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No.: **ICC-01/11-01/11**

Date: **24 August 2015**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION IN LIBYA

IN THE CASE OF *THE PROSECUTOR* v. *SAIF AL-ISLAM GADDAFI*

Public

**Decision on the Defence Request for Review of the
Registrar's Decision on Legal Aid**

Decision to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Counsel for Saif Al-Islam Gaddafi
John R.W.D. Jones

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representative

Others

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues this decision on the “Request for review of Registrar’s Decision”¹ (the “Request”).

The present decision is classified as public although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential *ex parte*. The Chamber considers that the references to the said documents in the present decision are required by the principle of judicial reasoning as well as fairness and transparency of the proceedings. Moreover, those references are not inconsistent with the nature of the documents referred to and have been kept to a minimum.

I. Procedural History and Background

1. On 17 April 2013, the Chamber rendered the “Decision on ‘Request to Withdraw’” (the “17 April 2013 Decision”) appointing John R.W.D. Jones to represent Saif Al-Islam Gaddafi (“Mr Gaddafi”) as a provisional measure “until Mr Gaddafi exercises his right to freely choose counsel under article 67(1)(d)” of the Rome Statute (the “Statute”).² At the time, the Chamber noted that the Office of Public Counsel for the defence (the “OPCD”) “[was] in a position to continue providing its assistance to the Defence, including in terms of case-managerial support and legal advice, where necessary”.³

¹ ICC-01/11-01/11-595-Conf-Exp with ten confidential *ex parte* annexes.

² Pre-Trial Chamber I, ICC-01/11-01/11-311-Conf-Exp, para. 20. A public redacted version is also available, ICC-01/11-01/11-311-Red.

³ *Ibid.*, para. 39. Following the Chamber’s decision, a representative of the Counsel Support Section (the “CSS”) informed counsel that the Registry agreed, on an exceptional basis, to “provisionally assume the costs of [Mr Gaddafi’s] legal representation until such time an assessment of his disposable means has been conducted and a decision on his indigence can be rendered following the normal procedure”. It was further clarified, amongst other, that only costs deemed “reasonably necessary as determined by the Registrar for an effective and

2. On 19 August 2013, the Registrar agreed, “to the extent necessary and reasonable”, to grant additional resources for an *ad hoc* Arabic language assistant to facilitate communication between counsel and Mr Gaddafi as well as potential witnesses, provided these services could not be secured in-house within the OPCD or the Registry Translation and Interpretation Section.⁴ The Registrar also clarified that such services would be remunerated on the basis of a daily/hourly basis as opposed to a lump-sum at the end of every month.⁵ This daily/hourly rate was borrowed from the payment scheme pertaining to a field assistant/research person (4,047 €/month; 186.07 €/day; 24.81 €/hour).⁶ The work for language assistance was subsequently agreed to be set at maximum 20 hours per month without prior authorisation of the Registry.⁷ The concrete monthly payment was to be justified in a timesheet.⁸

3. On 20 February 2014, counsel met with a representative of the CSS and requested that assistant to counsel be authorised to provide also legal services to counsel.⁹ It was agreed that assistant to counsel would perform limited research pertaining to “Libya’s domestic system and national judicial activities”.¹⁰ On 21 February 2014, a representative of the CSS confirmed by email that the language assistant would be reimbursed “up to a cap of 2,500 €

efficient defence” would be covered, and that payment is “confined solely to a counsel at this stage of the proceedings”. ICC-01/11-01/11-608-Conf-Exp-Anx1, p. 3.

⁴ ICC-01/11-01/11-608-Conf-Exp-Anx2, p. 3. Counsel submitted request to the Registry for the appointment of the language assistant on 1 September 2013, see ICC-01/11-01/11-608-Conf-Exp-Anx4, p. 6. Remuneration for language assistance was requested to be paid retroactively since 1 August 2013 (ICC-01/11-01/11-608-Conf-Exp-Anx3, pp. 3-4), which was granted on an exceptional basis by the Registry (ICC-01/11-01/11-608-Conf-Exp-Anx3, p. 2).

⁵ ICC-01/11-01/11-608-Conf-Exp-Anx2, p. 3.

⁶ *Ibid.* The exact breakdown of figures was clarified in an email from representative of the CSS to counsel, ICC-01/11-01/11-595-Conf-Exp-AnxC, p. 2.

