

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-55-A

Date: 15 June 2016

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 15 June 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVIEW
OF REGISTRAR'S REMUNERATION DECISION
FOR APPEAL PHASE I**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Mr. Radovan Karadžić

Mr. Peter Robinson

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seised of the “Request for Review of Registrar’s Remuneration Decision for Appeal Phase I”, filed by Mr. Radovan Karadžić (“Karadžić”) on 30 May 2016 with annexes (“Request for Review”), which requests review of the Registrar of the Mechanism’s (“Registrar”) decision of 23 May 2016, attached to the Request as Annex B (“Impugned Decision”),¹ granting in part and denying in part Karadžić’s request for additional compensation for the preparation and filing of his notice of appeal. The Registrar responded to the Request on 14 June 2016.² On 3 June 2016, the Prosecutor of the Mechanism (“Prosecution”) filed a submission, stating that it takes no position on the Request.³

I. BACKGROUND

2. On 24 March 2016, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Karadžić of ten (10) counts and sentenced him to a single term of 40 years of imprisonment.⁴ On the same day, the Registrar of the MICT (“Registrar”) assigned Mr. Peter Robinson (“Lead Counsel”) as Karadžić’s Lead Counsel.⁵

3. On 29 March 2016, Lead Counsel sent a letter to the Registrar requesting, *inter alia*: (i) an increase of the amount to be allocated to Karadžić’s defence team for the preparation and filing of the notice of appeal, from \$27,500 (as set forth in Paragraph 10 of the Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals⁶) to \$265,467, so that the defence can have resources proportional to those available to the Prosecution; and (ii) an increase of his monthly entitlement to Daily Subsistence Allowance (“DSA”) from three days, as provided in the Remuneration Policy, to 22 days.⁷ On 27 March 2016, Lead Counsel wrote to the Prosecutor of the Mechanism requesting certain information about the Prosecution staff members who are to be assigned to the *Karadžić* case so as to ensure the proportionality of resources available to both parties in this case.⁸ On 11 April 2016, Lead Counsel also sent a letter to the Registry’s Office of Legal Aid and Defence

¹ Request, Annex B, Letter from Ms. Fiana Reinhardt, Head of the Office for Legal Aid and Defence Matters, on behalf of the Registrar, to Mr. Peter Robinson, Counsel for Mr. Radovan Karadžić, dated 23 May 2016.

² Registrar’s Submission on Defence Request for Review of Remuneration Decision for Appeal Phase I, 14 June 2016 (“Response”).

³ Prosecution’s Response to Request for Review of Registrar’s Remuneration Decision for Appeal Phase I, 3 June 2016, (“Prosecution’s Response”), para. 1.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016 (“Trial Judgement”), paras. 6071-6072.

⁵ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55, Decision, 24 March 2016, p. 2. *See also* Request, para. 3.

⁶ Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals, 21 March 2016 (“Remuneration Policy”).

⁷ Request, Annex A, Letter from Lead Counsel to Mr. John Hocking, Registrar of the Mechanism, dated 29 March 2016 (“Motion for Additional Remuneration”).

Matters (“OLAD”) requesting that three case managers be assigned to his defence team and be given the right to visit Karadžić in Lead Counsel’s absence.⁹

4. On 21 April 2016, I, in my capacity as the Pre-Appeal Judge in this case, granted Karadžić a 60-day extension of the time provided under Rule 133 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) for the filing of his notice of appeal.¹⁰ As reasons justifying the extension I cited “the length of the Trial Judgement and the significant complexity of this case”.¹¹

5. On 25 April 2016, the Registrar requested the Appeals Chamber’s views on Karadžić’s Motion for Additional Remuneration.¹² On 4 May 2016, the Appeals Chamber declined to provide further views or information in response to the Registrar’s request and referred to the reasons given by the Pre-Appeal Judge in the decision extending the time for the filing of the notice of appeal.¹³

6. On 20 May 2016, Karadžić filed a motion seeking a further 90-day extension for the preparation and filing of his notice of appeal due to the lack of adequate resources available to his defence team.¹⁴ On the same day, I, in my capacity as Pre-Appeal Judge, ordered the Registrar to rule on Karadžić’s Motion for Additional Remuneration and to make any submissions, if necessary, on the issues related to the funding of Karadžić’s defence team raised in the Motion for Further Extension by 25 May 2016.¹⁵

7. Following my order, the OLAD issued the Impugned Decision on 23 May 2016. The OLAD increased the lump sum remuneration of Karadžić’s defence for the preparation and filing of the notice of appeal to \$82,500.¹⁶ The OLAD calculated this amount by multiplying the monthly sum of \$27,500 provided under the Remuneration Policy by three (corresponding to the 90 days granted by the Pre-Appeal Judge for the filing of the notice of appeal).¹⁷ The OLAD found that this increase of the lump sum was reasonable and justified for the preparation of “a meaningful” notice of appeal, because “the overall work required for the preparation and filing of the Notice of Appeal exceeds

⁸ Request, Annex A, Letter from Lead Counsel to Mr. Serge Brammertz, Prosecutor of the Mechanism, dated 27 March 2016.

