

IT-95-5/18-PT 13598
D 13598- D 13566 PK
24 MARCH 2009

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

Acting Registrar: Mr. John Hocking

Date: 23 March 2009

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

Public

REQUEST FOR JUDICIAL REVIEW OF THE REGISTRY DECISION ON THE ASSIGNMENT
OF MR. MARKO SLADOJEVIĆ AS LEGAL ASSOCIATE

The Office of the Prosecutor:

Mr. Alan Tieger

Mr. Mark Harmon

Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

1. Dr. Radovan Karadžić respectfully moves the Trial Chamber for an order directing the Registrar to assign Mr. Marko Sladojević as his legal associate.

I INTRODUCTION

2. On 14 January 2009, Dr Karadžić sent a request to the Registry for the assignment of Mr. Sladojević as a legal associate in his defence team [hereinafter: "Request for assignment"]. Mr. Sladojević was at the time also assigned as a legal associate in the defence team of Mr. Momčilo Krajišnik. On the same date Mr. Krajišnik wrote to the Registry consenting to Mr. Sladojević's dual assignment.
3. In its letter of 4 February 2009 ["Decision on assignment"], the Registry denied Dr. Karadžić's Request stating that Mr. Sladojević had been privy to confidential information in Mr. Momčilo Krajišnik's case, and that the possibility that he could inadvertently disclose such information to Dr. Karadžić could not be excluded [Annex A].
4. On 6 February 2009, Dr. Karadžić filed a request for reconsideration of the Decision on assignment [Annex B] with the Acting Registrar, setting out the grounds on which the Registry should reverse its original Decision as follows:
 - a. Mr. Marko Sladojević is supposed to play an indispensable role in the defence team
 - b. Appointment of Mr. Marko Sladojević will enhance the equality of arms balance
 - c. Mr. Marko Sladojević has no record of unprofessional behaviour and is a member of support staff
 - d. It is a matter of professionalism rather than conflicting loyalties
 - e. Appointment of Mr. Marko Sladojević will enhance the efficiency of pre-trial preparation
 - f. Appointment of Mr. Marko Sladojević will enhance efficient management of public funds
5. On 3 March 2009, the Acting Registrar reiterated the concern already stated in the original Decision on assignment, namely that there may be confidential information in the Krajišnik case of which Mr. Sladojević may be aware, that may be advantageous to Dr. Karadžić and harmful to Mr. Krajišnik if Dr. Karadžić were aware of this information, and consequently

denied the Request for reconsideration [Annex C]. However, the Acting Registrar did not address some of the issues at all and/or only partially addressed other grounds set out in the Request for reconsideration

6. The Registrar's decision has had a devastating effect on the preparation of the defence. Dr. Karadžić is building his team step by step, with each component being a necessary part of the whole. He has been unable to fill the remaining positions on his defence team until he has secured a person who can fill the vital role of working with him, face-to-face, in The Hague on a daily basis and reviewing and organizing the disclosure and other materials into a trial-ready state. Therefore, he requests the Trial Chamber to favorably review this request on an urgent basis.

II LAW

7. Dr. Karadžić respectfully submits that it is the primary, if not exclusive, responsibility of the Chamber to ensure proper administration of justice and to safeguard the rights of the accused as set forth in Articles 20(1), 21(2) and 21(4) of the statute.¹ Pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal ("Rules") a Judge or a Trial Chamber may at the request of either party of *proprio motu* issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or of the *preparation or conduct of the trial*. [Emphasis added]
8. Furthermore, the obligation vested in the Trial Chamber to ensure the proper administration of justice cumulatively entails that any steps which the Trial Chamber takes are discretionary and in its overarching interest and commitment to ensuring that in the case of the accused, justice is not only done but justice is seen to be done, including by the accused himself.²

¹ *Prosecutor v. Hadžihasanović, Alagić, and Kubura*, Case No. IT-01-47-PT, Decision on Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, 26 March 2002, para 24

² *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003, para. 112

9. Pursuant to Article 21(4) of the statute the accused is entitled to the following minimum guarantees, in full equality: [...] (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; and (c) to be tried without undue delay.
10. Dr. Karadžić respectfully submits that it is the Trial Chamber, not the Registry that is in the best position to determine which factors pose a risk to the expeditious conduct of the proceedings.³ In addition, the proper administration of justice also demands that the Trial Chamber guarantee the fairness of trial and pursuant to Article 20 to ensure that the proceedings are conducted in a fair *and* expeditious manner.
11. Therefore, bearing in mind the above mentioned, Dr. Karadžić seeks that the Trial Chamber quash the Registry Decision because a) it has failed to comply with the requirements of the relevant legal authorities, b) it has failed to take into account relevant material, and c) it has reached a conclusion that is unreasonable.⁴

III DISCUSSION

A. Registry failed to comply with the requirements of the relevant legal authorities

12. In its “Decision on Accused motion for adequate facilities and equality of arms: Legal Associates”⁵, the Trial Chamber interpreted the *Krajišnik* Appeal Decision⁶ as a clear statement that it is not for the Registry to fund the provision to a self-represented accused of expensive legal advice. In addition, on 14 November 2008, the Registrar denied the request to reconsider the Remuneration decision in which Dr. Karadžić requested that his legal associates be paid at higher rates than the rates authorised by the Registry. While agreeing that “the case

³ Decision on third request for review of the Registry decision on the assignment of Co-Counsel for Radivoje Miletic. 20 february 2007, p. 4

⁴ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Zigic, 7 February 2003, para 13

⁵ 28 January 2009, para 30-31

⁶ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and Prosecution Motion, 11 September 2007

is very complex from a factual and legal point of view”, the Registrar refused this request asserting that the Accused’s needs could be met by the provision of additional support staff.⁷

13. Complying with this position, Dr. Karadžić requested the Registry to appoint Mr. Sladojević as additional support staff as suggested by the Registry whose legal advice would not be expensive as suggested by the Trial Chamber. The Registry unreasonably denied the appointment in breach of both the relevant legal authorities and its own advice to Dr. Karadžić to appoint additional support staff. Furthermore, the Registry frustrated the efforts made by Dr. Karadžić as encouraged by the Trial Chamber “to engage urgently in further discussion to ensure that the support can be provided is made available as soon as possible”.⁸

