

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-95-5/18-T
Date: 31 January 2012
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 31 January 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVIEW
OF DECISION ON DEFENCE TEAM FUNDING**

The Office of the Prosecutor

Mr. Alan Tieger and Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 (“International Tribunal”), am seised of the “Request for Review of Decision on Defence Team Funding”, filed on 22 August 2011 (“Request for Review”) by Radovan Karadžić (“Karadžić”). The Registrar of the International Tribunal (“Registrar”) filed a response to the Request for Review,¹ and Karadžić filed a reply.²

I. BACKGROUND

2. On 19 February 2010, the President of the International Tribunal issued the “Decision on Request for Review of OLAD Decision on Trial Phase Remuneration” (“*Karadžić* Remuneration Decision”), ordering the Registrar to allocate a total of 750 remunerable hours per month for the funding of five support staff to the Karadžić defence team during the trial phase.³

3. On 29 March 2011 and 9 May 2011, Karadžić submitted requests to the Office of Legal Aid and Detention Matters of the International Tribunal (“OLAD”) asking that the Registrar allocate additional hours per month to his defence team (collectively, “Request for Additional Funding”).⁴ Specifically, Karadžić sought the allocation of 40 additional hours per month for each of his first case manager and his legal associate, and 190 hours per month for a second case manager upon the expiration of his funding.⁵ Karadžić submitted that, “given the unprecedented scope and breadth of [his] case, it has been impossible to mount an effective defence with the allocated resources.”⁶

4. In support of his Request for Additional Funding, Karadžić argued, *inter alia*, that: (i) his case is three-times more complex than the other “Level 3” cases funded by the International Tribunal;⁷ (ii) he has no co-accused to share the burden of the defence tasks;⁸ (iii) the receipt and timing of voluminous disclosure from the Office of the Prosecutor (“Prosecution”), which was not taken into account when previous funding decisions and policy were reached, as well as disclosure violations;⁹ (iv) the Prosecution has called a great number of witnesses pursuant to Rule 92 *ter* of

¹ Registrar’s Submission Pursuant to Rule 33 (B) Regarding Radovan Karadžić’s Request for Review of Decision on Defence Team Funding, 5 September 2011 (public with confidential, *ex parte* annexes) (“Response”).

² Reply Brief: Request for Review of Decision on Defence Team Funding, 8 September 2011 (“Reply”).

³ *Karadžić* Remuneration Decision, paras 46, 56.

⁴ Request for Review, Annex A, pp. 1-4; Response, Annex A (confidential and *ex parte*), pp. 1, 4.

⁵ Request for Review, Annex A, pp. 1-2, 4. *See also* Response, Annex A (confidential and *ex parte*), p. 4.

⁶ Request for Review, Annex A, p. 1. *See also* Request for Review, Annex A, p. 4; Response, Annex A (confidential and *ex parte*), p. 1.

⁷ Request for Review, Annex A, p. 1. *See also* Request for Review, Annex A, p. 2; Response, Annex A (confidential and *ex parte*), pp. 1-2.

⁸ Request for Review, Annex A, p. 1.

⁹ Request for Review, Annex A, pp. 2-3. *See also* Response, Annex A (confidential and *ex parte*), pp. 1, 3.

the Rules of Procedure and Evidence of the International Tribunal (“Rules”);¹⁰ and (v) members of Karadžić’s defence team based in The Hague regularly work in excess of the hours for which they are remunerated.¹¹ Karadžić also asserted that he has not had time to prepare his defence case,¹² and that if additional hours are not allocated to his defence team, he would continue to face an “impossible situation.”¹³

5. The Registrar denied the Request for Additional Funding in its entirety.¹⁴ The Registrar reasoned, *inter alia*, that the allocation of funds could only be granted in accordance with paragraphs 14 and 16 of the International Tribunal’s Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused¹⁵ and that the Remuneration Scheme did not provide for an increase of funds in the circumstances presented.¹⁶ In particular, the Registrar concluded that he was not satisfied that the scope of Karadžić’s case constituted an unforeseeable circumstance as required under the Remuneration Scheme.¹⁷ In addition, the Registrar found that “the exceptional volume of disclosure and disclosure violations, and the additional workload resulting therefrom, have been addressed through the prolonged and fully remunerated adjournment periods.”¹⁸ The Registrar also concluded that disclosure pursuant to Rule 66(B) of the Rules “is not beyond the control of the defence” and thus cannot serve as a justification for allocation of additional resources,¹⁹ and rejected the suggestion that the Prosecution’s presentation of a large number of witnesses under the aegis of Rules 92 *bis* and 92 *ter* of the Rules and Karadžić’s need to prepare a defence case while the Prosecution case was ongoing were unforeseeable circumstances.²⁰

II. STANDARD OF REVIEW

6. 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 [*sic*] 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

¹⁰ See Request for Review, Annex A, p. 4. See also Response, Annex A (confidential and *ex parte*), pp. 2-3; Request for Review, Annex B, Letter from Jaimee Campbell, Head of the Office for Legal Aid and Detention Matters, to Karadžić, Re: Your request for additional funds, 3 June 2011 (“Impugned Decision”), p. 53283 (Registry pagination).

