UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-95-5/18-T
		Date:	12 October 2015
		Original:	English

THE PRESIDENT OF THE TRIBUNAL

Before: **Judge Theodor Meron, President**

Registrar: **Mr. John Hocking**

Decision of: **12 October 2015**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL AND *EX PARTE*

DECISION ON REQUEST FOR REVIEW OF REGISTRAR'S DECISION ON REMUNERATION FOR OCTOBER 2014-JANUARY 2015

The Accused:

Mr. Radovan Karadžić

Legal Adviser:

Mr. Peter Robinson

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 seised of the "Request for Review of Decision on Remuneration for October 2014-January 2015", filed confidentially and *ex parte* by Radovan Karadžić ("Karadžić") on 10 June 2015 ("Request") and subsequently referred to me by the Registry of the Tribunal ("Registry").[1] The Registry filed a confidential and *ex parte* response on 24 June 2015.[2] Karadžić submitted a confidential and *ex parte* reply brief on 29 June 2015[3] and the Registry filed a further submission under Rule 33(B) of the Tribunal's Rules of Procedure and Evidence ("Rules") on 3 July 2015.[4]

I. BACKGROUND

2. On 25 July 2014, the Appeals Chamber of the Tribunal ("Appeals Chamber") denied Karadžić's appeal from a decision of Trial Chamber III of the Tribunal ("Trial Chamber") that declared him only partially indigent and determined that he was able to contribute €146,501 to his defence ("Contribution").[5] The Registry stayed the recovery of the Contribution until the issuance of the trial judgement in Karadžić's case, but decided that any reasonable and necessary work performed by Karadžić's legal team until the issuance of the judgement would be deducted from the Contribution.[6] Karadžić submitted four invoices for work performed by his legal adviser, Mr. Peter Robinson ("Legal Adviser"), from October 2014 to January 2015 and requested that the Registry deduct the amount of the invoices (€24,392.77) from the Contribution.[7]

3. On 30 April 2015, the Office of Legal Aid and Defence Matters of the Tribunal ("OLAD") responded that it would deduct from the Contribution €3,486.11 of the €24,392.77 claimed

[1] Registry's Submission Regarding Radovan Karadžić's Request for Review of Decision on Remuneration for October 2014-January 2015, 19 June 2015 (confidential and *ex parte*).
[2] Deputy Registrar's Submission on the Request for Review of Decision not to Remunerate Unnecessary Work after the Close of the Case, 25 June 2015 (confidential and *ex parte*) ("Response").
[3] Reply Brief: Request for Review of Decision on Remuneration for October 2014-January 2015, 29 June 2015 (confidential and *ex parte)* ("Reply").
[4] Deputy Registrar's Further Submission on the Request for Review of Decision to Remunerate Unnecessary Work after the Close of the Case, 6 July 2015 (confidential and *ex parte*) ("Registry's Further Submission").
[5] *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.13, Public Redacted Version of the 25 July 2014 Decision on Appeal from Decision on Indigence, 2 December 2014 ("Decision on Appeal"), paras 2-3, 8, 40-41.
[6] Decision on Appeal, paras 2-3, 8. *See also* Decision on Request for Review of Registrar's Decision, 8 October 2014 ("*Karadžić* Decision"), paras 2, 17-18.
[7] *See* Request, Confidential Annex A (Letter from Karadžić to Head of OLAD, dated 4 November 2014), Confidential Annex D (Letter from Karadžić to Head of OLAD, dated 9 December 2014), Confidential Annex E (Letter from Karadžić to Head of OLAD, dated 2 January 2015), Confidential Annex F (Letter from Karadžić to Head of OLAD, dated 3 February 2015). *See also* Request, para. 2 (stating that the amount Karadžić contends should have been credited against the Contribution is €22,439).

corresponding to (i) the costs of one visit every two months by the Legal Adviser to Karadžić[8] and (ii) work reasonable and necessary for the presentation of Karadžić's case, such as the review of material disclosed by the Office of the Prosecutor ("Prosecution") under Rule 68 of the Rules.[9] The Registry denied sums claimed for general searches and factual investigations, such as the review of transcripts and exhibits in the case of *Prosecutor v. Ratko Mladić*, Case No. IT-09-92 ("*Mladić* case"), that were not disclosed by the Prosecution.[10]

4. On 5 May 2015, the Legal Adviser provided further explanations as to why the work performed of which payment was denied was reasonable and necessary for Karadžić's defence.[11] On 5 June 2015, the OLAD revised its earlier decision and agreed to deduct from the Contribution the total amount of €8,258.79 of the €24,392.77 claimed.[12] The OLAD again denied remuneration for work related to the review of material from the *Mladić* case that were not disclosed under Rule 68 of the Rules and to tasks that it determined were not essential to the presentation of the defence case at this stage of the proceedings.[13]

II. STANDARD OF REVIEW

5. The following standard applies to the review of administrative decisions 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 judgement [*sic*] in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar […] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.[14]

6. 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

[8] Request, Confidential Annex G (Letter from Head of OLAD to Karadžić, dated 30 April 2015) ("April 2015 Letter"), pp. 2-3. *See also* Request, Confidential Annex B (Letter from Head of OLAD to Karadžić, dated 12 November 2014) ("November 2014 Letter").
[9] *See* April 2015 Letter, pp. 2-3. *See also* Request, Confidential Annex C (Letter from Head of OLAD to Karadžić, dated 4 December 2014) ("December 2014 Letter").
[10] *See* April 2015 Letter, p. 2. *See also* December 2014 Letter; November 2014 Letter.
[11] Request, Confidential Annex H (Letter from Peter Robinson to Head of OLAD, dated 5 May 2015).
[12] Request, Confidential Annex I (Letter from Head of OLAD to Karadžić, dated 5 June 2015) ("Impugned Decision"), p. 4. In addition to the expenses incurred by the Legal Adviser for one trip every two months to visit Karadžić, including expenses relating to a trip in January 2015 that had been rejected previously (*see* April 2015 Letter), the Registry agreed to remunerate work undertaken by the Legal Adviser in connection with all visits and electronic communications to Karadžić. *See* Impugned Decision, pp. 2-3. The Registry also agreed to remunerate work related to the 28 January 2015 status conference, which had been denied previously. *See* Impugned Decision, p. 3.
[13] Impugned Decision, pp. 1-4.
[14] *Karadžić* Decision, para. 4, *citing 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.