B. Registry failed to take into account relevant material

14. The Acting Registrar received letters from Dr. Karadžić, Mr. Krajišnik and Mr. Sladojević, which provided necessary information and arguments for Mr. Sladojević’s appointment as legal associate [Annexes B, D and E]. In his decision on reconsideration of Decision on assignment [“Decision on reconsideration”], the Acting Registrar merely reiterated what had already been stated in the first Decision on assignment, namely that there may be confidential information in the Krajišnik case of which Mr. Sladojević may be aware, that may be advantageous to Dr. Karadžić and harmful to Mr. Krajišnik if Dr. Karadžić were aware of this information. However, the Acting Registrar did not address and/or take into account other relevant information provided by Dr. Karadžić, and Messr. Krajišnik and Sladojević:

B.1. Professionalism rather than conflicting loyalties

15. Contrary to the conclusions stated in the Decision on assignment and the Decision on reconsideration, there are no conflicting loyalties in case of Mr. Sladojević. Mr. Krajišnik’s rights are not prejudiced by Mr. Sladojević’s appointment to Dr. Karadžić’s team. On 17

⁷ See for example “Decision on Accused motion for adequate facilities and equality of arms: Legal Associates”, 28 January 2009, at para. 4

⁸ *Idem*, para. 37

March 2009, the Appeals Chamber delivered its final judgment in Mr. Krajišnik's case rendering the possibility of Mr. Krajišnik's rights not being fully protected non-existent.

16. Furthermore, Mr. Krajišnik encouraged Mr. Sladojević to join Dr. Karadžić's defence team, another indication that Mr. Sladojević is a responsible professional who will approach any potential conflict of interest issue with great care.⁹

B.2. Tasks to be performed by Mr. Sladojević

17. In his Decision on reconsideration, the Acting Registrar erroneously assumed that "given the number of people assisting you in the preparation of your case, this delay should not have affected your ability to prepare your case". Dr. Karadžić respectfully submits that this assumption is wrong because, save for two legal associates and an investigator, the number of people assisting him is limited and on a *pro bono* basis. These persons deal only with academic/theoretical issues whereas Mr. Sladojević is the only person that is supposed to help Dr. Karadžić prepare for trial *factually*. By way of analogy, a football team cannot consist of defenders only – it must have a goal keeper, defenders, middle fielders and strikers; Dr.

⁹ Mr. Krajišnik wrote to the Acting Registrar explaining that

"Mr. Sladojević has twice joined my Defence team. Both times he was assigned to my defence team as a member coming from another defence team, where he may have been privy to confidential information. I understand that in his previous capacities Mr. Sladojević accompanied Counsel during visits to General Gvero acting as an interpreter and legal assistant. I also recall Mr. Sladojević having meetings with my trial Counsel and myself at the UNDU throughout his original assignment in my team as legal assistant and interpreter coming from Mr. Slobodan Milošević's defence team. I can confirm that there was not a single example of Mr. Sladojević acting in any unprofessional way, whereby there was even a possibility of him inadvertently disclosing confidential information to me, which he had been privy to during his assignments in Mr. Milošević's and General Gvero's defence teams.

Throughout his assignment as my legal associate, Mr. Sladojević always acted professionally and with great care with respect to the rights of his previous clients. I can confidently state that he would continue to act professionally and with great care were he to become Mr. Karadžić's legal associate. I have absolutely no reason to believe that Mr. Sladojević could inadvertently disclose any information to Mr. Karadžić that would be adverse to my rights.

If anything, I would sincerely encourage the OLAD and Mr. Karadžić to appoint Mr. Sladojević as Mr. Karadžić's legal associate because I believe that he would protect his rights as vigorously as he protected mine."

Karadžić needs to have a variety of suitable team members that will cover all aspects of his trial.¹⁰

18. The declarations provided by Messrs. Krajišnik and Sladojević did not form part of the material considered in the Acting Registrar's Decision on reconsideration.

B.3. Appointment of Mr. Marko Sladojević will enhance the efficiency of pre-trial preparation

19. Mr. Sladojević's situation is a rare example of an accused's right to a fair trial [adequate time and facilities] enhancing, rather than frustrating, trial efficiency. His appointment would be an important step toward speeding up the pace of pre-trial preparations. Even if an equally-qualified replacement could be found – itself not a given – a new person would require a significant amount of time and resources to learn the factual and legal issues in Dr. Karadžić's case with which Mr. Sladojević is already familiar, inevitably slowing down Dr. Karadžić's pre-trial preparations and requiring the postponement of the trial. That delay is neither in the Prosecution's interest nor consistent with Dr. Karadžić's right to be tried without undue delay under Article 21 (4) (c) of the ICTY Statute.

¹⁰ In his letter to the Acting Registrar, Mr. Sladojević explained his role on Dr. Karadžić's team in greater detail:

"My proposed main, and ostensibly only, task during the pre-trial phase is supposed to be reviewing the Prosecution supporting and disclosed material, discussing the contents of such material with Dr. Karadžić in light of his Indictment, and helping him to organise this vast amount of documents involved. Additionally, I would help Dr. Karadžić with the electronic processing of case-related information because I am much more skilled than him in the relevant computer programmes. Dr. Karadžić will also rely on my assistance for the use of the EDS, JDB and other ICTY software, as well as for physical communication with the outside world in terms of receiving, transmitting, copying, burning CD's and DVD's etc. of both Prosecution and Defence documents. This kind of work could not and will not involve using confidential information that I may have obtained from Mr. Krajišnik.

The status of a legal associate with privileged communication is important from a practical and logistical point of view. As you may be aware, the other two legal associates Mr. Goran Petronijevic and Mr. Peter Robinson reside and work in Serbia and the United States/ICTR [Arusha, Tanzania] respectively. They will spend little time in The Hague during the pre-trial phase of Dr. Karadžić's case. During this phase Dr. Karadžić needs a person who is constantly present in The Hague and can work with him on a daily basis. I am both based in The Hague and available to assist Dr. Karadžić on a daily basis. In order to have physical access to and work with Dr. Karadžić, I would need to be assigned as a legal associate with privileged communication because that is the only way in which OLAD will allow individual visits to Dr. Karadžić. It is, therefore, a matter of logistics and practicality that I require the said legal associate status."

