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18 December 2012

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HC

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-04-75-T  
Date: 18 December 2012  
Original: English

**THE PRESIDENT OF THE TRIBUNAL**

**Before:** Judge Theodor Meron, President  
**Registrar:** Mr. John Hocking  
**Decision:** 18 December 2012

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

***CONFIDENTIAL AND EX PARTE***

**DECISION ON THIRD REQUEST FOR REVIEW OF OLAD  
DECISION ON PRE-TRIAL FUNDING**

**Counsel for Goran Hadžić:**

Mr. Zoran Živanović  
Mr. Christopher Gosnell

1. I, THEODOR MERON, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal"), am seized of the confidential and *ex parte* "Third Request for Review of OLAD Decision on Pre-Trial Funding", filed by Goran Hadžić ("Hadžić") on 19 October 2012 ("Third Request"). The Registrar of the Tribunal ("Registrar") filed a confidential and *ex parte* response on 2 November 2012,<sup>1</sup> to which Hadžić filed a confidential and *ex parte* reply on 20 November 2012.<sup>2</sup>

## I. BACKGROUND

2. On 23 January 2012, the Registry of the Tribunal ("Registry") informed Hadžić that the pre-trial phase of his case would be classified at complexity level two.<sup>3</sup> The Complexity Decision noted, *inter alia*, the weight of the charges against Hadžić and "the fact that the geographical and temporal scope of the Hadžić case is not as extensive as in other comparable cases," placing his case "at the middle level of the complexity spectrum."<sup>4</sup> On 26 April 2012, Hadžić requested that the Registry's complexity assessment for the pre-trial phase of the case be revised and upgraded to level three.<sup>5</sup> He contended, *inter alia*, that the expansion of his case as a result of the filing of the Second Amended Indictment,<sup>6</sup> the large volume of newly disclosed documents, and the extensive geographic scope of the Office of the Prosecutor's ("Prosecution") case against him merited such an upgrade.<sup>7</sup>

3. On 5 June 2012, the Registry rejected the Upgrade Request.<sup>8</sup> In relevant part, the Registry submitted that the Second Amended Indictment did not materially change the scope of the case against Hadžić: that "extensive disclosure is not a valid justification on its own" to warrant a complexity level upgrade;<sup>9</sup> that "the Registry has no reason to believe that the volume of disclosed material, transcripts or victim-related information is exceptional in comparison with other cases to

<sup>1</sup> Registrar's Submission Regarding the Defence's Third Request for Review of OLAD Decision on Pre-Trial Funding, 2 November 2012 (confidential and *ex parte*) ("Third Response").

<sup>2</sup> Reply to Registrar's Submission Regarding the Defence's Third Request for Review of OLAD Decision on Pre-Trial Funding, 20 November 2012 (confidential and *ex parte*) ("Third Reply").

<sup>3</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Urgent Request for Review of OLAD Decision on Pre-Trial Funding, 19 June 2012 (confidential) ("First Request"); Confidential Annex A, Letter from Jaimee Campbell, Head, Office for Legal Aid and Detention Matters ("OLAD"), to Zoran Živanović, Lead Counsel, Goran Hadžić, 23 January 2012 ("Complexity Decision"), p. 1. A public and redacted version of the First Request was filed on 17 August 2012, however the annexes of the First Request remained confidential in their entirety.

<sup>4</sup> Complexity Decision, p. 1.

<sup>5</sup> First Request, Confidential Annex C, Letter from Zoran Živanović, Lead Counsel, Goran Hadžić, to Jaimee Campbell, Head, OLAD, 26 April 2012 ("Upgrade Request").

<sup>6</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Second Amended Indictment, 22 March 2012 ("Second Amended Indictment").

<sup>7</sup> Upgrade Request.