> 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]

7. Unless unreasonableness has been established, "there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled."[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]

III. APPLICABLE LAW

8. Paragraph 19(a) of the Tribunal's Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused[18] provides, in relevant part, that team members may be remunerated for work performed during court recess periods

> provided the self-represented accused submits a written request to the Registry for the remuneration of work performed during such recess periods, with justifications detailing reasons why the work had to be performed during the recess. The Registry must be satisfied that (i) the work performed during the recess was reasonable and necessary for the preparation of the case, and (ii) the work could not have been performed outside the recess period.

9. Paragraph 26 of the Remuneration Scheme also provides that any disputes over remuneration or reimbursement of expenses arising from the application of the Remuneration Scheme shall be settled in accordance with Article 31 of the Tribunal's Directive on the Assignment of Defence Counsel.[19] Under Article 31(C) of the Directive, "[w]here the dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar [of the Tribunal], who shall refer the matter to the President [of the Tribunal] for his determination", which "shall be final and binding upon the parties".

IV. SUBMISSIONS

10. Karadžić argues that the Impugned Decision should be quashed because the Registry considered irrelevant material, failed to take into account relevant material, and was unreasonable in deciding that: (i) material from the *Mladić* case did not qualify as "exculpatory material" and thus its review was not reasonable and necessary for the presentation of the defence case ("Ground 1");

[15] *Karadžić* Decision, para. 4, *citing*, *inter alia*, Žigić Decision, para. 13.
[16] *Karadžić* Decision, para. 5, *citing*, *inter alia*, Žigić Decision, para. 13.
[17] *Karadžić* Decision, para. 5, *citing*, *inter alia*, Žigić Decision, para. 14.
[18] Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 1 April 2010 ("Remuneration Scheme").
[19] Directive on the Assignment of Defence Counsel, Directive No. 1/94, IT/73/REV.11, 11 July 2006 ("Directive").

(ii) remuneration for tasks related to the preparation of motions to re-open the defence case depended on the ultimate success of such motions ("Ground 2"); (iii) tasks such as the correction of errors in the official transcript, providing responses to various requests by the Prosecution and the Trial Chamber, and seeking the reclassification of public filings as confidential could have been performed during the trial and thus would not be remunerated at this late stage ("Ground 3"); (iv) the post-trial review of filings in this and other cases and the facilitation of Karadžić's communications with academics and the media could not be remunerated because they were not essential to the presentation of the defence case ("Ground 4"); and (v) work on preparing and submitting requests for advance authorization before performing certain tasks, in accordance with the OLAD's requirements, was not remunerable ("Ground 5") ("Grounds").[20] Karadžić submits that a total amount of €22,439 should have been credited against the Contribution (*i.e.* €18,246 in addition to the amount already deducted by the OLAD).[21]

11. In particular, under Ground 1, Karadžić argues that the exculpatory nature of the reviewed *Mladić* case material and the fact that Mr. Mladić is on trial for many of the same events as Karadžić are more critical than whether those transcripts and exhibits were disclosed by the Prosecution under Rule 68 or not, which is wholly irrelevant.[22] Karadžić adds that Rule 68 disclosure was not even necessary, because the *Mladić* Trial Chamber has granted him access to confidential material in that case already since 2011.[23] Karadžić contends that, given the long history of disclosure violations by the Prosecution in the present case, it was reasonable and necessary for his Legal Adviser (who had extensive experience in representing accused individuals before the Tribunal) to review and assess potentially exculpatory material from the *Mladić* case.[24] According to Karadžić, his Legal Adviser had the duty, pursuant to Article 11 of the Code of Professional Conduct for Counsel Appearing before the International Tribunal ("Professional Code"),[25] to exercise due diligence in identifying and bringing to the attention of the Trial Chamber material that became available during the post-argument period.[26] If he failed to do so Karadžić could not have sought the admission of such material as additional evidence on appeal.[27] Karadžić refers, as an example, to Mladen Blagojević's testimony in the *Mladić* case that he had been interviewed by the Prosecution in 2004 – at which interview he apparently provided information contradicting a Prosecution witness in Karadžić's case; that testimony led the Legal Adviser to seek

[20] Request, para. 17.
[21] Request, paras 1-2.
[22] Request, paras 25, 27.
[23] Request, para. 26.
[24] Request, para. 29.
[25] Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 REV. 3, 22 July 2009.
[26] Request, para 31.
[27] Request, para 30.

the disclosure of the transcript of Blagojević's interview and then draft a motion to re-open Karadžić's case.[28]

