

**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-09-92-T
Date: 30 September 2013
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 30 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON RATKO MLADIĆ'S REQUEST FOR REVIEW OF
OLAD DECISION ON ADDITIONAL CO-COUNSEL**

Counsel for Mr. Ratko Mladić:

Mr. Branko Lukić
Mr. Miodrag Stojanović

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 a request for review submitted by Defence counsel for Mr. Ratko Mladić, dated 18 August 2013, seeking review of a decision issued by the Tribunal’s Office for Legal Aid and Defence Matters (“OLAD”) on 18 April 2013.¹ The Registry of the Tribunal (“Registry”) responded on 2 September 2013.²

I. BACKGROUND

2. On 22 July 2011, the Registry assigned Mr. Branko Lukić as lead counsel to Mr. Mladić on an interim basis, pending a determination of Mr. Mladić’s ability to remunerate counsel.³ Mr. Miodrag Stojanović was assigned as co-counsel to Mr. Mladić’s Defence team on 23 February 2012.⁴ The interim assignments of lead counsel and co-counsel were made permanent on 1 February 2013, when the Registry determined that Mr. Mladić was partially indigent and was thus eligible for the assignment of Tribunal-paid counsel.⁵ On 4 June 2012, Mr. Dragan Ivetić was assigned as a legal consultant to Mr. Mladić’s Defence team.⁶ The Trial Chamber has granted rights of audience to Mr. Ivetić.⁷

3. On 29 June 2012, the Registry ranked Mr. Mladić’s case at complexity level three (extremely difficult) and granted his Defence team funding in accordance with this ranking.⁸ In so doing, the Registry denied Mr. Lukić’s request, made on 28 May 2012, for funding beyond that provided for at complexity level three for the payment of a second co-counsel.⁹ The Registry noted in this regard that the Defence Counsel Trial Legal Aid Policy (“Trial Legal Aid Policy”) does not allow for the assignment and funding of a second co-counsel but that Mr. Lukić has the flexibility to determine the composition of the Defence team and the distribution of the lump sum payment provided under the Trial Legal Aid Policy.¹⁰

¹ See Annex A, Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 20 August 2013 (confidential), *transmitting*: (i) Appeal of OLAD Denial of Request for Additional Co-Counsel and DSA, 18 August 2013 (confidential) (“Request for Review”); and (ii) Annex I, Letter from Jaimee Campbell, Head of OLAD, to Branko Lukić, Lead Counsel to Ratko Mladić, dated 18 April 2013 (confidential) (“Impugned Decision”).

² Annex B, Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 2 September 2013 (confidential) (“Response”). Defence Counsel for Mr. Mladić did not submit a reply.

³ Response, para. 3.

⁴ Impugned Decision, p. 1.

⁵ Decision of the Deputy Registrar (public with public appendix I and confidential *ex parte* appendix II), 1 February 2013. See also Response, para. 3.

⁶ Impugned Decision, p. 1.

⁷ Impugned Decision, p. 2. See also Request for Review, p. 1.

⁸ See Impugned Decision, p. 2. See also Response, para. 6.

⁹ Response, paras 4, 6.

¹⁰ Response, para. 6.

4. On 3 April 2013, the Defence again requested the Registry to appoint Mr. Ivetić as additional co-counsel for Mr. Mladić and to enable him to receive DSA and travel allowances.¹¹ On 18 April 2013, OLAD denied the request on the grounds that neither the Directive on the Assignment of Defence Counsel (“Directive”)¹² nor the relevant remuneration policies provide for the assignment of an additional co-counsel or for the payment of trial DSA in The Hague for anyone other than lead counsel or co-counsel.¹³

II. STANDARD OF REVIEW

5. 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.¹⁴

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).¹⁵

6. 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”.¹⁶ 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”.¹⁷

¹¹ Impugned Decision, p. 1.

¹² IT/73/REV. 11, 11 July 2006.

¹³ Impugned Decision, p. 3. *See also* Impugned Decision, pp. 1-2; Response, para. 8.

¹⁴ *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* *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Request for Review of Registrar Decision and for Summary Reversal, 7 May 2012 (“Karadžić Decision”), para. 4.

¹⁵ Karadžić Decision, para. 4 (internal citation omitted). *See also* Žigić Decision, para. 13.

¹⁶ Žigić Decision, para. 13. *See also* Karadžić Decision, para. 5.

¹⁷ Karadžić Decision, para. 5 (internal citation omitted and alteration in original). *See also* Žigić Decision, para. 14.

III. APPLICABLE LAW

7. Article 16(A) of the Directive provides that an accused shall be entitled to have one counsel assigned to him. Pursuant to Article 16(C) of the Directive, the Registrar may assign a co-counsel in the interests of justice and at the request of lead counsel. Article 16(E) provides that the Registrar may, at the request of lead counsel, assign other persons such as legal consultants to provide support to counsel.

8. Pursuant to Article 24(B) of the Directive, assigned counsel and assigned members of the Defence team shall be remunerated in accordance with the Trial Legal Aid Policy.¹⁸

9. The Trial Legal Aid Policy provides that the Defence team shall be remunerated in the form of a lump sum allotment, which is calculated in accordance with the complexity level and estimated duration of the relevant trial phase¹⁹ and which includes payment for all aspects of representation except for necessary travel and DSA.²⁰ For cases ranked at complexity level three, the Trial Legal Aid Policy provides for a monthly allotment of €40,738.²¹ According to the Trial Legal Aid Policy, lead counsel is free to decide on the distribution of the lump sum among the assigned Defence team members in the best interest of the defence of the client.²²

10. Articles 26(A) and 27(A) of the Directive state that travel expenses of and DSA for assigned counsel and, where applicable, assigned members of the Defence team shall be met in accordance with the Registry Defence Travel and Daily Subsistence Allowance Policy (“Travel and DSA Policy”),²³ subject to prior authorization.

11. The Travel and DSA Policy is based on two guiding principles: (i) travel and DSA will be authorized where it is deemed reasonable and necessary in the particular circumstances of the case; and (ii) the need to make the most efficient use of public funds at the lower possible cost to the Tribunal, while ensuring full respect for the rights of the accused and their legal representatives.²⁴

12. The Travel and DSA Policy provides for the remuneration of travel during the trial period for investigative purposes undertaken primarily by investigators, occasionally by counsel, and exceptionally by legal consultants/assistants acting in the investigator’s or counsel’s stead, in other

¹⁸ 1 November 2009.