⁷ See Email from chief of CSS to counsel dated 2 December 2013, ICC-01/11-01/11-595-Conf-Exp-AnxD, p. 2; ICC-01/11-01/11-608-Conf-Exp, para. 4.

⁸ ICC-01/11-01/11-608-Conf-Exp-Anx2, p. 3.

⁹ See ICC-01/11-01/11-595-Conf-Exp, para. 9; ICC-01/11-01/11-595-Conf-Exp-AnxA, p. 3; see also ICC-01/11-01/11-608-Conf-Exp, para. 6.

¹⁰ ICC-01/11-01/11-595-Conf-Exp, para. 9; ICC-01/11-01/11-595-Conf-Exp-AnxA, p. 4.

per month for her services rendered to the Defence” from savings in the monthly budget.¹¹ The concrete monthly payment was to be justified in a timesheet.

4. In the following months, the calculation of the daily/hourly rate for legal research services became a bone of contention for the Defence and the CSS. The CSS established the daily/hourly rate for each month by dividing the capped amount of 2,500 € by the days of the month to arrive at a daily rate, and dividing the daily rate by 7.5 hours to arrive at an hourly rate. This method of calculation determined an hourly rate of 10.75 €.¹² Conversely, the Defence was of the view that the hourly rate was to be derived from the Court’s Legal Aid Policy (“LAP”) for legal assistants (4,889 €/month).¹³ It challenged the Registry’s calculation method of the daily rate which had based it on the full 31-day calendar month rather than the working 21-day month.¹⁴ Accordingly, the Defence opined that the hourly rate was to be set at 51.46 €.¹⁵

5. On 11 December 2014, the Defence requested the Registrar by letter, *inter alia*, to review the calculation and approach for remuneration of legal assistance provided; and to be provided with a breakdown of payments divided into remuneration for legal and language services respectively.¹⁶ The Defence conceded that the calculation of language assistance was not at issue.¹⁷

¹¹ ICC-01/11-01/11-595-Conf-Exp-AnxE, p. 2; see also ICC-01/11-01/11-608-Conf-Exp, paras 6 and 8.

¹² ICC-01/11-01/11-595-Conf-Exp-AnxF, p. 2.

¹³ ICC-01/11-01/11-595-Conf-Exp-AnxG, p. 3; ICC-01/11-01/11-595-Conf-Exp-AnxA, p. 10.

¹⁴ ICC-01/11-01/11-595-Conf-Exp-AnxG, pp. 5-6; ICC-01/11-01/11-595-Conf-Exp-AnxA, p. 11.

¹⁵ ICC-01/11-01/11-595-Conf-Exp-AnxG, p. 3; ICC-01/11-01/11-595-Conf-Exp-AnxA, p. 4; ICC-01/11-01/11-608-Conf-Exp-Anx5, p. 2.

¹⁶ ICC-01/11-01/11-595-Conf-Exp-AnxA.

¹⁷ ICC-01/11-01/11-595-Conf-Exp-AnxA, pp. 4, 7 and 13. See also ICC-01/11-01/11-595-Conf-Exp, para. 21.

6. On 6 May 2015, the Registrar took the decision on the points raised by the Defence (the “Registrar’s Decision” or “Decision”).¹⁸ At the outset, he confirmed the agreement that assistant to counsel would be remunerated for language assistance.

7. As regards the payment for legal services rendered, the Registrar recalled that assistant to counsel was not appointed formally as legal assistant and, moreover, was not included in the Registry’s list of legal assistants maintained under regulation 125 of the Regulations of the Registry. The Registrar also recalled that, despite not fulfilling the formal appointment criteria, assistant to counsel was exceptionally authorised to conduct limited research on an *ad hoc* basis alongside the duties as a language assistant, the remuneration of which was capped to a maximum of 2,500 €/month.

8. Due to the *ad hoc* nature of the appointment, the Registrar clarified that “the same method of calculation as used for all calculations under the legal aid system for appointments on an *ad hoc*, as opposed to full time, basis” would be applied.¹⁹ However, he reconsidered the calculation of the hourly rate of 10.75 €²⁰ of legal fees for two reasons: (i) the hourly rate of 10.75 € was erroneously based on 31 working days per month, and should have been based on 21.75 working days per month; and (ii) it did not take into account the time used by the assistant to perform the tasks as language assistant, which should be deducted from the maximum of 21.75 working days²¹ per month. As a consequence, the Registrar accepted that the remuneration over the period in question was underestimated by 3,506.33 € on the basis of an

¹⁸ ICC-01/11-01/11-595-Conf-Exp-AnxB.