12. Under Ground 2, Karadžić argues that it is unprecedented for the OLAD to condition the remuneration of defence counsel on the eventual success of a motion or a ground of appeal.[29] He explains that both himself and the Legal Adviser have targeted their post-trial searches at information that was reasonably likely to contain exculpatory material,[30] such as material from the *Stanišić and Simatović* case relating to events in Croatia, a cable from the United Kingdom concerning the Srebrenica events, or recently released oral accounts of U.S. officials involved in the alleged agreement by Richard Holbrooke that Karadžić would not be prosecuted.[31] Karadžić also refers to the post-trial publication of a book about himself, which mentioned a cable recounting a May 1992 meeting between Karadžić and the U.S. Ambassador to Yugoslavia; according to Karadžić, it was reasonable and necessary for the Legal Adviser to try to obtain the cable from the U.S. government and then draft a motion to re-open the defence case – as he did – even if the motion was ultimately unsuccessful.[32] Karadžić reiterates that his Legal Adviser had the duty, both under Article 11 of the Professional Code and Rule 115 of the Rules, to diligently undertake such tasks and draft motions to re-open the case,[33] which must be remunerated because, additionally, they were not found to be frivolous or an abuse of process under Rule 73 of the Rules.[34]

13. Under Ground 3, Karadžić argues that the OLAD erred in denying remuneration for certain tasks performed by the Legal Adviser (supplying the Trial Chamber and the Registry with defence translations, exhibits, and videos that could not be located electronically or providing corrections to errors in the official transcripts) on the ground that they could and should have been completed during the trial.[35] Karadžić recalls that the relevant requests from the Registry and the Trial Chamber were received post-trial, when his case manager had already departed and he only had the assistance of his Legal Adviser.[36] Karadžić explains that his defence team was only remunerated for the actual tasks performed during the trial, and not on a lump-sum basis, and thus, if something was not done during the trial and had to be completed afterwards, it would not be covered by funds dispersed by the OLAD before the end of the trial.[37] According to Karadžić, given the duration of the trial and the approximately 5,000 defence exhibits involved, certain issues could only be noticed

[28] Request, para. 28.
[29] Request, para. 38.
[30] Request, para 45.
[31] Request, para. 44.
[32] Request, para. 42.
[33] Request, para. 36.
[34] Request, paras 36, 43.
[35] Request, para. 47.
[36] Request, paras 47-48.
[37] Request, para. 49.

and addressed post-trial and his Legal Adviser should be remunerated for such tasks, just as Registry and Prosecution staff were paid for working on the same post-trial issues.[38] This is particularly true, Karadžić argues, vis-à-vis the review of public filings and transcripts for purposes of identifying confidential information and seeking their reclassification – a time-consuming task that, as the International Criminal Court has recognized, may only be performed post-trial.[39]

14. Under Ground 4, Karadžić challenges the OLAD's refusal to remunerate other tasks his Legal Adviser had to complete post-trial – such as reviewing filings by the Prosecution, Trial Chamber decisions, or correspondence to the defence, responding to Karadžić's requests for information, and facilitating communications with the media and various academics – even if they were not strictly essential to the presentation of the defence case.[40] According to Karadžić, it would be unprofessional for his Legal Adviser to not address issues arising post-trial on the basis that they were not essential to the presentation of the defence case.[41] With respect to media communications, in particular, Karadžić points out that his Legal Adviser advised Karadžić on his communications with the media before and during the trial and continued to do so after the trial ended and thus should be remunerated for his work in that regard.[42]

15. Under Ground 5, Karadžić submits that, even though administrative correspondence with the OLAD is not normally remunerated, the time spent by his Legal Adviser on preparing requests for authorisation of various tasks should be remunerated given the exceptional nature of the requirement in his case that advance authorisation be sought for all work performed.[43]

16. In its Response, the Registry argues that work performed after the end of the trial and before the delivery of the judgement should be remunerated pursuant to paragraph 19(a) of the Remuneration Scheme, which allows remuneration for work performed during court recess that is reasonable and necessary for the preparation of the case and could not have been performed outside the recess period.[44] The Registry adds that since Karadžić represents himself, post-trial work done by his Legal Adviser would be remunerated as long as the accused could not perform it by himself.[45] According to the Registry, Karadžić was provided with comprehensive guidelines as to the type of post-trial work that could be remunerated.[46]

[38] Request, para 50.
[39] Request, para. 54.
[40] Request, paras 56, 59-60.
[41] Request, para. 60.
[42] Request, para. 57-58.
[43] Request, para. 62-64.
[44] Response, para. 4.
[45] Response, para. 7.
[46] Response, paras 5-6.

17. In response to Ground 1 of the Request, the Registry argues that Karadžić had more than two years to present his case and thus, general searches for exculpatory evidence – other than the review of material disclosed by the Prosecution – are not reasonable and necessary at this stage of the proceedings and should have been performed earlier.[47] Regarding Karadžić's Legal Adviser duty of diligence under the Professional Code, the Registry contends that Karadžić acts as his own counsel and the Registry didn't fail to perform any financial obligation towards him.[48] The Registry also explains that the Impugned Decision relied on a decision by the Trial Chamber instructing Karadžić and his Legal Adviser to avoid delaying the trial through frivolous filings.[49] Concerning motions to re-open the defence case, in particular, the Registry reiterates that remuneration for work on such motions could be considered only once the Trial Chamber has granted the motion and re-opened the case for admitting additional defence evidence.[50]

18. In response to Ground 3 of the Request, the Registry argues that tasks such as the review of the case record and the reclassification of public filings as confidential are not necessary for the preparation of the case at this stage and could have been performed while the trial was ongoing.[51] The Registry notes that Karadžić's defence team received 85% of the amount that would be paid to the entire team of a represented accused for the trial phase of a case of the same complexity[52] and that it was the defence's duty to ensure the completion of all necessary work during trial.[53]