⁹ Request, Annex C, Letter from Lead Counsel to Ms. Fiana Reinhardt, Head of the Office for Legal Aid and Defence Matters, dated 11 April 2016 (“Letter of 11 April 2016”).

¹⁰ Decision on Motion for Extension of Time to File Notice of Appeal, 21 April 2016 (“Decision on Extension of Time”), p. 2.

¹¹ Decision on Extension of Time, p. 1.

¹² Internal Memorandum from the Registrar on Karadžić Defence Request for Additional Hours, 25 April 2016, paras. 1, 11.

¹³ Decision on the Registry’s Request for Observations Regarding Preparation of the Notice of Appeal, 4 May 2016 (“Decision of 4 May 2016”), p. 2.

¹⁴ Motion for Further Extension of Time to File Notice of Appeal, 20 May 2016, paras. 1, 2, 27 (“Motion for Further Extension”).

¹⁵ Order on a Motion for Further Extension of Time to File Notice of Appeal, 20 May 2016, p. 2.

¹⁶ Impugned Decision, p. 2.

¹⁷ Impugned Decision, p. 2.

what is usually foreseen.”¹⁸ The OLAD, by contrast, denied Karadžić’s request for an increase to his counsel’s monthly DSA allowance, stating that at this phase of the proceedings, the defence may consult Karadžić via telephone or email, in addition to the three days of DSA for in-person visits provided by the Remuneration Policy.¹⁹

8. Karadžić filed his Request for Review on 30 May 2016. The Prosecution’s Response takes no position on the Request, but notes that the Request is based on the “incorrect assumption” that Prosecution staff assigned to the *Karadžić* appeal will work solely on that appeal.²⁰

II. APPLICABLE LAW

9. According to Article 19(4) of the Mechanism’s Statute, an accused in proceedings before the Mechanism, is entitled “to have adequate time and facilities for the preparation of his or her defence” and “to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it”.

10. Pursuant to Paragraphs 9-11 of the Remuneration Policy, the lump sum remuneration available to an accused for “Phase One” of the appeal proceedings, *i.e.* for the preparation and filing of a notice of appeal, is \$27,500 and this amount “covers any and all work to be performed by Counsel and assigned Defence Team members during the phase”, but “is not contingent on the duration of the phase.” Paragraph 12 of the Remuneration Policy provides that

[w]hile it is considered that Phase One requires preparation by Lead Counsel and one Support Staff member, Lead Counsel may request the assignment of a Co-Counsel and/or additional Support Staff for Phase One or for the duration of the Appeal. Such assignments shall not, however, result in an increase of the allocated lump sum.

Paragraph 44 of the Remuneration Policy provides that

[e]xceptionally, in the event of unforeseeable circumstances beyond the control of the Defence Team which lead to a substantial increase or decrease in the reasonable and necessary work to be performed during a given phase of the Appeal, the Registry may, at the request of Counsel or *proprio motu*, adjust the lump sum without a change in the level of complexity. The extended duration of the phrase, or the review of newly disclosed material are not unforeseeable circumstances *per se*.

11. Paragraph 57 of the Remuneration Policy provides that any disputes “arising from the application of this Policy shall be settled in accordance with Article 32 of the” Mechanism’s Directive on the Assignment of Defence Counsel.²¹ Under Article 32(B) of the Directive,

¹⁸ Impugned Decision, p. 2.

¹⁹ Impugned Decision, p. 3.

²⁰ Prosecution’s Response, paras. 1-2.

[w]here the dispute involves a sum greater than USD 5,000 (five thousand), an aggrieved party may submit 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.

