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ICTY DEFENCE COUNSEL – APPEALS LEGAL AID POLICY

The Appeals Legal Aid Policy for the International Criminal Tribunal of the former Yugoslavia (“Policy” and “Tribunal”, respectively) sets forth the provisions governing remuneration of Defence Counsel assigned by the Registry during the appeal stage of proceedings, pursuant to a system based on a maximum lump sum allotment of hours.

The purpose of this lump sum scheme is to administer the legal aid system efficiently at the appeal stage by providing the Lead Counsel with flexibility in managing resources within the maximum allotments.

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I. Definitions

“Appeal Phase”, for the purposes of this Policy, shall mean that stage of the proceedings which commences after the filing of a Notice (by either party) and which ends one day following the delivery of the appeal judgement. It includes the briefing period and the appeal hearing.

“Appeal Stage”, for the purposes of this Policy, shall encompass both the preparation and filing of the Notice, as well as the Appeal phase.

“Appellant” shall mean any person against whom Judgment has been entered against by a Trial Chamber pursuant to Rule 98*ter* of the Rules, which Judgment is the subject of a notice of appeal filed by either the Defence or the Office of the Prosecutor.

“Counsel” shall mean a person assigned pursuant to Rules 44, 45 or 45*ter* of the Rules.

“Directive” shall mean the Directive on the Assignment of Defence Counsel.

“OLAD” shall mean the Office for Legal Aid and Defence Matters.

“Notice” shall mean the notice of appeal filed by a party pursuant to Rule 108 of the Rules.

“Policy” shall mean this Appeals Legal Aid Policy.

“Rules” shall mean the Rules of Procedure and Evidence.

II. Introduction

- 1) To the extent that matters are not addressed within this Policy, the Directive on the Assignment of Defence Counsel and other applicable Registry policies, including the Defence Travel and Daily Subsistence Allowance Policy and the Registry Guidelines on Submission of Invoices shall apply as appropriate.
- 2) All payments made pursuant to this Policy are subject to prior authorisation by the Registrar in accordance with Article 23(A) of the Directive. The Policy is based on a lump sum allotment of maximum working hours that can be used throughout the duration of the Appeal Stage.
- 3) Lead Counsel is responsible for the efficient management of the resources allocated to the Defence team to ensure that sufficient funds are available to cover work being performed and work anticipated during the entire length of the Appeal Stage.

III. Remuneration of Defence Counsel during Appeal Stage

A. Overview

- 4) The Appeal Stage is divided into two remunerable parts: (i) all work related to the preparation and filing of the Notice of Appeal, and (ii) all work related to the Appeal Phase, which encompasses the balance of the appeal, including the briefing period and the appeal hearing.
- 5) The hourly allotments are as follows:

Appeal Legal Aid Maximum Allotments

Notice of Appeal*		Appeal Phase			All phases
Counsel hours (Lead Counsel and Co-Counsel)	Support staff hours	Complexity Level	Counsel hours (Lead Counsel and Co-Counsel)	Support staff hours	Allotment for strictly client/counsel related interpretation and translation pursuant to Article 21 IV (b) of the Statute
300 hours total	300 hours total	Level 1	1050 hours total, plus all hearing hours	450 hours total	(€1,109 max. per month) ¹
300 hours total	300 hours total	Level 2	1400 hours, plus all hearing hours	600 hours total	(€1,109 max. per month)
300 hours total	300 hours total	Level 3	2100 hours, plus all hearing hours	900 hours total	(€1,109 max. per month)

¹ To be adjusted with reference to the mechanism set forth in Annex I of the Directive.

B. Notice of Appeal

- 6) A maximum of 300 counsel hours and 300 support staff hours shall be allotted for the preparation and filing of a Notice of Appeal, thus eliminating the need for Counsel to devote time and resources to the preparation of a submission regarding the complexity of the appeal during this period.
- 7) In the absence of the filing of a Notice of Appeal by either Counsel or Prosecution, a maximum of 50 counsel hours shall be allotted, to cover work such as reviewing the judgement to analyse possible grounds of appeal or cross-appeal, and consulting with and advising the accused.