¹¹ Request for Review, Annex A, p. 2. See also Response, Annex A (confidential and *ex parte*), pp. 2, 4.

¹² Request for Review, Annex A, pp. 3-4.

¹³ Request for Review, Annex A, p. 1; Response, Annex A (confidential and *ex parte*), p. 3.

¹⁴ See Impugned Decision, pp. 53282-53281.

¹⁵ Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 1 April 2010 (“Remuneration Scheme”).

¹⁶ Impugned Decision, pp. 53282-53281.

¹⁷ Impugned Decision, p. 53282.

¹⁸ Impugned Decision, p. 53282.

¹⁹ Impugned Decision, pp. 53282-53281.

²⁰ Impugned Decision, p. 53281.

procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.²¹

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
- (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).²²

7. 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.”²³ The onus of persuasion lies on the party challenging the administrative decision to show 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.”²⁴

III. APPLICABLE LAW

8. Paragraph 10 of the Remuneration Scheme provides in relevant part that:

The Remuneration Scheme is based on a maximum allocation of hours during each stage of the proceedings to the accused’s defence team, including all hearing hours for one defence team member (provided the accused has obtained leave from the Chamber for that person to attend the hearings), which depends on the complexity of the case.

9. Paragraph 12 of the Remuneration Scheme specifies that:

For the trial stage of the proceedings, the Remuneration Scheme is based on a maximum allocation of hours to the accused’s defence team per team member per month for the duration of the stage, depending on the level of complexity, as follows:

[...]

- iii) Complexity Level Three: A maximum of 150 hours per month per team member for up to five (5) team members, for a total maximum of up to 750 hours per month.

²¹ *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, e.g., Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Request for Review of Registry Decision Regarding Visit of Defence Team Members, 10 August 2011 (public redacted version) (“Šešelj Decision”), para. 12; *Karadžić Remuneration Decision*, para. 9; Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009 (“Karadžić Decision of 17 December 2009”), para. 18.

²² *Karadžić Remuneration Decision*, para. 9. *See, e.g., Šešelj Decision*, para. 12; *Karadžić Decision of 17 December 2009*, para. 18; *Žigić Decision*, para. 13.

²³ *Žigić Decision*, para. 13. *See, e.g., Šešelj Decision*, para. 13; *Karadžić Remuneration Decision*, para. 10; *Karadžić Decision of 17 December 2009*, para. 18.

²⁴ *Karadžić Remuneration Decision*, para. 10. *See, e.g., Šešelj Decision*, para. 13; *Karadžić Decision of 17 December 2009*, para. 18; *Žigić Decision*, para. 14.

10. Paragraph 14 of the Remuneration Scheme provides in relevant part that:

The Registrar may increase the maximum allotments of hours per team member or stage (while maintaining the level of complexity) if the self-represented accused demonstrates unforeseeable circumstances beyond the control of the self-represented accused or defence team members, which substantially impact upon the preparation reasonably required.

11. Paragraph 16 of the Remuneration Scheme states that:

In deciding upon a request for an increase of the maximum allotments of hours based on unforeseeable circumstances, the Registrar shall request and take into account information from the Pre-Trial Judge, or the Trial or Appeals Chamber, as the case may be, on the nature of the circumstances and their impact on the preparation of the case for the self-represented accused. Information requested will include whether the circumstances can be attributed fully or in part to the manner in which the Prosecution or the self-represented accused and/or his defence team members conducted their preparation, including their planning and organization.

12. Finally, paragraph 26 of the Remuneration Scheme provides that any disputes over remuneration or reimbursement of expenses arising from the application of the Remuneration Scheme shall be settled in accordance with Article 31 of the International Tribunal's Directive on the Assignment of Defence Counsel.²⁵ Article 31(C) of the Directive, in turn, provides that:

Where the dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President for his determination. Before making a determination the President shall request submissions from the aggrieved party and the respondent. The President's determination shall be final and binding upon the parties.

IV. SUBMISSIONS

A. Request

13. Karadžić requests that the Impugned Decision be reversed and that the Registrar be ordered to allocate an additional 270 hours per month to Karadžić's defence during the trial phase of the case.²⁶

14. In support of this request, Karadžić first argues that, in reaching the Impugned Decision, the Registrar misinterpreted the Remuneration Scheme as precluding increases in the maximum allotment of funds based on anything other than the "unforeseeable circumstances" referred to in paragraph 14 of the Remuneration Scheme.²⁷ Karadžić adds that nothing in the Remuneration Scheme indicates that "unforeseeable circumstances" is the only basis justifying increases in the allocation of resources.²⁸ Karadžić also submits that the "rigidity" of the Registrar's approach is unreasonable when contrasted with the standard of reconsideration before the Chambers of the

²⁵ Directive on the Assignment of Defence Counsel, Directive No. 1/94, IT/73/REV. 11, 11 July 2006 ("Directive").

²⁶ Request for Review, para. 24.

²⁷ Request for Review, paras 8-9, 20.

²⁸ Request for Review, para. 20.