¹⁹ ICC-01/11-01/11-595-Conf-Exp-AnxB, p. 2.

²⁰ In the Decision, the Registrar refers to 11 €. The Chamber understands that the Registrar brought the hourly rate of 10.75 € to a round figure.

²¹ The Chamber notes that in the Decision the Registrar refers to “21.75 hours per month”. However, considering the context in which this statement is made, the Chamber understands that this was an oversight and the relevant text element should read “27.75 working days per month”.

hourly rate of 34.31 €.²² The Registrar also emphasised that the hourly rate referred to was on the basis of the hours actually worked by the assistant and that, based on the working schedule every month, the hourly rate may vary.²³

9. On 25 May 2015, the Defence submitted the Request challenging the calculation and approach taken in relation to the payments of assistant to counsel rendering language and legal services.

10. On 23 June 2015, the Registrar, having been granted twice an extension of time,²⁴ submitted the “Observations on the ‘Request for the review of the Registrar’s Decision’ (ICC-01/11-01/11-595-Conf-Exp)” (the “Registrar’s Observations”).²⁵

11. On 29 June 2015, the Defence submitted the “Defence Request for Leave to Reply to ‘Observations on the *Request for review of Registrar’s Decision* (ICC-01/11-01/11-595-Conf-Exp)” (the “Request for Leave to Reply”).²⁶

II. Submissions

1. *The Request*

12. In the Request, the Defence challenges the calculation and approach taken in relation to the payments of assistant to counsel rendering language and legal services. In particular, the Defence requests that the Registrar’s Decision be reversed and remitted on the grounds that

- (i) the Registrar has acted arbitrarily by using services provided as a language assistant as a basis for creating a variable rate for legal assistance; and

²² ICC-01/11-01/11-595-Conf-Exp-AnxB, pp. 2-3.

²³ ICC-01/11-01/11-595-Conf-Exp-AnxB, p. 3.

²⁴ Email from Senior Legal Adviser of the Pre-Trial Division to the Registry on 12 June 2015 at 11h48; Pre-Trial Chamber I, Decision on the Registrar’s Request for an Extension of Time, 23 June 2015, ICC-01/11-01/11-607-Conf-Exp.

²⁵ ICC-01/11-01/11-608-Conf-Exp, with eight confidential *ex parte* annexes.

²⁶ ICC-01/11-01/11-609-Conf-Exp.

(ii) the Registrar's decision is unreasonable in so far as it fails to provide a breakdown of monthly payments.²⁷

The Defence also requests the Chamber to order the Registrar to apply the "Registry Rate", i.e. the hourly rate of 34.31 € referred to in the Decision, to all legal research remuneration from January 2014 onwards.²⁸

13. More specifically, the Defence purports that the Registrar acted arbitrarily by using services provided as a language assistant as a basis for creating a variable rate for legal assistance. The Defence alleges that by indexing the rate to language assistant hours, the Registrar contradicts the "*ad hoc* arrangement which concerned two distinct payment structures".²⁹ At the same time, the Defence accepts the rate of 34.31 € "as a reasonable remuneration rate for (...) legal research" but questions that this rate should be variable.³⁰ The Defence argues that even if one were to accept a variable rate, "there is no reasonable basis as to why the variable factor would be language assistance".³¹ Rather, in the view of the Defence, assistant to counsel should be paid "at the Registry Rate for all legal assistance she provides, up until the monthly remuneration hits the € 2,500.00 per month".³²

14. Moreover, the Defence avers that the Registrar's Decision is unreasonable insofar as it fails to provide a breakdown of monthly payments.³³ In the opinion of the Defence, this is necessary, amongst other, to understand how the Registrar in his Decision arrived at the finding that assistant to counsel was underpaid by 3,506.33 €. ³⁴ The Defence also maintains that the Registrar's calculation "does not equate the number of hours billed and

²⁷ ICC-01/11-01/11-595-Conf-Exp, paras 4 and 56.

²⁸ ICC-01/11-01/11-595-Conf-Exp, para. 56.

²⁹ ICC-01/11-01/11-595-Conf-Exp, para. 30.