<sup>8</sup> First Request, Confidential Annex B, Letter from Jaimee Campbell, Head, OLAD, to Zoran Živanović, Lead Counsel, Goran Hadžić, 5 June 2012 ("Upgrade Decision"), pp. 3-4.

such a degree so as to warrant a level three [complexity] determination";<sup>10</sup> and that "other related cases covering a larger geographical scope" had similarly been classified at complexity level two at the same pre-trial phase.<sup>11</sup>

4. On 19 June 2012, Hadžić requested that I review both the Complexity Decision and the Upgrade Decision, and that I order the Registrar to either assign complexity level three funding for the pre-trial stage of his case, or issue a new decision on pre-trial funding.<sup>12</sup> On 17 August 2012, I granted the First Request in part, and ordered the Registrar to submit a revised Upgrade Decision, explicitly citing comparable cases the Registry relied on in reaching its Complexity Decision.<sup>13</sup> On 22 August 2012, the Registry issued a revised decision with respect to Hadžić's pre-trial funding, including references to the specific cases it relied on in its analysis.<sup>14</sup>

5. On 24 August 2012, Hadžić filed a request for review of the Revised Upgrade Decision, on the basis that, *inter alia*, the Revised Upgrade Decision "is manifestly deficient, does not comply with the [Decision on First Request], and is still not a decision that any sensible decision-maker could have reached."<sup>15</sup> The Registrar responded on 28 August 2012, asserting, *inter alia*, that the Revised Upgrade Decision complied with the Decision on First Request.<sup>16</sup>

6. In a decision issued on 26 September 2012, I rejected Hadžić's assertions in regards to his status as a single accused,<sup>17</sup> the ongoing nature and scope of the documentary evidence disclosed to Hadžić,<sup>18</sup> and the broad geographic scope of his case.<sup>19</sup> However, I found that the Registrar erred by not addressing Hadžić's contention that the number of Prosecution witnesses had increased from 115 to 141, following the filing of the Prosecution's witness list pursuant to Rule 65ter of the Rules ("Rule 65ter List").<sup>20</sup> Accordingly, I ordered the Registrar to either provide an

<sup>9</sup> Upgrade Decision, p. 2.

<sup>10</sup> Upgrade Decision, p. 2.

<sup>11</sup> Upgrade Decision, p. 3.

<sup>12</sup> First Request, paras 1, 42.

<sup>13</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Decision on Request for Review of Decision on Pre-Trial Funding, 17 August 2012 (confidential and *ex parte*) ("Decision on First Request"), paras 19-20.

<sup>14</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Second Urgent Request for Review of OLAD Decision on Pre-Trial Funding, 24 August 2012 (public with confidential annex) ("Second Request"), Confidential Annex A, Letter from Jaimee Campbell, Head, OLAD, to Zoran Živanović, Lead Counsel, Goran Hadžić, 22 August 2012 ("Revised Upgrade Decision"), pp. 1, 4 nn 1-2, 12-13.

<sup>15</sup> Second Request, para. 3.

<sup>16</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Registrar's Submission Pursuant to Rule 33(B) of the Rules Regarding the Defence "Second Urgent Request for Review of OLAD Decision on Pre-Trial Funding", 28 August 2012 (confidential and *ex parte*), para. 2.

<sup>17</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-PT, Decision on Second Urgent Request for Review of OLAD Decision on Pre-Trial Funding, 26 September 2012 (confidential and *ex parte*) ("Decision on Second Request"), para. 15.

<sup>18</sup> Decision on Second Request, para. 16.

<sup>19</sup> Decision on Second Request, para. 17.

<sup>20</sup> Decision on Second Request, paras 18-19.

additional submission addressing this issue, or to upgrade the complexity level of Hadžić's pre-trial case.<sup>21</sup>

7. The Registry filed a Second Revised Upgrade Decision on 5 October 2012.<sup>22</sup> The Second Revised Upgrade Decision concluded that the increased number of proposed Prosecution witnesses in Hadžić's case did not merit an upgrade to the complexity level of his case. The Registry justified this conclusion by citing to three single-accused cases with a comparable number of witnesses at the pre-trial phase, which were ranked at complexity level two.<sup>23</sup> Moreover, the Registry noted that the 141 witnesses reflected on the Rule 65ter List are "far fewer than the number of pre-trial witnesses in other single-accused cases ranked at level three during pre-trial."<sup>24</sup> The Registry emphasized that the number of Prosecution witnesses at the pre-trial stage is "not determinative of complexity, as it comprises one part of one of six factors, and must be considered in conjunction with all factors."<sup>25</sup>