International Tribunal, which is not limited to unforeseeable circumstances and can be invoked “when necessary in order to prevent an injustice.”²⁹ In the alternative, Karadžić contends that, by requiring a showing of “unforeseeable circumstances”, the Remuneration Scheme violates the right of the accused to adequate facilities for his defence provided by Article 21(4)(b) of the Statute of the International Tribunal (“Statute”) because it precludes “consideration of the actual situation faced by an indigent self-represented accused trying to defend himself.”³⁰

15. Karadžić also submits that the Registrar erred in failing to consider relevant material which demonstrates that the original allocation of hours is inadequate for him to defend himself, given the scope and pace of the trial.³¹ In particular, Karadžić points to the fact that: his trial has been in the evidentiary phase for 16 months; the pace has increased to the equivalent of a five-day trial week; Prosecution witnesses called pursuant to Rule 92 *ter* of the Rules have been presented very rapidly; the volume of disclosure has grown to over 2 million pages; and almost 5000 exhibits have been admitted at trial.³² He also asserts that the allocation of 750 hours per month in his case is inadequate in light of the fact that the defence team has been required to work 1200 hours per month over a sustained period,³³ and given the scope of the charges, the amount of disclosure, the Prosecution’s resources devoted to his case, and the fact that, as a single accused, he cannot rely on the support from co-accused often present in Level 3 cases.³⁴ Karadžić observes that the Registrar acknowledged these factors but denied the Request for Additional Funding because they were allegedly foreseeable.³⁵ Karadžić notes that he agrees that these factors were foreseeable and that he, in fact, foresaw them himself when he requested 1200 hours’ funding per month during the trial phase.³⁶

16. Karadžić underscores that the Prosecution has acknowledged that the scope of the case is unique,³⁷ and asserts that, unlike the Prosecution which has had access to additional resources, he is, in fact, faced with a diminution of available resources.³⁸ He avows that he will be unable to comply with the demands of the Trial Chamber for the smooth functioning of the trial and will have to request significant adjournments if adequate funds are not provided.³⁹

²⁹ Request for Review, para. 21.

³⁰ Request for Review, para. 9. *See also* Request for Review, para. 22.

³¹ Request for Review, para. 23. *See also* Request for Review, paras. 13, 15, 22.

³² Request for Review, paras 10, 16.

³³ Request for Review, para. 18. *See also* Request for Review, para. 17.

³⁴ Request for Review, para. 15. *See also* Request for Review, para. 17.

³⁵ Request for Review, para. 19.

³⁶ Request for Review, para. 19.

³⁷ Request for Review, paras 11-12.

³⁸ Request for Review, paras 13-14.

³⁹ Request for Review, paras 14, 16.

B. Response

17. As a preliminary matter, the Registrar observes that by filing the Request before me, Karadžić failed to follow the procedure prescribed under Article 31(C) of the Directive despite previous findings that Karadžić must follow the procedure laid out in the Directive.⁴⁰

18. The Registrar proceeds to assert that the Impugned Decision complied with the standard for proper administrative decision-making and should be upheld.⁴¹ The Registrar argues that: (i) he correctly applied the relevant legal provisions of the Remuneration Scheme; (ii) he correctly interpreted the Remuneration Scheme to require the accused to demonstrate unforeseeable circumstances; and (iii) the policy set forth in the Remuneration Scheme is consistent with both the rights of the accused and the Registrar's obligation to administer public funds diligently.⁴² The Registrar adds that, absent a showing of unforeseen circumstances, an increase in monthly allotments of defence funding beyond the maximum permitted by the Remuneration Scheme would not only have been "*contra legem*", but would have resulted in unequal treatment of Karadžić as compared to other accused before the International Tribunal.⁴³

19. The Registrar further asserts that, in reaching the Impugned Decision, he considered whether the factors identified by Karadžić in the Request for Additional Funding constituted "extraordinary factors" that could qualify as unforeseen circumstances.⁴⁴ In this respect, the Registrar explains that he determined, in consultation with the Trial Chamber, that the size, scope, and complexity of the case had not changed since the *Karadžić* Remuneration Decision and the subsequent amendment of the Remuneration Scheme.⁴⁵ In the Registrar's view, "[t]o argue that 750 hours are not sufficient in light of the scope and complexity of the case amounts to a request for reconsideration" of the *Karadžić* Remuneration Decision.⁴⁶

20. The Registrar also submits that the high volume of disclosure in the case was entirely foreseeable, and that the exceptional volume of disclosure pursuant to Rule 68 of the Rules, alleged disclosure violations of the Prosecution, and additional workload related thereto, even if unforeseeable, have been addressed by the Trial Chamber through prolonged and fully remunerated

⁴⁰ Response, para. 15, referring to *Karadžić* Decision of 17 December 2009, para. 19.

⁴¹ Response, paras 18, 49, 51. See also Response, paras 41-47, 50.

⁴² Response, paras 19-25, 40, 50.

⁴³ Response, para. 48.

⁴⁴ Response, para. 26. See Response, paras 27-40.

⁴⁵ Response, para. 29. The Registrar adds that the *Karadžić* Remuneration Decision specifically accounted for the magnitude and complexity of the case in its determination of the appropriate allocation of hours for Karadžić's defence. See Response, para. 28.