³⁰ ICC-01/11-01/11-595-Conf-Exp, para. 32.

³¹ ICC-01/11-01/11-595-Conf-Exp, para. 34.

³² ICC-01/11-01/11-595-Conf-Exp, para. 35.

³³ ICC-01/11-01/11-595-Conf-Exp, para. 36.

³⁴ ICC-01/11-01/11-595-Conf-Exp, para. 39.

accepted by the CSS when using the Registry's Rate and bearing in mind the applicable € 2,500.00 per month cap".³⁵

15. In addition, the Defence contends that the legal services provided by assistant to counsel were necessary and relevant to the admissibility proceedings in relation to the suspect. The Defence claims that this work was necessary even after the Appeals Chamber ruling on the admissibility of this case, as Libya indicated the intention to lodge a second admissibility challenge.³⁶ The Defence also argues that the work completed by assistant to counsel "was also directly relevant to the substantive case against Mr. Gaddafi" before the Court and "conducted within the Defence's obligation to pursue [the suspect's] interests with due diligence and as part of the scope of counsel's mandate".³⁷ Moreover, the Defence avers that the Registrar had accepted that the legal research conducted by assistant to counsel was necessary for the defence of the suspect and "could not have been undertaken by counsel alone".³⁸

16. Finally, the Defence maintains that there are compelling reasons for the Chamber to intervene. It argues that the Registrar "(i) failed to provide full and complete justification for his decision; and (ii) failed to fully consider each of the submissions made by the Defence".³⁹ The Defence claims that the unreasonable approach of the Registrar infringes the rights of the suspect to an effective defence.⁴⁰

³⁵ ICC-01/11-01/11-595-Conf-Exp, para. 40.

³⁶ ICC-01/11-01/11-595-Conf-Exp, para. 46.

³⁷ ICC-01/11-01/11-595-Conf-Exp, para. 47.

³⁸ ICC-01/11-01/11-595-Conf-Exp, para. 49.

³⁹ ICC-01/11-01/11-595-Conf-Exp, para. 52.

⁴⁰ ICC-01/11-01/11-595-Conf-Exp, para. 54.

2. Registrar's Observations

17. With regard to the appointment of assistant to counsel as language assistant, the Registrar recalls in part the submissions made in earlier communications with the Defence and his Decision. In addition, the Registrar submits that certain activities, such as management, organisation of case files, drafting and meetings, were not taken into account in the calculation of fees of the assistant in her capacity as language assistant as they do not form part of the functions of a language assistant.⁴¹

18. With regard to the legal research performed by assistant to counsel on an *ad hoc* basis, the Registrar recalled the limited scope of such research and emphasised that such “an activity ‘was in no way an invitation to supplant activities that should be properly conducted by counsel’”.⁴² He underlined that assistant to counsel was not admitted to the Court’s list of assistants and that counsel’s request was granted only on an exceptional basis.⁴³ Further, the timesheets provided by assistant to counsel had been unilaterally calculated on the basis of the hourly rate applicable to legal assistants.⁴⁴

19. As regards the calculation method, the Registrar explains that assistant to counsel is not paid a monthly lump sum but “on the basis of activities performed and in accordance with the relevant fee calculation method”.⁴⁵ He adds that the calculation method for the language assistant rate is based on 21.75 working days per month and 7.5 hours per day,⁴⁶ but that the rate of *ad hoc* appointments is calculated on an *ad hoc* basis in light of the LAP

⁴¹ ICC-01/11-01/11-608-Conf-Exp, para. 5.

⁴² ICC-01/11-01/11-608-Conf-Exp, para. 6.

⁴³ ICC-01/11-01/11-608-Conf-Exp, para. 7.

⁴⁴ ICC-01/11-01/11-608-Conf-Exp, para. 9.

⁴⁵ ICC-01/11-01/11-608-Conf-Exp, para. 10.

