necessary for my defence. I cannot obtain this level of advice when you are only willing to pay someone at the rate a law firm pays its secretaries.<sup>4</sup>

7. In his accompanying letter to the Registry, Dr. Karadzic's Legal Advisor, Peter Robinson, provided specific details of work which was needed to be performed on behalf of Dr. Karadzic that required experience and expertise well beyond that of support staff. These included the complex legal issues surrounding the agreement that Dr. Karadzic not

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<sup>2</sup> A copy of this letter is attached as Annex "A"

<sup>3</sup> A copy of this letter is attached as Annex "B".

<sup>4</sup> A copy of this letter is attached as Annex "C".

be prosecuted at the ICTY made by U.S. Ambassador Richard Holbrooke, joint criminal enterprise, and use of Rule 54 *bis* to obtain documents from States, as well as the need for fact interviews with high level witnesses such as U.S. Secretaries of State and Contact Group Ministers.<sup>5</sup>

8. On 14 November 2008, the Registrar denied Dr. Karadzic's request. While agreeing that "the case is very complex from a factual and legal point of view", he concluded that this could be addressed by providing additional support staff. He refused to authorize a higher remuneration rate for persons with the legal expertise and experience greater than that of support staff, saying that such rates were applicable only to persons providing assistance in cases where the accused was represented by counsel (i.e. co-counsel, legal consultants). The Registrar also suggested that standby counsel or *amicus curiae* could perform these functions in the case of a self-represented accused.<sup>6</sup>

9. Because this decision directly impacts Dr. Karadzic's right to a fair trial, he requests that the Trial Chamber consider the matter in light of his statutory rights to adequate facilities for his defence and equality of arms, and in light of the Trial Chamber's duty to ensure the proper administration of justice.<sup>7</sup>

### Argument

10. In the *Krajisnik* case, the Appeals Chamber held that an accused who decides to represent himself is not entitled to legal assistance under Article 21(4)(d) of the Statute.<sup>8</sup> However, it recognized that a self-represented accused was entitled to adequate "facilities" under Article 21(4)(b) of the Statute.<sup>9</sup>

<sup>5</sup> A copy of this letter is attached as Annex "D".

<sup>6</sup> A copy of this letter is attached as Annex "E".

<sup>7</sup> *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Appeals Against Decisions of the Registrar of 4 January 2007 and 9 February 2007* (25 April 2007) at para. 12; *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on Appeal Against Registry Decision of 19 December 2006* (12 March 2007) at para. 6; *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Motion Seeking Review of the Decisions of the Registry Relating to the Assignment of Counsel* (29 January 2007) at fn. 11; *Prosecutor v Seselj*, No. IT-03-67-AR73.3, *Decision on Appeal Against Trial Chamber Decision on Assignment of Counsel* (20 October 2006) at para. 16; *Prosecutor v Blagojevic*, No. IT-02-60-AR73.A, *Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace His Defence Team* (7 November 2003) at para. 7; *Prosecutor v Milutinovic et al*, No. IT-99-37-AR73.2, *Decision on Interlocutory Appeal on Motion for Additional Funds* (13 November 2003) at paras. 23-24; *Prosecutor v Knezevic*, No. IT-95-4-PT, *Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel* (6 September 2002)

<sup>8</sup> *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Krajisnik Request and on Prosecution Motion* (11 September 2007) at para. 41

<sup>9</sup> *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Krajisnik Request and on Prosecution Motion* (11 September 2007) at para. 42.

11. In defining those “facilities”, the Appeals Chamber said:

To the extent that the Registry requires or encourages indigent self-represented 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-represented accused), but nonetheless should **adequately** reimburse the legal associates for their coordinating work and for related **legal consultation...**(emphasis added)

12. Shortly after that decision, the Registrar promulgated his *Remuneration Scheme for Persons Assisting Indigent Self Represented Accused* (30 September 2007), which purported to implement the Appeals Chamber decision. The Registrar included the following provision:

The defence team members assigned by the Registrar shall be remunerated at the hourly rates for support staff ...<sup>10</sup>

These guidelines have never before been the subject of judicial review. Thus Dr. Karadzic’s request to this Trial Chamber creates an issue of first impression.

13. In Dr. Karadzic’s case, the Registrar has inflexibly applied these guidelines to prohibit payments of more than 25 Euros to persons who are needed to perform legal functions on Dr. Karadzic’s defence team which are clearly more specialized and complicated than the functions of support staff.

14. Dr. Karadzic respectfully contends that the Registrar has misapplied the holding of the Appeals Chamber in *Krajisnik* in such a way as to deny Dr. Karadzic adequate facilities for his defence.

15. The Appeals Chamber in *Krajisnik* recognized that provision of adequate facilities to a self-represented accused under Article 21(4)(b) included “legal consultation”, and that the Registry was required to “adequately” reimburse those providing such services to a self-represented accused. Unfortunately, by categorically prohibiting payments to legal associates above the level of support staff, the Registrar has

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<sup>10</sup> Para 3.4. These rates are from 15-25 Euros per hour.

created a scheme whereby an accused cannot obtain legal consultation to which he is entitled under Article 21(4)(b).<sup>11</sup>

16. The Registrar has misinterpreted the Appeals Chamber's statement in its *Krajisnik* decision that "funding should not be comparable to that paid to counsel for represented accused." That funding, 97 Euros per hour, refers to lead counsel—a position occupied by the accused when he chooses to represent himself. The *Krajisnik* decision does not prohibit funding at the same level as a legal consultant or co-counsel to a represented accused, 71 Euros per hour, when a person of similar qualifications and experience provides those same services to a self-represented accused. That is all that Dr. Karadzic is asking for.

17. Nothing in the *Krajisnik* Appeals Chamber decision said that the persons providing "legal consultation" must be paid like support staff. If the Appeals Chamber had intended to equate "legal associates", i.e. trained lawyers who provide legal consultation, with support staff such as "legal assistants", it would have used the latter term. Indeed, by insisting that a self-represented accused has the right to legal consultation, a service that has never been provided by Registrar-appointed support staff, the Appeals Chamber clearly did not intend for the Registrar to treat legal associates and support staff as equivalent.

18. The Registrar's compensation system for a person represented by counsel recognizes that a lead counsel in a complex and fast moving case at this Tribunal cannot do the job with only a support staff. It provides for the appointment of a co-counsel who can share the burden of legal submissions and trial preparation at the pre-trial stage, and the in-court work during trial.<sup>12</sup> It also provides for the appointment of a legal consultant

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<sup>11</sup> The Registrar also inflexibly refused to reduce the number of allocated hours to compensate for the higher rate, demonstrating that it is inflexibly applying its guidelines regardless of the fact that no additional cost would be incurred. Under its own legal aid scheme, defence teams are allowed to set their own salaries for support staff within the lump sum allotted.