19. In response to Ground 4, the Registry argues that tasks such as reviewing scheduling orders in other cases or reading filings by the Prosecution, Trial Chamber decisions, or correspondence to the defence, are tangential or irrelevant to the preparation of Karadžić's case before the Trial Chamber and cannot be considered necessary or reasonable at this stage of the proceedings.[54] Regarding the facilitation of communications with the media, the Registry argues that such work is not necessary for the preparation of the defence case and thus not remunerable. The Registry points out that the refusal to remunerate the Legal Adviser for this work in no way limits Karadžić's ability to communicate with the media.[55]

20. Finally, in response to Ground 5, the Registry contends that, despite the particularities of Karadžić's case, the Remuneration Scheme still applies and prohibits remuneration for

[47] Response, para 14.
[48] Response, para. 15.
[49] Response, para. 16.
[50] Impugned Decision, p. 1.
[51] Response, para. 20.
[52] Response, fn. 26.
[53] Response, para. 19.
[54] Response, para. 22.
[55] Response, para. 23

correspondence with the OLAD.[56] The Registry notes that all Tribunal-funded defence teams are obliged to request advance authorization for work to be performed.[57]

21. Karadžić replies that certain materials from the *Mladić* case were disclosed by the Prosecution after the end of his trial and thus their review at this late stage was undertaken in good faith and was "reasonable and necessary even if ultimately not successful in uncovering exculpatory material".[58] In relation to the remuneration for time spent on preparing and submitting requests for authorization to the OLAD, Karadžić argues that the OLAD erred in relying on policies applicable to lump-sum cases,[59] because, unlike in those cases, Karadzic and his Legal Adviser are required to seek advance authorization for all tasks they intend to undertake.

22. The Registry's Further Submission reiterates that while there may be potentially exculpatory material in the *Mladić* case file, work undertaken by the Legal Adviser can only be considered reasonable and necessary if the material reviewed were disclosed by the Prosecution pursuant to Rule 68 of the Rules.[60]

V. DISCUSSION

A. Preliminary matter

23. At the outset, I note that, according to paragraph 5 of the Practice Direction on the Length of Brief and Motions ("Practice Direction"), the length of motions filed before a Chamber (other than those filed in connection with appeals from judgements, interlocutory appeals, and Rule 115 motions) shall not exceed 3,000 words. Pursuant to paragraph 7 of the Practice Direction, "[a] party must seek authorization in advance from the Chamber to exceed the word limit […] and must provide an explanation of the exceptional circumstances that necessitate the oversized filing". These provisions apply, *mutatis mutandis*, to motions filed before the President.[61] I observe that, although the Request exceeds the prescribed word limit,[62] Karadžić did not seek prior authorization to file it.

[56] Response, para. 25.
[57] Response, para. 24. In the Response, the Registry also contends that support staff do not have standing to raise matters before the President, but acknowledges that the Request was signed by both Karadžić, who has standing, and the Legal Adviser. *See* Response, fn. 2. There is, thus, no need to discuss the standing issue further in this decision.
[58] Reply, para. 12.
[59] Reply, para. 14.
[60] Registry's Further Submission, para. 10.
[61] *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 ("*Praljak* Decision"), para. 29; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Motion By Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 22 June 2010, paras 24-25.
[62] *See* Request, p. 33 (indicating that the Request totals 5,500 words).

Nevertheless, it is in the interest of fairness and judicial economy to address the merits of the Request in order to reach a final resolution in this case.[63]

B. Analysis

24. Turning to the merits, I note that Karadžić does not argue that the Registry failed to act with procedural fairness or observe legal requirements in issuing the Impugned Decision.[64] He only challenges the relevance of the material considered by the Registry, the failure to consider relevant material, and the reasonableness of the conclusions reached in the Impugned Decision. This decision will address these allegations.

25. A fundamental issue in this case is what the appropriate standard is for the remuneration of work undertaken by a self-represented accused and his defence team after the end of his trial but before the issuance of the judgement. The Registry claims that Paragraph 19(a) of the Remuneration Scheme, which concerns work performed during court recess periods, should apply by analogy to work performed during the post-trial period.[65] Application of this provision by analogy is reasonable, since Paragraph 19(a) of the Remuneration Scheme is the only provision that provides guidance as to the remuneration of work performed when the Chamber is not sitting, *i.e.* recess periods. The same provision could, therefore, also apply by analogy to the period between the end of the trial in a case and the issuance of the trial judgement – a procedural stage that is, in essence, similar to a court recess period. Nonetheless, I wish to emphasize that what is "reasonable and necessary" in a particular case must be analyzed in light of the circumstances of the case. As my predecessor in the Tribunal's Presidency stated in a prior review decision in this case, "such [remuneration] decisions can only be made on a case-by-case basis after careful consideration of the particular circumstances of each self-represented accused".[66] Bearing these principles in mind, I will now address Karadžić's request for remuneration for each category of work completed since the end of his trial.

1. Review of *Mladić* Case Material

26. Concerning the review of confidential material (exhibits and transcripts) from the *Mladić* case, I observe, at the outset, that some of this material was indeed disclosed to Karadžić by the Prosecution pursuant to Rule 68 of the Rules and the OLAD agreed to remunerate the Legal

[63] *Cf. Praljak* Decision, para. 29.
[64] Request, para. 19.
[65] Response, pp. 1-2, fn. 6. The Registry essentially relied upon this provision in determining whether to remunerate the work performed by the Legal Advisor after the end of Karadžić's trial. *See* Impugned Decision, pp. 1, 3; April 2015 Letter, p. 2; December 2014 Letter, p. 1.
[66] Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010, para. 47.