⁴⁶ Response, para. 28.

adjournment periods.⁴⁷ The Registrar likewise contends that disclosures pursuant to Rule 66(B) of the Rules were foreseeable, and notes that the Trial Chamber expressly considered the issue of Rule 66(B) disclosure and repeatedly found that it did not warrant further adjournments.⁴⁸ The Registrar asserts that Karadžić “has been aware of the prospect of the intention of the Prosecution” to call witnesses pursuant to Rules 92 *bis* and 92 *ter* of the Rules since the pre-trial phase of the case and that the presence of such witnesses therefore does not constitute unforeseen circumstances.⁴⁹ As for the arguments concerning the Prosecution’s resources, the Registrar adds that Karadžić’s claim that he has a right to be afforded the same means as the Prosecution is “unsustainable” under the International Tribunal’s jurisprudence regarding the “equality of arms.”⁵⁰

C. Reply

21. Karadžić notes that the Registrar does not contest that his defence team has worked 1200 hours per month, only some of which are compensated, and submits that either the Registrar should use his discretion to remedy the situation or that the Remuneration Scheme, as interpreted by the Registrar, violates his statutory right to adequate facilities.⁵¹ Karadžić further asserts that the Registrar erred in interpreting the *Karadžić* Remuneration Decision as determining that 750 hours per month was an adequate allocation for this case.⁵² He also argues that the Registrar, by considering the need to ensure that all self-represented accused are treated equally, has taken an irrelevant factor into account in reaching the Impugned Decision, and underscores that, in any event, his case is of unequalled scope and complexity.⁵³ Karadžić submits that he is not seeking resources equal to those of the Prosecution, but rather pointing to the Prosecution’s need to dedicate “an extraordinary number of resources to this case” as support for his argument that 750 hours per month is not adequate to defend a case of the magnitude presented here.⁵⁴ Finally, Karadžić asserts that the shortfall funding for his defence constitutes an injustice and that addressing this is necessary to assure a fair trial.⁵⁵

⁴⁷ Response, paras 30-31.

⁴⁸ Response, para. 33. The Registrar acknowledges that there may be circumstances where Rule 66(B) disclosures are unforeseen, but he submits that Karadžić did not specify the precise nature of the Rule 66(B) disclosure at issue and that the Registrar was therefore unable to determine whether the disclosure amounted to an unforeseen circumstance. *See* Response, para. 34.

⁴⁹ Response, para. 35. The Registrar notes that he has substantially increased the number of hours available for experts to 570 hours, which is over and above what is usually granted to defence teams, in order to assist Karadžić with the most important Rule 92 *bis* and 92 *ter* materials. *See* Response, para. 36. *See also* Response, para. 22.

⁵⁰ Response, paras 37-39.

⁵¹ Reply, paras 3-4. Karadžić indicates that 900 hours per month are compensated, consisting of 750 hours per month plus 150 hour carry-over from funds not disbursed at the pre-trial stage. *See* Reply, n. 1.

⁵² Reply, para. 5.

⁵³ Reply, para. 6.

⁵⁴ Reply, para. 7.

⁵⁵ Reply, para. 8.

V. DISCUSSION

A. Preliminary Consideration

22. The Registrar correctly observes that, by filing the Request for Review simultaneously before both the President and the Registrar, Karadžić did not follow the procedure outlined in Article 31(C) of the Directive. This is not the first instance in which Karadžić has failed to follow the procedure set forth in Article 31(C) of the Directive, and, unlike previous such occasions when Karadžić cited reasons of urgency,⁵⁶ no such urgency is claimed in the Request for Review.⁵⁷ However, given that the Registrar has not sought any specific form of relief with regard to Karadžić's failure in this respect,⁵⁸ and in light of the need for judicial economy, I will consider the Request for Review as filed. However, I underscore that Karadžić is required to follow the proper procedure for filing any requests for review of the Registrar's decisions in the future.

B. Analysis

1. Legal Requirements

23. Karadžić claims that the Registrar misinterprets the Remuneration Scheme to require a demonstration of "unforeseeable circumstances" before the Registrar may grant additional allotments of hours. In this regard, I first note that paragraph 14 of the Remuneration Scheme explicitly requires that the self-represented accused demonstrate "unforeseeable circumstances beyond the control of the self-represented accused or defence team members, which substantially impact upon the preparation reasonably required" before the Registrar may increase the maximum allotments of hours per team member or stage.⁵⁹ Karadžić correctly observes that nothing in the Remuneration Scheme indicates that "unforeseeable circumstances" is the *only* factor that may be considered in reaching such a determination. However, it does not follow from the fact that other factors may also be taken into account by the Registrar that an applicant need not make the necessary showing of "unforeseeable circumstances" required under the Remuneration Scheme. Nor does it follow that the Registrar's adherence to the "unforeseeable circumstances" requirement of the Remuneration Scheme is unreasonable, as Karadžić submits, simply because that requirement differs from the standard of reconsideration employed by Chambers of the International Tribunal.⁶⁰

⁵⁶ Karadžić Remuneration Decision, para. 31. *See also* Karadžić Decision of 17 December 2009, para. 19.

⁵⁷ *See generally* Request; Reply.

⁵⁸ *See* Response, para. 15.

⁵⁹ *See also* Remuneration Scheme, para. 16.