<sup>12</sup> Directive on Assignment of Defence Counsel, Article 16(C). The appointment a co-counsel was considered so essential to the accused's right to a fair and expeditious trial that the Trial Chamber in the *Popovic et al* case found it necessary to overrule the Registrar's decision when it refused to appoint a co-counsel who did not speak one of the working languages of the Tribunal. *Prosecutor v Popovic et al*, No. IT-05-88-T, *Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletic* (20 February 2007)

who can provide advice and high-level legal expertise to the lead counsel during the pre-trial and trial phases of a case.<sup>13</sup>

19. In the *Prlic* case, the Appeals Chamber held that the determination of whether an accused's right to adequate facilities is violated depends on the totality of the measures taken.<sup>14</sup> The Registrar's compensation scheme, and its decision in Dr. Karadzic's case pursuant to that scheme, strips a self-represented accused of the facilities deemed to be necessary when defending a case at this Tribunal. By requiring him to go it alone, aided only by a support staff, the scheme makes it virtually impossible for any single person, attempting to represent himself in a trial at this Tribunal, to defend himself adequately and professionally. Thus, self-representation at the Tribunal is reduced to an illusion—granted under conditions in which it cannot effectively be exercised and then taken away when the accused collapses from the burdens of doing the impossible.

20. The Registrar has failed to account for the vast differences between an appeal, as in the *Krajisnik* decision, and a trial, where the accused faces the heavy demands of conceiving, researching, and drafting preliminary motions, dealing with complex pre-trial procedures for shortening the trial, such as judicial notice and admission of written statements and testimony, mastering massive amounts of factual material, carrying out field investigation involving high-level witnesses, and the frenetic pace of in-court trial proceedings at the ICTY.

21. Dr. Karadzic's case provides an opportunity for the Tribunal to learn from the lessons of the *Milosevic* and *Seselj* cases, and not to repeat them. Jeopardizing Dr. Karadzic's health by putting him through an exhausting trial without adequate facilities is not in the interest of either the Tribunal or Dr. Karadzic. All Dr. Karadzic is asking for is the opportunity to defend himself in a reasonable way, with reasonable resources.

22. Dr. Karadzic notes that in other cases involving self-represented accused, such as the *Milosevic* and *Krajisnik* cases, the Trial or Appeals Chamber did not recruit or remunerate lawyers as support staff when it decided such personnel were needed to protect the rights of the accused. On the contrary, in the *Milosevic* trial, three highly experienced lawyers were appointed to serve as *amicus curiae* and were paid

<sup>13</sup> Directive on Assignment of Defence Counsel, Article 16(E), 23(B)(iii)

<sup>14</sup> *Prosecutor v Prlic et al*, No. IT-04-74-AR73.9, *Decision on Slobodan Praljak's Appeal Against the Trial Chamber's Decision of 16 May 2008 on Translation of Documents* (4 September 2008) at para. 26

accordingly. If facilities of three lawyers paid at rates higher than support staff were needed to advise a Chamber on issues which should be raised and argued by the accused, why are such facilities not also needed to advise an accused so that he may raise and argue those issues himself? There is no logical reason for the Trial Chamber adequately remunerating experienced lawyers for advising it as *amicus curiae*, while denying the same level of remuneration for experienced lawyers directly advising the accused.

23. It is no answer for the Registrar to say that by choosing to represent himself, an accused agrees that he will not have adequate facilities for his defence. The Registrar cannot vitiate the right of self-representation—which the Appeals Chamber has recognized as an “indispensable cornerstone of justice”<sup>15</sup>—by refusing to provide adequate facilities to a self-represented accused.

24. The Registrar also erred in his opinion that the role of an experienced legal advisor could be filled by an *amicus curiae* or standby counsel.<sup>16</sup> An *amicus curiae* works independently of an accused and the Trial Chamber is not obliged to consider his or her arguments.<sup>17</sup> A standby counsel and a self-represented accused have a built-in conflict of interest—the very nature of a standby counsel supposes that he will be willing to act contrary to the wishes of the accused by replacing him when the Trial Chamber deems it necessary.<sup>18</sup> Neither type of counsel is a substitute for adequate facilities provided to a self-represented accused in the form of a trusted and experienced legal advisor—a modest contribution by the Registrar to the smooth and harmonious flow of the proceedings.

25. In the *Seselj* case, the Trial Chamber also recognized a separate duty of the Trial Chamber to ensure the proper administration of justice. It held that the duty to ensure the proper administration of justice can be fulfilled only if a team of associates

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<sup>15</sup> *Milosevic v Prosecutor*, No. IT-02-54-AR73.7, *Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Counsel* (1 November 2004) at para. 11

<sup>16</sup> See Annex E at p. 3

<sup>17</sup> *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Momcilo Krajisnik's Request to Self-Represent, on Counsel's Motions in Relation to Appointment of Amicus Curiae, and on the Prosecution Motion of 16 February 2007* (11 May 2007) at paras. 19-20

<sup>18</sup> *Prosecutor v Seselj*, No. IT-03-67-AR73.4, *Decision on Appeal Against Trial Chamber Decision (No. 2) on Assignment of Counsel* (8 December 2006) at paras. 24,28

assists the accused in preparing and presenting his defence at every stage of the proceedings.<sup>19</sup>

26. The Pre-Trial Judge in the *Seselj* case, after noting the value to the administration of justice of receiving submissions drafted by experienced associates of the accused, held that:

It is therefore in the interests of the proper administration of justice to succeed in ensuring that the associates of the Accused, who undeniably play a positive role in his defence, may be decently paid for the services they perform.<sup>20</sup>

27. The Pre-Trial Judge in this case has indicated that the Trial Chamber was prepared to be flexible in allowing the accused to be heard during his trial and at the same time being assisted by experienced personnel in presenting his case.<sup>21</sup> Indeed, the Registrar's decision denying Dr. Karadzic the assistance of an experienced legal advisor above the level of support staff is a particularly short sighted one.

28. While Dr. Karadzic insists on representing himself, the addition to his team of an experienced legal advisor who can advise him on the quality and likelihood of success of pretrial motions, assist him in making submissions on complicated legal issues, and, if desired by the accused and permitted by the Trial Chamber, relieve him from time to time during the course of the trial, will only enhance the quality, fairness, and expeditiousness of this case.