III. STANDARD OF REVIEW

12. An administrative decision of the Registrar is subject to review by the President of the Mechanism for procedural or substantive unfairness.²² However, a judicial review of an administrative decision is not a rehearing.²³ Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgement.²⁴ Rather, 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.²⁵

13. Accordingly, the President of the Mechanism may quash an administrative decision 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).²⁶

14. 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.²⁷ The party challenging the administrative decision bears the burden of demonstrating that an error of the nature enumerated above has occurred and that this error significantly affected the administrative decision to his detriment.²⁸

²¹ Directive on the Assignment of Defence Counsel, MICT/5, 14 November 2012 ("Directive").

²² *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55, Decision on Motion for Review of Decision on Assignment of Counsel on Appeal, 4 February 2016 ("Karadžić Review Decision"), para. 17 and referenced cited therein.

²³ *Karadžić Review Decision*, para. 17 and referenced cited therein.

²⁴ *Karadžić Review Decision*, para. 17 and referenced cited therein.

²⁵ *Karadžić Review Decision*, para. 17 and referenced cited therein.

²⁶ *Karadžić Review Decision*, para. 16 and referenced cited therein.

²⁷ *Karadžić Review Decision*, para. 17 and referenced cited therein.

²⁸ *Karadžić Review Decision*, para. 17 and referenced cited therein.

IV. SUBMISSIONS

15. Karadžić argues that the Impugned Decision should be quashed because it reached unreasonable conclusions with respect to both his request for additional funding for the preparation of the notice of appeal and his request for 22 days of DSA per month so his Lead Counsel can visit him in The Hague.²⁹ According to Karadžić, the Impugned Decision, by denying both of these requests, put him at a significant disadvantage in presenting his case vis-à-vis the Prosecution and thus violated the principle of equality of arms, which is a component of fair trial rights.³⁰

16. Concerning the issue of funding, Karadžić argues that the Impugned Decision does not take into account that: (i) while the monthly lump sum provided in the Remuneration Policy is enough for the remuneration of Lead Counsel and a single legal assistant, the complexity of his case requires the hiring of additional appellate lawyers as highly experienced as the Prosecution's three senior staff members assigned to this appeal, as well as at least one paid case manager;³¹ (ii) the issuance of the Impugned Decision two months after the issuance of the Trial Judgement prevented Lead Counsel from hiring legal support staff for the defence team;³² (iii) an appellant before the Mechanism bears a heavy burden of proof and without the help of a team of experienced lawyers, Karadžić will not be able to substantiate his arguments and will thus suffer a disadvantage in presenting his case.³³ Karadžić also points to three prior occasions, on which the President of the ICTY has determined that the Registrar underestimated the resources needed by his defence team.³⁴ While Karadžić acknowledges that equality of arms does not mean that he is entitled to the same means and resources available to the Prosecution, he argues that the funds made available to his defence so far violate the principle of "basic proportionality" between the resources available to the parties and denies him a fair opportunity to present his case.³⁵ Karadžić points out that he must challenge the Trial Judgement's findings on ten counts of the indictment, compared to the one count the Prosecution is likely to appeal.³⁶

17. Concerning the issue of his monthly DSA allowance, Karadžić claims that the allocation of only 3 DSA days per month to his defence team deprives him of the opportunity to have meaningful meetings with his counsel while in detention.³⁷ Karadžić argues that he and Lead Counsel have already been having more in-person meetings than those allowed for under the Remuneration Policy

²⁹ Request, para. 13.

³⁰ Request, paras. 26-31.

³¹ Request, paras. 14-20.

³² Request, para. 14, fn. 11.

³³ Request, paras. 21-22.

³⁴ Request, para. 24.

³⁵ Request, paras. 26-27, 29.

³⁶ Request, para. 29.

so as to review and analyse the Trial Judgement.³⁸ Karadžić contends that given his familiarity with the facts of the case and the trial record, these long meetings with his defence team cannot take place over the phone.³⁹ Karadžić also alleges that requiring the defence team to work by telephone while the Prosecution works collaboratively in The Hague puts the defence at a significant disadvantage in presenting its case.⁴⁰

18. In the Response, the Registrar submits that both the decision to triple the lump sum for the filing of the notice of appeal and the decision regarding Lead Counsel's DSA entitlement were based on a consideration of all the relevant factors and were reasonable.⁴¹ Concerning the former decision, the Registrar contends that the OLAD correctly applied the Remuneration Policy, the relevant legal precedent, and the principle of equality of arms to the circumstances of this case and awarded Karadžić's defence sufficient additional funds to present a meaningful notice of appeal.⁴² Concerning the DSA entitlement, the Registrar asserts that the denial of Lead Counsel's request for 22 days of DSA per month was consistent with the Remuneration Policy and reasonable, since Lead Counsel's continuous physical presence at the seat of the Mechanism is not warranted beyond what is provided for in the Remuneration Policy, in light of the nature of appeal proceedings.⁴³

V. DISCUSSION

19. At the outset, I note that Karadžić does not argue that the Registrar failed to act with procedural fairness or observe legal requirements in issuing the Impugned Decision.⁴⁴ He only challenges the Registrar's alleged failure to consider relevant material and the reasonableness of the conclusions reached in the Impugned Decision. This decision will address these allegations.