¹⁹ Trial Legal Aid Policy, para. 1.

²⁰ Trial Legal Aid Policy, para. 4.

²¹ Trial Legal Aid Policy, para. 37.

²² Trial Legal Aid Policy, para. 39.

²³ 1 January 2007, as amended on 1 August 2011.

²⁴ Travel and DSA Policy, Introduction.

words, when the investigator and counsel are unavailable to travel for objective reasons.²⁵ The Travel and DSA Policy also authorizes payment for travel of lead counsel and co-counsel to their country of residence during the trial.²⁶

13. Pursuant to the Travel and DSA Policy, DSA is paid for days spent on trial-related work in the Netherlands.²⁷ The Travel and DSA Policy further specifies that lead counsel and co-counsel who do not reside in the Netherlands are entitled to a general DSA allotment of 22 days at the end of each month during the trial stage, subject to certain conditions.²⁸

IV. SUBMISSIONS

14. Mr. Lukić requests that Mr. Ivetić be appointed as second co-counsel and be authorized to receive DSA and travel allowances so that he may “assist with the cross-examination of witnesses” and “travel to assist with the preparations for the defense case, when either co-counsel or lead counsel are unable to do so”.²⁹ Mr. Lukić submits that Mr. Ivetić’s assistance is required in light of: (i) the pace of the trial, which is scheduled to take place five days a week with no foreseeable breaks until the end of the Prosecution case in chief, and the upcoming commencement of the Defence phase;³⁰ (ii) the scope of the indictment and the volume of disclosures made by the Prosecution, including untimely disclosures;³¹ and (iii) the increase in work “normally undertaken by counsel”, including cross-examination of witnesses, oversight of the Defence team’s work in the field, and travel to the field to work with investigators and witnesses.³² In addition, Mr. Lukić submits that having another co-counsel will afford the team “some sort of fair footing with the Prosecution, who has employed no fewer than over 20 different attorneys to examine witnesses during the trial”.³³

15. Mr. Lukić also notes that Mr. Ivetić has already conducted the cross-examination of several witnesses, including four expert witnesses, and is scheduled to cross-examine nine of the remaining 32 Prosecution witnesses, including three “fact witnesses” and six “main military experts”.³⁴

16. The Registry contends that the Request for Review fails to address whether the Impugned Decision can be properly quashed on the basis of the factors relevant to the review of an

²⁵ Travel and DSA Policy, Part I, Section B(1).

²⁶ Travel and DSA Policy, Part I, Section B(2).

²⁷ Travel and DSA Policy, Part II, Section B(a)(1).

²⁸ Travel and DSA Policy, Part II, Section B(a)(2).

²⁹ Request for Review, p. 3.

³⁰ Request for Review, pp. 1-2.

³¹ Request for Review, p. 2.

³² Request for Review, p. 2.

³³ Request for Review, p. 1.

³⁴ Request for Review, p. 3. *See also* Request for Review, p. 2.

administrative decision.³⁵ According to the Registry, the Request for Review constitutes “a direct request to the President to circumvent the Tribunal’s legal aid system and authorise legal representation and funding beyond the parameters set forth in the Directive and applicable Registry policies” and thus should be summarily dismissed.³⁶ The Registry further submits that the Request for Review improperly presents new arguments that were not contained in the original Defence request, including: (i) the need for a second co-counsel to achieve some measure of equal footing with the Prosecution; and (ii) the scope of the indictment, the volume of disclosures made by the Prosecution, and the un-timeliness of the Prosecution’s disclosures.³⁷ The Registry accordingly asserts that these arguments should not form part of my consideration of the Request for Review.³⁸

17. The Registry asserts that, should I consider the merits of the Request for Review, the Impugned Decision was made in compliance with the Directive, the applicable Registry policies and “the standard of reasonableness and proper administrative decision-making”.³⁹ Specifically, the Registry contends that the language of Article 16(C) of the Directive explicitly affords the possibility of only one co-counsel, and lead counsel was made aware of this fact on multiple occasions.⁴⁰ Moreover, the Registry avers that the amount of the lump sum allotment does not vary with the size of the Defence team, but instead is distributed to the team members according to the instructions of lead counsel.⁴¹ The Registry further submits that the Travel and DSA Policy does not provide for the disbursement of trial-related DSA to Defence team support staff in the Netherlands.⁴²

18. The Registry also asserts that it took into account the size and difficulty of the case and accordingly ranked the trial at complexity level three, thus providing the Defence team with the highest level of funding available under the Trial Legal Aid Policy.⁴³ According to the Registry, there is no basis under either the Directive or the Trial Legal Aid Policy to authorize funding in excess of that already dispersed pursuant to the level three complexity ranking.⁴⁴ Similarly, the Registry submits that there is no basis under the Directive to designate Mr. Ivetić as second co-counsel and thus there is no basis under the Travel and DSA Policy to authorize travel and DSA entitlements for Mr. Ivetić as counsel.⁴⁵ Moreover, the Registry reiterates that the Travel and DSA

³⁵ Response, para. 13. *See also* Response, paras 24-25.

³⁶ Response, para. 13.

³⁷ Response, para. 14.

³⁸ Response, para. 14.

³⁹ Response, para. 15.

⁴⁰ Response, paras 16, 20. *See also* Response, para. 19.

⁴¹ Response, para. 17.

⁴² Response, para. 18.

⁴³ Response, para. 21.

⁴⁴ Response, para. 21.

⁴⁵ Response, para. 22.

Policy does not provide for such entitlements for Defence team support staff, aside from remuneration for travel for investigative purposes in certain circumstances.⁴⁶ The Registry also contends that its refusal to assign Mr. Ivetić as second co-counsel does not prevent him from performing certain tasks, such as cross-examining witnesses, supervising other Defence team members in the field, and occasionally travelling to the field.⁴⁷

19. Finally, the Registrar requests that, as “matters of legal representation are matters of public record”, this decision, or a redacted version, be made available to the public.⁴⁸

V. DISCUSSION

20. As a preliminary matter, I note that although Mr. Lukić does not explicitly state that the Impugned Decision should be quashed on the basis of factors relevant to the review of an administrative decision, his submissions constitute allegations that the Registry reached an unreasonable conclusion. In these circumstances, I will consider the Request for Review on the merits.