Adviser for the review of that material.[67] This is not disputed. Karadžić objects to the Registry's refusal to remunerate him for the review of material that was not disclosed by the Prosecution, but nonetheless reviewed by the Legal Adviser on the basis of the access granted to him by the *Mladić* Trial Chamber.

27. In this regard, I note that in 2011, the *Mladić* Trial Chamber allowed Karadžić access to "all closed and private session testimony transcripts", "all confidential exhibits", "all confidential filings and submissions" and "all closed session hearing transcripts other than testimonies",[68] subject to certain restrictions.[69] Explaining its decision, the *Mladić* Trial Chamber reasoned that "[t]he underlying crimes forming the basis of the charges set out in the two indictments [*i.e.* in the *Karadžić* and the *Mladić* cases] are, with a number of exceptions, identical."[70] In other words, Karadžić did not need to wait until the Prosecution disclosed to him potentially exculpatory material in the *Mladić* case pursuant to Rule 68 of the Rules: the *Mladić* Trial Chamber had already granted Karadžić access to confidential submissions, transcripts, and evidence in the *Mladić* case, recognizing the relevance of such material to the *Karadžić* case and their potential evidentiary value for Karadžić's defence. This is a factor to which the Registry did not assign any weight in determining that only the review of material disclosed to Karadžić by the Prosecution pursuant to Rule 68 of the Rules would be remunerated.

28. Furthermore, I take note of the Prosecution's multiple disclosure violations in this case, a recurring issue since the early stages of this case,[71] which has, on occasion, led the Trial Chamber to discontinue the trial proceedings to allow the Prosecution to comply with its disclosure

[67] *See* Request, Confidential Annex C (Letter from Head of OLAD to Karadžić, dated 4 December 2014), pp. 2-3 ("the Registrar considers requests to review materials disclosed by the OTP under Rule 68 [such as disclosure of batch 1429] reasonable and necessary work which might be performed during this stage of the proceedings. Accordingly, the Registrar grants this request, in principle, and will assess the quantum of any claims subject to the aforementioned provisos."). In the same letter, the OLAD granted Karadžić's request for remuneration of work relating to Karadžić's 94th disclosure violation motion, stating that "potential motions which would be the result of Rule 68 disclosure are also generally considerable reasonable and necessary work". *See* Request, Confidential Annex C.

[68] *Prosecutor v. Ratko Mladić,* Case No. IT-09-92-PT, Decision on Motion by Radovan Karadžišć for Access to Confidential Materials in the Mladić case, 18 October 2011 ("*Mladić* Decision"), para. 21.

[69] *Mladić* Decision, paras 15-19. The restrictions concerned (1) material relating to protected witnesses for whom orders of delayed disclosure have been issued, (2) material relating to the enforcement of sentences, and (3) material containing sensitive information that have little or no evidentiary value to Karadžić (such as material relating to remuneration, provisional release, fitness to stand trial, weekly medical reports, expert reports on health issues, notices of non-attendance in court, modalities of trial, protective measures, subpoenas, video-conference links and orders to redact public transcripts and the public broadcast of a hearing).

[70] *Mladić* Decision, para. 14.

[71] *See*, *e.g.*, Decision on Accused's One Hundredth Disclosure Violation Motion, 13 July 2015, para. 19; Decision on Accused's Ninety-Eighth and Ninety-Ninth Disclosure Violation Motions, 8 June 2015, para. 19; Decision on Accused's Ninety-Sixth Disclosure Violation Motion, 21 January 2015, para. 11; Decision on Accused's Ninety-Fifth Disclosure Violation Motion, 5 December 2014, para. 13; Decision on Accused's Ninety-Fourth Disclosure Violation Motion, 13 October 2014, para. 19.

obligations under the Rules and allow Katadžić to review the newly disclosed materials.[72] In light of the long history of such violations, it was not reasonable for the Registry to require that Karadžić and his Legal Counsel only review *Mladić* case material disclosed by the Prosecution pursuant to Rule 68 of the Rules. Karadžić and his defence team already had access to potentially exculpatory material in the *Mladić* case and they could not have been reasonably expected to rely on the Prosecution to disclose such material at their own initiative – especially given the long history of disclosure violations. This is another factor that the Registry failed to take into account in deciding to exclude remuneration for the review of *Mladić* case material not disclosed by the Prosecution pursuant to Rule 68 of the Rules.

29. In light of these factors, the OLAD's denial to remunerate the Legal Adviser for the review of confidential material from the *Mladić* case was unreasonable. Given that the charges in the *Mladić* and *Karadžić* cases are "identical" (as the *Mladić* Trial Chamber has recognized),[73] the Legal Adviser could not have been reasonably expected to only review the *Mladić* case material disclosed by the Prosecution and not use his access to essentially all confidential filings in that case to review potentially relevant evidence and other material as it was becoming available.

30. I therefore find that in reaching that decision, the Registry failed to take into account relevant material and reached an unreasonable conclusion. Ground 1 of the Request is granted and the Registry is ordered to compensate Karadžić and his Legal Counsel for the post-trial review of material from the *Mladić* case, which was reasonable and necessary for Karadžić's defence and could not have been performed during the trial as it involved material that came to the attention of the defence after the conclusion of the trial.