## II. STANDARD OF REVIEW

8. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar [...] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.<sup>26</sup>

Accordingly, an administrative decision may be quashed if the Registrar:

(a) failed to comply with [...] legal requirements [...], or

(b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or

<sup>21</sup> Decision on Second Request, paras 20-21.

<sup>22</sup> Third Response, confidential and *ex parte* Annex, Letter from Jaimee Campbell, Head, OLAD, to Zoran Živanović, Lead Counsel, Goran Hadžić, 5 October 2012 ("Second Revised Upgrade Decision").

<sup>23</sup> Second Revised Upgrade Decision, p. 2, citing *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, T. 28 March 2006 p. 124 ("D. Milošević case"); *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, Prosecution's Submissions Pursuant to Rule 65 ter(E) with Confidential Annex I, Annex II, and Annex III, 1 September 2008 (public with confidential annexes), para. 5 ("Đorđević case").

<sup>24</sup> Second Revised Upgrade Decision, p. 2, citing *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Corrigendum to Prosecution Rule 65ter (E) Filings, 2 March 2012 (public with confidential annexes), para. 3; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, para. 1220; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-PT, T. 6 February 2007 p. 76.

<sup>25</sup> Second Revised Upgrade Decision, p. 1.

<sup>26</sup> *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("Žigić Decision"), para. 13. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("Karadžić Decision"), para. 6.

(c) took into account irrelevant material or failed to take into account relevant material, or

(d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).<sup>27</sup>

9. Unless unreasonableness has been established, "there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled."<sup>28</sup> The party challenging the administrative decision bears the burden of demonstrating that "(1) an error of the nature enumerated above has occurred, and (2) [...] such an error has significantly affected the administrative decision to his detriment."<sup>29</sup>

### III. APPLICABLE LAW

10. Article 24(A) of the Directive on the Assignment of Defence Counsel<sup>30</sup> establishes that remuneration for the pre-trial phase shall be determined in accordance with the Defence Counsel Pre-Trial Legal Aid Policy.<sup>31</sup>

11. Pursuant to paragraph 22 of the Legal Aid Policy, the Registrar will make a determination as to the complexity of the pre-trial stage of a case after consulting with the Chamber seized of the case and with the Defence team. The complexity level determination shall be based on, *inter alia*, an assessment of the following six factors: (i) the position of the accused within the political/military hierarchy; (ii) the number and nature of counts in the indictment; (iii) whether the case raises any novel issues; (iv) whether the case involves multiple municipalities (geographical scope); (v) the complexity of legal and factual arguments involved; and (vi) the number and type of witnesses and documents involved.<sup>32</sup>

12. Paragraph 35 of the Legal Aid Policy allows a defence team working on a case determined to be of a complexity level one or two to submit a request for a change in the complexity level. Such a request must "include a description of a change in the criteria specified in paragraph 22 [of the Legal Aid Policy] and the manner in which that change affects the preparation of the defence case."<sup>33</sup>

<sup>27</sup> Karadžić Decision, para. 6. See also Žigić Decision, paras 13-14.

<sup>28</sup> Žigić Decision, para. 13. See also Karadžić Decision, para. 7.

<sup>29</sup> Karadžić Decision, para. 7. See also Žigić Decision, para. 14.

<sup>30</sup> IT/73/Rev. 11, 11 July 2006.

<sup>31</sup> 1 May 2006 ("Legal Aid Policy").

<sup>32</sup> Legal Aid Policy, para. 22.

<sup>33</sup> Legal Aid Policy, para. 35.