29. The refusal to allow a self-represented accused to have legal consultation by persons above the level of support staff also violates the accused's rights to equality of arms with the prosecution. This right has been held to be a component of the right to a fair trial guaranteed by the ICTY Statute.<sup>22</sup> The Appeals Chamber has held that:

Under the Statute of the International Tribunal the principle of equality of arms must be given a more liberal interpretation than that normally upheld with regard to proceedings before domestic courts. This principle means that the Prosecution and the Defence must be equal before the Trial Chamber. It follows that the Chamber shall provide every practicable

<sup>19</sup> *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 53

<sup>20</sup> *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 55

<sup>21</sup> Transcript of 17 September 2008 at p. 42

<sup>22</sup> *Prosecutor v Prlic et al*, No. IT-04-74-AR73.4, *Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case* (6 February 2007) at para. 14

facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.<sup>23</sup>

30. At a recent status conference, the Pre-Trial Judge assured Dr. Karadzic that

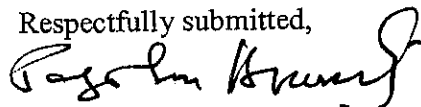
[I]t's one of the fundamental tenets of the law of international criminal procedure that there must be equality of arms, and that tenet will be recognised in all that this Trial Chamber in due course does.<sup>24</sup>

31. While equality of arms does not require equality in the number of resources, the prosecution is represented in Dr. Karadzic's case by a minimum of three lawyers. The right of self-representation cannot be interpreted to mean that the accused has to face these prosecutors alone, with only support staff. The Trial Chamber is capable of providing Dr. Karadzic with the practicable facility of a legal consultant with experience equal to that of his prosecutors to assist him in presenting its case. Its failure to do so would result in a violation of Dr. Karadzic's right to equality of arms.

32. In his Separate Opinion in the *Krajisnik* case, Judge Shahabuddeen said that "the Tribunal, as a judicial body established on behalf of practically the whole of the international community, has to satisfy the highest possible standards." The Registrar's refusal to provide for facilities to a self-represented accused above that of support staff falls short of that standard. The Trial Chamber is thus respectfully requested to order the Registrar to provide an experienced legal advisor to Dr. Radovan Karadzic to be remunerated adequately and at a level above that of support staff.

Word count: 2955

Respectfully submitted,



Dr. Radovan Karadzic

<sup>23</sup> *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 52.

<sup>24</sup> Transcript of 29 August 2008 at p. 39

Dr. Radovan Karadzic

The Honorable Hans Holthuis  
Registrar  
International Criminal Tribunal for  
the former Yugoslavia

Re: Request for Legal Aid for Self-Represented Accused

Dear Mr. Holthuis,

Please consider this as my request for legal aid as a self-represented accused. I am providing you with the completed form demonstrating that I have insufficient financial means to fund my own defence.

As you know, my case is well above any other case that has been tried at this Tribunal in terms of complexity and scope. I am committed to defending myself and I wish to do so professionally and competently. But, as I am in detention and have no formal legal training, I will need the help of experienced and competent people in order to defend myself. In order to have a fair trial, I need a capable defence team behind me.

I therefore request that I be allocated sufficient funds during the pre-trial phase of my case to prepare for the trial.

I believe that at a minimum I need three Legal Advisors to be compensated at the same level as counsel to assist me. This will include one lawyer experienced in the common law system and at the International Tribunals, one lawyer experienced in the civil law system who can coordinate my team and lead the factual defence, and a third lawyer experienced in the civil law system who can be concentrated on the events in Srebrenica.

There are likely to be many unique legal issues arising in my case, such as the impact of the promise made to me in 1996. I need top people to help me research the jurisprudence, using sources to which as a detained person, I do not have access, and to give me advice on the complex legal ramifications and procedure in raising these issues. I also need experienced lawyers who can help me obtain documentation and interview high level witnesses so that I can substantiate my claims.

The Trial Chamber has urged me to compose a team of highly experienced and competent persons from both legal systems. I strongly agree that I need the advice and support of such lawyers in order to confront the vast legal and factual challenges which exist in my case.

ANNEX 'A'

I cannot get such persons to work for 15 or 25 Euros per hour. Therefore, it is absolutely essential that the lawyers advising me be compensated at the same rate as those appearing as amicus curiae to assist the Chamber and those appointed to represent other accused.

I am prepared to ensure that at least one of the lawyers I nominate as legal advisor meets all of the qualifications of Rule 45.

I also believe that at a minimum I need five persons to be compensated at the level of support personnel. These persons can include a case manager in The Hague, a case manager in Belgrade, two investigators, and an electronic documentation specialist.

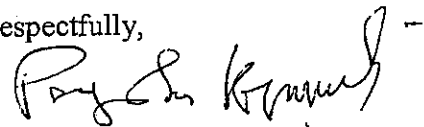
I expect that there may be more than 1 million pages of disclosure in my case alone. It will be impossible for me to be prepared for trial in my lifetime unless I am allowed the resources to have strong team to help me review the material, organize it, conduct investigation based on that material and my own knowledge, and provide me with the tools to use the material during the trial.

I recognize that the stakes are very high in my case, not only for the rest of my own life but for other leaders of small nations who may face such charges. I also recognize the important historical value this trial will have beyond all of our lifetimes. It would be a true injustice if I were to have to face the prosecution, with its vast resources and international support, with a patchwork team of underpaid and under-qualified members.

Therefore, if there is any intention that I receive a fair trial here at the ICTY, I implore you to provide me with the resources I have requested.

Thank you very much for your cooperation.

Respectfully,



Dr. Radovan Karadzic

cc: Trial Chamber III



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yugoslavie

16 October 2008

Dear Mr. Karadžić,

**RE: Your requests for assignment of assistants**

I refer to your "Request for approval of defence advisers" of 4 September 2008 ("Request") and your "Request for Legal Aid for Self-Represented Accused" of 29 September 2008 ("Second Request"), in which you request funding for a number of prospective assistants that you wish to retain to assist you in the preparation of your defence. I further refer to several meetings between you and me at the United Nations Detention Unit ("UNDU") over the past two months at which we discussed several options regarding the organization of your defence and the preparation and presentation of your case. I also note your Declaration of Means attached to the Second Request, in which you claim that you do not have sufficient means to pay for your defence.

In your Request, you ask the Registry to assign Mr. Goran Petronijević as a legal associate and Mr. Milivoj Ivanišević as an investigator to your defence team. In your Second Request, you ask the Registry to provide you with funding for your defence as a self-represented accused. In particular, you request the Registrar to assign three legal advisors to you and to remunerate them at a rate of assigned counsel. You further request the assignment of five additional support staff, namely two case managers, two investigators and one "electronic documentation specialist" with remuneration at the support staff level.