2. Motions to Re-Open the Defence Case

31. Also unreasonable was the Registry's denial of remuneration to the Legal Adviser's for work related to motions to re-open the defence case that were ultimately rejected. The Registry's rationale was that Karadžić's post-trial motions to re-open the defence case were based on material uncovered as a result of the defence's own "fishing" expeditions and independent factual

[72] *See*, *e.g.*, Decision on Accused's Motion for Suspension of Proceedings, 18 August 2010, paras 7-8; Decision on Accused's Twenty-Second, Twenty-Fourth and Twenty-Sixth Disclosure Violation Motions, 11 November 2010, paras 40, 43 ("The Chamber is deeply troubled by the manner in which disclosure has been carried out by the Prosecution in this case, during both the pre-trial and trial phases."); Decision on Accused's Motion for Fifth Suspension of Proceedings, 17 March 2011, para. 10; Decision on Accused's Motion for Fourth Suspension of Proceedings, 16 February 2011, para. 14.
[73] *Mladić* Decision, para. 14.

investigations, which the Tribunal should not be funding, since Karadžić had ample time to conduct investigations and present evidence in support of his case before and during his long trial.[74]

32. I note, however, that between 8 October 2014 and 31 January 2015, Karadžić filed 3 motions to re-open the defence case, all of which were based on publicly available information that emerged after Karadžić's trial or on information that became accessible to Karadžić after the end of his trial and which the Legal Adviser could not be reasonably expected to ignore since they did pertain to Karadžić's case.[75] Indeed, Karadžić's Second Motion was based on a diplomatic cable related to the Srebrenica events successfully obtained by the Legal Adviser from the United Kingdom,[76] after Karadžić's 93rd motion for disclosure violations by the Prosecution relating to the cable (filed during the trial) was granted by the Trial Chamber on 13 October 2014.[77] The Third Motion was based on a document related to the credibility of Prosecution Witness Fadil Banjanović, which was disclosed by the Prosecution on 17 November 2014, even though the document had been in its possession for 10 years.[78] Finally, the Fourth Motion was based on a statement made by Prosecution Witness Mirsada Malagić during the Tribunal's Legacy Conference in Sarajevo on November 2013, but which came to Karadžić's attention on January 2015, when the Tribunal distributed a publication of the conference.[79] The Trial Chamber rejected all three motions, but acknowledged that the material on which each motion was based was unavailable to Karadžić during the trial.[80]

33. I note that these three motions were admitted and denied on the merits.[81] The Trial Chamber did not find that in filing those motions, the Legal Adviser engaged in misconduct under Rule 46 of the Rules or that fees associated with those motions should not be paid because the motions were frivolous or an abuse of process, pursuant to Rule 73(D) of the Rules. I do take note of the fact that, in rejecting Karadžić's Fourth Motion, the Trial Chamber suggested that it delayed the expeditious completion of the trial.[82] It is also true, however, that neither vis-à-vis the Fourth Motion nor with

[74] Impugned Decision, pp. 2-3.
[75] *See* Second Motion to Re-open Defence Case: UK Document, 27 October 2014 (public with confidential annexes) ("Second Motion"); Third Motion to Re-open Defence Case: Fadil Banjanović Document, 9 December 2014 ("Third Motion"); Fourth Motion to Re-Open Defence Case: Mirsada Malagić Statement, 23 January 2015 ("Fourth Motion").
[76] Second Motion, para. 6.
[77] *See* Decision on Accused's Ninety-Third Disclosure Violation Motion, 13 October 2014 (confidential), para. 21.
[78] Third Motion, paras 3-4.
[79] Fourth Motion, para. 5.
[80] *See* Decision on Accused's Fourth Motion to Re-open Defence Case, 24 February 2015 ("Decision on Fourth Motion"), para. 9; Decision on Accused's Third Motion to Re-Open Defence Case, 17 December 2014 ("Decision on Third Motion"), para. 12; Decision on Accused's Second Motion to Re-open Defence Case, 30 October 2014 (confidential) ("Decision on Second Motion"), para. 13.
[81] *See* Decision on Fourth Motion, para. 10; Decision on Third Motion, para. 14; Decision on Second Motion, paras 15, 17.
[82] Decision on Fourth Motion, para. 11 ("following the closing arguments in this case, the Accused and his legal adviser have not paid regard to its repeated instruction to avoid filing frivolous motions which simply delay the expeditious nature of the trial and do not promote the interests of justice or advance his own case. The Chamber reminds the

respect to any other motion to re-open the defence did the Trial Chamber order that "the Registrar shall withhold payment of fees associated with the production of that motion and/or costs thereof", pursuant to Rule 73(A) of the Rules. In the absence of such an order from the Trial Chamber, the Registry could not deny the payment of fees in connection with that or other motions to re-open.[83]

34. In addition to tasks relating to these three motions to re-open the defence case, the Legal Adviser also seeks remuneration for work of a similar nature performed during the same period (8 October 2014 to 31 January 2015), such as: (1) the review of newly discovered or published material, (2) the investigation of possible disclosure violations by the Prosecution, and (3) the completion of a series of tasks in connection with a subsequent motion to re-open the defence case, filed on 2 February 2015.[84] With very few exceptions, there is no indication that the tasks listed in Annex K to the Request involved material available to Karadžić and his defence team before and during the trial or material discovered following post-trial investigations undertaken at the defence team's own initiative.[85] A careful review of Annex K makes it clear that the tasks listed therein involved new material, brought to the attention of the defence through channels other than Karadžić's post-trial factual investigations, which a diligent advisor to a self-represented accused could not have been reasonably expected to ignore.