⁶⁰ *See, e.g.*, Decision on Accused's Motion for Reconsideration of Decision on Ninth Suspension of Proceedings: Witness KDZ456, 11 November 2011, para. 6 (and references therein).

Karadžić fails to further substantiate his claim in this regard, and his challenges concerning the interpretation of the Remuneration Scheme are, accordingly, dismissed.

24. Karadžić also submits that if the Remuneration Scheme requires a showing of “unforeseeable circumstances”, the Remuneration Scheme violates Article 21(4)(b) of the Statute because it precludes consideration of the actual situation faced by a self-represented accused.⁶¹ However, Karadžić fails to explain how requiring a showing of “unforeseeable circumstances” precludes such consideration. Because Karadžić fails to show how the “unforeseeable circumstances” requirement is otherwise incompatible with Article 21(4)(b) of the Statute, his claim in this respect is dismissed.

2. Material Taken into Account and Reasonableness

25. Karadžić also submits that, in reaching the Impugned Decision, the Registrar erred in failing to consider relevant material.⁶² I will address his specific arguments on this point in turn. In doing so, I note that the test for the allocation of additional defence funding under paragraph 14 of the Remuneration Scheme is objective rather than subjective. Karadžić’s suggestion that the circumstances underlying his request for additional funding were foreseeable to him is therefore not determinative.⁶³ Furthermore, his submission in this regard in no way relieves the Registrar of the duty to determine whether the accused has demonstrated unforeseen circumstances, a point which the Registrar acknowledges by addressing each of Karadžić’s arguments.⁶⁴ I will therefore consider whether the Registrar was reasonable in his assessment of whether the circumstances put forth by Karadžić in support of his Request for Additional Funding were objectively foreseeable.

(a) Scope, Size, and Complexity of the Karadžić Trial

26. Karadžić argues that the Registrar erred with respect to his assessment of the scope and pace of Karadžić’s trial. I note that the Registrar explicitly considered the scope and complexity of the case in the Impugned Decision.⁶⁵ In particular, he noted that the “exceptional scope” of the case had already been taken into account in the *Karadžić* Remuneration Decision, and that the Trial Chamber, upon consultation, stated on 6 April 2011 that there was no change in the size, scope, or

⁶¹ Request for Review, para. 9. *See also* Request for Review, para. 22.

⁶² Request for Review, paras 22-23. Karadžić also submits that the Registrar, by considering the need to ensure that all self-represented accused are treated equally, took into account an irrelevant factor in reaching the Impugned Decision. *See* Reply, para. 6. I do not consider, however, that the Registrar’s discussion of the equal treatment of self-represented accused, which was in the context of his submissions concerning the development and consistent application of the Remuneration Scheme, indicates that the Registrar took into account the need to equalize resources between two different cases, as Karadžić suggests, or otherwise took into account irrelevant material. *See* Reply, para. 6; Response, paras 20-21, 48. Karadžić’s claim is, accordingly, dismissed.

⁶³ *See* Request for Review, para. 19.

⁶⁴ *See generally* Response.

complexity of the case since the issuance of the *Karadžić* Remuneration Decision and the subsequent amendment of the Remuneration Scheme.⁶⁶

27. Karadžić does not demonstrate that the Registrar failed to consider any relevant evidence in this regard. Moreover, the fact that Karadžić's defence team has worked for more hours than he was allocated funding does not, in itself, demonstrate that the Registrar erred with regard to his assessment of the scope and nature of Karadžić's case. The Registrar thus reasonably concluded that it had not been shown that the scope of the case is an "unforeseen circumstance [...] which substantially impact [*sic*] on the preparation required."⁶⁷

(b) Rule 68 Disclosure

28. With regard to Karadžić's claims concerning the high volume of disclosure materials and large number of disclosure violations, I recall that the Registrar dismissed these arguments in the Impugned Decision, concluding that "the exceptional volume of disclosure and disclosure violations, and the additional workload resulting therefrom, have been addressed through the prolonged and fully remunerated adjournment periods."⁶⁸ I also note that the Trial Chamber has granted Karadžić several periods of adjournment for the purpose of reviewing material disclosed pursuant to Rule 68 of the Rules.⁶⁹ Karadžić's defence team has invoiced the same maximum time allotments during these adjournment periods as during full-time sitting periods.⁷⁰

29. I observe that the Registrar reached no explicit conclusion in the Impugned Decision as to whether "the exceptional volume of disclosure and disclosure violations" at issue,⁷¹ or Rule 68 disclosures in particular, constituted unforeseeable circumstances beyond the control of the

⁶⁵ Impugned Decision, p. 53282.

⁶⁶ Impugned Decision, p. 53282.

⁶⁷ Impugned Decision, p. 53282 (internal quotation marks omitted). The Registrar suggests that Karadžić, by seeking an increase in allotted hours based upon the scope and complexity of his case, is effectively requesting reconsideration of the *Karadžić* Remuneration Decision. See Response, para. 28. In the *Karadžić* Remuneration Decision, the President took into account the case's scope and complexity in ordering the Registrar to allocate 750 hours for Karadžić's defence. See *Karadžić* Remuneration Decision, paras 41-45. I consider, however, that this fact has no bearing on whether Karadžić may seek to demonstrate, or has demonstrated, that "unforeseeable circumstances" have arisen in relation to these factors since the issuance of the *Karadžić* Remuneration Decision.