21. I consider that OLAD reasonably relied on Article 16(B) of the Directive, which entitles an accused to have one counsel assigned to him, and Article 16(C) of the Directive, which provides for the assignment of a co-counsel when it is in the interests of justice and at the request of the lead counsel, as the basis for its refusal to assign Mr. Ivetić as a second co-counsel. As the Registry points out, the Directive does not explicitly provide for the assignment of multiple co-counsel.⁴⁹ In these circumstances, I consider that OLAD was reasonable in determining that Mr. Mladić is entitled to a lead counsel and one co-counsel only.⁵⁰

22. I further find that OLAD was reasonable in concluding, on the basis of the Travel and DSA Policy, that Mr. Ivetić, as a member of the Defence team support staff, may not be reimbursed for certain travel expenditures. As the Registry points out, the Travel and DSA Policy explicitly limits certain travel reimbursement to assigned counsel.⁵¹ I note, however, that the Travel and DSA Policy

⁴⁶ Response, paras 18, 22.

⁴⁷ Response, para. 23.

⁴⁸ Response, para. 26.

⁴⁹ See generally the Directive.

⁵⁰ With regard to Mr. Lukić’s submission that Mr. Ivetić should be appointed as a second co-counsel in view of the size of the case, the volume and untimeliness of disclosures by the Prosecution, and the need for equality of arms, I note that Mr. Ivetić did not present these arguments in his original request to the Registry. See Request for Review, pp. 1-2; Impugned Decision, pp. 1- 3; Response, para. 14. Accordingly, and recalling that a review of an administrative decision is not a rehearing but rather an assessment of the propriety of the Registry’s decision-making process, I will not consider these arguments in this context and they will not form a part of my review. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Public Redacted Version of the 25 July 2013 Decision on Slobodan Praljak’s Motion for Review of the Registrar’s Decision on Means, 28 August 2013, paras 30-31.

⁵¹ Travel and DSA Policy, Part I, Section B(2).

does provide that legal consultants acting in the investigator's or counsel's stead may be authorized to travel for investigative purposes and receive corresponding DSA,⁵² and the Registry does not dispute this.⁵³

23. Turning to the matter of whether Mr. Ivetić may receive trial-related DSA, I consider that OLAD was reasonable in relying on Article 27(A) of the Directive and the Travel and DSA Policy in determining that Mr. Ivetić, as a member of the Defence team, is not eligible to receive DSA for days spent in the Netherlands on trial-related work.⁵⁴ As the Registry points out, the Travel and DSA Policy specifically discusses the disbursement of DSA for work conducted in the Netherlands to lead counsel and co-counsel, rather than members of the defence team as a whole.⁵⁵ In these circumstances, I am of the view that OLAD took into account relevant information and that the Impugned Decision is thus reasonable in this regard.

24. With respect to the Registrar's request that a public version of this decision be filed, I consider that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for maintaining their confidential status.⁵⁶ In this context, I consider that neither this decision nor the underlying submissions contain information requiring confidentiality.

VI. CONCLUSION

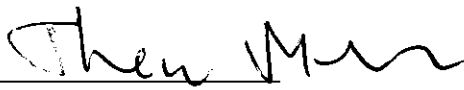
25. For the foregoing reasons, I hereby:

DENY the Request for Review in its entirety; and

GRANT the Registrar's request that a public version of this decision be filed.

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

Done this 30th day of September 2013,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Tribunal]

⁵² Travel and DSA Policy, Part I, Section B(1).

⁵³ Response, para. 18.

⁵⁴ See Travel and DSA Policy, Part II, Section B(a).

⁵⁵ See Travel and DSA Policy, Part II, Section B(a).

⁵⁶ See, e.g., *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.3, Order Lifting Confidentiality, 10 June 2011, p. 1; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.6, Decision on Ivan Čermak and Mladen Markač Interlocutory Appeals against Trial Chamber's Decision to Reopen the Prosecution Case, 1 July 2010, para. 6.

ANNEX A



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

INTERNAL MEMORANDUM - MEMORANDUM INTERIEUR CONFIDENTIAL

Date: 20 August 2013

Ref.: IT-09-92-T

To: Judge Theodor Meron, President

A:

Copy: Mr. John Hocking, Registrar
Copie: Ms. Susan Stuart, Acting Head of the Office for Legal Aid and Defence Matters
Mr. Branko Lukić, lead counsel to Mr. Ratko Mladić

From: Kate Mackintosh, Deputy Registrar

De:

Subject: Request for Review under Article 31 of the Directive on the Assignment of Defence Counsel
Objet:

1. Defence Counsel for Mr. Ratko Mladić has requested your review of a decision issued by the Office for Legal Aid and Defence Matters on 18 April 2013 concerning the resources allocated to the Mladić Defence team for work performed during the trial phase of the case *Prosecutor v. Ratko Mladić* ("Request"). The Request, addressed to you, is dated 18 August 2013, and was received by my Office on 19 August 2013.
2. Article 31(C) of the Directive on the Assignment of Defence Counsel ("Directive") provides that "[w]here [a] 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."
3. The present dispute involves a sum greater than € 4,999. I therefore respectfully refer the Request to you for determination, and attach same to this memorandum.
4. My Office will provide a submission to you regarding this matter within 14 days.
5. Thank you for your consideration.

PERSONAL AND CONFIDENTIAL**DEFENSE TEAM FOR GENERAL RATKO MLADIĆ**

Case No. IT-09-92-T

TO:

(via E-mail)

18 August 2013

The Honorable President Theodor Meron
Churchillplein 1
The Hague, Netherlands
2517JW

RE: IT-09-92-T (Prosecutor vs. Ratko Mladic)**Appeal of OLAD Denial of
Request for Additional Co-Counsel and DSA**

Dear President Meron:

We address you with this urgent appeal of an OLAD denial of our request for authorization of Additional co-counsel and DSA in the Mladic case. We would ask that you give this matter your urgent attention, as it affects our team's ability to continue with the pace of trial and continue to provide professional representation to Mr. Mladic. It affects the fairness of the proceedings and the image that this case will leave on the legacy of the Tribunal's work. A copy of the OLAD decision denying our request is attached hereto as "Annex 1."