Legal aid v. funding for assistants to a self-represented accused

Your Second Request is entitled "Legal Aid for Self-Represented Accused." As previously explained to you at meetings in the UNDU, the Tribunal's legal aid system, established on the basis of Article 21(4)(d) of the Statute, allows the Registrar to provide counsel free of charge to an accused person who wishes to be represented by counsel but who does not have the means to afford one. As such, the term legal aid (or legal assistance as it is referred to in the Statute), is interpreted as 'assignment of counsel' to indigent accused. This interpretation is consistent with the meaning of the term in national jurisdictions. In addition, the Appeals Chamber has held that "Article 21(4)(d) of the Statute does not support the proposition that an accused who elects to self-represent is nonetheless entitled to legal aid. [...] An accused who chooses to self-represent is not entitled to legal assistance. Hence, he is not entitled to the subsidiary right mentioned in Article 21(4)(d) [of the Statute] to have legal assistance paid for by the Tribunal if indigent."<sup>1</sup> Therefore, an indigent accused who chooses to represent himself in proceedings before the Tribunal is *not* entitled to receive legal aid funds.<sup>2</sup>

However, a self-represented accused is entitled to have adequate facilities to prepare his defence in accordance with Article 21(4)(b) of the Statute. Whilst the term "facilities" in Article 21(4)(b) of the Statute does not encompass legal assistance, the Registry, in seeking to otherwise give effect to this provision, considers it appropriate to provide some funding, outside the Tribunal's legal aid system, for a self-represented accused's associates for their coordination work and legal consultation.

<sup>1</sup> *Prosecutor v. Momčilo Krajišnik*, Decision on Krajišnik Request and on Prosecution Motion, IT-00-39-A, 11 September 2007 ("Krajišnik Decision"), at para. 40.

<sup>2</sup> As the Appeals Chamber put it, "to allow an accused to self-represent and yet to receive full legal aid funding from the Tribunal would, as the saying goes, let him have his cake and eat it too." (*Krajišnik Decision*, at para. 41). In this regard, the Registrar considers the so-called "defence funding" to be a consequence of the assignment of counsel. Such funding usually consists of the remuneration and other entitlements paid to assigned counsel and defence support staff under the Tribunal's legal aid regime.

### Remuneration Scheme:

The assignment and payment of assistants to a self-represented accused are regulated in the *Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused* of 28 September 2007 ("Remuneration Scheme"), a copy of which has been provided to you in English and Serbian languages. According to the Remuneration Scheme, a self-represented accused "may [...] receive some funding for legal associates whom the Registry has authorized to assist him in the preparation of his case."<sup>3</sup> The Remuneration Scheme further stipulates that the Registrar shall provide remuneration for up to four persons who discharge the functions of legal associate, case manager, investigator and language assistant on a self-represented accused's defence team. In exceptional circumstances, a fifth defence team member may be assigned. Any additional assistants the accused wishes to retain are not remunerated by the Registry.<sup>4</sup>

Pertaining to the remuneration rates, in your Second Request you ask that your legal associates be compensated at the same level as counsel working before the Tribunal.

As previously discussed, the Appeals Chamber has held that the remuneration of legal associates to a self-represented accused "should not be comparable to that paid to counsel for a represented accused."<sup>5</sup> Nevertheless, legal associates will be compensated adequately for their "coordinating work and for related legal consultation."<sup>6</sup> Since work typically performed by defence counsel is to be done by the self-represented accused himself, (legal) associates assigned to assist him perform tasks typically carried out by defence support staff. Accordingly, the Remuneration Scheme provides that persons assigned to assist an indigent self-represented accused shall be remunerated at the hourly rates for support staff as set out in Annex I to the Directive on the Assignment of Defence Counsel,<sup>7</sup> a copy of which you have received in Serbian translation upon your arrival at the UNDU.

### Funding and qualification requirements of your defence team

In light of the above, and as you have been informed previously, the Defence Counsel Pre-Trial and Trial Legal Aid Policies of 1 May 2006 do not apply to your case since you are not represented by assigned counsel. Any person assigned by the Registrar to assist you in your capacity as a self-represented accused will be remunerated in accordance with the Remuneration Scheme.

In particular, the Remuneration Scheme provides a maximum allocation of hours to the self-represented accused's defence team depending on the stage of the proceedings. In pre-trial, the Registry allocates a maximum of **3000 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. During trial, the Registry allocates a **maximum of 150 out-of-court preparation hours** for the entire defence team per month for the duration of the trial, **plus all hearing hours for up to two defence team members**, if they are given leave by the Chamber to attend the hearings. Finally, on appeal, the Registry allocates a **maximum of 600 hours for the entire appeal 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.<sup>8</sup> As indicated above, the defence team members assigned by the Registrar will be remunerated at the hourly rates for support staff as set out in Annex I to the Directive.

<sup>3</sup> Remuneration Scheme, para. 1.2.

<sup>4</sup> Remuneration Scheme, para. 3.2.

<sup>5</sup> Krajišnik Decision, at para. 42.

<sup>6</sup> *Ibid.*

<sup>7</sup> Remuneration Scheme, para. 3.4.

<sup>8</sup> Remuneration Scheme, para. 3.3.

As regards the necessary qualification requirements for assistants to a self-represented accused who seeks funding from the Tribunal, the Registry has, in accordance with the Appeals Chamber's findings in the *Krajišnik Decision*,<sup>9</sup> established specific qualification requirements for legal associates, case managers, investigators and language assistants in the Remuneration Scheme. These qualification requirements apply to all defence team members who receive funding from the Tribunal.

In your Second Request you state that you are "prepared to ensure that at least one of the lawyers [you] nominate as legal advisor meets all of the qualifications of Rule 45 [of the Rules of Procedure and Evidence]". Please be informed that the qualification requirements for legal associate(s) are set out in paragraph 5.1. of the Remuneration Scheme. In this respect, I wish to reiterate that qualifications in excess of those required under paragraph 5.1. of the Remuneration Scheme do not warrant higher remuneration.

#### Assignment of your defence team members

I note your intention to retain three legal associates, two case managers, two investigators and one "electronic documentation specialist", amounting to eight envisaged staff members. As explained above, the Registry may assign up to a maximum of five remunerated staff members under the Remuneration Scheme. The Registrar understands your Second Request as a request to increase the number of assistants remunerated by the Tribunal and/or the maximum number of hours available to such assistants. Paragraph 3.5. of the Remuneration Scheme stipulates:

The accused may request the assignment of one additional defence team member and/or an increase of the maximum allotment of hours for the Pre-Trial phase if he can show that the geographical scope of the indictment, the number of exhibits and number of witnesses to be called to testify are substantially greater than the average case heard before the Tribunal.

The Registrar is satisfied that the scope and complexity of your case would warrant an increase in the number of assistants remunerated by the Tribunal and/or the maximum allotment of hours. Therefore, the Registrar will exceptionally consider a request for the assignment of associates surpassing the maximum number of five assigned defence team members upon submission of a reasoned request. In this respect, I draw your attention to paragraphs 3.7. and 3.8. of the Remuneration Scheme which set out the regular entitlements in such cases.