C. Complexity Level Determination and Appeal Phase

- 8) The maximum lump sum allotment of hours allocated during the Appeal Phase is based on the assessed complexity of the Appeal: Level 1 (difficult), Level 2 (very difficult), or Level 3 (extremely difficult/leadership). The ranking reflects the complexity of the legal and factual issues raised during the Appeal Phase rather than the complexity of the underlying case.
- 9) At the outset of the Appeal Phase, Lead Counsel shall submit to the Registrar a reasoned written submission on the complexity level of the appeal.
- 10) At the request of Lead Counsel, the Registrar will promptly, and no later than two weeks after the request, invite representatives of the Defence, representatives of the Appeals Chamber seised of the case and representatives of the Prosecution to a meeting with the Registry to discuss the complexity of the appeal.
- 11) After review of the complexity submission, and following written consultation with representatives of the Appeals Chamber seised of the case (and consultation with the parties present at any meeting held pursuant to paragraph 10, *supra*), the Registrar will determine the complexity level of the appeal, taking into account several factors, including:
 - a. the number and nature of the grounds of appeal;
 - b. whether there is a cross-appeal;
 - c. whether the appeal raises any novel legal issues that have not been addressed by the Tribunal's jurisprudence;
 - d. the length of the Trial Judgement;
 - e. the complexity of the legal and factual issues involved in the appeal;
 - f. the number of documents, and in particular new documents, that have to be reviewed; and
 - g. the sentence imposed by the Trial Chamber.
- 12) Pending the complexity determination pursuant to paragraph 11, *supra*, the Registrar shall rank each case provisionally at Level 1 (difficult) to ensure the continuous funding of the appeal.

D. Request for an Upgrade of the Complexity Level Determination

- 13) With respect to an appeal that has been ranked at complexity level 1 or complexity level 2, Lead Counsel may submit a reasoned request in writing for an upgrade of the complexity level during the course of the Appeal Phase, if he or she is of the view that a significant change in the criteria set forth in paragraph 11, *supra* warrants such an upgrade. Such requests will be determined on a case-by-case basis. The Registrar shall consult with the Appeals Chamber seized of the case for its input.

IV. Adjustment of allotment

A. Request for Additional Hours

- 14) If, during the Appeal Phase, Lead Counsel demonstrates the occurrence of unforeseeable circumstances beyond the control of the Defence which substantially impact the preparation reasonably required, the Registrar may allocate additional hours, while maintaining the complexity ranking of the case.
- 15) In deciding upon a request for additional hours, the Registrar may consult with the Appeals Chamber and also give consideration to the efficient use of resources by the Defence throughout the duration of the Appeal Phase.
- 16) Any additional allocation of hours must be requested and approved prior to work being performed. If authorisation was not obtained before the work was performed, the Registrar may refuse to approve payment in whole or in part.² The exhaustion of resources, without more, shall not constitute a basis for a request for additional hours.

B. *Proprio Motu* Adjustment

- 17) In certain circumstances, after consulting with the Appeals Chamber, the Registrar may consider *proprio motu* whether it is necessary to adjust the allocation of hours to Counsel. In such circumstances, the Registrar shall consult with Counsel for their views prior to finalising this decision.

V. Invoicing and Rates

- 18) The applicable hourly rates for Counsel and support staff are set out in Annex I of the Directive.³ Hours allocated to Legal Consultants at “counsel” or “expert” rates will be billed against the “counsel hours” allocation.
- 19) The remuneration provided for herein shall be invoiced in accordance with the Guidelines on the Submission of Invoices and the activities which may be Remunerated (“Invoicing Guidelines”).

² An exception can be made in exigent circumstances where forgoing work pending additional allocation would negatively impact the preparation of the Defence.

³ Fixed gross hourly rates for Counsel include general office costs.

- 20) In particular, Defence teams are required to submit detailed monthly invoices including a description of work performed to the Registry. Invoices must be accompanied by a completed Cover Sheet for Statement of Fees. The cover sheet must be signed by the Defence team member submitting the invoice and by Lead Counsel.
- 21) In accordance with Article 23 of the Directive, only the costs of legal representation necessarily and reasonably incurred shall be authorised by the Registrar, and invoices for authorised resources must be submitted to OLAD within 120 days from the last day of the month during which work was performed. Invoices submitted after the deadline will not be processed for reimbursement absent a show of good cause.
- 22) In accordance with the Invoicing Guidelines, tasks that are typically performed by support staff (*e.g.* review of disclosed material, legal research or clerical activities) may be remunerated at the support staff rate, even if performed by Counsel.

VI. Other Resources

A. Support Staff

- 23) Support Staff assignments shall be determined pursuant to the Directive.

B. Travel

- 24) Travel shall be undertaken pursuant to the Defence Travel and DSA Policy.

C. Translation

- 25) Costs for strictly client/counsel communication pursuant to Article 21 IV (b) of the Statute are billable up to €1,109.00⁴ per month for all three complexity levels. Any amounts billed over and above this maximum allotment may be deducted from the hours allotted for support staff.

VII. Settlement of Disputes

- 26) Disputes arising from the application of this Policy shall be settled in accordance with Article 31 of the Directive.

⁴ To be adjusted with reference to the mechanism set forth in Annex I of the Directive.