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D 30783

CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) DATE 01 February 2010

FROM/DE RAM DORAISWAMY, COURT OFFICER

TO/A		
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<input checked="" type="checkbox"/> Vice President/Vice-Président		
0 Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	<input checked="" type="checkbox"/> Self-representing Accused MR. R. KARADŽIĆ (1)
0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes	<input checked="" type="checkbox"/> Legal Advisers MR. G. PETRONIJEVIĆ MR. P. ROBINSON MR. M. SLADOJEVIĆ
0 Trial Chamber II/ Chambre de 1ère instance II		
<input checked="" type="checkbox"/> Trial Chamber III/ Chambre de 1ère instance III		<input checked="" type="checkbox"/> Court Appointed Counsel MR. R. HARVEY
0 Embassy/Ambassade		
<input checked="" type="checkbox"/> Pro Se Legal Liaison Officer/Juriste chargé de la liaison avec l'accusé MS. J. GUDURIĆ		
0 Other/Autre		
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/Greffier/Greffier adjoint MS. T. MAIKOWSKI / MS. S. FOFANA	0 VWS Coordinator/Coordinateur de la SVT	
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe MS. Y. FEATHERSTONE / MS. L. DAVIDSON	0 UNDU Commanding Officer/Commandant du QPNU	
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0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ____/____/____
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0 Decision of the Registrar on/Décision du Greffier le ____/____/____
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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Date: 1 February 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REPLY BRIEF:
REQUEST FOR REVIEW OF OLAD DECISION
ON TRIAL PHASE REMUNERATION

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan filed his *Request for Review of OLAD Decision on Trial Phase Remuneration* on 14 January 2010. On 28 January 2010, the Registrar filed a submission opposing the *Request*.¹ Dr. Karadzic now replies.²

Procedural Issue

2. The Registrar claims that Dr. Karadzic violated the provisions of Article 31(C) by filing his request directly with the President.³ However, Dr. Karadzic indeed filed the request “with the Registrar, pursuant to Article 31(C) of the *Directive on Assignment of Counsel*.” He “requested that the Registrar refer the matter to the President for his determination.” He also simultaneously filed the request with the President because time was of the essence.⁴

3. There was no violation.

4. Indeed, in light of the imminent trial date, Dr. Karadzic filed his request the next business day after the Impugned Decision. He has filed this reply the next business day after receiving the Registrar’s submission. The Registrar never referred the matter to the President as required by Article 31(C) and took a full 14 days to make his submission. If anyone is in violation of Article 31(C), and is delaying these proceedings, it is the Registrar.

Trial Phase Remuneration

5. The Registrar’s decision was unreasonable. In his Submission, he has not explained how it is possible for an accused to adequately defend himself at this Tribunal with the assistance of one team member.

6. Who will retrieve the disclosure from the Electronic Disclosure Suite, e-court, and the almost 190 CD Roms disclosed to the defence so that Dr. Karadzic can review the prosecution’s own material for each witness it will call?

7. Who will search the 1.3 million documents of disclosure, as well as the defence’s own documents, to find the exhibits that Dr. Karadzic can use with the

¹ *Registrar’s Submission Pursuant to Rule 33(B) Regarding Radovan Karadzic’s Request for Review of OLAD Decision on Trial Phase Remuneration*.

² *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Krajisnik Request and on Prosecution Motion* (11 September 2007) at para. 24

³ *Registrar’s Submission* at para. 34

⁴ *Request for Review* at para. 1

prosecution's witness during his cross examination, request translation when necessary, and upload the document onto the E-court system?

8. Who will review, search, and organize the new disclosure which inevitably is made during the course of a trial?

9. These are the duties of a case manager. The Registrar's remuneration scheme provides no funding for a case manager to assist Dr. Karadzic at trial.

10. When Dr. Karadzic sees that there are witnesses who are likely to have relevant information that might contradict what a prosecution witness will testify to, or that there are documents in the field which can contradict the witness, who will go and interview such persons and find such documents?

11. When new information surfaces during the testimony of a witness or production of a new exhibit, as it inevitably does during a trial, who will investigate this new information?

12. These are the duties of an investigator. The Registrar's remuneration scheme provides no funding for an investigator to assist Dr. Karadzic at trial.

13. The most that Dr. Karadzic will be able to do with the one full time team member allocated to him is to meet the requirements of the Trial Chamber by making timely filings of pleadings and protecting his rights by having someone advising him on legal issues and making legal submissions where necessary.