By way of a brief background and introduction, on 2 April 2013 we presented OLAD with a request to have authorized 1 additional co-counsel and additional DSA for that co-counsel and one other team member, in order to permit the defense to keep pace with the trial and have some sort of fair footing with the Prosecution, who has employed no fewer than over 20 different attorneys to examine witnesses during the trial, whereas the Defense only has 2 recognized counsel, and limited rights of audience for 2 more staff members.¹ OLAD denied that request. This Appeal is presented only in relation to Mr. Dragan Ivetic, and our request to have him appointed as an additional co-counsel, and funding provided for him to have DSA.

As I am sure that you are aware, the Trial Chamber has scheduled to sit 5 days a week in for the remainder of the trial. The currently set schedule for the coming months is very tight and hectic and does not foresee any break or pause in proceedings until the end of the Prosecution Case in Chief.

Furthermore, the current schedule foresees the Prosecution case lasting until October, with the defense case thus commencing sometime thereafter.

¹ The same personnel for whom the instant request was made and denied.

PERSONAL AND CONFIDENTIAL

The pace of the trial thus far has been very demanding on the defense team, and I must say that we have barely survived it, and only because of the regular breaks in the proceedings, which we will no longer have the benefit of. The case itself is the largest in the history of the tribunal, both in terms of the scope of the indictment and the volume of the disclosures made to date by the Prosecution. Further, this is a case where the Prosecution failed to timely disclose about 2/3 of the materials required under Rule 66 and 68 until just before the start of trial. We are now up to 71 additional disclosure batches. Quite frankly, it has been a case that we have been forced to do both pre-trial and trial work simultaneously.

To date the successful representation of our client at trial has only been possible due to several of our team members sharing the load of work in cross-examining prosecution witnesses. To illustrate the extent to which that has been necessary, please look at the following summary (as of 26 July 2013), taking us up to the current time:

<u>Defense Team Member</u>	<u># of Witnesses Crossed</u>	<u>Total Time Spent in Cross</u>
Branko Lukic (lead counsel)	43 <i>*including 4 experts</i>	121 hours 13 minutes
Miodrag Stojanovic (co-counsel)	46 <i>*including 3 experts</i>	80 hours 53 minutes
Dragan Ivetic (legal consultant)	36 <i>*including 4 experts</i>	89 hours 14 minutes
Nenad Petrusic (legal assistant)	5	12 hours 51 minutes

We have endured thus far with team members making sacrifices and performing work that was not adequately compensated, however the costs of keeping multiple staff persons present in The Hague for purposes of trial keep rising. This will continue to become even worse with the approaching defense case, as in addition to the foregoing work, we will have to also expand our work with defense witnesses.

In order to endure the coming busy schedule with no breaks, and to adequately prepare for the defense case while handling the remaining Prosecution witnesses, it will be even more necessary to share the tasks normally undertaken by counsel, including: a) cross-examination of witnesses; b) oversight of work of defense team in the field; c) travel to the field to work with investigators/witnesses.

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For that reason, we would kindly request that you grant our Appeal of the OLAD denial and appoint as additional co-counsel, Mr. Dragan Ivetic, and authorize him DSA and travel allowances as appropriate for counsel. As I am sure you are aware, Mr. Ivetic is on the Rule 45 list for counsel, and in fact is currently co-counsel on 2 completed cases, in addition to being vice-president of the ADC and executive board member. In this way Mr. Ivetic would be in a position to assist with the cross-examination of witnesses, as well as travel to assist with the preparations for the defense case, when either co-counsel or lead counsel are unable to do so. Thus his experience and abilities would greatly contribute to the work of the defense in the court-room.

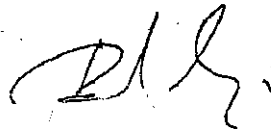
As you can see above, Mr. Ivetic has already borne a great deal of the examination of witnesses, including 4 experts to date. As to the remaining 32 witnesses, 11 of whom are experts, from the Prosecution Case in Chief, Mr. Ivetic is scheduled to be cross-examining 9 of the same (including 3 fact witnesses and 6 of the main military experts) with a total estimated time of **16.75 hours** in direct examination and **48.50 hours** in cross-examination. Thus his funding as an additional co-counsel is necessary in order for the team to function.

Unless we receive this additional allotment I truly fear that we will not be able to endure the pace of the trial, and will have to seek an adjournment of the same.

I kindly look forward you your immediate attention to this matter.

Should you have any questions or comments relative to the foregoing, I would ask that you do not hesitate to contact me. Thank you.

Very truly yours,



Branko Lukic, Lead Counsel

PERSONAL AND CONFIDENTIAL

ANNEX 1

18 April 2013



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Registry

Tribunal Pénal
International pour
l'ex-Yougoslavie

Greffe

Dear Mr. Lukić,

Request for Additional Co-Counsel and DSA

I refer to your letter of 3 April 2013 in which you request that the Registry:

- i) "appoint as additional co-counsel Mr. Dragan Ivetić and authorise him DSA and travel allowances as appropriate for counsel"; and
- ii) "approve an additional DSA allotment for Legal Assistant Mr. Nenad Petrusić".¹

Additional Co-counsel

The Directive on the Assignment of Defence Counsel ("Directive") governs the Tribunal's assignment and remuneration of defence counsel to indigent accused.² Article 16(C) of the Directive provides that the Registrar "may assign a second counsel" in the interests of justice. In this regard, at your request, and in the interests of justice pursuant to Directive Article 16(C), on 23 February 2012 Mr. Miodrag Stojanović was assigned as Co-counsel to the Defence team of Mr. Mladić.³

Article 16 (E) of the Directive provides that the Registrar may also assign other persons, such as legal assistants, consultants, investigators and interpreters, to assist in the defence. Mr. Ivetić was assigned as a legal consultant to your defence team on 4 June 2012, in accordance with Article 16 (E) of the Directive.

While lead counsel has flexibility in determining the composition of his team, the Directive does not provide for the assignment of more than one Co-counsel.

Cross examination

In your letter you state that assigning Mr. Ivetić as an additional Co-counsel would put him "in a position to assist with the cross examination of witnesses". You also request a daily subsistence allowance for Mr. Petrusić while in the Hague to permit him to assist in the cross examination of witnesses.