⁴⁶ ICC-01/11-01/11-608-Conf-Exp, para.11.

principles of “Objectivity, Transparency, Flexibility and Economy”.⁴⁷ He further explains that for *ad hoc* appointments, the rate is determined “by dividing the applicable ceiling to the number of days in the month to find the daily rate”.⁴⁸ He adds that for reasons of fairness, he has revised this calculation method by using instead 21.75 working days. Further, the Registrar submits that the hourly rate for legal assistance varies as the number of days worked as language assistant varies over the period. He explains that the rate of 34.31 € referred to in the Decision is “nothing more than the average of monthly hourly rates based on the above calculation over the period running from January until December 2014”.⁴⁹ He states that the rate of 34.31 € is only an indication and that the calculation for legal research services would need to be made anew every month in the future, thus accurately reflecting the nature of the appointment and performed work.⁵⁰

20. The Registrar also reiterates that the hourly rate of 54.46 € (taken from the LAP) applies only to legal assistants admitted to the Court’s list and working full-time, as opposed to *ad hoc* appointments.⁵¹ In that context, he also recalls that the LAP would in any event not provide for a legal assistant in the defence team at the current stage of proceedings.⁵² Finally, he contends that the proposed calculation “provides a practical response to a situation which was not foreseen” in the LAP and that the Registry services “went very far in the application of the principle of flexibility to accommodate [counsel’s] specific requirements in a way that was fair for all parties, including [assistant to counsel]”.⁵³

⁴⁷ ICC-01/11-01/11-608-Conf-Exp, para. 16.

⁴⁸ ICC-01/11-01/11-608-Conf-Exp, para. 12; see also para. 16.

⁴⁹ ICC-01/11-01/11-608-Conf-Exp, para. 14.

⁵⁰ ICC-01/11-01/11-608-Conf-Exp, para. 15.

⁵¹ ICC-01/11-01/11-608-Conf-Exp, paras 13 and 16.

⁵² ICC-01/11-01/11-608-Conf-Exp, para. 16.

⁵³ ICC-01/11-01/11-608-Conf-Exp, para. 17.

III. Applicable Law

21. The Chamber notes articles 43(1) and 67(1) of the Statute, rules 20 and 21 of the Rules of Procedure and Evidence (the “Rules”), regulation 23*bis*, 24(5), and 83 of the Regulations of the Court (the “Regulations”) and regulation 135 of the Regulations of the Registry.

22. Article 67(1)(b) of the Statute entitles the suspect to have adequate time and facilities for the preparation of his or her defence; article 67(1)(d) of the Statute entitles the suspect “to have legal assistance assigned by the Court (...) and without payment if the accused lacks sufficient means to pay for it”.

23. Article 43(1) of the Statute, rules 20 and 21 of the Rules and regulation 83(1) of the Regulations charge the Registrar with the management of the legal assistance scheme of the Court, including the determination as to the scope of legal aid, in conformity with the Statute, the Rules and the Court’s legal aid scheme.⁵⁴ According to Regulation 83(1) of the Regulations, “[l]egal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence”. Pursuant to Regulation 83(4) of the Regulations, the Chamber has the authority to review decisions of the Registrar on the “scope of legal assistance paid by the Court”.

24. According to regulation 135(1) of the Regulations of the Registry, the Registrar shall take any decision “on any dispute concerning the calculation and payment of fees (...) at the earliest possible juncture and notify counsel accordingly”. Pursuant to regulation 135(2) of the Regulations of the

⁵⁴ The “Registry’s single policy document on the Court’s legal aid system”, which was submitted to the Assembly of States Parties at its twelfth session in 2013, codifies and constitutes the Legal Aid Policy, ICC-ASP/12/3, para. 2.

Registry, “counsel may request the Chamber to review any decision taken [by the Registrar under regulation 135(1) of the Regulations of the Registry]”.

25. The Chamber notes its review function in relation to decisions of the Registrar on the scope of legal assistance paid by the Court. It has been accorded with a similar review function in relation to the calculation and payment of fees under regulation 135(2) of the Regulations of the Registry. As the calculation and payments of fees is interrelated with that of the scope of legal aid, the Chamber is of the view that the same standard of review must be applied in relation to an examination of the calculation of fees. As held previously by this Chamber

[T]he appropriate standard of review shall take into account that it is the Registrar’s responsibility to administer the available legal aid budget. The Registry is the organ of the Court best positioned to overview the available financial means and the needs involved in all cases before the Court. The Registrar therefore enjoys a degree of discretion in the determination of the costs which are “reasonably necessary” for an “effective and efficient defence” as set out in regulation 83(1) of the Regulations. The Chamber should only interfere with this discretion when there are compelling reasons for doing so, taking into consideration the right to legal assistance as enshrined in the Statute.