14. The Registrar concedes that Dr. Karadzic's case is among the most complex. He has granted Level 3 status to this case when remunerating the standby counsel. If standby counsel is imposed, that counsel will be remunerated for at least five full-time support staff deemed necessary to assist him in the defence of this case. If five support staff are necessary for a counsel to adequately defend Dr. Karadzic, at least that amount is necessary for Dr. Karadzic to adequately defend himself.

15. The fatal flaw in the Registrar's position is that it labels such assistance as "legal aid" and then posits that a self-represented accused is not entitled to legal aid.⁵ If the assistance was labeled "adequate facilities", it would be applicable to all accused. The bottom line is that self-representation is a **right**, and a right must be one which can be exercised. Requiring a self-represented accused in a Level 3 case to go to trial assisted

⁵ *Registrar's Submission* at paras. 43,49

by only one team member eviscerates the right to self-representation and makes it a right impossible to exercise at this Tribunal. A trial under those conditions would be *prima facie* unfair.

16. Because the Registrar's view of the legal aid/self representation scheme was flawed, his decision not to allocate more than 150 hours per month plus hearing hours was unreasonable. Since he based his decision for remuneration during the adjournment on that same formula, his decision to allocate 250 hours per month during the adjournment period was likewise flawed.

17. In his submission, the Registrar has completely ignored the circumstances that 300,000 pages of new disclosure arrived after the trial has commenced and more is arriving every day. That is extraordinary—and there is no one to review it under the Registrar's remuneration scheme.

18. The Registrar has completely ignored that prosecution motions have been filed seeking judicial notice of 300 documents, some 300 adjudicated facts, admission of 700 documents from the bar table, and the addition of 300 exhibits to the Rule 65 ter list. All of these motions have to be responded to during the adjournment period. That is extraordinary—and there is no one to retrieve these documents under the Registrar's remuneration scheme.

19. The Registrar has completely ignored that there are over 200 Rule 92 *bis* witnesses to be interviewed and likely to be over 2000 adjudicated facts to be rebutted in this case. That is extraordinary—and there is no one to interview these witnesses or to investigate these facts.

20. The Registrar has completely ignored that in a prosecution case of this magnitude, the defence will have to identify, interview, obtain documents from, and create 65 ter summaries for, a huge number of witnesses for the defence case. That is extraordinary—and there is no one to do this job.

21. The Registrar points out that Dr. Karadzic has not yet exhausted his allocation for experts. There are 26 prosecution experts to be challenged. That is extraordinary—and there is no one to collect and retrieve the information to send to the defence experts for them to do their work.

22. For the Registrar to say that there are no extraordinary circumstances in this case to distinguish it from a contempt case, or a single incident case such as *Lukic & Lukic*, where a self represented accused would be entitled to remuneration of 150 hours per month for his team is more than unreasonable—it is ludicrous.

23. For all of these reasons, the decision of the Registrar to limit remuneration to 150 hours plus hearing hours during the trial and 250 hours during the adjournment should be reversed.

Remuneration of Legal Advisor

24. The Registrar never squarely answered the issue presented by Dr. Karadzic in his appeal. His position is clear—the Appeals Chamber has said that the Registrar must “adequately reimburse” legal associates for a self-represented accused.⁶ Because, during the trial phase, Dr. Karadzic’s Legal Advisor, Peter Robinson, has been explicitly granted right of audience by the Trial Chamber to make submissions on legal issues during the course of the trial, to remunerate him as support staff does not “adequately reimburse” him for his work.

25. An accused does not have to relinquish his right to self-representation for the Registrar to be required to “adequately reimburse” a member of his defence team.

26. The Registrar continues to insist that anyone assisting a self-represented accused, no matter in what capacity, be paid at support staff rates. This is unreasonable, and violates the Appeals Chamber’s holding that those assisting self-represented accused should be adequately compensated.

27. The President is respectfully requested to reverse the decision of OLAD and order it to remunerate Dr. Karadzic’s Legal Advisor at E72 per hour during the trial.

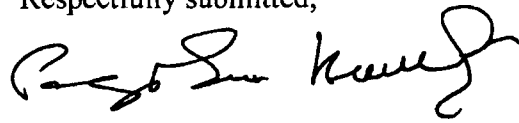
Conclusion

28. This appeal goes to the very heart of the right of self-representation and the right to a fair trial. The decision of the President will determine the future course of this case and the future legacy of this Tribunal. Dr. Karadzic calls upon the wisdom of the President to chart a course which will allow him to have a fair trial.

⁶ *Prosecutor v Krajisnik*, IT-00-39-A, *Decision on Krajisnik Request and Prosecution Motion*, 11 September 2007, para. 42

Word count: 1501

Respectfully submitted,

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

Radovan Karadzic