As stated above, the Directive does not provide for the assignment of more than one Co-Counsel.

Article 27(A) of the Directive provides that Daily Subsistence Allowance ("DSA") is paid by the Registrar in accordance with the Defence Travel and DSA Policy ("Policy"). In accordance with the Policy, DSA during trial in the Hague is payable only paid to Lead Counsel and Co-counsel.⁴

Experienced lawyers working as part of a defence team may request leave of the Trial Chamber for specific rights of audience during trial proceedings, under the authority and supervision of assigned Counsel. There have been other instances before the Tribunal of qualified support staff being granted such rights of audience for e.g., making submissions in closing arguments or cross examining particular witnesses.

¹ Mr. Petrusić is assigned as legal assistant/investigator.

² Mr. Mladić was determined partially indigent by Decision dated 31 January 2013.

³ *The Prosecutor v. Ratko Mladic*, Case No. IT-09-92, Decision of the Registrar, 23 February 2012.

⁴ See Policy, Part II B.

While the Trial Chamber has granted rights of audience to Mr. Ivetić, and, to a lesser extent Mr. Petrusić, this does not implicate the allotment of additional resources by the Registry. Under the Trial Legal Aid Policy, Lead Counsel may distribute the lump sum (currently €30,753.00 per month, plus an end of stage payment equal to twenty percent of the total lump sum allotment) among the assigned defence team members commensurate with the tasks performed. The Registrar is not in a position to increase the remuneration provided based on the division of tasks within the Mladić defence team.

All letters of assignment to support staff, including the assignment letters of Messrs. Ivetić and Petrusić, clearly state that the Tribunal does not cover travel expenses of defence support staff to the Seat of the Tribunal, and accordingly these assignments were made and accepted in full knowledge of the remuneration to be provided.

Travel to the field

Your letter also indicates that assignment as Co-Counsel will allow Mr. Ivetić to be in a position to "travel to assist with the preparations for the defence case, when either co-counsel or lead counsel are unable to do so." You mention travel to the field to work with investigators/witnesses as a task you envisage needing to share.

Under the terms of the Policy, it is expected that investigative missions are to be undertaken primarily by the investigators assigned to your team, occasionally by Counsel, and exceptionally by other team members such as legal consultants.⁵ Mr. Ivetić is accordingly not prohibited from undertaking such missions, and assignment as Co-counsel is therefore not required for him to assist your defence team in this respect.⁶

I note in this regard that my office has not to date received any request for Mr. Ivetić to travel for investigative purposes. Should such a request be received it will be determined in accordance with the terms of the Policy.⁷

With regards to Mr. Petrusić, as he is assigned in the dual role of legal assistant/investigator, it is anticipated that he will work with witnesses. Requests for Mr. Petrusić to travel for investigative purposes will be determined in accordance with the terms of the Policy.

Pace of Trial

You indicate in your letter that without additional funding as addressed above, you "fear that you will not be able to endure the pace of the trial". You have not, however, indicated how additional funds would operate to impact the pace of trial.

The difficulty and complexity of the Mladić case has been factored in to the ranking of the case, at level three (extremely difficult) and the funding provided pursuant thereto is significant (currently totaling approximately €42,177 per month plus end of phase retention, including DSA for Lead Counsel and Co-Counsel in the amount of approximately €10,424 per month based on a full-time trial sitting schedule).⁸ Task management and corresponding distribution of remuneration within

⁵ The Policy provides that: "Travel for the purpose of meeting witnesses...and engaging in other investigative tasks [...] will primarily be undertaken by investigators, occasionally by counsel (e.g. to interview key witnesses and witnesses that are scheduled to testify in the case) and exceptionally by legal consultants/assistants acting in counsel or the investigator's stead (i.e. where the counsel and investigator(s) are unavailable to travel for objective reasons." See Part I B 1.

⁶ In accordance with Part I B 1 of the Policy, authorisation for travel and DSA for investigative purposes is considered "[...] on a case by case basis depending on the reasonableness and necessity of the travel which in turn is to be assessed in light of the nature and amount of work to be undertaken, and the efficient use of public funds."

⁷ *Ibid.*

⁸ I note that in the month of March, 2013, €15,262.00 was distributed to you (€9,550 lump sum plus €5,712 DSA), €11,077.00 to your Co-Counsel (€5,365 plus €5,712 DSA), €1,800.00 to Mr. Petrusić, and €5,538.00 to Mr. Ivetić, with the balance being distributed to assigned members of your defence team including, in addition to Counsel, Co-

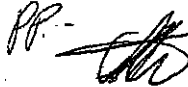
the lump sum is for Lead Counsel to determine, and the delegation of Counsel-level tasks to legal consultants or legal assistants does not implicate additional funds or payment of Counsel DSA.

Finally, you mention a prior "impediment" to Mr. Ivetić's assignment as Co-counsel and that same has been resolved. In this regard, should you believe that it is in the interests of justice for Mr. Ivetić to be assigned as your Co-Counsel in place of Mr. Stojanović, I invite you to make a reasoned request to my Office to this effect. However, whether or not it is determined that Mr. Ivetić would be a suitable replacement Co-Counsel for the Mladić defence team, the Registry is not in a position to assign him as an additional Co-Counsel.

Accordingly, I regret to inform you that the Registry is not in a position to approve your request, as neither the Directive nor the applicable payment policies provide for the assignment of an additional Co-Counsel or the payment of trial DSA in the Hague for defence team members other than Counsel or Co-Counsel.

Should you have any additional questions, please do not hesitate to contact my office.