20. Concerning the first ground for review raised by Karadžić, it bears recalling that, as the ICTY Appeals Chamber has held most recently:

the principle of equality of arms, which goes to the heart of the fair trial guarantee, requires that neither party is put at a disadvantage when presenting its case. When assessing whether this balance has been properly struck "a principle of basic proportionality, rather than a strict principle of mathematical equality" applies. Accordingly, ensuring that the accused has been provided with an adequate opportunity to present his case does not necessarily require affording him the same amount of time or the same number of witnesses afforded to the Prosecution. Rather, the time granted to an accused "must be reasonably proportional to the time allocated to the Prosecution,

³⁷ Request, paras. 31-35.

³⁸ Request, para. 33.

³⁹ Request, paras. 32-34.

⁴⁰ Request, para. 35.

⁴¹ Response, paras. 2, 16.

⁴² Response, paras. 17-23.

⁴³ Response, paras. 24-27.

⁴⁴ Request, para. 13.

and objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights under Article 21 of the Statute.”⁴⁵

21. Karadžić recognizes these principles, yet challenges the Impugned Decision on the ground that the limited increase of funding available to his defence continues to put him at a disadvantage in preparing and presenting his case when compared to the resources available to the Prosecution. After careful consideration of the materials before me, I find that Karadžić’s submissions have merit, at least in part. In particular, I am satisfied that, in calculating the increase in the defence’s remuneration for the preparation of the notice of appeal, the Registry did not provide adequate consideration to a number of relevant factors that would have warranted a different outcome.

22. First, I note “the length of the Trial Judgement and the significant complexity of this case”, which I also recognized as a factor warranting an extension of the time for the filing of the notice of appeal.⁴⁶ The Trial Judgement consists of 6,073 paragraphs and 2,538 pages (excluding dissenting opinions and annexes) of findings concerning a single accused. This is not only the longest judgement issued in a single-accused case before the ICTY – it is also the longest judgement ever issued by the ICTY or any other international criminal tribunal. As the Trial Chamber has stated, the nature of this case is indeed “unprecedented”.⁴⁷ Karadžić has been convicted on ten (10) out of 11 counts in the indictment against him⁴⁸ and thus is expected to challenge the vast majority of these extensive findings in the Trial Judgement.

23. It goes without saying that the complexity of this case does not only warrant granting additional time to Karadžić and his defence team for the adequate preparation of a notice of appeal. The volume and unprecedented nature of the case also mean that Karadžić’s defence team would have to comprise more legal staff members than those assigned to the defence in other appeals adjudicated by the ICTY, the ICTR or the MICT. Paragraph 12 of the Remuneration Policy acknowledges that the \$27,500 lump sum amount provided for the preparation of the notice of appeal corresponds to the needs of a defence team composed of a “Lead Counsel and one Support Staff member”.⁴⁹ The sheer volume and the complexity of this case, nevertheless, evidently call for the full-time dedication of more than a single Lead Counsel, assisted by only one other lawyer.

⁴⁵ *Prosecutor v. Nikola Sainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014, para. 123, and references cited therein. See also *Callixte Kalimanzira v. The Prosecutor*, ICTR-05-88-A, Judgement, 20 October 2010, para. 34; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 220; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006, para. 149; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras. 47, 48, 53.

⁴⁶ Decision on Extension of Time, p. 1.

⁴⁷ Trial Judgement, para. 6. See also Decision on Extension of Time, p. 2, fn. 7.

⁴⁸ Trial Judgement, para. 6071.