In reviewing the Registrar’s determinations, the Chamber must not consider whether it would have made the same decision as the Registrar. Instead, the Chamber must assess whether the decision of the Registrar was materially affected by an error of law or fact or whether the decision is so unfair and unreasonable as to constitute an abuse of discretion.⁵⁵

IV. Determinations of the Chamber

1. Preliminary Matters

26. As a preliminary matter, the Chamber wishes to address first the Defence Request for Leave to Reply. Mindful of regulation 24(5) of the Regulations, the Chamber has not taken into account any argument contained in said request that has been put forth without the Chamber’s prior authorisation. Consequently, the said request must be rejected.

⁵⁵ Pre-Trial Chamber I, Decision on “Request for Review of Registrar’s Decision” by the Defence of Saif Al-Islam Gaddafi, 20 July 2013, ICC-01/11-01/11-390-Red, paras 30-31.

27. The Chamber also observes that the Registrar has no objection that his submission be reclassified as public. Given the principle of publicity of judicial proceedings, the Chamber deems it necessary that the filings of the Defence be available in public form, if necessary with redactions. Therefore, mindful of regulation 23*bis* (3) of the Regulations, the Defence is ordered to prepare a public version of its filings and to submit them in due course.

2. Review of the Registrar's Decision

28. The issue, which the Defence seeks the intervention of the Chamber, is twofold: (i) the Registrar's calculation method using services provided as a language assistant as a basis for creating a variable rate for legal assistance; and (ii) the absence of a monthly breakdown of payments in relation to language and legal assistance. In the view of the Defence, both these issues warrant a reversal of the Registrar's Decision.

29. As regards the first issue, the Chamber understands from the submissions made that the calculation of payment of language assistance is not at issue between the Defence and the Registrar. It is also undisputed that payment for legal research of assistant to counsel is capped at 2,500 € per month. Rather, the dispute revolves around the calculation method for the legal research rendered by assistant to counsel.

30. As this Chamber has previously ruled, the Registrar enjoys a degree of discretion in the determination of the costs which are "reasonably necessary" for an "effective and efficient defence", as set out in regulation 83(1) of the Regulations. This must also include the calculation methods employed. The Chamber will therefore only interfere with this discretion when there are compelling reasons to do so.

31. In this particular instance, the Chamber does not discern any compelling reason to disturb the calculation method of payments for legal research employed by the Registrar.

32. The Chamber finds it important to recall that in the 17 April 2013 Decision counsel was appointed in the “interests of justice”⁵⁶ (and subsequently payment provisionally granted)⁵⁷. Considering the fact that the initial appearance had yet to take place, payment was confined only to counsel, as laid down in the Court’s LAP. The Chamber also notes that it discarded the submission of counsel at the time to increase legal aid and recalls the reference that counsel was benefiting from the services of the OPCD.⁵⁸ The situation has not changed in the meantime and the above findings remain valid. Indeed, while this case has been declared admissible before the Court,⁵⁹ proceedings leading to the confirmation of charges hearing have still not commenced before this Chamber, pending the surrender of the person.⁶⁰ The submission of a potential second admissibility challenge by Libya at this time remains hypothetical.

33. The Chamber is mindful of the *ad hoc* nature of the arrangement allowing the language assistant to provide *in addition* limited legal research to counsel on a part-time basis. This was agreed upon, notwithstanding the fact that assistant to counsel is not registered in the Court’s list of assistants to counsel and has not otherwise been appointed as legal assistant on the defence team.

⁵⁶ Pre-Trial Chamber I, Decision on the “Request to Withdraw”, 17 April 2013, ICC-01/11-01/11-311-Red, para. 20.

⁵⁷ ICC-01/11-01/11-608-Conf-Exp-Anx1, p. 3.

⁵⁸ *Ibid.*, para. 39.

⁵⁹ Pre-Trial Chamber I, Decision on admissibility of the case against Saif-Al-Islam, 31 May 2013, ICC-01/11-01/11-344-Red; Appeals Chamber, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”, 21 May 2014, ICC-01/11-01/11-547-Red.

⁶⁰ See also Pre-Trial Chamber I, Decision on the “Request for Review of Registrar’s Decision” by the Defence of Saif Al-Islam Gaddafi, 30 July 2013, para. 34.