⁶⁸ Impugned Decision, p. 53282.

⁶⁹ See, e.g., Decision on Accused's Forty-Seventh Motion for Finding of Disclosure Violation and for Further Suspension of Proceedings, 10 May 2011 ("Decision on Forty-Seventh Motion") (granting a one-week suspension); Decision on Accused's Motion for Fifth Suspension of Proceedings, 17 March 2011 (granting a two-week suspension); Decision on Accused's Motion for Fourth Suspension of Proceedings, 16 February 2011 (granting a six-week suspension). Rule 68(i) of the Rules provides that "the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence."

⁷⁰ See Impugned Decision, p. 53282; Response, para. 31.

⁷¹ Impugned Decision, p. 53282.

self-represented accused or defence team members.⁷² It would have been preferable for the Registrar to have done so. Nonetheless, I do not find it unreasonable for the Registrar to have exercised his discretion to conclude that the fully remunerated adjournment periods, granted for the purpose of allowing Karadžić time to review the Rule 68 material, obviated the need for an additional allocation of resources to the Karadžić defence team on that same basis.⁷³ Karadžić's claims in this respect are, accordingly, dismissed.

(c) Rule 66(B) Disclosure

30. In the Request for Additional Funding, Karadžić submitted that material disclosed pursuant to Rule 66(B) of the Rules⁷⁴ accounted for the greatest amount of disclosure received from the Prosecution since February 2010.⁷⁵ In the Impugned Decision, however, the Registrar concluded that, "given that disclosure pursuant to Rule 66(B) is based on the requests by the defence, such disclosure is not beyond the control of the defence and can therefore not serve as justification for additional resources under the Remuneration Scheme."⁷⁶

31. While a request for Rule 66(B) disclosure originates with Karadžić, I consider that the precise amount of material resulting from such a request is not in his control, and therefore is not necessarily foreseeable. Provided that the disclosure request is material to the preparation of the defence, relates to materials which are intended for use by the Prosecution as evidence at trial, or relates to materials that were obtained from or belonged to the accused,⁷⁷ Karadžić is entitled to make such requests. The fact that these requests may result in a large volume of material does not offer a reasonable basis for the Registrar to conclude that Karadžić should not be accorded sufficient resources to deal with it.

32. In deciding not to grant additional resources on the basis of the Rule 66(B) disclosures, the Registrar also considered as a relevant factor that the Trial Chamber did not grant an adjournment period for review of such disclosures.⁷⁸ As the Registrar notes, the Trial Chamber came to this decision on the basis that "the defence does not have the right to have all Rule 66(B) material

⁷² See Impugned Decision, pp. 53282-53281. See also Response, para. 30 ("With respect to the disclosure of Rule 68 material specifically, the Registrar submits that even were it not foreseeable, it does not justify additional funding.").

⁷³ See Remuneration Scheme, para. 14 (setting forth the circumstances in which the Registrar "may" increase the maximum allotment of hours per team member or stage).

⁷⁴ Rule 66(B) of the Rules provides that "[t]he Prosecutor shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused."

⁷⁵ Request for Review, Annex A, p. 2.

⁷⁶ Impugned Decision, p. 53281. See also Response, para. 33.

⁷⁷ See Rule 66(B) of the Rules.

⁷⁸ Impugned Decision, pp. 53282-53281.

provided to it prior to hearing evidence in the case.”⁷⁹ This reasoning does not address whether the volume of material disclosed pursuant to Rule 66(B) was unforeseeable.⁸⁰ I therefore find that the Registrar, by relying, in part, upon the Trial Chamber’s rationale, took into account irrelevant material in reaching the Impugned Decision.

33. In view of the foregoing, I find that the Registrar’s determination as to Rule 66(B) disclosures was unreasonable and took into account irrelevant material, and that the Registrar therefore erred. I note Karadžić’s submission that he has received over 2 million pages of disclosure from the Prosecution, including more than a quarter of a million pages of Rule 66(B) disclosure material since February 2010 alone.⁸¹ I also note his submission that the receipt of such voluminous material was a circumstance not taken into account, *inter alia*, by prior funding decisions.⁸² I consider, however, that while there is no question that he has received a substantial amount of disclosure material and while the precise amount of material resulting from a Rule 66(B) request is not necessarily foreseeable, Karadžić fails to demonstrate whether and to what degree some or all of the volume of the Rule 66(B) material in this case was, in fact, “unforeseeable”, as required under the Remuneration Scheme.⁸³ I therefore find that he fails to show how the Registrar’s error significantly affected the administrative decision to his detriment.⁸⁴

(d) Rule 92 *ter* Witnesses

34. Turning to Karadžić’s claims concerning the number of witnesses called pursuant to Rule 92 *ter* of the Rules,⁸⁵ I observe that the Registrar explained that the Trial Chamber had advised that use of Rule 92 *bis* and Rule 92 *ter* of the Rules was known to Karadžić and his defence team “since the pre-trial phase, and hence cannot be qualified as an unforeseeable circumstance.”⁸⁶ In this regard, the Registrar also stated that the Trial Chamber repeatedly allowed Karadžić’s assigned experts to assist in the preparation and conduct of specific cross-examinations, and that, as a result, the Registrar allocated additional hours for such tasks.⁸⁷

35. At the outset, I note that an awareness of the prospective use of these Rules by the Prosecution does not establish the foreseeability of the volume of material that would be admitted

⁷⁹ Impugned Decision, p. 53282, *citing* Decision on Forty-Seventh Motion, para. 21 (internal quotation marks omitted).