20. Pursuant to Article 20 of the Statute the Chamber has a duty to ensure that the proceedings are conducted in a fair and expeditious manner, and it is submitted that the Registry decision in the present circumstances would undermine, rather than advance, these twin goals. As the jurisprudence of the Tribunal has recognized, the Registrar's decision to refuse a requested assignment is not final. In a number of decisions in this Tribunal it has been recognized that it is inherent in the judicial function of the Tribunal that a decision of the Registrar which affects, or is likely to affect, the right of an Accused to a fair and expeditious trial or the integrity of the proceedings, may be reviewed by the Trial Chamber before which the trial is to be held.¹¹
21. As is apparent from the background of Mr. Sladojević [Annex B], it is submitted that because Mr. Sladojević has had the experience working with the defence teams of Messrs. Slobodan Milošević, Momčilo Krajišnik, Dragoljub Ojdanić, and Milan Gvero, which involved charges same or similar to those facing Dr. Karadžić, he has a familiarity with the geographic region and many of the relevant facts and background circumstances. There will be a significant ongoing advantage for the conduct of the trial and a significant saving of time by the defence team by virtue of Mr. Sladojević's earlier involvement in the cases mentioned above.

B.4. Appointment of Mr. Marko Sladojević will enhance efficient management of public funds

22. Legal aid funds are public funds that OLAD is entrusted to manage efficiently. Appointing Mr. Sladojević, would be an important step toward the efficient management of the legal-aid funds Dr. Karadžić is entitled to receive, because a new person would require far more time and resources to learn the factual and legal issues relevant to this case. By contrast, Mr. Sladojević's appointment would make that exercise unnecessary and be cost-free. It is thus in the interest of efficient management of public legal aid funds to appoint Mr. Sladojević as Dr. Karadžić's legal associate as soon as possible.

¹¹ *Prosecutor v. Hadžihasanović, Alagić and Kubura*, Case No. IT-01-47-PT, Decision on Prosecution's Motion for Review of the Decision of the registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, 26 March 2002, para. 23-24

C. Registry reached a conclusion that is unreasonable

23. The Registry as well as the Appeals Chamber in *Krajišnik* and the Trial Chamber in the present case consider legal associates as support staff, which is currently also reflected in the *Remuneration Scheme for Persons Assisting Indigent Self- Represented Accused* of 28 September 2007 ("Remuneration Scheme"). It is submitted that the conflict of interest test should be applied differently to legal associates, who are considered to be assistants to a self-represented accused, than to counsel for fully represented accused persons. Although the Acting Registrar in theory agrees that the conflicts of interest are assessed differently for counsel and legal associates, his decision shows that the Registry unreasonably applied stricter tests in relation to support staff than to counsel. Dr. Karadžić undertakes to prove this unreasonableness by comparing the case of Mr. Sladojević on one side to that of Messr. Nenad Petrušić and Miodrag Stojanović on the other side.
24. The Registry and the Trial Chamber in *Popović et al.* appointed Mr. Petrušić and Mr. Stojanović Co-Counsel in that case, despite the fact that they had been lead counsel in *Krstić* and *Jokić* respectively [all three cases have the same Srebrenica crime base and are very much related]. As far as Mr. Petrušić's is concerned, his appointment was originally denied by the Registry. However, the Trial Chamber concluded that the Registry had "attached too much weight to the potential of a conflict of interest stemming from Mr. Petrušić's former representation of Radislav Krstić."¹² The *Popović et al.* case had much more in common with the *Krstić* and *Jokić* cases than the *Krajišnik* case has in common with the *Karadžić* case. The Registry thus appears to be holding support staff to a higher conflict of interest standard than legal counsel.
25. The Acting Registrar justifies such a stricter test by stating that in the case of an accused represented by counsel, lead counsel is responsible for managing support staff and would take responsibility for ensuring the maintenance of strict confidentiality parameters. Dr. Karadžić rhetorically asks whether that means that a lead counsel would always have to be present at meetings between his/her co-counsel and client? Of course not. It is respectfully submitted that

¹² Decision on third request for review of the Registry decision on the assignment of Co-Counsel for Radivoje Miletić.

in the case of a co-counsel this simply bears no contemplation. Just as Mr. Sladojević would have unrestricted access to Dr. Karadžić, so did Messr. Petrušić and Stojanović visit and work with their respective clients without their lead counsel supervising the visit in order to ensure “the maintenance of strict confidentiality parameters”.

26. Furthermore, in determining the conflict of interest issue, the Registry did not take into consideration the important difference between a counsel and a legal associate. According to the Trial Chamber in *Gotovina et al.*:

"Where a Chamber can reasonably expect that due to a conflict of interest, *a counsel* may be reluctant to pursue a line of defence, to adduce certain items in evidence, or to plead certain mitigating factors at the sentencing stage in order to avoid prejudicing another client, it can no longer presume that counsel has fulfilled his or her professional obligations under the Code of Conduct and has the power and duty to intervene in order to guarantee or restore the integrity of the proceedings without delay."¹³

27. That standard cannot be applied to Mr. Sladojević's appointment because as a self-represented accused Dr. Karadžić decides what line of defence to pursue, whether to adduce certain items in evidence, and whether to plead certain mitigating factors at the sentencing stage. Legal associates such as Mr. Sladojević will have no final say on these issues.

28. Finally, in order to better portray the unreasonableness of the Registry decision, Dr. Karadžić undertakes in Annex F to compare the situation and the level of the possible conflicts of interest between Mr. Sladojević on one hand and Messr. Petrušić and Stojanović on the other.

29. As is apparent from the preceding paragraphs and the table in Annex F, the Registry reached a conclusion about the possible conflict of interest that is both unreasonable and that failed to observe the basic rules of natural justice and procedural fairness towards Dr. Karadžić who is affected by the decision.