From this it follows that the Registrar was not under the obligation to apply the Court's LAP (hourly rate of 51.46 €) but was entitled to calculate the hourly rate "using the same method of calculation as used for all calculations under the legal aid system for appointments on an *ad hoc* (...) basis".⁶¹ All told, the Chamber finds it reasonable, on the part of the Registrar, to adopt a calculation method which takes into account these exceptional circumstances.

34. In this context, it is worth noting that assistant to counsel works only part-time and is employed first and foremost to render language assistance to counsel in Arabic (a necessity which was acknowledged by this Chamber).⁶² Under these circumstances, the Chamber accepts the Registrar's Decision to take into account the "time used by [assistant to counsel] to perform her normal tasks as language assistant".⁶³ As a corollary, this varying factor necessarily has a bearing on the calculation of the hourly rate for legal research, as it depends on the hours actually worked by the person concerned. The Chamber, therefore, cannot find merit in the Defence's argument that it was unreasonable on the part of the Registrar to use "services provided as a language assistant as a basis for creating a variable rate for legal assistance".

35. Consequently, absent any compelling reason to disturb the calculation method for legal research employed by the Registrar, the Chamber finds no reason to reverse the Registrar's Decision.

36. As regards the second issue, the Defence claims that the Registrar's Decision is unreasonable due to the absence of monthly breakdown of

⁶¹ See ICC-01/11-01/11-595-Conf-Exp-AnxB, p. 2.

⁶² Pre-Trial Chamber I, Decision on "Request for Review of Registrar's Decision" by the Defence of Saif Al-Islam Gaddafi, 30 July 2013, ICC-01/11-01/11-390-Conf-Red, para. 41.

⁶³ ICC-01/11-01/11-608-Conf-Exp-AnxB, p. 2.

payments in relation to language and legal assistance. The Chamber accepts that the Decision is not that clear as to how the Registrar arrived at the average hourly rate of 34.31 € for legal research. A breakdown of monthly payments covering the period January to December 2014 was not provided. However, the Chamber does not consider that this apparent omission is *per se* sufficient to justify reversing the Registrar's Decision.

37. Finally, the Chamber deems it important to make two comments on the manner in which this issue has been addressed on the part of the Court. It is clear from the submissions of both sides that the terms and conditions of the engagement of assistant to counsel, discussed orally in the meeting of 20 February 2013, were only partially documented in the email sent by the representative of the CSS on 21 February 2013. For future purposes, the Registry is advised to properly document any agreements of such kind, in particular if they involve financial commitments on the part of the Court. This complies with proper administrative accounting and reduces the risk of misunderstandings.

38. Also, when accepting *ad hoc* appointments, the Registrar is requested to act within the confines of the Court's legal instruments. The Chamber accepts that authorising the appointment of assistant to counsel, who is not registered in the Court's list of assistants to counsel, may have been exceptional and owed to the specific circumstances of this case. However, for future purposes, the Registrar is reminded to advise counsel of the existence of the list of assistants to counsel maintained by the Registry, and to propose the appointment of persons who fulfil the requirements under regulation 124 of the Regulations of the Registry.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Reply;

REJECTS the Request;

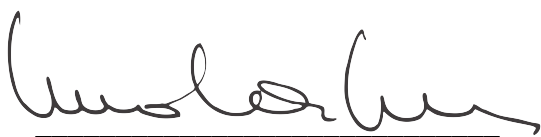
ORDERS the Defence to prepare and submit a public version of documents ICC-01/11-01/11-595-Conf-Exp and ICC-01/11-01/11-609-Conf-Exp, if need be with redactions; and

ORDERS the Registrar to re-classify as “public” document ICC-01/11-01/11-608-Conf-Exp.

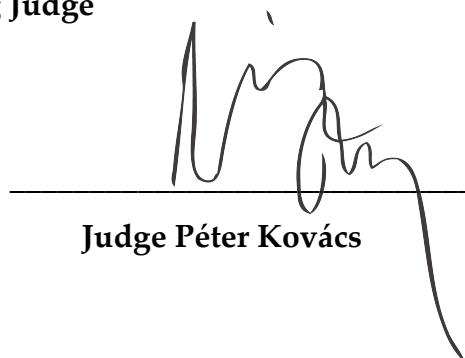
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Cuno Tarfusser



Judge Péter Kovács

Dated this Monday, 24 August 2015

At The Hague, The Netherlands