⁸⁰ I note the Registrar’s submission that Karadžić did not specify the precise nature of the Rule 66(B) disclosure at issue and that the Registrar was therefore unable to determine whether the disclosure amounted to an unforeseen circumstance. *See* Response, para. 34. I further note, however, that this position was not articulated in the Impugned Decision. *See* Impugned Decision, pp. 53282-53281.

⁸¹ Request for Review, Annex A, p. 2.

⁸² Request for Review, Annex A, p. 3.

⁸³ *See* Request for Review, Annex A, pp. 2-3. *See also* Response, para. 34.

⁸⁴ *See* Karadžić Remuneration Decision, para. 10.

⁸⁵ Request for Review, para. 16.

⁸⁶ Impugned Decision, p. 53281.

through such witnesses. In this regard, I also note Karadžić's submission that a particularly large number of Prosecution witnesses have been called pursuant to Rule 92 *ter*.⁸⁸ Accordingly, I do not consider that awareness of the prospective use of Rule 92 *ter* of the Rules alone provides a reasonable basis to conclude that Karadžić should not be accorded sufficient resources to deal with the volume of material resulting from such use. I observe, however, that the Impugned Decision indicates that the Registrar allocated additional hours to Karadžić "over and above what is usually granted for any other defence team" for the preparation and conduct of specific cross-examinations by Karadžić's assigned experts.⁸⁹ I further note the Registrar's submission that Karadžić has not yet exhausted the existing allocation.⁹⁰ In these circumstances, I do not find it unreasonable for the Registrar to have exercised his discretion to conclude that these additional allocations obviated the need for further allocations of resources to the Karadžić defence team with respect to Rule 92 *ter* witnesses. Karadžić's claims concerning Rule 92 *ter* of the Rules are, accordingly, dismissed.

3. Reconsideration

36. The foregoing analysis addresses all of the specific arguments raised in the Request for Review. Denying on this basis, however, would ignore the core theme that runs through Karadžić's submissions. Read broadly and in context, the Request for Review and Reply effectively challenge whether the *Karadžić* Remuneration Decision was correct in providing Karadžić 1200 remunerable hours per month during the adjournment phase of his trial, but reducing this allocation to 750 remunerable hours per month after the resumption of the trial.⁹¹ More specifically, I note Karadžić's assertion that the factors requiring increased allocation of remunerable hours during trial proceedings "were foreseeable" before the *Karadžić* Remuneration Decision was filed,⁹² and that the "wider scope" and complexity of his case were not given sufficient consideration.⁹³ He underscores that he has brought the Request for Review because the reduced number of remunerable hours he was allocated prevent him from having a fair trial and constitute an injustice.⁹⁴ I also note Registrar explicitly states that Karadžić's submissions amount to a request for reconsideration.⁹⁵

⁸⁷ Impugned Decision, p. 53281. *See also* Response, para. 36.

⁸⁸ *See* Request for Review, para. 16; Response, Annex A, p. 2 (confidential and *ex parte*). *See also* Impugned Decision, pp. 53283, 53281.

⁸⁹ Impugned Decision, p. 53281, n. 1; Response, para. 36.

⁹⁰ Response, n. 25. *See also* Response, para. 22 (noting that the Registrar has exceptionally increased the remunerable tasks for experts and the hours allocated for expert assignments to 570 hours).

⁹¹ *Karadžić* Remuneration Decision, paras 45-46, 56.

⁹² *See* Request for Review, para. 19.

⁹³ *See* Reply, para. 5.

⁹⁴ *See* Reply, paras 7-8.

⁹⁵ Response, para. 28.

37. In view of the foregoing, and recalling the International Tribunal's responsibility to provide for the rights of the accused and ensure fair trials,⁹⁶ I believe that it is in the interests of justice to, *proprio motu*, treat the Request for Review as also encompassing a request for reconsideration of the *Karadžić* Remuneration Decision. I note that decisions by the President of the International Tribunal reviewing administrative determinations have not previously been reconsidered. However, it is well established that reconsideration of non-final decisions by Chambers of the International Tribunal is permitted.⁹⁷ In this context, I see no reason why decisions by the President should not be similarly subject to revision in appropriately limited circumstances.