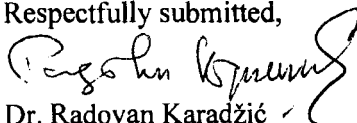
¹³ *Prosecutor v Gotovina et al*, No. IT-06-90-AR73.2, *Decision on Ivan Cermak's Interlocutory Appeal Against Trial Chamber Decision on Conflict of Interest of Attorneys Cedo Prodanovic and Jadranka Slokovic* (29 June 2007) at para. 23 (emphasis added).

IV RELIEF SOUGHT

30. For the foregoing reasons, Dr. Karadžić requests the Trial Chamber to quash the Registry Decision on reconsideration and Decision on assignment and orders that the Registry assign Mr. Sladojević as legal associate for Dr. Karadžić with immediate effect.

Word count: 2750

Respectfully submitted,



Dr. Radovan Karadžić

ANNEX A



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

4 February 2009

Dear Mr. Karadžić,

RE: Your request for the assignment of Mr. Sladojević as your legal associate

I refer to your request for the assignment of Mr. Marko Sladojević as a legal associate in your defence team dated 14 January 2009. After careful consideration, I wish to inform you that your request has been denied. The Registrar's reasons for the denial are outlined in this letter, as well as steps taken in the assessment of your request prior to making a determination.

As Mr. Sladojević is currently assigned as a legal associate in the defence team of Mr. Momčilo Krajišnik, the Registrar examined the possibility of a scheduling conflict as a result of the dual assignment and was satisfied that there was no potential of a scheduling conflict, as Mr. Krajišnik's case is in the Appeal stage and is almost concluded. The Registrar however wrote to you and Mr. Krajišnik to inquire if you both consented to Mr. Sladojević's dual assignment and also informed you of the potential consequences of such an assignment, given Mr. Sladojević's participation in the Krajišnik defence. I confirm that both you and Mr. Krajišnik consented to the dual assignment in writing.

The Registrar is however concerned about the dual assignment due to the overlap of facts between your case and Mr. Krajišnik's case. It is the Registrar's view that given the possibility that your interests and Mr. Krajišnik's interests are potentially materially adverse, Mr. Sladojević, who has been privy to confidential information in the Krajišnik case, could find himself in a situation whereby he could be faced with conflicting loyalties on a variety of matters in your case. While I wish to underline that the Registrar does not suggest that Mr. Sladojević may use any information in his possession inappropriately, the possibility that he could inadvertently disclose such information to you is not excluded. Additionally, Mr. Sladojević played a significant role on substantive matters in the Krajišnik defence case which included actively participating in the preparation of your testimony as a witness for Mr. Krajišnik, which included proofing you.

The Registry wrote to Mr. Sladojević and informed him of its concerns with regard to the potential consequences of this dual assignment and invited him to address the specific steps he envisaged to take, in order to ensure that Mr. Krajišnik's and your rights are protected, should he be assigned to your defence team as a legal associate. In his response of 15 January 2009, Mr. Sladojević stated that he may have been privy to confidential information that you could not have been aware of and which could be 1) advantageous to you were you aware of it and 2) harmful to Mr. Krajišnik if you were aware of it. He however contended that he would not reveal any confidential information and stated that he would inform both you, Mr. Krajišnik and the Registry if such a matter arose and seek advice of the Registry on the matter.

The Registry has made an assessment of all the information before it notably the unlikelihood of a scheduling conflict; consent to the dual assignment provided by both you and Mr. Krajišnik; Mr. Sladojević's participation in the Krajišnik case and concerns that he may face conflicting loyalties. The Registry has also given due consideration to Mr. Sladojević's statement that he would not disclose any information but is not satisfied that Mr. Krajišnik's rights will be fully protected. Taking into consideration the role that Mr. Sladojević is expected to play in your defence team as a legal associate with privileged access to you and your statement to Registry officials on 8 January 2009¹ that you envisage Mr. Sladojević to undertake a central role in your defence team with

¹ Meeting at the United Nations Detention Unit with Registry Officials [redacted], Deputy Head of the Office for Legal Aid and Detention Matters (OLAD) and [redacted] Associate Legal Officer (OLAD).
Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague, Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 EW La Haye. Pays-Bas

access to all confidential material in your case, the Registry is of the view that the conflicting loyalties generated through Mr. Sladojević's dual assignment and knowledge of confidential material in both cases are likely to impede him from effectively carrying out his tasks in your case, and may be harmful to Mr. Krajišnik whose rights may be prejudiced.

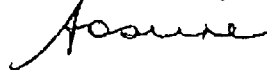
Furthermore, the assignment of Mr. Sladojević to your case is likely to be publicly perceived as improper in light of Mr. Sladojević's assignment to Mr. Krajišnik, thereby diminishing public confidence in the Tribunal and the proper administration of justice and is capable of bringing the Tribunal into disrepute.

In light of the above, the Registry considers that the administration of justice could be compromised were Mr. Sladojević to join your defence team and as such the Registry has denied your request for his assignment as your legal associate.

Should you have any questions on this matter, please do not hesitate to contact [REDACTED], Associate Legal Officer in OLAD, [REDACTED].

PS

Yours sincerely,



Anna Osure
Deputy Head of the Office
for Legal Aid and Detention Matters

TO: Mr. Radovan Karadžić
UNDU
Per facsimile

CC: Mr. Marko Sladojević
Legal associate of Mr. Momčilo Krajišnik

ANNEX B

The Hague, 6 February 2008

Dear Mr. Hocking,

I am writing you in relation to ^{the} ~~my~~ letter of 4 February 2009, denying my request for appointment of Mr. Marko Sladojević to my defence team as a legal associate. As the main reason for denying my request, ~~Mr. Sladojević~~ stated that Mr. Sladojević had been privy to confidential information in Mr. Momčilo Krajišnik's case, in which he also acted as a legal associate, and that the possibility that he could inadvertently disclose such information to me could not be excluded.