⁴⁹ The term “Support Staff” is defined in the Remuneration Policy as “[a]ny person providing support to Counsel pursuant to Article 16(E) of the Directive”. See Remuneration Policy, Definitions, p. 5. According to Article 16(E) of

24. I recognize that, pursuant to Paragraph 12 of the Remuneration Policy, the assignment of additional staff members to the defence team shall not necessarily result in an increase of the allocated lump sum. Yet Paragraph 44 of the Remuneration Policy also allows for the adjustment of the lump sum remuneration available to the defence “in the event of unforeseeable circumstances beyond the control of the Defence Team which lead to a substantial increase [. . .] in the reasonable and necessary work to be performed during a given phase of the Appeal.” The fact that additional time was granted to the defence for the preparation of the notice of appeal does not qualify as such an “unforeseeable circumstance”, but the issuance of such a voluminous, unprecedented Trial Judgement in this case, combined with the fact that the increase of the lump sum remuneration was made available to Karadžić’s defence only two months into the 90-day deadline provided for the filing of the notice of appeal, are such circumstances. These factors warrant, in my view, the allocation of additional resources to the defence.⁵⁰ In other words, it was not reasonable for the Registry to simply multiply the monthly lump sum amount of \$27,500 by three. That amount was calculated on the basis of the needs of a single Lead Counsel and one legal assistant for the period of one month.⁵¹ The Registrar should have also considered that the complexity of the case requires the assignment of additional legal and other support staff to the defence team for a period exceeding the one month usually allocated for the filing of a notice of appeal.

25. Second, as mentioned above, I take note of the fact that the Impugned Decision was issued on 23 May 2016, two months after the issuance of the Trial Judgement and more than a month after I granted an extension of 60 days for the filing of the notice of appeal. This means that for about 60 out of the 90 days granted to the defence for the preparation and filing the notice of appeal (i.e., two thirds of the amount of time provided for this phase of the proceedings), Karadžić’s counsel did not have adequate resources at his disposition and thus could not hire legal staff to work at full speed on analysing the Trial Judgement and identifying grounds of appeal.

26. The Registrar’s two-month delay in awarding additional funds to Karadžić’s defence was partly due to the Registrar’s decision to seek the Appeals Chamber’s views on Karadžić’s Motion for Additional Remuneration on 25 April 2016.⁵² I note, however, that the Remuneration Policy does not require the Registrar to seek the Appeals Chamber’s views on all issues relating to the remuneration of defence counsel in a given appeal. Paragraph 47 of the Remuneration Policy only provides that “[i]n deciding upon a request for the adjustment of the lump sum, the Registry *may*

the Directive, “[a]t the request of the lead counsel, [...] the Registrar may assign other persons such as legal assistants, consultants, investigators and interpreters, as required, to provide support to counsel.”

⁵⁰ See also Impugned Decision, p. 2 (acknowledging the unforeseen amount of work required for the preparation and filing of the case due to the length and complexity of the case).

⁵¹ Remuneration Policy, Paragraph 12.

⁵² See *supra*, para. 5.

seek information from the Appeals Chamber on the nature of the circumstances and their impact on the preparation of the defence case.”⁵³ As the Appeals Chamber held, “the Registry has the primary responsibility in the determination of matters relating to remuneration of counsel”.⁵⁴ In a case of this unprecedented magnitude and complexity, it was not necessary for the Registry to seek the views of the Appeals Chamber before allocating additional resources to Karadžić’s defence; additional funding should have been made available as soon as practically possible after the issuance of the Trial Judgement. I also note that even after the Appeals Chamber issued its Decision of 4 May 2016 declining to provide its views on the issue of funding, the Registrar issued the Impugned Decision 19 days thereafter, on 23 May 2016. Nothing on the record justifies this 19-day delay in awarding additional funds to Karadžić’s defence.

27. I recognize that on 12 April 2016, the Registrar assigned to his team three case managers to work on a *pro bono* basis.⁵⁵ However, the role of case managers is more limited than the role of co-counsels or legal assistants, especially when they are expected to work on *pro bono* basis. Indeed, the role of the three case managers consisted of assisting Karadžić’s own review of the Trial Judgement – not preparing the notice of appeal.⁵⁶ A legal assistant was only assigned to this case on 23 May 2016 – less than a month before the expiration of the deadline for the filing of the notice of appeal.⁵⁷ The two-month absence of readily available funds for the hiring of a full defence team put Karadžić at a disadvantage in preparing his notice of appeal.

28. Third, the Registrar failed to take into account the multiplicity of tasks to be completed by Karadžić’s defence team along with the preparation of the notice of appeal. The pre-judgement phase of an appeal does not only consist in the filing of the notice of appeal and the appeal brief and reply, but also includes the preparations of motions on various matters that would arise before the appeal judgement is issued. In this case, Karadžić’s defence counsel has already prepared and filed numerous motions, on issues ranging from Karadžić’s request for provisional release to evidentiary questions.⁵⁸ While I note that some of those matters could have been raised after the filing of the notice of appeal, I also take into account the urgent nature of some of these motions, such as the

⁵³ Emphasis added.