38. In determining the standards governing reconsiderations of decisions by the President of the International Tribunal, I am guided by the standards applicable to reconsideration of decisions by Chambers of the International Tribunal. Reconsideration is permitted, *inter alia*, where the impugned decision presents a "clear error of reasoning" or "particular circumstances justify[] its reconsideration in order to avoid injustice."⁹⁸ Circumstances justifying the reconsideration of decisions by Chambers can include new facts.⁹⁹ I note, however, that the *Karadžić* Remuneration Decision constituted review of an administrative decision; new facts arising after the relevant administrative decision would not constitute a valid basis for reconsideration, as they were not before the Registrar when he reached his decision.¹⁰⁰

39. Turning to the merits of *Karadžić's* request for reconsideration, I note that the *Karadžić* Remuneration Decision allocated 750 remunerable hours per month during the conduct of the trial on the basis of two separate considerations. The first was that certain exceptional circumstances involving, *inter alia*, a high volume of work relating to disclosure materials and witnesses justified allocating 1200 remunerable hours per month to *Karadžić's* defence team during an adjournment phase. However, this grant was limited to the period before trial proceedings re-commenced.¹⁰¹ The second was that the allocation of support to *Karadžić* during trial proceedings should mirror the number of remunerated hours for support staff provided in the International Tribunal's most

⁹⁶ See Articles 20 and 21 of the Statute.

⁹⁷ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009 ("*Prlić* Decision"), para. 18.

⁹⁸ *Prlić* Decision, para. 18.

⁹⁹ *Prlić* Decision, para. 18.

¹⁰⁰ Cf. *Žigić* Decision, para. 13; *Karadžić* Remuneration Decision, paras 1-9. I observe that where new facts justify revision of a decision by the Registrar, these facts should be brought to his attention.

¹⁰¹ See *Karadžić* Remuneration Decision, paras 38-39, 45-46.

complex cases, as set out in the standardized defence reimbursement framework used by the Registrar with regard to represented accused.¹⁰²

40. The *Karadžić* Remuneration Decision's focus on ensuring alignment with the Trial Legal Aid Policy would be justified in normal circumstances. However, it did not sufficiently consider the massive scope and complexity of Karadžić's trial. The exceptional scale of the charges against Karadžić was already well-established and, as Karadžić submits, it was clear that he would be required to analyze unprecedented volumes of disclosure and witness materials while trial proceedings were ongoing. Reducing the number of remunerated hours allocated by more than a third after the re-commencement of trial was thus unjustified and had the potential to lead to injustice. In these circumstances, the *Karadžić* Remuneration Decision should not have limited itself to the maximum support thresholds established by the Trial Legal Aid Policy.

41. I recognise and underscore that:

Nothing in this decision should be construed as meaning that all self-represented accused should be allocated the same number of support staff as allocated to represented accused with cases of similar complexity. Rather, such decisions can only be made on a case-by-case basis after careful consideration of the particular circumstances of each self-represented accused.¹⁰³

In the present circumstances, I believe that it is appropriate to reconsider the conclusions of the *Karadžić* Remuneration Decision and, considering the particular circumstances of Karadžić's trial, grant an additional allocation of remunerable hours to Karadžić's defence team.

42. Karadžić's submissions do not establish that an allocation of 1200 remunerable hours per month is appropriate. However, he provides sufficient justifications to support allocating 270 additional remunerable hours per month to his defence team.¹⁰⁴ More specifically, he explains that the case manager for whom he seeks funding is needed to upload documents to the e-court system and manage B/C/S translation issues, and that responding to the high volume of case materials requires substantial additional work hours from his legal associate and case managers.¹⁰⁵

4. Conclusion

43. In light of the foregoing, I find that the Registrar acted within his discretion in issuing the Impugned Decision, except with respect to the issue of Rule 66(B) disclosures. With regard to that issue, I find that the Registrar erred when he took into account irrelevant material and reached an unreasonable conclusion. I nonetheless find that because Karadžić fails to demonstrate how and to

¹⁰² See *Karadžić* Remuneration Decision, para. 46; Defence Counsel – Trial Legal Aid Policy, 1 November 2009 (“Trial Legal Aid Policy”), paras 31-38.

¹⁰³ *Karadžić* Remuneration Decision, para. 47.

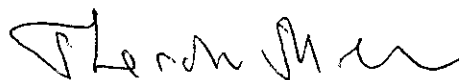
¹⁰⁴ See, e.g., Request for Review, paras 14-17.

what degree the volume of material disclosed pursuant to Rule 66(B) of the Rules in his case was, in fact, “unforeseeable” as required under the Remuneration Scheme, he fails to show that the Registrar’s error “significantly affected the administrative decision to his detriment.”¹⁰⁶

44. However, as I have explained above, the Request for Review, considered in appropriate context, makes a convincing case for reconsidering the *Karadžić* Remuneration Decision. The latter did not sufficiently consider the scope and complexity of Karadžić’s trial, and thus erred by granting too limited an allocation of remunerable hours per month to Karadžić’s defence team.

VI. DISPOSITION

45. For the foregoing reasons, I **GRANT** the Request for Review and **ORDER** the Registrar to provide Karadžić’s defence team an additional 270 remunerable hours per month during the trial.



Judge Theodor Meron
President

Dated this 31st day of January 2012
At The Hague,
The Netherlands

[Seal of the International Tribunal]

¹⁰⁵ See Request for Review, paras 4, 14-15.

¹⁰⁶ See *Karadžić* Remuneration Decision, para. 10. See, e.g., *Šešelj* Decision, para. 13; *Karadžić* Decision of 17 December 2009, para. 18; *Žigić* Decision, para. 14.