I would like to request you to reconsider the decision made by the OLAD on the following grounds:

Mr. Marko Sladojević is supposed to play an indispensable role on my team

As you may be aware, Mr. Sladojević has worked on a number of cases at the ICTY. He was a member of Mr. Slobodan Milošević's, Mr. Momčilo Krajišnik's, General Dragoljub Ojdanić's and General Milan Gvero's defence teams. He also assisted to the team of the Government of the Republic of Serbia in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) before the International Court of Justice. His experience and knowledge of both the factual and legal issues in these cases thus makes him an indispensable member of my team.

Mr. Sladojević already has a thorough knowledge of the factual and legal issues of my case. During our proofing sessions in the case of Mr. Krajišnik, Mr. Sladojević gained my trust, and I can confidently state that no other available person has an equivalent understanding of the facts in light of the legal issues at stake. Mr. Sladojević's knowledge is also not limited to years 1990-1992 that feature significantly in my indictment; he has a great command of the facts and law surrounding the events in Srebrenica, as well.

Moreover, in addition to being fluent in English and Serbian, Mr. Sladojević is also fluent in Dutch – trilingualism that few, if any, other available legal associates possess. The ability to speak Dutch will be particularly important for the preparation of witnesses and documents in relation to the Srebrenica charges, which will require interviewing members of the Dutch battalion, reviewing NIOD documents, etc.

Appointment of Mr. Marko Sladojević will enhance the equality of arms balance

As a member of Mr. Krajišnik's defence team [first as a legal assistant at trial and then as a legal associate during the appeal], Mr. Sladojević has come to understand the dynamics and the operational methods of the Prosecution team headed by Mr. Alan Tieger. As already said above, he greatly contributed to the preparation of my testimony in *Krajišnik*. Drawing on my own experience as a witness in that case, in which I was

subjected to the cross-examination by Mr. Tieger, I am more than confident that Mr. Sladojević will protect my rights in the best possible and effective way. No other available person has this advantage of personal understanding of the work of the chief prosecutor in my case. Therefore, I strongly believe that the decision of the OLAD denying the appointment of Mr. Sladojević as my legal associate significantly increases the already existing inequality of arms in favour of the Prosecution. Needless to say, this directly affects the fairness of the proceedings and my rights to fair trial under Article 21 of the ICTY Statute.

Mr. Marko Sladojević has no record of unprofessional behaviour and is a member of support staff

Mr. Sladojević has always complied with the rules of the Tribunal and the Detention Unit and there is no reason to believe that he would act unprofessionally in the future. As far as I understand from Ms. ~~Sladojević~~ letter, Mr. Sladojević undertook not to disclose any information that could be advantageous to Mr. Krajišnik to either me or to members of my defence team. I also understand that should any conflict of interest arise, Mr. Sladojević will promptly and fully inform both Mr. Krajišnik and myself of the nature and extent of the conflict and will immediately notify the Registry and seek its advice on the matter, in compliance with Article 14 of Code of Professional Conduct for Counsel Appearing before the International Tribunal.

Furthermore, the Registry as well as the Appeals Chamber in *Krajišnik* and the Trial Chamber in the present case consider legal associates as support staff, which is currently also reflected in the *Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused* of 28 September 2007 ("Remuneration Scheme"). It is my submission that the conflict of interest test should be applied differently to legal associates, who are considered to be assistants to a self-represented accused, than to counsel for fully represented accused persons. Indeed, OLAD's decision appears to apply stricter tests in relation to support staff than to counsel.

This position is confirmed by the Trial Chamber decision in *Popović et al.* to appoint Mr. Petrušić Co-Counsel in that case, despite the fact that he had been lead counsel in *Krstić*. In reaching that decision, the Trial Chamber concluded that the Registry had "attached too much weight to the potential of a conflict of interest stemming from Mr. Petrušić's former representation of Radisav Krstić."³ The *Popović et al.* case had much more in common with the *Krstić* case than the *Krajišnik* case has in common with the *Karadžić* case. The Registry thus appears to be holding – without explanation – support staff to a higher conflict of interest standard than legal counsel.

In determining the conflict of interest issue, therefore, the OLAD did not take into consideration the important difference between a counsel and a legal associate. According to the Trial Chamber in *Gotovina et al.*:

³ Decision on third request for review of the Registry decision on the assignment of Co-Counsel for Radivoje Miletić.

"Where a Chamber can reasonably expect that due to a conflict of interest, a *counsel* may be reluctant to pursue a line of defence, to adduce certain items in evidence, or to plead certain mitigating factors at the sentencing stage in order to avoid prejudicing another client, it can no longer presume that counsel has fulfilled his or her professional obligations under the Code of Conduct and has the power and duty to intervene in order to guarantee or restore the integrity of the proceedings without delay."⁴

That standard cannot be applied to Mr. Sladojević's appointment because as a self-represented accused I decide what line of defence to pursue, whether to adduce certain items in evidence, and whether to plead certain mitigating factors at the sentencing stage. Legal associates such as Mr. Sladojević will have no final say on these issues

Professionalism rather than conflicting loyalties

I respectfully submit that, contrary to the letter from the OLAD, there are no conflicting loyalties in case of Mr. Sladojević. Mr. Krajišnik's rights are not prejudiced by Mr. Sladojević's appointment to my team. To begin with, given that his appeal is complete, the possibility of Mr. Krajišnik's rights not being fully protected is non-existent. Furthermore, it is my understanding that Mr. Krajišnik encouraged Mr. Sladojević to join my defence team, another indication that Mr. Sladojević is a responsible professional who will approach any potential conflict of interest issue with great care.

Appointment of Mr. Marko Sladojević will enhance the efficiency of pre-trial preparation

Mr. Sladojević's situation is a rare example of an accused's right to a fair trial [adequate time and facilities] enhancing, rather than frustrating, trial efficiency. His appointment would be an important step toward speeding up the pace of pre-trial preparations. Even if an equally-qualified replacement could be found – itself not a given – a new person would require a significant amount of time and resources to learn the factual and legal issues in my case with which Mr. Sladojević is already familiar, inevitably slowing down my pre-trial preparations and requiring the postponement of my trial. That delay is neither in the Prosecution's interest nor consistent with my right to be tried without undue delay under Article 21 (4) (c) of the ICTY Statute.