#### a. Assignment of Mr. Peter Robinson as legal associate

I am pleased to inform you that the Registrar has assigned Mr. Robinson as a legal advisor to you as of the date of this decision. Mr. Robinson fulfils the basic qualification requirements for legal associate under paragraph 5.1. of the Remuneration Scheme. In this capacity, Mr. Robinson may perform legal research, consultation, and other relevant legal work on your behalf. He shall also be permitted access to confidential materials and you will be able to have privileged communications with him upon signing the relevant undertakings. In addition, he will be entitled to have certain reasonable travel costs associated with the preparation of your defence reimbursed by the Tribunal in accordance with the Defence Counsel Travel and DSA Policy, which applies *mutatis mutandis* to self-represented accused's assistants.

#### b. Assignment of Mr. Milivoje Ivanišević as investigator

<sup>9</sup> *Krajišnik Decision*, at para. 42.

I am also pleased to inform you that the Registrar has assigned Mr. Milivoje Ivanišević as an investigator to your team as of the date of this decision. The Registrar is satisfied that Mr. Ivanišević fulfils the basic qualification requirements to act as an investigator pursuant to paragraph 5.3. of the Remuneration Scheme. Please be informed that investigators are normally not allowed to have privileged communications with an accused at the UNDU, unless such communications take place in the presence of a recognized legal associate. Furthermore, as per standard policy, investigators are usually not allowed to travel to the seat of the Tribunal at the Tribunal's expense. The Tribunal will nevertheless cover certain reasonable costs associated with investigative trips as per the Defence Counsel Travel and DSA Policy.

Please note that since the Registry has been unable to complete the standard background check on Mr. Ivanišević to date, the Registrar reserves the right to revoke Mr. Ivanišević's assignment and to refuse payment if the outcome of said check shows that he is unsuitable for assignment to a Tribunal-paid defence team.

c. Assignment of Mr. Goran Petronijević as legal associate

You have requested the assignment of Mr. Goran Petronijević as legal associate. As I have informed you previously, the Registry has certain concerns regarding Mr. Petronijević suitability for assignment (and by extension remuneration) by the Registrar in connection with a controversial judgement rendered by him as a judge in Serbia in May 2000. The judgement attracted the attention of the media and various human rights groups before being overturned by the Supreme Court in 2008. As you know, Mr. Petronijević has been denied assignment to a different case in the past on this ground.

The Registry continues to investigate the matter. For your information, we have contacted the Disciplinary Prosecutor of the Belgrade Bar Association and are awaiting answers to certain questions we have asked. These answers may have an impact on the Registrar's decision whether to assign Mr. Petronijević as a legal associate to you. A decision on the assignment of Mr. Petronijević will therefore be taken after the Registrar has obtained the information requested from the Belgrade Bar Association.

**The assigned members of your team are required to contact the Registry for completion of the formalities, such as signing of undertakings, provision of access to the defence IT network and issuance of defence ID cards where necessary.**

I would like to remind you that only self-represented accused who are found to be indigent or partially indigent are entitled to have their assigned assistants remunerated by the Tribunal. As you know, the Registry has not yet completed its inquiry into your financial status. Therefore, the assignments granted in this letter are provisional, pending the outcome of the Registry's inquiry into your means.

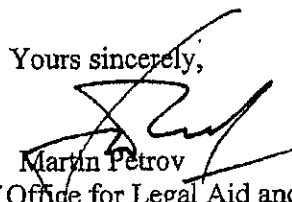
General invoicing guidelines

In order to receive payment under the Remuneration Scheme, assigned defence team members must submit detailed hourly invoices specifying the work performed and the time taken to perform each task, in accordance with Registry guidelines. If the Registry is satisfied that the work performed was reasonable and necessary for the facilitation of your participation in the proceedings, payment will be authorized directly into the respective defence team members' bank accounts. I strongly encourage your assistants to seek further guidance from the Registry on the submission of invoices and general billing requirements.

Finally, I wish to express my regret that after several conversations regarding the various options available to you to organize your defence, you opted for self-representation. It is my strong belief

that your choice to self-represent will limit your ability to mount and present an effective defence considerably, particularly since you are in detention. I therefore wish to take this opportunity to once again urge you to reconsider your decision, rethink the matters that we discussed, and explore, with the help of the Registry and the Trial Chamber if necessary, other options, including the Tribunal's legal aid system.

Yours sincerely,



Martin Petrov  
Head of Office for Legal Aid and  
Detention Matters

TO: Mr. Radovan Karadžić (UNDU)

CC: Mr. Peter Robinson

Dr. Radovan Karadzic

The Honorable Hans Holthuis  
Registrar  
International Criminal Tribunal for  
the former Yugoslavia

Dear Mr. Holthuis,

In a letter dated 16 October 2008, Mr. Martin Petrov, Head of the Office of Legal Aid and Detention, rejected several aspects of my request for assistance in order to adequately defend myself. I wish you to reconsider those matters which directly impact on my right to a fair trial, legal assistance, adequate facilities for my defence, and equality of arms.

#### **Assignment of Goran Petronijevic**

Mr. Petrov has declined to assign Goran Petronijevic as a Legal Advisor to my defence team. He claims that additional time is needed to investigate Mr. Petronijevic's role as a judge in a case in Serbia in May 2000, which he says was overturned in 2008.

I am concerned about this position. Decisions in which Judge Robinson, the presiding Judge of my Trial Chamber, participated in as a judge, such as the modalities of self-representation in the *Milosevic* case, have been overturned by the Appeals Chamber and criticized by human rights groups. Yet no one is suggesting that he is unfit to participate in my case.

In addition, the two prosecutors in my case participated in the *in absentia* Rule 61 proceedings against me in July 1996. No one is suggesting that their participation in that "show trial" renders them unfit to be assigned to prosecute me.

Therefore, the refusal to assign Mr. Petronijevic as one of my Legal Advisors seems like an inappropriate double standard more akin to a victor's court than an impartial institution. Mr. Petronijevic has an impeccable record as a judge and lawyer in Serbia and your "investigation" is both insulting and unnecessary. I request that you assign him immediately.

My defence strategy envisions Mr. Petronijevic in charge of advising me on the factual issues in my case and coordinating the efforts of my defence team. Because I am in detention, I need him to recruit, interview, and select the other members of our defence team and to supervise them. Therefore, our trial preparation cannot even commence until this issue is resolved.

ANNEX "C"

Mr. Hans Holthuis

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### **Level of Compensation for my Defence Team**

Mr. Petrov indicates that all members of my defence team, including those providing me with legal advice, will be compensated at the rate of support staff. I understand that to be a maximum of 25 Euros an hour and 2500 Euros a month.