#### IV. SUBMISSIONS

13. Hadžić asserts that the Registry acted unreasonably by declining to upgrade the pre-trial complexity level of his case, and asks that I direct the Registry to effect an upgrade to complexity level three.<sup>34</sup> Hadžić contends, *inter alia*, that comparing the projected number of Prosecution witnesses and documents in his case to those actually presented in eight other cases supports his request for an upgrade in complexity level.<sup>35</sup>

14. Hadžić challenges the Registry's claim that the pre-trial phase in his case is comparable in scope to that of three other cases classified at complexity level two: the *D. Milošević* case, the *Dorđević* case, and an unidentified third case ("Unidentified Case").<sup>36</sup> Hadžić maintains that he is unable to ascertain, without access to relevant Registry decisions on complexity level, whether the Registry actually relied on pre-trial projections in the *D. Milošević* and *Dorđević* cases.<sup>37</sup> He submits that the Registry's complexity determinations in these two cases probably "discounted" early indicators regarding the cases' size.<sup>38</sup> Hadžić suggests that since the Registry does not appear to have discounted the increase in projected Prosecution witnesses in his own case, it is not reasonable to use the *D. Milošević* and *Dorđević* cases as benchmarks.<sup>39</sup> Hadžić also suggests that the Registry was unreasonable in relying on the *Dorđević* case as a benchmark because its complexity ranking was anomalously low.<sup>40</sup> In this respect, he maintains that the *Dorđević* case is similar in size to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T ("*Milutinović*"), and that all the defendants in the latter case were provided with level three complexity funding.<sup>41</sup>

15. Hadžić further maintains that the Second Revised Upgrade Decision does not take into account particular factors that render the scope of his defence burden greater than those in the *D. Milošević* and *Dorđević* cases, including: (i) the volume of documentary evidence; (ii) Hadžić's rank in both military and political hierarchies; (iii) the extended period covered by the Second Amended Indictment; and (iv) the broad geographic scope of the Second Amended Indictment.<sup>42</sup> Finally, Hadžić maintains that the Registrar was unreasonable in relying on the Unidentified Case.<sup>43</sup> He asserts that it is "patently absurd" to claim that the number of Prosecution witnesses forecast in the pre-trial stages of any case must be kept confidential after the witnesses have

<sup>34</sup> See Third Request, paras 1, 12.

<sup>35</sup> Third Request, paras 3-4.

<sup>36</sup> Third Request, para. 2.

<sup>37</sup> Third Request, para. 5. See also Third Reply, para. 4.

<sup>38</sup> Third Request, para. 5. See also Third Request, para. 6.

<sup>39</sup> See Third Request, paras 4-6.

<sup>40</sup> Third Request, para. 7.

<sup>41</sup> Third Request, para. 7.

<sup>42</sup> See Third Request, paras 7-8.

<sup>43</sup> Third Request, para. 9.

already testified.<sup>44</sup> More broadly, Hadžić submits that he is “in the dark” about the actual grounds relied on by the Registry to determine complexity level in other cases.<sup>45</sup> Hadžić submits that the Registry may be utilising concerns about confidentiality as a means of avoiding scrutiny of its decisions.<sup>46</sup>

16. The Registrar submits that the Second Revised Upgrade Decision conforms with established Registry policies and practices, was made in compliance with the standard of reasonableness and proper administrative decision-making set out in the *Žigić* Decision, and complies with the Decision on Second Request.<sup>47</sup> Specifically, the Registrar contends that the Registry compared the number of witnesses referenced in the Rule 65ter List in Hadžić’s case with the number of pre-trial Prosecution witnesses in other single accused cases ranked at complexity level two.<sup>48</sup> The Registrar also submits that Hadžić appears to base his contentions on the final number of Prosecution witnesses presented in other trials before the Tribunal.<sup>49</sup> The Registrar contends that this comparison is inapt, as the exact number of Prosecution witnesses will only be known at the close of the Prosecution case.<sup>50</sup>