⁵⁴ Decision of 4 May 2016, p. 1.

⁵⁵ Registrar’s Submission on Funding on Appeal, 25 May 2016, para. 8.

⁵⁶ Letter of 11 April 2016.

⁵⁷ Registrar’s Submission on Funding on Appeal, 25 May 2016, para. 8.

⁵⁸ See, e.g., Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements, 30 March 2016; Reply Brief: Motion for Access to *Ex Parte* Filings in Completed Cases, 14 April 2016; Reply Brief: Motion for Access to Prosecution’s Sixth Protective Measures Motion 14 April 2016; Motion for Substitution of Translation of Exhibit P2891, 18 April 2016; Motion for Provisional Release, 22 April 2016; Motion for Temporary Release to Attend Memorial Service, 28 April 2016 (confidential with confidential annexes); Motion for Disclosure of Recording, 29 April 2016; Supplement to Motion for Temporary Release to Attend Memorial Service, 3 May 2016 (confidential with confidential annexes); Supplement to Motion for Temporary Release to Attend Memorial Service, 3 May 2016

motion for provisional release so that Karadžić would attend the memorial service for his brother.⁵⁹ In my view, the fact that a single Lead Counsel had to both deal with all these pre-appeal matters and prepare the notice of appeal put Karadžić at a disadvantage in preparing his case. This finding takes into account the limited work done by the three *pro bono* case managers and the single legal assistant (assigned two months after the issuance of the Trial Judgement).

29. In sum, I am satisfied that Karadžić has substantiated his claim that the Registrar acted unreasonably and failed to consider relevant factors in issuing the Impugned Decision. Taking into account all relevant circumstances and the factors mentioned above, a five-fold increase of the monthly lump sum amount of \$27,500 – *i.e.*, the allocation of a total of \$137,500 – was warranted and should be awarded to Karadžić’s defence immediately. The allocation of this amount will allow Karadžić and his Lead Counsel to immediately hire additional legal staff to assist in the preparation and filing of the notice of appeal in the limited time remaining until the expiration of the deadline for the filing of the notice of appeal. Such an allocation will also compensate Karadžić for the disadvantage caused to his defence team as a result of the protracted dispute over his remuneration and the unavailability of sufficient funds to him for two-thirds of the time allotted for the first phase of the appeal.

30. Concerning the second ground for review, which relates to the calculation of Lead Counsel’s DSA entitlement, I am also satisfied that the determination reached by the OLAD was not reasonable. In light of the complexity of the case and of Karadžić’s personal, active participation in the trial proceedings, it was not reasonable for the Registrar to expect that three days of in-person communications between Karadžić and Lead Counsel would be sufficient for the adequate preparation of the notice of appeal. I acknowledge that modern means of communication obviate the need for Lead Counsel to live in The Hague on a full-time basis. However, there still exists a need for sufficient in-person communications between Karadžić and Lead Counsel so as to allow the latter to prepare Karadžić’s defence in the best possible way. The Registrar submits that the allocation of three (3) days of DSA per month “has proven sufficient for all previous appeals from ICTY trial judgements.”⁶⁰ This case, nevertheless, is unlike any previous appeal adjudicated by either the ICTY or any other international criminal tribunal, due to its unprecedented volume and complexity. In my view, Lead Counsel should be entitled to claim up to 10 days of DSA per month, an amount that more reasonably corresponds to the nature and the needs of this appeal.

(confidential with confidential annexes); Reply Brief: Motion for Temporary Release to Attend Memorial Service, 12 May 2016 (confidential); Request for Reclassification of Filings, 1 June 2016.

⁵⁹ See Motion for Temporary Release to Attend Memorial Service, 28 April 2016 (confidential with confidential annexes).


⁶⁰ Response, para. 26.

VI. DISPOSITION

31. For the foregoing reasons, I hereby **GRANT IN PART** the Request and **ORDER** the Registry to: (i) increase the remuneration of Karadžić's defence for the first phase of his appeal to \$137,500 and make these funds immediately available to Karadžić's defence; and (ii) grant DSA for up to ten (10) days per month. I **DENY** the Request in all other respects.

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

Done this 15th day of June 2016,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]