This decision will not allow me to have adequate facilities for my defence. My case is extremely complex, both factually and legally. I require legal advice from persons with extensive experience in international criminal law and with the procedures at this Tribunal, and with access to legal materials and research tools not available to me. Since I am detained, I need experienced advisors who can have high level contacts with people possessing important information necessary for my defence. I cannot obtain this level of advice when you are only willing to pay someone at the rate a law firm pays its secretaries.

In the *Krajisnik* decision, the Appeals Chamber held that the Registry should "adequately re-emburse the legal associates for their coordination work and for related legal consultation." While the Chamber indicated that this need not be the same rate as a Lead Counsel assigned to represent an accused (97 Euros per hour), it did not limit such compensation to the level of support staff. Given the nature of the legal advice needed to deal with the complex legal issues and high level factual contacts in my particular case, and the level of experience and qualification needed for those tasks, failure to compensate such persons at least at the rate of legal consultant or co-counsel (71 Euros per hour) is in contravention of the *Krajisnik* appeals decision and a violation of my right to legal assistance and adequate facilities for my defence.

In the *Seselj* decision, the Pre-Trial Judge noted that it was "in the interests of the proper administration of justice to succeed in ensuring that the associates of the Accused, who undeniably play a positive role in his defence, may be decently paid for the services they perform."

In a letter to Mr. Petrov, Peter Robinson, my choice as one of my legal advisors, has set forth in detail the exceptional circumstances in my case which require compensation at a level greater than that paid to support staff. I understand that these are fact-specific determinations that you have to make on a case-by-case basis. I urge you to approve a level of compensation to Mr. Robinson sufficient so he will accept the assignment in my case.

The failure to do so will result in denial of a fair trial, legal assistance, equality of arms, and adequate time and facilities for my defence.

Mr. Hans Holthuis

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### **Authorized Personnel and Hours**

In his letter, Mr. Petrov sets forth the provisions of the guidelines which provide for the assignment of up to five team members working a total of 3000 hours in the pre-trial stage. Given the complexity and scope of my case, this is plainly inadequate. However, I note that Mr. Petrov indicated that he was satisfied that my case would warrant an increase in these resources "upon submission of a reasoned request."

I understand that your office is disbursing public funds and that you have a right to see that those funds are being spent wisely and productively before increasing your financial commitment. Therefore, I hope to staff my defence team with qualified and competent people who will do the maximum with the resources you provide, and who will satisfy you of that through adequate invoices and reporting as you require. Nevertheless, by accepting the assignment and remuneration of members of my team, I want to make it clear that I do not accept or agree in any way that only 5 people or 3000 hours is sufficient for me to be prepared for trial and that I will be applying for additional personnel and hours.

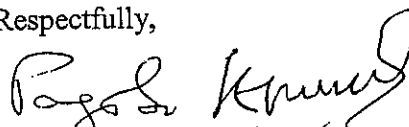
### **Carrot and Stick**

Finally, I take note of Mr. Petrov's disappointment in my choice to represent myself. I appreciate his concern. However, I have decided to represent myself in the pre-trial phase of my case and that decision is final. So please stop using the carrot and stick approach to entice me to take a lawyer. Respect my decision, and provide me with adequate facilities so that my trial can be conducted fairly and honorably, which is what I want.

There is an inverse relationship between adequate time and facilities for the preparation of my defence. The more facilities I have, the shorter the time needed to prepare for the trial. The fewer facilities I have, the longer it will take me to prepare for the trial.

Thank you very much for your understanding and cooperation.

Respectfully,



Dr. Radovan Karadzic

cc: Trial Chamber III

**PETER ROBINSON**  
*International Criminal Law*  
**P.O. Box 1844**  
**Santa Rosa, California 95402**  
**(707) 575-0540**  
**E-mail: [peter@peterrobinson.com](mailto:peter@peterrobinson.com)**

20 October 2008

Mr. Martin Petrov  
Head of Office for  
Legal Aid and Detention Matters  
International Criminal Tribunal  
For the former Yugoslavia  
Churchillplein 1  
2517 JW The Hague  
The Netherlands

*Re: Assignment as Legal Advisor for Radovan Karadzic*

Dear Martin,

I am in receipt of your letter dated 16 October 2008 to Dr. Radovan Karadzic in which, among other things, you informed him that I had been assigned by the Registrar as a legal advisor to him. I am grateful to the Registrar for that assignment.

Dr. Karadzic will be responding to your letter directly concerning the adequacy of the facilities being offered to him. However, I am writing to you concerning your proposal that I be compensated at the level of a case manager or legal assistant, which is 25 Euros per hour.

I understand that the *Remuneration Scheme for Persons Assisting Self-Represented Accused* provides that defence team members assigned to an accused who elects to represent himself shall be remunerated at the hourly rate for support staff. However, the exceptional circumstances of Mr. Karadzic's case justifies that an exception be made to these guidelines.

During the most recent status conference, the Pre-Trial Judge in Mr. Karadzic's case, Judge Iain Bonomy, urged Mr. Karadzic to compose his defence team with at least one lawyer from the common law system, familiar with the jurisprudence of the Tribunal. Mr. Karadzic took that advice and nominated me to be one of his legal advisors.

ANNEX "D"

Mr. Martin Petrov

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As you know from my CV, which Dr. Karadzic submitted to you, I have 30 years experience as a criminal lawyer in the common law system, 10 as a federal prosecutor with the United States Department of Justice. In addition, I have served as co-counsel and legal consultant in cases here at the ICTY continuously since 2001, and have served as lead counsel at the ICTR since 2002. I am accepted on the list of counsel at the International Criminal Court, Special Court for Sierra Leone, and Extraordinary Chambers for Cambodia.

I was selected by the Executive Board of the Association of Defence Counsel of the ICTY to draft the Association's *amicus curiae* brief on joint criminal enterprise in the *Brdjanin* appeal. In that matter, I was compensated at the rate of \$80 per hour—the going rate for co-counsel at that time.

I was appointed by the Registrar in the *Ojdanic* case as legal consultant, initially to deal with matters relating to the Rule 54 *bis* litigation with NATO and its Member States—an issue which was litigated in the Trial Chamber and ultimately the Appeals Chamber. In that matter, I was also compensated at the rate of co-counsel.

As you know better than I, many of my colleagues who have been assigned by the Registrar to provide legal advice to the Appeals or Trial Chambers as *amicus curiae*, or to various defence teams as legal consultants, have been compensated at the rate of counsel, not support staff.

I do not need to tell you that the legal issues involved in Dr. Karadzic's case are the most complex in any case brought before this Tribunal. The proposed amended indictment alleges *four* joint criminal enterprises over a three year period, with an untold number of members. Dr. Karadzic was the subject of intense interest and documentation by the United Nations and its member States, and will require access to that documentation through complicated and contentious Rule 54 *bis* proceedings. On these two issues alone, the Registrar has already determined that the level of expertise needed, whether as *amicus curiae* or legal consultant, justified remuneration at the level of counsel. There is no justification for failing to compensate a person consulting with a self-represented accused on these same issues at the same rate.