35. One prominent example are the tasks performed in relation to the material that formed the basis for Karadžić's Fifth Motion. In late October 2014, the Legal Adviser reviewed a book entitled "*Radovan Karadžić: Architect of the Bosnian Genocide*", which was published after the end of Karadžić's trial and written by Robert Donia, a prosecution expert witness.[86] The mere title of the book made it clear that it concerned Karadžić and his involvement in the conflicts in Bosnia and Herzegovina. A diligent defence counsel could not have been reasonably expected to disregard such a publication while the trial proceedings are still on-going, even if the trial has ended. Indeed, it appears that Robert Donia's book contained a reference to "a cable recounting a May 1992 meeting between US Ambassador Warren Zimmerman and Dr. Karadzic from the United States government

Accused's legal adviser that the filing of motions should not be viewed as a numerical exercise to keep the Chamber and the parties occupied and will consider what measures it can take if this warning is not taken seriously.").

[83] I also note that, in denying Karadžić's third motion to re-open the defence case, the Trial Chamber opined that "the motion does not illustrate an efficient use of the Accused's resources or that of the Chamber" since the motion "could have been an alternative remedy in [Karadžić's] Ninety-Fifth Motion [regarding disclosure violations by the Prosecution]." Decision on Third Motion, para. 15. An inefficient filing, however, is not necessarily a frivolous one and the Trial Chamber did not dismiss Karadžić's motion as frivolous or an abuse of process nor did it sanction Karadžić and his defence team for filing it.

[84] *See* Request, Confidential Annex K. *See also* Fifth Motion to Re-open Defence Case: Zimmerman Cable, 2 February 2015 ("Fifth Motion").

[85] The exceptions to this were (1) the tasks undertaken on 5 November 2014 in relation to "General Kadijević's 1993 book", and (2) the tasks performed on 9 December 2014 involving (i) the review of certain statements and (ii) the request to obtain statements of a late person from his biographer, both for possible use under Rule 92 *quater* of the Rules. *See* Request, Confidential Annex K. These tasks appear to have involved material available to Karadžić and his defence team before the end of his trial and thus they could have been undertaken earlier by the Legal Advisor.

pursuant to a request pursuant to the Freedom of Information Act".[87] The Legal Adviser managed to obtain the cable[88] and filed a motion to re-open the defence case to admit the cable,[89] but the OLAD refused to remunerate the work performed by the Legal Adviser in relation to the motion (including the tasks he undertook to obtain the relevant cable) on the basis that the motion to re-open was eventually denied.[90] This was an unreasonable conclusion that failed to take into account that (1) the evidence on which the Fifth Motion was based emerged in the public domain after the conclusion of Karadžić's trial and independently of any post-trial "fishing" expeditions by the defence, and (2) the Fifth Motion, too, was denied on the merits, without the Trial Chamber imposing a penalty pursuant to Rule 73(A) of the Rules.[91]

36. Considering the above, I find that the determinative factor in deciding whether to remunerate the tasks listed in Annex K to the Request, especially work related to post-trial motions to re-open the case, cannot be whether these motions were ultimately successful or not or even whether any motions to re-open the case were filed at all. The ultimate success of a filing is not the decisive criterion for the remuneration of work performed by the defence before or during a trial and there is no reason why it should be the decisive criterion for the compensation of work undertaken after the end of the trial and before the issuance of the judgement. The Registry's blanket refusal to remunerate the Legal Adviser for the review of newly discovered material and for the preparation and filing of motions to re-open the defence case that were ultimately unsuccessful was unreasonable. The reasonable approach in this context would have been to remunerate all work related to public information emerging after the trial or to evidence discovered or brought to the attention of the defence after the trial through channels other than its own investigations. Once such evidence came to the Legal Adviser's attention, it was both necessary and reasonable for him to examine its potential relevance to Karadžić's defence. A defence counsel's duties do not cease until a judgement in the case is rendered. This approach would have led to the remuneration of almost all the tasks listed in Annex K to the Request, with the few exceptions identified above.[92]

37. Ground 2 of the Request is thus granted and the OLAD is ordered to remunerate the Legal Adviser for the tasks listed in Annex K to the Request (with the exceptions identified above[93]), as

[86] *See* Request, Confidential Annex K.
[87] Request, para. 41.
[88] *See* Decision on the Accused's Tenth Motion for Order Pursuant to Rule 70 (United States of America), 26 January 2015.
[89] *See* Fifth Motion.
[90] *See* Decision on the Accused's Fifth Motion to Re-open Defence Case: Zimmerman Cable, 9 March 2015 ("Decision on Fifth Motion").
[91] Decision on Fifth Motion, para. 11.
[92] *See supra*, fn. 85.
[93] *See supra*, fn. 85.

these tasks were reasonable and necessary for Karadžić's defence and could not have been performed during the trial.

3. Responses to Trial Chamber and Registry Requests and Reclassification of Transcripts

38. Under Ground 3 of the Request, Karadžić complains about the OLAD's denial of remuneration to the Legal Adviser for (1) responses to the Registry's and Trial Chamber's requests for translations, exhibits, and videos that could not be located on the Tribunal's electronic filing database, (2) identifying corrections to errors in the official transcripts, and (3) seeking the reclassification of erstwhile confidential filings that have become public.[94] Remuneration was denied on the basis that these tasks were of an administrative nature, undertaken by the Legal Adviser as "a matter of providing assistance to the Trial Chamber and Appeals Chamber rather than being essential to the presentation of the defence case at trial",[95] even though they could and should have been performed during the trial.[96]

39. These reasons, however, do not withstand much scrutiny. I note that the tasks listed on Annex L to the Request were performed by the Legal Advisor in response to requests addressed to Karadžić by the Registry and the Trial Chamber,[97] indeed as a matter of assisting the Trial Chamber to locate certain evidentiary material that could not be located otherwise. A diligent defence lawyer could not be expected to ignore these requests, as the refusal to provide the Trial Chamber with a misplaced exhibit or a translation could seriously impede Karadžić's defence. It was, thus, not reasonable for the OLAD to deprive the Legal Adviser of remuneration for work that he, as a member of Karadžić's defence team, was required to perform in order to serve the best interests of the accused.