17. The Registrar also points out that the remainder of the assertions raised in the Third Request were addressed and subsequently dismissed in previous decisions.<sup>51</sup> The Registrar further submits that he does not necessarily weigh each factor the same way in each complexity decision, though the Registry conducts “a simple comparison of [...] factual information [...] to confirm that the Registrar’s assessment of the individual factor is not anomalous.”<sup>52</sup>

18. Hadžić replies that the Registry failed to consider whether it had discounted projections regarding the size of the *D. Milošević* and *Đorđević* cases in deciding on their complexity level.<sup>53</sup> Hadžić suggests that I review these two cases and the Unidentified Case, *ex parte*, to determine whether the Registrar applied such a discount.<sup>54</sup>

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<sup>44</sup> See Third Request, para. 9.

<sup>45</sup> Third Request, para. 10.

<sup>46</sup> Third Request, para. 9.

<sup>47</sup> Third Response, para. 8 n. 20. See also Third Response, paras 15-16.

<sup>48</sup> Third Response, para. 9.

<sup>49</sup> Third Response, para. 11.

<sup>50</sup> Third Response, para. 11. The Registrar thereafter explains that, because of fluctuations, it can not rely on witness numbers alone as a “single determinative factor” in assessing the complexity level of a pre-trial case. Third Response, para. 11.

<sup>51</sup> Third Response, para. 12.

<sup>52</sup> Third Response, para. 13.

<sup>53</sup> Third Reply, para. 5.

<sup>54</sup> Third Reply, para. 6.

## V. DISCUSSION

19. As an initial matter, I underscore that the scope of this decision is limited, as per the Decision on Second Request,<sup>55</sup> to whether the increase in the number of Prosecution witnesses present on the Rule 65*ter* List, alone, demonstrates that the Registry was unreasonable in refusing to upgrade the complexity classification of this case from level two to level three. Hadžić's submissions in regards to the volume of documentary evidence, the extended period covered by the Second Amended Indictment, and the broad geographic scope of his case relative to that of the *D. Milošević* and *Đorđević* cases have been dismissed in prior decisions on the complexity of Hadžić's case,<sup>56</sup> and Hadžić does not demonstrate that reconsideration of these prior decisions is warranted.

20. Turning to Hadžić's relevant contentions, I agree that insofar as the Registry relies on the Unidentified Case,<sup>57</sup> it did not act with procedural fairness. The information the Registry provided regarding this case is insufficient to allow a reasoned response from Hadžić.<sup>58</sup> Accordingly, I consider that the Registry erred in justifying its decision with references to the Unidentified Case. Nonetheless, I am satisfied that the Registry's error does not demonstrate that the Second Revised Upgrade Decision was unreasonable. The Second Revised Upgrade Decision notes that the number of witnesses now proposed by the Prosecution during the pre-trial stage in Hadžić's case is similar to the number proposed in the pre-trial stages of the *D. Milošević* and *Đorđević* cases, and that the latter cases were ranked at complexity level two.<sup>59</sup> On their face, these two cases suggest that the Registry's decision not to upgrade the complexity level of Hadžić's case was reasonable, and as set out below, Hadžić's challenges to the Registry's reliance on these cases is unconvincing.

21. I first observe that Hadžić's comparison of pre-trial projections in his case with the actual size of completed cases<sup>60</sup> is of dubious utility: Hadžić himself adduces information suggesting that the size of Prosecution cases can diminish throughout both the pre-trial and the trial period.<sup>61</sup> Hadžić's proposed comparison would thus risk making Hadžić's case appear comparatively larger in scope than is justified. Accordingly, it was reasonable for the Registry to rely instead on a more

<sup>55</sup> Decision on Second Request, paras 20-21.

<sup>56</sup> See Decision on Second Request, paras 15-17. See also Complexity Decision, p. 1; Upgrade Decision, pp. 2-3; Revised Upgrade Decision, pp. 3-4.

<sup>57</sup> Second Revised Upgrade Decision, p. 2 n. 3.

<sup>58</sup> Cf. Decision on First Request, paras 17, 19.