These are just two of the highly complex issues presented in Dr. Karadzic's case. There are many more. I wish to call your attention to one issue in particular which requires expertise and experience at a level far greater than support staff—the agreement made with Richard Holbrooke.

This issue is of paramount importance to Dr. Karadzic because, if enforced, it could result in the dismissal of the indictment. It is also of great importance to the jurisprudence of this Tribunal and to international criminal jurisprudence, as it will set the

Mr. Martin Petrov

--page three--

parameters for the peace vs justice paradigm in which the international community seeks to end wars and at the same time do justice.

The issue is a multi-faceted one involving factual investigation into the representations made by Mr. Holbrooke and legal research into the ramifications of those representations.

On the factual side, it will be necessary to interview high level officials of the United States government, as well as governments comprising the Contact Group, who were heavily involved in the negotiations for peace in Bosnia, to determine the existence of this promise, and the authority, actual or apparent, for Mr. Holbrooke to have made it.

Your own *Defence Counsel Travel and DSA policy*, which your letter indicates would apply to Dr. Karadzic's legal advisors, recognizes that persons at the level of counsel need to interview key witnesses. This is particularly true of interviews of high-level officials, such as those who were dealing with Dr. Karadzic and the strategies for removing him from office in 1995 and 1996. I do not imagine these people will be willing to come to the United Nations Detention Unit to be interviewed by Dr. Karadzic in his capacity as self-represented accused.

On the legal side, the issues of attribution of Mr. Holbrooke's promise to the ICTY are novel and complex. Principles of international amnesty law going back to 17<sup>th</sup> century treaties have already been raised by the prosecution and must be researched and addressed. Issues of contract and agency law (actual and apparent authority), liability of states vis a vis the United Nations (attribution issues), and responsibility of those engaging in a common purpose (JCE-type issues) are all potentially applicable to this important motion. Even deciding whether this issue can be raised as a preliminary motion under Rule 72 or a regular motion under Rule 73 is a complicated problem, requiring research of the jurisprudence of the other Tribunals as well as understanding the distinctions made in recent ICTY jurisprudence between original Rule 72 and its amended version.

It is simply not realistic to contend that these interviews and legal work can be adequately performed by a support staff member. To fail to provide competent assistance to Dr. Karadzic at the level of counsel to advise him on these issues would truly be failing to provide him adequate facilities for his defence.

I hope that by providing you with these details demonstrating the exceptional nature of the work required in my proposed role as Legal Advisor in Dr. Karadzic's case, I can convince you to reconsider the rate of compensation for me set forth in your letter to Dr. Karadzic. If budgetary concerns are paramount in your decision, you can reduce the number of hours authorized for me. But given the level of the work required, and my

own level of experience and expertise, I cannot seriously be expected to work at support staff rates.

Finally, I urge you to consider the positive contributions I can make to Dr. Karadzic's case and to the Tribunal. Everyone will benefit if he receives competent legal advice from an experienced person he trusts.

Thank you for your consideration of this request.

Yours truly,

PETER ROBINSON



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Registry

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

Greffé

14 November 2008

Dear Mr. Karadžić,

**Re: Your request for reconsideration**

I write in response to your request of 21 October 2008 and the request of your legal associate, Mr. Peter Robinson, of 20 October 2008 (together "Reconsideration Requests"), seeking reconsideration of the 16 October 2008 decision on the remuneration scheme applicable to your case ("Remuneration Decision"). I understand that, prior to the issuance of the Remuneration Decision, representatives from OLAD have discussed the matter with you, as well as Mr. Robinson, on several occasions.

**Reconsideration Requests**

In your letter to me, you claim that the Remuneration Decision does not provide you with adequate facilities for your defence. You state that your case is extremely complex, both factually and legally. You claim that you require legal assistance by persons with extensive experience in international criminal law, as well as the procedural law, at the Tribunal. You argue that these persons will have to meet with important people at a high political or diplomatic level in order to obtain important information necessary for your defence, which, in your view, requires a high degree of experience and qualification. In sum, you argue that the remuneration of your assistants, as authorized under the Remuneration Decision, would be plainly inadequate and request payment for them at least at the rate of a co-counsel or consultant.

In his letter of 20 October 2008, Mr. Robinson states his qualifications and experience in criminal law, and lists his assignments as counsel and legal consultant before the Tribunal and the ICTR. He refers to the payment rates of stand-by counsel and *amici curiae* assigned in other cases and argues that his professional experience would entitle him to an hourly rate of at least € 71 per hour. In addition, he underlines the exceptional legal and factual complexity of your case. He states that the defence will require the highest level of qualification and expertise amongst your defence team members in order to produce the necessary evidence for imminent complicated and contentious proceedings. Interviews with high level officials have to be conducted, novel and complex legal issues have to be analyzed, and a large volume of evidentiary material has to be assessed. He stresses that these tasks cannot be adequately performed by a support staff member and that failure to provide competent assistance to you would deprive you of adequate facilities for your defence.

The arguments made in the Reconsideration Requests are therefore summarized as follows:

- The factual scope of your case, *i.e.*, the timeframe and the events encompassed by the indictment, and the extensive amount of documents and evidence make this case extraordinarily voluminous.
- With a number of complex and novel legal issues, your case presents an exceptionally high level of legal complexity.
- In view of the magnitude of the case, you require assistance from highly qualified and experienced lawyers and, while your legal associates meet these requirements, they need to be remunerated accordingly.

## Discussion

As a detained self-represented accused, you are entitled to the assignment by the Registrar of persons to assist you in the preparation of your defence if you do not have sufficient means to remunerate them.<sup>1</sup> I note that you have submitted a declaration of means in accordance with Article 7(B) of the Directive on the Assignment of Defence Counsel ("Directive") and have requested the assignment of such assistants. The Registry has opened an inquiry into your means and has so far assigned Mr. Robinson as legal associate and Mr. Ivanišević as investigator on a temporary basis. The assignment of another legal associate is pending. I note that you have indicated that you would be requesting the assignment of additional support staff.

As you are aware, the assignment and remuneration of persons assisting a self-represented accused are governed by the *Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused* of 28 September 2007 ("Remuneration Scheme"). The Remuneration Scheme is consistent with the Appeals Chamber's decision of 11 September 2007 in the *Krajišnik* case<sup>2</sup> and the relevant features of the Tribunal's legal aid policies, taking into account the UN financial rules and regulations. Under the Remuneration Scheme, the Registrar may assign up to four (exceptionally five) support staff to assist an indigent detained self-represented accused. Such support staff, however, do not act as defence counsel for the accused, nor do they need to meet all the qualification requirements for counsel. An accused who chooses to represent himself acts as his own counsel.