Appointment of Mr. Marko Sladojević will enhance efficient management of public funds

Legal aid funds are public funds that OLAD is entrusted to manage efficiently. Appointing Mr. Sladojević, would be an important step toward the efficient management of the legal-aid funds I am entitled to receive, because a new person would require far

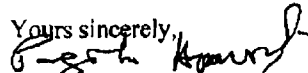
⁴ *Prosecutor v Gotovina et al*, No. IT-06-90-AR73.2, *Decision on Ivan Cermak's Interlocutory Appeal Against Trial Chamber Decision on Conflict of Interest of Attorneys Cedo Prodanovic and Jadranka Stokovic* (29 June 2007) at para. 23 (emphasis added).

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more time and resources to learn the factual and legal issues relevant to my case. By contrast, Mr. Sladojević's appointment would make that exercise unnecessary and be cost-free. It is thus in the interest of efficient management of public legal aid funds to appoint Mr. Sladojević my legal associate as soon as possible.

In conclusion, I urge you to reconsider OLAD's refusal to appoint Mr. Sladojević. His appointment will enable me to prepare for the trial efficiently and thoroughly and will avoid the unnecessary time and expense of finding an adequate replacement for him,

Yours sincerely,



Radovan Karadžić

ANNEX C



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yugoslavie

3 March 2009

Dear Mr. Karadžić,

RE: Your request for reconsideration

I refer to the Registry's letter of 4 February 2009 ("Decision"), denying your request for the assignment of Mr. Marko Sladojević as your legal associate, and your request for reconsideration of this Decision dated 6 February 2009 ("Request for Reconsideration"). I apologise for the delay in responding to your letter. Given the number of people assisting you in the preparation of your case, this delay should not have affected your ability to prepare your case.

In your Request for Reconsideration, you state that Mr. Sladojević would play an indispensable role in your defence team as he has a unique understanding of the facts of the case, the legal issues at stake, a personal understanding of the work of the counsel for the Prosecution in your case and is fluent in English, BCS and Dutch. You are also of the view that more stringent standards have been applied for the assessment of the conflicting loyalties that a dual assignment of Mr. Sladojević in both the case of Mr. Momčilo Krajišnik and your case would present, than would be applied in a conflict of interest test for counsel, thereby disregarding the differences between counsel and a legal associate regarding their qualification requirements.

I note that Mr. Sladojević not only enjoys your trust but also that of Mr. Krajišnik who as you state, encouraged him to join your defence team. However, it is of concern that he was substantively involved in the case of Mr. Krajišnik. Mr. Sladojević had access to confidential material in the Krajišnik case, to the defence strategy, and also proofed you as a witness in that case. It is undisputed that there is a certain overlap of facts between your case and Mr. Krajišnik's case.¹ I reiterate a concern already stated in the Decision that Mr. Sladojević would face limitations in assisting you, as there may be confidential information in the Krajišnik case of which he may be aware, that may be advantageous to you and harmful to Mr. Krajišnik if you were aware of this information. As such, he will not be in a position to assist you effectively.

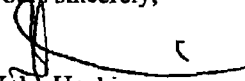
Whilst I agree that conflicts of interest are assessed differently for counsel and legal assistants (or legal associates), the Registry has consistently made such assessments prior to assigning defence support staff from one defence team to another. In most cases of potential conflict, the Registry has been able to take measures to limit or prevent such conflicts from actually arising. Notably, in the case of an accused represented by counsel under the Code of Professional Conduct for Counsel Appearing before the International Tribunal, lead counsel is responsible for managing support staff and would take responsibility for ensuring the maintenance of strict confidentiality parameters, thus ensuring at all times that the duty of loyalty of support staff who have switched defence teams is not compromised. Such a measure cannot be guaranteed in your case as you are a self-represented accused. It is therefore out of concern that Mr. Sladojević would be faced with conflicting loyalties towards two clients whose interests are potentially materially adverse, and out of an abundance of caution, that the dual assignment of Mr. Sladojević to your case and that of Mr. Krajišnik has been denied. Therefore, your statement that the Registry has disregarded the differences between counsel and legal associates is inaccurate. Furthermore, upon review of Mr. Sladojević's qualifications, I cannot conclude that he possesses exceptional skills or qualifications that would make him an indispensable member of your defence team.

¹ For example, you are alleged to have participated in a joint criminal enterprise ("JCE") together with Mr. Krajišnik as members of the Bosnian-Serb leadership, the crime bases of both cases are largely identical regarding the locations of the crime scenes (municipalities) and the charged crimes, and there is a substantial temporal overlap between the cases.

Churchillplein 1, 2517 JW The Hague, P.O. Box 13888, 2501 EW The Hague, Netherlands
Churchillplein 1, 2517 JW La Haye, B.P. 13888, 2501 EW La Haye, Pays-Bas

In light of the above, I reaffirm the Decision denying your request for the assignment of Mr. Sladojević as your legal associate.

Yours sincerely,



John Hocking

Acting Registrar

TO: Mr. Radovan Karadžić
UNDU

ANNEX D

Momčilo Krajišnik
Penitentiair complex
UN Detention Unit
Popmtstationsweg 32
2597 JW Den Haag
Netherlands

The Hague, 6 February 2009

Dear Mr. Hocking,

I am writing you in relation to the appointment of Mr. Marko Sladojević to Mr. Radovan Karadžić's defence team.

R.W. I have been informed by Mr. Sladojević that his appointment has been denied by the OLAD. As one of the main reasons for denying Mr. Karadžić's request, Ms. ~~Radović~~ stated that Mr. Sladojević had been privy to confidential information in my case and that the possibility that he could inadvertently disclose such information to Mr. Karadžić could not be excluded.

Hereby, I would like to emphasize that Mr. Sladojević has twice joined my Defence team. Both times he was assigned to my defence team as a member coming from another defence team, where he may have been privy to confidential information. I understand that in his previous capacities Mr. Sladojević accompanied Counsel during visits to General Gvero acting as an interpreter and legal assistant. I also recall Mr. Sladojević having meetings with my trial Counsel and myself at the UNDU throughout his original assignment in my team as legal assistant and interpreter coming from Mr. Slobodan Milošević's defence team. I can confirm that there was not a single example of Mr. Sladojević acting in any unprofessional way, whereby there was even a possibility of him inadvertently disclosing confidential information to me, which he had been privy to during his assignments in Mr. Milošević's and General Gvero's defence teams.

