

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 Christoph Flugge
Judge Michele Picard

Registrar: Mr. Hans Holthuis

Date Filed: 16 December 2008

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR LEAVE TO REPLY:
ADEQUATE FACILITIES AND
EQUALITY OF ARMS

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 leave to reply to the *Registrar's Submission Pursuant to Rule 33(B) Regarding Radovan Karadzic's Motion for Adequate Facilities and Equality of Arms* (2 December 2008). The submission was served on him in Serbian on 10 December 2008.

2. Dr. Karadzic contends that a reply is needed to clarify the Registrar's role in these proceedings and to focus the issues raised by the submissions of the Registrar, should they be considered.

Motion to Strike Registrar's Submission

3. Dr. Karadzic contends that the Registrar cannot be both an administrative decision maker and an advocate at the same time. The Registrar characterizes these proceedings as judicial review of an administrative decision.¹ In such cases, it is unheard of in administrative law for the administrator whose decision is under review to defend his decision before the reviewing body. The administrator is not a party to the lower proceedings, he is the decision-maker, and like any decision-maker he must, on appeal, stand back and have his decision reviewed.

4. Rule 33(B) provides:

The Registrar, in the execution of his or her functions, may make oral and written representations to the President or Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

5. This Rule, which allows the Registrar to comment on issues which arise in specific cases, does not entitle the Registrar to skew the process of review of administrative decisions by advocating in favor of its decision, and injecting new arguments in support of its decision.²

6. The submission of the Registrar creates a procedural unfairness to the accused, who must not only contend with the prosecution, but is faced with a second party-opponent—the Registrar. The Registrar legitimately may make decisions affecting the rights of an accused under the Statute, but, when such decisions are challenged, must refrain from a partisan role in the case.

¹ *Submission* at p. 12

² See, for example, *Submission* at para. 39

7. Therefore, Dr. Karadzic respectfully requests that the Registrar's response be stricken and not considered by the Trial Chamber.

Legal Consultation and Adequate Facilities

8. The issue before the Trial Chamber is a narrow one: Does the right of an accused to adequate facilities for his defence at this Tribunal include "legal consultation"?

9. Dr. Karadzic contends that the Appeals Chamber has already answered this question in the affirmative when it held in the *Krajisnik* case that the Registrar "should adequately reimburse the legal associates for their coordinating work and for related legal consultation."³

10. The Registrar concedes that under its' funding scheme, a self-represented accused is entitled to a defence team "similar to that of an accused represented by counsel."⁴ It also concedes that an accused represented by counsel is provided with a legal consultant, in addition to a lead counsel and co-counsel.⁵ And it concedes that those legal consultants are paid at the rate of co-counsel, not support staff.⁶

11. Thus the Registrar remunerates legal consultants to a represented accused at 71 Euros per hour and remunerates those providing the same work to a self-represented accused at 25 Euros per hour. There is no justification for this disparity.

12. The Registrar claims that legal consultants, whilst paid at the co-counsel rate, have their hours allocated to the total allotment for counsel and co-counsel, thereby not increasing the overall cost of the defence.⁷ However, the same can be accomplished in the case of a self-represented accused, where an overall allotment of hours and funding is established. In fact, Dr. Karadzic's legal advisor specifically suggested that the number of hours could be reduced if he was paid at the higher rate, thus not resulting in any additional cost to the Tribunal.⁸

13. The Registrar also fails to justify why it pays lawyers at the rate of counsel to provide legal consultation to the Trial Chamber on the rights of the accused (*amicus*

³ *Prosecutor v Krajisnik*, No. IT-00-39-A, *Decision on Krajisnik Request and on Prosecution Motion* (11 September 2007) at para. 42

⁴ *Submission* at para. 21

⁵ *Submission* at para. 31

⁶ *Submission* at para. 31

⁷ *Submission* at para. 31

⁸ See Annex "D" to *Motion* at pg. 3, last paragraph

curiae), yet it refuses to pay lawyers at the rate of legal consultants to provide legal consultation to the accused himself.

14. In addition, the Registrar has misinterpreted the *Seselj* decision but selecting the parts it likes and disregarding the parts it doesn't. It relies on paragraph 55 of that decision where the Trial Chamber said 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,"⁹ and that "by 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"¹⁰ However, it omits the remainder of that paragraph:

"However, the pre-trial Judge agrees in part with the position of the Registry which considers it 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. By 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, **considering his qualifications and title of professor of law. While the pre-trial Judge does not doubt the abilities of the Accused, he finds nevertheless that the recent written submissions drafted by the assistants of the Accused are more concise, better argued and reasoned than those previously filed. 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.**"¹¹ (emphasis added)

15. There are three important principles from the *Seselj* decision that the Registrar ignores.

16. First, *Seselj* was a professor of law and qualified to draft his own submissions. Dr. Karadzic has no such qualifications.

17. Second, legal associates may legitimately draft submissions for an accused, even one who is a professor of law.

⁹ *Submission* at para. 27

¹⁰ *Submission* at paras. 24

¹¹ *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at para. 55

18. And third, when they do draft the submissions, the legal associates are to be paid decently for those services.

19. Therefore, the *Seselj* decision does not stand for the proposition that persons providing legal consultation to a self-represented accused should only be paid at the level of support staff.

20. Interestingly, the Trial Chamber in *Seselj* found it reasonable for the Registrar to require that at least one legal associate meet the qualifications of counsel under Rule 45.¹² The fact that, for its own reasons, the Registrar chose to eliminate this requirement when drafting its remuneration scheme, does not justify refusing to “decently pay” a lawyer who does meet those qualifications and who is providing the same kind of services as a legal consultant to a represented accused.

21. Therefore, the Registrar has misinterpreted both the *Krajisnik* and *Seselj* decisions in refusing to remunerate a legal consultant to a self-represented accused at the same rate as a legal consultant to an accused represented by counsel.

22. The Appeals Chamber has never held that an accused who decides to represent himself under Article 21(4)(d) of the Statute gives up his right to adequate facilities for his defence under Article 21(4)(b). Those adequate facilities at this Tribunal include providing legal consultation to a defence team in which an accused is represented by counsel. The Registrar has provided no justification for denying the same facilities to an accused who represents himself.

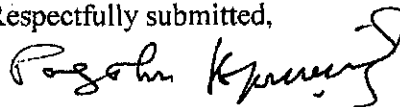
23. Because the Registrar has misapplied the controlling jurisprudence and unreasonably denied the accused adequate facilities for his defence, the Trial Chamber should order the Registrar to allow the accused to have the services of a legal consultant and to remunerate him accordingly.

24. Dr. Karadzic emphasizes that he is seeking professional assistance so that he can enhance, rather than obstruct, the proceedings. This approach to self-representation ought to be encouraged over confrontational approaches of self-represented accused which have succeeded in the past. The higher the quality of the facilities provided to a self-represented accused, the higher the quality of the trial.

¹² *Prosecutor v Seselj*, No. IT-03-67-PT, *Decision on the Financing of the Defence of the Accused* (30 July 2007) at paras 60-61

Word count: 1424

Respectfully submitted,

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

Dr. Radovan Karadzic