I agree with your assertion that your case is exceptionally large in terms of the factual scope of the indictment and the sheer volume of documents that need to be reviewed. I also accept that the case is very complex both from a factual and legal point of view. I note that it is for these reasons that in the Remuneration Decision, the Registry has exceptionally offered to consider a request for the assignment of assistants surpassing the maximum number of five assigned defence team members upon submission of a reasoned request.<sup>3</sup> The rates at which such assistants are paid, however, remain those applicable to defence support staff.

The Appeals Chamber in the *Krajišnik* case has found that, whilst some funding should be made available for legal associates to a self-represented accused, the remuneration of such associates "should not be comparable to that paid to counsel for a represented accused."<sup>4</sup> This is so because an accused who elects to defend himself accepts the burden of mounting his defence without a legally trained counsel and an adequately skilled defence team. The Appeals Chamber has held that where an accused elects to self-represent, he is asserting his ability to conduct his case without legal assistance and thus Tribunal funding for legal aid for him can be presumed unnecessary to the conduct of a fair trial.<sup>5</sup> Especially in light of Article 21(1) of the Statute, the Appeals Chamber has held that as part of the choice of self-representation, the accused must accept the disadvantages this choice may bring.<sup>6</sup> Similarly, the Appeals Chamber in the *Milošević* case held that "[t]here is no doubt that, by choosing to conduct his own defence, the accused deprives himself of resources a

<sup>1</sup> *Prosecutor v. Momčilo Krajišnik*, Decision on Krajišnik Request and on Prosecution Motion, IT-00-39-A, 11 September 2007 ("Krajišnik Second Decision"), para. 42.

<sup>2</sup> *Ibid.*

<sup>3</sup> The Remuneration Scheme stipulates in para. 3.2 that the Registrar shall provide remuneration for up to four persons who discharge the functions of legal associate, case manager, investigator and language assistant in a self-represented accused's defence team. In exceptional circumstances, a fifth defence team member may be assigned. Any additional assistants the accused wishes to retain are not remunerated by the Registry.

<sup>4</sup> *Krajišnik* Decision, para. 42.

<sup>5</sup> *Krajišnik* Second Decision, para. 41.

<sup>6</sup> *Prosecutor v. Momčilo Krajišnik*, Decision on Momčilo Krajišnik's Request to Self-Represent, on Counsel's Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 17 February 2007 ("Krajišnik First Decision"), IT-00-39-A, 11 May 2007, para. 17.

well-equipped legal defence team could have provided.”<sup>7</sup> An accused who “decides to represent himself relinquishes many of the benefits associated with representation by counsel. The legal system’s respect for a defendant’s decision to forgo assistance of counsel must be reciprocated by the acceptance of responsibility for the disadvantages this choice may bring.”<sup>8</sup>

Therefore, the persons assigned by the Registrar to assist a self-represented accused cannot be paid to do the work of defence counsel. That work is performed by the accused himself. Additionally, the Trial Chamber in the Šešelj case has held that it is “unimaginable that associates who draft the written submissions of the accused be paid for carrying out the work of a counsel whereas the Accused has chosen to represent himself.”<sup>9</sup>

The Appeals Chamber has ruled that legal associates to a self-represented accused should be compensated adequately for their “coordinating work and for related legal consultation.”<sup>10</sup> Since work typically performed by defence counsel is to be done by the self-represented accused himself, (legal) associates assigned to assist him are to perform tasks typically carried out by defence support staff (legal assistants, investigators, case managers and interpreters). Therefore, the Remuneration Scheme provides that assistants to an indigent self-represented accused are remunerated at the hourly rates for support staff as set out in Annex I to the Directive.<sup>11</sup>

It is for these reasons that a person whose qualifications or experience exceed those required for assignment under the Remuneration Scheme cannot be granted a higher remuneration rate. I appreciate that Mr. Robinson’s qualifications exceed the qualification requirements for a legal associate to a self-represented accused. I am also aware of the fact that he has been remunerated at a higher hourly rate in other cases where he has acted as counsel or consultant. Unfortunately, neither of these factors justifies a higher remuneration rate for him as a legal associate to a self-represented accused.

Furthermore, I believe that most if not all of the legal and factual issues affecting the complexity of your case referred to in the Requests for Reconsideration can be addressed without affecting the Remuneration Scheme. In previous cases before the Tribunal, Trial Chambers have deemed it in the interests of justice to appoint standby counsel<sup>12</sup> or an *amicus curiae*<sup>13</sup> to make submissions to the Trial Chamber on matters in favour of the defence. Any of these options could be envisaged in your case too without affecting your self-representation.

Finally, I am satisfied that you were informed in detail of the legal framework and the relevant payment policies, including the legal aid policies, prior to your request for Tribunal-paid associates. The Registry has provided you with copies of the relevant documents. You have

<sup>7</sup> *Prosecutor v. Slobodan Milošević*, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, IT-02-54-AR73.6, 20 January 2004, para. 19.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Prosecutor v. Vojislav Šešelj*, Decision on the Financing of the Defence of the Accused, IT-03-67-PT, 30 July 2007, para. 55. The Chamber also found that “[b]y choosing to represent himself, the Accused accepts at a minimum the burden of drafting his submissions, as he has stated that he is qualified to carry out these tasks [...]”.

<sup>10</sup> Krajšnik Second Decision, at para. 42.

<sup>11</sup> Remuneration Scheme, para. 3.4. Please note that most defence legal assistants are fully qualified lawyers, and some have substantial professional experience.

<sup>12</sup> *Prosecutor v. Vojislav Šešelj*, Decision on Prosecution’s Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence, IT-03-67-PT, 9 May 2003, para. 27; *Prosecutor v. Slobodan Milošević*, Decision on the Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel, IT-02-54-AR73.7, November 2004, para. 19.

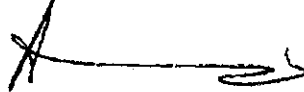
<sup>13</sup> *Prosecutor v. Slobodan Milošević*, Order Inviting Designation of *Amicus Curiae*, IT-02-54-PT, 30 August 2001. See also the Krajšnik First Decision of the Appeals Chamber, paras. 18-21, 25.

therefore made the decision to conduct your own defence in full knowledge of the magnitude and complexity of your case while also being aware of the Remuneration Scheme.

**Conclusion**

In light of the above, I regret to inform you that I am unable to increase the remuneration rates of your assistants. I reiterate, however, that the Registry will be prepared to consider exceptionally assigning up to eight assistants and/or increasing the overall allotment of working hours for such assistance upon a reasoned request.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Hans Holthuis', written over a horizontal line.

Hans Holthuis  
Registrar

TO: Mr. Radovan Karadžić  
UNDU

CC: Mr. Peter Robinson  
Attorney at Law