<sup>59</sup> Second Revised Upgrade Decision, p. 2 n. 3.

<sup>60</sup> Third Request, paras 3-4.

<sup>61</sup> See Third Request, para. 6.



analogous comparison: pre-trial projections regarding the number of Prosecution witnesses in the *D. Milošević* and *Đorđević* cases.

22. Hadžić is unconvincing insofar as he suggests that the *Đorđević* case was wrongly decided, and thus should not have been relied on by the Registry.<sup>62</sup> Hadžić admits that he does not have access to relevant decisions on the complexity level in this case, and his general comparison of *Đorđević* to the *Milutinović* case is thus speculative.<sup>63</sup> In any event, I note that the Registry relies on both the *Đorđević* and *D. Milošević* case; these cases had equivalent numbers of projected Prosecution witnesses, and were both ranked at complexity level two.<sup>64</sup> In this context, Hadžić does not demonstrate that the ranking in *Đorđević* case's was so anomalous as to make the Registry's reference to it unreasonable.

23. Hadžić also fails to demonstrate that the Registry erred by not considering whether projections regarding the number of Prosecution witnesses in the *D. Milošević* and *Đorđević* cases were "discounted".<sup>65</sup> Hadžić's assertions regarding the potential existence of such "discounting" by the Registry are speculative.<sup>66</sup> His bases for contending that this discounting took place are that the Registry discounted early forecasts in his own case,<sup>67</sup> and the Prosecution and Trial Judges in the *D. Milošević* case made statements or took actions indicating that they wanted to reduce the number of Prosecution witnesses.<sup>68</sup> While these factors may suggest that the Registry could have discounted forecasts in the *D. Milošević* and *Đorđević* cases, they do not demonstrate that such discounting in fact took place. In any event, even if I accepted Hadžić's invitation to research past complexity decisions on his behalf,<sup>69</sup> it would be unclear how much impact any "discounting" I identified would have.<sup>70</sup> In this context, I do not consider that any discounting I may have identified would demonstrate that the Registry acted unreasonably or ignored relevant information.

24. Finally, insofar as Hadžić contends that the failure to provide him access to past decisions on complexity rankings in other cases was procedurally unfair, he is mistaken. I recall that the Registry "need not justify every individual determination, nor is it under an obligation to make

<sup>62</sup> Third Request, para. 7.

<sup>63</sup> See Third Request, para. 7.

<sup>64</sup> See *D. Milošević* case; *Đorđević* case.

<sup>65</sup> See Third Request, paras 5-6; Third Reply, para. 5.

<sup>66</sup> Third Request, paras 5-6; Third Reply, paras 3-4.

<sup>67</sup> Third Request, para. 5.

<sup>68</sup> Third Request, para. 6.

<sup>69</sup> Third Reply, para. 6.

<sup>70</sup> In this context, I note that the Registry's discussion of "discounting" in Hadžić's case was very general. See Third Response, para. 11

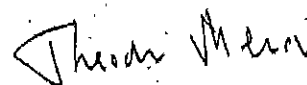
available (redacted) versions of previous complexity decisions.”<sup>71</sup> I also observe that even if relevant complexity decisions in the *D. Milošević* and *Dordević* cases did not explicitly address the number of projected Prosecution witnesses, it was still reasonable for the Registry to rely on these two cases as points of comparison. If the number of projected Prosecution witnesses in the *D. Milošević* and *Dordević* cases was so great as to require a level three complexity classification in all circumstances, the Registry would have acted accordingly. The fact that the Registry instead assigned a level two ranking demonstrates that the number of projected Prosecution witnesses in the *D. Milošević* and *Dordević* cases, and by extension, Hadžić’s case, was not a dispositive issue.

## VI. DISPOSITION

25. In view of the foregoing, I hereby **DENY** the Third Request.

Done in English and French, the English version being authoritative.

Done this 18<sup>th</sup> day of December 2012,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
President

[Seal of the Tribunal]

<sup>71</sup> Decision on Second Request, para. 19.