Yours sincerely,



Jaimee Campbell
Head of the Office for
Legal Aid and Defence Matters

TO: Mr. Branko Lukić
Lead Counsel to Ratko Mladić

ANNEX B



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yugoslavie

INTERNAL MEMORANDUM - MEMORANDUM INTERIEUR CONFIDENTIAL

Date: 2 September 2013

Ref: IT-09-92-T

To: Judge Theodor Meron, President

A:

Copy: Mr. John Hocking, Registrar
Copie: Ms. Susan Stuart, Acting Head of the Office for Legal Aid and Defence Matters
Mr. Branko Lukić, Lead counsel to Mr. Ratko Mladić

From: Kate Mackintosh, Deputy Registrar

De:

Subject: Prosecutor v. Ratko Mladić – Request for Review under Article 31 of the Directive on the
Objet: Assignment of Defence Counsel

1. I write in reference to the request for review (“Request for Review”) under Article 31 of the Directive on the Assignment of Defence Counsel (“Directive”) by lead counsel to Mr. Ratko Mladić (“Accused”) concerning the resources allocated to the Defence team for work performed during the trial stage of the case *Prosecutor v. Ratko Mladić*. The Request for Review, addressed to you, was referred to you for determination by my internal memorandum of 20 August 2013.
2. The Request for Review asks that the President authorise and/or order the assignment of Mr. Dragan Ivetić as a second co-counsel to Mr. Branko Lukić (*i.e.*, a third counsel to the Accused’s Defence team) and further authorise him to receive travel and DSA entitlements as appropriate for assigned counsel before the Tribunal. The Registry hereby provides its response to the Request for Review for your consideration.

Background

3. On 22 July 2011, the Registry assigned Mr. Branko Lukić as lead counsel to the Accused on an interim basis pending a determination on the Accused’s means to remunerate counsel. On 23 February 2012, the Registry assigned Mr. Miodrag Stojanović as co-counsel to Mr. Lukić. The interim assignments of lead counsel and co-counsel were made permanent on 1 February 2013, when the Registry determined that the Accused was partially indigent and therefore eligible for the assignment of Tribunal-paid counsel.¹

¹ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision of the Deputy Registrar (public with public appendix I and confidential *ex parte* appendix II), 1 February 2013.

4. On 28 May 2012, lead counsel requested the assignment of Mr. Dragan Ivetić as a legal consultant on the Defence team.² On that same date, lead counsel also asked that the Registry authorise exceptional funding during the trial stage for a second co-counsel, including daily subsistence allowance (“DSA”) entitlements.³
5. On 4 June 2012, the Registry assigned Mr. Ivetić as a legal consultant on the Defence team.⁴ The Registry informed lead counsel that since Mr. Ivetić was assigned as support staff, the Tribunal would not cover his travel expenses to the Seat of the Tribunal.⁵
6. On 29 June 2012, the Registry ranked the case at complexity Level 3 for the Prosecution phase of the trial stage, which is the highest level of complexity under the Defence Counsel Trial Legal Aid Policy (“Trial Policy”). The Registry denied lead counsel’s request for funding beyond that provided for a complexity Level 3 case under the Trial Policy to enable the payment of a second co-counsel. The Registry noted that lead counsel has flexibility in determining the composition of the Defence team and the distribution of the lump sum payment under the Trial Policy, but that the Directive and relevant policies do not enable the assignment and funding of a second co-counsel.⁶ Following a request for reconsideration, the Registry reaffirmed its decision on 17 July 2012.⁷
7. On 3 April 2013, some eight and a half months later, lead counsel again requested that the Registry assign Mr. Ivetić as a second co-counsel and authorise him to receive travel and DSA entitlements as appropriate for counsel. Lead counsel also requested that the Registry authorise additional DSA entitlements for Mr. Nenad Petrušić, assigned as a legal assistant/investigator, to permit him to assist in the cross-examination of witnesses. Lead counsel argued that due to the demanding court schedule, members of the Defence team were increasingly needed to perform tasks normally undertaken by counsel, such as the cross-examination of witnesses, oversight of other Defence team members working in the field, and travel to the field. Lead counsel noted that Mr. Ivetić, assigned as a legal consultant, had so far cross-examined 20 witnesses, which amounted to approximately one-quarter of all

² Letter from lead counsel to the Office for Legal Aid and [Defence] Matters (“OLAD”) requesting assignment of legal consultant, 28 May 2012.

³ Letter from lead counsel to OLAD requesting exceptional trial stage funding, 28 May 2012.

⁴ Pursuant to Article 16(E) of the Directive.

⁵ Letter from OLAD to lead counsel assigning legal consultant, 4 June 2012.

⁶ Letter from OLAD to lead counsel regarding trial stage funding, 29 June 2012.

⁷ Email from OLAD to lead counsel regarding trial stage funding, 17 July 2012.

cross-examinations performed by the Defence team. Mr. Petrušić, assigned as a legal assistant, had so far cross-examined 4 witnesses.⁸

8. On 18 April 2013, the Registry denied the Defence Request.⁹ In the Decision on Defence Request, the Registry noted that the Directive does not provide for the assignment of more than one co-counsel and that under the Defence Travel and DSA Policy ("TDSA Policy"), DSA during trial in The Hague is payable only to lead counsel and co-counsel. The Registry found that although Mr. Ivetić and Mr. Petrušić had been granted rights of audience before the Trial Chamber and were assisting with the cross-examination of witnesses, this arrangement did not implicate the allotment of additional resources to the Defence team. Rather, lead counsel has the flexibility to distribute the lump sum payment to Defence team members commensurate with division of tasks. The Registry further found that under the TDSA Policy, Mr. Ivetić and Mr. Petrušić could be authorised on a case-by-case basis to travel to the field even though neither were assigned as co-counsel.¹⁰
9. On 19 August 2013, lead counsel submitted the present Request for Review,¹¹ asking that the President overturn the Decision on Defence Request, authorise and/or order the assignment of Mr. Ivetić as a second co-counsel and further authorise him to receive travel and DSA entitlements as appropriate for counsel. Lead counsel does not ask for review of the Decision on Defence Request with respect to Mr. Petrušić.

Law on judicial review

10. This matter is properly submitted to you for review based on Article 31(C) of the Directive.¹²
11. A judicial review of an administrative decision is not a rehearing. Rather, a decision of the Registrar undergoes a four-part test for proper administrative decision-making and judicial review of such decisions: (1) compliance with the legal requirements of the Directive; (2) observance of basic rules of natural justice and procedural fairness; (3) consideration of

⁸ Letter from lead counsel to OLAD requesting assignment and entitlements for second co-counsel, 3 April 2013 ("Defence Request").

⁹ Letter from OLAD to lead counsel denying request for assignment and entitlements for second co-counsel, 18 April 2013 ("Decision on Defence Request"). The Decision on Defence Request was an annex to the Request for Review.

¹⁰ See TDSA Policy, Part I(B)(1).

¹¹ Dated 18 August 2013.