40. Equally unreasonable was the OLAD's denial to remunerate the Legal Adviser for the post-trial review of the official transcript of the case and for seeking the reclassification of confidential filings that have become public. The review of the official transcript with a view to correct any mistakes found therein could only have been undertaken after the conclusion of the trial; it goes without saying that such a task must be performed before the delivery of the judgement and the conclusion of the proceedings. The reclassification of public filings as confidential was also reasonable and necessary at the post-trial phase in order to protect the sensitivity of certain information.

[94] Request, paras 47, 51.
[95] Request, Confidential Annex C (Letter from Head of OLAD to Karadžić, dated 4 December 2014), p.3
[96] Response, para 19.
[97] Request, Confidential Annex L.

41. Whether all of these tasks (as listed in Annexes L and M to the Request) should have been performed during Karadžić's trial is not relevant: these tasks were not and could not have been performed during the trial, *inter alia*, because of the complexity of the trial and the volume of both the transcripts and the evidentiary material on the record. The need to perform these tasks arose after the trial as a result of requests addressed to Karadžić and his defence team by the Registry and the Trial Chamber and because some of these tasks could necessarily only be performed after the trial. The Legal Adviser ought, thus, to be remunerated for these tasks.

42. Ground 3 of the Request is also granted and the OLAD is ordered to remunerate the Legal Adviser for the tasks listed in Annexes L and M to the Request, as these tasks were reasonable and necessary for Karadžić's defence and could not have been performed during the trial.

4. Other Work and Karadžić's Communications with the Media

43. Under Ground 4, Karadžić challenges the OLAD's refusal to remunerate the Legal Adviser for a series of other tasks listed in Annex N to the Request, such as (1) the review of various documents, including Prosecution filings and Trial Chamber decisions, and (2) communications with media representatives and academics who were seeking to interview Karadžić.

44. With respect to these tasks, an important distinction must be made. On the one hand, the Legal Adviser's review of post-trial filings in Karadžić's case was both reasonable and necessary, since such filings are directly related to Karadžić's defence and various matters pending post-trial. The Legal Adviser should be remunerated for the review of such filings. On the other hand, however, the OLAD's decision to not remunerate the Legal Adviser for the review by the Legal Adviser of filings in other cases, not directly related to Karadžić's case, was not unreasonable. Karadžić does not provide any reasons in the Request as to why it was reasonable and necessary for his Legal Adviser to review unrelated filings in other cases.

45. The OLAD's denial of remuneration to the Legal Adviser in relation to communications with the media and academics was also reasonable. I note that Karadžić himself may communicate with the press in line with the Registry's applicable regulations, but, as a self-represented accused, does not need the help of his Legal Adviser to do that.[98] Whatever tasks were, therefore, undertaken by the Legal Adviser in that respect, were not necessary and reasonable for Karadžić's defence before the Tribunal and the Registry's decision to not remunerate the Legal Adviser for those tasks was not unreasonable nor was it based on irrelevant material or the failure to consider relevant material.

46. Ground 4 of the Request is, therefore, granted in part, to the extent that it concerns the OLAD's denial of remuneration vis-à-vis the review of filings in Karadžić's case; the remainder of Ground 4 is dismissed.

5. Correspondence with OLAD and Requests for Authorisation

47. Likewise meritless are Karadžić's objections to the Registry's refusal to reimburse Karadžić for time spent by his Legal Adviser on requests to the OLAD for authorisation of post-trial work, in compliance with the relevant requirement under the Remuneration Scheme. I note that the Registry's applicable policies do not allow the reimbursement of costs relating to administrative correspondence with the OLAD.[99] Karadžić acknowledges that.[100] The Registry's refusal to remunerate the Legal Adviser for work related to the authorisation requests was, thus, reasonable and consistent with the Tribunal's policies and was not based on irrelevant material or the failure to consider irrelevant material. Accordingly, Ground 5 of the Request is dismissed.

* * *

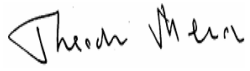
48. In sum, I am satisfied that Karadžić has demonstrated adequately that the Registry acted unreasonably, considered irrelevant material, and failed to consider relevant material in refusing to remunerate the Legal Adviser for the tasks listed in Annexes J, K, L, and M to the Request (*i.e.* the review of the *Mladić* case material, tasks related to motions to re-open the defence case that were ultimately dismissed,[101] responses to post-trial requests by the Registry, the Trial Chamber and the Prosecution, correction of errors in the official transcript, and requests for the reclassification of public filings) and, in part, for the review of post-hearing filings in this case as listed in Annex N to the Request. The remainder of the Request is dismissed.

VI. DISPOSITION

49. In view of the foregoing, I hereby **GRANT Grounds 1, 2, 3 and Ground 4, in part,** of the Request and **ORDER** the Registrar to remunerate work performed by the Legal Adviser and listed in Annexes J, K, L, and M to the Request, with the limitations stated in previous paragraphs of this decision.[102] The Request is dismissed in all other respects.

[98] Remuneration Scheme, Guidelines on the Submissions on Invoices and the Activities of Assistants to Self-Represented Accused which may be Remunerated, 1 April 2010 ("Guidelines on the Submissions on Invoices"), p. 3.
[99] Guidelines on the Submissions on Invoices, p. 3.
[100] Request, para. 63.
[101] With the exceptions identified above in this regard. *See supra*, fn. 85.
[102] *See supra*, paras 34, 36-37. 44-46.

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



Done this 12th day of October 2015,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Tribunal]