Throughout his assignment as my legal associate, Mr. Sladojević always acted professionally and with great care with respect to the rights of his previous clients. I can confidently state that he would continue to act professionally and with great care were he to become Mr. Karadžić's legal associate. I have absolutely no reason to believe that Mr. Sladojević could inadvertently disclose any information to Mr. Karadžić that would be adverse to my rights.

If anything, I would sincerely encourage the OLAD and Mr. Karadžić to appoint Mr. Sladojević as Mr. Karadžić's legal associate because I believe that he would protect his rights as vigorously as he protected mine.

Finally, I would like to add that since Mr. Sladojević was appointed as my legal associate during my appeal, his efforts genuinely smoothed the administration of justice and made a very difficult and novel process run efficiently. Therefore I believe that he would continue to contribute to the enhancement of the efficient administration of justice while vigorously defending Mr. Karadžić's rights, and

would like to encourage you to reconsider your decision and approve the appointment of Mr. Sladojević as Mr. Karadžić's legal associate.

Yours sincerely,

Momčilo Krajišnik

Момчило Крајишник
Penitentiair complex
UN Detention Unit
Popmistsationsweg 32
2597 JW Den Haag
Netherlands

Ден Хаг, 6. фебруар. 2009.

Поштовани г. Хокинг,

Обраћам вам се у вези именовања г. Марка Сладојевића у тим одбране г. Радована Караџића.

Информисан сам од стране г. Сладојевића да је ОЛАД одбио његово именовање. **Б.Н.**
Као један од разлога за одбијање молбе г. Караџића, гђица ~~Сладојевић~~ је навео да је г. Сладојевић имао приступа поверљивим информацијама у мом случају и да постоји могућност да ће он грешком обелоданити такве информације г. Караџићу.

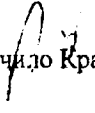
Овом приликом бих желео да напоменем да је г. Сладојевић два пута постајао члан мог тима одбране. Оба пута је био дошао из другог тима одбране где је могао имати приступ поверљивим информацијама. Ја сам разумео да је у својим претходним функцијама г. Сладојевић посећивао генерала Гверу заједно са његовим адвокатима у функцији преводиоца и правног асистента. Такође се сећам да је г. Сладојевић имао састанке самном заједно са мојим адвокатима током суђења у притворској јединици, којом приликом је током свог првобитног именовања у мом тиму одбране наступао као правни асистент и преводилац који је прешао из тима одбране г. Слободана Милошевића. Могу да потврдим да не постоји ниједна ситуација непрофесионалног понашања г. Сладојевића коју бих могао да наведем, приликом које би постојала и најмања могућност да је он мени грешком обелоданио поверљиву информацију у коју је могао имати увид током обављања својих послова у тимовима одбране г. Милошевића и генерала Гвере.

Током свог наступања у функцији мог правног саветника, г. Сладојевић је увек поступао професионално и са великим бригом према правима својих бивших клијената. Могу поуздано да кажем да ће наставити да поступа професионално и са великом бригом према г. Караџићу уколико буде постављен за његовог правног саветника. Немам апсолутно ниједан разлог да верујем да би г. Сладојевић могао грешком да обелодани било коју информацију г. Караџићу која би била супротна мојим правима.

Управо супротно, ја бих желео да подржим ОЛАД да именује г. Сладојевића за правног саветника г. Караџића због тога што верујем да ће штитити његова права исто тако предано као што је штитио моја права.

На крају бих желео да додам и то да од тренутка када је г. Сладојевић постављен за мог правног саветника у жалбеном процесу, његов допринос је истински олакшао спровођење правде и олакшао веома тежак и по много чему нови процес да се одвија ефикасно. Према томе верујем да ће он наставити да допринеси унапређењу ефикасности спровођења правде и у исто време предано бранити права г. Караџића. У том циљу бих желео да вас подржим да поново размотрите вашу одлуку и одобрите именовање г. Сладојевића за правног саветника г. Караџића.

С поштовањем,


Момчило Крајишник

ANNEX E

11 February 2009, The Hague

Dear Mr. Hocking,

I am writing to you in relation to the letter from OLAD, transmitted to me on 4 February 2009, denying Mr. Karadzic's request for my appointment as his legal associate. I appreciate that OLAD made its decision on the basis of all of the information available at the time. However, I am concerned that OLAD did not have sufficient information explaining the role envisaged for me in Dr. Karadzic's team. This resulted in the decision considering the conflict of interest issue only in general terms. Therefore, I would like to provide you with further information that could assist you in reconsidering the matter.

I understand that on 6 February 2009 Dr. Karadzic made a written request to you seeking a reconsideration of the said decision. I have been informed as to the contents of that letter by his legal associates and agree with the arguments presented therein. Please consider this letter as an addendum to Dr. Karadzic's letter of 6 February.

In the disputed decision, Ms. ^{P. U.} ~~U.~~ states that I had been privy to confidential information in Mr. Krajisnik's case and that the possibility that I could inadvertently disclose such information to Dr. Karadzic can not be excluded. Whilst I agree that I may have been privy to confidential information, I respectfully disagree with the proposition that I could inadvertently disclose such information to Dr. Karadzic or to members of his team. I base my assertion on my previous engagements in four cases before the Tribunal working for a total of six defence teams, whereby such inadvertent disclosure has never occurred.

Having consulted with Dr. Karadzic, his legal associates, as well as with Mr. Krajisnik, I would like to provide you with some further information that I hope may assist you. Firstly, I would like to emphasize that I would continue to assist Mr. Krajisnik as his legal associate until a judgement has been rendered on his appeal. During that time I would limit my involvement in the case of Dr. Karadzic to matters in which there can be no possible conflict of interest. My proposed main, and ostensibly only, task during the pre-trial phase is supposed to be reviewing the Prosecution supporting and disclosed material, discussing the contents of such material with Dr. Karadzic in light of his Indictment, and helping him to organise this vast amount of documents involved. Additionally, I would help Dr. Karadzic with the electronic processing of case-related information because I am much more skilled than him in the relevant computer programmes. Dr. Karadzic will also rely on my assistance for the use of the EDS, JDB and other ICTY software, as well as for physical communication with the

outside world in terms of receiving, transmitting, copying, burning CD's and DVD's etc. of both Prosecution and Defence documents. This kind of work could not and will not involve using confidential information that I may have obtained from Mr. Krajisnik.