¹² Article 31(C) of the Directive states: "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."

relevant material and non-consideration of irrelevant material; and (4) reasonableness of the conclusion reached.¹³ “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’”.¹⁴

Discussion

The Request for Review presents no proper arguments in support of quashing an administrative decision, and should be summarily dismissed.

12. The Request for Review argues that the assignment of Mr. Ivetić as a second co-counsel and the authorisation of travel and DSA entitlements for him as appropriate for counsel is necessary for the Defence team to have “some sort of fair footing with the Prosecution” and to be able to “keep pace with the trial”. Lead counsel contends that this is the largest case in the history of the Tribunal in terms of the scope of the indictment and the volume of disclosures made by the Prosecution and that the Defence team’s workload has been increased by the Prosecution’s untimely disclosures. Lead counsel asserts that the Defence team has only been able to successfully represent the Accused thus far because support staff have been sharing the workload of cross-examining witnesses. The Request for Review provides some updated statistics regarding the work of the Defence team,¹⁵ and repeats the original argument that due to the trial schedule, it is increasingly necessary for members of the Defence team to perform tasks normally undertaken by counsel, such as cross-examination of witnesses, oversight of other Defence team members working in the field, and travel to the field.
13. The Registry submits that the arguments presented by lead counsel in the Request for Review do not address whether the Decision on Defence Request either: (1) failed to comply with the

¹³ “The administrative decision will be quashed if the Registrar has failed to comply with the legal requirements of the Directive. This issue may in the particular case involve a consideration of the proper interpretation of the Directive. The administrative decision will also be quashed if the Registrar has failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or if he has taken into account irrelevant material or failed to take into account relevant material, or if he has reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the ‘unreasonableness’ test).” *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/I-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 (“Žigić Decision”), para. 13.

¹⁴ *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, pars. 6-7; see also Žigić Decision, para. 13.

¹⁵ Specifically, that Mr. Ivetić has thus far cross-examined 36 witnesses (including 4 experts), which amounts to over one-quarter of all cross-examinations performed by the Defence team. Furthermore, they state that Mr. Ivetić is expected to cross-examine approximately 9 of the remaining 32 Prosecution witnesses.

legal requirements of the Directive or other applicable Registry policies; (2) failed to observe basic rules of natural justice and procedural fairness; (3) considered irrelevant material or failed to consider relevant material; or (4) was otherwise unreasonable. Rather, the Request for Review asks the President to make a fresh assessment of the original Defence Request. The Request for Review is in substance not a request for judicial review, but a direct request to the President to circumvent the Tribunal's legal aid system and authorise legal representation and funding beyond the parameters set forth in the Directive and applicable Registry policies. The Registry respectfully submits that the Request for Review should be summarily rejected on this basis.

The Request for Review presents new information.

14. The Registry notes that presents several arguments presented in the Request for Review did not form part of the original Defence Request. Specifically, lead counsel raises as additional arguments: (1) the need for an additional co-counsel to achieve approximately equal footing with the Prosecution; and (2) the scope of the indictment, the volume of disclosures made by the Prosecution, and the untimeliness of the Prosecution's disclosures.¹⁶ The Registry submits that the Request for Review is not the appropriate forum for raising new arguments related to the composition and funding of the Defence team. Should the President agree to address the merits of the Request for Review, therefore, these arguments should not form part of his consideration.

The Decision on Defence Request was made in accordance with the applicable legal requirements.

15. Should the President determine to consider the merits of the Request for Review, the Registry respectfully submits that the Decision on Defence Request was issued in conformity with the Directive and applicable Registry policies and in accordance with the standard of reasonableness and proper administrative decision-making enunciated in the *Žigić* Decision. The Registry therefore respectfully requests that its decision be upheld.

¹⁶ Lead counsel also provides an update of the number of witnesses cross-examined by Mr. Ivetić thus far and an estimate of the number of remaining witnesses that Mr. Ivetić is expected to cross-examine. As these figures are related to an argument presented by lead counsel in the Defence Request and are in line with figures provided in the Defence Request (*i.e.*, Mr. Ivetić has cross-examined and is expected to cross-examine approximately one-quarter of

16. Article 16(A) of the Directive provides that an accused who is eligible for legal aid is entitled to have one counsel assigned to him. Article 16(C) of the Directive provides that, in the interests of justice and at the request of lead counsel, the Registry may assign a second counsel, called the co-counsel, to assist with the defence of the accused. The Directive does not provide for the assignment of any additional co-counsel. To the contrary, the language of Article 16(C) explicitly affords the possibility of only one additional assigned counsel.¹⁷
17. Article 24(B) of the Directive provides that during the trial stage, assigned counsel and assigned members of the defence team shall be remunerated in accordance with the Trial Policy. Under the Trial Policy, defence teams are remunerated by means of a lump sum allotment, which is calculated by multiplying the estimated duration of a phase with a monthly allotment based on the complexity level of the phase.¹⁸ The lump sum allotment is distributed to defence team members according to the instructions of lead counsel, who is free to decide on the number of support staff and the distribution of the lump sum amongst assigned defence team members in the best interests of his or her client.¹⁹ The amount of the lump sum allotment does not vary with the size of the defence team.
18. Articles 26 and 27 of the Directive provide that travel and DSA costs for assigned counsel, and where applicable assigned members of the defence team, shall be met in accordance with the TDSA Policy. Under the TDSA Policy, counsel are entitled to regular travel between their countries of residence and the Seat of the Tribunal during the trial stage.²⁰ Counsel, investigators, and exceptionally other defence team support staff may be authorised to travel for investigative purposes and receive corresponding DSA.²¹ Furthermore, counsel are entitled to receive DSA for days spent on trial-related work in the Netherlands during the

the witnesses), the Registry does not object to lead counsel's use of these new figures as a basis of the Request for Review.

¹⁷ Article 16(C) of the Directive states: "In the interests of justice and at the request of lead counsel, the Registrar may assign a *second* counsel to assist with the defence of the suspect or accused. *This* counsel shall be called the co-counsel. Acting under the authority of lead counsel, the co-counsel may deal with all stages of the proceedings and all matters arising out of the defence of the suspect or accused. The co-counsel may also be authorised, in writing, to sign documents on behalf of the lead counsel." [Emphasis added.]

¹⁸ Trial Policy, pars. 1, 37.