The status of a legal associate with privileged communication is important from a practical and logistical point of view. As you may be aware, the other two legal associates Mr. Goran Petronijevic and Mr. Peter Robinson reside and work in Serbia and the United States/ICTR [Arusha, Tanzania] respectively. They will spend little time in The Hague during the pre-trial phase of Dr. Karadzic's case. During this phase Dr. Karadzic needs a person who is constantly present in The Hague and can work with him on a daily basis. I am both based in The Hague and available to assist Dr. Karadzic on a daily basis. In order to have physical access to and work with Dr. Karadzic, I would need to be assigned as a legal associate with privileged communication because that is the only way in which OLAD will allow individual visits to Dr. Karadzic. It is, therefore, a matter of logistics and practicality that I require the said legal associate status.

Finally, although I do not expect any conflict of interest issues to arise, I would nevertheless like to emphasize that should Dr. Karadzic wish me to undertake work which raise a potential conflict, I will advise him that I cannot perform that work without disclosing to him the reasons. As mentioned above, Dr. Karadzic is already assisted by two other experienced legal associates who can, if need be, deal with such issues. In addition, should any unlikely conflict of interest matter arise, I will additionally undertake to discuss such a matter with Messrs. Alan and Nathan Dershowitz who represent Mr. Krajisnik on matters of JCE. In passing I should add that if the suggestion that since I have been privy to confidential information in Mr. Krajisnik's case means that I cannot work on another matter because I may inadvertently disclose such information, was made into a general principle, it would preclude all persons who worked on prior related cases from being involved in subsequent cases. In any event as is apparent from this paragraph, there would be multiple layers safeguarding Mr. Krajisnik's interests, which makes the possibility of me inadvertently disclosing confidential information to Dr. Karadzic non-existent.

Such an arrangement could be maintained until Mr. Krajisnik's case is decided on appeal, after which the Registry could reconsider my position *de novo*.

Respectfully,

Marko Sladojevic

ANNEX F

CONFLICT OF INTEREST TABLE

Nenad Petrušić/Miodrag Stojanović	Marko Sladojević
<p>Mr. Petrušić - Lead Counsel for Radisav Krstić and Co-Counsel for Radivoj Miletić in <i>Popovic et al.</i> [both <i>Srebrenica</i> cases, same JCE, same crime base].</p> <p>Mr. Stojanović – Lead Counsel for Dragan Jokić and Co-Counsel for Ljubomir Borovčanin . [both <i>Srebrenica</i> cases same JCE, same crime base]</p>	<p>Mr. Sladojević – Legal Associate for Momčilo Krajišnik</p>
<p>In the case of Mr. Petrušić the Registry assessed that the likelihood of a conflict of interest arising is reasonably high. [Emphasis added]</p>	<p>In the case of Mr. Sladojević the Registry concluded that “there <i>may</i> be confidential information in the Krajišnik case of which [Mr. Sladojević] <i>may</i> be aware that <i>may</i> be advantageous to Dr. Karadžić and harmful to Mr. Krajišnik.” [Emphasis added]</p>
<p>Adverse effect on the trial and on the defence should an actual conflict situation arise in the case of a co-counsel is very high – Withdrawal of co-counsel would harm the accused’s defence and disrupt the proceedings and may prejudice the administration of justice</p>	<p>Such a scenario is not possible in the case of a legal associate because the self-represented accused is the one who is conducting the case</p>
<p>Neither Mr. Petrušić nor Mr. Stojanović have written and oral proficiency in one of the two working languages of the Tribunal.</p> <p>With all due respect, neither Mr. Petrušić nor Mr. Stojanović were able to follow other significant aspects of the proceedings e.g. live transcripts in court, pleadings, motions, written submissions etc.</p>	<p>Mr. Sladojević is fluent in English and Dutch and has qualified as an official translator of the ICTY. In addition, Mr. Sladojević would facilitate communication within the team, that is, between two other legal associates Mr. Robinson and Mr. Petronijević who do not speak each other’s languages. In addition, Dr. Karadžić’s knowledge of the English language is not sufficient to understand difficult legal texts and would rely heavily on Mr. Sladojević’s assistance in this regard.</p>
<p>There was a prospect that General Krstić could have been called as a Prosecution witness or that Mr. Petrušić could have been called as a witness to establish the provenance of certain documents he tendered in the trial of General Krstić and which are considered relevant to the Prosecution case against General Miletić. [See Decision on appointment of co-counsel for Radivoj Miletić, 28 September 2005, para 34]</p>	<p>No such prospect exists in the case of Mr. Sladojević. Even if Mr. Krajišnik was called as a witness in the case of Dr. Karadžić, that would not have any adverse effect. Mr. Krajišnik already testified in <i>Popovic et al.</i>, where both Mr. David Josse [ex co-Counsel for Mr. Krajišnik] and Mr. Sladojević worked for the defence team of General Gvero, a co-accused in <i>Popovic et al.</i> Neither the Registry nor the Trial Chamber considered their previous engagement in Mr. Krajišnik’s defence to be a problem when their ex client Mr. Krajišnik gave evidence in the case of their client at that time, General Gvero.</p>

<p>There was a possibility of an agreement with the Prosecution leading to a plea of guilty by general Miletic. The Prosecution observed that normally, in such case, a condition required in such an agreement is cooperation with the Prosecution including, where appropriate, giving evidence in other cases. What General Miletic might have been able to say with respect to General Krstic was unknown to Mr. Petrusic. [See Decision on appointment of co-counsel for Radivoj Miletic, 28 September 2005, para 34]</p>	<p>There is no such possibility in the case of Dr. Karadzic.</p>
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