¹⁹ Trial Policy, pars. 9, 39.

²⁰ TDSA Policy, Part I(B)(2). Between the close of trial proceedings and the issuance of the trial judgement, counsel are also entitled to regular travel to visit their client at the United Nations Detention Unit. TDSA Policy, part I(B)(5).

²¹ TDSA Policy, Part I(B)(1).

trial stage.²² Defence team support staff are not entitled to trial-related DSA in the Netherlands.²³

19. With respect to the Registry's refusal to assign a second co-counsel, the Registry submits that there is no legal basis under the Directive or any other applicable Registry policy to assign more than one co-counsel. Therefore, the Registry acted in full accordance with the applicable policies in denying lead counsel's request for the assignment of a second co-counsel.
20. The plain language of Article 16 of the Directive makes clear that only one co-counsel may be assigned. Persons accepting assignments to represent indigent or partially indigent accused before the Tribunal do so with full knowledge of the parameters of the legal aid system as set forth in the Directive and applicable Registry policies. Furthermore, lead counsel had been informed on prior occasions that the Registry was unable to authorise the assignment of a second co-counsel. Thus, the Registry's refusal to assign a second co-counsel resulted in no "unfair surprise" to lead counsel or to the Defence team. The Registry thus respectfully submits that its refusal to assign a second co-counsel was in accordance with rules of natural justice, was procedurally fair, and was not unreasonable.
21. To the extent that the Registry's refusal to assign a second co-counsel implicates the funding of the Defence team during the trial stage, the Registry respectfully submits that it fully and fairly considered both the difficulty and the size of the case in determining to rank it at complexity Level 3 during the Prosecution phase of the trial stage, which is the highest level of complexity. Thus, the Defence team is receiving the highest level of funding available under the Trial Policy.²⁴ There is no basis under either the Directive or the Trial Policy for the Registry to authorise funding in excess of funding based on a complexity Level 3 ranking. Therefore, the Registry acted in full accordance with the Directive and the Trial Policy in denying lead counsel's request for extraordinary funding.

²² TDSA Policy, Part II(B)(a)(1).

²³ The TDSA policy allows for one trip for the case manager or another defence team support staff to travel to the Seat of the Tribunal during the pre-trial stage to receive training in software and court management procedures. The traveller is not entitled to DSA for this trip. See TDSA Policy, Part I(A)(7).

²⁴ The monthly allotments used as part of the lump sum calculation under the Trial Policy are adjusted each year in accordance with the consumer price index. In 2012, the monthly allotment for a complexity Level 3 case was €44,009. In 2013, the monthly allotment for a complexity Level 3 case is €45,197.

22. With respect to the Registry's refusal to authorise travel and DSA entitlements for Mr. Ivetić commensurate with entitlements available to counsel under the TDSA Policy, the Registry again submits that there is no basis under the Directive to assign a second co-counsel and thus no basis under the TDSA Policy to authorise such entitlements for Mr. Ivetić as a counsel. Furthermore, there is no basis under the TDSA Policy to authorise such entitlements for defence team support staff. In correspondence assigning Mr. Ivetić as a legal consultant dated 4 June 2012, the Registry reminded lead counsel, in accordance with standard practice, that the Tribunal would not cover the costs of his travel to the Seat of the Tribunal. Therefore, the Registry acted in full accordance with the Directive and the TDSA Policy in denying lead counsel's request to authorise counsel-level travel and DSA entitlements for Mr. Ivetić.
23. Finally, lead counsel argues that the assignment of a second co-counsel is necessary in light of the Defence team's need for personnel to perform tasks normally undertaken by counsel such as cross-examination of witnesses, supervision of other Defence team members in the field, and occasional travel to the field. The Registry submits that its refusal to assign Mr. Ivetić as a second co-counsel does not prevent him from performing any of these tasks. As outlined in the Decision on Defence Request, Mr. Ivetić has been granted rights of audience by the Trial Chamber and has engaged in the cross-examination of a substantial number of witnesses. He may supervise the work of Defence team members in the field and may be authorised to travel to the field, subject to approval by the Registry.²⁵ Lead counsel is free to distribute the lump sum allotment amongst members of the Defence team in the best interests of the Accused and so as to compensate Mr. Ivetić for his performance of high-level tasks. Lead counsel also does not explain how payment of a daily subsistence allowance in the Hague to a third team member permits or affects the performance of any of these tasks.²⁶
24. The Registry submits that the Request for Review fails to raise any argument that the Decision on Defence Request contravened any aspect of proper administrative decision-making as set forth in the *Žigić* Decision. The Request for Review cites no legal basis for lead counsel's request that a second co-counsel be assigned or that counsel-level travel and DSA entitlements be awarded to a Defence team support staff. Rather, lead counsel contends

²⁵ TDSA Policy, Part I(B)(1).

²⁶ Implicating additional public funds up to approximately €6,000 per month during full-time trial proceedings, in addition to fees from the lump sum. The Registry observes that assigned support staff in several other defence teams before this Tribunal have performed tasks such as interviewing and cross examining witnesses and making submissions before a Chamber.

that additional resources are necessary due to the very demanding workload faced by the Defence team during trial. The Registry respectfully submits that it gave full and fair consideration to the difficulty of the case in deciding to rank it at complexity Level 3 during trial and thus authorising the highest level of funding available under the Trial Policy, and that the Request for Review provides no other basis for quashing the Decision on Defence Request.

Conclusion

25. For the foregoing reasons, the Registry respectfully submits that the Decision on Defence Request was in conformity with the Directive and applicable Registry policies, was in accordance with rules of natural justice, was procedurally fair, and was in all respects reasonable. The Registry further submits that it did not consider irrelevant material or fail to consider relevant material in making its decision. Therefore, the Registry respectfully requests that its decision be upheld.
26. As a final matter, the Registry notes that matters of legal representation are matters of public record. Should the President be inclined to fully or partially grant the Request for Review and order the Registry to assign a second co-counsel (i.e. a third counsel) or award counsel-level travel and DSA entitlements to a Defence team support staff, the Registry respectfully requests that such order, or a redacted version thereof, be made available to the public, and placed on the record in case no. IT-09-92-T. In the event the request is dismissed, the Registrar reserves the right to make a further request regarding placing the decision on the record.
27. The Registry remains available to make any further submissions that may be required.